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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

**Corrected Version of "*Décision relative à la confirmation des charges portées contre
Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*"**

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Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”), acting pursuant to article 61(7) of the Rome Statute (“Statute”), hereby renders this decision on the charges brought against 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 and now held at the seat of the Court.

I. Procedural history

1. On 20 March 2018, the Prosecutor filed an application seeking the issuance of a warrant for the arrest of Mr Al Hassan.¹
2. On 27 March 2018, the Chamber, acting pursuant to article 58 of the Statute, issued a warrant for Mr Al Hassan’s arrest² for the commission of: (a) crimes against humanity, *viz.* torture, rape, sexual slavery, persecution on religious and gender grounds and other inhumane acts committed in Timbuktu, on the territory of Mali, between April 2012 and January 2013; and (b) war crimes, *viz.* violence to person, outrages upon personal dignity, the passing of sentences without previous judgment pronounced by a regularly constituted court affording all judicial guarantees which are generally recognized as indispensable, rape and sexual slavery committed in Timbuktu, Mali, between April 2012 and January 2013, and the war crime of attacking protected objects, committed in Timbuktu, Mali, between late June and mid-July 2012.

¹ “*Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*”, ICC-01/12-01/18-1-Secret-Exp. A confidential version, *ex parte* Office of the Prosecutor and the Defence team for Mr Al Hassan (ICC-01/12-01/18-1-Conf-Exp-Red2) and a public redacted version (ICC-01/12-01/18-1-Red) of the application were filed on 31 March 2018.

² “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, ICC-01/12-01/18-2-tENG.

3. On 31 March 2018, Mr Al Hassan was surrendered to the Court and is now held at its detention centre in The Hague.³

4. On 4 April 2018, the first appearance hearing was held, during which 24 September 2018 was chosen as the date of commencement of the confirmation hearing.⁴

5. On 16 May 2018, the Single Judge, entrusted on 28 March 2018 with carrying out the functions of the Chamber in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*⁵ (“Single Judge” and “Al Hassan case” respectively), issued the “Decision on the Evidence Disclosure Protocol and Other Related Matters”.⁶

6. On 22 May 2018, the Chamber issued its decision on the warrant of arrest (“Decision on the Warrant of Arrest”).⁷

7. On 20 July 2018, the Single Judge postponed the confirmation hearing (“Hearing”) to 6 May 2019.⁸

8. On 5 October 2018, the Chamber issued its “Decision on the Defence Request concerning the Time Limit for the Prosecutor to File the Document Containing a Detailed Description of the Charges” (“Decision on the Date of Filing of the DCC”).⁹

³ ICC-01/12-01/18-11-US-Exp.

⁴ Transcript of the first appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-CONF-FRA ET.

⁵ “Decision Designating a Single Judge”, dated 28 March 2018 and re-classified as “public” on 31 March 2018, ICC-01/12-01/18-6-tENG.

⁶ “Decision on the Evidence Disclosure Protocol and Other Related Matters”, ICC-01/12-01/18-31-tENG, with one annex.

⁷ “Decision on the Prosecutor’s Application for the Issuance of a Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, ICC-01/12-01/18-35-Conf-Exp-Red-tENG. A public redacted version was issued that day (ICC-01/12-01/18-35-Red2-tENG).

⁸ “Decision Postponing the Date of the Confirmation Hearing”, ICC-01/12-01/18-94-Conf-Exp-tENG. That day, the Single Judge issued a public redacted version of his decision, ICC-01/12-01/18-94-Red-tENG.

⁹ ICC-01/12-01/18-143-tENG.

In that decision, the Chamber directed the Prosecutor to enter into the record the French version of the document containing a detailed description of the charges (“DCC”) and the list of evidence no later than 60 days before the date of the Hearing – 6 March 2019.¹⁰

9. On 9 November 2018, the Prosecutor filed information on the fulfilment of her obligations concerning disclosure and witness protection.¹¹

10. On 7 February 2019, the Single Judge directed specific submissions from the Prosecutor on the applications which she intended to file in relation to the proceedings before the start of the Hearing.¹²

11. On 12 February 2019, the Prosecutor filed her submissions and requested a deferment of the Hearing.¹³

12. On 25 February 2019, the Single Judge issued the “*Ordonnance fixant une date butoir pour le dépôt des requêtes en vue du dépôt du document contenant les charges*”,¹⁴ directing the Prosecutor to file all of her applications in prospect of filing the DCC by 15 March 2019.

¹⁰ Decision on the Date of Filing of the DCC, para. 27 and p. 14.

¹¹ ICC-01/12-01/18-180-Red2. On 9 November 2018, the confidential *ex parte* version was filed see ICC-01/12-01/18-180-Conf-Exp. The Prosecutor then filed a confidential redacted version (ICC-01/12-01/18-180-Conf-Red), available to the Defence, in the record on 13 November 2018, and a public redacted version (ICC-01/12-01/18-180-Red2) on 16 November 2018.

¹² “Order Directing the Prosecutor to File Precise Submissions for Requests concerning the Proceedings which She Intends to File before the Start of the Confirmation of Charges Hearing”, ICC-01/12-01/18-236-tENG.

¹³ “*Éléments d’information concernant notamment la communication des éléments de preuve et les requêtes aux fins d’expurgation à venir et demande d’extension de délai pour déposer le Document contenant les charges ainsi que la Liste des témoins et des éléments de preuve*”, ICC-01/12-01/18-243-Secret-Exp. The Prosecutor filed a secret, *ex parte* redacted version of her application, available to the Defence on 14 February 2019 (ICC-01/12-01/18-243-Secret-Exp-Red), and a public redacted version on 15 February 2019 (ICC-01/12-01/18-243-Red2).

¹⁴ ICC-01/12-01/18-250.

13. On 20 March 2019, the Single Judge issued the “Decision on Principles Applicable to Victims’ Applications for Participation, to Legal Representation of Victims, and to the Manner of Victim Participation in the Proceedings”.¹⁵

14. On 18 April 2019, the Single Judge issued a decision directing the Prosecutor to file the DCC by Wednesday, 8 May 2019 and rescheduling the Hearing for Monday, 8 July 2019 (“Decision of 18 April 2019”).¹⁶

15. That day, the Single Judge granted the Prosecutor’s application¹⁷ seeking to extend to 500 pages the authorized page limit for the filing of the DCC.¹⁸

16. On 8 May 2019, the Prosecutor filed the DCC against Mr Al Hassan.¹⁹

17. On 11 May 2019, the Prosecutor filed an amended, corrected version of the DCC against Mr Al Hassan.²⁰

18. On 29 May 2019, the Single Judge issued the “*Ordonnance portant sur l’organisation de l’Audience*”, wherein he decided that the Hearing would, in principle, be held from Monday, 8 July to Friday, 12 July 2019.²¹ The Single Judge also specified that the Hearing would have to focus in part on answers to questions from the Bench which reading the parties’ and participants’ submissions had prompted and, in that

¹⁵ ICC-01/12-01/18-289-Conf-Exp-tENG-Corr. That day, the Single Judge issued a public redacted version of his decision, ICC-01/12-01/18-289-Red.

¹⁶ “Decision Rescheduling the Date of Filing of the Document Containing the Charges and the Commencement of the Confirmation Hearing”, ICC-01/12-01/18-313-tENG, paras. 18-20.

¹⁷ “*Requête de l’Accusation sollicitant l’augmentation du nombre de pages autorisées pour le dépôt du Document contenant les charges*”, 28 March 2019, ICC-01/12-01/18-296-Conf-Exp. That day, the Prosecutor filed a public redacted version of her request, ICC-01/12-01/18-296-Red.

¹⁸ “Decision on the ‘*Requête de l’Accusation sollicitant l’augmentation du nombre de pages autorisées pour le dépôt du Document contenant les charges*’”, ICC-01/12-01/18-310-tENG.

¹⁹ ICC-01/12-01/18-335-Conf.

²⁰ ICC-01/12-01/18-335-Conf-Corr. The Prosecutor filed a public redacted version of the document, ICC-01/12-01/18-335-Corr-Red, on 2 July 2019.

²¹ ICC-01/12-01/18-357, para. 18.

respect, he stated that a list of questions would be transmitted at the appropriate point before the Hearing.²²

19. On 7 June 2019, the Prosecutor filed the DCC in Arabic.²³

20. On 11 June 2019, the Prosecutor filed the Arabic version of the DCC, including the footnotes.²⁴

21. On 24 June 2019, the Single Judge issued an order,²⁵ inviting the parties and participants to file, after the Hearing, final written submissions on issues considered at the Hearing, not exceeding 30 pages and without procedural history or annexes, and stated that the decision on the confirmation of charges would be rendered by 30 September 2019 (“Scheduling Order of 24 June 2019”).²⁶

22. On 27 June 2019, the Single Judge issued an order amending the Scheduling Order of 24 June 2019,²⁷ wherein he instructed the Prosecutor and the Legal Representatives of Victims to file their final written observations by 24 July 2019 and the Defence team for Mr Al Hassan (“Defence”) to file its final written observations by 31 July 2019.²⁸

23. On 4 July 2019, the Defence filed its written observations under rule 121(9) of the Rules of Procedure and Evidence (“Rules”).²⁹

²² ICC-01/12-01/18-357, para. 20.

²³ ICC-01/12-01/18-366.

²⁴ ICC-01/12-01/18-370.

²⁵ “Scheduling Order for the Confirmation of Charges Hearing”, ICC-01/12-01/18-385-tENG.

²⁶ ICC-01/12-01/18-385-tENG, paras. 33-34; pp. 10-11.

²⁷ “Ordonnance modifiant l’Ordonnance portant calendrier aux fins de l’audience de confirmation des charges”, ICC-01/12-01/18-390.

²⁸ ICC-01/12-01/18-390, para. 4.

²⁹ “Submissions for the confirmation of charges”, ICC-01/12-01/18-394-Conf (“Defence Written Submissions”). The Defence filed a public redacted version of the document, ICC-01/12-01/18-394-Red, on 9 July 2019.

24. That day, the Legal Representatives of Victims filed their observations under rule 121(9) of the Rules.³⁰

25. On 5 July 2019, by email,³¹ the Single Judge sent a list of 43 questions to the parties and participants. On 8 July 2019, prior to the Hearing, the Single Judge issued an order³² with one annex containing the list of questions which the parties and participants were instructed to answer at the Hearing (“List of Questions from the Chamber”).³³

26. The Hearing was held from 8 to 17 July 2019 in the presence of the Prosecutor, the Defence and the Legal Representatives of Victims.³⁴

27. On 24 July 2019, the Prosecutor³⁵ and the Legal Representatives of Victims³⁶ filed their final observations.

28. On 31 July 2019, the Defence filed its final observations.³⁷

³⁰ “Observations des Représentants légaux des victimes en vertu de la règle 121-9 du Règlement de procédure et de preuve”, ICC-01/12-01/18-395 (“Written Observations of Legal Representatives of Victims”).

³¹ Email from the Chamber on 15 July 2019 at 19.12.

³² “Order Instructing Parties and Participants to Respond to the Questions in the Annex at the Confirmation Hearing”, ICC-01/12-01/18-399 and annex ICC-01/12-01/18-399-Conf-Anx-tENG. That day, a public redacted version of the annex, ICC-01-12-01/18-399-Red, was entered into the record.

³³ Annex to “Order Instructing Parties and Participants to Respond to the Questions in the Annex at the Confirmation Hearing”, ICC-01/12-01/18-399-Conf-Anx-tENG. That day, a public redacted version of the document, ICC-01-12-01/18-399-Red, was entered into the record.

³⁴ Scheduling Order of 24 June 2019 and “Ordonnance modifiant l’Ordonnance portant calendrier de l’audience de confirmation des charges”, 27 June 2019, ICC-01/12-01/18-390.

³⁵ “Prosecution’s final written observations regarding confirmation of the charges”, ICC-01/12-01/18-430-Conf (“Prosecutor’s Final Written Submissions”).

³⁶ “Observations finales des Représentants légaux relatives aux débats”, ICC-01/12-01/18-429 (“Final Observations of Legal Representatives of Victims”).

³⁷ “Defence’s final submissions regarding the confirmation of charges”, ICC-01/12-01/18-442-Conf (“Defence Final Written Submissions”). On 5 September 2019, the Defence filed a public redacted version of the document, ICC-01/12-01/18-442-Red.

II. Applicable law, jurisdiction of the Court and admissibility of the case concerning Mr Al Hassan

29. The Chamber bases its decision on articles 7, 8, 11, 12(2)(a), 17(1)(a), 17(1)(d), 19(1), 21(1)(a) and (b), 21(2), 21(3), 25(3)(a)-(d), 30, 61, 64, 66, 67, 69 of the Statute and rules 63, 64, 68, 70, 71, 76, 77, 78, 121 and 122 of the Rules, as well as on the evidentiary principles as interpreted in previous decisions of the Court.

30. Article 19(1) of the Statute provides that “[t]he Court shall satisfy itself that it has jurisdiction in any case brought before it”. It is therefore necessary at the outset to determine whether the case concerning Mr Al Hassan falls within the jurisdiction of the Court.

31. For a crime to come under the Court’s jurisdiction, the following three conditions must be met:

- (i) it must be one of the crimes referred to in article 5 of the Statute (jurisdiction *ratione materiae*);
- (ii) it must have been committed within the time frame specified in article 11 of the Statute (jurisdiction *ratione temporis*); and
- (iii) it must satisfy one of the two criteria laid down in article 12 of the Statute:³⁸ either it was committed on the territory of a State Party to the Statute or by a national of that State, or it was committed on the territory of a State which has lodged

³⁸ *The Prosecutor v. Germain Katanga*, “Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Germain Katanga”, dated 5 November 2007, French version registered on 13 November 2007, ICC-01/04-01/07-55 (“Decision of 5 November 2007 in *Katanga*”), para. 11; Situation in the Democratic Republic of the Congo, “Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6”, dated 17 January 2006, registered on 18 January 2006, ICC-01/04-101-tEN-Corr (“Decision of 18 January 2006 in the Situation in the Democratic Republic of the Congo”), para. 85.

the declaration for which article 12(3) of the Statute provides or committed by nationals of that State³⁹ (jurisdiction *ratione loci* and jurisdiction *ratione personae*).

32. With regard to jurisdiction *ratione materiae*, the Chamber has decided, for the reasons set out below, that there are substantial grounds to believe (“standard required”) that the crimes of which Mr Al Hassan stands charged constitute crimes against humanity within the meaning of article 7 of the Statute (namely paragraphs 7(1)(f), 7(1)(g), 7(1)(h) and 7(1)(k)) since they were committed as part of a widespread or systematic attack directed against the civilian population, and war crimes within the meaning of article 8 of the Statute (specifically paragraphs 8(2)(c)(i), 8(2)(c)(ii), 8(2)(c)(iv), 8(2)(e)(iv) and 8(2)(e)(vi)) since they were committed in the context of the non-international armed conflict ongoing in Mali since January 2012. In all of these instances, the first condition, relating to jurisdiction *ratione materiae*, is satisfied.

33. As to jurisdiction *ratione temporis*, the Chamber notes that the Statute entered into force for Mali on 1 July 2002, given that it deposited its instrument of ratification on 16 August 2000.

34. With respect to jurisdiction *ratione loci*, the events addressed in the DCC took place from April 2012 to January 2013 on the territory of Mali, which on 18 July 2012 referred to the Court the situation taking place on its territory since January 2012 and in which a number of crimes within the jurisdiction of the Court appear to have been committed.⁴⁰

35. From the foregoing, the Chamber concludes that the case against Mr Al Hassan falls within the jurisdiction of the Court.

³⁹ Decision of 18 January 2006 in the Situation in the Democratic Republic of the Congo, para. 91.

⁴⁰ MLI-OTP-0001-0003; MLI-OTP-0001-0002.

36. As regards the admissibility of the case, article 19(1) of the Statute confers on the Chamber the discretion to rule on the admissibility of a case when rendering its decision on confirmation of charges pursuant to article 61 of the Statute.

37. The Chamber points out that

[t]he admissibility test [...] is composed of two parts: the first relating to national investigations, prosecutions and trials concerning the facts alleged in the case at hand, and the second to the gravity threshold that the case should meet to be admissible before the Court.⁴¹

38. Regarding domestic proceedings under article 17(1) (a), (b) and (c) of the Statute, the Chamber refers to its findings in the Decision on the Warrant of Arrest⁴² and sees that there has been no change in circumstances. Accordingly, the Chamber finds the case admissible in view of the inaction of the Malian domestic courts.

39. As to the gravity of the case under article 17(1)(d) of the Statute, the Chamber notes that that aspect was addressed in a separate decision and that the Chamber concluded that it was satisfied that the case is of sufficient gravity within the meaning of article 17(1)(d) of the Statute.⁴³

40. From the foregoing, the Chamber finds the case against Mr Al Hassan admissible.

⁴¹ *The Prosecutor v. Bahar Idriss Abu Garda*, "Decision on the Confirmation of Charges", dated 8 February 2010, French version registered on 16 March 2010, ICC-02/05-02/09-243-Red, ("*Abu Garda* Decision"), para. 28. See also Pre-Trial Chamber II, Situation in the Republic of Kenya, "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya", dated 31 March 2010, French version registered on 6 April 2011, ICC-01/09-19-Corr, ("Decision Pursuant to Article 15 of the Rome Statute in the Situation in the Republic of Kenya"), para. 52; Pre-Trial Chamber III, Situation in the Republic of Burundi, "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, ICC-01/17-X-9-US-Exp, 25 October 2017", dated 25 October 2017, French version registered on 30 November 2011, ICC-01/17-9-Red, ("Decision Pursuant to Article 15 of the Rome Statute in the Situation in Burundi"), paras. 145-148 and 183-184.

⁴² Decision on the Warrant of Arrest, paras. 25-32.

⁴³ "Decision on the Admissibility Challenge raised by the Defence for Insufficient Gravity of the Case", 27 September 2019, ICC-01/12-01/18-459-tENG, para. 58.

III. Nature and purpose of the present decision

41. In the present decision, the Chamber must determine, in accordance with article 61(7) of the Statute, whether there is sufficient evidence to establish substantial grounds to believe that Mr Al Hassan committed the crimes with which he is charged.

42. The purpose of the confirmation proceedings is to determine whether the case as presented by the Prosecutor is sufficiently established to warrant holding a trial. To that end, the Statute mandates that the question whether there are substantial grounds to believe that the person committed the crimes with which he or she is charged must be answered. It has thus been said that the confirmation of charges process shields suspects from wrongful and unfounded accusations⁴⁴ by ensuring that “only those

⁴⁴ *The Prosecutor v. Ahmad Faqi Al Mahdi*, decision pursuant to article 61(7)(a) and (b) of the Rome Statute on the charges brought by the Prosecutor against Ahmad Al Faqi Al Mahdi, dated 24 March 2016, French version registered on 27 September 2016, ICC-01/12-01/15-84-Red (“*Al Mahdi Decision*”), para. 14; Pre-Trial Chamber II, *The Prosecutor v. Bemba et al.*, “Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute” on the charges brought by the Prosecutor against Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, dated 11 November 2014, French version registered on 25 November 2014, ICC-01/05-01/13-749 (“*Bemba et al. Decision*”), para. 28; Pre-Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the confirmation of charges”, 29 January 2007, ICC-01/04-01/06-803-tEN (“*Lubanga Decision*”), para. 37; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Decision on the confirmation of charges”, dated 30 September 2008, French version registered on 11 January 2010, ICC-01/04-01/07-717 (“*Katanga and Ngudjolo Decision*”), para. 63; Pre-Trial Chamber II, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, dated 15 June 2009, French version registered on 28 August 2009, ICC-01/05-01/08-424 (“*Bemba Decision*”), para. 28; *The Prosecutor v. Bahar Idriss Abu Garda*, “Decision on the Confirmation of Charges”, dated 8 February 2010, French version registered on 16 March 2010, ICC-02/05-02/09-243-Red (“*Abu Garda Decision*”), para. 39; *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, “Corrigendum of the ‘Decision on the Confirmation of Charges’”, dated 7 March 2011, French version registered on 2 August 2012, ICC-02/05-03/09-121-Corr-Red (“*Banda and Jerbo Decision*”), para. 31; *The Prosecutor v. Callixte Mbarushimana*, “Decision on the confirmation of charges”, dated 16 December 2011, French version registered on 22 February 2012, ICC-01/04-01/10-465-Red (“*Mbarushimana Decision*”), para. 41; Pre-Trial Chamber II, *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, dated 23 January 2012, French version registered on 11 December 2014, ICC-01/09-02/11-382-Red (“*Muthaura et al. Decision*”), para. 52.

persons against whom sufficiently compelling charges going beyond mere theory or suspicion have been brought” are committed for trial.⁴⁵

43. In sum, the pre-trial proceedings ensure that only those charges which are sufficiently supported by the available evidence and which, from a factual and legal perspective, are clearly and properly formulated come before the Trial Chamber for consideration.

44. The Chamber underscores that the evidentiary standard applicable at the current stage of proceedings is less stringent than that required at trial, and it is met where the Prosecutor offers “concrete and tangible proof demonstrating a clear line of reasoning underpinning [her] specific allegations”.⁴⁶ It is the responsibility of the Pre-Trial Chamber to ensure that cases do not proceed to trial where “the evidence is so riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe the person committed the crimes charged”.⁴⁷

⁴⁵ *Al Mahdi* Decision, para. 18; *Bemba et al.* Decision, para. 37; *Lubanga* Decision, para. 37; *Abu Garda* Decision, para. 39; *Banda and Jerbo* Decision, para. 31; *Mbarushimana* Decision, para. 41.

⁴⁶ *Al Mahdi* Decision, para. 18; *Bemba et al.* Decision, para. 37; *Lubanga* Decision, para. 39; *Katanga and Ngudjolo* Decision, para. 65; *Bemba* Decision, para. 29; *Abu Garda* Decision, para. 37; *Mbarushimana* Decision, para. 40; *Muthaura et al.* Decision, para. 52; Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, dated 9 June 2014, French version registered on 15 December 2017, ICC-01/04-02/06-309 (“*Ntaganda* Decision”), para. 9; *The Prosecutor v. Laurent Gbagbo*, “Decision on the confirmation of charges against Laurent Gbagbo”, dated 12 June 2014, French version registered on 17 July 2014, ICC-02/11-01/11-656-Red (“*Gbagbo* Decision”), para. 19; *Bemba et al.* Decision, para. 25; *The Prosecutor v. Charles Blé Goudé*, “Decision on the confirmation of charges against Charles Blé Goudé”, dated 11 December 2014, French version registered on 20 January 2015, ICC-02/11-02/11-186 (“*Blé Goudé* Decision”), para. 12; Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, “Decision on confirmation of charges against Dominic Ongwen”, dated 23 March 2016, French version registered 9 October 2017, ICC-02/04-01/15-422-Red (“*Ongwen* Decision”), para. 17.

⁴⁷ 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 ‘Decision on the confirmation of charges’”, dated 30 May 2012, French version registered on 11 March 2014, ICC-01/04-01/10-514, (“*Mbarushimana* Appeal Judgment”), para. 46.

45. The Chamber has examined all the oral and written observations and submissions of the parties and applicants authorized to participate in the proceedings. Nevertheless, in the present decision, it relies solely on the evidence that it regards as necessary and sufficient to determine that the facts are established to the standard required,⁴⁸ without prejudice to the relevance of other evidence presented and lending support to the same facts.

IV. Evidentiary matters

(A) General considerations on the credibility of witnesses

46. The very nature of pre-trial proceedings precludes the Pre-Trial Chamber from conclusively determining the probative value of evidence, including with respect to credibility of witnesses, whose statements are, as a rule, put before it in written form alone. As the Appeals Chamber has said, “the Pre-Trial Chamber’s determinations will necessarily be presumptive”, and the Pre-Trial Chamber “should take great care in finding that a witness is or is not credible”.⁴⁹ However, the Pre-Trial Chamber must assess the contradictions in the evidence. Accordingly, the Chamber notes that it must “assess the evidence and resolve any ambiguities, contradictions, inconsistencies or

⁴⁸ See *Lubanga* Decision, para. 39; *Katanga and Ngudjolo* Decision, para. 69; *Abu Garda* Decision, para. 45; *Banda and Jerbo* Decision, para. 39; *Mbarushimana* Decision, para. 48; *Muthaura et al.* Decision, para. 60; *Gbagbo* Decision, para. 22; *Blé Goudé* Decision, paras. 15 and 16; *Ongwen* Decision, para. 19. The Chamber also notes that some evidence could not be used for lack of explanation by the Prosecutor concerning, for instance, its nature, source or author (See, e.g., “ [REDACTED]”, [REDACTED], [MLI-OTP-0009-0005](#), described in ICC-01/12-01/18-179-Conf-AnxA, p. 1; Document, [REDACTED], [MLI-OTP-0012-2161](#), described in ICC-01/12-01/18-326-Conf-AnxA); Report, [REDACTED], [MLI-OTP-0012-1974](#), described in ICC-01/12-01/18-326-Conf-AnxA.

⁴⁹ *Mbarushimana* Appeal Judgment, para. 48.

doubts as to credibility arising from contestation of the evidence”.⁵⁰ In the words of the Appeals Chamber:

Any other interpretation would carry the risk of cases proceeding to trial although the evidence is so riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe the person committed the crimes charged.⁵¹

(B) [REDACTED]

47. In that connection, the Chambers takes particular note of the detailed submissions of the parties on the [REDACTED]

1. Submissions of the parties

(a) Submissions of the Defence

48. The Defence submits that [REDACTED] should be treated with “extreme caution” and that the Chamber should attach very little probative value to them because

- (i) [REDACTED] according to the Defence,
[REDACTED]
[REDACTED]
- (ii) [REDACTED]
[REDACTED]; and
- (iii) [REDACTED] contain multiple inconsistencies, in the view of the Defence.⁵²

⁵⁰ *Mbarushimana* Appeal Judgment, para. 40; see also para. 46 of the same appeal judgment.

⁵¹ *Mbarushimana* Appeal Judgment, para. 46.

⁵² [REDACTED]

49. Regarding the first argument, the Defence observes that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁵³

50. [REDACTED]
[REDACTED]
[REDACTED].⁵⁴ [REDACTED]
[REDACTED].⁵⁵ [REDACTED]
[REDACTED].⁵⁶ [REDACTED].⁵⁷ [REDACTED]
[REDACTED]
[REDACTED].⁵⁸ [REDACTED]
[REDACTED].⁵⁹

51. The Defence says that, since [REDACTED]
[REDACTED]
[REDACTED].⁶⁰ [REDACTED]
[REDACTED]
[REDACTED].⁶¹

53 [REDACTED]
54 [REDACTED]
55 [REDACTED]
56 [REDACTED]
57 [REDACTED]
58 [REDACTED]
59 [REDACTED]
60 [REDACTED]
[REDACTED]
61 [REDACTED]
[REDACTED]

52. The Defence submits that [REDACTED]
[REDACTED]
[REDACTED].⁶² [REDACTED]
[REDACTED]
[REDACTED].⁶³

The Defence concludes therefrom that the credibility and the probative force of [REDACTED]
[REDACTED] are diminished as a result.⁶⁴

53. As the Defence has not, at this stage in the proceedings, had the opportunity to cross-examine [REDACTED]
[REDACTED],⁶⁵ it concludes that the rights of the Defence can be protected only if [REDACTED]
[REDACTED] are corroborated by other evidence.⁶⁶

54. Regarding the second argument, the Defence notes [REDACTED]
[REDACTED]
[REDACTED].⁶⁷
[REDACTED].⁶⁸

55. The Defence observes [REDACTED]
[REDACTED].⁶⁹
Furthermore, according to the Defence, [REDACTED]
[REDACTED]

⁶² [REDACTED]
⁶³ [REDACTED]
⁶⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
⁶⁵ [REDACTED]
⁶⁶ Defence Written Submissions, para. 57.
⁶⁷ [REDACTED]
⁶⁸ [REDACTED]
⁶⁹ [REDACTED]

(b) Submissions of the Prosecutor

58. In her submissions, the Prosecutor refutes the arguments advanced by the Defence.⁷⁷ The Prosecutor contends that [REDACTED] are relevant to the Chamber because of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁷⁸

59. The Prosecutor submits that the Defence's claim that [REDACTED] [REDACTED] [REDACTED].⁷⁹ Contrary to the Defence's assertion, [REDACTED] did provide evidence regarding the Islamic Police and Mr Al Hassan [REDACTED].⁸⁰

60. In response to the arguments on the rights of the defence, the Prosecutor points out that, despite the lack of an oath and cross-examination, the evidence remains credible and reliable, not least considering the limited purpose and the scope of the confirmation of charges, which is not intended to be a "mini-trial" or a "trial before the trial".⁸¹ The Prosecutor goes on to say that article 61(5) of the Statute provides that, at this stage, witnesses need not be called.⁸² As to the corroboration of evidence, the Prosecutor points out that rule 63(4) of the Rules expressly provides that it is not mandatory.⁸³ Lastly, and in any event, the key aspects of [REDACTED] are

⁷⁷ [REDACTED]

⁷⁸ [REDACTED]

⁷⁹ [REDACTED]

⁸⁰ [REDACTED]

⁸¹ Prosecutor's Final Written Submissions, para. 106.

⁸² Prosecutor's Final Written Submissions, para. 106.

⁸³ Prosecutor's Final Written Submissions, para. 106.

corroborated by Witnesses [REDACTED] P-0623, [REDACTED] as well as by Mr Al Hassan himself.⁸⁴

61. Lastly, the Prosecutor submits that the Defence provides no evidence in support of its allegations that the role of [REDACTED]

[REDACTED]⁸⁵ Moreover, according to the Prosecutor, [REDACTED]

[REDACTED].⁸⁶

2. Analysis

62. Turning to the first argument, the Chamber notes the misgivings that the Defence has expressed about [REDACTED] in particular that [REDACTED] is [REDACTED]

[REDACTED] The Chamber also notes [REDACTED]

63. That notwithstanding, the Chamber considers that, given the Chamber's limited remit at the confirmation of charges stage, a concrete assessment of these risks will be possible only at the trial stage. To be specific, the Chamber takes the view that the matter must be examined in greater depth and that it will fall to the Trial Chamber for determination.

⁸⁴ Prosecutor's Final Written Submissions, paras. 106, 110.

⁸⁵ [REDACTED]

⁸⁶ [REDACTED]

64. The same, in the opinion of the Chamber, holds true, of the second argument of the Defence that [REDACTED].

65. Lastly, as to the Defence's final argument and [REDACTED]'s credibility as such, it is the view of the Chamber that, at this stage of the proceedings, [REDACTED] do not contain ambiguities, inconsistencies or contradictions of such an extent as to cast doubt sufficient to affect [REDACTED]'s overall credibility and to prompt the Chamber to reject [REDACTED]'s [REDACTED] in their entirety. The Chamber recalls that the Court has held that, where issues of witness credibility arise (due to political or other motives), the bench proceeds on a case-by-case basis and would "not automatically reject [that] evidence solely because the witness might be politically or otherwise motivated, but [would] asses[s] the witness's credibility on each issue to be decided upon and in light of the evidence as a whole".⁸⁷

3. The Chamber's conclusions

66. Accordingly, the Chamber will not reject [REDACTED] outright; it will analyse the credibility of [REDACTED] and the reliability of each piece of information on a case-by-case basis having regard to the subject matter itself of the [REDACTED]. For example, the Chamber may rely on the [REDACTED] as supporting facts relating to the general context, but will treat with all the more circumspection [REDACTED] that go to Mr Al Hassan's (alleged) responsibility.

⁸⁷ *Bemba* Decision, para. 57, referring to *Katanga and Ngudjolo* Decision, paras. 121-122, 219-232; ICTY, *Prosecutor v. Nikola Šainović et al.*, "Judgement", 26 February 2009, IT-05-87-T, para. 61; see also the settled view of the Appeals Chambers of the ad hoc tribunals holding that a chamber could rely on part of a witness's testimony or statements while rejecting other parts: ICTY, *Prosecutor v. Vujadin Popović et al.*, "Judgement", 30 January 2015, IT-05-88-A ("Popović et al. Appeal Judgment"), para. 1243; *Prosecutor v. Nikola Šainović et al.*, "Judgement", 23 January 2014, IT-05-87, paras. 294, 336, 342; *Prosecutor v. Milan Lukić and Sredoje Lukić*, "Judgement", 4 December 2012, para. 92; ICTR, *Prosecutor v. Idelphonse Nizeyimana*, "Judgement", 29 September 2014, ICTR-00-55C, paras. 17, 93 and 108; *Prosecutor v. Ephrem Setako*, "Judgement", 28 September 2011, ICTR-04-81, para. 48.

(C) Statements from anonymous witnesses

67. When it comes to statements from anonymous witnesses, the Chamber recalls that it has followed⁸⁸ the settled view of the other pre-trial chambers that statements and summaries of statements from anonymous witness are accorded lower probative value than statements from witnesses whose identities are known to the Defence,⁸⁹ and that such evidence must be corroborated.⁹⁰ Furthermore, the Chamber has also taken the view that no conclusion can be drawn on the sole basis of circumstantial evidence from anonymous sources.⁹¹

(D) [REDACTED] P-0007

68. The Chamber notes that certain [REDACTED]. This witness, whose identity was disclosed to the Defence, states that [REDACTED] travelled to Timbuktu on [REDACTED]. [REDACTED].⁹² [REDACTED] states [REDACTED].

⁸⁸ "Decision on the Prosecution Request for Leave Not to Disclose the Identity of Witness MLI-OTP-P-0431", 19 July 2018, ICC-01/12-01/18-88-Conf-Exp-tENG, para. 18. That day, a confidential redacted version, available to the Defence, ICC-01/12-01/18-88-Conf-Exp-Red-tENG, and a public redacted version (ICC-01/12-01/18-88-Red2-tENG) were filed.

⁸⁹ Pre-Trial Chamber II, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", dated 23 January 2012, French version registered on 9 December 2014, ICC-01/09-01/11-373 ("*Ruto and Sang Decision*"), para. 78; *Abu Garda Decision*, para. 52, *Bemba Decision*, para. 50; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Corrigendum to the Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules", dated 25 April 2008, French version registered on 22 July 2008, ICC-01/04-01/07-428-Corr, para. 18. See also *Mbarushimana Decision*, para. 49; *Katanga and Ngudjolo Chui Decision*, para. 160.

⁹⁰ *Ruto and Sang Decision*, paras. 78, 297; *Mbarushimana Decision*, para. 49; *Abu Garda Decision*, para. 52; *Katanga and Ngudjolo Decision*, para. 140.

⁹¹ "Decision on the Prosecution Request for Leave Not to Disclose the Identity of Witness MLI-OTP-P-0431," 19 July 2018, ICC-01/12-01/18-88-Conf-Exp-tENG, para. 18, referring to *Katanga and Ngudjolo Decision*, para. 140. That day, a confidential redacted version, available to the Defence (ICC-01/12-01/18-88-Conf-Exp-Red-tENG) and a public redacted version (ICC-01/12-01/18-88-Red2-tENG) were filed.

⁹² [REDACTED]

[REDACTED]

[REDACTED]⁹³ In particular, P-0007 went [REDACTED]

[REDACTED]⁹⁴ [REDACTED] explains [REDACTED]

[REDACTED]

[REDACTED]⁹⁵ P-0007 certifies that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁹⁶ On the basis of this information, the Chamber determines that it is established, for the purposes of the present proceedings, that [REDACTED]

[REDACTED] and [REDACTED]

[REDACTED] by a credible and reliable person.

V. Context of the *Al Hassan* case and structure of the regime introduced in Timbuktu by the armed groups Ansar Dine and AQIM

69. Having examined all of the evidence, the Chamber finds that the following facts are established to the standard required.

(A) Takeover of Timbuktu, context and geographical and temporal scope of the *Al Hassan* case

70. After Kidal and Gao were captured by the insurgent groups, the civilian and military authorities of Mali left the city of Timbuktu, fearing an offensive on

⁹³ [REDACTED]

⁹⁴ [REDACTED]

⁹⁵ [REDACTED].

⁹⁶ [REDACTED]

Timbuktu.⁹⁷ On the morning of Sunday, 1 April 2012, public and privately owned buildings were looted by a local Arab militia, which withdrew⁹⁸ just before the *Mouvement National pour la Libération de l’Azawad* [National Movement for the Liberation of Azawad] (MNLA)⁹⁹ entered the city that day.¹⁰⁰ Ansar Dine¹⁰¹ and Al-Qaida in Islamic Maghreb (AQIM)¹⁰² entered the city on 1 or 2 April 2012, took control of it and drove out the MNLA, which took cover on the south bank of the river and at the airport.¹⁰³ Between 1 and 4 April 2012, Iyad Ag Ghaly,¹⁰⁴ the leader of Ansar Dine, addressed the population over the radio to declare the alliance between Ansar Dine and AQIM and their shared ambition to apply their sharia-based religious ideology in

⁹⁷ Government of Mali, Intelligence Bulletin no. 0095/DSM, 18 April 2012, [MLI-OTP-0012-0119](#), (“[MLI-OTP-0012-0119](#)”), p. 0119; Summary of statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), pp. 0008-0009, paras. 20-21; Statement [REDACTED] see also Prosecutor’s Final Written Submissions, para. 4.

⁹⁸ Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]

⁹⁹ For a description of this group, see, below, para. 209.

¹⁰⁰ Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]

¹⁰¹ For a description of this group, see, below, para. 72.

¹⁰² For a description of this group, see, below, para. 73.

¹⁰³ Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0009, para. 23, p. 0013, para. 41; Statement of [REDACTED]; Video, [MLI-OTP-0011-0259](#), 00:00:10:00 to 00:02:46:00, 00:02:56:00 to 00:05:13:00 and 00:06:50:00 to 00:08:38:00; Government of Mali, Dispatch [*Message Porté*], 3 April 2012, [MLI-OTP-0012-0157](#) (“[MLI-OTP-0012-0157](#)”); [MLI-OTP-0012-0119](#), p. 0122; Intelligence Bulletin no. 0099/DSM, 24 April 2012, [MLI-OTP-0012-0356](#) (“[MLI-OTP-0012-0356](#)”), p. 0358; Dispatch no. 0803/DSM, 10 April 2012, [MLI-OTP-0012-0938](#) (“[MLI-OTP-0012-0938](#)”).

¹⁰⁴ For more information on Iyad Ag Ghaly, see below, paras. 77-79, 83. The Chamber notes from the evidence that this person is referred to by the names Iyad Ag Ghaly, Iyad and Abou Fadl. Having reviewed the facts, it sees, however, that the same person is at issue. The Chamber has therefore chosen to refer to him by the name “Iyad Ag Ghaly” for the purposes of this decision.

Timbuktu and called on the population to cooperate.¹⁰⁵ Part of the population left Timbuktu before and after they entered the city.¹⁰⁶ Ansar Dine and AQIM controlled and ran the city of Timbuktu and the Timbuktu Region until 28 January 2013 when they were ousted by the Malian army's intervention, backed by French troops deployed to Operation Serval.¹⁰⁷ In late January 2013, the State of Mali had regained control of most of the territory of northern Mali, including the major cities of Kidal, Timbuktu and Gao.¹⁰⁸

71. The events relating to the case *sub judice* took place in the city of Timbuktu and the Region of the same name between 1 April 2012 and 28 January 2013.

(B) The armed groups Ansar Dine and AQIM

72. Ansar Dine, whose name means “the defenders of the religion”, is a principally Tuareg movement founded and led, since 10 December 2011, by Iyad Ag Gahly, a native of Mali¹⁰⁹ and former leader of the 1991 Tuareg rebellions in Mali, and by other Tuaregs primarily from the Ifoghas clan.¹¹⁰ Some of its members – including its leader,

¹⁰⁵ Nouakchott News Agency, media report, “Leader Abu-al-Fadl addresses the people of the Islamic Emirate”, 4 April 2012, [MLI-OTP-0038-0870](#) (“[MLI-OTP-0038-0870](#)”), translation, [MLI-OTP-0039-0937](#).

¹⁰⁶ Video, [MLI-OTP-0011-0259](#), 00:04:58:00 to 00:05:10:00.

¹⁰⁷ UN, Security Council, Report of the Secretary-General on the Situation in Mali, S/2013/189, 26 March 2013, [MLI-OTP-0013-3480](#) (“[MLI-OTP-0013-3480](#)”), p. 3480, para. 3; [REDACTED] [MLI-OTP-0013-3257](#) (“[MLI-OTP-0013-3257](#)”), p. 3260.

¹⁰⁸ [MLI-OTP-0013-3480](#), p. 3481, para. 6; [MLI-OTP-0013-3257](#), p. 3260.

¹⁰⁹ See FIDH/AMDH “*Crimes de guerre au Nord-Mali*”, 11 July 2012, [MLI-OTP-0001-2298](#) (“[MLI-OTP-0001-2298](#)”), p. 2305.

¹¹⁰ UN, Security Council, Letter dated 17 January 2012 from the Secretary-General addressed to the President of the Security Council, S/2012/42, [MLI-OTP-0001-1359](#), p. 1369, para. 40; Al Jazeera Centre for Studies Report, “Al-Qaeda and its allies in the Sahel and the Sahara”, 1 May 2012, [MLI-OTP-0001-3758](#), (“[MLI-OTP-0001-3758](#)”), pp. 3762-3764; [MLI-OTP-0001-2298](#), p. 2306; Al-Akhbar, “Al-Qaida in the Islamic Maghreb (AQMI): infrastructure, institutions, leaders and affiliated movements (2)”, 4 October 2012, [MLI-OTP-0024-3045](#) (“[MLI-OTP-0024-3045](#)”), translation, [MLI-OTP-0042-0375](#), p. 0379.

Iyad Ag Gahly – advocate jihad¹¹¹ and the application of their religious ideology which is based on their interpretation of sharia as the only law.¹¹²

73. AQIM is the new name the *Groupe salafiste pour la prédication et le combat* [Salafist Group for Preaching and Combat] (GSPC) took in 2007, after renewing allegiance to Al-Qaida.¹¹³ The GSPC has been described as an Algerian armed organization formed by jihadi veterans of the Algerian civil war who refused to lay down arms despite the

¹¹¹ See Video, [MLI-OTP-0011-0265](#), transcript, [MLI-OTP-0056-0648](#), translation, [MLI-OTP-0061-1193](#) (video of Iyad Ag Ghaly calling for jihad); [REDACTED] Video, [MLI-OTP-0001-0052](#), 00:01:42 to 00:13:30, transcript, [MLI-OTP-0033-5148](#), translation, [MLI-OTP-0033-5296](#) [REDACTED]; Omar Ould Hamaha was a member of Ansar Dine ("*Enquête Exclusive*", video, broadcast on 21 October 2012, [MLI-OTP-0001-7037](#), transcript [MLI-OTP-0024-2962](#), pp. 2977-2978, lines 507-525); Report of P-0152, [MLI-OTP-0031-0496](#) ("[MLI-OTP-0031-0496](#)"), p. 0513; Maurinews, media report, "In a long interview a commander from the Sahara Emirate talks about the Islamists' rule over northern Mali", 24 December 2013, [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#) ("[MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#)"), p. 1031. [REDACTED]

¹¹² [REDACTED] [MLI-OTP-0038-0888](#), transcript, [MLI-OTP-0056-0851](#), translation, [MLI-OTP-0063-1041](#), p. 1055, lines 471-475 [REDACTED]

[REDACTED] Video posted by the group Ansar Dine on 11 March 2012 on YouTube, [MLI-OTP-0011-0007](#), transcript, [MLI-OTP-0040-0425](#), and translation, [MLI-OTP-0040-0430](#), pp. 0434-0435, lines 103-117 (For the date the video was posted, see Video, Jeune Afrique, "*Mali: Iyad Ag Ghaly, le leader d'Ansar Dine, se met en scène*", 15 March 2012, [MLI-OTP-0001-3418](#)); "*Enquête Exclusive*", Video, broadcast on 21 October 2012, [MLI-OTP-0001-7037](#), 00:19:21 to 00:20:10 and 00:44:00 to 00:44:20, transcript, [MLI-OTP-0024-2962](#) ("[TRANSLATION] Rid yourselves of the Constitution and institutions, practice sharia and we will be with you 100%"), translation, [MLI-OTP-0024-2910](#); [REDACTED] Video, [MLI-OTP-0001-0052](#) at 00:12:00, transcript, [MLI-OTP-0033-5148](#), p. 5153; Interview by Sahara Media, 16 April 2012, [MLI-OTP-0001-3271](#), p. 3272; Video, [MLI-OTP-0011-0265](#), transcript, [MLI-OTP-0056-0648](#), translation, [MLI-OTP-0061-1193](#); [MLI-OTP-0024-3045](#), translation, [MLI-OTP-0042-0375](#), p. 0379; Amnesty International, Report, "Mali: Five Months of Crisis", 2012, [MLI-OTP-0001-2265](#) ("[MLI-OTP-0001-2265](#)"), p. 2273. For more details on the evidence cited in this footnote, see DCC, footnote 133.

¹¹³ [MLI-OTP-0031-0496](#), p. 0519. For the fact that relations between AQIM and Al-Qaida are based on mutual collaboration but also open conflict, see p. 0519. See also [MLI-OTP-0001-3758](#), p. 3759; [MLI-OTP-0001-2265](#), p. 2273; [MLI-OTP-0001-2298](#), p. 2306.

national amnesty declared in 1999.¹¹⁴ The members of AQIM come predominantly from Algeria, Mauritania, Senegal, Mali, Chad, Niger and Nigeria.¹¹⁵ AQIM set out an “[TRANSLATION] Islamic jihadist project” to be rolled out on Azawad territory (area in northern Mali that includes Timbuktu), consisting of the creation of an Islamic State “[TRANSLATION] ruled by jihadists and Islamists”.¹¹⁶ The organization succeeded in developing networks and securing a local foothold in Timbuktu and the Region of the same name, in line with a strategy introduced in 2003 consisting of trade relations, social and humanitarian aid distribution, and ties and marriages with members of the local population.¹¹⁷

(C) Structure of the regime introduced by Ansar Dine and AQIM in Timbuktu from April 2012 to January 2013

1. Preliminary remarks

74. Between 1 April 2012 and 28 January 2013, Ansar Dine and AQIM created and kept in place a hierarchical command structure in Timbuktu and the Timbuktu Region, which was based on a religious ideology particular to these groups.¹¹⁸ This new regime was led by Iyad Ag Ghali with the support of Abou Zeid,¹¹⁹ who had been appointed Governor of Timbuktu and the Timbuktu Region and was a senior AQIM

¹¹⁴ [MLI-OTP-0031-0496](#), pp. 0518-0519.

¹¹⁵ [MLI-OTP-0001-2298](#), p. 2306; [MLI-OTP-0001-3758](#), p. 3759.

¹¹⁶ AQIM, “General Instructions for the Islamic Jihadist Project in Azawad”, 20 July 2012, [MLI-OTP-0024-2320](#), translation, [MLI-OTP-0027-0964](#), pp. 0970-0971 [unofficial translation from English into French]. See also AQIM, Audio recording, 21 May 2012, MLI-OTP-0024-2744, transcript, [MLI-OTP-0027-1073](#), p. 1074, translation, [MLI-OTP-0024-3130](#), p. 3132; [MLI-OTP-0001-3758](#), pp. 3759-3762.

¹¹⁷ [MLI-OTP-0031-0496](#), pp. 0519-0520; [MLI-OTP-0001-3758](#), p. 3759; French National Assembly, “Rapport d’information sur la situation sécuritaire dans les pays de la zone sahélienne”, 6 March 2012, [MLI-OTP-0001-2588](#) (“[MLI-OTP-0001-2588](#)”), pp. 2625-2627.

¹¹⁸ See, below, paras. 77-139. See also paras. 816-835.

¹¹⁹ The Chamber notes that this person is referred to several times in the evidence by the following names: Abou Zeid, Abdelhamid, Abd-al-Hamid, Grand Emir Abou Zeid and Sheyban. Having acquainted itself with the facts, it sees, however, that the same person is at issue. The Chamber has therefore chosen to refer to him by the name “Abou Zeid” for the purposes of this decision. Abou Zeid was Algerian (United Nations, List of sanctions concerning Al-Qaida, [MLI-OTP-0001-2001](#), p. 2027).

member,¹²⁰ and of Yahia Abou Al Hammam¹²¹ and Abdallah Al Chinguetti,¹²² who were also senior AQIM members.¹²³

75. To cement their power over Timbuktu, Ansar Dine and AQIM created and kept in place, until the time they left the city, institutions (“bodies”) for the control and repression of the civilian population of Timbuktu, with the remit of implementing this ideology, including by force: a body tasked with general security in Timbuktu and referred to as the Islamic security services, the army, security or the security battalions (“Security Battalion”); a body tasked with civil and criminal matters and with receiving reports of incidents (“Islamic Police”); a body tasked with matters concerning certain crimes and lesser offences against what Ansar Dine and AQIM regarded as public morality, and which was referred to as the “morality police”, “*actio popularis individuals*”, “organization for enjoining right and forbidding wrong” or “*Hisbah*” (the “*Hisbah*”); a body tasked with handing down judgments (“Islamic Court”); a group composed of religious scholars, referred to as the religious committee or the sharia committee (“Sharia Committee”); premises used to detain suspects and sentenced persons; and centres that dispensed military training and religious instruction to those who joined Ansar Dine and AQIM (“Training Centres”).¹²⁴ Ansar Dine and AQIM also relied on a body tasked with disseminating the new rules and

¹²⁰ See, below, paras. 78-83.

¹²¹ The Chamber notes that this person is referred to several times in the evidence by the following names: Yahia, Yahia Abou Al Hammam and Ojamel Okacha. Having acquainted itself with the facts, it sees, however, that the same person is at issue. The Chamber has therefore chosen to refer to him by the name “Yahia Abou Al Hammam” for the purposes of this decision. Yahia Abou Al Hammam is Algerian ([MLI-OTP-0024-3045](#), translation, [MLI-OTP-0042-0375](#), pp. 0377-0378).

¹²² The Chamber notes that this person is referred to several times in the evidence by the following names: Sheikh Abdallah, Abdallah Al Chinguetti and Mohamed Lemine Ould El-Hassen. Having acquainted itself with the facts, it sees, however, that the same person is at issue. The Chamber has therefore chosen to refer to him by the name “Abdallah Al Chinguetti” for the purposes of this decision.

¹²³ See, below, paras. 84-85.

¹²⁴ For a description of the bodies, see, below, paras. 86-139.

prohibitions and with promoting their interests: the media commission, media office or media affairs group (“Media Commission”). Each such body was headed by a person appointed as its “emir” and was composed of men belonging to the armed groups Ansar Dine and AQIM.¹²⁵ Inhabitants of Timbuktu also joined Ansar Dine and AQIM upon the groups’ arrival in the city and worked for these bodies.¹²⁶ Mr Al Hassan is a case in point; [REDACTED]

[REDACTED]
[REDACTED]¹²⁷ [REDACTED]
[REDACTED].¹²⁸

76. The Chamber will use the term “Ansar Dine/AQIM” to denote the entire set-up described in the preceding paragraph and the terms “members of Ansar Dine/AQIM” to denote those who joined Ansar Dine/AQIM and worked for the groups, irrespective of the body for which they worked and whether they formally pledged allegiance to the groups.

2. Leadership of the new set-up established in Timbuktu

77. The most important decisions of Ansar Dine/AQIM in Timbuktu from April 2012 to January 2013 were taken by Iyad Ag Ghali,¹²⁹ who maintained control over the

¹²⁵ See, below, paras. 89, 102-104, 113, 122, 126, 129-130.

¹²⁶ See, below, para. 113. See also [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), pp. 11.

¹²⁷ [REDACTED].

¹²⁸ [REDACTED].

¹²⁹ Statement of [REDACTED]
[REDACTED] Statement of [REDACTED] [MLI-](#)

[REDACTED]
[REDACTED]

Statement of [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] General Instructions for the Islamic Jihadist Project in Azawad, AQIM, 20 July 2012, [MLI-OTP-0024-2320](#), translation, [MLI-OTP-0027-0964](#);

city of Timbuktu and the Timbuktu Region, mostly through envoys who kept him informed and served as liaison between Timbuktu and Kidal where he was primarily based.¹³⁰ He gave orders to the members of Ansar Dine/AQIM who were based in Timbuktu.¹³¹ Upon becoming members of Ansar Dine, new recruits had to pledge allegiance to Iyad Ag Gahly.¹³²

78. In addition to being in Timbuktu in the initial days of the city's takeover,¹³³ Iyad Ag Ghali travelled there regularly¹³⁴ and even lived there for several weeks.¹³⁵

79. In about November 2012, Iyad Ag Ghali was present at and oversaw the military training that took place 80 or 100 km from Timbuktu.¹³⁶ Attacks on military bases in Mali were planned during this training.¹³⁷

80. Abou Zeid held the post of Governor of the Timbuktu Region and the city of Timbuktu.¹³⁸ He belonged to AQIM and headed one of its battalions, called Tarek Ibn

Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0011, para. 30, p. 0012, para. 36; Summary of statement

¹³⁰ Statement of [REDACTED]

¹³¹ Statement of [REDACTED]

¹³² Statement of [REDACTED]

¹³³ [REDACTED] Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0011, para. 30, p. 0012, para. 36.

¹³⁴ Statement of [REDACTED] Statement of [REDACTED]

[REDACTED] Statement of [REDACTED]

[REDACTED] Statement of [REDACTED]

¹³⁵ [REDACTED] Statement of [REDACTED]

¹³⁶ Statement of [REDACTED]

¹³⁷ Statement of [REDACTED]

[REDACTED] Statement of [REDACTED]

¹³⁸ Statement of [REDACTED]

Zeyad (“Tarek Ibn Zeyad Battalion”), which was active in the Sahel.¹³⁹ He was living in Timbuktu at the time of the events which took place in Timbuktu and the Timbuktu Region from April 2012 to January 2013.¹⁴⁰

81. Abou Zeid consulted Iyad Ghali about the running of Timbuktu and reported to him.¹⁴¹ He chaired meetings, unless Iyad Ag Ghali was present.¹⁴² He had the power to appoint emirs to the leadership of the bodies set up by Ansar Dine/AQIM¹⁴³ and gave them orders.¹⁴⁴ Specifically Abou Zeid issued written instructions addressed to the Islamic Police, the *Hisbah* and all the soldiers on how to behave towards the population of Timbuktu.¹⁴⁵ The emirs of each body, for their part, had to report to him.¹⁴⁶

 [REDACTED]
 [REDACTED] (Statement of [REDACTED])
 [REDACTED] Statement of [REDACTED] Summary of statement of [REDACTED]

¹³⁹ Statement of [REDACTED] [MLI-OTP-0001-2588](#), p. 2623; [MLI-OTP-0001-3758](#), p. 3761; [MLI-OTP-0024-3045](#), translation, [MLI-OTP-0042-0375](#), pp. 0377-0378; [REDACTED]

¹⁴⁰ Statement of [REDACTED]

¹⁴¹ Statement of [REDACTED]

¹⁴² Summary of statement of [REDACTED]

¹⁴³ Statement of [REDACTED]
 [REDACTED]

¹⁴⁴ Summary of statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-1124](#), p. 1134, lines 327-328 and [MLI-OTP-0062-3234-R01](#), p. 3255, lines 735-740; [MLI-OTP-0051-0513](#), pp. 0530-531, lines 554-606; [MLI-OTP-0051-0407](#) pp. 0419-0420, lines 384-408.

¹⁴⁵ Compulsory instructions to the police, Hisba corps and all soldiers, 15 August 2012, [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040, [REDACTED] (“[MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040”). Statement of P-0398, [MLI-OTP-0051-0483](#), pp. 0500-0501, lines 506-539.

¹⁴⁶ Summary of statement of [REDACTED] Summary of statement of [REDACTED] Statement of [REDACTED]
 [REDACTED]

82. Moreover, Abou Zeid made funds available to members of Ansar Dine/AQIM to make it easier for them to marry the women of Timbuktu¹⁴⁷ and also to finance other activities undertaken by the bodies.¹⁴⁸ He was present when the mausoleums of Timbuktu were destroyed in about June and July 2012.¹⁴⁹

83. Some witnesses state that Iyad Ag Ghali and Abou Zeid could intervene in the proceedings of the Islamic Court, for example by giving permission for the punishments ordered by the judges to be carried out.¹⁵⁰

84. Yahia Abou Al Hamman was another of the leaders in Timbuktu¹⁵¹ and had the power to take decisions¹⁵² and to give orders to members of the bodies which Ansar Dine/AQIM set up in Timbuktu.¹⁵³ Yahia Abou Al Hammam was likewise present

¹⁴⁷ Statement of [REDACTED] see also Statement of P-0398, [MLI-OTP-0051-0891](#), p. 0900, lines 283-313; Statement of P-0398, [MLI-OTP-0051-0891](#), pp. 0906-0907, lines 501-520. See, below, paras. 573, 576-577.

¹⁴⁸ Statement of [REDACTED]

¹⁴⁹ Statement of [REDACTED] For the destruction of the mausoleums of Timbuktu, see, below, paras. 523-531.

¹⁵⁰ As regards Iyad Ag Ghali, see Statement of [REDACTED]

As regards Abou Zeid, see Statement of P-0398, [MLI-OTP-0051-0631](#), pp. 0642-0643, lines 362-379; Summary of statement [REDACTED] [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), pp. 1042-1043.

¹⁵¹ Statement of [REDACTED]

[REDACTED] of [REDACTED] Statement of [REDACTED]
[REDACTED]
[REDACTED], [MLI-OTP-0029-0191](#), translation, [MLI-OTP-0034-0741](#), pp. 0742-0751: [REDACTED]
[REDACTED]
[REDACTED]

¹⁵² Statement of [REDACTED] Statement of P-0099, [MLI-OTP-0024-0160-R01](#), pp. 0169-0170, lines 323-361; Statement of [REDACTED]
[REDACTED]

¹⁵³ Statement of P-0398, [MLI-OTP-0051-0513](#), pp. 0530-531, lines 554-606.

when the mausoleums of Timbuktu were destroyed in about June and July 2012.¹⁵⁴ He also belonged to AQIM and led one of its battalions, Al Fourqane (“Al Fourqane Battalion”), which also operated in the Sahel.¹⁵⁵ This battalion funded, among other things, some of Ansar Dine/AQIM’s activities in Timbuktu.¹⁵⁶ In about October or November 2012, Yahia Abou Al Hammam became the emir of AQIM in the Sahel.¹⁵⁷

85. Abdallah Al Chinguetti was another leader in Timbuktu.¹⁵⁸ He was a spokesperson for AQIM¹⁵⁹ and a member of the Al Fourqane Battalion.¹⁶⁰ According to ██████████ Abou Zeid appointed Abdallah Al Chinguetti to oversee the Islamic Court and the *Hisbah*.¹⁶¹ To make a case for the destruction of the mausoleums of Timbuktu, Abdallah Al Chinguetti wrote a document on the tombs of Timbuktu.¹⁶²

¹⁵⁴ Statement of ██████████ For the destruction of the mausoleums, see, below, paras. 523-531.

¹⁵⁵ Statement of ██████████ [MLI-OTP-0001-3758](#), p. 3761; ██████████ See also “Treasury Designates an Additional Senior Leader of Al-Qaida in the Lands of the Islamic Maghreb”, US Department of the Treasury, 14 February 2013, [MLI-OTP-0067-0270](#).

¹⁵⁶ Statement of ██████████
¹⁵⁷ “Treasury Designates an Additional Senior Leader of Al-Qaida in the Lands of the Islamic Maghreb”, US Department of the Treasury, 14 February 2013, [MLI-OTP-0067-0270](#); Statement of ██████████
 ██████████
 ██████████

¹⁵⁸ Statement of ██████████ Statement of ██████████

¹⁵⁹ Statement of ██████████ France 2, Video, “*Envoyé spécial, Sous le règne des islamistes*”, 31 January 2013, [MLI-OTP-0009-1749](#) (“[MLI-OTP-0009-1749](#)”), at 00:09:04:01, transcript, [MLI-OTP-0028-0839](#).

¹⁶⁰ Statement of ██████████

¹⁶¹ Statement of ██████████ See, below, para. 123.

¹⁶² [MLI-OTP-0002-0757](#), translation, [MLI-OTP-0034-1363](#); Statement of P-0010, [MLI-OTP-0002-0126-R01](#); [MLI-OTP-0037-0922-R01](#), pp. 0923-0924, lines 31-75; [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1046.

3. Bodies set up by Ansar Dine/AQIM in Timbuktu from April 2012 to January 2013

(a) Security Battalion

86. The Security Battalion was the first body to be set up by Ansar Dine/AQIM upon arrival in Timbuktu.¹⁶³ The Security Battalion occupied the premises of the Malian Solidarity Bank [*Banque Malienne de Solidarité*] (BMS),¹⁶⁴ located in the neighbourhood of the Yoboutao market,¹⁶⁵ the big market in Timbuktu.¹⁶⁶

87. From the outset of Ansar Dine/AQIM's arrival in Timbuktu, this body's role was to protect the city's entrance, guard check-posts and carry out patrols.¹⁶⁷ [REDACTED] the members of the Security Battalion set to work immediately, beating anyone caught drinking alcohol or smoking.¹⁶⁸

88. The Security Battalion subsequently operated with the other bodies set up by Ansar Dine/AQIM. For example, the members of the Security Battalion conducted joint patrols with the Islamic Police,¹⁶⁹ including at the markets,¹⁷⁰ and they could

¹⁶³ [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1020; Statement of P-0125, para. 35; Statement of [REDACTED]

¹⁶⁴ Statement of P-0398, [MLI-OTP-0051-0692](#), p. 0710, lines 590-597.

¹⁶⁵ Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0027 para. 107; Statement of [REDACTED]

¹⁶⁶ [REDACTED], [MLI-OTP-0024-2814](#), p. 2822.

¹⁶⁷ Statement of [REDACTED] [MLI-OTP-0037-0714-R01](#), p. 0733, lines 670-673; Summary of statement of [REDACTED] [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040; Statement of [REDACTED] Statement of [REDACTED] [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1020.

¹⁶⁸ Statement of [REDACTED]

¹⁶⁹ Statement of P-0398, [MLI-OTP-0051-0717](#), pp. 0719-0720, lines 50-77.

¹⁷⁰ [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), pp. 1042-1043.

request the assistance of the Islamic Police,¹⁷¹ including to secure the sites when punishment was carried out in public.¹⁷² The Security Battalion could also arrest transgressors of the rules¹⁷³ and was required to deliver them to the Islamic Police or the *Hisbah*.¹⁷⁴ Besides the Islamic Police and the *Hisbah*, the Security Battalion was also one of the bodies that could be assigned to carry out the punishments ordered by the Islamic Court.¹⁷⁵

89. This body was headed by a person named Talha Al Chinguetti,¹⁷⁶ a member of AQIM from the Al Fourqane Battalion. [REDACTED] Talha Al Chinguetti saw one of his responsibilities as waging a campaign against alcohol consumption.¹⁷⁷

90. According to [REDACTED] although the Islamic Police was originally part of the Security Battalion, it ceased to be under the leadership of Talha Al Chinguetti because he and another AQIM member named Adama¹⁷⁸ disagreed about the execution of orders, as Adama would not take orders from Talha Al Chinguetti.¹⁷⁹

¹⁷¹ Statement of P-0398, [MLI-OTP-0051-0513](#), pp. 0521-0523, lines 251-336, pp. 0529-0535, lines 510-751; [MLI-OTP-0051-0692](#), p. 0710, lines 590-597.

¹⁷² Statement of P-0398, [MLI-OTP-0051-0457](#), p. 0472, lines 490-494.

¹⁷³ [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040.

¹⁷⁴ [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040.

¹⁷⁵ Statement of P-0398, [MLI-OTP-0051-0457](#), p. 0472, lines 505-513.

¹⁷⁶ Statement of [REDACTED]; Statement of [REDACTED]; Summary of statement of [REDACTED]; Statement of P-0125, para. 35. The Chamber notes that this person is referred to several times in the evidence by the following names: Talha Al Chinguetti, Talha, Tolha, Tallah, Abderrahmane and Abou-Musa al-Shinquiti. Having looked at the evidence, the Chamber sees that the same person is at issue. The Chamber has therefore chosen to refer to him by the name "Talha Al Chinguetti" for the purposes of this decision. The evidence shows that Talha Al Chinguetti was Mauritanian and Malian (Statement of [REDACTED])

¹⁷⁷ Statement of [REDACTED]

¹⁷⁸ See, below, para. 102.

¹⁷⁹ Statement of [REDACTED]

91. Talha Al Chinguetti participated in [REDACTED]'s trial.¹⁸⁰

(b) Islamic Police

92. The Islamic Police was created in late April 2012 by Ansar Dine/AQIM.¹⁸¹ It occupied the premises of the BMS¹⁸² alongside the Security Battalion.¹⁸³ Later, by decision of its emir,¹⁸⁴ the Islamic Police moved in about August or September 2012¹⁸⁵ to the palace of the former Governor of Timbuktu ("Governorate [*Gouvernorat*]"),¹⁸⁶ north of the city's military camp.¹⁸⁷

93. The Islamic Police was responsible for patrolling the city of Timbuktu¹⁸⁸ by car (Toyota pickup)¹⁸⁹ and motorcycle,¹⁹⁰ and for providing security in the city¹⁹¹ and

¹⁸⁰ Statement of [REDACTED].

¹⁸¹ Statement of [REDACTED] "*Mali : Quand la Police islamique fait sa loi à Tombouctou*", *Algérie*, 1 May 2012, [MLI-OTP-0033-2980](#); Statement of [REDACTED]. Mr Al Hassan states that the Islamic Police already existed before he arrived ([REDACTED]).

¹⁸² Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0014 para. 47; Statement of P-0007, [MLI-OTP-0001-7182-R01](#), p. 7184 para. 14; [REDACTED]; Statement [REDACTED].

¹⁸³ [REDACTED].

¹⁸⁴ [REDACTED].

¹⁸⁵ Statement of [REDACTED].

¹⁸⁶ [REDACTED] Statement of [REDACTED]; [REDACTED]; Statement [REDACTED].

¹⁸⁷ Statement of [REDACTED].

¹⁸⁸ Summary of statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-1184](#), p. 1198, line 465; Statement of [REDACTED].

[REDACTED] Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0015, para. 50; Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, para. 26.

¹⁸⁹ Summary of statement of [REDACTED] Statement of P-0608, MLI-OTP-0060-9414-R01, p. 9434, para. 79, p. 9445, paras. 127-129 [REDACTED]; [REDACTED].

¹⁹⁰ Summary of statement of [REDACTED].

¹⁹¹ Statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-1184](#), p. 1198, line 465; UN, General Assembly, Report of the United Nations High Commissioner

controlling traffic.¹⁹² Members of the Islamic Police communicated with its emir and Mr Al Hassan by walkie-talkie¹⁹³ or mobile telephone.¹⁹⁴

94. The Islamic Police carried out checks and inspections in the street¹⁹⁵ and at markets.¹⁹⁶ It saw to it that the population complied with the new rules (watching television and listening to music were prohibited; the veil had to be worn properly; unmarried men and women were prohibited from mixing; smoking and drinking alcohol were prohibited).¹⁹⁷ The Islamic Police arrested¹⁹⁸ and detained persons caught committing or suspected of committing an offence.¹⁹⁹ It punished transgressors of the

for Human Rights on the human rights situation in Mali, 7 January 2013, A/HRC/22/33, [MLI-OTP-0013-3500](#) ("[MLI-OTP-0013-3500](#)"), p. 3510, para. 27; [REDACTED]

¹⁹² Statement of [REDACTED]

¹⁹³ Summary of statement of [REDACTED]

¹⁹⁴ [REDACTED]

¹⁹⁵ [REDACTED]

¹⁹⁶ Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9434, para. 79, p. 9445, paras. 127-129.

¹⁹⁷ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, paras. 25-29; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0015, para. 50; [REDACTED] notes [REDACTED] Summary of statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-0457](#), pp. 0470-0471, lines 437-449; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9434, para. 79, p. 9445, paras. 127-129.

¹⁹⁸ [MLI-OTP-0013-3500](#); Statement of [REDACTED]

Summary of statement of [REDACTED]

¹⁹⁹ Statement of P-0398, [MLI-OTP-0051-1124](#), p. 1148, line 801; Statement of [REDACTED]

Summary of statement of [REDACTED]

new rules,²⁰⁰ there and then in the street²⁰¹ or at its headquarters,²⁰² and confiscated prohibited items.²⁰³

95. Civil and criminal matters²⁰⁴ were reported to the Islamic Police, including the sale²⁰⁵ and consumption of alcohol,²⁰⁶ “[TRANSLATION] adultery”,²⁰⁷ land disputes,²⁰⁸

²⁰⁰ Statement of [REDACTED] [REDACTED] Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0015, para. 50; Statement of P-0398, [MLI-OTP-0051-0457](#), pp. 0470-0471, lines 437-449.

²⁰¹ Summary of statement of [REDACTED]

²⁰² Summary of statement [REDACTED] Statement of P-0398, [MLI-OTP-0051-1184](#), p. 1205, lines 686-704, pp. 1206-1207, lines 737-744, pp. 1207-1208, lines 761-778; Statement of [REDACTED] Summary of statement of [REDACTED]

²⁰³ [REDACTED] notes [REDACTED] MLI-OTP-0001-7428, translation, MLI-OTP-0034-0119, p. 0120; MLI-OTP-0002-0082, translation, MLI-OTP-0068-0101.

²⁰⁴ Statement of P-0398, [MLI-OTP-0051-0457](#), pp. 0475-0479, lines 530-616, lines 602-616; [MLI-OTP-0051-1155](#), pp. 1172-1173, lines 566-586; [MLI-OTP-0060-1423](#), pp. 1424-1425, lines 30-51; [MLI-OTP-0060-1484](#), pp. 1492-1494, lines 264-320.

²⁰⁵ Islamic Police reports dated 23 and 16 July 2012, [MLI-OTP-0001-7514](#), translation, [MLI-OTP-0034-0169](#), p. 170; Statement of P-0398, MLI-OTP-0060-1511, pp. 1525, lines 446-470. For the authenticity of the Islamic Police reports, see paras. [REDACTED] 712-715, 718 and footnote 1928.

²⁰⁶ See, e.g., Islamic Police report, [MLI-OTP-0002-0037](#), translation, [MLI-OTP-0052-0039](#), p. 0040; Statement of P-0398, [MLI-OTP-0060-1453](#), pp. 1473-1475, lines 659-807. For the authenticity of the Islamic Police reports, see paras. [REDACTED] 712-715, 718 and footnote 1928.

²⁰⁷ See, e.g., Islamic Police report dated 26 November 2012, [MLI-OTP-0001-7549](#), translation, [MLI-OTP-0034-0177](#), p. 0178 and Islamic Police report, [MLI-OTP-0001-7509](#), translation, [MLI-OTP-0034-0167](#), p. 0168. For the authenticity of the Islamic Police reports, see paras. [REDACTED] 712-715, 718 and footnote 1928. The Chamber notes that the term “adultery” is used by the Islamic Police to denote sexual relations between unmarried persons, which, in their view, are illegal. In this connection, see, below, the incidents concerning [REDACTED] who had sexual relations when not married. [REDACTED]

²⁰⁸ See, e.g., Islamic Police report dated 23 July 2012, [MLI-OTP-0001-7510](#), translation, [MLI-OTP-0052-0017](#), p. 0018. Statement of P-0398, [MLI-OTP-0060-1453](#), pp. 1456-1458, lines 101-149. Islamic Police report, [MLI-OTP-0053-0070](#), translation, [MLI-OTP-0069-2231](#). For the authenticity of the Islamic Police reports, see paras. [REDACTED] 712-715, 718 and footnote 1928.

theft,²⁰⁹ sorcery²¹⁰ and claims connected to marital disputes (e.g. divorce).²¹¹ A case of murder,²¹² as well as a case of ill-treatment of villagers at the hands of a member of the MNLA were also reported to the Islamic Police.²¹³ One of the tasks assigned to Mr Al Hassan was to record in writing the facts of cases reported to the Islamic Police.²¹⁴

96. The inhabitants of Timbuktu also turned to the Islamic Police regarding debt disputes. Once the parties concerned were before the Islamic Police, they could agree on a deadline for repayment of the debt. A document stating the deadline would be composed in the presence of two or three witnesses and a copy of the agreement given to the lender who, if the debt was overdue, could ask that the case be referred to the Islamic Court.²¹⁵

97. As said, the Islamic Police worked on a daily basis with the Security Battalion, as well as with the prison, the *Hisbah* and the Islamic Court.²¹⁶

²⁰⁹ See, e.g., Islamic Police report dated 19 November 2012, [MLI-OTP-0001-7552](#), translation, [MLI-OTP-0034-0179](#), p. 0180; Statement P-0398, [MLI-OTP-0060-1605](#), p. 1617, lines 384-403. For the authenticity of the Islamic Police reports, see paras. ■ 712-715, 718 and footnote 1928.

²¹⁰ Islamic Police report, [MLI-OTP-0001-7543](#), translation, [MLI-OTP-0052-0029](#), p. 0030; Statement of P-0398, [MLI-OTP-0060-1580](#), pp. 1599-1604, lines 619-795. For the authenticity of the Islamic Police reports, see paras. ■ 712-715, 718 and footnote 1928.

²¹¹ Islamic Police report, [MLI-OTP-0001-7541](#) translation, [MLI-OTP-0052-0027](#), p. 0028; Statement of P-0398, MLI-OTP-0060-1423, p. 1443, lines 666, 671; Islamic Police report, [MLI-OTP-0001-7572](#), translation, [MLI-OTP-0052-0121](#), p. 0122. For the authenticity of the Islamic Police reports, see paras. ■ 712-715, 718 and footnote 1928.

²¹² See, e.g., Islamic Police report, [MLI-OTP-0002-0031](#), translation, [MLI-OTP-0052-0037](#), p. 0038; ■ For the authenticity of the Islamic Police reports, see paras. ■ 712-715, 718 and footnote 1928.

²¹³ See, e.g., Islamic Police report, [MLI-OTP-0002-0037](#) translation, [MLI-OTP-0052-0039](#), p. 0040; ■. For the authenticity of the Islamic Police reports, see paras. ■ 712-715, 718 and footnote 1928.

²¹⁴ See, below, paras. 733-735.

²¹⁵ ■
 ■;
 ■
 ■ See, below, para. 728.

²¹⁶ See also Statement of P-0398, [MLI-OTP-0051-0457](#), p. 0460, lines 73-92; [MLI-OTP-0051-1184](#), p. 1198, lines 460-472; [MLI-OTP-0051-1032](#), pp. 1041-1042, lines 303-317.

98. [REDACTED], the *Hisbah* contacted the Islamic Police when a transgression of the rules laid down by Ansar Dine and AQIM was reported.²¹⁷ The Islamic Police and the *Hisbah* conducted joint patrols; the role of the Islamic Police was to protect members of the *Hisbah*, consisting of preachers, who were mostly unarmed.²¹⁸

99. Lastly, the Islamic Police brought suspects and accused persons to the Islamic Court and took them to the prison before and after sentencing.²¹⁹ It also took persons sentenced by the Islamic Court to the site where the public punishment took place.²²⁰

100. The Islamic Police comprised 30 or so, and sometimes 40 or so members²²¹ – Malians and foreigners.²²² Its members bore weapons²²³ and were recognizable by their blue vests marked “Islamic Police” in the Arabic and Latin alphabets.²²⁴

²¹⁷ [REDACTED].

²¹⁸ Statement of P-0398, [MLI-OTP-0051-0483](#), pp. 0504-0507, lines 643-747. [REDACTED]

²¹⁹ Statement of P-0398, [MLI-OTP-0051-1032](#), p. 1041, lines 296-297.

²²⁰ Statement of [REDACTED]

²²¹ Statement of P-0398, [MLI-OTP-0051-1257](#), p. 1288, lines 1034-1040.

²²² Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0014 para. 47; Statement [REDACTED]

[REDACTED]; Statement of [REDACTED]

²²³ Statement [REDACTED] Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0015, para. 50.

²²⁴ Statement of [REDACTED] Statement of [REDACTED]

[REDACTED]; Al Jazeera, Video, “Orphans of the Sahara / Episode 2 / Rebellion”, 17 January 2014, [MLI-OTP-0015-0495](#) (“[MLI-OTP-0015-0495](#)”) 00:27:26:04 to 00:27:31:00, transcript MLI-OTP-0033-5189, translation, MLI-OTP-0033-5288.

101. Mr Al Hassan was one of its members²²⁵ and, among the ranks of the Islamic Police, he names Abou Dhar,²²⁶ [REDACTED] and who, he says, was deputy to the emir of the Islamic Police;²²⁸ according to [REDACTED] in the Islamic Police.²²⁹ He likewise names "Al Foulani, Abdoul Malik Bambari, Abdelaziz Barbouchi, Abdallah Bourkinabi".²³⁰ [REDACTED] Ismaël Diallo²³² and Demba Demba²³³ were also part of the Islamic Police.

²²⁵ See, above, para. 75. See generally, below, VIII. Responsibility.

²²⁶ The Chamber notes that this person is referred to several times in the evidence by the following names: Abou Dhar, Abou Zhar, Ahmed Shak and Abou Dhar Ahmed Shaki. Having acquainted itself with the facts, it sees, however, that the same person is at issue. The Chamber has therefore chosen to refer to him by the name "Abou Dhar" for the purposes of this decision. Abou Dhar is Senegalese and Malian ("Northern Mali: A dying land", 8 July 2012, [MLI-OTP-0001-4812](#), p. 4813; Statement P-0099, MLI-OTP-0024-0069-R01, p. 0078, lines 346-372).

²²⁷ [REDACTED].

²²⁸ [REDACTED]. See also summary of statement of P-0146, MLI-OTP-0031-0061, p. 0063, para. 5. See also [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Summary statement [REDACTED]
[REDACTED] Summary of statement of P-0625, MLI-OTP-0070-1440, p. 1441.

²²⁹ Summary statement [REDACTED].

²³⁰ [REDACTED].

²³¹ Summary of statement of [REDACTED].

²³² Summary of statement of [REDACTED].

²³³ According to one source, Demba is a Malian who comes from a village 11 km from Timbuktu ([REDACTED]); see also [REDACTED].

102. Akin to the other bodies, the Islamic Police was headed by an emir appointed by Abou Zeid.²³⁴ Adama²³⁵ was the first person to hold this post.²³⁶ He was a member of AQIM²³⁷ who belonged to the Al Fourqane Battalion headed by Yahia Abou Al Hamman.²³⁸

103. [REDACTED], Adama was dismissed following an incident involving Adama, Abou Baccar Al Chinguetti²³⁹ and Talha Al Chinguetti,²⁴⁰ in which they flogged a woman in the street and pursued her to her home.²⁴¹ Abou Zeid, Governor of Timbuktu during the takeover of the city, was informed of the incident and summoned them, resulting in Adama's dismissal from the Islamic Police and

²³⁴ [REDACTED]

²³⁵ The Chamber notes that this person is referred to several times in the evidence by the following names: Adama, Adam Oumar Ould Mohamed Gulam Al Ghalawi and Adam Abou Omeyr. Having looked at the evidence, the Chamber sees that the same person is at issue. The Chamber has therefore chosen to refer to him by the name "Adama" for the purposes of this decision. Adama is Mauritian (Summary of statement [REDACTED])

²³⁶ Statement of P-0398, [MLI-OTP-0051-1213](#), p. 1218-1220, lines 134-225; [MLI-OTP-0051-1257](#), p. 1287, lines 981-989; Statement of [REDACTED]

²³⁷ Statement of [REDACTED]

²³⁸ Statement of P-0398, [MLI-OTP-0051-1184](#), p. 1200, line 535.

²³⁹ The Chamber notes that this person is referred to several times in the evidence by the following names: Farouna, Harouna, Firwana, Firaoun, Effad Bouhkhari and Abou Baccar Al Chinguetti. Having looked at the evidence, the Chamber sees that the same person is at issue. The Chamber has therefore chosen to refer to him by the name "Abou Baccar Al Chinguetti" for the purposes of this decision.

²⁴⁰ [REDACTED]; see also Statement of [REDACTED]

²⁴¹ Statement of P-0398, [MLI-OTP-0051-1213](#), pp. 1218-1220, lines 134-225; see also Statement of [REDACTED]

Abou Bacchar Al Chinguetti's dismissal from the *Hisbah*.²⁴² Talha Al Chinguetti, the emir of the Security Battalion, was not dismissed however.²⁴³

104. Adama was replaced²⁴⁴ by Khaled Abou Souleymane,²⁴⁵ a member of AQIM's Tarek Ibn Zeyad Battalion headed by Abou Zeid,²⁴⁶ in about August 2012.²⁴⁷

105. The emir of the Islamic Police reported to Abou Zeid, the Governor of Timbuktu.²⁴⁸ Talha Al Chinguetti could ask for support and assistance from members of the Islamic Police,²⁴⁹ but they could refuse because he was not their emir.²⁵⁰

²⁴² Statement of P-0398, [MLI-OTP-0051-1213](#), pp. 1218-1220, lines 134-225; see also Statement of [REDACTED]

²⁴³ Statement of P-0398, [MLI-OTP-0051-1213](#), pp. 1218-1220, lines 134-225; see also Statement of [REDACTED]

²⁴⁴ Statement of P-0398, [MLI-OTP-0051-1213](#), pp. 1217-1218, lines 130-160; Statement of [REDACTED]
[REDACTED] Statement of [REDACTED] Summary of statement of [REDACTED] [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1044.

²⁴⁵ The Chamber notes that this person is referred to several times in the evidence by the following names: Khaled, Khalid, Khaled Abou Souleymane and Khalid Sahrawi. Having looked at the evidence, the Chamber sees that the same person is at issue. The Chamber has therefore chosen to refer to him by the name "Khaled Abou Souleymane" for the purposes of this decision. Khaled Abou Souleymane was Algerian (Summary of statement of [REDACTED])

²⁴⁶ Statement of [REDACTED]

²⁴⁷ [REDACTED] He states that the first chief of police was Adama, later replaced by Khalid/Khaled towards late August/early September. The Islamic Police moved premises in about August to September and, [REDACTED]
[REDACTED]
[REDACTED]

²⁴⁸ Summary of statement [REDACTED] Statement of P-0398, [MLI-OTP-0051-0407](#), pp. 0419-0420, lines 371-408. See [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040.

²⁴⁹ Statement of P-0398, [MLI-OTP-0051-0513](#), pp. 0521-0523, lines 257-336; [MLI-OTP-0051-0741](#), pp. 0760-0765, lines 651-814.

²⁵⁰ Statement of P-0398, [MLI-OTP-0051-0513](#), pp. 0529-0530, lines 539-558, p. 0531, lines 585-606; [MLI-OTP-0051-0741](#), pp. 0760-0765, lines 651-814.

106. In turn, the emir of the Islamic Police²⁵¹ or, ██████████²⁵² its deputy, Abou Dhar, in the absence of the emir, gave orders to the members of the Islamic Police.

107. The Chamber will subsequently examine the role played by Mr Al Hassan in the Islamic Police.²⁵³

(c) *Hisbah*

108. The *Hisbah* was created by Ansar Dine/AQIM in early May 2012.²⁵⁴ It was originally housed in a building ██████████ refers to as the “[TRANSLATION] telecentre” of Timbuktu.²⁵⁵ Subsequently, in about August or September 2012,²⁵⁶ the *Hisbah* moved into the BMS.²⁵⁷

109. The *Hisbah*’s role was to patrol the city of Timbuktu²⁵⁸ and ensure compliance with the rules and prohibitions regarding dress and relations between men and women, and the prohibition on listening to music and using “*gris-gris*” and amulets.²⁵⁹ It was responsible for explaining to the civilian population of Timbuktu the rules and

²⁵¹ ██████████.

²⁵² ██████████.

²⁵³ See, below, paras. 725-786.

²⁵⁴ Statement of ██████████

²⁵⁵ ██████████

█████████

²⁵⁶ See, above, para. 92.

²⁵⁷ ██████████; Statement of ██████████

█████████ Statement of ██████████

Lettering inside the BMS reads “*Commission pour la promotion de la vertu et de la prévention du vice Hisbah* [Commission for the Promotion of Virtue and the Prevention of Vice *Hisbah*]”, [MLI-OTP-0006-1542](#) photograph taken during the Prosecutor’s fieldwork.

²⁵⁸ Summary of statement of ██████████ [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), pp. 0021-0023.

²⁵⁹ Statement of ██████████ Summary of statement of ██████████ *Hisbah* report [MLI-OTP-0055-1022](#), translation, MLI-OTP-0054-0337.

prohibitions to be obeyed²⁶⁰ and for issuing advice²⁶¹ (or threats).²⁶² The *Hisbah* could stop and detain transgressors of the rules²⁶³ and punish them, on the spot if need be.²⁶⁴

110. As said, the *Hisbah* and the Islamic Police could conduct joint patrols.²⁶⁵ The *Hisbah* possessed five vehicles for driving around Timbuktu.²⁶⁶ [REDACTED], the *Hisbah* could also contact the Islamic Police if an offence was reported.²⁶⁷ As for cooperation with the Islamic Court, the *Hisbah*, like the Islamic Police, wrote reports on the persons arrested which they sent to the judges of the Islamic Court.²⁶⁸

111. Furthermore, the *Hisbah* would announce to the civilian population the punishments ordered by the Islamic Court.²⁶⁹ The *Hisbah* could also make

²⁶⁰ Statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-1032](#), p. 1037, lines 163-172; Statement of [REDACTED] [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1045.

²⁶¹ Summary of statement of [REDACTED] [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), pp. 0021-0023; [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040.

²⁶² [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), pp. 0021-0023, p. 1045.

²⁶³ Summary of statement of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. See also Statement [REDACTED] See also *Hisbah* report [MLI-OTP-0055-1022](#), translation, MLI-OTP-0054-0337.

²⁶⁴ Statement of [REDACTED] Summary of statement of [REDACTED] [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1045.

²⁶⁵ See, above, para. 98.

²⁶⁶ Statement of [REDACTED]

²⁶⁷ [REDACTED].

²⁶⁸ *Hisbah* report [MLI-OTP-0055-1022](#), translation, MLI-OTP-0054-0337. See also Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7431](#), translation, [MLI-OTP-0034-0125](#), p. 0126.

²⁶⁹ Statement of [REDACTED]

arrangements for punishment to be carried out in public²⁷⁰ by, for example, telling soldiers, the crowd and vehicles where to position themselves.²⁷¹

112. The *Hisbah* was also the body tasked with destroying the mausoleums in about June or July 2012.²⁷²

113. Ahmed Al Faqi Al Mahdi or Abou Tourab (“Al Mahdi”),²⁷³ a Malian from Timbuktu,²⁷⁴ led the *Hisbah* from May to autumn 2012, around the time of Ramadan.²⁷⁵ He was later replaced by Mohamed Moussa²⁷⁶ until about December 2012²⁷⁷ when someone named Abou Al Walid Al Tchadi (“Abou Al Walid”) held the position.²⁷⁸

114. According to [REDACTED],²⁷⁹ the *Hisbah* meetings were chaired by Abou Zeid, if present. [REDACTED] recalls that some 30 members of the *Hisbah*, including some of its soldiers, attended one such meeting.²⁸⁰ The members of the

²⁷⁰ Statement of [REDACTED]

²⁷¹ Statement of [REDACTED]

²⁷² See, below, para. 526.

²⁷³ Statement of P-0398, [MLI-OTP-0051-1099](#), p. 1118, lines 610-641; [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1051.

²⁷⁴ *Al Mahdi* Decision, p. 22.

²⁷⁵ Statement of P-0398, [MLI-OTP-0051-1099](#), p. 1118, lines 610-661; Statement of P-0398, [MLI-OTP-0051-1124](#), p. 1147, lines 749-760. *Al Mahdi* Decision, p. 17 (until September).

²⁷⁶ Statement of P-0398, [MLI-OTP-0051-1099](#), p. 1118, lines 610-641; [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1051. The Chamber notes that this person is referred to several times in the evidence by the following names: Ahmed, Hamed, Mohamed Moussa and Mossa. Having looked at the evidence, the Chamber sees that the same person is at issue. The Chamber has therefore chosen to refer to him by the name “Mohamed Moussa” for the purposes of this decision. Mohamed Moussa was from Timbuktu (Statement of P-0602, [MLI-OTP-0059-0401-R01](#), pp. 0410-0411, para. 57).

²⁷⁷ Statement of P-0398, [MLI-OTP-0051-1124](#), p. 1147, lines 749-760.

²⁷⁸ Statement of P-0398, [MLI-OTP-0051-1099](#), p. 1120, lines 688-701; [MLI-OTP-0018-0997](#).

²⁷⁹ Statement of [REDACTED]

²⁸⁰ Statement of [REDACTED]

Hisbah also wore vests similar to those of the Islamic Police,²⁸¹ marked “*Hisbah*” in Arabic.²⁸²

(d) Islamic Court²⁸³

115. The Islamic Court was created by Ansar Dine/AQIM and was operational by late April 2012.²⁸⁴ The Chamber finds that the evidence tendered by the Prosecutor shows that a first judgment was handed down on 23 May 2012.²⁸⁵

116. The Islamic Court was housed in Hotel La Maison, Timbuktu.²⁸⁶ Moreover, certain judges, such as Houka Houka²⁸⁷ and Abdallah Al Chinguetti, could settle many cases if people went directly to their respective homes.²⁸⁸

117. The Islamic Court was established to receive members of the public with problems and to address issues concerning persons brought before it by the *Hisbah* and the Islamic Police.²⁸⁹ It took decisions and imposed punishment.²⁹⁰ The Islamic Court handled the most serious matters,²⁹¹ which rested exclusively with it to

²⁸¹ Statement of [REDACTED]

²⁸² Video, France 2, “*Envoyé spécial, Sous le règne des islamistes*”, 31 January 2013, [MLI-OTP-0009-1749](#), at 00:07:30:14.

²⁸³ DCC, para. 139, footnote 373; Prosecutor’s Final Written Submissions, paras. 26-27.

²⁸⁴ [MLI-OTP-0055-0223](#), translation, [MLI-OTP-0054-0329](#), p. 0330; Statement of [REDACTED]

²⁸⁵ Islamic Court Judgment, [MLI-OTP-0001-7373](#), translation, [MLI-OTP-0054-0322](#), p. 0323. For the reliability and the authenticity of this judgment, see para. 476.

²⁸⁶ Statement of [REDACTED] Statement of P-0007, [MLI-OTP-0001-7182-R01](#), p. 7184, para. 17; Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8852, paras. 41-42; Statement of [REDACTED] Video, [MLI-OTP-0009-1749](#), 00:09:30 to 00:10:42, transcript, [MLI-OTP-0028-0839](#), p. 0846, lines 213-234.

²⁸⁷ The Chamber notes that this person is referred to several times in the evidence by the following names: Muhammad Bin al Husayn, Haku Haka, Hakuhaka and Hakou Haka. Having looked at the evidence, the Chamber sees that the same person is at issue. The Chamber has therefore chosen to refer to him by the name “Houka Houka” for the purposes of this decision.

²⁸⁸ Statement of [REDACTED] Summary of statement of [REDACTED]

²⁸⁹ Statement of [REDACTED]

²⁹⁰ Statement of [REDACTED]

²⁹¹ Statement of [REDACTED]

decide.²⁹² In addition to the cases that the Chamber will examine below,²⁹³ the Islamic Court ruled on cases of debt and ownership of wells or land.²⁹⁴

118. [REDACTED] the Islamic Court had the power to adjudicate cases throughout the Province of Timbuktu, including in Niafunké and Rharous.²⁹⁵

119. A copy of each judgment was kept in the archives of the Islamic Police, a further copy was sent to at least the Islamic Police and the *Hisbah*, and another was given to the person who had committed the offence.²⁹⁶

120. As regards their cooperation with the Islamic Court, the Islamic Police²⁹⁷ and the *Hisbah*²⁹⁸ wrote reports on the accused persons and then sent them to the judges of the Islamic Court.²⁹⁹

121. When a decision was taken by the Islamic Court,³⁰⁰ it was then for the members of the *Hisbah*, the Islamic Police or the Security Battalion, under the direction of an emir designated ad hoc,³⁰¹ to secure the site³⁰² and to carry out the punishment in the

²⁹² Summary of statement of [REDACTED]

²⁹³ See, below, paras. 390-472.

²⁹⁴ Summary of statement of [REDACTED] Statement of [REDACTED]

²⁹⁵ [REDACTED].

²⁹⁶ Statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-0631](#), pp. 0652-0653, lines 690-731.

²⁹⁷ [REDACTED]; Statement of [REDACTED]

²⁹⁸ *Hisbah* report [MLI-OTP-0055-1022](#), translation, MLI-OTP-0054-0337.

²⁹⁹ [REDACTED]; Statement of [REDACTED] [0040-0368-R01](#), p. 0390, paras. 102-103.

³⁰⁰ See, above, para. 117.

³⁰¹ [REDACTED].

³⁰² For the *Hisbah*, see, e.g., below, paras. 272-276. For the Islamic Police, see Statement of [REDACTED] [MLI-OTP-0028-0831](#), 00:03:33:00 to 00:06:27:00; Summary of statement of P-0147, [MLI-OTP-0066-0569](#), p. 0570; Statement of P-0398, [MLI-OTP-0051-0631](#), pp. 0648-0649, lines 551-586. For the Security Battalion, see, e.g., [REDACTED]

presence of the civilian population of Timbuktu.³⁰³ The leaders of Ansar Dine/AQIM were also on hand to supervise the administration of the punishment.³⁰⁴

122. The Islamic Court was composed of a number of members,³⁰⁵ including at least Aboubacar Ibn Abdullah or Radwan Abou Achbal (“Radwan”),³⁰⁶ Abdallah Al Chinguetti,³⁰⁷ Koutaïba Abou Al Noaman (“Koutaïba”),³⁰⁸ Al Mahdi,³⁰⁹ Mohamed Moussa,³¹⁰ a person by the name of Daoud(a) from Bellafarandi Mosque³¹¹ and

³⁰³ See, below, paras. 272-276, 279, 307-308, 312, 317-319, 322-323. [REDACTED]

³⁰⁴ Statement of [REDACTED]

³⁰⁵ [REDACTED] [MLI-OTP-0001-7369](#), p. 7369, translation, [MLI-OTP-0034-0071](#), p. 0072; Video [MLI-OTP-0009-1749](#) 00:09:30:20 to 00:11:15:00, transcript [MLI-OTP-0028-0839](#), p. 7, lines 241-249; Video [MLI-OTP-0025-0010](#) 00:10:02:00 to 00:10:29:00, transcript [MLI-OTP-0033-5244](#), translation, [MLI-OTP-0033-5488](#), p. 5494, lines 180-184.

³⁰⁶ Statement of [REDACTED] Summary of statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-0598](#), p. 0625, line 901, Statement of P-0398, [MLI-OTP-0051-1032](#), p. 1040, line 243; Statement of P-0398, [MLI-OTP-0051-0631](#), p. 0649, lines 601-608; Statement of [REDACTED]

³⁰⁷ Statement of [REDACTED] Summary of statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-0598](#), p. 0625, lines 897; Statement of P-0398, [MLI-OTP-0051-1032](#), p. 1040, line 246; Statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-0631](#), p. 0649, lines 601-606.

³⁰⁸ Statement of [REDACTED] Statement of [REDACTED]

³⁰⁹ Statement of [REDACTED] Summary of statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-0598](#), p. 0625, line 897; Statement of P-0398, [MLI-OTP-0051-1032](#), p. 1040, line 248; Statement of P-0398, [MLI-OTP-0051-0631](#), p. 0649, lines 601-606; Statement of [REDACTED] [MLI-OTP-0001-7369](#), p. 7369, translation, [MLI-OTP-0034-0071](#), p. 0072.

³¹⁰ Statement of [REDACTED] [MLI-OTP-0020-0019-R01](#), p. 0053, para. 163; Summary of statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-1032](#), p. 1040, line 250; Statement of P-0398, [MLI-OTP-0051-0631](#), p. 0649, lines 601-612; Associated Press, Media report, “Al-Qaida papers: The Multinational”, [MLI-OTP-0009-2390](#) (“[MLI-OTP-0009-2390](#)”), p. 2428.

³¹¹ Statement of P-0398, [MLI-OTP-0051-0598](#), p. 0625, line 903; Statement of P-0398, [MLI-OTP-0051-1032](#), p. 1040, line 252; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0016, para. 55; [REDACTED] [MLI-OTP-0024-2814](#), p. 2834.

Daouda Ali Maiga.³¹² Judge Houka Houka³¹³ succeeded Mohamed al-Amin or Lamine as President of the Islamic Court.³¹⁴ The Secretariat was run by someone called Abdelhay.³¹⁵

(e) Sharia Committee

123. The Sharia Committee was a group of religious scholars attached to the Islamic Court and its role was to propagate religious teachings; it was headed by Abdallah Al Chinguetti.³¹⁶

³¹² [REDACTED] [MLI-OTP-0001-7369](#), p. 7369, translation, [MLI-OTP-0034-0071, p. 0072](#); Statement of [REDACTED] Summary of statement of [REDACTED]

[REDACTED] Statement of [REDACTED]

³¹³ Summary of statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-0598](#), p. 0624, lines 874-878; Statement of [REDACTED] Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0016, para. 55; Statements of [REDACTED]

[REDACTED] Statements of P-0398, [MLI-OTP-0051-0631](#), p. 0649, lines 601-616; [MLI-OTP-0051-1032](#), pp. 1039-1040, lines 226-230; Statement of [REDACTED]

Statement of [REDACTED] Statement of [REDACTED] Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8853, para. 43, p. 8860, para. 80; Statements of [REDACTED]

[REDACTED] [MLI-OTP-0024-2814](#), p. 2834.

³¹⁴ [REDACTED] [MLI-OTP-0001-7369](#), translation, [MLI-OTP-0034-0071](#), p. 0072; Statements of [REDACTED]

[REDACTED] Statements of P-0398, [MLI-OTP-0051-0598](#), pp. 0624-0625, lines 884-887, 918-922 and [MLI-OTP-0051-0631](#), p. 0649, lines 601-614; Summary of statement of [REDACTED]

[REDACTED] [MLI-OTP-0025-0305](#), p. 0308.

³¹⁵ Statement of P-0398, [MLI-OTP-0051-0598](#), p. 0627, lines 992-995; Summary of statement of [REDACTED] [MLI-OTP-0009-2390](#), p. 2428.

³¹⁶ [REDACTED] [MLI-OTP-0001-7369](#), translation, [MLI-OTP-0034-0071](#), p. 0072;

Statement of [REDACTED]

[REDACTED] Summary of statement of [REDACTED]

[REDACTED]

(f) Media Commission

124. The Media Commission was the body Ansar Dine/AQIM created to disseminate their ideology. It was located in the *Office de radiotélévision du Mali* [Office of Radio and Television of Mali] (“ORTM”) in Timbuktu.³¹⁷

125. This body ran the local radio stations, Radio Bouctou and Al Farouk, and broadcast sermons and religious music³¹⁸ in the local languages until Ansar Dine/AQIM left Timbuktu.³¹⁹ [REDACTED] states that, in the week preceding 1 July 2012, [REDACTED] heard sermons about the tombs in Timbuktu not being in keeping with the religious ideology of Ansar Dine/AQIM.³²⁰ The execution of the punishments ordered by the Islamic Court was pre-announced over the radio or by town criers.³²¹

126. The Media Commission included among its ranks Abou Dardar, responsible for local radio stations;³²² Radwan, a member of AQIM and the Tarek Ibn Ziyad

³¹⁷ Statement of [REDACTED]

³¹⁸ Statement of [REDACTED]; Statement of [REDACTED]
[REDACTED]

³¹⁹ Statement of [REDACTED]

³²⁰ Statement of [REDACTED]

³²¹ Statement of [REDACTED] Summary of statement of [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Video, [MLI-OTP-0001-6954](#), 00:00:16:00 to 00:00:20:00, transcript [MLI-OTP-0056-0605](#).

³²² Statement of [REDACTED]; Statement of [REDACTED]

[REDACTED] Statement of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Battalion;³²³ and Youssouf.³²⁴ Sanda Ould Boumama³²⁵ headed the body³²⁶ and was spokesperson for Ansar Dine.³²⁷ Sanda Ould Boumama was responsible for communication with journalists,³²⁸ for example with regard to the destruction of the mausoleums.³²⁹ Sanda Ould Boumama also prohibited [REDACTED]

[REDACTED].³³⁰

³²³ Statement of [REDACTED] Radwan was also tasked with recruitment for Ansar Dine. Radwan was also part of the Islamic Court (see, above, para. 122); Statement of [REDACTED]

³²⁴ Statement of [REDACTED]

³²⁵ The Chamber notes that this person is referred several times in the evidence by the following names: Sandal, Sanda, Sanda Boumama and Sanda Ould Boumama. Having looked at the evidence, the Chamber sees that the same person is at issue. The Chamber has therefore chosen to refer to him by the name "Sanda Ould Boumama" for the purposes of this decision.

³²⁶ Statement [REDACTED]; Statement of [REDACTED]

[REDACTED] Statement of [REDACTED]

³²⁷ Statement of [REDACTED]

[REDACTED] Statement of [REDACTED] Statement of [REDACTED] "Ansar Dine au Nord-Mali : les talibans comme modèle", 11 September 2012, [MLI-OTP-0037-1567](#), p. 1567; Video, "Exclusivité Africa N1 Entretien avec Sanda Ould Boumama porte-parole du groupe Ansar Dine", Africa-United TV, 13 January 2013, [MLI-OTP-0010-0076](#), 00:00:30:00 to 00:00:57:00; transcript, [MLI-OTP-0033-5201](#), translation, [MLI-OTP-0033-5346](#); see "Mali : la destruction des mausolées de Tombouctou par Ansar Dine sème la consternation", RFI, 30 June 2012, [MLI-OTP-0007-0228](#), pp. 0228-0229 and Audio recording, [MLI-OTP-0001-6944](#) and transcript [MLI-OTP-0001-6944](#), [MLI-OTP-0020-0582](#) (Sanda Ould Boumama is described as an Ansar Dine representative). See also Video, [MLI-OTP-0015-0495](#) 00:35:23:00 to 00:35:40:00; transcript, [MLI-OTP-0033-5189](#), translation, [MLI-OTP-0033-5288](#), p. 5293, lines 133-139.

³²⁸ Statement [REDACTED] Interview of Sanda Ould Boumama with the newspaper Sahara Media, 16 April 2012, [MLI-OTP-0001-3271](#), p. 3272; Video, [MLI-OTP-0001-0052](#) 01:21:08:00 to 01:21:30:10; transcript, [MLI-OTP-0033-5148](#), translation, [MLI-OTP-0033-5296](#), p. 5330, lines 1263-1265; "Ansar Dine au Nord-Mali : les talibans comme modèle", 11 September 2012, [MLI-OTP-0037-1567](#), p. 1567; Africa-United TV, Video, Exclusive Africa N1 Interview of Sanda Ould Boumama spokesperson for the Ansar Dine group, 13 January 2013, [MLI-OTP-0010-0076](#), 00:00:30:00 to 00:00:57:00, transcript, [MLI-OTP-0033-5201](#), translation, [MLI-OTP-0033-5346](#).

³²⁹ Video posted on YouTube on 6 May 2012, [MLI-OTP-0011-0402](#), 00:00:50:00 to 00:01:06:00; "Mali : la destruction des mausolées de Tombouctou par Ansar Dine sème la consternation", RFI, 30 June 2012, [MLI-OTP-0007-0228](#), pp. 0228-0229; Audio recording, [MLI-OTP-0007-0228](#) transcript [MLI-OTP-0020-0584](#). See also audio recording, [MLI-OTP-0001-6944](#) and transcript [MLI-OTP-0001-6944](#), [MLI-OTP-0020-0582](#).

³³⁰ [REDACTED]

127. Sanda Ould Boumama was also involved in running the city.³³¹ [REDACTED]
[REDACTED] Sanda Ould Boumama³³² had been arrested by the Malian police some years prior and Yahia Al Hammam had exchanged him for a French hostage. The witness states that Sanda Ould Boumama acted as the intermediary between Abou Zeid and Yahia Al Hammam. [REDACTED] makes the point that, as a trader, Sanda Ould Boumama had contacts among Arab tradespeople and the population.³³³

128. Sanda Ould Boumama was present when P-0557 was flogged³³⁴ and when the mausoleums were destroyed.³³⁵

(g) Detention sites

129. The Chamber notes that the witnesses refer to a number of premises, such as the BMS,³³⁶ the Governorate³³⁷ or “Timbuktu Central Prison [*Maison centrale d’arrêt de Tombouctou*]”, which Ansar Dine/AQIM used in Timbuktu to detain or imprison transgressors of the rules laid down by these groups.³³⁸ Here, by way of illustration, the Chamber draws attention to [REDACTED]’s comments. [REDACTED] explains that there was a “[TRANSLATION] big” prison at the “[TRANSLATION] National Guard” camp, itself located near the military camp in Timbuktu to the west of the Djingareyber Mosque,

³³¹ Statement of [REDACTED] Statement of [REDACTED]
[REDACTED] Summary of statement [REDACTED]
[REDACTED]

³³² The Chamber considers that, from [REDACTED] description of someone by the name of “Sandal”, it can be concluded that that person is Sanda Ould Boumama.

³³³ [REDACTED]

³³⁴ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8852, para. 42.

³³⁵ Statement of [REDACTED] [REDACTED]

³³⁶ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0029, para. 53; Statement of P-0574, [MLI-OTP-0049-0098-R01](#), p. 0105, paras. 33-35; Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0870-0871, paras. 35-38.

³³⁷ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0035, para. 78; Statement of P-0538, [MLI-OTP-0039-0072-R01](#), pp. 0080-0081, paras. 41-44.

³³⁸ Written record of interview of Dédéou Maiga, [MLI-OTP-0032-0320-R01](#), p. 0321.

next to the Imam Ben Essayouti School.³³⁹ [REDACTED] states that this prison had an emir and guards³⁴⁰ and that Mohamed Ag Mohamed Emetta, who belongs to the same tribe as [REDACTED], was the emir of the prison and had been appointed by Adama.³⁴¹ Further, [REDACTED] states that “[TRANSLATION] the prison was initially part of the [Islamic Police]” and that “[TRANSLATION] the [Islamic Police] had guarded the prison for some time”.³⁴² According to [REDACTED], when [REDACTED] began working at the Islamic Police, the “[TRANSLATION] big” prison did not exist; there was only a “[TRANSLATION] small” prison “[TRANSLATION] at the BHM Bank” in town, “[TRANSLATION] adjoining Sotelma”.³⁴³ [REDACTED] explains that when the Islamic Police occupied the BMS, it detained suspects in a cell for two or three hours for interrogation. [REDACTED] says that when the *Hisbah* moved to the BMS, it used that same cell as a prison. According to [REDACTED], the cell was outside the BMS and had a “[TRANSLATION] barred door” through which the detainees could be seen.³⁴⁴

(h) Training Centres

130. The Training Centres were created by Ansar Dine/AQIM to receive new members and provide them with military training and religious instruction. In principle, new Ansar Dine/AQIM recruits underwent religious instruction and military training before joining one of the bodies described above.³⁴⁵ According to [REDACTED], the Training Centres were temporary and shut down once new recruits were trained. The first centre was north of the city in “[TRANSLATION] the gendarmerie centre” and was headed by persons named Abou Harris Al Chinguetti and Abou

339 [REDACTED].

340 [REDACTED].

341 [REDACTED].

342 [REDACTED].

³⁴³ Statement of P-0398, [MLI-OTP-0051-1032](#), pp. 1043-1044, lines 371-408.

³⁴⁴ Statement of P-0398, [MLI-OTP-0051-1032](#), pp. 1047-1048, lines 423-493.

345 [REDACTED].

Hamza Al Chinguetti. Military training and religious instruction were dispensed there. Mr Al Hassan states that the young people who attended the centre subsequently joined Ansar Dine/AQIM. A second centre was housed in a building east of the city, next to the Regional Assembly, and was headed by Nasser Al Chinguetti and Abou Oubada Al Sahraoui. A third centre was located close to the building where Abou Zeid and the members of his battalion lived and was headed by Abou Al Walid, who later became the emir of the *Hisbah*. [REDACTED] explains that this centre provided training on heavy weaponry and the firing of shells and missiles. According to [REDACTED], this third centre was reserved for Moroccan, Tunisian, Algerian and Libyan “[TRANSLATION] mujahidin”. It was located between Timbuktu Airport and the city and was headed by Adama. Adama had opened it after being dismissed from the Islamic Police. It had the same purpose as the first two centres, that is, to receive new recruits.³⁴⁶ [REDACTED] says that [REDACTED] did not attend these centres as they were exclusively for “[TRANSLATION] soldiers” [REDACTED].³⁴⁷

(D) Allocation of roles and powers among the various bodies

131. As said, the *Hisbah*, the Islamic Police, the Security Battalion and the Islamic Court worked together on a daily basis. Moreover, the powers and roles assigned to the *Hisbah*, the Islamic Police and the Security Battalion overlapped. For instance, the Chamber notes that, in principle, persons caught in the act of “[TRANSLATION] adultery” or immediately thereafter were supposed to be taken to the *Hisbah*³⁴⁸ but in

³⁴⁶ [REDACTED]. See also Statement of [REDACTED]
[REDACTED]

³⁴⁷ [REDACTED].

³⁴⁸ [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040; Islamic Court Judgment, [REDACTED] [MLI-OTP-0001-7431](#), translation, [MLI-OTP-0034-0125](#), p. 0126.

practice the Islamic Police also received cases of this type³⁴⁹ before referring them to the Islamic Court. According to ██████ when a problem arose, for example a concert that was going to take place had to be prevented, the Islamic Police and the *Hisbah* had the authority to intervene and so could go to the scene.³⁵⁰

132. The evidence shows that the Security Battalion, the Islamic Police and the *Hisbah* all had the power to arrest and punish offenders by imposing a discretionary penalty³⁵¹ even if, ██████ it was everyone's responsibility to "[TRANSLATION] correct [...] the vice [...]".³⁵² ██████ witnesses refer to this type of penalty by the Arabic term "*ta'zir*".³⁵³ At the Islamic Police, this penalty could take the form of detention³⁵⁴ or flogging (10 to 40 lashes of the whip ██████).³⁵⁵ Flogging was administered in the courtyard of the Islamic Police in the presence of members of the Islamic Police³⁵⁶ and, ██████ the civilian population of Timbuktu was not

³⁴⁹ See, e.g., Islamic Police report dated 26 November 2012, [MLI-OTP-0001-7549](#), translation, [MLI-OTP-0034-0177](#), p. 0178 and Islamic Police report, [MLI-OTP-0001-7509](#), translation, [MLI-OTP-0034-0167](#), p. 0168. For the authenticity of the Islamic Police reports, see paras. ██████712-715, 718 and footnote 1928.

³⁵⁰ Statement of ██████

³⁵¹ [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040; Statement of P-0398, [MLI-OTP-0051-1184](#), p. 1205, lines 685-686, p. 1206, lines 723-727, p. 1207, lines 743-749, p. 1211, lines 881-887; [MLI-OTP-0051-1067](#), p. 1095, lines 922-929; Summary of statement of ██████ Statement of P-0398, [MLI-OTP-0051-1124](#), p. 0148, lines 800-801; Statement of ██████; Statement of ██████; Statement of ██████ Summary of statement of ██████ Statement ██████

³⁵² Statement ██████

³⁵³ ██████; Summary of statement of ██████ Statement of ██████

³⁵⁴ ██████. Statement of P-0125, [MLI-OTP-0023-0004-R01](#), para. 53; Statement of ██████

³⁵⁵ Statement of P-0398, [MLI-OTP-0051-1184](#), pp. 1205-1211, lines 678-686, pp. 1209-1211, lines 835-894; Summary of statement of ██████ Statement of ██████ [MLI-OTP-0062-3234-R01](#), p. 3257, lines 815-832.

³⁵⁶ Summary of statement of ██████

called on to attend.³⁵⁷ The Islamic Police would at times ask the judge whether the case should be referred to the Islamic Court or whether the penalty should be applied without the court's involvement, at the police station or in public;³⁵⁸ otherwise authorization to carry out the punishment could be sought from the leadership such as Abou Zeid or Iyad Ag Ghaly.³⁵⁹

133. For some cases, such as those concerning "adultery", the Islamic Court was the body with the power to punish convicted persons by the imposition of a legal penalty, which, as Ansar Dine/AQIM saw it, was prescribed by Islamic law,³⁶⁰ and which [REDACTED] and several witnesses refer to by the Arabic term "*hadd*", whose plural form is "*hudud*".³⁶¹ [REDACTED] explains that *hudud* entailed amputating the hand of the thief, killing the killer and administering lashes of the whip in cases of "[TRANSLATION] adultery" or alcohol consumption.³⁶² The Court also imposed *ta'zir*.³⁶³

134. By 15 August 2012, a document from Abou Zeid was available to the bodies, setting out mandatory instructions on how to behave towards the civilian population and, specifically, on how to handle transgressions of the rules laid down by Ansar

³⁵⁷ Summary of statement of [REDACTED]

³⁵⁸ [REDACTED].

³⁵⁹ As regards Iyad Ag Ghali, see Statement of [REDACTED]

As regards Abou Zeid, see [REDACTED]; Summary of statement of [REDACTED] [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), pp. 1042-1043.

³⁶⁰ [MLI-OTP-0010-0088](#), p. 0090, translation, [MLI-OTP-0024-0015](#), pp. 0020, 0029.

³⁶¹ [MLI-OTP-0010-0088](#), p. 0090, translation, [MLI-OTP-0024-0015](#), p. 0029; Statement of [REDACTED]

[REDACTED]; Summary of statement of [REDACTED]

[REDACTED] Statement of [REDACTED]

³⁶² [REDACTED].

³⁶³ Statement of [REDACTED]

Dine/AQIM.³⁶⁴ It contained the procedures to follow when a person transgressed the rules laid down by Ansar Dine/AQIM. Generally, a first-time offender had to be informed of the religious precept violated and, where applicable, any prohibited item in his or her possession had to be confiscated but the person would not incur a penalty. A repeat offender had to be taken to the Islamic Police or to the *Hisbah* for punishment.³⁶⁵ According to the document, the principles and procedures pertaining to the penalties applicable to offenders were decided by “*la mairie* ([TRANSLATION] City Hall)”.³⁶⁶ The Chamber understands “City Hall” as referring to Abou Zeid, the Governor of Timbuktu, and to the premises where he performed his functions.³⁶⁷

135. The existence of such a procedure is corroborated by the statements of [REDACTED] who says that those in charge at the Islamic Police would explain beforehand to those assigned to patrol duty how to behave if they caught people breaking the rules. For example, a person listening to music had to be advised to stop. The members of the Islamic Police assigned to patrol were not to hit, insult or shoot transgressors; even if attacked by a suspected offender, they were not to react but to report the case to the headquarters of the Islamic Police.³⁶⁸

136. [REDACTED] and [REDACTED] also refer to the existence of a document setting out the types of penalties applicable to each type of offence,³⁶⁹ such as 10 lashes of the whip for smoking tobacco.³⁷⁰

³⁶⁴ [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040.

³⁶⁵ [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040. See also Statement of P-0398, [MLI-OTP-0051-1184](#), pp. 1205-1211, lines 678-894.

³⁶⁶ [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040.

³⁶⁷ See, above, 80-83.

³⁶⁸ Summary of statement of [REDACTED]

³⁶⁹ [REDACTED]

³⁷⁰ [REDACTED].

137. ██████████ explains that in some situations, members of the Islamic Police were bound by the instructions given by the emirs (for instance those concerning guard shifts, patrols and the administering of punishment) but that in others they could refuse (for example, to appear in a video). ██████████ also explains that it was possible to volunteer in some cases but, when it came to carrying out punishment, the emir of the Islamic Police designated whom was to take part.³⁷¹

138. The emirs of the Islamic Police could take disciplinary action against members of the Islamic Police when, for instance, a member did not follow an order or an instruction. As an example, ██████████ cites the case of a guard who fell asleep and whom “[TRANSLATION] they [...] gave 10 lashes of the whip”.³⁷²

139. As mentioned above, the Islamic Police, the *Hisbah* or the Security Battalion saw to it that the punishment was carried out or were on hand to secure the site. An Islamic Court judgment further shows that not only could the Islamic Police be involved in carrying out punishment but also that it had some leeway in applying them.³⁷³

140. As will subsequently be made apparent,³⁷⁴ the Chamber considers that it was the combined action of all these bodies, and not that of a single body acting in isolation, that enabled the crimes to be committed in Timbuktu from April 2012 to January 2013.

³⁷¹ ██████████
██████████ ██████████

³⁷² ██████████

³⁷³ The judgment sentences a person accused of selling alcohol to 40 lashes of the whip and to the closure of his shop for a period that is left to the Islamic Police to determine. Islamic Court Judgment, MLI-OTP-0034-0163 [translation].

³⁷⁴ See, below, VII. The crimes, paras. 228-707, 849, 855-856.

VI. Contextual elements of crimes against humanity and war crimes

(A) Contextual elements of crimes against humanity

1. Applicable law

141. Article 7(1) of the Statute defines a crime against humanity as any of the acts enumerated in that article when committed as part of, and with knowledge of, a widespread or systematic attack directed against any civilian population.

(a) Existence of an attack

i. Course of conduct involving the multiple commission of acts

142. Article 7(2)(a) of the Statute states that an “[a]ttack directed against any civilian population” involves the multiple commission of acts referred to in article 7(1) of the Statute. The Court has held that this phrase sets a quantitative threshold requiring “more than a few”, “several”, or “many” acts, although “[t]he number of the individual types of acts referred to in Article 7(1) is, however, irrelevant provided that each of the acts fall within the course of conduct and cumulatively satisfy the required quantitative threshold.”³⁷⁵

143. As the term “attack” refers to a certain pattern of behaviour, *viz.* “a campaign or operation carried out against the civilian population”,³⁷⁶ it has previously been held that the course of conduct involving the multiple commission of acts has “a systemic aspect as it describes a series or overall flow of events as opposed to a mere aggregate of random acts.”³⁷⁷ The occurrence of those acts is therefore not the only evidence that

³⁷⁵ Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Judgment pursuant to Article 74 of the Statute”, dated 21 March 2016, French version registered on 3 October 2016 (“*Bemba* Trial Judgment”), ICC-01/05-01/08-3343, para. 150 and references therein; see also Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, “Judgment”, ICC-01/04-02/06-2359 (“*Ntaganda* Trial Judgment”), para. 663.

³⁷⁶ *Bemba* Decision, para. 75; see also *Ruto and Sang* Decision, para. 164.

³⁷⁷ *Gbagbo* Decision, paras. 209-210; see also *Bemba* Trial Judgment, para. 149.

may be relevant to proving the existence of the course of conduct; since the course of conduct requires a certain “pattern of behaviour”,³⁷⁸ evidence relevant to proving the degree of planning, direction or organization by a group or an organization is also relevant to assessing the links and commonality of features between individual acts.³⁷⁹

144. Furthermore the Elements of Crimes specify that the acts in question need not constitute a military attack³⁸⁰ and may involve any form of violence against a civilian population.³⁸¹

145. It must be underscored that only those acts enumerated in article 7(1)(a) to (k) of the Statute may be relied upon to establish the multiple commission of acts.³⁸²

ii. Acts directed against a civilian population

146. To constitute crimes against humanity, the acts specified in article 7(1) of the Statute must be directed against the civilian population.

147. The Chamber recalls that the requirement of an attack “directed” against the population means that the civilian population must be the primary object, and not just an inadvertent victim, of the attack.³⁸³ It suffices for the Prosecutor to establish that

³⁷⁸ Trial Chamber II, *The Prosecutor v. Germain Katanga*, “Judgment pursuant to article 74 of the Statute”, 7 March 2014, ICC-01/04-01/07-3436-tENG, (“*Katanga* Trial Judgment”), para. 1101.

³⁷⁹ *Gbagbo* Decision, para. 210.

³⁸⁰ Elements of Crimes, Crimes against humanity, Introduction, para. 3; see also *Ntaganda* Trial Judgment, para. 662.

³⁸¹ *Katanga* Trial Judgment, para. 1101.

³⁸² *Bemba* Trial Judgment, para. 151; see also *Ntaganda* Trial Judgment, para. 663.

³⁸³ *Bemba* Decision, para. 76; see also *Ntaganda* Trial Judgment, para. 668; *Bemba* Trial Judgment, para. 154; *Katanga* Trial Judgment, para. 1104; Pre-Trial Chamber III, *Situation in the Republic of Côte d’Ivoire*, “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire’”, dated 15 November 2011, French version registered on 8 February 2012, ICC-02/11-14-Corr (“Corrected Version of Decision to Open an Investigation in Côte d’Ivoire”), paras. 31-33; *Katanga and Ngudjolo* Decision, para. 399.

civilians were targeted during the attack in sufficient number or in such a manner that the attack was effectively directed against the civilian population.³⁸⁴

148. The expression “civilian population” denotes civilians – as opposed to “members of armed forces and other legitimate combatants”³⁸⁵ – as defined by article 50 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (“Protocol I”).³⁸⁶ The Chamber accepts that “the population so targeted must be primarily composed of civilians – the presence of non-civilians in its midst has therefore no effect on its status of civilian population”.³⁸⁷ Moreover, there is no requirement that the individual victims of crimes be “civilians”, since the concept must be construed in a manner which does not exclude other protected persons.³⁸⁸

149. The Chamber points out that the Prosecutor must therefore prove that the attack was not directed against a limited group of randomly selected persons.³⁸⁹

150. In order to determine whether the attack was directed against a civilian population, regard may be had *inter alia* to the means and methods used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants

³⁸⁴ *Bemba* Trial Judgment, para. 154 and references therein; see also *Bemba* Decision, para. 76; see also ICTR, *The Prosecutor v. Ignace Bagilishema*, “Judgement”, ICTR-95-1A-T, 3 July 2002, para. 80; ICTR, *The Prosecutor v. Laurent Semanza*, “Judgement and Sentence”, ICTR-97-20-T, 15 May 2003, (“*Semanza* Trial Judgment”), para. 330; ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, “Judgement”, IT-96-23 and IT-96-23/1-A, 12 June 2002 (“*Kunarac et al.* Appeal Judgment”), para. 90.

³⁸⁵ *Bemba* Decision, para. 78; see also *Katanga* Trial Judgment, para. 1102; *Kunarac et al.* Appeal Judgment, para. 425.

³⁸⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, United Nations Treaty Series, vol. 1125, no. 17512, article 50; see also *Bemba* Trial Judgment, para. 152.

³⁸⁷ *Katanga* Trial Judgment, para. 1105 and references therein; see also *Bemba* Trial Judgment.

³⁸⁸ *Bemba* Trial Judgment, para. 156 and references therein; see also *Ntaganda* Trial Judgment, para. 669.

³⁸⁹ *Bemba* Decision, para. 77; ICTY, *Prosecutor v. Milomir Stakić*, “Judgement”, 31 July 2003, IT-97-24, para. 627 (“*Stakić* Trial Judgment”); *Kunarac et al.* Appeal Judgment, para. 90.

at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.³⁹⁰

iii. State or organizational policy

151. Under article 7(2)(a) of the Statute an attack against a civilian population means the multiple commission of acts pursuant to or in furtherance of a State or organizational policy to commit such attack. In this regard it must be shown first that a policy existed and second that the policy was connected to a State or an organization.³⁹¹

152. As to the ingredients of the policy, article 7(2)(a) of the Statute refers essentially to the fact that the State or organization intends to carry out an attack against a civilian population and must, therefore, invariably target a particular civilian population.³⁹² Beyond that, the Elements of Crimes require that the organization or State “actively promote or encourage” the attack.³⁹³

153. As regards proof of the existence of such a policy, the policy may consist of a pre-established plan. In this respect the Chamber is of the view that the concepts of “policy” and “systematic” character of the attack under article 7(1) and (2)(a) of the Statute, while not synonymous, both refer to a certain level of planning of the attack.³⁹⁴

154. However, such a policy need not be predefined in a pre-established design; it may crystallize gradually “as actions are set in train and undertaken by the

³⁹⁰ *Bemba* Trial Judgment, para. 153 and references therein.

³⁹¹ *Katanga* Trial Judgment, para. 1097.

³⁹² *Katanga* Trial Judgment, para. 1108.

³⁹³ Elements of Crimes, Article 7, Introduction, para. 3; see also *Katanga* Trial Judgment, para. 1108; *Ntaganda* Trial Judgment, para. 673.

³⁹⁴ *Katanga* Trial Judgment, para. 1111; see also *Gbagbo* Decision, para. 216.

perpetrators [...] such that definition of the overall policy is possible only *in retrospect*".³⁹⁵ Its existence may thus be inferred by discernment of, *inter alia*, repeated actions occurring according to a same sequence of violence; involvement of the State or organized forces in the commission of the crimes; their statements, instructions or documentation; collective mobilization orchestrated and coordinated by the State or the organization; or an underlying motivation.³⁹⁶

155. Turning to the concept of an organization, the Chamber has reference to the definition provided by Trial Chamber II: an "association, whether or not governed by institutions, that sets itself specific objectives".³⁹⁷

156. As to the nature of such an organization, the Chamber concurs with the Court's previous holding that the organization which promotes or encourages the attack need not be structured so as to assume the formal characteristics of a State.³⁹⁸ In the Chamber's view the organization concerned must have sufficient means, a set of sufficiently efficient structures or mechanisms and the capacities for action and mutual agreement to ensure the coordination necessary to carry out an attack directed against a population, no further requirement being necessary.³⁹⁹

157. The Chamber also recalls that the determination whether a given group qualifies as an organization under the Statute must be made on a case-by-case basis.⁴⁰⁰

158. Lastly, the criminal conduct must have been carried out "pursuant to" or "in furtherance of" the State or organizational policy. A connection must therefore be

³⁹⁵ *Katanga* Trial Judgment, paras. 1109-1110; see also *Ntaganda* Trial Judgment, para. 673.

³⁹⁶ *Bemba* Decision, para. 81; see also *Katanga* Trial Judgment, para. 1109; *Mbarushimana* Decision, para. 263; *Bemba* Trial Judgment, para. 160; *Ntaganda* Trial Judgment, para. 674.

³⁹⁷ See *Katanga* Trial Judgment, para. 1119 and references therein.

³⁹⁸ See *Katanga* Trial Judgment, paras. 1119-1122.

³⁹⁹ *Katanga* Trial Judgment, para. 1119.

⁴⁰⁰ Decision to Open an Investigation in Kenya, para. 93; see also *Ruto and Sang* Decision, para. 185.

established between the conduct and the State or organizational policy, so as to exclude acts committed by isolated individuals.⁴⁰¹

159. The Chamber is of the view that this condition is satisfied where a perpetrator deliberately acts in furtherance of the policy or knowingly engages in conduct envisaged by the policy.⁴⁰²

(b) Widespread or systematic attack

160. Article 7(1) of the Statute lays down that the attack must have been either widespread or systematic, implying that the acts of violence were not spontaneous or isolated.

161. The adjective “widespread” refers, mainly, to two requirements: geographic scope and number of victims.⁴⁰³ The Chamber subscribes to the settled authority which holds that the term denotes an attack that is massive, frequent, carried out on a large scale and collectively, of considerable seriousness and directed against a multiplicity of victims.⁴⁰⁴

162. The “systematic” nature of the attack reflects the organized character of the acts of violence committed and the improbability of their random occurrence as evidenced

⁴⁰¹ *Katanga* Trial Judgment, paras. 1115-1116; see also *Ntaganda* Trial Judgment, para. 673.

⁴⁰² *Bemba* Trial Judgment, para. 161.

⁴⁰³ *Katanga* Trial Judgment, para. 1123; see also *Ntaganda* Trial Judgment, para. 691; *Bemba* Trial Judgment, para. 163.

⁴⁰⁴ *Harun* Decision on Article 58(7), para. 62 and references therein; see also *Ntaganda* Trial Judgment, para. 691; *Bemba* Trial Judgment, para. 163; *Gbagbo* Decision, para. 222; *Bemba* Decision, para. 83; *Katanga and Ngudjolo* Decision, para. 395 and references therein.

by the existence of a pattern of crimes,⁴⁰⁵ i.e. the non-accidental repetition of similar criminal conduct on a regular basis.⁴⁰⁶

163. Having regard to previous decisions of this Court, the Chamber is of opinion that the analysis aims also to inquire as to whether a series of repeated actions seeking to produce always the same effects on a civilian population was undertaken with consideration – identical acts or similarities in criminal practices, continual repetition of a same *modus operandi*, similar treatment meted out to victims or consistency in such treatment across a wide geographic area.⁴⁰⁷

(c) Acts committed as part of the attack

164. The individual acts charged under article 7(1) of the Statute must be “part of” a widespread or systematic attack directed against the civilian population.

165. This Court has already held that the determination whether that nexus exists entails an objective assessment of the nature and characteristics, aims and consequences of the acts in question, consideration being given to the attack as a whole and to its various components.⁴⁰⁸

166. Thus, isolated acts that clearly differ in their context and circumstances from other acts which form part of an attack fall outwith article 7(1) of the Statute.⁴⁰⁹

167. The Chamber concurs with the holding of Pre-Trial Chamber II which highlighted that:

⁴⁰⁵ *Katanga and Ngudjolo* Decision, para. 397; see also *Ntaganda* Trial Judgment, para. 692; *Katanga* Trial Judgment, para. 1123.

⁴⁰⁶ *Harun* Decision on Article 58(7), para. 62; see also *Ntaganda* Trial Judgment, para. 692; *Gbagbo* Decision, para. 223 and references therein.

⁴⁰⁷ *Katanga* Trial Judgment, para. 1113; see also *Ntaganda* Trial Judgment, para. 693.

⁴⁰⁸ *Katanga* Trial Judgment, para. 1124; see also *Ntaganda* Trial Judgment, para. 696; *Bemba* Trial Judgment, para. 165.

⁴⁰⁹ *Katanga* Trial Judgment, para. 1124; see also *Bemba* Trial Judgment, para. 165 and references therein.

jurisprudence and legal doctrine are consistent about the fact that an individual may be held responsible of crimes against humanity even if he or she perpetrates one or two offences, or engages in one such offence against only a small number of civilians, provided that those offences are part of the attack. Therefore, only the attack and not the individual acts of the perpetrator must be widespread or systematic. A single act of murder by a perpetrator may constitute a crime against humanity as long as the legal requirements with regard to the contextual element of crimes against humanity, including the nexus element, are met.⁴¹⁰

(d) Acts committed with knowledge of the attack

168. Article 7(1) of the Statute and the Elements of Crimes require that the perpetrator of the act knew that his or her conduct was part of, or intended that conduct to be part of, the widespread or systematic attack directed against the civilian population.⁴¹¹

169. However, the Elements of Crimes make clear that this element must not be interpreted as requiring proof that the perpetrator had knowledge of all of the characteristics of the attack or the precise details of the plan or of the State or organizational policy. Furthermore, the Chamber recalls,

[n]or is it required that the perpetrator of the act subscribed to the State or the organisation's criminal design, any more than it must be shown that the perpetrator deliberately intended his or her act to form part of the attack against the civilian population, even though the Elements of Crimes mention this scenario. The perpetrator's motive is hence irrelevant to such proof and for his or her act to be characterised as a crime against humanity, it suffices to establish, in view of the context, knowledge of the particular fact that his or her act formed part of the attack.⁴¹²

170. Lastly, the Chamber underscores that the perpetrator's knowledge of the attack and awareness that his or her conduct was part of the attack may be inferred from circumstantial evidence such as the accused's hierarchical position; his or her assuming an important role in the broader criminal campaign; his or her presence at the scene of the crimes; his or her references to the superiority of his or her group over

⁴¹⁰ *Bemba* Decision, para. 151 and references therein.

⁴¹¹ *Katanga* Trial Judgment, para. 782.

⁴¹² *Katanga* Trial Judgment, para. 1125 and references therein.

the enemy group; and the general historical and political environment in which the acts occurred.⁴¹³

2. Analysis

171. The Prosecutor alleges that the armed groups directed a widespread and systematic attack against the civilian population of Timbuktu and the Timbuktu Region between early April 2012 and January 2013.⁴¹⁴ The Defence contends that the Prosecutor has not established substantial grounds to believe that the contextual elements required by article 7 of the Statute are made out.⁴¹⁵

172. Turning first to the organization as it is understood under article 7(2)(a) of the Statute, the Chamber adverts to its set of findings of fact concerning the structure of the armed groups Ansar Dine and AQIM and in particular concerning the existence of organized armed groups within the meaning of humanitarian law.⁴¹⁶ Thus it is established that the groups possessed the means and capacities for action, communication and coordination to accomplish their objectives.⁴¹⁷ Moreover, in the Chamber's view, the armed groups showed, in particular through the institutions they put in place,⁴¹⁸ that they had a set of structures or mechanisms that were sufficiently efficient to carry out an attack against a population.

⁴¹³ *Katanga and Ngudjolo* Decision, para. 402.

⁴¹⁴ DCC, paras. 159-207; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 41, line 11 to p. 55, line 18; Prosecutor's Final Written Submissions, para. 114.

⁴¹⁵ Defence Written Submissions, paras. 24, 89-91, 76-101; Annex 6 to Defence Written Submissions; Transcript of Hearing of 11 July 2019, ICC-01/12-01/18-T-006-CONF-FRA, p. 19, lines 17-28; Defence Final Written Submissions, para. 6.

⁴¹⁶ See, below, paras. 206-214.

⁴¹⁷ See, below, paras. 206-214.

⁴¹⁸ See, above, paras. 70-140 and below, paras. 206-214.

173. Those factors suffice, therefore, in the Chamber's opinion, to determine that the armed groups Ansar Dine/AQIM constituted an organization for the purposes of article 7(2)(a) of the Statute.

174. Furthermore, as regards the requirement of the existence of an attack under article 7(1) of the Statute, the Chamber finds, from an examination of the evidence relating to the crimes established,⁴¹⁹ that between 1 April 2012 and 28 January 2013⁴²⁰ in the city of Timbuktu and the Region of the same name,⁴²¹ the members of the armed groups Ansar Dine/AQIM committed a series of multiple acts of violence including persecution, physical violence, sexual violence and other inhumane acts.

175. It is also apparent from the documents filed by the Prosecutor that those acts, considered in their entirety, reveal a pattern of behaviour that cannot be regarded as a mere aggregate of random acts. To be specific, the chronology of events and the takeover of the city by force,⁴²² the creation of new bodies,⁴²³ and the various prongs of the armed groups' policy⁴²⁴ and their systematic implementation show that the

⁴¹⁹ In this regard the Chamber makes general reference to its findings of fact concerning the crimes against humanity which it considers to be established – see Facts pertaining to counts 1 to 5: torture, other inhumane acts, cruel treatment and outrages upon personal dignity; Facts pertaining to counts 8 to 12: rape, sexual slavery and other inhumane act in the form of forced marriage; Facts pertaining to count 13: persecution.

⁴²⁰ See, above, para. 71 and below, para. 227.

⁴²¹ The Prosecutor has adduced evidence of events that took place in the towns of Léré (see Islamic Police report, [MLI-OTP-0001-7543](#), translation [MLI-OTP-0052-0029](#), p. 0030; Statement of P-0398, [MLI-OTP-0060-1580](#), pp. 1599-1604, lines 619-795), Goundam (see Islamic Police report, [MLI-OTP-0002-0041](#); MLI-OTP-0069-2112; Statement of P-0398, [MLI-OTP-0060-1631](#), pp. 1636-1640, lines 147-277; Islamic Police report dated 26 November 2012, [MLI-OTP-0001-7549](#), translation [MLI-OTP-0034-0177](#), p. 0178; Statement of P-0398, [MLI-OTP-0060-1446](#), pp. 1450-1452, lines 131-196), Rharous (see Islamic Police report, MLI-OTP-0002-0037, translation MLI-OTP-0052-0039, p. 0040; Statement of P-0398, MLI-OTP-0060-1453, pp. 1473-1478, lines 659-826) and Kabara (see RFI, “*Nord du Mali – nouvelle destruction de mausolées par les islamistes de Tombouctou*”, 18 October 2012, MLI-OTP-0001-7038, transcript MLI-OTP-0056-0617, p. 0618).

⁴²² See, above, paras. 70-71 and below, paras. 216-220.

⁴²³ See, above, paras. 74-140 and below, paras. 206-214.

⁴²⁴ See, below, paras. 180-185.

members of Ansar Dine/AQIM employed a specific modus operandi which establishes a nexus between these various acts.

176. As to the object of the attack, an examination of the documents makes clear that the civilian population of Timbuktu was targeted after the Malian army had left⁴²⁵ and the MNLA forces had been expelled.⁴²⁶

177. The evidence available also establishes the civilian status of numerous victims, the fact that they were inhabitants of Timbuktu and that women and young girls were particularly affected.⁴²⁷

178. Lastly, the Chamber considers that the large number of victims⁴²⁸ suggests that the population of Timbuktu was the primary object of the attack.

179. Furthermore, the application of a religious ideology, which the armed groups portrayed as belonging to sharia, affected every sphere of the inhabitants' public and private lives;⁴²⁹ accordingly, and in the light of the nature of the crimes committed,⁴³⁰ the Chamber concludes that the crimes specifically targeted the civilian population.

⁴²⁵ [MLI-OTP-0012-0119](#), p. 0119; Statement of [REDACTED] Statement of [REDACTED] Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0009, para. 21.

⁴²⁶ [MLI-OTP-0012-0157](#); Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0009, para. 23, p. 0013, para. 41; Statement of [REDACTED] Video, [MLI-OTP-0011-0259](#), 00:00:10:00-00:02:46:00, transcript [MLI-OTP-0033-5211](#), translation [MLI-OTP-0033-5358](#); p. 5360, lines 3-19; Statement of [REDACTED] Statement of [REDACTED]

[REDACTED] UN, Security Council, "Report of the Secretary-General on the situation in Mali", 29 November 2012, S/2012/894, [MLI-OTP-0001-2113](#) ("[MLI-OTP-0001-2113](#)"), p. 2117, para. 21; [MLI-OTP-0012-0356](#), p. 0358.

⁴²⁷ The Chamber notes the status of the witnesses who were subjected to the crimes alleged by the Prosecutor. See, below, VII. The crimes.

⁴²⁸ See, below, VII. The crimes.

⁴²⁹ Video, [MLI-OTP-0011-0007](#), 00:06:59:00-00:09:00:00, transcript [MLI-OTP-0040-0425](#), p. 0428, lines 99-109, translation [MLI-OTP-0040-0430](#), p. 0434, lines 103-113 (for the date the video was broadcast, see Video [MLI-OTP-0001-3418](#)); [MLI-OTP-0010-0088](#), p. 0090, translation [MLI-OTP-0024-0015](#), p. 0023; the Chamber refers also to its findings concerning the group identified as the object of persecution, paras. 688-702.

⁴³⁰ See, below, VII. The crimes.

The Chamber notes in this connection that the documents show that public statements aimed at the inhabitants of Timbuktu,⁴³¹ as well as the content of some of the training dispensed⁴³² and some written instructions⁴³³ made specific reference to civilians. Similarly, regarding the methods employed for the purposes of the attack, the Chamber sees that the city, streets and market were patrolled⁴³⁴ and that the members of the armed groups sought people out in their homes.⁴³⁵

180. As to the existence of a policy to commit the attack against the civilian population, the documents tendered by the Prosecutor show that a policy was adopted by the groups Ansar Dine/AQIM.

181. The Chamber is mindful of the parties' and participants' submissions⁴³⁶ in this regard, in particular those of the Defence,⁴³⁷ in whose view the Prosecutor's description of the policy underlying the attack amounts to contending that the policy was to institute sharia in Timbuktu and that, therefore, the implementation alone of the policy constituted an attack within the meaning of article 7 of the Statute. Yet,

⁴³¹ [MLI-OTP-0038-0870](#), pp. 0870-0872, translation [MLI-OTP-0039-0937](#); [MLI-OTP-0012-0933](#); Summary of statement

⁴³² Statement of

⁴³³ [MLI-OTP-0001-7193](#), translation [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation [MLI-OTP-0034-0039](#), p. 0040.

⁴³⁴ Statement of P-0398, [MLI-OTP-0051-1184](#), p. 1198, line 465;

Statement of P-0398, [MLI-OTP-0051-0422](#), pp. 0433-0435, lines 361-415; Statement of Summary of statement of Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0015, para. 50.

⁴³⁵ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, paras. 25-29; Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1051, para. 16, translation [MLI-OTP-0063-0404-R01](#); Slate Afrique, article "Nord-Mali – Les femmes de Tombouctou contre-attaquent", 9 October 2012, [MLI-OTP-0033-4305](#).

⁴³⁶ Transcript of Hearing of 10 July 2019 (Prosecutor), ICC-01/12-01/18-T-005-CONF-FRA, p. 50, lines 13-21; Final Observations of Legal Representatives, para. 17.

⁴³⁷ Defence Written Submissions, paras. 78, 82-85.

the Chamber emphasizes, the policy element required by article 7(2)(a) of the Statute is concerned essentially with establishing a nexus between the crimes committed, absent which they would remain isolated acts constituting ordinary crimes. Furthermore the Chamber points out that the Preparatory Commission for the International Criminal Court did not adopt a culturally relative approach to crimes against humanity.⁴³⁸ The international community endorsed one same law of crimes against humanity for the whole of humanity.⁴³⁹

182. Here the Chamber is of opinion that, far from constituting the imposition of a particular religion, the policy of the armed groups was to impose control over the population through violence, under the pretext of applying an ideology portrayed as being guided by sharia. From the documents tendered by the Prosecutor it is apparent that the groups Ansar Dine/AQIM harboured the aim of cementing their power and control over the civilian population of the city of Timbuktu and the Timbuktu Region, and imposing on it their ideology, which was portrayed as belonging to sharia and was used to justify a policy of violence against the population.⁴⁴⁰ The armed groups seized control of Timbuktu, imposing on it their newly prescribed rules and

⁴³⁸ Proposal submitted by Bahrain, Iraq, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Oman, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic and United Arab Emirates concerning the elements of crimes against humanity, [PCNICC/1999/WGEC/DP.39](#), 3 December 1999.

⁴³⁹ D. Robinson in Roy S. Lee, *The International Criminal Court, Elements of Crimes and Rules of Procedure and Evidence* (Transnational Publishers, 2001), pp. 65-71.

⁴⁴⁰ Government of Mali, *Note sur la situation sécuritaire dans les régions du nord du Mali*, 15 May 2012, [MLI-OTP-0001-0167](#) ("[MLI-OTP-0001-0167](#)"), p. 0168; Referral made by the State of Mali to the Prosecutor of the International Criminal Court, 1 July 2012, [MLI-OTP-0001-0006](#), p. 0015; [MLI-OTP-0001-2298](#), p. 2313; [MLI-OTP-0001-3758](#), p. 3763; "Transcript of the audio message of Iyad Ag Ghaly Amir of Ansar Al-Din movement to the people of Timbuktu", [MLI-OTP-0049-0137](#), p. 0138; Video, [MLI-OTP-0011-0007](#), 00:06:59:00 to 00:09:56:00, transcript [MLI-OTP-0040-0425](#), translation [MLI-OTP-0040-0430](#), pp. 0434-0435, lines 103-130; Dispatch no. 0064/DSM, 11 January 2012, [MLI-OTP-0012-0717](#), p. 0717; Statement of ██████████ [MLI-OTP-0037-0672-R01](#), pp. 0674-0681, lines 56-305 .

prohibitions – hitherto unfamiliar to the population – and cracking down violently on any behaviour considered contrary to the new order established.⁴⁴¹

183. Moreover, one aspect of the armed groups’ policy encompassed a set of strict rules, prohibitions and penalties informed by this religious thinking, and was directed at women and young girls in particular. The prescriptions covered, *inter alia*, religious,⁴⁴² cultural,⁴⁴³ vestimentary⁴⁴⁴ and consumption⁴⁴⁵ practices and relations

⁴⁴¹ Wildaf-Mali, *Monitoring et documentation des violations des droits humains - Violations commises à Tombouctou suite à la crise de 2012*, January 2016, [MLI-OTP-0039-0920](#), p. 0928; Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7437](#), translation [MLI-OTP-0067-1064](#), p. 1065; Statement of P-0622, [MLI-OTP-0065-0558-R01](#), pp. 0563-0564, paras. 30-31, 35; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0012, para. 36; Statement of P-0398, [MLI-OTP-0051-1099](#), pp. 1102-1103, lines 82-103; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9426, paras. 49-50; Statement of [REDACTED]; Statement of P-0610, [MLI-OTP-0062-0670-R01](#), p. 0674, para. 25; Summary of statement of [REDACTED]

⁴⁴² Judgment of the Islamic Court, [MLI-OTP-0002-0082](#), translation [MLI-OTP-0068-0101](#), p. 0102; [REDACTED] [MLI-OTP-0002-0757](#), translation [MLI-OTP-0034-1363](#), pp. 1364-1365; Video, [MLI-OTP-0009-1749](#), 00:08:43:15 to 00:09:25:09, transcript [MLI-OTP-0020-0590](#), p. 0597, lines 208-209; United Nations Report, [MLI-OTP-0014-5201](#), p. 5201; Statement of [REDACTED]; Statement of [REDACTED]; [REDACTED]’s notes, [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Summary of statement of [REDACTED]

⁴⁴³ Video, [MLI-OTP-0011-0143](#), 00:00:11:24 to 00:00:48:01, translation [MLI-OTP-0069-2399](#), p. 2400, lines 5-27; Statement of [REDACTED]; Statement of [REDACTED]; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9426, paras. 49-50; pp. 9435-9436, para. 86; Summary of statement of [REDACTED]; Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, para. 29; [REDACTED]’s notes [REDACTED]

⁴⁴⁴ [REDACTED] [MLI-OTP-0053-0020](#); Video, [MLI-OTP-0011-0376](#), 00:03:35:00 to 00:04:01:00, transcript [MLI-OTP-0033-5221](#), p. 5223, lines 77-78, translation [MLI-OTP-0033-5369](#), p. 5372, lines 82-83; Video, [MLI-OTP-0009-1749](#), 00:07:06:00 to 00:08:32:00, transcript [MLI-OTP-0020-0590](#), p. 0596, lines 172-190; Statement of P-0603, [MLI-OTP-0059-0361-R01](#), p. 0371, paras. 53-54; Statement of P-0622, [MLI-OTP-0065-0558-R01](#), pp. 0563-0564, paras. 30-31; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0010, para. 28; Statement of P-0574, [MLI-OTP-0049-0098-R01](#), p. 0102, para. 20; Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0867, para. 25; Statement of [REDACTED] [REDACTED]’s notes [REDACTED]; Summary of statement of [REDACTED]

⁴⁴⁵ Maurinews, article “In a long interview a Commander from the Sahara Emirate talks about the Islamists’ rule over northern Mali”, 24 December 2013, [MLI-OTP-0010-0088](#), translation [MLI-OTP-0024-0015](#), p. 0036; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9435, para. 84; Summary of statement of [REDACTED]

between men and women⁴⁴⁶ and boys and girls.⁴⁴⁷ It was on the basis of this ideology that the violent action against the civilian population of Timbuktu was primarily taken.

184. From the outset and for such time as Ansar Dine and AQIM exercised control over the city of Timbuktu and the Timbuktu Region, the policy was expressly laid down in the armed groups.⁴⁴⁸ It was also clearly and widely disseminated by radio broadcast,⁴⁴⁹ video interviews,⁴⁵⁰ speeches,⁴⁵¹ articles,⁴⁵² propaganda documents,⁴⁵³

P-0147, [MLI-OTP-0066-0569](#), p. 0569; Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0565, paras. 38-39.

⁴⁴⁶ [MLI-OTP-0001-7193](#), translation [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation [MLI-OTP-0034-0039](#), p. 0040; Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0404, para. 19, p. 0411, para. 59; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0010, para. 28; Summary of statement of [REDACTED]; Statement of P-0603, [MLI-OTP-0059-0361-R01](#), p. 0367, para. 29; Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0564, para. 34; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9425, para. 45; [REDACTED]

⁴⁴⁷ Statement of [REDACTED].

⁴⁴⁸ [MLI-OTP-0001-7193](#), translation [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation [MLI-OTP-0034-0039](#), p. 0040.

⁴⁴⁹ [MLI-OTP-0038-0870](#), pp. 0871-0872, translation [MLI-OTP-0039-0937](#), p. 0939; Statement of [REDACTED]; Summary of statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED];

⁴⁵⁰ Video, [MLI-OTP-0001-0052](#), 01:21:08:00 to 01:21:31:02, transcript [MLI-OTP-0033-5148](#), translation [MLI-OTP-0033-5296](#), p. 5330, lines 1261-1265; [REDACTED]

[REDACTED] Video, [MLI-OTP-0011-0402](#), 00:00:32:20 to 00:01:06:00, transcript [MLI-OTP-0020-0612](#), p. 0613, lines 16-29.

⁴⁵¹ Video, [MLI-OTP-0009-1749](#), 00:08:57:00 to 00:09:04:01, transcript [MLI-OTP-0028-0839](#), p. 0846, lines 204-205; Video, [MLI-OTP-0015-0495](#), 00:36:12:02 to 00:37:08:00, transcript [MLI-OTP-0033-5189](#), pp. 5193-5194, lines 140-158, translation [MLI-OTP-0033-5288](#), pp. 5293-5294, lines 155-181; Audio recording, [MLI-OTP-0002-0257](#), 00:35:00:00 to 00:36:58:00, translation [MLI-OTP-0063-1002](#), p. 1013, lines 344-347.

⁴⁵² Sahara Media, article "Abu Turab : 'Nous organisons des patrouilles à Tombouctou pour nous assurer que les femmes observent bien une certaine pudeur hors de leurs maisons'", 28 September 2012, [MLI-OTP-0015-0406](#).

⁴⁵³ [REDACTED] [MLI-OTP-0002-0019](#), translation [MLI-OTP-0069-2966](#); Summary of statement of [REDACTED]

billboards⁴⁵⁴ and public meetings.⁴⁵⁵ The Defence submits in this respect that Iyad Ag Ghaly's speech in early April 2012 was not intended to encourage the commission of crimes falling under article 7 of the Statute, and cites some passages from it in support.⁴⁵⁶ However, the Chamber notes the continuation of the speech, where Iyad Ag Ghaly stated, among other things, that the best weapon for instituting what, to their way of thinking, constituted sharia, was to fight those who opposed it.⁴⁵⁷ Accordingly, and having regard to all the foregoing, the Chamber concludes that the armed groups actively promoted and encouraged the commission of acts of violence against the civilian population of Timbuktu and the Timbuktu Region.

185. The Chamber concurs with the Prosecutor⁴⁵⁸ in the view that the commission, in and of itself, of the crimes discussed here reveals that they ensued from the policy. Specifically, the policy being inferable from the occurrence of a set of events,⁴⁵⁹ the Chamber concludes that the implementation of the policy by Ansar Dine/AQIM⁴⁶⁰ followed a regular pattern of repeated actions occurring according to a same sequence of violence and a modus operandi recurring throughout the material time. The

⁴⁵⁴ Video, [MLI-OTP-0009-1749](#), 00:03:50:15 to 00:04:06:05, transcript [MLI-OTP-0020-0590](#), p. 0594, lines 83-86; [REDACTED]

[REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]

⁴⁵⁵ [REDACTED] [MLI-OTP-0012-0933](#); Statement of [REDACTED] [MLI-OTP-0065-0710-R01](#), p. 0734, lines 820-839; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0012, para. 36; Video, [MLI-OTP-0009-1749](#), 00:07:19:00 to 00:08:22:20, transcript [MLI-OTP-0028-0839](#), p. 0845, lines 172-192; Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0404, para. 17, translation [MLI-OTP-0062-3557-R01](#).

⁴⁵⁶ Defence Final Written Submissions, para. 47; see [MLI-OTP-0038-0870](#), pp. 0871-0872, translation [MLI-OTP-0039-0937](#), p. 0939.

⁴⁵⁷ "Yet our greatest tool for establishing the rule of religion is jihad and fighting against those who oppose sharia, so as to prevent civil strife and ensure that the only prevailing religion is that of Allah Almighty", [MLI-OTP-0038-0870](#), pp. 0871-0872, translation [MLI-OTP-0039-0937](#), p. 0939.

⁴⁵⁸ DCC, para. 188.

⁴⁵⁹ *Katanga* Trial Judgment, paras. 1109-1110; see also *Ntaganda* Trial Judgment, para. 673.

⁴⁶⁰ See, below, VII. The crimes.

Chamber adverts in this connection to its findings concerning the systematic character of the attack.⁴⁶¹

186. As to whether the crimes were part of the attack aimed at the civilian population, the documents adduced by the Prosecutor going to the commonality of features between the criminal acts show that those acts formed part of a regular and organized course of conduct and were based on instructions.⁴⁶² The perpetrators of the crimes were members of the armed groups Ansar Dine/AQIM who had received religious instruction and military training covering, *inter alia*, how they were to treat the civilian population.⁴⁶³ The Chamber also draws attention to certain factors which establish the nexus between the criminal acts and the attack, *viz.* the violent nature of the underlying offences;⁴⁶⁴ their impact, which served the armed groups' goal of imposing a particular, strict religious order on the population;⁴⁶⁵ the similarities between the acts committed by the suspect personally and the other acts constituting the attack ([REDACTED]);⁴⁶⁶ and the way in which the acts served to promote the underlying policy in that punishment was public.⁴⁶⁷ The Chamber is thus satisfied that the acts of violence were consistent with the policy of the armed groups Ansar Dine/AQIM.

187. Accordingly, in the light of the evidence before it, the Chamber finds that the acts of violence committed by the groups Ansar Dine/AQIM in Timbuktu and the Timbuktu Region against the civilian population were committed, not randomly, but

⁴⁶¹ See, below, paras. 190-191.

⁴⁶² [MLI-OTP-0001-7193](#), translation [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation [MLI-OTP-0034-0039](#), p. 0040.

⁴⁶³ Statement of [REDACTED]; Statement of [REDACTED]
[REDACTED]

⁴⁶⁴ See, below, VII. The crimes.

⁴⁶⁵ See, above, paras. 180-185.

⁴⁶⁶ See, below, para. 279.

⁴⁶⁷ See, above, para. 190.

pursuant to a widely promoted organizational policy, and that they therefore constitute an attack within the meaning of article 7(2)(a) of the Statute.

188. On the widespread character of the attack, the Defence argues that the facts relied on by the Prosecutor are, for want of specificity,⁴⁶⁸ incapable of substantiating a widespread attack against the civilian population.⁴⁶⁹ And yet the Chamber notes a number of accounts reporting acts of violence.⁴⁷⁰

189. In addition, the documents tendered by the Prosecutor establish that the attack, carried out collectively by the members of Ansar Dine/AQIM through the institutions they put in place, was perpetrated on a large scale inasmuch as it targeted the entire population of the Timbuktu Region,⁴⁷¹ which then stood at about 780,000,⁴⁷² over a period of about nine months between 1 April 2012 and 28 January 2013.⁴⁷³ What is more, the members of Ansar Dine/AQIM carried out a widespread attack on the men and women of Timbuktu, shattering their lives in every respect: they violated their rights and freedoms⁴⁷⁴ and subjected them by force to oppressive new rules, harshly punishing any transgression. In addition, the Chamber notes the climate of fear, violence and oppression among the population.⁴⁷⁵ Lastly, the documents examined by the Chamber show that the acts were committed frequently – as established by certain

⁴⁶⁸ Defence Written Submissions, paras. 77, 86-87; see DCC, footnote 1 and para. 199.

⁴⁶⁹ Defence Written Submissions, paras. 24, 88, 91; Annex 6 to Defence Written Submissions.

⁴⁷⁰ See, below, VII. The crimes.

⁴⁷¹ See, above, para. 174.

⁴⁷² 4^e Recensement général de la population et de l'habitat du Mali (RGPH), [MLI-OTP-0070-0003](#); [REDACTED] [MLI-OTP-0065-0655](#).

⁴⁷³ [REDACTED] see also, above, para. 71 and below, para. 227.

⁴⁷⁴ See, below, paras. 672-687.

⁴⁷⁵ Video, [MLI-OTP-0017-0027](#), 00:01:44:00 to 00:02:27:30, transcript [MLI-OTP-0033-5228](#), p. 5231, lines 52-73, translation [MLI-OTP-0033-5405](#), p. 5409, lines 63-74; Statement of P-0398, [MLI-OTP-0051-1099](#), pp. 1102-1103, lines 99-103; Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0563, para. 28; see also Statement of P-0603, [MLI-OTP-0059-0361-R01](#), p. 0371, para. 51.

witness statements which tell of the ubiquity of Islamic Police and *Hisbah* patrols,⁴⁷⁶ and the string of judgments handed down by the Islamic Court⁴⁷⁷ – such that the effect of the violent acts was cumulative and many people were affected.

190. When it comes to the systematic character of the attack, the Chamber has before it a number of items of evidence attesting to the subjection of the population to the rules and prohibitions which took the form of a campaign of crimes. After the arrival of the armed groups Ansar Dine/AQIM in Timbuktu, the Security Battalion, the Islamic Police and the *Hisbah* began conducting patrols⁴⁷⁸ and imposing penalties.⁴⁷⁹ Persons apprehended for offences considered more serious⁴⁸⁰ could be referred to the Islamic Court, which imposed penalties such as corporal punishment, fines and

⁴⁷⁶ Statement of P-0398, [MLI-OTP-0051-1184](#), pp. 1198, lines 460-472; Statement of P-0398, [MLI-OTP-0051-0483](#), pp. 0504-508, lines 635-767; Sahara Media, article, Abu Turab: “*Nous organisons des patrouilles à Tombouctou pour nous assurer que les femmes observent bien une certaine pudeur hors de leurs maisons*”, 2 September 2012, [MLI-OTP-0015-0406](#); Summary of statement of [REDACTED]

[REDACTED] Statement of [REDACTED]
[REDACTED] Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0015, para. 50; Statement of [REDACTED]
[REDACTED] P-0099 [REDACTED] [MLI-OTP-0013-3101-R01](#), p. 3106, translation [MLI-OTP-0069-0129-R01](#); Statement of [REDACTED]; Statement of P-0622, [MLI-OTP-0065-0558-R01](#), pp. 0564-0566, paras. 32 and 38-39, 41; Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1051, para. 16, translation [MLI-OTP-0063-0404-R01](#); Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0867, para. 24, translation [MLI-OTP-0063-0442-R01](#).

⁴⁷⁷ See, e.g., Judgment of the Islamic Court, [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323; Judgment of the Islamic Court, [MLI-OTP-0001-7490](#), translation [MLI-OTP-0034-0163](#), p. 0164; Judgment of the Islamic Court, [MLI-OTP-0001-7480](#), translation [MLI-OTP-0034-0157](#), p. 0158; Judgment of the Islamic Court, [MLI-OTP-0001-7474](#), translation [MLI-OTP-0039-0893](#), p. 0894; Judgment of the Islamic Court, [MLI-OTP-0002-0052](#), translation [MLI-OTP-0034-0208](#), p. 0209; Judgment of the Islamic Court, [MLI-OTP-0001-7425](#), translation [MLI-OTP-0034-0117](#), p. 0118; Judgment of the Islamic Court, [MLI-OTP-0001-7418](#), translation [MLI-OTP-0034-0111](#), p. 0112; Judgment of the Islamic Court, [MLI-OTP-0001-7413](#), translation [MLI-OTP-0034-0106](#), p. 0107; see, also below, paras. 429-514.

⁴⁷⁸ See, above, paras. 88, 98, 179.

⁴⁷⁹ [MLI-OTP-0001-7193](#), translation [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation [MLI-OTP-0034-0039](#), p. 0040; Statement of P-0398, [MLI-OTP-0051-0483](#), pp. 0493-0494, lines 297-322; Statement of [REDACTED] [REDACTED] see, also, below, paras. 390-415.

⁴⁸⁰ Statement of [REDACTED]; [MLI-OTP-0001-7193](#), translation [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation [MLI-OTP-0034-0039](#), p. 0040; Statement of P-0398, [MLI-OTP-0051-0483](#), pp. 0493-0494, lines 297-322.

imprisonment.⁴⁸¹ Some such penalties were carried out in public, with the population told to assemble for the occasion.⁴⁸² Thus, a particular type of corporal punishment, flogging, was applied to various persons as of mid-June 2012.⁴⁸³ Lastly, as set out below,⁴⁸⁴ the Chamber notes that people were singled out on the basis of specific criteria, namely local people perceived as not adhering to Ansar Dine/AQIM's avowed ideology – women and young girls in particular.

191. In conclusion, having regard to the number of victims, the scope of the attack and the modus operandi followed, the Chamber finds substantial grounds to believe that the attack was both widespread and systematic.

3. The Chamber's findings

192. In view of all of the foregoing, the Chamber is satisfied that there is sufficient evidence to establish substantial grounds to believe that the acts alleged were carried out pursuant to or in furtherance of an organizational policy and that they occurred as part of the widespread and systematic attack described above, which was directed

⁴⁸¹ See, e.g., Islamic Police report on a case of adultery, [REDACTED]; Judgment of the Islamic Court, [REDACTED]; Statement of P-0398, [REDACTED]; see, also, below, paras. 429-514.

⁴⁸² Statement of P-0398, [MLI-OTP-0051-1184](#), p. 1188, lines 117-118; Statement of [REDACTED] Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8854, paras. 49, 52, translation [MLI-OTP-0063-1186-R01](#); Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8888, para. 47, translation [MLI-OTP-0063-0422-R01](#); [REDACTED]

⁴⁸³ See, e.g., the cases of [REDACTED] discussed below, paras. [REDACTED]; see also [REDACTED] [MLI-OTP-0003-0195-R01](#) ("[MLI-OTP-0003-0195-R01](#)"), p. 0196; [REDACTED]

[REDACTED] see, also, below, paras. [REDACTED].

⁴⁸⁴ See, below, paras. 688-702.

against the civilian population of Timbuktu and the Timbuktu Region, within the meaning of article 7(1) of the Statute.

(B) Contextual elements of war crimes

1. Applicable law

193. Pursuant to article 8(2)(d) and (f) of the Statute, the provisions of article 8(2)(c) and (e) of the Statute “appl[y] to armed conflicts not of an international character”. Article 8(2)(f) of the Statute further provides that such armed conflicts “take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.”

194. As to what constitutes an armed conflict, the approach of the Court is by now clearly settled,⁴⁸⁵ and the Chamber adopts the definition deduced by the Appeals Chamber of the ICTY in *Tadić*.⁴⁸⁶

195. Since the Statute and the Elements of Crimes leave the concept of “organized armed groups” undefined, the Court has held that the groups must have a sufficient

⁴⁸⁵ *Ntaganda* Trial Judgment, para. 701, footnote omitted; *Bemba* Trial Judgment, para. 128; *Katanga* Trial Judgment, para. 1173; *The Prosecutor v. Thomas Lubanga*, Trial Judgment, dated 18 March 2012, French version registered on 31 August 2012, ICC-01/04-01/06-2842 (“*Lubanga* Trial Judgment”), paras. 531-533; *Bemba* Decision, para. 229.

⁴⁸⁶ ICTY, *Prosecutor v. Duško Tadić*, “Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction”, 2 October 1995, IT-94-1-AR72, para. 70: “[...] an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.”

degree of organization to enable them to plan and carry out sustained military operations.⁴⁸⁷ Like Trial Chambers I and II, the Chamber is of the view that:

[w]hen deciding if a body was an organised armed group (for the purpose of determining whether an armed conflict was not of an international character), the following non-exhaustive list of factors is potentially relevant: the force or group's internal hierarchy; the command structure and rules; the extent to which military equipment, including firearms, are available; the force or group's ability to plan military operations and put them into effect; and the extent, seriousness, and intensity of any military involvement. None of these factors are individually determinative. The test, along with these criteria, should be applied flexibly when the Chamber is deciding whether a body was an organised armed group, given the limited requirement in Article 8(2)(f) of the Statute that the armed group was "organized".⁴⁸⁸

196. None of these factors, however, is individually determinative, and they must be considered on a case-by-case basis.⁴⁸⁹

197. For purposes of determining the existence of an armed conflict not of an international character, article 8(2)(d) and (f) of the Statute require the violence to go beyond internal disturbances such as riots or sporadic or isolated acts⁴⁹⁰ and therefore to be of a certain intensity. Decisions of this Court have identified a number of criteria relevant to analysing the intensity of the violence or conflict, *viz.* the number of armed

⁴⁸⁷ *Ntaganda* Trial Judgment, paras. 703-704; *Katanga* Trial Judgment, para. 1185; *Lubanga* Trial Judgment, para. 536.

⁴⁸⁸ *Lubanga* Trial Judgment, para. 537. See also *Ntaganda* Trial Judgment, para. 704; *Katanga* Trial Judgment, para. 1186. See also ICTY, *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, "Judgement", 10 July 2008, IT-04-82-T, paras. 199-203; *Prosecutor v. Ramush Haradinaj et al.*, "Judgement", 3 April 2008, IT-04-84-T ("*Haradinaj* Trial Judgment"), para. 60; *Prosecutor v. Fatmir Limaj et al.*, "Judgement", 30 November 2005, IT-03-66-T ("*Limaj et al.* Trial Judgment"), para. 90. See also the other factors identified by the Trial Chambers of the ICTY, *viz.* an armed group's control over a territory, its ability to speak with one voice and to negotiate and conclude ceasefire or peace agreements, its ability to recruit new members and provide them with military training, the fact that it put a system in place for communicating with the public and the media, its ability to coordinate the operations of multiple units of the group, the designation of a spokesperson, the existence of internal regulations, the creation of a military police corps tasked with enforcing troop discipline, the wearing of uniforms by soldiers and the establishment of means of communication between command posts and units, and between units themselves. See *Haradinaj* Trial Judgment, para. 60; *Limaj et al.* Trial Judgment, paras. 99, 101-103, 108-113, 118, 123, 125-127.

⁴⁸⁹ *Katanga* Trial Judgment, para. 1186; *Lubanga* Trial Judgment, para. 537.

⁴⁹⁰ *Katanga* Trial Judgment, paras. 1186-1187; *Lubanga* Trial Judgment, para. 538.

attacks carried out in a certain period, the number of casualties, the number of civilians having fled the combat zones and the adoption by the Security Council of a resolution under Chapter VII of the Charter of the United Nations⁴⁹¹ (“UN”, “United Nations Charter”).⁴⁹²

198. Since the intensity of a conflict and the degree of organization of armed groups are questions of fact, their determination requires an analysis of the evidence particular to each judicial case.⁴⁹³ The Chamber takes the view, as has Trial Chamber III, that the criteria of intensity and protracted armed conflict “do not require the violence to be continuous and uninterrupted”.⁴⁹⁴

199. Article 8(2)(f) of the Statute, which applies to article 8(2)(e), contains a second sentence requiring in addition the existence of a “protracted” armed conflict between the belligerents. Conversely, article 8(2)(d), which applies to article 8(2)(c), imposes no such requirement. The concept of “protracted conflict” has not been explicitly defined in the decisions of this Court, but it has generally been approached as part of the

⁴⁹¹ United Nations Charter, 26 June 1945, United Nations Treaty Series, vol. 1, p. xvi, last amended 20 December 1971.

⁴⁹² *Ntaganda* Trial Judgment, para. 716; *Lubanga* Decision, para. 235. See also *Lubanga* Trial Judgment, para. 538. See also the following additional factors to which Chambers of the ICTY had regard in their analysis of conflict intensity: the intensity, duration and frequency of armed confrontations; the geographic and temporal scope of the fighting; the government troop build-up; the mobilization and the distribution of weapons among both parties to the conflict; the number of casualties; the type of weapon used; the number of persons who took part in the fighting; and the extent of material destruction. See ICTY, *Haradinaj* Trial Judgment, para. 49; *Prosecutor v. Mile Mrkšić et al.*, “Judgement”, 27 September 2007, IT-95-13/1-T (“*Mrkšić et al.* Trial Judgment”), para. 407; *Limaj et al.* Trial Judgment, para. 90; *Prosecutor v. Slobodan Milošević*, “Decision on Motion for Judgment of Acquittal”, IT-02-54-T, 16 June 2004, paras. 28-29. See also A. Zimmermann and R. Geif in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (3rd edition, 2016), para. 870 and references therein; N. Melzer, *International Humanitarian Law*, ICRC, p. 71.

⁴⁹³ See ICTY, *Limaj et al.* Trial Judgment, para. 90 (“the determination of the intensity of a conflict and the organisation of the parties are factual matters which need to be decided in light of the particular evidence and on a case-by-case basis”) citing ICTR, *The Prosecutor v. Georges Anderson Nderumbumwe Rutaganda*, “Judgement”, 6 December 1999, ICTR-96-3, para. 93.

⁴⁹⁴ *Bemba* Trial Judgment, para. 140.

assessment of the intensity of the conflict. Be that as it may, when determining whether an armed conflict not of an international character was “protracted”, various chambers of this Court have regarded the duration of the violence as a factor for consideration.⁴⁹⁵ The Chamber will apply the same principles in the present decision.

200. The Elements of Crimes furthermore require that the alleged criminal conduct “took place in the context of and was associated with an armed conflict”.⁴⁹⁶

The Chamber agrees with the approach taken by Trial Chamber II, which held that:

the perpetrator’s conduct must have been closely linked to the hostilities taking place in any part of the territories controlled by the parties to the conflict. The armed conflict alone need not be considered to be the root of the conduct [...] and the conduct need not have taken place in the midst of battle. Nonetheless, the armed conflict must play a major part in the perpetrator’s decision, in his or her ability to commit the crime or the manner in which the crime was ultimately committed.⁴⁹⁷

201. The Appeals Chamber has adopted the following factors for the purposes of determining whether a particular act bears a sufficient nexus to the armed conflict:

the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator’s official duties.⁴⁹⁸

⁴⁹⁵ *Lubanga* Trial Judgment, paras. 538, 545, 546, 550; *Katanga* Trial Judgment, paras. 1217, 1218. See also ICTY, *Haradinaj* Trial Judgment, para. 49 (noting that the criterion of protracted armed violence was interpreted in practice, including in *Prosecutor v. Duško Tadić* by the Chamber itself, as referring more to the intensity of the violence than to its duration).

⁴⁹⁶ See Elements of Crimes, Article 8, “War crimes”, Introduction, p. 14.

⁴⁹⁷ *Katanga* Trial Judgment, para. 1176. See also *Ntaganda* Trial Judgment, para. 731; ICTY, *Prosecutor v. Milomir Stakić*, “Judgement”, 22 March 2006, IT-97-24, para. 342; *Kunarac et al.* Appeal Judgment, para. 58; ICTR, *Prosecutor v. Ephrem Setako*, “Judgement”, 28 September 2011, ICTR-04-81, para. 249.

⁴⁹⁸ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, “Judgment on the appeal of Mr Ntaganda against the ‘Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9’”, 15 June 2017, ICC-01/04-02/06-1962 (“*Ntaganda* Appeal Judgment of 15 June 2017”), para. 68, citing ICTY, *Kunarac et al.* Appeal Judgment, para. 59; *Ntaganda* Trial Judgment, para. 732. See also *Katanga and Ngudjolo* Decision, para. 191. See also ICTR, *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, “Judgement”, 26 May 2003, ICTR-96-3-A (“*Rutaganda* Appeal Judgment”), paras. 569-570.

202. The same line of authority holds that, to show a nexus between the crime and the armed conflict, it is not necessary

that the crime alleged takes place during combat, that it be part of a policy or of a practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of war or in the actual interest of a party to the conflict.⁴⁹⁹

203. Lastly, according to the Elements of Crimes, a further element common to war crimes is that “the perpetrator was aware of factual circumstances that established the existence of an armed conflict”. In this connection, the introduction to article 8 in the text of the Elements of Crimes pertaining to war crimes specifies that “there is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms ‘took place in the context of and was associated with’”.⁵⁰⁰ The requisite awareness for these purposes is that of the perpetrators of the crimes.⁵⁰¹

2. Analysis

204. The Prosecutor submits that the alleged events occurred in the context of an armed conflict not of an international character (or “non-international armed conflict”) which took place on the territory of Mali.⁵⁰² The Defence argues that the Prosecutor has not established substantial grounds to believe that the requirements of the contextual elements under article 8 of the Statute were met,⁵⁰³ nor that the crimes

⁴⁹⁹ ICTY, *Prosecutor v. Duško Tadić and Goran Borovnica*, “Judgement”, 7 May 1997, IT-94-1-T (“*Tadić* Trial Judgment”), para. 573.

⁵⁰⁰ The introduction to article 8 in the Elements of Crimes also specifies that: (a) there is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international; (b) in that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international.

⁵⁰¹ *Bemba* Trial Judgment, para. 147.

⁵⁰² DCC, paras. 37-91; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-FRA, pp. 56-63.

⁵⁰³ Defence Written Submissions, paras. 102-122; Defence Final Written Submissions, paras. 34-36. The Defence disputes that the fighting was intense and protracted and argues that the Prosecutor has

alleged were connected to the armed conflict.⁵⁰⁴ At the same time, the Chamber notes that Trial Chamber VIII in *Al Mahdi* found that the acts alleged had occurred in the context of an armed conflict not of an international character.⁵⁰⁵

205. For the reasons which follow, the Chamber is also satisfied that the situation in Mali during the material time may be characterized as an armed conflict not of an international character (or “non-international armed conflict”) within the meaning of article 8(2)(d) and (f) of the Statute.

(a) Organized armed groups

206. The Chamber is of the view that the evidence adduced by the Prosecutor establishes substantial grounds to believe that the following groups had a degree of organization sufficient to qualify as “armed groups” within the meaning of article 8 of the Statute: the Malian regular national forces, Ansar Dine, AQIM, the MNLA and MUJAO.

failed to adduce evidence: (i) of a connection between the sporadic acts of violence, predating Ansar Dine’s arrival in Timbuktu and not situated in or around Timbuktu, to which she refers; (ii) that fighting occurred in Timbuktu between April 2012 and January 2013; and (iii) that fighting occurred *after* Ansar Dine’s arrival in Timbuktu. See Defence Written Submissions, paras. 110-117.

⁵⁰⁴ Defence Written Submissions, paras. 123-137. The Defence submits that the Prosecutor has failed to establish the nexus between the alleged non-international armed conflict and the acts imputed to Mr Al Hassan, in particular because there is no evidence that Mr Al Hassan pledged allegiance to any armed group, underwent any military training or religious instruction, or personally took part in armed combat, or that his daily activities bore any connection to the armed conflict. See Defence Written Submissions, paras. 118-130. The Defence also asserts that the Prosecutor has failed to establish that the conduct for which he is charged took place in the context of a non-international armed conflict.

⁵⁰⁵ Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, “Judgment”, 27 September 2016, ICC-01/12-01/15-171 (*Al Mahdi* Trial Judgment), para. 49.

207. The Malian regular forces had the military capabilities of a State in terms of troop strength, a clearly defined chain of command⁵⁰⁶ and the means to gather military intelligence⁵⁰⁷ and develop military strategies.⁵⁰⁸

208. For the history, ideology and structure of the groups Ansar Dine and AQIM the Chamber refers to its survey above.⁵⁰⁹ Ansar Dine is a principally Tuareg movement founded, and led, since 10 December 2011, by Iyad Ag Gahly. It advocates jihad and the application of sharia or “Islamic law” – according to its interpretation of the term – as the only law.⁵¹⁰ AQIM is an organization that has pledged allegiance to Al-Qaida and whose members come predominantly from Algeria, Mauritania, Senegal, Mali, Chad, Niger and Nigeria.⁵¹¹ AQIM, whose project was to create an Islamic State “[TRANSLATION] ruled by jihadists and Islamists” on the territory of Azawad (which includes Timbuktu), had succeeded in developing networks and securing a local foothold in the city of Timbuktu and the Region of the same name as of 2003.⁵¹² AQIM’s considerable wealth, derived chiefly from trafficking of various kinds (cigarettes, ransoms for hostages, “customs duties” on trafficking transiting the territories under its control, etc.), is estimated at 100 million dollars.⁵¹³ Ansar Dine is

⁵⁰⁶ See, e.g., Government of Mali, Letter no. 0649/CEMGA/S-CEM/OPS/COIA, operations order, 30 April 2012, [MLI-OTP-0012-0327](#) (“[MLI-OTP-0012-0327](#)”).

⁵⁰⁷ See, e.g., among the great many items of similar evidence: Government of Mali, Intelligence Bulletin no. 0171/DSM, 21 June 2011, [MLI-OTP-0012-0060](#); Intelligence Bulletin no. 0136/DSM, 20 May 2011, [MLI-OTP-0012-0054](#); Dispatch no. 0030/DSM, 5 January 2012, [MLI-OTP-0012-0709](#).

⁵⁰⁸ [MLI-OTP-0012-0327](#).

⁵⁰⁹ See, above, paras. 72-73.

⁵¹⁰ See, above, para. 72.

⁵¹¹ See, above, para. 73.

⁵¹² [MLI-OTP-0031-0496](#), pp. 0519-0520; [MLI-OTP-0001-3758](#), p. 3759; [MLI-OTP-0001-2588](#), pp. 2625-2627; [MLI-OTP-0001-2298](#), p. 2306; [MLI-OTP-0001-3758](#), p. 3759.

⁵¹³ [MLI-OTP-0001-2298](#), p. 2306; [MLI-OTP-0031-0496](#), pp. 0519-0520; [MLI-OTP-0001-2588](#), pp. 2624-2625.

purported to have received continuous military, financial, manpower and logistical support from AQIM.⁵¹⁴

209. The *Mouvement National pour la Libération de l'Azawad* (MNLA) came into being on 16 October 2011, founded by Tuaregs who left Libya in the wake of Colonel Gaddafi's fall and returned, heavily armed, home to Mali.⁵¹⁵ It was led in 2012 by Mohammed Ag Najim, a former Libyan army colonel.⁵¹⁶ The movement identifies itself as secular and the heir to the Tuareg independence movements of the 1990s and 2000s, fighting for an independent Azawad and the right of its people to self-determination.⁵¹⁷ The MNLA declared Azawad independent on 6 April 2012.⁵¹⁸

210. The *Mouvement pour l'unicité et le jihad en Afrique de l'Ouest* [Movement for Unity and Jihad in West Africa] (MUJAO) is an AQIM splinter which has nonetheless continued to enjoy the support of AQIM, as well as that of Ansar Dine.⁵¹⁹ Founded in October 2011 and led by Hamad el Khairy, a Mauritanian, and Ahmed el Tilemsi, both AQIM veterans, the movement is made up of sub-Saharan jihadis; it advocates the institution of their interpretation of sharia and proclaims its ideological affiliation with Al-Qaida in Asia, AQIM, Ansar Dine and the Somali movement Al-Shabaab, at the

⁵¹⁴ Statement of [REDACTED]; UN, Security Council Committee, Narrative summary of reasons for listing, 20 March 2013, [MLI-OTP-0066-0391](#) ("[MLI-OTP-0066-0391](#)").

⁵¹⁵ MNLA, MNLA Communiqué no. 1, 16 October 2011, [MLI-OTP-0012-1150](#); [MLI-OTP-0031-0496](#), pp. 0500, 0504; Government of Mali, Intelligence Bulletin no. 0104/DSM, 18 April 2011, [MLI-OTP-0002-0221](#), p. 0222; [MLI-OTP-0012-0356](#), p. 0358; France24, "Images et témoignage exclusifs du nord du Mali : un colonel du MNLA dévoile son arsenal militaire", 21 June 2012, [MLI-OTP-0033-3467](#) ("[MLI-OTP-0033-3467](#)"), p. 3469; [MLI-OTP-0001-2265](#), p. 2273.

⁵¹⁶ [MLI-OTP-0001-2265](#), p. 2273; [MLI-OTP-0001-2298](#), p. 2304.

⁵¹⁷ MNLA, "Une semaine dans l'Azawad", 27 January 2012, [MLI-OTP-0066-0409](#) ("[MLI-OTP-0066-0409](#)") p. 0410; [MLI-OTP-0001-2298](#), p. 2304; [MLI-OTP-0033-3467](#), p. 3470; [MLI-OTP-0001-2265](#), p. 2273.

⁵¹⁸ [MLI-OTP-0001-2265](#), p. 2273.

⁵¹⁹ [MLI-OTP-0066-0391](#); [MLI-OTP-0001-2113](#), p. 2115, para. 10; [MLI-OTP-0001-2298](#), p. 2306.

same time asserting its West African identity.⁵²⁰ The movement funds itself by taking foreigners hostage for ransom, amongst other activities.⁵²¹

211. Ansar Dine, AQIM and MUJAO were allies and afforded each other support throughout the time material to the case *sub judice*.⁵²² They took coordinated military action, for example against the Amachach military camp in Tessalit on 10 March 2012.⁵²³ At first the MNLA was also an ally of these groups;⁵²⁴ that alliance culminated in the formal signing of a “memorandum of understanding” with Ansar Dine on 26 May 2012 in Gao.⁵²⁵ As a result of an ideological disagreement over what they

⁵²⁰ [MLI-OTP-0031-0496](#), pp. 0520-0521; [MLI-OTP-0001-2298](#), p. 2307; United States Department of State, press release, “Terrorist Designations of the Movement for Unity and Jihad in West Africa, Hamad el Khairy, and Ahmed el Tilemsi”, 7 December 2012, [MLI-OTP-0066-0397](#); [MLI-OTP-0024-3045](#), translation [MLI-OTP-0042-0375](#), pp. 0379-0380.

⁵²¹ [MLI-OTP-0001-2298](#), p. 2307; [MLI-OTP-0024-3045](#), translation [MLI-OTP-0042-0375](#), pp. 0379-0380; [MLI-OTP-0031-0496](#), p. 0520; Jeune Afrique, media report, “Un groupe dissident revendique le rapt de diplomates algériens au Mali”, 8 April 2012, [MLI-OTP-0001-3523](#), p. 3523.

⁵²² UN, Secretary-General, “Report of the Secretary-General on children and armed conflict in Mali”, 14 April 2014, S/2014/267, [MLI-OTP-0014-5183](#) (“[MLI-OTP-0014-5183](#)”), p. 5185, para. 9; UN, Security Council, “Rapport final du Groupe d’experts créé en application de la résolution 2374 (2017) du Conseil de sécurité sur le Mali”, 9 August 2018, [MLI-OTP-0062-4367](#) (“[MLI-OTP-0062-4367](#)”), p. 4374, para. 16; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0010, para. 27. For the relationship between Ansar Dine and AQIM, see Statement of [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [MLI-OTP-0012-1024](#), pp. 1024, 1041; [MLI-OTP-0066-0391](#); Statement of [REDACTED]

[REDACTED] Statement of [REDACTED] Statement of [REDACTED]

⁵²³ International Crisis Group, Report, “Mali : éviter l’escalade”, 18 July 2012, [MLI-OTP-0001-5687](#), (“[MLI-OTP-0001-5687](#)”), p. 5709.

⁵²⁴ Government of Mali, Intelligence Bulletin no. 0021/DSM, Re: Insurgent attack on Aguel-hoc, 2 February 2012, [MLI-OTP-0002-0201](#) (“[MLI-OTP-0002-0201](#)”), p. 0203.

⁵²⁵ [REDACTED]
[MLI-OTP-0018-1226](#); [REDACTED]
[REDACTED]; RFI, media report, “Mali : le MNLA et Ansar Dine signent un protocole d’accord aux contours encore flous”, 27 May 2012, [MLI-OTP-0001-3895](#); Statement of [REDACTED], [MLI-OTP-0019-0296-R01](#), p. 0310, para. 83.

portrayed as the application of sharia, the “memorandum of understanding”⁵²⁶ was very quickly torn up and the same groups then ousted the MNLA from the territories taken since June 2012.⁵²⁷

212. In the particular case of Timbuktu, an analysis of the evidence shows that MUJAO was not present in Timbuktu during the time material to the case *sub judice* – or, if it was, only sporadically – and that it was AQIM and Ansar Dine who were the masters of the city and who ran it.⁵²⁸ AQIM exercised appreciable control over the city of Timbuktu,⁵²⁹ funded the running of the city⁵³⁰ and had the power to appoint and to remove appointees from key positions⁵³¹ and to influence the rulings of the Islamic Court.⁵³² Ansar Dine, namely in the person of Iyad Ag Ghaly,⁵³³ ran the city of Timbuktu and were its masters and supplied the bulk of the troops, at about 250-strong.⁵³⁴

213. The Chamber considers that the Prosecutor has also established to the standard required that the movements possessed a clear structure and internal hierarchy,⁵³⁵ with

⁵²⁶ Government of Mali, Dispatch no. 0878/DSM, 29 May 2012, [MLI-OTP-0012-0951](#); Jeune Afrique, media report, “Mali : le MNLA ne veut plus fusionner avec Ansar Eddine”, 1 June 2012, [MLI-OTP-0001-3708](#).

⁵²⁷ [MLI-OTP-0014-5183](#), p. 5185, para. 9.

⁵²⁸ See, above, para. 70.

⁵²⁹ [MLI-OTP-0031-0496](#), p. 0512.

⁵³⁰ See [MLI-OTP-0009-2390](#); Statement of [REDACTED]

⁵³¹ Statement of [REDACTED]

⁵³² See, below, para. 419.

⁵³³ See, below, para. 77.

⁵³⁴ Government of Mali, Intelligence Bulletin no. 0144/DSM, Re: Security Situation in Northern Mali, 5 June 2012, [MLI-OTP-0012-0422](#), p. 0423.

⁵³⁵ For AQIM and how it is organized into various battalions called “*katibas*” and led by a chief or an “emir”, see [MLI-OTP-0001-2298](#), p. 2306; [MLI-OTP-0024-3045](#), translation [MLI-OTP-0042-0375](#). For the structure of AQIM, see also [MLI-OTP-0001-3758](#), pp. 3760-3761; [MLI-OTP-0009-2390](#), p. 0374 (referring to the political and military directives which the “*Emirat de l’organisation* [Emirate of the organization]” issued on an ongoing basis to the emirs of the various brigades); AQIM, “General Instructions for the Islamic Jihadist Project in Azawad”, 20 July 2012, [MLI-OTP-0024-2320](#), translation [MLI-OTP-0027-0964](#), p. 0974 (containing military instructions about the MNLA); [MLI-OTP-0001-2588](#), pp. 2623-2624 (for how the territory of the Sahel was subdivided). For the MNLA see [MLI-OTP-0066-0409](#); [MLI-OTP-0033-3467](#).

a clearly identified command structure⁵³⁶ that laid down rules and instructions⁵³⁷ and operated according to a system of allegiance and obedience;⁵³⁸ a large number

p. 3470; [REDACTED]
[MLI-OTP-0002-0488](#), p. 0489; MNLA, *Déclaration de désertion de l'armée malienne et d'adhésion au MNLA*, 3 December 2011, [MLI-OTP-0066-0399](#).

⁵³⁶ For Ansar Dine and how Iyad Ag Ghaly led his movement and how the territory under his control was subdivided and run, see [MLI-OTP-0012-1024](#), pp. 1026-1028; Statement of [REDACTED]

[REDACTED]; Statement of [REDACTED]

⁵³⁷ For AQIM, see [MLI-OTP-0001-7193](#), translation [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation [MLI-OTP-0034-0039](#), p. 0040; [MLI-OTP-0024-2320](#), translation [MLI-OTP-0027-0964](#), p. 0974. See also Statement of [REDACTED]

[REDACTED]; [MLI-OTP-0009-2390](#), p. 0374.

⁵³⁸ Statement of [REDACTED] Statement of [REDACTED]
 [REDACTED]; Associated Press, media report, "Al-Qaida papers", [MLI-OTP-0022-0369](#), p. 0387.

of fighters;⁵³⁹ and the ability to enlist and train new recruits,⁵⁴⁰ arm themselves,⁵⁴¹ raise and manage money,⁵⁴² engage in public communication,⁵⁴³ speak with one voice

⁵³⁹ The Malian army has estimated that it fought a total of 3,000-3,500 troops at the time of the hostilities that took place between January and March 2012. See Government of Mali, Intelligence Bulletin, Re: Monitoring of the situation of armed groups in Northern Mali, 18 June 2012, [MLI-OTP-0012-0223](#), p. 0223. That figure is corroborated by the following evidence: [MLI-OTP-0001-2113](#), p. 2115, para. 10; [MLI-OTP-0014-5183](#), p. 5185, para. 9. In 2012, the estimated strength of AQIM was 500-1000 ([MLI-OTP-0001-2588](#), pp. 2625-2627), about 1500/2000 for Ansar Dine ([MLI-OTP-0012-0327](#), p. 0328; [MLI-OTP-0012-0119](#), p. 0120; [MLI-OTP-0012-0356](#), p. 0358), between 1500 and 3000 for the MNLA whereas it claimed to muster about 9,000 ([MLI-OTP-0033-3467](#), pp. 3469-3470; [MLI-OTP-0012-0327](#), p. 0328; [MLI-OTP-0012-0119](#), p. 0120; [MLI-OTP-0012-0356](#), p. 0358) and about 150 for MUJAO ([MLI-OTP-0012-0327](#), p. 0328; [MLI-OTP-0012-0356](#), p. 0359). See also, more generally, Government of Mali, Intelligence Bulletin no. 0165/DSM, 27 June 2012, [MLI-OTP-0012-0445](#), pp. 0447-0448.

⁵⁴⁰ [MLI-OTP-0001-2588](#), pp. 2625-2627. For the military training provided by AQIM, see Statement of [REDACTED]; Government of Mali, Dispatch no. 1101/DSM, 27 November 2012, [MLI-OTP-0012-0988](#); [REDACTED]

[REDACTED] For the military training provided by Ansar Dine, see Government of Mali, Dispatch no. 0867/DSM, 21 May 2012, [MLI-OTP-0012-0949](#) (referring to the training of 73 recruits near Timbuktu on 21 May 2012); Intelligence Bulletin, 4 September 2012, [MLI-OTP-0002-0197](#) (referring to the setting up by Ansar Dine of a training camp in Timbuktu in September 2012); Statement of [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Statement of [REDACTED]

[REDACTED] For the military training provided by the MNLA, see [MLI-OTP-0033-3467](#), p. 3470. For the military training provided by MUJAO, see France TV info, Video, 18 February 2014, [MLI-OTP-0011-0338](#), transcript [MLI-OTP-0030-0115](#); Government of Mali, Intelligence Bulletin no. 0186, 9 July 2012, [MLI-OTP-0012-0472](#), p. 0472. For training in general, see France 24, media report, “Exclusive: Tuareg rebels in Mali talk tactics and weaponry”, 22 June 2012, [MLI-OTP-0001-3823](#), p. 3828.

⁵⁴¹ Government of Mali, Dispatch no. 0245, 27 January 2012, [MLI-OTP-0012-0850](#) (“[MLI-OTP-0012-0850](#)”) (referring to the attack on the Anderamboucane military camp on 27 January 2012 by a group of assailants in 70 “[TRANSLATION] Toyotas”); [MLI-OTP-0012-0356](#), p. 0358; Government of Mali, Dispatch no. 0242/DSM, 27 January 2012, [MLI-OTP-0012-0849](#) (referring to heavy mortar fire on the Tessalit barracks); Dispatch no. 0540/DSM, 25 February 2012, [MLI-OTP-0012-0592](#) (referring to “[TRANSLATION] heavy mortar fire” in Tessalit); UN, Security Council, “Letter dated 17 January 2012 from the Secretary-General addressed to the President of the Security Council”, S/2012/42, [MLI-OTP-0001-1359](#), p. 1369, paras. 32-35; Statement of [REDACTED] France TV info, video, 18 February 2014, [MLI-OTP-0011-0338](#), transcript, [MLI-OTP-0030-0115](#); France 24, media report, “Exclusive: Tuareg rebels in Mali talk tactics and weaponry”, 22 June 2012, [MLI-OTP-0001-3823](#), p. 3826. See also DCC, para. 71.

⁵⁴² For AQIM see [MLI-OTP-0001-2298](#), p. 2306; US Department of the Treasury, “Treasury Designates an Additional Senior Leader of Al-Qa’ida in the Lands of the Islamic Maghreb”, 14 February 2013, [MLI-OTP-0067-0270](#); [MLI-OTP-0001-2588](#), pp. 2624-2625; [MLI-OTP-0009-2390](#); Statement of [REDACTED]
[REDACTED] For Ansar Dine and its financial management of the

through a spokesperson⁵⁴⁴ and provide international diplomatic representation,⁵⁴⁵ and that they displayed distinctive signs identifying the movement, such as flags and emblems.⁵⁴⁶

214. The groups also proved themselves capable of controlling and running cities and towns such as Timbuktu⁵⁴⁷ and Kidal (in Ansar Dine's case) and Gao, Douentza, Ménaka, Ansongo and Gourma (in MUJAO's case),⁵⁴⁸ so much so that by April 2012 the entire territory of northern Mali was in their grip.⁵⁴⁹ The MNLA, too, gained some

institutions set up in Timbuktu, see Statement of [REDACTED]

⁵⁴³ For the MNLA, see the following press releases from its website (<http://www.mnlamov.net/>), referred to in the DCC, para. 67, footnote 180: [MLI-OTP-0066-0409](#), pp. 0411-0412; "Bilan des hostilités à Tinzawaten", 8 February 2012, [MLI-OTP-0066-0418](#); Press release no. 09-12/03/2012, "Bilan d'Amachach", 12 March 2012, [MLI-OTP-0066-0424](#).

⁵⁴⁴ For Ansar Dine spokesperson, Sanda Ould Bouamama, see Sahara Media, media report, "Sahara Media Interview With Sanda Bin Bouamama Al-Timbukti A Commander In Ansar Al-Din Movement", 16 April 2012, [MLI-OTP-0001-3271](#), p. 3272; Video, [MLI-OTP-0015-0495](#), 00:35:23:00 to 00:35:40:00, transcript [MLI-OTP-0033-5189](#), translation [MLI-OTP-0033-5288](#), p. 5293, lines 133-139; Statement of [REDACTED] Video, [REDACTED] [MLI-OTP-0001-0052](#), 01:21:08:00 to 01:21:30:10, transcript [MLI-OTP-0033-5148](#), translation [MLI-OTP-0033-5296](#), p. 5330, lines 1263-1265.

⁵⁴⁵ For Ansar Dine, see [MLI-OTP-0001-2113](#), p. 2121, para. 39.

⁵⁴⁶ For Ansar Dine, see Video [MLI-OTP-0009-1749](#), 00:03:39:00 to 00:03:41:00, 00:07:30:00 to 00:07:34:00 and 00:12:41:00 to 00:12:46:00, transcript [MLI-OTP-0028-0839](#); Video [MLI-OTP-0015-0495](#), 00:27:16:00 to 00:27:31:00 and 00:37:35:00 to 00:37:40:00, transcript [MLI-OTP-0033-5189](#), translation [MLI-OTP-0033-5288](#). See, e.g., the stamp used on the following documents: "Permit to drill a well" and "Divorce Certificate", 2 and 5 January 2013, [MLI-OTP-0001-7444](#) and translation [MLI-OTP-0034-0804](#); Permit to dig a well, 3 and 4 January 2013, [MLI-OTP-0001-7446](#).

⁵⁴⁷ For Timbuktu, see, above, V(C)(3), The bodies Ansar Dine/AQIM set up in Timbuktu from April 2012 to January 2013. See also the following documents: [MLI-OTP-0001-7193](#), translation [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation [MLI-OTP-0034-0039](#), p. 0040; Permit to dig a well, 9 November 2012, [MLI-OTP-0001-7202](#); Permit to dig a well, 17 June 2012, [MLI-OTP-0001-7205](#); Permit granted to Doctors Without Borders, [MLI-OTP-0001-7242](#), translation [MLI-OTP-0034-0047](#).

⁵⁴⁸ [MLI-OTP-0001-2113](#), p. 2115, para. 10; [MLI-OTP-0012-1024](#), pp. 1042-1045; [MLI-OTP-0012-0119](#).

⁵⁴⁹ [MLI-OTP-0012-0327](#), p. 0328.

territories and repulsed the Malian national armed forces⁵⁵⁰ before being pushed back to the Mauritanian border by Ansar Dine and AQIM.⁵⁵¹

(b) Intensity and protractedness of the armed conflict

215. The armed groups described above clashed in a number of armed encounters, establishing the intense and protracted nature of the conflict. The Chamber finds the following facts to be established to the standard required.

216. The non-international armed conflict in Mali began with the MNLA attack on the Ménaka military camp in the Gao Region on 17 January 2012,⁵⁵² and with the battle at the Aguelhock military camp which commenced on 18 January 2012 and reportedly lasted a week, pitting the Malian armed forces against the coalition of AQIM, Ansar Dine and the MNLA.⁵⁵³ Further battles,⁵⁵⁴ such as that at Tessalit on 10 March 2012,⁵⁵⁵ marked this phase, spanning January to March 2012, of military confrontation between the insurgent armed groups, which were striving for control of northern

⁵⁵⁰ MNLA, *Déclaration d'indépendance de l'Azawad*, 6 April 2012, [MLI-OTP-0012-1144](#) (stating "[TRANSLATION] Considering the total liberation of the territory of Azawad"); [MLI-OTP-0012-0356](#), p. 0358; MNLA, "*Léré dans la région de Tin-Bouctoun est libre*", 26 January 2012, [MLI-OTP-0066-0406](#) ("[MLI-OTP-0066-0406](#)"); MNLA, "*La localité de Tinzawaten est libre*", 7 February 2012, [MLI-OTP-0066-0415](#) ("[MLI-OTP-0066-0415](#)"); [MLI-OTP-0001-2113](#), p. 2117, para. 21.

⁵⁵¹ See, below, para. 100, footnote 561.

⁵⁵² Government of Mali, Intelligence Bulletin no. 0013/DSM, 17 January 2012, [MLI-OTP-0012-0098](#); [MLI-OTP-0001-0167](#), p. 0167.

⁵⁵³ Government of Mali, *Rapport de la Commission Spéciale d'Enquête sur les événements survenus à Aguelhoc les 18 et 24 janvier 2012*, 14 February 2012, [MLI-OTP-0001-0031](#) ("[MLI-OTP-0001-0031](#)"), pp. 0034-0038; Dispatch no. 0118, 18 January 2012, [MLI-OTP-0012-0748](#); [MLI-OTP-0002-0201](#), p. 0203; [MLI-OTP-0001-0167](#), p. 0167.

⁵⁵⁴ Government of Mali, Dispatch no. 0227/DSM, 26 January 2012, [MLI-OTP-0012-0839](#); [MLI-OTP-0012-0850](#) (for the Anderamboukane military camp); [MLI-OTP-0066-0406](#) (for the town of Léré); [MLI-OTP-0066-0409](#), pp. 0411-0412; [MLI-OTP-0066-0415](#) (for Tinzawaten); MNLA, Communiqué no. 08-25/02/2012/MNLA, 26 February 2012, [MLI-OTP-0066-0421](#) ("[MLI-OTP-0066-0421](#)") (for Goumakoura); MNLA, "*Libération de la ville de Goudam (Région de Tinbouctou)*", 14 March 2012, [MLI-OTP-0066-0428](#) (for the town of Goudam).

⁵⁵⁵ Government of Mali, Dispatch no. 0123/DSM, 18 January 2012, [MLI-OTP-0012-0753](#).

Mali, and the Malian army, which failed to stem their advance. The Malian army has estimated that it fought a total of 3,000-3,500 troops at the time of the hostilities which took place between January and March 2012.⁵⁵⁶ The coup d'état against President Amadou Toumani Touré on 22 March 2012 in Bamako was the result of army discontent at these military defeats.⁵⁵⁷ A week later, Mali had lost control of the three largest cities in northern Mali: Kidal on 30 March 2012, Gao on 31 March 2012 and Timbuktu on 1 April 2012.⁵⁵⁸

217. As recounted above,⁵⁵⁹ Ansar Dine and AQIM entered and took the city of Timbuktu on 1 or 2 April 2012, driving out the MNLA, who took cover on the south bank of the river and at the airport⁵⁶⁰ before being dislodged from there as well, on 28 June 2012, following an ultimatum issued by Ansar Dine and MUJAO.⁵⁶¹

218. As of 1 April 2012, the date of the Malian armed forces' withdrawal from northern Mali, Ansar Dine, AQIM and MUJAO exercised control over two-thirds of

⁵⁵⁶ See, above, footnote 539.

⁵⁵⁷ [MLI-OTP-0001-2113](#), p. 2114, para. 5; [MLI-OTP-0001-568Z](#), pp. 5711-5715.

⁵⁵⁸ [MLI-OTP-0012-0119](#), pp. 0119, 0123; Government of Mali, Dispatch no. 0760/DSM, 31 March 2012, [MLI-OTP-0012-0658](#); Dispatch no. 0767/DSM, 2 April 2012, [MLI-OTP-0012-0930](#) ("[MLI-OTP-0012-0930](#)"); [MLI-OTP-0012-0119](#), pp. 0119, 0122; Jeune Afrique, media report, "Mali : la ville de Kidal aux mains des rebelles, la junte appelle à l'aide", 31 March 2012, [MLI-OTP-0001-3512](#). For the capture of Timbuktu, see para. 70, above.

⁵⁵⁹ See, above, para. 70.

⁵⁶⁰ Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0009, para. 23, p. 0013, para. 41; Statement of [REDACTED]; Video, [MLI-OTP-0011-0259](#), 00:00:10:00 to 00:02:46:00, 00:02:56:00 to 00:05:13:00 and 00:06:50:00 to 00:08:38:00; [MLI-OTP-0012-0157](#); [MLI-OTP-0012-0119](#), p. 0122; [MLI-OTP-0012-0356](#), p. 0358; [MLI-OTP-0012-0938](#).

⁵⁶¹ Government of Mali, Intelligence Bulletin, Re: Situation in Timbuktu, 29 June 2012, [MLI-OTP-0012-0251](#); Intelligence Bulletin, Situation in the north, 29 June 2012, [MLI-OTP-0012-0252](#); Dispatch no. 0887/DSM, 14 June 2012, [MLI-OTP-0012-0954](#); [REDACTED]

[REDACTED] Statement of [REDACTED]
Statement of [REDACTED]

Malian territory, and they took charge of the running of major cities such as Timbuktu, Gao and Kidal, until 2013.⁵⁶² However, armed combat continued, pitting the MNLA against AQIM, Ansar Dine and MUJAO on or about 7 and 8 June 2012 in Kidal, on 13 June 2012 in Timbuktu, on 26 and 27 June 2012 in Gao and on 11 July 2012 in Ansongo, to name the most important theatres.⁵⁶³ Fighting carried on with MUJAO's capture of the cities of Douentza and Menaka in September 2012,⁵⁶⁴ later, clashes also erupted in the Gao Region, setting the MNLA against MUJAO and AQIM, in November 2012.⁵⁶⁵

219. In January 2013, an attempted offensive by AQIM, Ansar Dine and MUJAO into southern Mali and specifically against the capital, Bamako, was thwarted by Malian forces backed by French troops deployed to Operation Serval.⁵⁶⁶ By late January 2013 the Malian State had retaken the cities of Kidal, Timbuktu and Gao.⁵⁶⁷ On 19 January 2013, the UN set up the African-led International Support Mission in Mali (AFISMA), which later became the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).⁵⁶⁸ "Despite violent combat" which was still ongoing,⁵⁶⁹

⁵⁶² [MLI-OTP-0012-0327](#), pp. 0327-0328; [MLI-OTP-0012-1024](#), p. 1025; [MLI-OTP-0001-2113](#), p. 2115.

⁵⁶³ [MLI-OTP-0014-5183](#), p. 5185, para. 9; Government of Mali, Dispatch no. 0912/DSM, 11 July 2012, [MLI-OTP-0012-0958](#); Dispatch, 28 June 2012, [MLI-OTP-0012-0250](#); Intelligence Bulletin, 12 July 2012, [MLI-OTP-0012-0281](#); Statement of [REDACTED] p. 0062, para. 205; Statement of [REDACTED]; RFI, media report, "Nord du Mali : les islamistes du Mujao affirment que la ville de Gao est « complètement » sous leur contrôle", 27 June 2012, [MLI-OTP-0001-4822](#).

⁵⁶⁴ Government of Mali, Dispatch no. 0997/DSM, 7 September 2012, [MLI-OTP-0012-0970](#); Dispatch no. 0998/DSM, 9 September 2012, [MLI-OTP-0012-0971](#); [MLI-OTP-0014-5183](#), p. 5185, para. 9.

⁵⁶⁵ Government of Mali, Dispatch no. 1082/DSM, 16 November 2012, [MLI-OTP-0012-0982](#) ("[MLI-OTP-0012-0982](#)"); Dispatch no. 1087/DSM, 19 November 2012, [MLI-OTP-0012-0985](#); Dispatch no. 1089/DSM, 19 November 2012, [MLI-OTP-0012-0986](#); [MLI-OTP-0014-5183](#), p. 5185, para. 9.

⁵⁶⁶ [MLI-OTP-0013-3480](#), p. 3480, para. 3; [MLI-OTP-0013-3257](#), p. 3260.

⁵⁶⁷ [MLI-OTP-0013-3480](#), p. 3481, para. 6; [MLI-OTP-0013-3257](#), p. 3260.

⁵⁶⁸ UN, Security Council, Resolution 2085 (2012), 20 December 2012, S/RES/2085, [MLI-OTP-0006-2732](#) ("[MLI-OTP-0006-2732](#)"), p. 2735, para. 9; Resolution 2100 (2013), 25 April 2013, S/RES/2100, [MLI-OTP-0006-2740](#) ("[MLI-OTP-0006-2740](#)"), p. 2744, para. 7, pp. 2746-2748, para. 16.

⁵⁶⁹ [MLI-OTP-0062-4367](#), in particular p. 4374, para. 20.

a peace agreement was signed in two stages, on 15 May 2015 and 24 June 2018.⁵⁷⁰ Nonetheless, the security situation, marked by significant violations of the ceasefire and recurrent deadly incidents, remained volatile.⁵⁷¹ All in all, this armed combat attests to the existence of an armed conflict of a level of intensity exceeding “internal disturbances and tensions”. In addition to the intense nature of the armed conflict, the foregoing analysis establishes its protracted nature.

220. Apart from the number of armed attacks and battles noted above, the following factors also go to establish the degree of intensity of the armed conflict: the Malian troop build-up in northern Mali as of late 2011 or early 2012 in preparation for the fighting;⁵⁷² the size of the territory concerned (all of northern Mali);⁵⁷³ the seriousness of the fighting in terms of loss of life and wounded among the Malian army⁵⁷⁴ and the other armed groups;⁵⁷⁵ the use of heavy weaponry;⁵⁷⁶ the adoption of resolutions⁵⁷⁷ by

⁵⁷⁰ [MLI-OTP-0062-4367](#), in particular p. 4375, para. 20.

⁵⁷¹ RFI, media report, “Violences au nord du Mali malgré la signature d’un accord de paix”, 24 May 2015, [MLI-OTP-0034-0738](#); Francetv info, media report, “Un casque bleu tué par des tirs à Bamako, un autre blessé”, 26 May 2015, [MLI-OTP-0034-0696](#); [MLI-OTP-0062-4367](#), in particular p. 4375, paras. 21-22, p. 4435.

⁵⁷² MNLA, “Déclaration de guerre du Mali au peuple de l’Azawad”, 12 January 2012, [MLI-OTP-0066-0402](#), p. 04032; [MLI-OTP-0066-0409](#), p. 0409.

⁵⁷³ See, above, para. 218 and footnote 562.

⁵⁷⁴ See, e.g., for the capture of the Aguelock military camp, which, according to the Malian Government, cost the lives of about 100 Malian soldiers, of whom some 60 were executed, see [MLI-OTP-0001-5687](#), p. 5707; [MLI-OTP-0001-0031](#), pp. 0034, 0037-0038; [MLI-OTP-0001-0167](#), p. 0167; AFP, media report, “L’armée confirme des exécutions sommaires de soldats et de civils”, 13 February 2012, [MLI-OTP-0001-3323](#). See also [MLI-OTP-0066-0421](#); [MLI-OTP-0012-0930](#).

⁵⁷⁵ UN Office for the Coordination of Humanitarian Affairs, report, “Mali / Complex Emergency / Situation Report No. 11”, 11 July 2012, [MLI-OTP-0001-1459](#), p. 1459 (the document reports at least 35 killed, including civilians, and 41 wounded in clashes between the MNLA and MUJAO in Gao on 26 and 27 June 2012); Government of Mali, Dispatch no. 0898/DSM, 27 June 2012, [MLI-OTP-0012-0955](#); Dispatch no. 0595/DSM, 6 March 2012, [MLI-OTP-0012-0610](#); [MLI-OTP-0012-0982](#) (referring to “[TRANSLATION] significant loss of life on both sides” in a clash between MUJAO and the MNLA in November 2012); Dispatch no. 0595/DSM, 6 March 2012, [MLI-OTP-0012-0610](#).

⁵⁷⁶ See, above, para. 213 and footnote 541.

⁵⁷⁷ UN, Security Council, Resolution 2056 (2012), 5 July 2012, S/RES/2056, [MLI-OTP-0006-2722](#). See also Resolution 2071 (2012), 12 October 2012, S/RES/2071, [MLI-OTP-0006-2728](#); [MLI-OTP-0006-2732](#); [MLI-OTP-0006-2740](#), p. 2744, para. 7, pp. 2746-2748, para. 16.

the Security Council acting under Chapter VII⁵⁷⁸ of the United Nations Charter, which also shows that it remained seized of the matter throughout the material time; the flight and displacement of people as a result of the fighting, estimated by the Office of the United Nations High Commissioner for Refugees as at 1 December 2012 to amount to 155,187 refugees outside the country, 198,558 internally displaced persons⁵⁷⁹ and half the population of Timbuktu having left the city in 2012,⁵⁸⁰ and the deterioration of the humanitarian situation in general for civilians.⁵⁸¹

**(c) Issue of the absence of armed combat in
Timbuktu during the time material to the case
*sub judice***

221. The Chamber sees that the Defence contests the applicability of article 8 on the ground, among others, that there was no armed combat in Timbuktu during the time material to the case *sub judice*.⁵⁸²

222. The Chamber does not subscribe to that thesis. The Chamber takes the view that to consider only the city of Timbuktu while disregarding, as the Defence does, all the fighting in the rest of the country, so as to gainsay the existence of an armed conflict, would leave the analysis incomplete.⁵⁸³ As pointed out above, the statutory provisions related to the existence of an armed conflict apply from the

⁵⁷⁸ The Chamber recalls that the United Nations Security Council passes resolutions under Chapter VII of the United Nations Charter “with respect to threats to the peace, breaches of the peace, and acts of aggression”. See UN, Security Council, Resolution 2056, 5 July 2012, S/RES/2056(2012).

⁵⁷⁹ [MLI-OTP-0013-3500](#), p. 3507, para. 14; International Committee of the Red Cross, “Mali : les populations continuent de fuir les zones de combats”, 17 February 2012, [MLI-OTP-0024-2284](#); “Mali : la situation humanitaire des populations est inquiétante”, 18 January 2013, [MLI-OTP-0024-2289](#) (“[MLI-OTP-0024-2289](#)”).

⁵⁸⁰ Le Soir, media report, “La renaissance de Tombouctou”, [MLI-OTP-0068-4817](#), p. 4817.

⁵⁸¹ [MLI-OTP-0024-2289](#); Economic Community of West African States, Press Release no. 065/2012, 19 March 2012, [MLI-OTP-0001-0861](#), p. 0861; Press Release no. 160/2012, 7 June 2012, [MLI-OTP-0001-0839](#), p. 0839; African Union, “Déclaration solennelle sur la situation au Mali”, [MLI-OTP-0020-0465](#), p. 0465.

⁵⁸² Defence Written Submissions, paras. 111-112.

⁵⁸³ Defence Written Submissions, paras. 110-111.

onset of armed violence until the conclusion of a peace agreement, and to the whole territory under a party's control, even in the absence of armed combat proper in that part of the territory.⁵⁸⁴ In that case it need only be proven that the crimes in question are closely related to the hostilities ongoing in other parts of the territory which are controlled by a party to the conflict.⁵⁸⁵

223. According to this approach taken in previous cases, the few months for which Ansar Dine and AQIM ran the city of Timbuktu – between 1 April 2012 and 28 January 2013, the date when they were driven out *militarily* – cannot be regarded as a period of peace or “end of armed conflict”. Rather, this spell was a lull in the armed conflict, a lull limited to a particular geographic area. To be specific, as found to be established above,⁵⁸⁶ armed combat took place before, during and after the time material to the case *sub judice*, and, since the wider conflict was ongoing in the rest of the territory and the parties had not reached a peace agreement – and one would not be signed until 15 May 2015 –⁵⁸⁷ the provisions of article 8 continued to apply throughout the territory, including Timbuktu and the Timbuktu Region.

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.

⁵⁸⁴ See, above, para. 194 and footnote 486. See also ICTY, *Prosecutor v. Dusko Tadić*, “Decision on Defence Motion for Interlocutory Appeal on Jurisdiction”, 2 October 1995, IT-94-1, para. 70. See also *Kunarac et al.* Appeal Judgment, para. 57; ICTY, *Prosecutor v. Zdravko Mucić, Hazim Delić, Esad Landžo and Zejnib Delalić (Čelebići)*, “Judgement”, 16 November 1998, IT-96-21-T (“Čelebići Trial Judgment”), paras. 183, 184; ICTR, *Semanza* Trial Judgment, para. 367.

⁵⁸⁵ ICTY, *Prosecutor v. Dusko Tadić*, “Decision on Defence Motion for Interlocutory Appeal on Jurisdiction”, 2 October 1995, para. 70; Čelebići Trial Judgment, para. 193.

⁵⁸⁶ See, above, paras. 218-219.

⁵⁸⁷ [MLI-OTP-0062-4367](#), in particular p. 4375, para. 20.

225. Although there was not an “occupation” in the legal sense of the term under the Statute and international humanitarian law, which confine it to international armed conflicts⁵⁸⁸ – for such was the term used by the Prosecutor, whereas its legal implications, as the Defence points out, are inapplicable to the case at bar⁵⁸⁹ – the fact nevertheless remains that the city of Timbuktu and the Timbuktu Region were certainly *run* by the *soldiers* of AQIM and Ansar Dine. The evidence discloses no real distinctions between civilian and military institutions – in other words, the city was run entirely by the military apparatus. Anyone in a position of responsibility, for instance, the head of a body, was part of AQIM or Ansar Dine.⁵⁹⁰ Adama and Khaled Abou Souleymane, for instance, the two successive chiefs of police, were members of AQIM.⁵⁹¹ The religious instruction and military training (including weapons training) undergone by the members of the Islamic Police was the training undergone by all fighters.⁵⁹² Police officers, in working for the Islamic Police, were working for Ansar

⁵⁸⁸ The Statute uses the term “occupation” only in its articles applying to international armed conflict. See Elements of Crimes, Article 8(2)(a)(i), footnote 34: “The term ‘international armed conflict’ includes military occupation. This footnote also applies to the corresponding element in each crime under article 8(2)(a).” Article 42 of the Regulations respecting the Laws and Customs of War on Land (The Hague, 1907) defines an occupation as follows: “Territory is considered occupied when it is actually placed under the authority of *the hostile army*. The occupation extends only to the territory where such authority has been established and can be exercised [emphasis added].” The fourth Hague Convention is regarded as specifically applicable to a regime of occupation, as is Additional Protocol I. The Appeals Chamber of the ICTY in *Tadić* described that convention as being intended to “protect those civilians in [enemy or] occupied territory who, while having the nationality of the Party to the conflict in whose hands they find themselves, are refugees”. See *Prosecutor v. Dusko Tadić*, “Judgement”, IT-94-1-A, 15 July 1999, para. 164. See also E. Crawford, A. Pert, “International Humanitarian Law”, Cambridge University Press, 2015, pp. 142-162.

⁵⁸⁹ See Defence Written Submissions, paras. 118-122.

⁵⁹⁰ Statement of [REDACTED] See also, above, V.(C) The structure of the regime introduced in Timbuktu from April 2012 to January 2013 by Ansar Dine and AQIM.

⁵⁹¹ See, above, paras. 102-104.

⁵⁹² Statement of P-0398, [MLI-OTP-0051-1184](#), pp. 1201-1202, lines 554-593; Statement of [REDACTED] Summary of statement of [REDACTED] See also, above, para. 130.

Dine/AQIM.⁵⁹³ As a general rule, moreover, new Ansar Dine and AQIM recruits first completed the standard religious instruction and military training given to all new recruits, before a decision was taken as to which body they were to serve.⁵⁹⁴

226. In this context the Chamber therefore takes the view that, contrary to what the Defence contends, the time material to the case *sub judice*, and the crimes committed by members of Ansar Dine or AQIM⁵⁹⁵ during that period while they were working for those groups, cannot be regarded as lacking a nexus to the armed conflict, although a closer, crime-by-crime analysis of the nexus is called for.

3. The Chamber's findings

227. The Chamber determines that the events pertaining to the case *sub judice* occurred as part of an armed conflict not of an international character which was ongoing in Mali at the period material to the case *sub judice*, viz. between 1 or 2 April 2012 and 28 January 2013.⁵⁹⁶

VII. The crimes

228. The Prosecutor alleges that there are substantial grounds to believe that between April 2012 and January 2013, in Timbuktu and the Timbuktu Region, Mr Al

⁵⁹³ See, above, paras. 75-76.

⁵⁹⁴ Statement of [REDACTED]

⁵⁹⁵ See ICTR, *Rutaganda* Appeal Judgment, para. 570: "[T]he expression 'under the guise of the armed conflict' does not mean simply 'at the same time as an armed conflict' and/or 'in any circumstances created in part by the armed conflict'. For example, if a non-combatant takes advantage of the lessened effectiveness of the police in conditions of disorder created by an armed conflict to murder a neighbour he has hated for years, that would not, without more, constitute a war crime under Article 4 of the Statute. By contrast, the accused in *Kunarac*, for example, were combatants who took advantage of their positions of military authority to rape individuals whose displacement was an express goal of the military campaign in which they took part."

⁵⁹⁶ See, above, paras. 70-71.

Hassan committed crimes against humanity and war crimes, and moves the Chamber to confirm the charges corresponding to the following crimes:

- the crime of torture as a crime against humanity referred to at article 7(1)(f) (count 1);
- the crime of other inhumane acts as a crime against humanity referred to at article 7(1)(k) of the Statute (count 2);
- the crime of torture as a war crime referred to at article 8(2)(c)(i) of the Statute (count 3);
- the crime of cruel treatment as a war crime referred to at article 8(2)(c)(i) of the Statute (count 4);
- the crime of outrages upon personal dignity as a war crime referred to at article 8(2)(c)(ii) of the Statute (count 5);
- the crime of passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable, as a war crime referred to at article 8(2)(c)(iv) of the Statute (count 6);
- the crime of attacking protected objects as a war crime referred to at article 8(2)(e)(iv) of the Statute (count 7);
- the crime of other inhumane acts in the form of forced marriages as a crime against humanity referred to at article 7(1)(k) of the Statute (count 8);
- the crime of sexual slavery as a crime against humanity referred to at article 7(1)(g) of the Statute (count 9);
- the crime of sexual slavery as a war crime referred to at article 8(2)(e)(vi) of the Statute (count 10);
- the crime of rape as a crime against humanity referred to at article 7(1)(g) of the Statute (count 11);

- the crime of rape as a war crime referred to at article 8(2)(e)(vi) of the Statute (count 12); and
- the crime of persecution as a crime against humanity referred to at article 7(1)(h) of the Statute (count 13).

(A) Facts pertaining to counts 1 to 5: torture, other inhumane acts, cruel treatment and outrages upon personal dignity

1. Applicable law

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

229. The Chamber refers to the definition of the crime of torture as set out in articles 7(1)(f), 7(2)(e) and 8(2)(c)(i) of the Statute and in the Elements of Crimes.⁵⁹⁷

230. A significant degree of pain and suffering must be reached for a crime to qualify as torture under the Statute.⁵⁹⁸ Specifically, it is the “severe” character of the pain or suffering that sets the crime of torture apart from other acts of ill-treatment.⁵⁹⁹ That degree may be reached through a single act or a combination of acts taken as a whole,⁶⁰⁰ and can be assessed only on a case-by-case basis in the light of all the

⁵⁹⁷ See Elements of Crimes, articles 7(1)(f) and 8(2)(c)(i)(4).

⁵⁹⁸ *Bemba* Decision, para. 193; see also ICTY, *Prosecutor v. Krnojelac*, “Judgement”, 15 March 2002, IT-97-25-T, (“*Krnojelac* Trial Judgment”), paras. 181, 219, 222, 224 and 236; European Court of Human Rights (“ECtHR”), *El-Masri v. The Former Yugoslav Republic of Macedonia*, “Judgment”, 13 December 2012, application no. 39630/09, paras. 196, 197; *Gäfgen v. Germany*, “Judgment”, 3 June 2010, application no. 22978/05, “Judgment”, para. 90; *Selmouni v. France*, “Judgment”, 28 July 1999, application no. 25803/94, (“*Selmouni v. France* Judgment”), para. 100.

⁵⁹⁹ ICTY, *Prosecutor v. Brđanin*, “Judgement”, 1 September 2004, IT-99-36-T (“*Brđanin* Judgment”), para. 483; ECtHR, *Selmouni v. France* Judgment, para. 105; *Aydin v. Turkey*, “Judgment”, 25 September 1997, application no. 23178/94 (“*Aydin v. Turkey* Judgment”), para. 82; *Ireland v. United Kingdom*, “Judgment”, 18 January 1978, application no. 5310/71 (“*Ireland v. The United Kingdom* Judgment”), para. 167.

⁶⁰⁰ See also ICTY, *Prosecutor v. Mladen Naletilić and Vinko Martinović*, “Judgement”, 3 May 2006, IT-98-34-A, (“*Naletilić and Martinović* Appeal Judgment”), para. 299; *Krnojelac* Trial Judgment, para. 182; ECtHR, *Selmouni v. France* Judgment, para. 105; *Aydin v. Turkey* Judgment, para. 86.

particular circumstances.⁶⁰¹ In order to determine the “severity” or seriousness of the pain, certain subjective factors may be considered: the repeated and prolonged character of the violence, the physical and mental effects of the act in question on the victim, the victim’s physical or mental condition and, in some instances, the victim’s age, sex, state of health or position of inferiority.⁶⁰² The victim’s social, cultural and religious context may also be taken into consideration as a factor that may aggravate the suffering.⁶⁰³

231. According to international jurisprudence, acts of torture may, for instance, consist of flogging as a method of torture subsequent to arrest;⁶⁰⁴ inflicting corporal punishment using electrical cables, or applying electric shocks;⁶⁰⁵ inflicting corporal punishment of 15 lashes of the whip on a naked and hooded prisoner tied to a metal

⁶⁰¹ See also Extraordinary Chambers in the Courts of Cambodia (ECCC), *Prosecutor v. Kaing Guek Eav alias Duch*, “Judgement”, 26 July 2010, 001/18-07-2007/ECCC/TC, (“*Duch* Trial Judgment”), para. 355; ICTY, *Prosecutor v. Radoslaw Brđanin*, “Judgement”, 3 April 2007, IT-99-36-A (“*Brđanin* Appeal Judgment”), para. 251; ECtHR, *Ireland v. The United Kingdom* Judgment, para. 162 (“The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.”).

⁶⁰² ICTY, *Brđanin Trial* Judgment, para. 484 referring to *Prosecutor v. Kvočka et al.*, “Judgement”, 2 November 2001, IT-98-30/1-T (“*Kvočka et al.* Trial Judgment”), para. 143; *Krnojelac* Trial Judgment, para. 182; ECtHR, *Selmouni v. France* Judgment, paras. 100 and 104; *Ireland v. The United Kingdom* Judgment, para. 167.

⁶⁰³ ICTY, *Limaj et al. Trial* Judgment, “Judgement”, 30 November 2005, IT-03-66-T, para. 237.

⁶⁰⁴ *Chambre extraordinaire d’Assises, Ministère Public c. Hissein Habré*, “Judgement”, 30 May 2016, paras. 592 (“[TRANSLATION] Some witnesses heard by the Chamber described flogging as a method of torture that DDS [*Direction de la Documentation et de la Sécurité* (Documentation and Security Directorate)] officers often used. According to the CNE [*Commission nationale d’enquête* (National Investigations Commission)], by this method of torture, detainees were beaten with leather straps.”), 593-595, 1565, 1568 and 1570.

⁶⁰⁵ ECCC, *Duch* Trial Judgment, paras. 241, 360; ECtHR, *Korobov v. Ukraine*, “Judgment”, 21 July 2011, application no. 39598/0321, paras. 66, 73; *Akkoç v. Turkey*, “Judgment”, 10 October 2000, application nos. 22947/93 and 22948/93, (“*Akkoç v. Turkey* Judgment”), paras. 116-117; Human Rights Committee, *Isidore Kanana Tshiongo a Minanga v. Zaire*, “Views”, 2 November 1996, communication no. 366/1989, paras. 2.1, 5.3; *Rodríguez v. Uruguay*, “Views”, 19 July 1994, communication no. 322/1988, paras. 2.1, 12.1; *Delia Saldias de López and Sergio Rubén López Burgos v. Uruguay*, “Views”, 29 July 1981, communication no. 52/1979, para. 2.3.

structure;⁶⁰⁶ inducing a sensation of suffocation using water, e.g. by immersion in dirty water or by simulated drowning;⁶⁰⁷ mock executions or mock amputations;⁶⁰⁸ forcing someone to watch another person being raped;⁶⁰⁹ “Palestinian hanging”;⁶¹⁰ ripping out nails;⁶¹¹ inflicting prolonged periods of isolation;⁶¹² or any combination of those acts. It need not be shown that the pain or suffering was the result of physical injury (such as organ failure), impairment of biological function, or that it led to the victim’s death.⁶¹³

⁶⁰⁶ Inter-American Court, *Winston Caesar v. Trinidad and Tobago*, “Judgment of March 11, 2005”, series C no. 123, paras. 27, 49, 73. It should be noted that in that case, the Court laid down what it considered to be aggravating circumstances: the anguish, stress and fear caused by the wait for the flogging and during which time the victim did not know whether he would be flogged, while being exposed to the suffering of other prisoners who had been flogged. See para. 88.

⁶⁰⁷ ECCC, *Duch Trial Judgment*, paras. 241, 360; Inter-American Court, *Baldeón-García v. Peru*, “Judgment of April 6, 2006”, paras. 72(20), 123; Human Rights Committee, *Rodríguez v. Uruguay*, “Views”, 19 July 1994, communication no. 322/1988, paras. 2.1 and 12.1; *Joaquín Herrera Rubio v. Colombia*, “Views”, 2 November 1987, communication no. 161/1983, paras. 1.2 and 11; *Alberto Grille Motta v. Uruguay*, “Views”, 29 July 1980, communication no. 11/1977, paras. 2 and 16; *Ann Maria Garcia Lanza de Netto v. Uruguay*, “Views”, 3 April 1980, communication no. 8/1977, para. 9; United Nations Committee Against Torture (“Committee Against Torture”), Conclusions and Recommendations of the Committee Against Torture: United States of America, UN Doc. CAT/C/USA/CO/2, 25 July 2006, para. 24 (“CAT/C/USA/CO/2”).

⁶⁰⁸ ECtHR, *Al Nashiri v. Poland*, “Judgment”, 24 July 2014, application no. 28761/11, (“*Al Nashiri v. Poland Judgment*”), paras. 511, 515-516; Human Rights Committee, *Mutabe v. Zaire*, “Views”, 24 July 1984, communication no. 124/1982, paras. 10.2, 12; *Estrella v. Uruguay*, “Views”, 29 March 1983, communication no. 74/1980, paras. 1.6, 8.3, 10.

⁶⁰⁹ ICTY, *Kvočka et al. Trial Judgment*, para. 149; *Prosecutor v. Anto Furundžija*, “Judgement”, 10 December 1998, IT-95-17/1-T, (“*Furundžija Trial Judgment*”) para. 267.

⁶¹⁰ ECtHR, *Durmuş Kurt and Others v. Turkey*, “Judgment”, 31 May 2007, application no. 12101/03, paras. 29-30; *Aktaş v. Turkey*, “Judgment”, 24 April 2003, application no. 24351/94, para. 319; *Aksoy v. Turkey*, “Judgment”, 18 December 1996, application no. 21987/93, para. 64.

⁶¹¹ ECCC, *Duch Trial Judgment*, paras. 242, 360.

⁶¹² ECtHR, *Babar Ahmad and Others v. The United Kingdom*, “Judgment”, 10 April 2012, application nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, para. 206 (“complete sensory isolation, coupled with total social isolation”); Human Rights Committee, *Polay Campos v. Peru*, “Views”, 6 November 1997, communication no. 577/1994, para. 8.6; *Albert Womah Mukong v. Cameroon*, “Views”, 21 July 1994, communication no. 458/1991, para. 9.4.

⁶¹³ See ICTY, *Brdanin Appeal Judgment*, paras. 244-251.

232. The category of torture must be reserved for the highest degree of inhuman treatment on account of the special stigma that torture attaches.⁶¹⁴ Ill-treatment that does not reach the severity threshold of torture may, in some cases, constitute other inhumane acts as a crime against humanity or cruel treatment as a war crime (see discussion below).⁶¹⁵

233. The definition of the crime of torture as a crime against humanity also requires, pursuant to article 7(2)(e) of the Statute, that the victim be in the custody or under the control of the perpetrator of the crime. It does not, however, require proof that the act was committed by a public official acting in an official capacity, as the relevant provisions do not state such a requirement.⁶¹⁶

234. The crime against humanity of torture, unlike the war crime of torture, does not require that the act be carried out for a specific purpose.⁶¹⁷ The perpetrator must have caused the victim severe pain or suffering intentionally,⁶¹⁸ within the meaning of article 30 of the Statute, or the perpetrator must have been aware that such a consequence would occur in the ordinary course of events.

235. According to the Elements of Crimes, article 8 of the Statute, unlike article 7, requires the act of torture as a war crime to have been carried out for a specific purpose. The perpetrator must have “inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for

⁶¹⁴ See ECtHR, *Al Nashiri v. Poland* Judgment, para. 508; *Akkoç v. Turkey* Judgment, para. 115; *Selmouni v. France* Judgment, para. 96; *Aydin v. Turkey* Judgment, para. 82; *Ireland v. The United Kingdom* Judgment, para. 167.

⁶¹⁵ See below, paras. 257-259.

⁶¹⁶ See Elements of Crimes, article 7(1)(f) of the Statute.

⁶¹⁷ The Chamber refers to footnote 14 of the Elements of Crimes: “It is understood that no specific purpose need to be proved for this crime”; see also *Bemba* Decision, para. 195.

⁶¹⁸ The Chamber refers to para. 4 of the General introduction to the Elements of Crimes: “With respect to mental elements associated with elements involving value judgement, such as those using the terms ‘inhumane’ or ‘severe’, it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated.”

a reason based on discrimination of any kind.”⁶¹⁹ The specific purpose must be part of the motives for the conduct but it need not be the “predominant or sole purpose”.⁶²⁰ The Chamber recalls that this condition constitutes the perpetrator’s specific intent, which must be proved by the Prosecutor.⁶²¹ The presence of the purpose element will also distinguish torture from similar offences.⁶²² In the case of the war crime of torture, the perpetrator must also have been aware of the factual circumstances that established the victim’s status as a civilian.⁶²³

236. Lastly, the Chamber notes that article 7(2)(e) of the Statute provides that

“[t]orture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; *except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.*⁶²⁴

237. The lawful sanctions exclusion clause does not appear in the definition of the war crime of torture in articles 8(2)(a)(ii) or 8(2)(c)(i) of the Statute. And nor do the Statute, the Elements of Crimes or the previous decisions of the Court further elucidate the term “lawful sanctions”⁶²⁵ at article 7(2)(e) of the Statute.

238. On this issue, the Prosecutor maintains that “[TRANSLATION] the amputation and the floggings perpetrated in accordance with judgments handed down by the Islamic Court cannot be considered lawful sanctions” and refers to the section of her

⁶¹⁹ See para. 2 of the Elements of Crimes for article 8(2)(c)(i)(4) of the Statute. See also *Bemba* Decision, para. 294.

⁶²⁰ Similarly, see, ECCC, *Duch* Trial Judgment, para. 356; ICTY, *Prosecutor v. Radovan Karadžić*, “Judgment”, 24 March 2016, IT-95-5/18-T (“*Karadžić* Trial Judgment”), para. 508; *Kunarac et al.* Appeal Judgment, para. 153.

⁶²¹ See also *Bemba* Decision, para. 294.

⁶²² Similarly, see, ICTY, *Čelebići* Trial Judgment, para. 552.

⁶²³ The Chamber refers to paragraph 4 of the Elements of Crimes for article 8(2)(c)(i)(4).

⁶²⁴ Emphasis added. See also Elements of Crime, Article (7)(1)(f), para. 3.

⁶²⁵ This “exclusion” clause at article 7 is said to have been “[TRANSLATION] secured by numerous Muslim States whose concern was to ensure that certain forms of Islamic punishment were not considered as acts of torture within the meaning of the Statute”. See J. Fernandez and X. Pacreau (eds.), *Statut de Rome de la Cour Pénale Internationale. Commentaire article par article* (Pedone, Vol. I, 2012), p. 434.

DCC on the “[TRANSLATION] [w]ar crimes of passing of sentences without previous judgment pronounced by a regularly constituted court” without expounding on her argument further; regarding the cases of use of “[TRANSLATION] torture as an interrogation method”, she notes that the prohibition of torture is *jus cogens* – a norm “[TRANSLATION] from which no derogation is permitted” – and that “[TRANSLATION] authorization from a court, be it regularly constituted or not, does not make the use of torture a lawful practice”.⁶²⁶

239. The Defence states that article 7 of the Statute condemns “conduct which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world”, and that that reference to “international law” must be understood as the international law which governs individual criminal responsibility.⁶²⁷ The Defence submits that a mere violation of international human rights law is not sufficient in this regard for article 7 of the Statute to be applicable and that, although certain punishments resulting from the application of Islamic law have been described as human rights violations, there has been no call for those who carried out the punishments to be held individually responsible.⁶²⁸ The Special Rapporteurs have, for instance, called on States to abolish such punishments, not to prosecute those who carried them out.⁶²⁹

240. The interpretation of the term “lawful sanctions” in the Statute has also been the subject of scholarly discussion, in particular the question as to whether the term

⁶²⁶ DCC, paras. 590-591, footnote 1468 referring to ICTY, *Furundžija* Trial Judgment, paras. 139, 153, 155. See also Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-FRA p. 59.

⁶²⁷ Defence Final Written Submissions, para. 135.

⁶²⁸ Defence Final Written Submissions, para. 135.

⁶²⁹ Defence Final Written Submissions, para. 135.

must be understood as denoting lawful under domestic law and nothing more,⁶³⁰ or instead lawful under domestic law provided that domestic law is consistent with international law. Publicists lean overwhelmingly towards the latter option.⁶³¹

241. The Chamber notes that the choice was made, in the final text of the Statute, not to incorporate certain proposals to spell out the term, thus leaving its interpretation for the Court to determine.⁶³²

242. That discussion predated the entry into force of the Statute: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contains a similar clause, albeit with a nuance in wording – the [French version of the] Convention speaks of *sanctions “légitimes”*⁶³³ and not *sanctions “légales”*.⁶³⁴ Some States⁶³⁵ were of the opinion that corporal punishment foreseen by the domestic law

⁶³⁰ See J. Fernandez and X. Pacreau (eds.), *Statut de Rome de la Cour Pénale Internationale. Commentaire article par article* (Pedone, Vol. I, 2012), p. 434. It should be noted that the position taken by the author on the issue is however not clearly stated as such.

⁶³¹ R. Cryer *et al.*, *An Introduction to International Criminal Law and Procedure* (Cambridge, 3rd ed., 2014), p. 253 referring to the report by the United Nations Special Rapporteur on Torture, E/CN.4/1988/17, para. 42; C. K. Hall and C. Stahn, Article 7 in K. Ambos, O. Triffterer (ed.) *The Rome Statute of the International Criminal Court: A Commentary* (Baden Nomos Verlagsgesellschaft, 2015), p. 272, para. 134; S.H. Steiner and L. Nemer Caldeira Brant, *O Tribunal Penal Internacional, Comentários ao Estatuto de Roma* (Del Rey Editora, 2016), p. 181. See also M. Klamberg, *Commentary on the Law of the International Criminal Court* (FICHL, 2017), p. 49.

⁶³² See R. S. Lee, *The International Criminal Court, Elements of Crimes and Rules of Procedure and Evidence* (Transnational Publishers, 2001), p. 92.

⁶³³ Article 1 of the Convention against Torture provides: “[a]ux fins de la présente Convention, le terme ‘torture’ [...] ne s’étend pas à la douleur ou aux souffrances résultant uniquement de sanctions légitimes, inhérentes à ces sanctions ou occasionnées par elles”. [“For the purposes of this Convention, the term ‘torture’ [...] does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”], Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations Treaty Series, vol. 1465, no. 24841. For the *travaux préparatoires*, see J. Herman Burgers and H. Danielus, *The United Nations Convention against Torture* (Martinus Nijhoff Publishers, 1988), pp. 46-47, 121-122.

⁶³⁴ For this difference in wording see, See J. Fernandez and X. Pacreau (eds.), *Statut de Rome de la Cour Pénale Internationale. Commentaire article par article* (Pedone, Vol. I, 2012) at, p. 434.

⁶³⁵ See, e.g., the stated position of Saudi Arabia, contribution referred to in United Nations, Report of the Special Rapporteur, Mr. Nigel S. Rodley, Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading

of States falls within the definition of the “*sanctions légitimes*” laid down in the Convention, whereas the Committee against Torture,⁶³⁶ three United Nations Special Rapporteurs on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁶³⁷ and various publicists,⁶³⁸ have taken the view that such sanctions must

Treatment or Punishment, 10 January 1997, E/CN.4/1997/7, (“Report by N. S. Rodley”). See also for this issue, A. Boulesbaa, *The U.N. Convention on Torture and the Prospects for Enforcement* (Martinus Nijhoff Publishers, 1999) (“A. Boulesbaa”), p. 29. See also M. Nowak, *Challenges to the Absolute Nature of the Prohibition of Torture and Ill-treatment* (“M. Nowak”), consulted on 17 June 2019, p. 681 also referring to A. Boulesbaa, para. 39; Report by N. S. Rodley, paras. 4, 8.

⁶³⁶ Committee against Torture, Concluding observations on the Democratic Republic of the Congo A/61/44, 2006, para. 26(11); Concluding observations on Togo, A/61/44, 2006, para. 36(19).

⁶³⁷ United Nations, Commission on Human Rights, Report by Special Rapporteur P. Kooijmans, Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 12 January 1988, E/CN.4/1988/17, para. 42; Report by Special Rapporteur P. Kooijmans, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 19 February 1986, E/CN.4/1986/15, p. 13, para. 48 “Corporal punishments as ‘lawful sanctions’ under domestic laws may constitute ‘severe pain or suffering’ under international law. Consequently, this kind of chastisement should be revised in order to prevent torture, particularly amputations, caning or flogging.”); Report by N. S. Rodley, para. 6 (“The Special Rapporteur takes the view that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”); see also paras. 7, 8; N. S. Rodley, *Integrity of the Person* in Moeckli *et al.*, *International Human Rights Law* (Oxford University Press, 2014), p. 182; M. Nowak, p. 681 (“One extreme interpretation is the one advocated by Saudi Arabia and other Islamic States maintaining that any sanction imposed in accordance with domestic law, including the most severe forms or corporal punishment and executions of capital punishment, was covered by the wording of the second sentence in Article 1(1). Such an interpretation is in clear contradiction with general international human rights (and humanitarian law).”). For various cases of flogging and amputation which the Special Rapporteurs against Torture raised with States, see the following reports by the following Special Rapporteurs: 10 January 1997, E/CN.4/1997/7 p. 27, paras. 112-114; 9 January 1996, E/CN.4/1996/35, p. 21, paras. 82-87; 12 January 1995, E/CN.4/1995/34, p. 119, para. 626; 10 January 1991, E/CN.4/1991/17, p. 46, para. 141; 18 December 1989, E/CN.4/1990/17.

⁶³⁸ I. Bantekas and L. Oette, *International Human Rights Law and Practice* (Cambridge, 2nd ed., 2016), p. 333; K. Bennoune, “‘A Practice Which Debases Everyone Involved’: Corporal Punishment Under International Law” in *20 Ans Consacrés à la Réalisation d’une Idée Recueil d’articles en l’honneur de Jean-Jacques Gautier (1997)* (“K. Bennoune”) pp. 210-213; C. E. Faria Coracini, “The Lawful Sanctions Clause in the State Reporting Procedure Before the Committee Against Torture”, *Netherlands Quarterly of Human Rights*, vol. 24/2 (2006), pp. 305-318; J. Herman Burgers, H. Danielus, *The United Nations Convention against Torture* (Martinus Nijhoff Publishers, 1988), p. 122; A. Karapetyan, “A recurring Phenomenon: The Lawful Sanctions Clause in the Definition of Torture and the Question of Judicial Corporal

also comply with international law in order to be considered “lawful sanctions”. Special Rapporteur on Torture N. S. Rodley has pointed out that “‘lawful sanctions’ [...] must necessarily refer to those sanctions that constitute practices widely accepted as legitimate by the international community”,⁶³⁹ while fellow Special Rapporteur on Torture Manfred Nowak has maintained that since corporal punishment is contrary to international law, it cannot be considered a “lawful sanction”.⁶⁴⁰

243. The Chamber likewise takes the view that the “lawful sanctions” referred to in article 7(2)(e) of the Statute must comport with international law. The Chamber therefore recalls that article 21(3) of the Statute requires that the “application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights”, and accordingly concludes that, within the legal framework laid down by the Statute, an interpretation of the term “lawful sanctions” cannot dispense with an analysis of international human rights law relevant to the matter at hand, in this instance the infliction of corporal punishment.⁶⁴¹

Punishment under International Human Rights Law”, *Polish Yearbook of International Law*, vol. 36 (2016) (“A. Karapetyan”) p. 137, 144-145; A. Byrnes, “Torture and Other Offences Involving the Violation of the Physical or Mental Integrity of the Human Person” in G. K. McDonald and O. Swaak-Goldman (eds.) *Substantive and Procedural Aspects of International Criminal Law: The Experience of International and National Courts*, (Kluwer Law International, vol. 1, 2001), p. 218.

⁶³⁹ Report by N. S. Rodley, para. 8.

⁶⁴⁰ UN, General Assembly, Note by the Secretary-General, 30 August 2005, A/60/316, para. 27.

⁶⁴¹ See also Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006”, 14 December 2006, ICC-01/04-01/06-772 (“Appeal Judgment of 14 December 2006”), para. 37: “Human rights underpin the Statute; every aspect of it”).

244. The content of international conventions and treaties and⁶⁴² their interpretation by United Nations treaty bodies,⁶⁴³ and regional human rights courts' decisions⁶⁴⁴ have been considered relevant sources for identifying "internationally recognized human rights" within the meaning of article 21(3) of the Statute.

245. And be it on the international plane – at the former United Nations Commission on Human Rights ("Commission on Human Rights")⁶⁴⁵ and the United Nations treaty

⁶⁴² The Court has previously drawn on international human rights treaties in order to interpret the Statute, including to define certain constituent elements of the crimes. *Lubanga* Trial Judgment, para. 604. See also Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled 'Decision on application for interim release'", 16 December 2008, ICC-01/05-01/08-323, para. 28. See also Appeals Chamber, *Situation in the Democratic Republic of the Congo*, "Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal", 13 July 2006, ICC-01/04-168, para. 38.

⁶⁴³ V. Nerlich, "Article 21 (3) of the ICC Statute: Identifying and Applying 'Internationally Recognized Human Rights'" in P. Lobba and T. Mariniello (eds.), *Judicial Dialogue on Human Rights: The Practice of International Criminal Tribunals* (Leiden: Brill Nijhoff, 2017), p. 82.

⁶⁴⁴ See, for example, Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled 'Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008'", issued by Trial Chamber I, 21 October 2008, ICC-01/04-01/06-1486, para. 46; Appeal Judgment of 14 December 2006, paras. 36-38; Pre-Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo", 10 June 2008, ICC-01/05-01/08-14, para. 24. See also Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, "Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court", 2 November 2012, ICC-02/11-01/11-286-Red, paras. 43-49.

⁶⁴⁵ UN Commission on Human Rights ("Commission on [TEXT MISSING] Rights"). According to Manfred Nowak, it was Saudi Arabia's objection to the fact that Special Rapporteur on Torture Mr Nigel S. Rodley had taken up the question of corporal punishment which prompted the Commission to adopt Resolution 1997/38, which "[r]eminds Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture". See UN, Commission on Human Rights, 11 April 1997; Resolution 2000/43, 20 April 2000, E/CN.4/RES/2000/43, para. 3. See also M. Nowak, p. 681, footnote 25.

bodies, such as the Human Rights Committee⁶⁴⁶ and the Committee against Torture⁶⁴⁷ – or in the relevant body of regional decisions of institutions, such as the African Commission on Human and Peoples’ Rights (“African Commission”),⁶⁴⁸ the Inter-American Court of Human Rights (“Inter-American Court”)⁶⁴⁹ or the ECtHR,⁶⁵⁰

⁶⁴⁶ See Human Rights Committee, General comment no. 20 - Article 7, HRI/GEN/1/Rev.9 (Vol. I), 10 March 1992, para. 5; General comment no. 7 – Article 7, 27 July 1982, para. 2; Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee: Yemen, eighty-fourth session, 9 August 2005, CCPR/CO/84/YEM, para. 16; Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee: Trinidad and Tobago, seventieth session, 10 November 2000, CCPR/CO/70/TTO, para. 13; *Errol Pryce v. Jamaica*, “Views”, 15 March 2004, communication no. 793/1998, para. 6.2; *Malcolm Higginson v. Jamaica*, “Views”, 28 March 2002, communication no. 792/1998, para. 6; *George Osbourne v. Jamaica*, “Views”, 15 March 2000, communication no. 759/1997, see in particular art. 9.1; *Boodlal Sooklal v. Trinidad and Tobago*, “Views”, 25 October 2001, communication no. 928/2000, para. 4.6; *Patterson Matthews v. Trinidad and Tobago*, “Views”, 31 March 1998, communication no. 569/1993.

⁶⁴⁷ Committee Against Torture, Concluding observations on Saudi Arabia, 12 June 2002, CAT/C/CR/28/5, para. 8(b), para. 4(b) (“The sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention”); Annual Report – 1993, 24 June 1993, CAT/A/48/44; Report of the Committee against Torture, fifty-second session, 1997, A/52/44 Supp. 44, p. 39, para. 250; Consideration of Reports Submitted by States Parties under Article 19 of the Convention, 26 November 2001, CAT/C/SR.494, para. 34. See also Karapetyan p. 149. The Chamber notes that the Committee against Torture has, on a number of occasions, concluded that certain forms of corporal punishment are incompatible with the Convention against Torture, without specifying whether the States concerned had violated article 1 or 14 of the Convention. It has nonetheless made clear that, as regards floggings, it is the intent of the perpetrator of the crime which differentiates between the two legal classifications. See Committee Against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, thirty-first session, 27 November 2003, CAT/C.SR.583, para. 10. See also C. E. Faria Coracini, “The Lawful Sanctions Clause in the State Reporting Procedure Before the Committee Against Torture”, *Netherlands Quarterly of Human Rights*, vol. 24/2 (2006), p. 316.

⁶⁴⁸ African Commission, *Doebbler v. Sudan*, thirty-third session, 15-29 May 2003, communication no. 236/2000, paras. 29-44.

⁶⁴⁹ See Inter-American Court, *Winston Caesar v. Trinidad and Tobago*, “Judgment of 11 March, 2005”, series C, no. 123, paras. 49(27) and 49(28).

⁶⁵⁰ See ECtHR, *Tyrer v. The United Kingdom*, “Judgment”, 25 April 1978, application no. 5856/72, (*Tyrer v. The United Kingdom* Judgment) paras. 31-33.

corporal punishment has been condemned in absolute terms⁶⁵¹ or condemned when it has reached a certain degree of severity.⁶⁵²

246. Likewise, the Chamber is alert to the fact that article 2 of the Inter-American Convention to Prevent and Punish Torture lays down that “[t]he concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, *provided that they do not include the performance of the acts or use of the methods referred to in this article*”,⁶⁵³ thereby excluding certain types of corporal punishment from the definition of lawful sanctions.⁶⁵⁴

247. Moreover, the clause does not appear in the definition of “other inhumane acts” at article 7 of the Statute: those acts causing suffering of such severity as to qualify as torture but which would be excluded from the definition thereof where the suffering

⁶⁵¹ In its decision in *Doebbler v. Sudan*, the African Commission was of the view that “[t]here is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the Charter and contrary to the very nature of this human rights treaty.” See African Commission, *Doebbler v. Sudan*, thirty-third session, 15-29 May 2003, communication no. 236/2000, para. 42. In the judgment in *Winston Caesar v. Trinidad and Tobago*, the Inter-American Court held that, by its *very nature* (“*la naturaleza misma*”) corporal punishment “reflects an institutionalization of violence, which, although permitted by the law, ordered by the State’s judges and carried out by its prison authorities, is a sanction incompatible with the Convention. As such, corporal punishment by flogging constitutes a form of torture.” See Inter-American Court, *Winston Caesar v. Trinidad and Tobago*, “Judgment of March, 11 2005”, series C, no. 123, para. 73.

⁶⁵² It is worth noting that the ECtHR has held that not all corporal punishment is prohibited as such: to be prohibited, it must reach a certain degree of severity that is assessed by the Court on a case-by-case basis. See, e.g., ECtHR, *Campbell and Cosans v. The United Kingdom*, “Judgment”, 25 February 1982, application nos. 7511/76 and 7743/76. See also *Karapetyan*, p. 144 referring to *Dedovskiy and Others v. Russia*, “Judgment”, 15 May 2008, application no. 7178/03, paras. 80-86; *Archip v. Romania*, “Judgment”, 27 September 2011, application no. 49608/08; *Thuo v. Cyprus*, “Judgment”, 4 April 2017, application no. 3869/07, paras. 141-149.

⁶⁵³ Inter-American Convention to Prevent and Punish Torture, 10 December 1984, United Nations Treaty Series, vol. 1465, no. 24841, emphasis added.

⁶⁵⁴ The terms “methods referred to in this article” are a reference to the first part of article 2 which provides: “For the purposes of this Convention, torture shall be understood to be *any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person* for purposes of criminal investigation, as a means of intimidation, *as personal punishment*, as a preventive measure, *as a penalty*, or for any other purpose”, [Emphasis added]. See for this point, K. Bennoune, pp. 112-113.

caused results from “lawful sanctions” therefore would come within this other category of inhumane acts and so would necessarily be punishable under the Statute. As pointed out by Mr Rodley, who applies a similar reasoning in relation to the Convention against Torture,⁶⁵⁵ it would be contradictory for the same treaty to classify and proscribe a given act as inhuman treatment, and, at the same time, to classify said act as a form of “authorized torture” because, according to the provisions governing this crime, it satisfies the definition of “lawful sanctions”.

248. Accordingly, the Chamber considers that corporal punishment which satisfies all the elements of the crime of torture as it is defined by article 7 of the Statute, including the severe degree of suffering, does not qualify as a “lawful sanction”. In the case *sub judice*, such “corporal punishment” includes the acts of flogging and amputation.

249. To otherwise interpret the “legal sanctions” clause at article 7(2)(e) of the Statute would be tantamount to saying that it “would suffice” to promulgate beforehand a law “legalizing” acts prohibited by international human rights law and constituting acts of torture in a crime against humanity context, in order to evade prosecution and to avoid incurring individual responsibility for the acts. Such interpretation would make the prohibition of acts that may qualify as torture under the Statute purely perfunctory and artificial and would render article 7(1)(f) of the Statute nugatory.

250. That being so, it is unnecessary to enter into the discussion raised by the Prosecutor on the issue of as to whether, notwithstanding the fact that the armed groups which took control of Timbuktu were not a State entity, they may nonetheless be considered, within the legal framework laid down by article 7 of the Statute, as

⁶⁵⁵ Report by N. Rodley, para. 8. See also N. S. Rodley, “Integrity of the Person” in Moeckli *et al.*, *International Human Rights Law* (Oxford University Press, 2014), p. 182.

capable of imposing “lawful sanctions”.⁶⁵⁶ On the present analysis, the Chamber also sees no “ambiguity”, in the sense of article 22 of the Statute, in the term “lawful sanctions” which appears at article 7(2)(e) of the Statute.

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

251. The Chamber refers to the definition of the crime of other inhumane acts as set out in article 7(1)(k) of the Statute and in the Elements of Crimes.

252. The “other inhumane acts” category captures conduct which, although of a similar nature and gravity,⁶⁵⁷ does not, however, come within the scope of the other provisions of article 7(1) of the Statute.⁶⁵⁸ It forms a residual category within article 7(1) of the Statute.⁶⁵⁹ The Pre-Trial Chambers have taken the view that the category is intended for “serious violations of international customary law and the basic rights pertaining to human beings, drawn from the norms of international human rights law, which are of a similar nature and gravity to the acts referred to in article 7(1) of the Statute”⁶⁶⁰ but that “this residual category of crimes against humanity must be interpreted conservatively and must not be used to expand uncritically the scope of crimes against humanity.”⁶⁶¹

253. The determination as to whether the above elements are met must be made case-by-case.⁶⁶² Whereas the suffering inflicted or the harm occasioned need not have long-term effects on the victim, the fact that it did may be relevant to the determination

⁶⁵⁶ See DCC, paras. 590-591.

⁶⁵⁷ See Elements of Crimes, Article 7(1)(k)(2) and footnote 30 which provides: “It is understood that ‘character’ refers to the nature and gravity of the act”.

⁶⁵⁸ *Muthaura et al.* Decision, para. 269; *Katanga and Ngudjolo* Decision, para. 452.

⁶⁵⁹ *Muthaura et al.* Decision, para. 269.

⁶⁶⁰ *Katanga and Ngudjolo* Decision, para. 448, footnote omitted.

⁶⁶¹ *Muthaura et al.* Decision para. 269.

⁶⁶² *Katanga and Ngudjolo* Decision, para. 449.

as to whether the act under consideration was similar to other acts listed at article 7(1) of the Statute.⁶⁶³

254. The Court has held the following to constitute inhumane acts: forcible circumcision and penile amputation,⁶⁶⁴ mental suffering caused by brutal killings and mutilations committed in front of family members,⁶⁶⁵ striking people with a machete and injuring protesters by mortar fire.⁶⁶⁶ International jurisprudence also appears to regard, *inter alia*, severe beatings,⁶⁶⁷ sniper fire into civilian areas,⁶⁶⁸ an acid attack on a teacher⁶⁶⁹ and detention in brutal and deplorable living conditions as other inhumane acts.⁶⁷⁰

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

255. The Chamber refers to the definition of the crime of cruel treatment as set out in article 8(2)(c)(i) of the Statute and in the Elements of Crimes.⁶⁷¹ An assessment of the allegations of cruel treatment must have regard to the particularities of each case⁶⁷² and must afford consideration to the nature of the acts or omission, the context in which they occurred, their duration or repetition, their physical and mental effects on

⁶⁶³ Similarly, see ECCC, *Duch* Trial Judgment, para. 369.

⁶⁶⁴ *Muthaura et al.* Decision, para. 270.

⁶⁶⁵ *Muthaura et al.* Decision, paras. 277 and 280.

⁶⁶⁶ Pre-Trial Chamber III, *The Prosecutor v. Laurent Gbagbo*, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, dated 30 November 2011, French version registered on 18 January 2012, ICC-02/11-01/11-9-Red, para. 61.

⁶⁶⁷ ICTY, *Prosecutor v. Blagoje Simić, Miroslav Tadić, Simo Zarić*, “Judgement”, 17 October 2003, IT-95-9-T (“*Simić et al.* Trial Judgment”), para. 78; *Tadić* Trial Judgment, paras. 719, 730, 737, 744.

⁶⁶⁸ See ICTY, *Prosecutor v. Stanislav Galić*, “Judgement” 30 November 2006, IT-98-29-A, (“*Galić* Appeal Judgment”), para. 158.

⁶⁶⁹ See ECtHR, *Ebcin v. Turkey*, “Judgment”, 1 February 2011, application no. 19506/05, paras. 52 and 62.

⁶⁷⁰ See ECCC, *Duch* Trial Judgment, paras. 260-272, 372 (overcrowded cells, lack of adequate food and lack of hygiene and medical care).

⁶⁷¹ See Elements of Crimes, article 8(2)(c)(i)(3).

⁶⁷² See ICTY, *Tadić* Trial Judgment, para. 724.

the victim and the particulars of the victim, such as age, sex and state of health.⁶⁷³ It need not be proved that the harm caused is permanent or irremediable, but its effects on the victim must be more than short term or temporary.⁶⁷⁴

256. The Chamber notes that, according to the Elements of Crimes, the degree of pain or suffering caused by cruel treatment is “severe”⁶⁷⁵ and is framed in identical terms to those used for the war crimes of torture⁶⁷⁶ and “inhuman treatment” (article 8(2)(a)(ii) of the Statute).⁶⁷⁷

257. A survey of the *travaux préparatoires* of the Elements of Crimes shows that, in terms of content, the constituent elements of “cruel treatment” and “inhuman treatment” as war crimes, including the degree of suffering, have been considered identical.⁶⁷⁸ This reading aligns with ICTY authority on the subject.⁶⁷⁹ That said, the

⁶⁷³ See ICTY, *Prosecutor v. Naser Orić*, “Judgment”, 30 June 2006, IT-03-68-T (“Orić Trial Judgment”), para. 352; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, “Judgment”, 17 January 2005, IT-02-60-T (“Blagojević and Jokić Trial Judgment”), para. 586; *Krnojelac* Trial Judgment, para. 131.

⁶⁷⁴ See ICTY, *Blagojević and Jokić* Trial Judgment, para. 586; *Krnojelac* Trial Judgment, paras. 131 and 144.

⁶⁷⁵ See Elements of Crimes, Article 8(2)(c)(i)(3), para. 1 (“*L’auteur a infligé à une ou plusieurs personnes une douleur ou des souffrances aiguës, physiques ou mentales*”; “The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.”) [Emphasis added].

⁶⁷⁶ See Elements of Crimes, Article 7(1)(f) and Article 8(2)(c)(i)(4), para. 1 (“*L’auteur a infligé à une ou plusieurs personnes une douleur ou des souffrances aiguës, physiques ou mentales*”; “The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.”) [Emphasis added]. The Chamber sees a difference with the crime against humanity of “other inhumane acts”. See Elements of Crimes, Article 7(1)(k) of the Statute, para. 1 (“*L’auteur a, par un acte inhumain, infligé de grandes souffrances ou porté gravement atteinte à l’intégrité corporelle ou à la santé physique ou mentale de ses victimes*.”; “The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.”) [Emphasis added].

⁶⁷⁷ See Elements of Crimes, Article 8(2)(a)(ii)(2), para. 1 (“*L’auteur a infligé à une ou plusieurs personnes une douleur ou des souffrances aiguës, physiques ou mentales*.”; “The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.”) [Emphasis added].

⁶⁷⁸ Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge, 2003, p. 398; A. Zimmermann and R. Geif in Triffterer/Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (3rd ed. 2016), p. 551, para. 894.

⁶⁷⁹ ICTY, *Prosecutor v. Zdravko Mucić, Hazim Delić, Esad Landžo and Zejnil Delalić (Čelebići)*, “Judgment”, 20 February 2001, IT-96-21-A (“Čelebići Appeal Judgment”), para. 426 “the sole distinguishing element [between ‘inhuman treatment’ under Article 2 [of the Statute] and ‘cruel treatment’ under Article 3 [of the Statute] stems from the protected person requirement under Article 2.”); *Orić* Trial Judgment, para.

ICTY has consistently held that the degree of suffering pertaining to cruel treatment or inhuman treatment as crimes against humanity is *lower* than the degree of suffering required for the crime of torture.⁶⁸⁰

258. The Chamber also recalls its conclusion on the category of “other inhumane acts” as a crime against humanity and that it forms a residual category within article 7(1) of the Statute.⁶⁸¹

259. Applying the same reasoning, the Chamber considers that “cruel treatment” has a residual function and therefore constitutes a residual category within article 8 of the Statute – in the same way as the Court has considered “other inhumane acts” to be a residual category within article 7 of the Statute⁶⁸² – and that, despite the similarity in wording (“severe” suffering), the degree of suffering required by the crime of “cruel treatment” is, by the same token, lower than that required for the crime of torture.⁶⁸³

260. International jurisprudence would also appear to regard, *inter alia*, the following acts, be they committed separately or in conjunction with other acts, as cruel treatment: threats of physical violence towards the victim or members of the victim’s

350 referring to *Simić et al.* Trial Judgment, para. 74 and *Krnojelac* Trial Judgment, para. 130. See also *Čelebići* Trial Judgment, para. 551.

⁶⁸⁰ ICTY, *Kvočka et al.* Trial Judgment, para. 161; *Čelebići* Trial Judgment, para. 552; *Prosecutor v. Mladen Naletilić and Vinko Martinović*, “Judgement”, 31 March 2003, IT-98-34, para. 246 “The jurisprudence of the Tribunal shows that the offences of inhuman treatment and cruel treatment are residual clauses under Articles 2 and 3 of the Statute respectively. Materially, the elements of these offences are the same. [...] The degree of physical or mental suffering required to prove either one of those offences is lower than the one required for torture, though at the same level as the one required to prove a charge of ‘wilfully causing great suffering or serious injury to body or health.’”) See also Inter-American Court, *Winston Caesar v. Trinidad and Tobago*, “Judgment of March, 11 2005”, series C, no. 123, para. 50.

⁶⁸¹ *Muthaura et al.* Decision, para. 269.

⁶⁸² *Muthaura et al.* Decision, para. 269.

⁶⁸³ See ICTY, *Čelebići* Trial Judgment, para. 542 “[cruel treatment] deliberately causes serious mental and physical suffering that falls short of the severe mental and physical suffering required for the offence of torture”) and references therein, above, footnote 680.

family;⁶⁸⁴ repeated blows, and beatings;⁶⁸⁵ being forced to dig trenches;⁶⁸⁶ deliberate deprivation of water and food;⁶⁸⁷ and lack of medical treatment.⁶⁸⁸

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

261. The Chamber refers to the definition of the crime of outrages upon personal dignity as set out in article 8(2)(c)(ii) of the Statute and in the Elements of Crimes.

262. The ascertainment as to whether the “severity” of the humiliation, degradation or violation was of such degree as to be “generally recognized” as an outrage upon personal dignity must be the outcome of an objective assessment, made case-by-case.⁶⁸⁹ This “objective component to the *actus reus*” was defined by the ICTY in

⁶⁸⁴ ECtHR, *D.F. v. Latvia*, “Judgment”, 29 October 2013, application no. 11160/07, para. 85; *Gäfgen v. Germany*, “Judgment”, 1 June 2010, application no. 22978/05, para. 91; Inter-American Court of Human Rights, *Maritz Urrutia v. Guatemala*, “Judgment of November 27, 2003”, paras. 58.6, 85, 94; *Loayza-Tamayo v. Peru*, “Judgment of September 17, 1997”, para. 58; Human Rights Committee, *Estrella v. Uruguay*, “Views”, 29 March 1983, communication no. 74/1980, paras. 8.3, 10.

⁶⁸⁵ ICTY, *Orić Trial Judgment*, paras. 412-474; *Prosecutor v. Goran Jelisić*, “Judgment”, 14 December 1999, IT-95-10-T, paras. 42, 45; ECtHR, *Tomasi v. France*, “Judgment”, 27 August 1992, application no. 12850/87, paras. 108, 115.

⁶⁸⁶ ICTY, *Prosecutor v. Tihomir Blaškić*, “Judgment”, 3 March 2000, IT-95-14-T, para. 713 (“*Blaškić Trial Judgment*”).

⁶⁸⁷ ICTY, *Krnojelac Trial Judgment*, para. 183; *Čelebići Trial Judgment*, paras. 1007-1008; Human Rights Committee, *Rozik Ashurov and Olimzhon Ashurov v. Tajikistan*, “Views”, 20 March 2007, communication no. 1348/2005, paras. 2.2 and 6.2; *Essono Mika Miha v. Equatorial Guinea*, “Views”, 8 July 1994, communication no. 414/1990, paras. 2.4 and 6.4; Committee Against Torture, *Danilo Dimitrijević v. Serbia and Montenegro*, 16 November 2005, communication no. 172/2000, paras. 2.2, 7.1-7.2; African Commission, *Civil Liberties Organisation v. Nigeria*, 15 November 1999, communication no. 151/96, para. 27.

⁶⁸⁸ African Commission, *Civil Liberties Organisation / Nigeria*, 15 November 1999, communication no. 151/96, para. 27; Human Rights Committee, *Williams v. Jamaica*, “Views”, 4 November 1997, communication no. 609/1995, paras. 6.4, 6.5; *Essono Mika Miha v. Equatorial Guinea*, “Views”, 8 July 1994, communication no. 414/1990, paras. 2.4, 6.4.

⁶⁸⁹ See Special Court for Sierra Leone (SCSL), *Prosecutor Against Sesay, Kallon and Gbao*, “Judgement”, 2 March 2009, SCSL-04-15-T-1234 (“*Sesay et al. Trial Judgment*”), para. 176; ICTY, *Prosecutor v. Dragoljub Kunarac et al.*, “Judgement”, 22 February 2001, IT-96-23-T and IT-96-23/1-T (“*Kunarac et al. Trial Judgment*”), para. 504; *Prosecutor v. Zlatko Aleksovski*, “Judgement”, 25 June 1999, IT-95-14/1-T, (“*Aleksovski Trial Judgment*”), para. 56.

Aleksovski thus: “the humiliation to the victim must be so intense that the reasonable person would be outraged”.⁶⁹⁰ There is no requirement for the suffering or the harm to have long-term effects.⁶⁹¹ International jurisprudence has held the following to constitute outrages upon personal dignity: rape,⁶⁹² hanging naked female prisoners from handcuffs or forcing them to maintain a certain position for a long time,⁶⁹³ being forced to walk naked in public (in the street),⁶⁹⁴ the use of detainees as human shields or making them dig trenches,⁶⁹⁵ forcing detainees to relieve themselves in their clothing,⁶⁹⁶ and treating corpses with disrespect and mutilating them.⁶⁹⁷

(e) Mental element

263. The crimes of torture, other inhumane acts, cruel treatment and outrages upon personal dignity must have been committed intentionally within the meaning of article 30 of the Statute or the perpetrator must have been aware that the consequence would occur in the ordinary course of events. Furthermore, concerning the war crimes set out at article 8 of the Statute, and in accordance with article 30(3) of the Statute, the

⁶⁹⁰ See *Aleksovski* Trial Judgment, para. 56 where the Chamber sets out its reasoning: “The degree of suffering which the victim endures will obviously depend on his/her temperament. [...] In the prosecution of an accused for a criminal offence, the subjective element must be tempered by objective factors; otherwise, unfairness to the accused would result because his/her culpability would depend not on the gravity of the act but wholly on the sensitivity of the victim. Consequently, an objective component to the *actus reus* is apposite: the humiliation to the victim must be so intense that the reasonable person would be outraged.” See also *Kunarac et al.* Trial Judgment, para. 504.

⁶⁹¹ *Katanga and Ngudjolo* Decision, para. 369. See also SCSL, *Sesay et al.* Trial Judgment, para. 176; ICTY, *Kvočka et al.* Trial Judgment, para. 168; *Kunarac* Trial Judgment, paras. 501, 503.

⁶⁹² ICTR, *Prosecutor v. Bagosora et al.*, “Judgment”, 18 December 2008, ICTR-98-41-T, para. 2254; *Prosecutor v. Jean-Paul Akayesu*, “Judgment”, 2 September 1998, ICTR-96-4-T (“*Akayesu* Trial Judgment”), para. 688; SCSL, *Prosecutor Against Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu*, “Judgement”, 20 June 2007, SCSL-04-16-T (“*Brima et al.* Trial Judgment”), para. 718.

⁶⁹³ *Katanga and Ngudjolo* Decision, para. 370.

⁶⁹⁴ *Katanga and Ngudjolo* Decision, paras. 375-376. See also ICTR, *Akayesu* Trial Judgment, para. 688.

⁶⁹⁵ See ICTY, *Aleksovski* Trial Judgment, para. 229.

⁶⁹⁶ See ICTY, *Kvočka et al.* Trial Judgment, para. 173.

⁶⁹⁷ See ICTY, *Brdanin* Trial Judgment, para. 1019

perpetrator must have been aware of the factual circumstances that established the status of the victim.⁶⁹⁸

2. Analysis

(a) General remarks on the use of torture and flogging by the Islamic Police and the *Hisbah*

264. As noted above,⁶⁹⁹ the Islamic Court could order the application of *hudud* which, [REDACTED], entailed amputating the hand of the thief, killing the murderer or flogging in cases of “[TRANSLATION] adultery” or consumption of alcohol. These punishments were allegedly inflicted in public to “[TRANSLATION] instil fear” or “[TRANSLATION] teach a lesson”.⁷⁰⁰ The Islamic Police, the *Hisbah* and the Security Battalion saw to it that the punishment was carried out or were on hand to secure the site.⁷⁰¹

265. *Ta’zir* were lesser penalties that the Islamic Police or the *Hisbah* had the discretion to administer on the spot, independently of the Islamic Court, in the street, for instance, if they noticed the rules being violated⁷⁰² or if a person lied while giving a statement to the Islamic Police.⁷⁰³ From the evidence it is apparent that *ta’zir* – whether in the form of flogging (10-40 lashes of the whip), several days’ imprisonment

⁶⁹⁸ See element 3 of the Elements of Crimes for article 8(2)(c)(i)-3 and element 4 of the Elements of Crimes for articles 8(2)(c)(i)-4 and 8(2)(c)(ii) of the Statute.

⁶⁹⁹ See, above, paras. 115-122.

⁷⁰⁰ [REDACTED]

⁷⁰¹ Statement of P-0398, [MLI-OTP-0051-045Z](#), p. 0472, [MLI-OTP-0051-106Z](#), p. 1095. See also the facts found below concerning the cases of public flogging of P-0565 and P-0557 (see, below, paras. 272-277), the [REDACTED] men flogged on or about [REDACTED] (see, below, paras. 278-280), [REDACTED] flogged on or about [REDACTED] (see, below, paras. 305-309), [REDACTED] (see, below, paras. 316-320) and [REDACTED] (see, below, paras. 321-324).

⁷⁰² [REDACTED]

⁷⁰³ [REDACTED]

or a fine – were very commonly employed as a method of punishing members of the civilian population who were in breach of the new rules.⁷⁰⁴

266. The Chamber nonetheless notes [REDACTED]
[REDACTED]
[REDACTED],⁷⁰⁵ [REDACTED]⁷⁰⁶ [REDACTED]
[REDACTED]⁷⁰⁷ [REDACTED] torture a suspect.⁷⁰⁸ This technique was used when others, such as advising the person to confess, telling the person that his or her sins would be absolved by confessing,⁷⁰⁹ or making threats, had failed.⁷¹⁰ It was especially employed where the suspect was implicated in a case of theft, so that property would be returned,⁷¹¹ or in a case of “[TRANSLATION] adultery”,⁷¹² probably because in such cases, it was more difficult to find the four male witnesses required for sentencing in the absence of a confession.⁷¹³ A person who did not confess under “[TRANSLATION] torture” had to be released.⁷¹⁴ According to [REDACTED] the Islamic Police did not use “[TRANSLATION] torture” to obtain confessions but rather as a deterrent to reoffending or so that the person would stop

⁷⁰⁴ See, above, para. 132. [REDACTED]; [REDACTED] L’Express, media report, “Mali : Tombouctou dans l’enfer du djihad”, 12 December 2012, [MLI-OTP-0001-4887](#), p. 4890. [REDACTED] stated that there had been many cases of flogging in Timbuktu (it is not known whether [REDACTED] was referring to flogging as a result of judgments by the court). See [REDACTED].

⁷⁰⁵ [REDACTED]; [REDACTED].

⁷⁰⁶ [REDACTED].

⁷⁰⁷ [REDACTED].

⁷⁰⁸ Statement of P-0398, [MLI-OTP-0060-1662](#), p. 1674.

⁷⁰⁹ [REDACTED].

⁷¹⁰ Statement of P-0398, [MLI-OTP-0060-1662](#), pp. 1671-1672.

⁷¹¹ Statement of P-0398, [MLI-OTP-0060-1662](#), pp. 1670-1671.

⁷¹² Statement of P-0398, [MLI-OTP-0060-1662](#), pp. 1670-1671. See also, above, footnote 207.

⁷¹³ [REDACTED].

⁷¹⁴ Statement of P-0398, [MLI-OTP-0060-1662](#), p. 1672.

his or her reprehensible activities.⁷¹⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁷¹⁶

267. The Chamber is therefore satisfied, to the standard required, that the Islamic Police used torture during interrogations, including for the purpose of extracting confessions from suspects, taking into account:⁷¹⁷ (i) the facts found below concerning [REDACTED]⁷¹⁸ and P-0580,⁷¹⁹ on whom, the Chamber has determined, torture was used as an interrogation method; (ii) an official document, a police report, stating that a suspect was tortured to no avail;⁷²⁰ and (iii) [REDACTED]'s statements on the subject which are summarized in the paragraph above.

⁷¹⁵ [REDACTED]

⁷¹⁶ [REDACTED].

⁷¹⁷ For the use of torture by the Islamic Police in interrogations, the Chamber has disregarded, for want of probative value or on account of its nature, the following evidence. DCC, para. 532, footnote 1305 referring to an Islamic Court Judgment against [REDACTED], [MLI-OTP-0055-0229](#), translation, [MLI-OTP-0054-0331](#) (because the judgment set a limit to the means of pressure employed, “[TRANSLATION] within the limits of what is humanely tolerable”, that judgment cannot be held against the suspect as establishing the use of torture). See DCC, para. 531, footnote 1304 referring to [REDACTED], [MLI-OTP-0001-7367](#), [MLI-OTP-0001-7366](#), translation, [MLI-OTP-0069-1724](#), [MLI-OTP-0069-1722](#) (it is impossible to identify the authors of these documents or to ascertain whether they were used as a reference in any proceedings). See also the video referred to in this regard, Video, [MLI-OTP-0025-0010](#), 00:05:32:00 to 00:05:55:00, transcript, [MLI-OTP-0033-5244](#), translation, [MLI-OTP-0033-5488](#), p. 5492, lines 99-110.

⁷¹⁸ See, below, paras. 269-271.

⁷¹⁹ See, below, paras. 285-300.

⁷²⁰ [REDACTED].

(b) Case-by-case analysis

268. In this section the Chamber will, taking each case separately, first make findings as to the facts alleged by the Prosecutor and then perform an overall analysis of the facts against the other constituent elements of the crimes.

i. Case [REDACTED]⁷²¹

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

270. On or about [REDACTED] 2012, [REDACTED] was arrested in Timbuktu by the Islamic Police while [REDACTED].⁷²² He was tortured by members of the Islamic Police⁷²³ so that he would reveal [REDACTED]⁷²⁴ and then sentenced for those acts by the Islamic Court on [REDACTED] 2012 to, *inter alia*, [REDACTED] lashes of the whip.⁷²⁵ The evidence also shows that Mr Al Hassan signed the police report, [REDACTED],⁷²⁶ and that he therefore took part in the investigation process, at the very least by writing that report.

⁷²¹ See DCC, paras. 449, 562, 592-593; Defence Written Submissions, paras. 41, 274; Transcript of Hearing of 9 July 2019 (Prosecutor), ICC-01/12-01/18-T-004-FRA, pp. 75-76; Defence Final Written Submissions, paras. 125-126, 138-139.

⁷²² Islamic Police report, [REDACTED]; Islamic Court Judgment, [REDACTED].

⁷²³ [REDACTED]; [REDACTED]; [REDACTED]; Statement of P-0380, [REDACTED].

⁷²⁴ Statement of P-0398, [MLI-OTP-0060-1662](#), pp. 1679-1680.

⁷²⁵ Islamic Court Judgment, [REDACTED], [REDACTED].

⁷²⁶ The Chamber notes that the graphology report does not confirm that the signature on this document belonged to Mr Al Hassan (Graphology report [MLI-OTP-0064-0175](#), p. 0302) but that [REDACTED].

271. The Chamber considers those facts to constitute crimes of torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute), other inhumane acts (article 7(1)(k) of the Statute), cruel treatment (article 8(2)(c)(i) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁷²⁷

ii. Case of P-0565 and P-0557⁷²⁸

272. The Chamber finds the following facts to be established to the standard required, on the basis of the evidence, the submissions of the parties, the observations of the participants and the particularly detailed and consistent nature of the statements given by P-0557 and P-0565 – the two witnesses and direct victims, whose identities have been disclosed to the Defence.

273. In or about [REDACTED]⁷²⁹ in Timbuktu, P-0557 was arrested in the street by members of the “[TRANSLATION] Ansar Dine police”, including Adama and [REDACTED] [REDACTED] and then held at the BMS for [REDACTED].⁷³⁰ P-0565, [REDACTED] was also taken to the BMS [REDACTED]; at the time she was held in a small room in which she had to relieve herself on the floor.⁷³¹ P-0557 was detained for [REDACTED]

⁷²⁷ For the findings as to the facts concerning the other elements of crimes, including facts concerning the contextual elements, see, below, paras. 339-349.

⁷²⁸ See DCC, paras. 536-546, 578, 592-593, 601-603, 617, 621, 623-624, 628, 631, 634, 1001, 1037, 1047-1050, 1058. See also paras. 436, 456-458, 927. Transcript of Hearing of 9 July 2019 (Prosecutor), ICC-01/12-01/18-T-004-FRA, p. 33, lines 5-9, pp. 72-74. Prosecutor’s Final Written Submissions, paras. 21, 33. Defence Final Written Submissions, paras. 116-118.

⁷²⁹ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8883, para. 16. [REDACTED] [REDACTED] The Chamber notes that the evidence is contradictory as to the date of this flogging. P-0565 estimates that it took place [REDACTED] but [REDACTED] places the flogging in [REDACTED] and [REDACTED]. See [REDACTED]. The Prosecutor also proposed [REDACTED] in her oral submissions but did not specify which piece of evidence allowed that date to be relied on. Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-0004-CONF-FRA, p. 72, line 10.

⁷³⁰ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), pp. 8849-8852, paras. 21-41.

⁷³¹ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), pp. 8883-8886, paras. 16-29.

days during which time he was not given anything to eat.⁷³² Judge Houka Houka sentenced P-0557 to [REDACTED] lashes of the whip for [REDACTED]

[REDACTED].⁷³³ P-0565 also [REDACTED] before a judge [REDACTED]

the judge ordered that “[TRANSLATION] sharia be applied” and that [REDACTED] be flogged [REDACTED]

[REDACTED].⁷³⁴ [REDACTED]

[REDACTED].⁷³⁵

274. [REDACTED].⁷³⁶ [REDACTED]

[REDACTED].⁷³⁷ [REDACTED]

[REDACTED].⁷³⁸ [REDACTED] flogged [REDACTED]

[REDACTED].⁷³⁹ [REDACTED]

⁷³² Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8851, para. 38.

⁷³³ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), pp. 8853-8854, para. 42.

⁷³⁴ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8886, paras. 33-40.

⁷³⁵ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8887, para. 41.

⁷³⁶ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), pp. 8887-8888; Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8853, para. 47.

⁷³⁷ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8854, para. 52.

⁷³⁸ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8889, para. 51; Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8857, para. 64.

⁷³⁹ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8854, paras. 48-50; Statement of P-0565, [MLI-OTP-0046-8881-R01](#), pp. 8888-8889, paras. 46-50. [REDACTED]

whip,⁷⁵⁵ [REDACTED].⁷⁵⁶ [REDACTED]
⁷⁵⁷ [REDACTED] Mr Al Hassan
 himself first began flogging the [REDACTED] men⁷⁵⁸ with Abou Dhar following suit, [REDACTED]
⁷⁵⁹ [REDACTED] at least [REDACTED] lashes
 of the whip to the victim [REDACTED]⁷⁶⁰ and then [REDACTED] lashes to the victim [REDACTED]
⁷⁶¹ [REDACTED]
⁷⁶² [REDACTED]
⁷⁶³ [REDACTED]
⁷⁶⁴ [REDACTED]
 [REDACTED] the flogging was decided by the Islamic Court⁷⁶⁵ and that either the emir of

⁷⁵⁵ [MLI-OTP-0033-4224](#). The Prosecutor alleges that the two victims received [REDACTED] lashes of the whip each;
 the Chamber considers that they actually received [REDACTED] lashes each. [REDACTED]

⁷⁵⁶ [REDACTED]
 [REDACTED]
 [REDACTED]

⁷⁵⁷ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

⁷⁵⁸ [REDACTED]
 [REDACTED]
 [REDACTED]

⁷⁵⁹ [REDACTED].

⁷⁶⁰ [REDACTED]

⁷⁶¹ [REDACTED]

⁷⁶² [REDACTED]

⁷⁶³ [REDACTED].

⁷⁶⁴ [REDACTED] [REDACTED]

⁷⁶⁵ [REDACTED]. See also Defence Final Written Submissions, para.

the police or, if he was absent, Abou Dhar, gave the order to execute the flogging and designated those who were to carry it out.⁷⁶⁶

280. The Chamber considers that those facts, the Defence's arguments notwithstanding,⁷⁶⁷ constitute crimes of torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute), other inhumane acts (article 7(1)(k) of the Statute), cruel treatment (article 8(2)(c)(i) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁷⁶⁸

iv. Case of P-0574⁷⁶⁹

281. The Chamber finds the following facts to be established to the standard required, on the basis of the evidence, the submissions of the parties, the observations of the participants and, specifically, the particularly detailed nature of P-0574's statement.

282. In about [REDACTED]⁷⁷⁰ in Timbuktu, P-0574 was arrested at her home by Mohamed Moussa and [REDACTED] men in khaki clothing and blue tops, [REDACTED] [REDACTED], for wearing a veil that was too sheer.⁷⁷¹ They reminded her that they had already given her a "[TRANSLATION] warning".⁷⁷² P-0574 does recall that

⁷⁶⁶ [REDACTED].

⁷⁶⁷ [REDACTED]
[REDACTED]
[REDACTED]

⁷⁶⁸ For the findings as to the facts concerning the other elements of crimes, including facts concerning the contextual elements, see, below, paras. 339-349.

⁷⁶⁹ DCC, paras. 574, 581, 592-593, 604, 621, 623, 628, 631, 634, 1056. See also paras. 471, 961, 964, 970, 1058, 1066. Defence Final Written Submissions, p. 51, paras. 150-152. For the fact the Prosecutor did not include the alleged acts of rape in the charges of torture, other inhumane acts, cruel treatment or outrages upon personal dignity, see Prosecutor's Final Written Submissions, para. 5. See also, below, VII. (E) Facts pertaining to count 13: persecution, paras. 676, 679, 681-682, 700.

⁷⁷⁰ Statement of P-0574, [MLI-OTP-0049-0098-R01](#), p. 0102, para. 21.

⁷⁷¹ Statement of P-0574, [MLI-OTP-0049-0098-R01](#), pp. 0102-0103, paras. 21-26.

⁷⁷² Statement of P-0574, [MLI-OTP-0049-0098-R01](#), p. 0103, para. 24.

284. The Chamber considers those facts to constitute crimes of torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute), other inhumane acts (article 7(1)(k) of the Statute), cruel treatment (article 8(2)(c)(i) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁷⁸⁴

v. Case of P-0580⁷⁸⁵

285. The Chamber notes that P-0580's account as a whole is particularly detailed and that the various statements he has given are generally consistent with each other.⁷⁸⁶ The few noteworthy discrepancies between P-0580's various statements concerning, for instance, the chronology of the events are not, in the Chamber's view, of a nature to cast doubt on the finding that the facts as described below are established to the standard required, primarily because his statements regarding some of the major events in his account are consistent with each other. Lastly, the Chamber does not accept the Defence argument that the events [REDACTED] are supported only by indirect "hearsay" because P-0580 was not present when they happened.⁷⁸⁷ Not only did P-0580 witness some of the events but also [REDACTED]. The Chamber therefore finds the following facts to be established to the standard required.

⁷⁸⁴ For the findings as to the facts concerning the other elements of crimes, including facts concerning the contextual elements, see, below, paras. 339-349.

⁷⁸⁵ DCC, paras. 210, 450-451, 563, 584, 589, 592-593, 610, 620, 623, 624, 628, 631, 634, 989, 1024, 1037, 1055, 1058. See also paras. 298, 425, 939. Defence Written Submissions, para. 275. Transcript of Hearing of 9 July 2019 (Prosecutor), ICC-01/12-01/18-T-004-FRA, pp. 65-66. Prosecutor's Written Final Submissions, paras. 23, 70. Defence Final Written Submissions, [REDACTED]

⁷⁸⁶ See, e.g., for the cell in which he was detained [REDACTED] Statement of P-0580, [MLI-OTP-0067-1806-R01](#), p. 1831, paras. 86-87.

⁷⁸⁷ [REDACTED]

286. In about [REDACTED] 2012,⁷⁸⁸ Mr Al Hassan⁷⁸⁹ – described by P-0580 as the “[TRANSLATION] chief of the police officers” who were at the BMS⁷⁹⁰ – accompanied by other people,⁷⁹¹ arrested P-0580 and [REDACTED] and other [REDACTED].⁷⁹² P-0580 [REDACTED] at the BMS,⁷⁹³ where Mr Al Hassan interrogated him the next day on [REDACTED] and also looked through his telephone. P-0580 said that [REDACTED] before the armed groups arrived in the city.⁷⁹⁴ Mr Al Hassan asked P-0580 [REDACTED] the BMS [REDACTED] [REDACTED] [REDACTED] Mohamed Moussa and [REDACTED] each administered 50 lashes to P-0580. The next day, P-0580 was [REDACTED] whipped another 50 times by [REDACTED].⁷⁹⁵ P-0580 lost consciousness at the fiftieth lash [REDACTED] [REDACTED] was then taken back to the BMS where he received another 50 lashes [REDACTED].⁷⁹⁶

⁷⁸⁸ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0029, para. 49.

⁷⁸⁹ As P-0580 has identified Mr Al Hassan, this (“Mr Al Hassan”) is how he will be referred to in the summary of the facts concerning P-0580, even though P-0580 calls him “Hassan”. See Statement of P-0580, [MLI-OTP-0067-1806-R01](#), p. 1848, for photograph MLI-OTP-0022-0482.

⁷⁹⁰ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0029, para. 51. The Chamber notes that P-0580 also states that it was Adama who was the “[TRANSLATION] superintendent at the time” of the Islamic Police. See Statement of P-0580, [MLI-OTP-0067-1806-R01](#), p. 1840, para. 113.

⁷⁹¹ The Chamber notes the Defence argument that it is not clear from P-0580’s statement that Mr Al Hassan arrested P-0580. On the contrary, the Chamber considers that the account makes clear the Mr Al Hassan’s central role in the arrest. See [MLI-OTP-0051-0018-R01](#), p. 0029, para. 52. See also Defence Final Written Submissions, [REDACTED]

⁷⁹² [MLI-OTP-0051-0018-R01](#), p. 0029, para. 52. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁷⁹³ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0029, para. 53.

⁷⁹⁴ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0030, para. 55.

⁷⁹⁵ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0030, para. 56.

⁷⁹⁶ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0030, para. 57; [MLI-OTP-0037-1580-R01](#), pp. 1580-1581.

287. [REDACTED]
 [REDACTED] with “[TRANSLATION] nothing on her head”, was stopped by Mohamed Moussa.⁷⁹⁷ She was then detained “[TRANSLATION] there where they locked up women” and treated violently, [REDACTED].⁷⁹⁸

288. P-0580 was subjected [REDACTED]
 [REDACTED].⁸⁰⁰ [REDACTED]
 [REDACTED] was then taken back to the BMS where [REDACTED] saw that [REDACTED]
 [REDACTED].⁸⁰¹

289. The next day P-0580 was taken to [REDACTED]
 [REDACTED] were present.⁸⁰²
 [REDACTED] that [REDACTED] lashes of the whip be administered to P-0580 [REDACTED]
 [REDACTED].⁸⁰³ Mohamed Moussa gave him 50 lashes and [REDACTED] continued until P-0580 fainted [REDACTED] before being brought back to the BMS.⁸⁰⁴ [REDACTED] and Mr Al Hassan, the “[TRANSLATION] police superintendent [*commissaire à la police*]”, then interrogated him

⁷⁹⁷ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), para. 54; [MLI-OTP-0037-1580-R01](#), pp. 1580-1581; [REDACTED]

⁷⁹⁸ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0031, para. 59. See also [MLI-OTP-0037-1580-R01](#), p. 1581; [MLI-OTP-0024-2814](#), p. 2835.

⁷⁹⁹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0031, para. 59; [MLI-OTP-0037-1580-R01](#), p. 1581.

⁸⁰⁰ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0031, para. 60; [MLI-OTP-0037-1580-R01](#), p. 1581; [MLI-OTP-0024-2814](#), p. 2835.

⁸⁰¹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0031, paras. 61-62. [REDACTED]

⁸⁰² Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0031-0032, para. 63.

⁸⁰³ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0031-0032, para. 63; [MLI-OTP-0067-1806-R01](#), p. 1842, para. 119.

⁸⁰⁴ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0031-0032, paras. 63-64; [MLI-OTP-0037-1580-R01](#), p. 1581. See also Photographs of the scars on P-0580’s body, see: [MLI-OTP-0051-0071](#), [MLI-OTP-0051-0072](#), [MLI-OTP-0051-0082](#).

again. [REDACTED]

[REDACTED]

[REDACTED].⁸⁰⁵

290. P-0580 [REDACTED] in detention at the BMS.⁸⁰⁶

Mr Al Hassan [REDACTED]

[REDACTED].⁸⁰⁷ [REDACTED]

[REDACTED]

[REDACTED].⁸⁰⁸ [REDACTED] took [REDACTED] back to the BMS and transferred [REDACTED] to Mr Al Hassan, telling him to do what he wanted with P-0580.

Mr Al Hassan, [REDACTED] police officers again threatened P-0580 with death and then released him that evening.⁸⁰⁹

291. P-0580 was arrested a second time, violently,⁸¹⁰ by [REDACTED]

Mr Al Hassan, [REDACTED]

[REDACTED]

[REDACTED].⁸¹¹ He was then taken [REDACTED]

[REDACTED] held for [REDACTED] days in [REDACTED] where he received [REDACTED]

lashes [REDACTED].⁸¹² [REDACTED] then took him "[TRANSLATION] to Hassan's at the BMS", where he was detained [REDACTED].⁸¹³

292. [REDACTED]

[REDACTED]

⁸⁰⁵ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0032, para. 64.

⁸⁰⁶ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0032, para. 65.

⁸⁰⁷ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0032-0033, paras. 66-69.

⁸⁰⁸ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0033, para. 69.

⁸⁰⁹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0033, para. 70.

⁸¹⁰ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0035, para. 76.

⁸¹¹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0035, para. 76.

⁸¹² Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0035, para. 78.

⁸¹³ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0036, para. 81.

[REDACTED]

[REDACTED]⁸¹⁴ Mohamed Moussa had been called to handle [REDACTED] case upon Mr Al Hassan's orders. [REDACTED] received [REDACTED] lashes of the whip [REDACTED] [REDACTED]⁸¹⁵ [REDACTED] to the BMS by Mr Al Hassan and Mohamed Moussa [REDACTED] [REDACTED] by Mr Al Hassan.⁸¹⁶ [REDACTED]⁸¹⁷ [REDACTED] [REDACTED]⁸¹⁸ [REDACTED]⁸¹⁹ [REDACTED] [REDACTED]⁸²⁰ [REDACTED]

293. P-0580 was arrested a [REDACTED] and taken to the BMS, [REDACTED]⁸²¹ [REDACTED] [REDACTED]⁸²² [REDACTED]

294. Mohamed Moussa arrested [REDACTED] [REDACTED] d.⁸²³ [REDACTED] [REDACTED] lashes [REDACTED]⁸²⁴ [REDACTED] lashes were administered to [REDACTED] [REDACTED] [REDACTED]⁸²⁵ [REDACTED]

⁸¹⁴ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0036-0037, para. 83.

⁸¹⁵ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0037, para. 84.

⁸¹⁶ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0037, paras. 85-86.

⁸¹⁷ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0037, para. 87.

⁸¹⁸ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0038, para. 91.

⁸¹⁹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0038, para. 91 (" [REDACTED] [REDACTED] I could no longer stand up [REDACTED] [REDACTED]").

⁸²⁰ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0038-0039, paras. 92-93.

⁸²¹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0039-0040, paras. 94-97.

⁸²² Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0041, para. 103.

⁸²³ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0041, paras. 103-106.

⁸²⁴ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0041, paras. 103-105.

⁸²⁵ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0041, paras. 104-105.

295. [REDACTED] P-0580 [REDACTED] was detained [REDACTED],⁸²⁶ during which time

Mr Al Hassan [REDACTED]

[REDACTED]

[REDACTED].⁸²⁷

[REDACTED]⁸²⁸ [REDACTED] to the Islamic Police at

the BMS where he placed [REDACTED] in a cell.⁸²⁹ [REDACTED]

[REDACTED]

[REDACTED].⁸³⁰ [REDACTED]

[REDACTED]

[REDACTED].⁸³¹ [REDACTED]

[REDACTED].⁸³²

296. [REDACTED]

[REDACTED].⁸³³ [REDACTED]

[REDACTED]

[REDACTED] held for several days [REDACTED]

[REDACTED].⁸³⁴ [REDACTED]

[REDACTED] release, [REDACTED]

[REDACTED]

[REDACTED]

⁸²⁶ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0041, para. 106.

⁸²⁷ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0041-0042, para. 107.

⁸²⁸ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0041-0043, paras. 107-112.

⁸²⁹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0044, para. 114.

⁸³⁰ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0044, para. 117.

⁸³¹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0044, para. 118.

⁸³² Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0044-0045, para. 118.

⁸³³ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0045, para. 120, p. 0048, para. 133, p. 0060, para. 182; Statement of P-0580, [MLI-OTP-0067-1806-R01](#), pp. 1808-1830, paras. 11-82.

⁸³⁴ Statement of P-0580, [MLI-OTP-0067-1806-R01](#), pp. 1830-1831, paras. 83-86, pp. 1831-1835, paras. 88-101.

[REDACTED] 835 [REDACTED]

[REDACTED] 836 [REDACTED]

[REDACTED] 837 [REDACTED]

[REDACTED] 838 [REDACTED]

297. Over the course of his detentions, P-0580 also suffered from being deprived of food and water, and the unsanitary conditions.⁸³⁹ [REDACTED] and Mr Al Hassan [REDACTED] and, to that end and to make him confess, they employed various pressure tactics and threatened him several times, including with death.⁸⁴⁰

298. P-0580 says that it “[TRANSLATION] upsets” him to describe the suffering he endured and that, were it not for the Court, he “[TRANSLATION] would never revisit that”⁸⁴¹. The Chamber also notes that P-0580 identified Mr Al Hassan in one of the photographs that the Office of the Prosecutor investigators showed him.⁸⁴²

⁸³⁵ Statement of P-0580, [MLI-OTP-0067-1806-R01](#), pp. 1839-1840, paras. 110-111.

⁸³⁶ Statement of P-0580, [MLI-OTP-0067-1806-R01](#), pp. 1839-1840, para. 111.

⁸³⁷ Statement of P-0580, [MLI-OTP-0067-1806-R01](#), p. 1841, para. 114.

⁸³⁸ Statement of P-0580, [MLI-OTP-0067-1806-R01](#), p. 1843, para. 121.

⁸³⁹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0029, para. 53, p. 0032, para. 65, p. 0033, para. 70, p. 0035, para. 76, p. 0041, para. 106.

⁸⁴⁰ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0031, para. 61, pp. 0032-0033, paras. 66-70, p. 0035, para. 76, pp. 0036-0037, para. 83, p. 0040, para. 98, pp. 0040-0041, paras. 100-102, pp. 0041-0043, paras. 107-112; [MLI-OTP-0067-1806-R01](#), p. 1831, para. 86. [REDACTED]

⁸⁴¹ Statement of P-0580, [MLI-OTP-0067-1806-R01](#), p. 1847, para. 133.

⁸⁴² Statement of P-0580, [MLI-OTP-0067-1806-R01](#), p. 1848, regarding photograph no. MLI-OTP-0022-0482.

299. Given the nature and repetition of the acts to which P-0580 was subjected during his [REDACTED] detention – the repeated floggings, the death threats, [REDACTED] [REDACTED] – the Chamber considers that the degree of suffering during his detention was “severe”.

300. The Chamber considers those facts to constitute crimes of torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute), other inhumane acts (article 7(1)(k) of the Statute), cruel treatment (article 8(2)(c)(i) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁸⁴³

vi. Case of [REDACTED]⁸⁴⁴

301. [REDACTED] the two episodes of detention of [REDACTED] during which she was treated violently,⁸⁴⁵ and the flogging to which she (in the form of [REDACTED] lashes of the whip)⁸⁴⁶ and [REDACTED] (in the form of [REDACTED] lashes) were subjected.⁸⁴⁷

302. The fact that [REDACTED] was [REDACTED] years old⁸⁴⁸ at the material time is a vulnerability factor for consideration when assessing the degree of pain, particularly the mental pain, inflicted, and the traumatizing repercussions that the event may have later in her life, given that the psychological defence mechanisms developed [REDACTED]

⁸⁴³ For the findings as to the facts concerning the other elements of crimes, including facts concerning the contextual elements, see, below, paras. 339-349.

⁸⁴⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁸⁴⁵ [REDACTED]

⁸⁴⁶ [REDACTED]

⁸⁴⁷ [REDACTED]

⁸⁴⁸ [REDACTED]
[REDACTED]
[REDACTED]

vii. Case [REDACTED] flogged on or about [REDACTED] 2012

305. The Prosecutor submits that, on or about [REDACTED] 2012, [REDACTED] were flogged in public for acts of “[TRANSLATION] adultery”: [REDACTED]
[REDACTED],⁸⁵¹ [REDACTED],⁸⁵² [REDACTED]
[REDACTED].⁸⁵³

306. The Chamber finds the following facts also to be established on the basis of the evidence, its consistency, the submissions of the parties and the observations of the participants.

307. The Chamber considers that the Prosecutor has submitted sufficient evidence to establish, to the standard required, that Mr Al Hassan signed the Islamic Police report concerning [REDACTED].⁸⁵⁴
On [REDACTED] 2012, [REDACTED] were flogged [REDACTED], each receiving 100 lashes of the whip after having been sentenced by the Islamic Court [REDACTED].⁸⁵⁵ The Islamic Court

⁸⁵¹ DCC, paras. 550-552, 555, 583, 608, 631-636, 1052, 1058. See also paras. 435, 927, 1061. Transcript of Hearing of 9 July 2019 (Prosecutor), ICC-01/12-01/18-T-004-FRA, pp. 75-77. Defence Final Written Submissions, paras. [REDACTED].

⁸⁵² DCC, paras. 550-551, 553, 555, 583, 608, 631-636, 1052, 1058. See also paras. 435, 1061. Transcript of Hearing of 9 July 2019 (Prosecutor), ICC-01/12-01/18-T-004-FRA, pp. 75-77. Defence Final Written Submissions, paras. 123-124.

⁸⁵³ DCC, paras. 550-551, 554, 555, 583, 597, 608, 631-636, 1023, 1052, 1058. See also paras. 371, 464, 1061. Transcript of Hearing of 9 July 2019 (Prosecutor), ICC-01/12-01/18-T-004-FRA, pp. 75-77. Defence Final Written Submissions, [REDACTED].

⁸⁵⁴ Islamic Police report, [REDACTED], [REDACTED]; Statement of P-0398, [REDACTED]. The Chamber finds that Mr Al Hassan signed the report despite the Defence arguments on the subject, which, in the Chamber’s view, do not call into question [REDACTED]. See Defence Final Written Submissions, para. 125.

⁸⁵⁵ Statement of P-0398, [MLI-OTP-0051-0967](#), pp. 0971-0975, lines 128-255, pp. 0986-0990, lines 637-787;

██████████ were likewise punished with a flogging of 100 lashes after being sentenced by the Islamic Court ██████████ is established to the standard required, on the basis of the following factors combined: ██████████

██████████,⁸⁶⁰ ██████████
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██████████,⁸⁶¹ ██████████ corresponding judgments ██████████⁸⁶² ██████████

██████████
██████████⁸⁶³ and those judgments refer to punishments (100 lashes of the whip) and grounds for the sentence ██████████

██████████ The evidence submitted by the Prosecutor does not establish which body (the Islamic Police, the *Hisbah* or some other entity) physically carried out the floggings. Considering that the above facts are established, it is the Chamber’s view that it is possible to make a finding, to the standard required, that Mr Al Hassan was also present at the flogging

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⁸⁶² Islamic Court Judgment, ██████████ 2012, [MLI-OTP-0001-7430](#), translation, [MLI-OTP-0034-0122](#); Islamic Court Judgment, ██████████
[MLI-OTP-0001-7431](#), translation, [MLI-OTP-0034-0125](#).

⁸⁶³ ██████████

██████████ given the circumstances⁸⁶⁴ and ██████████ on how punishment in public took place.⁸⁶⁵

309. The Chamber considers those facts to constitute crimes of torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute), other inhumane acts (article 7(1)(k) of the Statute), cruel treatment (article 8(2)(c)(i) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁸⁶⁶

viii. Case of Dédéou Maiga⁸⁶⁷

310. The Chamber finds the following facts to be established to the standard required on the basis of the evidence, the submissions of the parties, the observations of the participants and the number of items of concordant evidence.

311. Dédéou Maiga was arrested by Mr Al Hassan and “Adam”, accused of stealing all the movable property from his neighbour’s house, in addition to a ton of rice.⁸⁶⁸ Initially, Dédéou Maiga spent one or two months in detention and then managed to escape.⁸⁶⁹ He was rearrested after members of the public reported him, on the promise

⁸⁶⁴ In the Chamber’s view, when a chamber considers evidence at the pre-trial stage of a case, it may draw conclusions on the basis of circumstantial evidence without following the practice of the Court pertaining to evidentiary matters at the trial stage, whereby such conclusion must be the only reasonable conclusion that can be inferred from the facts or the evidence. See *Ntaganda* Trial Judgment, para. 70.

⁸⁶⁵ ██████████.

⁸⁶⁶ For the findings as to the facts concerning the other elements of crimes, including facts concerning the contextual elements, see, below, paras. 339-349.

⁸⁶⁷ DCC, paras. 235, 547-549, 605-607, 623, 628, 631, 634, 1051, 1058. See also paras. 259, 431, 435, 985. Transcript of Hearing of 9 July 2019 (Prosecutor), ICC-01/12-01/18-T-004-FRA, pp. 81-83. Prosecutor’s Final Written Submissions, paras. 34-36.

⁸⁶⁸ ██████████. The Chamber finds that Mr Al Hassan made the arrest despite the arguments of the Defence on the subject, which, in the Chamber’s view, do not call into question the statements made by Mr Al Hassan himself, who clearly says that he made the arrest. See Defence Final Written Submissions, paras. 119-120.

⁸⁶⁹ Statement of P-0398, [MLI-OTP-0051-0658](#), p. 0678.

of a reward from “[TRANSLATION] the emirate”.⁸⁷⁰ He spent several months in detention.⁸⁷¹ On 12 September 2012 the Islamic Court sentenced him to have his hand amputated.⁸⁷² The decision was implemented in September⁸⁷³ or in October⁸⁷⁴ near Hotel Azalai.⁸⁷⁵ Dédéou Maiga, who was in detention, was informed of the amputation on the day itself.⁸⁷⁶ The amputation was announced in public and the townspeople were asked to attend.⁸⁷⁷ Dédéou Maiga was tied down to a chair⁸⁷⁸ with his feet chained⁸⁷⁹ and he was most probably drugged or anaesthetized.⁸⁸⁰ Onlookers were prohibited from taking photographs.⁸⁸¹ A doctor was present.⁸⁸² Dédéou Maiga’s right hand was amputated by “Yazid”⁸⁸³ or “Firoun”⁸⁸⁴ with a *coupe-coupe* (machete); the

870 [REDACTED]

871 Statement of P-0398, [MLI-OTP-0051-0658](#), p. 0678; Written record of interview of Dédéou Maiga, [MLI-OTP-0032-0320-R01](#), p. 0322.

872 Islamic Court Judgment, [REDACTED] [MLI-OTP-0002-0051](#), translation, [MLI-OTP-0039-0893](#).

873 [REDACTED]

874 L’Express, media report, “Mali : Tombouctou dans l’enfer du djihad”, 12 December 2012, [MLI-OTP-0001-4887](#), p. 4889; Maliactu.net, online media report, “Mali : « ils lui ont scié la main avec un coupe-coupe », raconte un médecin”, 1 February 2013, MLI-OTP-0028-0817 (“MLI-OTP-0028-0817”).

875 Statement of P-0398, [MLI-OTP-0051-0658](#), p. 0680; [REDACTED]

876 Written record of interview of Dédéou Maiga, [MLI-OTP-0032-0320-R01](#), p. 0322; [REDACTED]

877 Written record of interview of Dédéou Maiga, [MLI-OTP-0032-0320-R01](#), p. 0322; [REDACTED]

878 BBC, Audio report, “Mali: I witnessed Sharia amputation”, 28 February 2013, [MLI-OTP-0028-0831](#) (“[MLI-OTP-0028-0831](#)”), 00:03:33:00 to 00:06:27:00.

879 [REDACTED]

880 Written record of interview of Dédéou Maiga, [MLI-OTP-0032-0320-R01](#), p. 0322; France 2, “Envoyé Spécial”, video report, MLI-OTP-0042-0157 (“MLI-OTP-0042-0157”), 00:03:34:00; MLI-OTP-0028-0817.

881 [REDACTED]

882 [REDACTED]; [MLI-OTP-0028-0831](#), 00:03:33:00 to 00:06:27:00; MLI-OTP-0028-0817.

883 Statement of P-0398, [MLI-OTP-0051-0658](#), p. 0681.

884 [REDACTED]

process took 10 minutes.⁸⁸⁵ Dédéou Maiga began to struggle and scream at the very end of the process when his hand was about to be detached from the rest of his body.⁸⁸⁶ The Islamists carried the hand away “[TRANSLATION] like a trophy”.⁸⁸⁷ A doctor attended to Dédéou Maiga and he was taken to hospital⁸⁸⁸ in a state of shock and with very low blood pressure.⁸⁸⁹ Dédéou Maiga was treated for several months in hospital but, being right-handed, he could not resume, among other activities, work as a builder.⁸⁹⁰ After his amputation, Dédéou Maiga was also ostracized;⁸⁹¹ he sank into despair⁸⁹² [REDACTED].⁸⁹³

312. Many members of the Islamic Police were on hand during the amputation to secure the site⁸⁹⁴ but the evidence does not report that Mr Al Hassan was present.⁸⁹⁵ Amputation of the hand of a thief was a punishment that some in the leadership of

⁸⁸⁵ [MLI-OTP-0028-0831](#), 00:03:33:00 to 00:06:27:00.

⁸⁸⁶ [REDACTED]; MLI-OTP-0028-0817; [MLI-OTP-0028-0831](#), 00:03:33:00 to 00:06:27:00.

⁸⁸⁷ [MLI-OTP-0028-0831](#), 00:03:33:00 to 00:06:27:00.

⁸⁸⁸ [REDACTED]
[REDACTED]
[REDACTED]

⁸⁸⁹ [MLI-OTP-0028-0831](#), 00:03:33:00 to 00:06:27:00.

⁸⁹⁰ Written record of interview of Dédéou Maiga, [MLI-OTP-0032-0320-R01](#), p. 0322; [REDACTED] See also Medical expert report, P-0598, [MLI-OTP-0060-9465-R01](#), p. 9468.

⁸⁹¹ [REDACTED]
⁸⁹² [REDACTED]; [REDACTED]
[REDACTED]

⁸⁹³ MLI-OTP-0042-0157.

⁸⁹⁴ [REDACTED]
[REDACTED]

⁸⁹⁵ Statement of P-0398, [MLI-OTP-0051-0658](#), p. 0680; [REDACTED] See also DCC, paras. 605-607. The Chamber notes that the Prosecutor argued in her oral submissions at the hearing that the mobile phone she attributes to Mr Al Hassan connected to a cell tower within close range of the site of the amputation. See Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 23, lines 7-13. However, the Chamber is of the opinion that these new facts, which do not appear in the DCC, cannot be considered in its assessment.

Ansar Dine saw as necessary because it was in keeping with sharia as they construed it.⁸⁹⁶

313. While it seems that the victim was anaesthetized at the time of the amputation, the fact remains that, according to one witness, the victim struggled and screamed at the end of the amputation, and that this physical suffering was compounded by the mental pain of having a limb amputated in public and by the physical pain throughout his convalescence, taking on a cumulative character akin to severe suffering.⁸⁹⁷

314. The Chamber considers those facts to constitute crimes of torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute), other inhumane acts (article 7(1)(k) of the Statute), cruel treatment (article 8(2)(c)(i) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁸⁹⁸

315. The Chamber notes that the amputation of Dédéou Maiga's hand has, in accordance with the legal characterization assigned to it by the Prosecutor, been categorized in this instance as an act of torture.⁸⁹⁹ When asked why she had not chosen the legal characterization of "mutilation" within the meaning of article 8(2)(c)(i) of the Statute,⁹⁰⁰ which, in the Chamber's view, seems to be the most fitting characterization

⁸⁹⁶ Sanda Ould Boumama had stated in an interview: "[TRANSLATION] I know we're going to cut off hands [...] we're also going to cut off heads if sharia tells us ... us that. So we have no qualms about that." Video, [MLI-OTP-0001-0052](#) 01:21:08:00 to 01:21:30:10, transcript, [MLI-OTP-0033-5148](#), translation, [MLI-OTP-0033-5296](#), p. 5330, lines 1263-1265. See also his statements in: MLI-OTP-0042-0157. See also the circumstantial evidence regarding Iyad ag-Ghaly: Rue89, online media report, "*C'est maintenant que la guerre va commencer*", 1 February 2013, [MLI-OTP-0040-0458](#), p. 0459.

⁸⁹⁷ See Medical expert report, P-0598, [MLI-OTP-0060-9465-R01](#), p. 9467 [REDACTED]

⁸⁹⁸ For the findings as to the facts concerning the other elements of crimes, including facts concerning the contextual elements, see, below, paras. 339-349.

⁸⁹⁹ See DCC, para. 1058.

⁹⁰⁰ See List of Questions from the Chamber, para. 18.

of the event,⁹⁰¹ the Prosecutor replied that she did not want the charge of mutilation to be added.⁹⁰² The Chamber would therefore draw the Trial Chamber's attention to this point so that the facts thus characterized can be examined and, should the Trial Chamber think it appropriate, undergo legal recharacterization pursuant to regulation 55 of the Regulations of the Court, preferably at the start of the trial proceedings.

ix. Case of [REDACTED]⁹⁰³

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

317. On [REDACTED]⁹⁰⁴ in Timbuktu, the Islamic Court sentenced [REDACTED] to [REDACTED] lashes of the whip for [REDACTED].⁹⁰⁵ The Chamber is unable to

⁹⁰¹ The Chamber refers, in particular, to the following previous decisions of the Court and of the STSL, which found that acts of mutilation had been committed in the following cases: when a person's eyes were pierced with a bayonet (Pre-Trial Chamber II, *The Prosecutor v. Sylvestre Mudacumura*, "Decision on the Prosecutor's Application under Article 58", dated 13 July 2012, French version registered on 27 August 2012, ICC-01/04-01/12-1-Red ("Decision Pursuant to Article 58 in *Mudacumura*"), para. 43), hands were cut off (*Sesay et al.* Trial Judgment, paras. 1316, 1318), limbs were cut off (STSL, *Brima et al.* Trial Judgment, paras. 1213, 1218, 1243), a person's genitals were cut off (Decision Pursuant to Article 58 in *Mudacumura*, para. 43; *Mbarushimana* Decision, paras. 159-160), several teeth were knocked out (*Sesay et al.* Trial Judgment, para. 1314).

⁹⁰² Prosecutor's Final Written Submissions, paras. 34-36.

⁹⁰³ DCC, paras. 556-558, 586, 612, 623, 628, 631, 634, 1053, 1058. See also paras. 435, 459, 1061. Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-FRA, pp. 78-80. Defence Final Written Submissions, p. 44, paras. 127-128.

⁹⁰⁴ The Chamber regards the date of [REDACTED] as established, given that it appears in the judgment [REDACTED]

⁹⁰⁵ Islamic Court Judgment [REDACTED] [MLI-OTP-0001-7413](#), translation, [MLI-OTP-0034-0106](#), p. 0107. The Chamber notes that the name of the person against whom the judgment is given is illegible. However, considering that the date and the description of the facts agree in every respect with the information contained in the other evidence presented by the Prosecutor, the Chamber determines that this document is the judgment handed down against [REDACTED]. Compare Islamic Court Judgment, [REDACTED] [MLI-OTP-0001-7413](#), translation, [MLI-](#)

establish the exact circumstances of the arrest which preceded the judgment,⁹⁰⁶ only that [REDACTED] was arrested by four “[TRANSLATION] mujahidin” on duty, who handed her over to the *Hisbah*.⁹⁰⁷

318. [REDACTED]⁹⁰⁸ [REDACTED]

[REDACTED]⁹⁰⁹ [REDACTED]

[REDACTED].⁹¹⁰ [REDACTED]

[REDACTED]

[OTP-0034-0106](#), p. 0107 with [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁹⁰⁶ In view of the discrepancies in the information on the circumstances surrounding the arrest, the Chamber is unable to find that the facts are established. Compare Islamic Court Judgment, [REDACTED] [REDACTED] [MLI-OTP-0001-7413](#), translation, [MLI-OTP-0034-0106](#), p. 0107 and [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁹⁰⁷ Islamic Court Judgment, [REDACTED] [MLI-OTP-0001-7413](#), translation, [MLI-OTP-0034-0106](#), p. 0107; [REDACTED]

[REDACTED]

⁹⁰⁸ That it is [REDACTED] is confirmed [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁹⁰⁹ [REDACTED]

⁹¹⁰ [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]⁹¹¹ [REDACTED]⁹¹² [REDACTED]

[REDACTED]⁹¹³ [REDACTED]

[REDACTED]

[REDACTED]⁹¹⁴ The Chamber notes that the victim herself uses the word “[TRANSLATION] humiliation” in describing the scene of the flogging.⁹¹⁵ [REDACTED] that at least 50 or so blows were delivered.

319. The men delivering the blows [REDACTED]

[REDACTED] forming a “[TRANSLATION] secure zone” [REDACTED]

[REDACTED]⁹¹⁶ [REDACTED]

[REDACTED]

⁹¹¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹¹² [REDACTED]

[REDACTED]

[REDACTED]

⁹¹³ [REDACTED]

[REDACTED]

⁹¹⁴ [REDACTED]

⁹¹⁵ [REDACTED]

[REDACTED]

[REDACTED]

⁹¹⁶ [REDACTED]

██████████⁹¹⁷ a member of the Islamic Police,⁹¹⁸ who is carrying out the flogging.

320. The Chamber considers those facts to constitute crimes of torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute), other inhumane acts (article 7(1)(k) of the Statute), cruel treatment (article 8(2)(c)(i) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁹¹⁹

x. Case of ██████████⁹²⁰

321. The Chamber finds the following facts to be established to the standard required on the basis of the evidence, the submissions of the parties, the observations of the participants and the number of items of concordant evidence.

322. On ██████████ in Timbuktu, the Islamic Court sentenced ██████████ to ██████████ lashes of the whip for having sexual relations outside marriage.⁹²¹ The judgment states that the sentenced person was arrested on the basis of a “[TRANSLATION] solid” charge ██████████.⁹²² ██████████

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⁹¹⁸ See DCC, paras. 558, 1053.

⁹¹⁹ For the findings as to the facts concerning the other elements of crimes, including facts concerning the contextual elements, see, below, paras. 339-349.

⁹²⁰ DCC, paras. 559-561, 587, 612, 623, 628, 631, 634, 1054, 1058. See also paras. 435, 461, 1059. Transcript of Hearing of 9 July 2019 (Prosecutor), ICC-01/12-01/18-T-004-FRA, pp. 77-78. Defence Final Written Submissions, paras. 129-130.

⁹²¹ Islamic Court Judgment, ██████████, [MLI-OTP-0001-7411](#), translation, [MLI-OTP-0067-1887](#).

⁹²² Islamic Court Judgment, ██████████, [MLI-OTP-0001-7411](#); translation, [MLI-OTP-0067-1887](#). ██████████
██████████

923 [REDACTED] 924
 [REDACTED] 925 [REDACTED] 926 [REDACTED]
 [REDACTED] 927 whom [REDACTED]
 [REDACTED] “[TRANSLATION] mujahidin” – a “[TRANSLATION] mix” of “[TRANSLATION]
 the police, the *Hisbah* and the army”,⁹²⁸ including a [REDACTED] member
 of the police;⁹²⁹ [REDACTED]
 [REDACTED]
 [REDACTED] 930 [REDACTED] 931 and
 probably was the [REDACTED] police officer [REDACTED] by [REDACTED] 932 [REDACTED]

923 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

924 [REDACTED]
 [REDACTED] the information
 being given about the case given is, in every respect, similar to the information contained in [REDACTED]
 [REDACTED]’s judgment (the fact that it concerns a sentenced person, who had been arrested for
 “[TRANSLATION] adultery” [REDACTED], the sentence of [REDACTED]
 lashes of the whip [REDACTED]). Compare Islamic Court
 Judgment, [REDACTED]
 with [REDACTED]
 [REDACTED]

925 [REDACTED]
 [REDACTED]
 [REDACTED]

926 Statement of P-0398, [MLI-OTP-0062-1218](#), p. 1226.

927 [REDACTED].

928 [REDACTED] [REDACTED]

929 Statement of P-0398, [MLI-OTP-0062-1194](#), p. 1213. Statement of P-0398, [MLI-OTP-0062-1218](#), p. 1226.

930 [REDACTED]

931 [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED]; [REDACTED]
 [REDACTED]; and compare with [REDACTED]
 [REDACTED]

932 [REDACTED] [REDACTED];
 [REDACTED] [REDACTED]; and
 compare with [REDACTED]

cruel treatment (article 8(2)(c)(i) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁹⁴³

xi. Case of the [REDACTED]⁹⁴⁴

325. The Chamber sees that the sole evidence adduced by the Prosecutor in support of the facts alleged in relation to the case [REDACTED] is the statement of an anonymous witness (P-0603). That notwithstanding, as it is not circumstantial evidence⁹⁴⁵ but comes from an eyewitness, contrary to what the Defence contends,⁹⁴⁶ and considering the detailed and credible nature of P-0603's statement overall,⁹⁴⁷ establishing, to the standard required, that he was present in Timbuktu when the city was under the control of Ansar Dine and AQIM, the Chamber finds the following facts to be established to the standard required.

326. At the "Yoboutao" market in Timbuktu between April 2012 and January 2013,⁹⁴⁸ [REDACTED], an "[TRANSLATION] Islamist", whipped an [REDACTED] [REDACTED] until he fell to the ground, as punishment [REDACTED].⁹⁴⁹

327. The Chamber notes that, for this case, the Prosecutor has brought cumulative charges, arguing that the facts constitute the crimes of torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute), other inhumane acts (article 7(1)(k) of the Statute), cruel

⁹⁴³ For the findings as to the facts concerning the other elements of crimes, including facts concerning the contextual elements, see, below, paras. 339-349.

⁹⁴⁴ DCC, paras. 576, 588, 609, 623, 628, 631, 634, 1056, 1058. See also para. 476. Defence Final Written Submissions, para. 159.

⁹⁴⁵ See Decision of 19 July 2018, [REDACTED].

⁹⁴⁶ Defence Final Written Submissions, [REDACTED].

⁹⁴⁷ Statement of P-0603, [MLI-OTP-0059-0361-R01](#).

⁹⁴⁸ See Statement of P-0603, [MLI-OTP-0059-0361-R01](#), p. 0368, para. 35; DCC, paras. 576, 588, 623, 628, 631, 634, 1058.

⁹⁴⁹ Statement of P-0603, [MLI-OTP-0059-0361-R01](#), p. 0368, para. 35.

treatment (article 8(2)(c)(i) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁹⁵⁰

328. The Chamber considers that [REDACTED] is a vulnerability criterion to be factored into the assessment of physical and mental pain. However, the Chamber is of the view that it does not have enough to go upon in order to determine to the standard required that the degree of suffering required for the crime of torture as a crime of humanity or as a crime of war has been met.

329. The Chamber does, however, consider from the facts as found that the degree of suffering required for both the crime against humanity of other inhumane acts and the war crime of cruel treatment⁹⁵¹ has been met to the standard required. The Chamber considers those facts, therefore, to constitute crimes of other inhumane acts (article 7(1)(k) of the Statute), cruel treatment (8(2)(c)(ii) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁹⁵²

xii. Case of P-0542⁹⁵³

330. The Chamber sees that the only evidence adduced by the Prosecutor in support of the facts alleged in relation to the case of P-0542 is the statement of the victim, who is an anonymous witness. That notwithstanding, as it is not circumstantial evidence⁹⁵⁴ but comes from the direct victim of the alleged acts and considering the personal

⁹⁵⁰ DCC, para. 1058.

⁹⁵¹ See previous discussion in the “applicable law” section for the degree of suffering required for this crime, para. 255.

⁹⁵² For the findings as to the facts concerning the other elements of crimes, including facts concerning the contextual elements, see, below, paras. 339-349.

⁹⁵³ DCC, paras. 634, 1056. See also paras. 473, 961, 964, 970. Defence Final Written Submissions, pp. 52-53, paras. 157-158, pp. 55-56, para. 168. For the fact that the Prosecutors did not include the alleged acts of rape in the charge of outrages upon dignity, see Prosecutor’s Final Written Submissions, para. 5. See also, below, VII. (E) Facts pertaining to count 13: persecution, paras. 676-682, 707.

⁹⁵⁴ See Decision of 19 July 2018, para. 18.

nature of the account given by P-0542 of the events⁹⁵⁵ which lends credibility to her statement,⁹⁵⁶ the Chamber finds the following facts to be established to the standard required.

331. “[TRANSLATION] One day [...] after the MNLA left the city”, between April 2012 and January 2013, P-0542 was arrested in the street by Mohamed Moussa, who was armed with a gun and told her that the veil she was wearing was prohibited.⁹⁵⁷ Mohamed Moussa took her to the BMS where she was detained for [REDACTED] [REDACTED], without food⁹⁵⁸ and in a particularly filthy room⁹⁵⁹ in which she had to relieve herself on the floor.⁹⁶⁰ P-0542 was blindfolded during the daytime and her hands tied behind her back with a rope the whole time.⁹⁶¹ P-0542 was released [REDACTED] [REDACTED], to whom Mohamed Moussa explained that the veil worn by P-0542 was too colourful, too beautiful and that everything that made a woman pretty was prohibited.⁹⁶² He added that were P-0542 to be arrested again, “[TRANSLATION] [they] wouldn’t let [her] out of prison”.⁹⁶³ P-0542 explains that Mohamed Moussa “[TRANSLATION] was the leader in this prison because it [was] he who made the decisions”.⁹⁶⁴

⁹⁵⁵ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), pp. 0869-0873, paras. 34-46.

⁹⁵⁶ The Chamber therefore rejects the Defence’s arguments. See Defence Final Written Submissions, [REDACTED].

⁹⁵⁷ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0171, paras. 22-23.

⁹⁵⁸ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0172, para. 24, p. 0174, para. 33.

⁹⁵⁹ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0172, para. 24 (“[TRANSLATION] The place was dirty. It smelled of urine. The room looked like the toilets. There were roaches, worms and other types of insects that you find in filthy places. There was nothing and nobody in this room. There was just filth and broken chairs.”)

⁹⁶⁰ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0174, para. 34.

⁹⁶¹ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0174, para. 34.

⁹⁶² Statement of P-0542, [MLI-OTP-0039-0167-R01](#), pp. 0173-0174, para. 31.

⁹⁶³ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0174, para. 32.

⁹⁶⁴ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0174, para. 32.

332. The Prosecutor argues that the facts relating to this case constitute the crime of outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁹⁶⁵ The Chamber considers that the facts as found establish to the standard required that those acts, taken together, and in particular the conditions of the victim's detention, constitute degradation of such severity as to be generally be recognized as an outrage against personal dignity. The Chamber therefore considers those facts to constitute the crime of outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁹⁶⁶

xiii. Case of P-0570⁹⁶⁷

333. The Chamber sees that the sole evidence adduced by the Prosecutor in support of the facts alleged in relation to P-0570 is a statement of an anonymous witness (P-0570 herself). That notwithstanding, as it is not circumstantial evidence⁹⁶⁸ but comes from the direct victim of the alleged acts, and considering the detailed and credible nature of P-0570's statement overall, the Chamber finds the following facts to be established to the standard required.

334. In about [REDACTED]⁹⁶⁹ in Timbuktu, a car with a black and white flag drove past P-0570's house while she [REDACTED] and her veil slipped down.⁹⁷⁰ Mohamed Moussa alighted from the car and, out of fear, P-0570 attempted to escape and took

⁹⁶⁵ DCC, para. 1058.

⁹⁶⁶ For the findings as to the facts concerning the other elements of the crime, including facts concerning the contextual elements, see, below, paras. 339-349.

⁹⁶⁷ DCC, paras. 628, 634, 1056, 1058. See also paras. 472, 762, 774, 816, 960, 964, 970, 1063, 1066, 1092. Defence Final Written Submissions, [REDACTED]. For the fact that the Prosecutor did not include the alleged acts of rape in the charges of other inhumane acts and outrages upon personal dignity, see Prosecutor's Final Written Submissions, para. 5. See also, below, VII. (E) Facts pertaining to count 13: persecution, paras. 676-682, 707.

⁹⁶⁸ See Decision of 19 July 2018, para. 18.

⁹⁶⁹ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0052, para. 24 (" [REDACTED] ").

⁹⁷⁰ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0052, para. 24.

shelter in her house but was followed by Mohamed Moussa.⁹⁷¹ He told her to come out and explained that they were taking her away.⁹⁷² Because she resisted, Mohamed Moussa and three other men who were his subordinates employed force: [REDACTED] and they criticized her [REDACTED].⁹⁷³ P-0570 felt pain and distress; [REDACTED] she could not defend herself. She was flung into the vehicle and driven to the premises of the [REDACTED] bank.⁹⁷⁴ [REDACTED] P-0570 was released [REDACTED].⁹⁷⁵ [REDACTED].⁹⁷⁶

335. The Chamber notes that, for this case, the Prosecutor has brought cumulative charges, arguing that it constitutes the crime of other inhumane acts (article 7(1)(k) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁹⁷⁷ The Chamber is of the view that the facts as found in relation to P-0570 do not allow a determination to be made to the standard required that the requisite degree of suffering for the crime of other inhumane acts as a crime against humanity has been met, but they do however constitute the crime of outrages upon personal dignity as a war crime.⁹⁷⁸

xiv. Case of P-0547⁹⁷⁹

336. The Chamber sees that the sole evidence adduced by the Prosecutor in support of the facts alleged in relation to P-0547 is a statement of an anonymous witness (P-

⁹⁷¹ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), pp. 0052-0053, paras. 24-26.

⁹⁷² Statement of P-0570, [MLI-OTP-0049-0047-R01](#), pp. 0052-0053, para. 26.

⁹⁷³ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), pp. 0052-0053, para. 26.

⁹⁷⁴ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0053, para. 27.

⁹⁷⁵ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0053, para. 27.

⁹⁷⁶ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), pp. 0055-0056, para. 37.

⁹⁷⁷ DCC, para. 1058.

⁹⁷⁸ For the findings as to the facts concerning the other elements of the crime, including facts concerning the contextual elements, see, below, paras. 339-349.

⁹⁷⁹ DCC, paras. 628, 634, 1056, 1058. See also paras. 470, 592-593, 961, 964, 970, 1063, 1066. Defence Final Written Submissions, para. 149. For the fact that the Prosecutor did not include the alleged acts of rape in the charges of other inhumane acts and outrages upon personal dignity, see Prosecutor's Final

0547 herself). That notwithstanding, as it is not circumstantial evidence⁹⁸⁰ but comes from the direct victim of the alleged acts and considering the detailed and credible nature of P-0570's statement overall, the Chamber finds the following facts to be established to the standard required.

337. In about [REDACTED] 2012⁹⁸¹ in Timbuktu, P-0547 [REDACTED] [REDACTED] when she saw a car with "[TRANSLATION] the flag of the Islamists" arrive.⁹⁸² She fled into the courtyard of her house but was followed by [REDACTED] men who had alighted from the vehicle.⁹⁸³ The men were light-skinned Arabs wearing khaki-coloured clothing.⁹⁸⁴ They explained that they were going to take P-0547 to prison because she was not properly covered.⁹⁸⁵ As she [REDACTED] objected to her being taken away, [REDACTED], hurting her.⁹⁸⁶ Under the threat of being taken away by force, she went with them and was driven directly to the BMS⁹⁸⁷ where she was detained in a cell the entire day with [REDACTED] other women [REDACTED].⁹⁸⁸ They were not given food and had to relieve themselves "[TRANSLATION] right there, in the room".⁹⁸⁹ [REDACTED]

Written Submissions, paras. 5-6. See also, below, VII. (E) Facts pertaining to count 13: persecution, paras. 676-682, 707.

⁹⁸⁰ See Decision of 19 July 2018, para. 18.

⁹⁸¹ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0869-0870, para. 34. (" [REDACTED] ").

⁹⁸² Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0869-0870, para. 34.

⁹⁸³ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0869-0870, para. 34.

⁹⁸⁴ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0869-0870, paras. 34-35.

⁹⁸⁵ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0869-0870, para. 34.

⁹⁸⁶ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0870, para. 35 (" [REDACTED] it hurt, I bled. It really hurt me. [REDACTED] ").

⁹⁸⁷ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0870-0871, paras. 35-38.

⁹⁸⁸ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0871, para. 38.

⁹⁸⁹ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0873, para. 45.

██████████.⁹⁹⁰ P-0547 and her fellow detainees were released that evening.⁹⁹¹

338. The Chamber notes that, for this case, the Prosecutor has brought cumulative charges, arguing that it constitutes the crime of other inhumane acts (article 7(1)(k) of the Statute) and outrages upon personal dignity (article 8(2)(c)(ii) of the Statute).⁹⁹² The Chamber is of the view that the facts as found in relation to P-0547 do not allow a determination to be made to the standard required that the requisite degree of suffering for the crime of other inhumane acts as a crime against humanity has been met, but they do however constitute the crime of outrages upon personal dignity as a war crime.⁹⁹³

**(c) Analysis pertaining to the elements of crimes,
common to all the cases**

339. 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.

340. For all the cases described in counts 1 to 5 presented by the Prosecutor as acts of torture within the meaning of articles 7(1)(f) and 8(2)(c)(i) of the Statute (save for the case of the ██████████), 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, a severe degree of suffering is established in respect of all those victims.⁹⁹⁴

⁹⁹⁰ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0871, para. 39.

⁹⁹¹ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0873, para. 46.

⁹⁹² DCC, para. 1058.

⁹⁹³ For the findings as to the facts concerning the other elements of the crime, including facts concerning the contextual elements, see, below, paras. 339-349.

⁹⁹⁴ The Chamber thus rejects the Defence arguments that the “*petits ta’zir-s*” or “small punishments” do not satisfy the requisite severity test to constitute war crimes or crimes against humanity. (Defence Written Submissions, para. 200) and that the Prosecutor has not established that the requisite degree of

341. Turning to the cases of public flogging and the case of amputation, the Chamber considers that, as the Legal Representatives of Victims have said,⁹⁹⁵ the public nature of the corporal punishment necessarily exacerbated the mental pain ensuing from those crimes, provoking a feeling of humiliation, not least on account of the “[TRANSLATION] spectacle” leading up to the administration of the punishment: the crowd was assembled, the judgment was read over the microphone, and the sentenced persons were surrounded by armed men, were at their “[TRANSLATION] mercy” and, above all, were violently subjected to bodily harm “[TRANSLATION] in front of all and sundry”. Some victims described this feeling of humiliation, of shame,⁹⁹⁶ while others covered their faces to avoid being recognized.⁹⁹⁷ Other victims have spoken of becoming outcasts and of the stigma attached to punishment in public.⁹⁹⁸

suffering was met for the alleged acts to qualify as torture or other inhumane acts (Defence Final Written Submissions, para. 131).

⁹⁹⁵ See Transcript of Hearing of 10 July 2019, pp. 101-102, lines 25-28 “[TRANSLATION] It is not just a matter of fearing punishment; in Malian culture, it is another form of banishment because a man who is beaten in public, a woman who is beaten in public, will inevitably leave the area and no longer want to be seen in those quarters. The jihadis knew this and that is also why they went about it the way they did, and it also reflects not only the cruelty but also the depth of the tragedy suffered, precisely because corporal punishment in public leaves a mark that does not heal: the wound left by corporal punishment in public does not heal in our tradition.”); Final Submissions of the Legal Representatives of Victims, para. 38 “[TRANSLATION] [t]he public nature [...] of the corporal punishment and the physical abuse leads to a phenomenon of multigenerational shame [...] that is why the majority of the victims who have endured this type of humiliation were, in addition, *de facto* sentenced to leave Timbuktu.”).

⁹⁹⁶ [REDACTED]
[REDACTED]
[REDACTED] Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8890, para. 60 (“[TRANSLATION] When I saw all the people who were there the day I was whipped, I felt so small, thinking to myself that I would never again be able to utter a single word to any of them. Some of my friends remained loyal but others stopped talking to me. [...] [REDACTED] [REDACTED]”); Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8856, para. 62 (“[REDACTED] [REDACTED]”).

⁹⁹⁷ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8889, para. 49 (“[TRANSLATION] [...] [REDACTED] [REDACTED]”).

⁹⁹⁸ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), pp. 8858-8859, paras. 72, 74. Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8890, para. 60 (“[TRANSLATION] Some of my friends remained loyal but others

342. For all these cases, the Chamber also finds that the victims were under the control of the direct perpetrator of the crimes, because they were kept in detention or because they were subjected to flogging or amputation by or in the presence of armed men belonging to the *Hisbah* and/or the Islamic Police or other bodies set up by Ansar Dine/AQIM, who secured the sites where the decision was to be implemented and were, in the circumstances under consideration, the sole law enforcement in Timbuktu during the time material to the case *sub judice*.

343. As explained above, the Chamber is of the view that none of these acts can be considered a “lawful sanction” within the meaning of article 7(2)(e) of the Statute.⁹⁹⁹

344. The Chamber notes that the floggings described in this section were carried out in a context or an environment where punishments of this type were seen as an appropriate method of maintaining public order.¹⁰⁰⁰ The members of the Islamic Police and the *Hisbah* also had the power to impose “small[er] punishments”, independently of the Islamic Court.¹⁰⁰¹ All these acts were therefore designed to inflict suffering intentionally in order to punish conduct regarded as deviant and to prevent reoffending. Also in the view of the Chamber, it is established that the use of violence, including the torture of suspects, was seen as an acceptable investigation method.¹⁰⁰² Accordingly, the Chamber is satisfied that all the acts described in this section – be they acts of torture to obtain confessions or information (cases ██████████ ██████████ and P-0580), floggings or other acts of violence dealt out at the discretion of members of the Islamic Police or other combatants (cases of P-0574 and ██████████ ██████████), public floggings whether or not pursuant to a judgment handed down by

stopped talking to me. [...] ██████████ ██████████)

⁹⁹⁹ See, above, paras. 236-249.

¹⁰⁰⁰ See, above, paras. 264-265.

¹⁰⁰¹ See, above, para. 265.

¹⁰⁰² See, above, para. 267.

the Islamic Court (all the other cases) or amputation (Dédéou Maiga) – 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 AQIM or Ansar Dine¹⁰⁰³ committing that attack, had knowledge of the existence of the attack and knew that the conduct was part of it.

345. The Chamber also finds that the perpetrators of the crimes such as those described above¹⁰⁰⁴ inflicted that severe pain or suffering in order to obtain information or confessions (cases ██████████ and P-0580) or to punish the victims (cases of P-0565 and P-0557, the ██████ men flogged on or about ██████ 2012, P-0574, ██████████, ██████████
██████████, ██████████, Dédéou Maiga, ██████████) 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.

346. The Chamber is also satisfied that the perpetrators of these crimes – all members of the Islamic Police or the *Hisbah* or combatants belonging to AQIM or Ansar Dine – 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. Lastly, the Chamber also considers that the alleged criminal conduct took place in the context of and was associated with the armed conflict not of an international character as described above,¹⁰⁰⁵ and it takes that view because it was precisely the armed conflict that placed the perpetrators of the crimes in a position,

¹⁰⁰³ See, above, para. 76 and below, para. 960.

¹⁰⁰⁴ See, above, paras. 269-324.

¹⁰⁰⁵ See, above, para. 227. See also VI. B. Contextual elements of war crimes

for a time, to commit those crimes, and the crimes were committed with the same purpose as the conflict itself, that is, to institute a new political and religious order over a territory encompassing Timbuktu and the Timbuktu Region and to compel the civilian population to submit to it.¹⁰⁰⁶

347. As to the mental elements required of the perpetrators 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 severe suffering for their victims (cases ██████████; P-0565 and P-0557; the ██████ men flogged on or about ██████ 2012; P-0574; P-0580; ██████████; ██████████; ██████████; ██████████; Dédéou Maiga; ██████████ or great suffering (case ██████████)).

348. As specifically concerns the elements of the crime of outrages upon personal dignity (article 8(2)(c)(ii) of the Statute), the Chamber considers that the various accounts given by the victims of or witnesses to the floggings and the amputation inflicted in public (P-0565 and P-0557; the ██████ men flogged on or about ██████ 2012; ██████████; ██████████; ██████████; Dédéou Maiga; ██████████ or inflicted at the police station (P-0574 and ██████████) constitute, without exception, outrages upon personal dignity within the meaning of article

¹⁰⁰⁶ See, above, paras. 182, 957.

8(2)(c)(ii) of the Statute, especially on account of their inherently infantilizing character. Regarding the public floggings and the amputation, as the Court has noted, the fact that they were inflicted in front of a large crowd of onlookers that had been assembled for the occasion necessarily exacerbated the feeling of humiliation suffered.¹⁰⁰⁷ Regarding [REDACTED] and P-0580, the Chamber's opinion is that the acts of torture to which they were subjected also constitute degradation. Regarding P-0570 and P-0547, the Chamber would further remark that, in its view, the violent way in which they were treated, in front of their family members, constituted a form of humiliation. To the Chamber, all these acts constituted violations of such severity as to be generally recognized as an outrage upon personal dignity.

349. As to the mental elements required of the perpetrators of the crimes by article 30 of the Statute, the Chamber finds it is 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 to violate the dignity of the victims.

3. The Chamber's findings

350. 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 directed against the civilian population and a non-international armed conflict, the acts found, at paragraphs 269 to 324 above,¹⁰⁰⁸ to be established,

¹⁰⁰⁷ See, above, para. 341.

¹⁰⁰⁸ See also, above, paras. 339-349.

constituting the crime against humanity and war crime of torture under articles 7(1)(f) and 8(2)(c)(i) of the Statute, against the following victims:

- [REDACTED]
- P-0565 and P-0557;
- the [REDACTED] men flogged on or about [REDACTED] 2012;
- P-0574;
- P-0580;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Dédéou Maiga;
- [REDACTED]
- [REDACTED]

351. 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 [REDACTED] can be characterized as torture within the meaning of articles 7(1)(f) and 8(2)(c)(i) of the Statute.

352. The Chamber also 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 269 to 329 above, to be established,¹⁰⁰⁹ constituting the crime against humanity of other inhumane acts under article 7(1)(k) of the Statute, against the following victims:

- [REDACTED]
- P-0565 and P-0557;
- the [REDACTED] men flogged on or about [REDACTED] 2012;
- P-0574;
- P-0580;
- [REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- Dédéou Maiga;
- [REDACTED]
- [REDACTED]
- [REDACTED]

353. 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 victims can be characterized as the crime against humanity of other inhumane acts within the meaning of article 7(1)(k) of the Statute:

- P-0547; and

¹⁰⁰⁹ See also, above, paras. 339-349.

- P-0570.

354. The Chamber also 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 269 to 329 above, to be established,¹⁰¹⁰ constituting the war crime of cruel treatment under article 8(2)(c)(i) of the Statute, against the following victims:

- [REDACTED]
- P-0565 and P-0557;
- the [REDACTED] men flogged on or about [REDACTED] 2012;
- P-0574;
- P-0580;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Dédéou Maiga;
- [REDACTED]
- [REDACTED]
- [REDACTED]

355. The Chamber also 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

¹⁰¹⁰ See also, above, paras. 339-349.

name, members of Ansar Dine/AQIM committed, as part of a non-international armed conflict, the acts found, at paragraphs 269 to 338 above,¹⁰¹¹ 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:

- [REDACTED]
- P-0565 and P-0557;
- the [REDACTED] men flogged on or about [REDACTED] 2012;
- P-0574;
- P-0580;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Dédéou Maiga;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- P-0542;
- P-0570; and
- P-0547.

¹⁰¹¹ See also, above, paras. 339-349.

356. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.¹⁰¹²

(B) Facts pertaining to count 6: passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees generally recognized as indispensable

1. Applicable law

357. The Chamber refers to the definition of the crime of passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees generally recognized as indispensable, as set out in article 8(2)(c)(iv) of the Statute and in the Elements of Crimes.

(a) Material elements

358. As regards the *actus reus* of the war crime under article 8(2)(c)(iv) of the Statute of passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees generally recognized as indispensable ("sentences"), the Chamber takes the view, contrary to the Defence's reading,¹⁰¹³ that the use of the coordinating conjunction "or" by the drafters of the Elements of Crimes shows that the crime under article 8(2)(c)(iv) of the Statute may result from any one of the following three violations: (1) the absence of previous judgment; (2) judgment pronounced by a court which was not regularly constituted, that is, which did not afford the essential guarantees of independence and impartiality; and (3) judgment pronounced by a court which did not afford all other judicial guarantees recognized as indispensable under international law. These three forms of conduct will be discussed in turn.

¹⁰¹² See VIII. Responsibility.

¹⁰¹³ Defence Written Submissions, para. 251; Transcript of Hearing of 11 July 2019, ICC-01/12-01/18-T-006-CONF-FRA, p. 39, line 24 to p. 40, line 16; Defence Final Written Submissions, paras. 92-98, 115.

359. Having regard to the Elements of Crimes, the Chamber is of the view that to establish the crime it rests with the Prosecutor to adduce proof of a sentence and proof of the absence of due process in sentencing, *viz.* that there was no previous judgment (direct sentence) or that there were defects in the procedure followed. These defects fall into two categories: defects relating to the court itself (regulatory guarantees of independence and impartiality) and defects in the procedure which the court followed (procedural guarantees).

360. First of all, for each of the three forms of conduct identified above, the first element of the crime in question lays down that “the perpetrator passed sentence”. This is because article 8(2)(c)(iv) of the Statute may be invoked only where a sentence has been passed. The Chamber would point out, moreover, that this element distinguishes the crime from others, such as torture, cruel treatment and outrages upon personal dignity, which do not require the passing of sentence.

361. Furthermore, sentences within the meaning of article 8(2)(c)(iv) of the Statute must have been passed upon persons *hors de combat*, civilians, or medical or religious personnel taking no active part in the hostilities.

i. Passing of sentences without previous judgment

362. The first form of conduct enumerated by the Statute and the Elements of Crimes concerns the sentencing of civilians without previous judgment.

363. In the interest of adopting a definition which dovetails with the rationale of article 8(2)(c)(iv) of the Statute, the Chamber considers that the term “sentence” must be defined in terms of the authority empowered to pass the sentence. Like the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Chamber is of the opinion that a sentence must be defined in terms of the authority with power to pass it and thus means a penalty pronounced by an authority empowered, by the system

in place at the material time, to pass sentence,¹⁰¹⁴ regardless of whether that authority is referred to as a court. Where a perpetrator had the power independently to punish a person, then he or she was duty-bound to exercise that power in accordance with due process.

364. As to the form which a sentence within the meaning of article 8(2)(c)(iv) of the Statute must take, the Chamber notes that the English version of the Statute uses the term “passing of sentences”, which places the emphasis less on the form, and more on the taking of a decision. The Chamber is, therefore, of the view that the provision has to be read as capable of embracing both written¹⁰¹⁴ and oral passing of sentence.

365. The Chamber considers, moreover, that it suffices for the sentence to be passed and matters not that it was suspended or subsequently not carried out: article 8(2)(c)(iv) of the Statute uses the term “passing of sentences” and so concerns the passing of the sentence, not the carrying out of a punishment.

366. In the absence of documentary evidence of the passing of a sentence, the sentence may be established, for example, by the statement of a witness recounting its passing. A sentence may also be inferred from the fact that a punishment was carried out.

367. Where the Chamber thus takes into account the carrying out of a sentence as a factor that goes to proof that the sentence was passed, the Chamber will satisfy itself that the penalty or punishment carried out did result from the sentence. Accordingly, and without adding to the requirements set out in the Elements of Crimes,

¹⁰¹⁴ See ECCC, *Duch* Trial Judgment, paras. 462-463: “While no judicial system existed during the DK period, S-21 functioned as a State institution with the power to detain, interrogate and execute persons. It was accordingly bound to exercise such powers in conformity with the fair trial rights guaranteed by the Geneva Conventions.” See also ECCC, *Prosecutor v. Mr Nuon Chea and Mr Khieu Samphan*, “Case 002/02 Judgement”, 16 November 2018, 002/19-09-2007/ECCC/TC (“*Nuon Chea and Khieu Samphan* Trial Judgment”).

the Chamber will consider all the circumstances of the judicial case, including the nature and context of the sentence and how it was carried out, if at all.¹⁰¹⁵ For example, in the first place, the perpetrator of the sentence may well have seen it as an effective means of deterrence. Furthermore, a sentence is, in principle, institutional in character, imposed by the authorities thus empowered, and passed as part of the perpetrator's role.¹⁰¹⁶ Thus the Prosecutor may adduce proof of a nexus between the sentence and the role of the person who passed it.

368. In any event, as regards sentences without previous judgment, given that the Elements of Crimes say nothing more than "[t]here was no previous judgement", the Chamber will confine its inquiry to the absence of judgment and will not go on to consider compliance with regulatory or procedural guarantees. Accordingly, for a violation of article 8(2)(c)(iv) of the Statute to be found in this context, the Prosecutor must establish that no judgment was pronounced before an accused was sentenced and need not enter into the particulars of the extent to which due process was observed in the proceedings brought in each individual case.

ii. Passing of sentences pursuant to a judgment pronounced by a court

369. The second form of conduct envisaged by article 8(2)(c)(iv) of the Statute and the Elements of Crimes concerns sentences passed pursuant to a judgment pronounced by a court.

¹⁰¹⁵ The Chamber notes here that these factors further distinguish the crimes of torture, cruel treatment and outrages upon personal dignity from the crime of sentencing, including without previous judgment.

¹⁰¹⁶ ECtHR, *Tyrer v. The United Kingdom* Judgment, para. 33.

370. The Chamber has considered the meaning of the term “judgment” and will entertain cases in which an authority gave judgment in writing or orally.¹⁰¹⁷

371. It is necessary in this context to look at the process which led to the judgment, and to prove the defects in terms of regulatory or procedural guarantees.

372. To that end, there are two approaches the Chamber may take. The first is to ascertain systematic denial, to the detriment of large numbers of victims, of the right to a fair trial, on the basis of a showing that the judicial system instituted by the authorities, when taken as a whole, both in terms of its structure and its operation, was an impediment to the issuance of a judgment affording procedural and regulatory guarantees. In this respect, several considerations go to establish the instrumentalization of the system, notably a lack of impartiality and independence on the part of the judges and a constellation of factors including: (i) the time the proceedings last, which is often accelerated; (ii) the enactment of specific discriminatory laws and decrees; (iii) the influence of members of the executive on the passing of sentences; and (iv) the application of measures by the judges in violation of procedural and regulatory guarantees.¹⁰¹⁸

373. Secondly, defects in the judicial system in place may be ascertained by a case-by-case approach entailing a showing, on the basis of the evidence relating to the

¹⁰¹⁷ The Chamber’s interpretation is set out for the purposes of the constituent elements of the offence under article 8(2)(c)(iv) of the Statute and does not in any way signify that the Chamber is entering into the lawfulness of any such judgment.

¹⁰¹⁸ United States Military Tribunal, Nuremberg, *United States of America v. Josef Altstötter et al.*, “Opinion and Judgment”, 3 March – 4 December 1947, in *Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No. 10*, Volume III (United States Government Printing Office, 1951); see also J. DePiazza, “Denial of Fair Trial as an International Crime”, *Journal of International Criminal Justice* 15, 2017, pp. 269-270, 273.

each of the judicial proceedings against the victims, that judicial guarantees were denied.¹⁰¹⁹

374. Turning to the concept of a “court” within the meaning of article 8(2)(c)(iv) of the Statute, the Chamber subscribes to the definition adopted in the decisions of the European Court of Human Rights (ECtHR), whereby a court qualifies as such by virtue of its judicial function: the adjudication of matters within its jurisdiction.¹⁰²⁰ The Chamber notes that the concept of a “tribunal” within the meaning of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁰²¹ (“European Convention on Human Rights”) may also apply to a disciplinary or administrative body, even if that body is not labelled a “tribunal” or “court” in the domestic legal system.¹⁰²²

¹⁰¹⁹ United States Military Commission, Shanghai, *Lieutenant-General Shigeru Sawada and others*, 27 February 1946 – 15 April 1946; Australian Military Court, Rabaul, *Sergeant-Major Shigeru Ohashi and others*, 20-23 March 1946; *Captain Eitaro Shinohara and others*, 30 March – 1 April 1946; *Captain Eikichi Kato*, 7 May 1946; United States Military Commission, Shanghai, *Lieutenant-General Harukei Isayama and others*, 1-25 July 1946; *General Tanaka Hisakasu and others*, 13 August – 3 September 1946, in *UNWCC Law Reports*, Vol. V, pp. 1-38, 60-81; see also J. DePiazza, “Denial of Fair Trial as an International Crime”, *Journal of International Criminal Justice* 15, 2017, pp. 263-265.

¹⁰²⁰ Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb), updated on 31 December 2018, para. 64.

¹⁰²¹ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, United Nations Treaty Series, vol. 213, no. 2889.

¹⁰²² Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb), updated on 31 December 2018, para. 64.

(a) Passing of sentences pursuant to a judgment pronounced by a court which was not regularly constituted, that is, which did not afford the essential guarantees of independence and impartiality

375. The Chamber notes the submissions of the Prosecutor¹⁰²³ and the Defence¹⁰²⁴ on the issue as to whether a court that applied the laws duly promulgated by the relevant State in accordance with its constitution was regularly constituted.

376. The Elements of Crimes clearly provide that the concept of a “regularly constituted court” is to be understood “[TRANSLATION] *in the sense that it*” [in the French version of the Statute] (“that is” in the English version) does not afford the essential guarantees of independence and impartiality. This reading, therefore, places the focus on the ability of the court to conduct a fair trial rather than on the manner in which the court is set up. In other words, independence and impartiality *are* the requisite attributes for a court to be regarded as “regularly constituted” within the meaning of the Statute.

377. In this connection, the *travaux préparatoires* of the Elements of Crimes reflect the drafters’ intention to set an objective test by linking the concept of a regularly constituted court to the regulatory guarantees. The drafters departed from article 3 common to the four Geneva Conventions and did not adopt Belgium’s drafting proposal for article 8(2)(c)(iv) of the Statute of the Elements of Crimes – a proposal which made the absence of a regularly constituted court a third route to establishing the crime, irrespective of the court’s compliance with the principles of independence

¹⁰²³ DCC, paras. 423, 486-488; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 29, lines 21-26, p. 39, line 24 to p. 52, line 11; see also J. Somer in D. Djukić and N. Pons, *The Companion to International Humanitarian Law, International Humanitarian Law Series* (Brill Nijhoff, 2018), p. 180.

¹⁰²⁴ Defence Written Submissions, para. 254; Transcript of Hearing of 11 July 2019, ICC-01/12-01/18-T-006-CONF-FRA, p. 40, line 21 to p. 41, line 8; Defence Final Written Submissions, para. 103.

and impartiality or with judicial guarantees generally recognized under international law.¹⁰²⁵

378. Furthermore, as the concepts of independence and impartiality are not defined in the Statute or the Elements of Crimes, the Chamber will, in accordance with article 21(3) of the Statute, flesh them out in the light of how various human rights bodies have interpreted them.

379. The Chamber takes the view that article 8(2)(c)(iv) of the Statute requires a court's "independence" vis-à-vis the other powers, that is, the executive and the legislature.¹⁰²⁶ The Human Rights Committee,¹⁰²⁷ for example, has considered that a situation where the functions and competences of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal within the meaning of article 14(1) of the International Covenant on Civil and Political Rights ("International Covenant").¹⁰²⁸ In order to determine whether a body satisfies the

¹⁰²⁵ Preparatory Commission for the International Criminal Court, Working Group on Elements of Crimes, "Proposal by Belgium concerning article 8, paragraph 2(c)(iv) of the Statute of the International Criminal Court", 11 August 1999, PCNICC/1999/WGEC/DP.13, p. 4: "Either no previous judgement was pronounced, or the previous judgement was not pronounced by a regularly constituted court or did not afford all judicial guarantees which are generally recognized as indispensable"; see also J. Somer, "Jungle justice: passing sentence on the equality of belligerents in non-international armed conflict", *International Review of the Red Cross*, Vol. 89, no. 867, September 2007, p. 675.

¹⁰²⁶ African Commission, *Centre for Free Speech v. Nigeria*, Decision, 15 November 1999, paras. 15-16; ECtHR, *Belilos v. Switzerland*, "Judgment", 29 April 1988, application no. 10328/83, para. 68; Human Rights Committee, *Bahamonde v. Equatorial Guinea*, communication no. 468/1991, Volume II, UN Doc. A/49/40, p. 199, para. 9.4.

¹⁰²⁷ Human Rights Committee, *Bahamonde v. Equatorial Guinea*, communication no. 468/1991, 21 September 1994, Volume II, UN Doc. A/49/40, para. 9.4, p. 187.

¹⁰²⁸ International Covenant on Civil and Political Rights, 16 December 1966, United Nations Treaty Series, vol. 999, no. 14668 ("International Covenant").

criterion of independence, the Human Rights Committee,¹⁰²⁹ the ECtHR,¹⁰³⁰ the Inter-American Commission on Human Rights (IACHR)¹⁰³¹ and the African Commission¹⁰³² have had regard to the following criteria: (i) the manner of appointment; (ii) the term of office of the members of the body in question; (iii) the existence of protection against outside pressure; and (iv) the issue of real or perceived independence.

380. Article 8(2)(c)(iv) of the Statute mandates that a court be “impartial”. The requirement of impartiality means that the judges transcend the parties so as to adjudicate objectively and without personal influence, solely on the basis of their knowledge and conscience. This requirement also entails an absence of prejudice or bias and, in particular, that the judge not presume the guilt of the accused or act in such a way as to favour one party’s interests. To determine whether the conduct of a judge raises doubts as to his or her impartiality, regard must be had to the judge’s personal conviction or personal interest in a particular case,¹⁰³³ and to whether the

¹⁰²⁹ Human Rights Committee, General Comment no. 32, “Article 14: Right to equality before courts and tribunals and to a fair trial”, 23 August 2007, UN Doc. CCPR/C/GC/32, para. 19 and references therein.

¹⁰³⁰ ECtHR, *Findlay v. The United Kingdom*, “Judgment”, 25 February 1995, application no. 22107/93, para. 73; ECtHR, *Campbell and Fell v. The United Kingdom*, “Judgment”, 28 June 1984, application no. 7819/77, para. 78; ECtHR, *Ringeisen v. Austria*, “Judgment”, 16 July 1971, application no. 2614/65, para. 95; *Bentham v. The Netherlands*, “Judgment”, 23 October 1985, application no. 8848/80, paras. 37-44.

¹⁰³¹ IACHR, *case 11.006 Peru*, Report 1/95, 7 February 1995, IAYHR 1995, pp. 278 *et seq.*

¹⁰³² African Commission, *Marcel Wetsh’okonda and others v. Democratic Republic of Congo*, Decision, 27 May 2009, communication no. 281/03, para. 79.

¹⁰³³ African Commission, *Jean-Marie Atangana Mebara v. Cameroon*, Decision, 8 August 2015, communication no. 416/12, para. 116; ECtHR, *Piersack v. Belgium*, “Judgment”, 1 October 1982, application no. 8692/79, paras. 28-34; *De Cubber v. Belgium*, “Judgment”, 26 October 1984, application no. 9186/80, paras. 24-26; *Findlay v. The United Kingdom*, “Judgment”, 25 February 1995, application no. 22107/93, para. 73; United Nations Human Rights Committee, General Comment no. 32, “Article 14: Right to equality before courts and tribunals and to a fair trial”, 23 August 2007, UN Doc. CCPR/C/GC/32, para. 21; ECtHR, *Incal v. Turkey*, “Judgment”, 9 June 1998, application no. 41/1997/825/1031, para. 65; see also J-M. Henckaerts and L. Doswald Beck, *Droit international humanitaire coutumier* (Bruylant, Vol. 1: Règles, 2006), footnote 20.

judge afforded objectively verifiable guarantees sufficient to exclude any legitimate doubt in this respect.¹⁰³⁴

381. For the purposes of its due process inquiry, it is necessary, in the view of the Chamber, to assess, first, whether the principles of independence and impartiality were violated. If a breach of those principles is established, the inquiry need in principle go no further, even if violation of other judicial guarantees is alleged, since, in the opinion of Chamber, a sentence passed by a court which does not satisfy the guarantees of independence or impartiality cannot be regarded as consistent with the Statute.¹⁰³⁵

382. That said, the Elements of Crimes specify that “the Court should consider whether, in the light of all relevant circumstances, *the cumulative effect* of factors with respect to guarantees deprived the person or persons of a fair trial.”¹⁰³⁶ The Chamber takes the view, therefore, that it is appropriate to examine the violation of judicial guarantees not only in the light of the most relevant facts but also in the light of all the factual circumstances relating to the proceedings in question considered as a whole.¹⁰³⁷ Thus, although a finding of lack of independence and impartiality on the

¹⁰³⁴ ECtHR, *Padovani v. Italy*, “Judgment”, 26 February 1993, application no. 13396/87, para. 27; *Pullar v. The United Kingdom*, “Judgment”, 10 June 1996, application no. 22399/93, para. 38; *Kyprianou v. Cyprus*, “Judgment”, 15 December 2005, application no. 73797/01, para. 118; *Piersack v. Belgium*, “Judgment”, 1 October 1982, application no. 8692/79, para. 30; *Grievés v. The United Kingdom*, “Judgment”, 16 December 2003, application no. 57067/00, para. 69; *Micallef v. Malta*, “Judgment”, 15 October 2009, application no. 17056/06, para. 97; African Commission, *Malawi Africa Association and others v. Mauritania*, Decision, 11 May 2000, communications nos. 54 and 61/91, 96 and 98/93, 164/97 and 210/98, para. 98.

¹⁰³⁵ S. Trechsel, *Human Rights in Criminal Proceedings*, Oxford University Press, 2005, paras. 46-47; R. Goss, *Criminal Fair Trial Rights – Article 6 of the European Convention on Human Rights* (Hart Publishing, 2014), paras. 160-161.

¹⁰³⁶ Elements of Crimes, footnote 59, emphasis added.

¹⁰³⁷ R. Goss, *Criminal Fair Trial Rights – Article 6 of the European Convention on Human Rights* (Hart Publishing, 2014), paras. 124-125, 160-162.

part of the judges will suffice, the Chamber may, in addition, look at procedural guarantees.

(b) Passing of sentences pursuant to a judgment pronounced by a court which did not afford all other judicial guarantees recognized as indispensable under international law

383. The Statute and the Elements of Crimes lay down that a court must adhere to judicial guarantees “generally recognized as indispensable under international law”, but do not enumerate them.¹⁰³⁸ As the Statute is silent on the matter, the Chamber, in accordance with article 21(1)(b) of the Statute, has regard to the non-exhaustive list of guarantees set out at article 6(2) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts¹⁰³⁹ (“Protocol II”), and to article 75 of Protocol I. Furthermore, in defining the “judicial guarantees which are generally recognized under international law”, the Chamber takes into consideration, in accordance with article 21(3) of the Statute, the attributes incorporated in human rights instruments such as the International Covenant, the European Convention on Human Rights, the American Convention on Human Rights¹⁰⁴⁰ and the African Charter on Human and Peoples’

¹⁰³⁸ The joint proposal put forward by Costa Rica, Hungary and Switzerland during the preparatory work on the Statute was rejected; see Preparatory Commission for the International Criminal Court, Working Group on Elements of Crimes, 19 July 1999, PCNICC/1999/WGEC/DP.10; see also A. Zimmerman and R. Geiss, “Article 8” in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Nomos Verlag, 3rd ed., 2016), p. 555, para. 908.

¹⁰³⁹ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), 8 June 1977, United Nations Treaty Series, vol. 1125, no. 17513.

¹⁰⁴⁰ American Convention on Human Rights: “Pact of San José, Costa Rica”, 22 November 1969, United Nations Treaty Series, vol. 1144, no. 17955 (“American Convention on Human Rights”).

Rights¹⁰⁴¹ (“African Charter”), and their respective corpora of decisions that have spelled out how those guarantees are to be interpreted.

384. It follows from those instruments that, when ascertaining whether a court afforded procedural guarantees to a person who was the subject of judicial proceedings, the Chamber will factor in as decisive the following rights in particular:

- the right to a fair trial (including equality of arms, proceedings that afford notice and the opportunity to be heard, judicial decisions that are reasoned and the right not to have unlawfully obtained evidence used against one);¹⁰⁴²
- a public hearing,¹⁰⁴³ including the right to have the judgment pronounced publicly;¹⁰⁴⁴
- the right to enjoy the necessary rights and means of defence,¹⁰⁴⁵ including:
 - o the right to be brought promptly before a judge or other officer authorized to exercise judicial power;¹⁰⁴⁶
 - o the right to be kept informed without delay of the nature and cause of the offence charged;¹⁰⁴⁷

¹⁰⁴¹ African Charter on Human and Peoples’ Rights, 27 June 1981, United Nations Treaty Series, vol. 1520, no. 26363.

¹⁰⁴² Article 6(2) of Protocol II; article 14(1) of the International Covenant; article 6(1) of the European Convention on Human Rights; article 8(1) of the American Convention on Human Rights; article 7(1) of the African Charter.

¹⁰⁴³ Article 14(1) of the International Covenant; article 6(1) of the European Convention on Human Rights.

¹⁰⁴⁴ Article 75(4)(i) of Protocol I; article 14(1) of the International Covenant; article 6(1) of the European Convention on Human Rights; article 8(5) of the American Convention on Human Rights.

¹⁰⁴⁵ Article 6(2)(a) of Protocol II; article 14(3) of the International Covenant; article 6(3) of the European Convention on Human Rights; article 8(2) of the American Convention on Human Rights.

¹⁰⁴⁶ Article 9(3) of the International Covenant; article 5(3) of the European Convention on Human Rights; article 7(5) of the American Convention on Human Rights.

¹⁰⁴⁷ Article 6(2)(a) of Protocol II; article 14(3)(a) of the International Covenant; article 6(3)(a) of the European Convention on Human Rights; article 8(2)(b) of the American Convention on Human Rights.

- the right to challenge the lawfulness of one's detention before a court;¹⁰⁴⁸
- the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of one's own choosing;¹⁰⁴⁹
- the right to defend oneself in person or through legal assistance of one's choosing;¹⁰⁵⁰
- the right to be tried without undue delay;¹⁰⁵¹
- the right to examine or obtain the attendance of witnesses;¹⁰⁵² and
- the right to have the (free) assistance of an interpreter;¹⁰⁵³
- the right against conviction except on the basis of individual criminal responsibility;¹⁰⁵⁴
- the principle of *nullum crimen, nulla poena sine lege* and the prohibition against the imposition of a heavier penalty than that which was applicable at the time of the offence;¹⁰⁵⁵

¹⁰⁴⁸ Article 9(4) of the International Covenant; article 5(4) of the European Convention on Human Rights; article 7(6) of the American Convention on Human Rights.

¹⁰⁴⁹ Article 14(3)(b) of the International Covenant; article 6(3)(b) of the European Convention on Human Rights; article 8(2)(c) and (d) of the American Convention on Human Rights.

¹⁰⁵⁰ Article 14(3)(d) of the International Covenant; article 6(3)(c) of the European Convention on Human Rights; article 8(2)(d) and (e) of the American Convention on Human Rights; article 7(1)(c) of the African Charter.

¹⁰⁵¹ Article 14(3)(c) of the International Covenant; article 6(1) of the European Convention on Human Rights; article 8(1) American Convention on Human Rights; article 7(1)(d) of the African Charter ("within a reasonable time").

¹⁰⁵² Art. 14(3)(e) of the International Covenant; article 6(3)(d) of the European Convention on Human Rights; article 8(2)(f) of the American Convention on Human Rights; see also article 75(4)(g) of Protocol I.

¹⁰⁵³ Article 14(3)(f) of the International Covenant; article 6(3)(e) of the European Convention on Human Rights; article 8(2)(a) of the American Convention on Human Rights.

¹⁰⁵⁴ Article 6(2)(b) of Protocol II.

¹⁰⁵⁵ Article 6(2)(c) of Protocol II; article 15 of the International Covenant; article 7 of the European Convention on Human Rights; article 9 of the American Convention on Human Rights; article 7(2) of the African Charter.

- the presumption of innocence;¹⁰⁵⁶
- the right to be present at one's trial;¹⁰⁵⁷
- the right to remain silent and against self-incrimination;¹⁰⁵⁸
- the right to appeal the judgment to a higher court, including the right to be advised, on conviction, of one's judicial and other remedies and of the time limits within which they may be exercised,¹⁰⁵⁹ and
- the principle of *non bis in idem*.¹⁰⁶⁰

385. As to the threshold that the violation of judicial guarantees must reach for conduct to qualify as criminal under article 8(2)(c)(iv) of the Statute, the Chamber notes that the Elements of Crimes invite it to consider the proceedings as a whole and the possible cumulative effect of the violation of several procedural or regulatory guarantees.¹⁰⁶¹

386. Nevertheless, the Chamber is of the opinion that that approach does not in itself prevent it from determining that, having regard to the circumstances, the violation of a single judicial guarantee is capable of establishing the crime under article 8(2)(c)(iv)

¹⁰⁵⁶ Article 6(2)(d) of Protocol II; article 14(2) of the International Covenant; article 6(2) of the European Convention on Human Rights; article 8(2) of the American Convention on Human Rights; article 7(1)(b) of the African Charter.

¹⁰⁵⁷ Article 6(2)(e) of Protocol II; article 14(3)(d) of the International Covenant; article 8(2)(g) of the American Convention on Human Rights.

¹⁰⁵⁸ Article 6(2)(f) of Protocol II; article 14(3)(g) of the International Covenant; article 8(2)(g) and 8(3) of the American Convention on Human Rights.

¹⁰⁵⁹ Article 6(3) of Protocol II; article 14(5) of the International Covenant; article 8(2)(h) of the American Convention on Human Rights.

¹⁰⁶⁰ Article 75(4)(h) of Protocol I; article 14(7) of the International Covenant; article 4 of Protocol 7 additional to the European Convention on Human Rights; article 8(4) of the American Convention on Human Rights.

¹⁰⁶¹ Elements of Crimes, footnote 59: "consider whether, in the light of all relevant circumstances, the cumulative effect of *factors* with respect to guarantees deprived the person or persons of a fair trial." [Emphasis added].

of the Statute.¹⁰⁶² One judicial guarantee may be regarded as crucial and so may suffice on its own to violate due process and make out the crime under article 8(2)(c)(iv) of the Statute.

(b) Mental elements

387. Turning to the *mens rea* required of the perpetrators of the sentences, the Chamber notes that the Elements of Crime lay down that the crime must have been committed intentionally within the meaning of article 30 of the Statute or the perpetrator must have been aware that the consequence would occur in the ordinary course of events. In the opinion of the Chamber, the mental element can be inferred from the specific conduct of the perpetrator.¹⁰⁶³ This element is proven where the perpetrator acted deliberately in order to pass sentence upon one or more persons in the absence of previous judgment or judicial guarantees or was aware that such a sentence would occur in the ordinary course of events.

388. Furthermore, as regards the war crimes set out at article 8 of the Statute, and as provided by article 30(3) of the Statute, the perpetrator must have been aware of the factual circumstances establishing the status of the victim.¹⁰⁶⁴

389. Lastly, the Chamber must satisfy itself that the perpetrator was aware of the denial of previous judgment or essential or indispensable judicial guarantees and the fact that they are essential or indispensable to a fair trial. In this respect the Chamber notes that paragraph 4 of the general introduction to the Elements of Crimes provides as follows: “With respect to mental elements associated with elements involving value judgement, such as those using the terms ‘inhumane’ or ‘severe’, it is not necessary that the perpetrator personally completed a particular value judgement, unless

¹⁰⁶² K. Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court* (Cambridge, 2003), p. 409.

¹⁰⁶³ See *Katanga* Trial Judgment, para. 913.

¹⁰⁶⁴ See paragraph 3 of the Elements of Crimes for article 8(2)(c)(iv) of the Statute.

otherwise indicated.” Accordingly, pursuant to that provision, the Chamber considers that the perpetrator need not personally have made a value judgement concerning the indispensable or essential nature of the guarantees referred to in article 8(2)(c)(iv) of the Statute.

2. Analysis

(a) Analysis pertaining to the cases of passing of sentences without previous judgment

390. In this section the Chamber will first, taking each case separately, make findings as to the facts alleged by the Prosecutor and will then perform an overall analysis of the facts against the other constituent elements of the crimes.

i. Case of the █████ men flogged on or about █████ 2012¹⁰⁶⁵

391. As to the facts pertaining to the situation of the █████ men flogged on or about █████ 2012, the Chamber refers to the facts as found above.¹⁰⁶⁶

392. █████, it is recalled, states that the flogging was decided by the Islamic Court and that either the emir of the police or, if he was absent, Abou Dhar gave the order to execute the flogging and designated those who were to carry it out.¹⁰⁶⁷

ii. Case of P-0547¹⁰⁶⁸

393. As to the facts pertaining to the situation of P-0547, the Chamber refers to the facts as found above.¹⁰⁶⁹

¹⁰⁶⁵ DCC, paras. 466, 477-478, 1063; Defence Final Written Submissions, para. 137.

¹⁰⁶⁶ See, above, paras. 278-279.

¹⁰⁶⁷ See, above, para. 279.

¹⁰⁶⁸ DCC, paras. 466, 470, 1063; Defence Final Written Submissions, para. 149.

¹⁰⁶⁹ See, above, paras. 336-337.

394. From the victim's description of the perpetrators, the Chamber concludes that the perpetrator of the aforementioned acts belonged to the armed groups Ansar Dine/AQIM.

iii. Case of P-0574¹⁰⁷⁰

395. As to the facts pertaining to the situation of P-0574, the Chamber refers to the facts as found above.¹⁰⁷¹

(a) First sentence – detention

396. As regards the first punishment imposed on her – a prison sentence – P-0574 identifies the perpetrators as Mohamed Moussa and two other men dressed in khaki clothing and a blue top, [REDACTED]. From the circumstances of the incident and the features of the clothing, the Chamber concludes that the perpetrators of the aforementioned acts belonged to the *Hisbah*¹⁰⁷² and/or the Islamic Police,¹⁰⁷³ bodies set up by the armed groups Ansar Dine/AQIM.

(b) Second sentence – lashes of the whip

397. As regards the second punishment imposed on her – a sentence of flogging – P-0574 identifies the perpetrator as Adama, who issued the order. Accordingly, the

¹⁰⁷⁰ DCC, paras. 466, 471, 1063; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 28, lines 17-22; Defence Final Written Submissions, paras. 150-152.

¹⁰⁷¹ See, above, paras. 281-282.

¹⁰⁷² For Mohamed Moussa.

¹⁰⁷³ For the two other men wearing a blue top; see Video, [MLI-OTP-0015-0495](#), at 00:27:26:08 showing two men wearing a blue vest marked "[TRANSLATION] Islamic Police" in Arabic and French; see also Video, [MLI-OTP-0009-1749](#), at 00:07:30:14; [REDACTED]

[REDACTED]; Statement of P-0398, [MLI-OTP-0051-1155](#), pp. 1175-1176, lines 671-708.

Chamber concludes that the perpetrator of the aforementioned act belonged to the Islamic Police,¹⁰⁷⁴ a body set up by the armed groups Ansar Dine/AQIM.

iv. Case of [REDACTED]¹⁰⁷⁵

398. As to the facts pertaining to the situation of [REDACTED], the Chamber refers to the facts as found above.¹⁰⁷⁶

(a) First sentence – first episode of detention

399. As regards the first punishment imposed on [REDACTED] – a prison sentence – Witness P-0580 identifies the perpetrator as Mohamed Moussa. Accordingly, the Chamber concludes that the perpetrator of the aforementioned act belonged to the *Hisbah*, a body set up by the armed groups Ansar Dine/AQIM.¹⁰⁷⁷

(b) Second sentence – second episode of detention

400. As regards the second punishment imposed on [REDACTED] – a prison sentence – Witness P-0580 identifies the perpetrator as Mohamed Moussa. Accordingly, the Chamber concludes that the perpetrator of the aforementioned act belonged to the *Hisbah*, a body set up by the armed groups Ansar Dine/AQIM.¹⁰⁷⁸

(c) Third sentence – lashes of the whip

401. As regards the third punishment imposed on [REDACTED] – a sentence of flogging – Witness P-0580 identifies the perpetrator as Mohamed Moussa.

¹⁰⁷⁴ See, above, paras. 102.

¹⁰⁷⁵ DCC, paras. 466, 474, 1063; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 28, lines 23-28; Defence Final Written Submissions, paras. 143-148.

¹⁰⁷⁶ See, above, paras. 287, 292, 301.

¹⁰⁷⁷ See, above, para. 113.

¹⁰⁷⁸ See, above, para. 113.

Accordingly, the Chamber concludes that the perpetrator of the aforementioned act belonged to the *Hisbah*, a body set up by the armed groups Ansar Dine/AQIM.¹⁰⁷⁹

v. Case of [REDACTED]¹⁰⁸⁰

402. As to the facts pertaining to the situation of [REDACTED], the Chamber refers to the facts as found above.¹⁰⁸¹

403. Witness P-0580 identifies the perpetrator of the act as Mohamed Moussa. Accordingly, the Chamber concludes that the perpetrator of the aforementioned act belonged to the *Hisbah*, a body set up by the armed groups Ansar Dine/AQIM.¹⁰⁸²

vi. Case of P-0570¹⁰⁸³

404. As to the facts pertaining to the situation of P-0570, the Chamber refers to the facts as found above.¹⁰⁸⁴

405. P-0570 identifies the perpetrators of her punishment as Mohamed Moussa and three other men who were his subordinates. Accordingly, the Chamber concludes that the perpetrators of the aforementioned acts belonged to the *Hisbah*, a body set up by the armed groups Ansar Dine/AQIM.¹⁰⁸⁵

vii. Case of P-0542¹⁰⁸⁶

406. As to the facts pertaining to the situation of P-0542, the Chamber refers to the facts as found above.¹⁰⁸⁷

¹⁰⁷⁹ See, above, para. 113.

¹⁰⁸⁰ DCC, paras. 466, 474-475, 1063; Defence Final Written Submissions, para. 148.

¹⁰⁸¹ See, above, paras. 294, 301.

¹⁰⁸² See, above, para. 113.

¹⁰⁸³ DCC, paras. 466, 472, 1063; Defence Final Written Submissions, paras. 140-142.

¹⁰⁸⁴ See, above, paras. 333-334.

¹⁰⁸⁵ See, above, para. 113.

¹⁰⁸⁶ DCC, paras. 466, 473, 1063; Defence Final Written Submissions, paras. 157-158.

¹⁰⁸⁷ See, above, paras. 330-331.

407. P-0542 identifies the perpetrator of the act as Mohamed Moussa. Accordingly, the Chamber concludes that the perpetrator of the aforementioned acts belonged to the *Hisbah* and hence to the armed groups Ansar Dine/AQIM.¹⁰⁸⁸

viii. **Case** [REDACTED]¹⁰⁸⁹

408. As to the facts pertaining to the situation [REDACTED], the Chamber refers to the facts as found above.¹⁰⁹⁰

409. From Witness P-0608's description of the perpetrator, the Chamber concludes that the perpetrator of the aforementioned acts belonged to the armed groups Ansar Dine/AQIM.

ix. **Analysis pertaining to the elements of crimes which are common to all the cases without previous judgment**

410. In accordance with the applicable law surveyed above, the Chamber will look first at whether a sentence was passed in the absence of judgment pronounced by a court.

411. As regards the case of the [REDACTED] men flogged on or about [REDACTED] 2012, the facts found in the section which concerns counts 1 to 5 do not permit the Chamber to conclude that the sentence was passed without previous judgment. However, the Chamber will consider their case in the section on the passing of sentences pursuant to a judgment pronounced by a court that was not regularly constituted or did not afford all other judicial guarantees generally recognized as indispensable.

¹⁰⁸⁸ See, above, para. 113.

¹⁰⁸⁹ DCC, paras. 466, 476, 1063; Defence Written Submissions, para. 10; Defence Final Written Submissions, para. 159.

¹⁰⁹⁰ See, above, paras. 325-326.

413. The Chamber finds that these sentences were passed without referral to the Islamic Court and without previous judgment. To be specific, P-0547, P-0574, [REDACTED], [REDACTED], P-0570 and P-0542 were placed in detention straightaway where they remained until their release. Moreover, the lashes were administered to P-0574, [REDACTED] [REDACTED] immediately after the order was given.

414. As regards the *mens rea* required of the perpetrators of the crime 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 this conduct intentionally and with 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. The Chamber is also satisfied that the perpetrators of those crimes, all of whom were combatants belonging to Ansar Dine/AQIM, 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.

415. Lastly, whereas the Defence argues that some of the cases relating to the sentencing crimes as set out above,¹⁰⁹⁷ or the offences which brought them before the Islamic Court (adultery, selling alcohol),¹⁰⁹⁸ were not associated with the armed conflict, the Chamber recalls that it is the conduct proscribed by the Statute – the sentences, in this instance – which must be associated with the armed conflict. Thus the Chamber notes that the aforementioned sentences were passed in Timbuktu and the Timbuktu Region – in a place under the control of the armed groups Ansar Dine and AQIM.¹⁰⁹⁹ Accordingly, the Chamber determines that all of the conduct set

¹⁰⁹⁷ Defence Final Written Submissions, paras. 109-110.

¹⁰⁹⁸ Defence Final Written Submissions, para. 111.

¹⁰⁹⁹ See, above, paras. 212, 214, 217.

out above took place in the context of and was associated with a non-international armed conflict.¹¹⁰⁰

(b) Analysis pertaining to the cases of passing of sentences pursuant to a previous judgment pronounced by a court

i. Independence of the judges of the Islamic Court¹¹⁰¹

416. The Prosecutor alleges that the Islamic Court did not afford the essential guarantees of independence,¹¹⁰² in particular because it was under the influence of the executive.¹¹⁰³

417. The Chamber has first looked at the manner in which the judges of the Islamic Court were appointed. It appears from the evidence filed by the Prosecutor that Abou Zeid invited all those with a measure of religious knowledge and ordered them to establish a court in Timbuktu.¹¹⁰⁴ At least one member of the Islamic Court had to be highly versed in religious matters.¹¹⁰⁵ Iyad Ag Ghaly met Houka Houka separately and the latter was subsequently made Presiding Judge.¹¹⁰⁶ Abou Zeid, meanwhile, appointed Abdallah Al Chinguetti.¹¹⁰⁷

¹¹⁰¹ DCC, paras. 423, 426-431, 434; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 29, line 10 to p. 31, line 7, p. 32, line 9 to p. 34, line 7; Prosecutor's Final Written Submissions, paras. 17-21.

¹¹⁰² DCC, paras. 423-434.

¹¹⁰³ DCC, paras. 426-432; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 29, lines 13-20, p. 32, line 12 to p. 9.

¹¹⁰⁴ [REDACTED]

¹¹⁰⁵ [REDACTED]

¹¹⁰⁶ [REDACTED]

[REDACTED]

[REDACTED]

¹¹⁰⁷ [REDACTED].

418. The Chamber refers to its findings concerning the composition of the Islamic Court¹¹⁰⁸ and notes, moreover, some of its members' out-of-court activities. Thus Abdallah Al Chinguetti, who belonged to AQIM¹¹⁰⁹ and was appointed by Abou Zeid to oversee the Court,¹¹¹⁰ was also head of the Sharia Committee.¹¹¹¹ Koutaïba, too, belonged to the group AQIM.¹¹¹² Radwan, besides having court duties, was also a member of the group AQIM,¹¹¹³ worked at the Media Commission and was in charge of new recruits for the group Ansar Dine.¹¹¹⁴

419. The evidence shows that Islamic Court decisions were influenced by the views of members belonging to AQIM, in particular Abdallah Al Chinguetti.¹¹¹⁵ In this connection the Chamber takes note of several witness statements describing the Islamic Court as “[TRANSLATION] window dressing” introduced so that people would not think that their fates were being decided by representatives of AQIM.¹¹¹⁶

420. In any event, decisions that could not be settled by the Islamic Court because they were considered too important were referred to and taken by persons other than

¹¹⁰⁸ See, above, para. 122.

¹¹⁰⁹ [REDACTED]

¹¹¹⁰ [REDACTED]

¹¹¹¹ See, above, para. 123.

¹¹¹² [REDACTED]

¹¹¹³ [REDACTED]

¹¹¹⁴ [REDACTED]

¹¹¹⁵ [REDACTED]

¹¹¹⁶ [REDACTED]

members of the Court, including by Abou Zeid,¹¹¹⁷ and ██████████ would then ask the bench to rule on matters of substance and form in accordance with their views.¹¹¹⁸

421. The Chamber sees that whereas the judges of the Islamic Court ruled on the merits of a case (or the existence of Islamic scripture prescribing a penalty), decisions on the execution of penalties could be taken by Iyad Ag Ghaly¹¹¹⁹ or Abou Zeid.¹¹²⁰ By way of example the Chamber refers to the court cases concerning Dédéou Maiga,¹¹²¹ whose amputation was decided by Iyad Ag Ghaly,¹¹²² and ██████████,¹¹²³ who saw members of the executive – ██████████ – ██████████ – play an active part at his hearing before the Islamic Court.¹¹²⁴

422. In the light of the foregoing the Chamber considers that the armed groups failed to ensure that the Islamic Court of Timbuktu was shielded from any outside

¹¹¹⁷ ██████████
██████████
██████████
██████████; Statement of P-0398, MLI-OTP-0051-0658, p. 0674, lines 514-515.

¹¹¹⁸ ██████████
¹¹¹⁹ ██████████
██████████
██████████ Statement of P-0398, [MLI-OTP-0051-0631](#), p. 0420, lines 415-424, pp. 0642-0643, lines 359-383, pp. 0643-0644, lines 402-417, p. 0655, lines 792-800; ██████████
██████████
██████████

¹¹²⁰ ██████████
██████████
██████████ Statement of P-0398, [MLI-OTP-0051-0631](#), pp. 0642-0643, lines 359-383, pp. 0643-0644, lines 402-417, p. 0655, lines 792-800; ██████████
██████████

¹¹²¹ See, below, para. 441.

¹¹²² ██████████
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██████████
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██████████

¹¹²³ ██████████

¹¹²⁴ ██████████

interference by other members of the armed groups Ansar Dine/AQIM and did not provide it with the necessary means of performing its task. Accordingly the Chamber finds that the Islamic Court of Timbuktu did not afford the essential guarantees of independence required by article 8(2)(c)(iv) of the Statute.

ii. **Impartiality of the judges of the Islamic Court**¹¹²⁵

423. The Prosecutor submits that the Islamic Court did not afford the essential guarantees of impartiality,¹¹²⁶ in particular because the Presiding Judge, Houka Houka, took part in the daily activities of the armed groups Ansar Dine/AQIM.¹¹²⁷

424. The Chamber sees that Judge Houka Houka took part in several events including a meeting with the Crisis Committee¹¹²⁸ and a meeting in which the decision was taken to attack the *Commune* of Konna.¹¹²⁹ Houka Houka was also present [REDACTED]

[REDACTED].¹¹³⁰ Likewise he was on hand when [REDACTED]

¹¹²⁵ DCC, paras. 423-425, 432-434; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 29, lines 16-17, p. 31, line 8 to p. 32, line 8, p. 33, lines 10-26; Prosecutor's Final Written Submissions, paras. 22-23.

¹¹²⁶ DCC, paras. 423-434; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 33, line 10 to p. 34, line 7.

¹¹²⁷ DCC, paras. 424-425; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 31, lines 8-27.

¹¹²⁸ Statement of P-0398, [MLI-OTP-0051-0598](#), pp. 0616-0622, lines 589-824; [REDACTED]

¹¹²⁹ [REDACTED]

¹¹³⁰ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0044-0045, paras. 116-118.

[REDACTED] flogged [REDACTED],¹¹³¹ and he committed a number of acts of violence [REDACTED].¹¹³²

425. [REDACTED] saw for himself¹¹³³ the lack of impartiality on the part of Daoud Ali [REDACTED] and Mohamed Moussa [REDACTED] in a case before the Islamic Court [REDACTED].¹¹³⁴

[REDACTED]¹¹³⁵
[REDACTED]¹¹³⁶
[REDACTED]¹¹³⁷
[REDACTED]¹¹³⁸
[REDACTED]
[REDACTED]
[REDACTED]¹¹³⁹

426. Moreover, the Chamber sees that Islamic Court hearings were intimidating in that the judges present were armed.¹¹⁴⁰

¹¹³¹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0044, para. 117.
¹¹³² Statement of P-0580, [MLI-OTP-0051-0018-R01](#), pp. 0035-0038, 0040, 0044-0045, paras. 77, 78, 83, 89, 100, 101, 116-118; see also, below, paras. 286-297.
¹¹³³ [REDACTED]
¹¹³⁴ [REDACTED]
¹¹³⁵ [REDACTED]
¹¹³⁶ [REDACTED]
¹¹³⁷ [REDACTED]
¹¹³⁸ [REDACTED]
¹¹³⁹ [REDACTED]
¹¹⁴⁰ [REDACTED] Video, [MLI-OTP-0009-1749](#), 00:09:40:00 to 00:10:19:00; transcript, [MLI-OTP-0028-0839](#); Video, [MLI-OTP-0025-0010](#), 00:10:08:00 to 00:10:29:00; transcript, [MLI-OTP-0033-5244](#), translation [MLI-OTP-0033-5488](#), p. 5494, lines 180-184; [REDACTED]
[REDACTED]

427. The foregoing, including the conduct of the members of the Islamic Court displaying a certain hostility, inclines the Chamber to the view that those members may have harboured preconceived opinions likely to sway considerably their decisions and that they were driven by motives that had nothing to do with the objective rules which were applicable. The Chamber notes the ties between the judges and other persons with an interest in the disputes to be settled by the court, and the inaction in that regard. Furthermore the Chamber sees that bias was baked into the roles of the judges, who performed other roles, and into the hierarchical relationships of the judges vis-à-vis Abou Zeid and Iyad Ag Ghaly. Accordingly, the Chamber finds that the Islamic Court of Timbuktu did not afford the essential guarantees of impartiality required by article 8(2)(c)(iv) of the Statute.

428. On the facts found, therefore, the Chamber determines that this system, taken as a whole, did not afford the essential guarantees of independence and impartiality. That being so the Chamber considers that the Islamic Court of Timbuktu established by the armed groups Ansar Dine/AQIM between 1 April 2012 and 28 January 2013 was not regularly constituted within the meaning of article 8(2)(c)(iv) of the Statute. In the Chamber's assessment such a system was, therefore, necessarily an impediment to the passing of sentences by a regularly constituted court under article 8(2)(c)(iv) of the Statute.

iii. Cases of passing of sentences pursuant to a written judgment

429. In this section the Chamber will first, taking each case separately, make findings as to the facts alleged by the Prosecutor, and will then perform an overall analysis of the facts against the other constituent elements of the crimes.

430. The Chamber finds the following facts to be established to the standard required, on the basis of the evidence, the submissions of the parties and the participants, and the number of items of concordant evidence.

(a) Case of [REDACTED]

[REDACTED]¹¹⁴¹

431. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to [REDACTED] lashes of the whip, a fine of [REDACTED] [REDACTED], the police having caught him in the act.¹¹⁴² The accused admitted to [REDACTED].¹¹⁴³ Moreover, as stated above, the victim was tortured by members of the Islamic Police so that he would reveal [REDACTED] [REDACTED], before being sentenced for those acts.¹¹⁴⁴ Lastly the Chamber underlines that it has also found that Mr Al Hassan signed the police report, which is dated the same day as the Islamic Court judgment, and that he therefore took part in the investigation process, at the very least by writing that report.¹¹⁴⁵

(b) Case [REDACTED]

[REDACTED]¹¹⁴⁶

[REDACTED]¹¹⁴⁷

432. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to pay [REDACTED]

¹¹⁴¹ DCC, paras. 307, 435, 445, 449, 1061; Defence Final Written Submissions, para. 108.

¹¹⁴² Judgment of the Islamic Court, [REDACTED]

¹¹⁴³ Judgment of the Islamic Court, [REDACTED]

¹¹⁴⁴ See, above, para. 270.

¹¹⁴⁵ See above, para. 270.

¹¹⁴⁶ The Chamber notes that the number of the judgment does not appear in the translation of the item of evidence but does appear in the original.

¹¹⁴⁷ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

[REDACTED] 1148

The judgment states that [REDACTED] 1149

The Chamber notes the existence of a police report¹¹⁵⁰ which, judging from the date and subject matter of the case, corresponds, to the standard required, to the same court case as the judgment in question. The police report states [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, the evidence also shows that Mr Al Hassan signed the police report and therefore took part in the investigation process, at the very least by writing that report.

(c) Case of [REDACTED]
[REDACTED]
[REDACTED] 1151

433. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED]

[REDACTED]

[REDACTED] to imprisonment, by way of "[TRANSLATION] ta'zir", and to take a course on sharia [REDACTED].¹¹⁵² [REDACTED]

[REDACTED]

¹¹⁴⁸ Judgment of the Islamic Court, [REDACTED], [REDACTED]
[REDACTED].

¹¹⁴⁹ Judgment of the Islamic Court, [REDACTED], [REDACTED]
[REDACTED].

¹¹⁵⁰ Islamic Police report, [REDACTED], [REDACTED].

¹¹⁵¹ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹¹⁵² Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-748Z](#), translation MLI-OTP-0069-2061, p. 2062.

[REDACTED]¹¹⁵³ [REDACTED]
 [REDACTED]
 [REDACTED]¹¹⁵⁴

(d) Case of [REDACTED]
 [REDACTED]¹¹⁵⁵

434. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to imprisonment and [REDACTED] lashes of the whip [REDACTED].¹¹⁵⁶ The judgment states that [REDACTED] witnesses gave evidence.¹¹⁵⁷ [REDACTED] states that the accused was [REDACTED] [REDACTED] at the time.¹¹⁵⁸

(e) Case of [REDACTED]
 [REDACTED]¹¹⁵⁹

435. On [REDACTED] 2012 the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to imprisonment for [REDACTED]
 [REDACTED]
 [REDACTED]¹¹⁶⁰

¹¹⁵³ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7487](#), translation MLI-OTP-0069-2061, p. 2062.

¹¹⁵⁴ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7487](#), translation MLI-OTP-0069-2061, p. 2062.

¹¹⁵⁵ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Written Submissions, para. 21; Defence Final Written Submissions, paras. 112-113.

¹¹⁵⁶ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7484](#), translation MLI-OTP-0034-0161, p. 1062.

¹¹⁵⁷ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7484](#), translation MLI-OTP-0034-0161, p. 1062.

¹¹⁵⁸ [REDACTED]

¹¹⁵⁹ DCC, paras. 435, 437-438, 443, 445-446, 462, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹¹⁶⁰ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7482](#), translation MLI-OTP-0069-2055, p. 2056.

(f) Case of [REDACTED]
[REDACTED]¹¹⁶¹

436. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing two people: [REDACTED] to [REDACTED] lashes of the whip [REDACTED]
[REDACTED]¹¹⁶² [REDACTED]
[REDACTED]
[REDACTED] to a
“[TRANSLATION] discretionary” penalty of [REDACTED] imprisonment [REDACTED]
[REDACTED].¹¹⁶³

(g) Case of [REDACTED]
[REDACTED]¹¹⁶⁴

437. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to [REDACTED] lashes of the whip each for “[TRANSLATION] adultery”.¹¹⁶⁵ The judgment underlines that an investigation took place and that the accused willingly and voluntarily confessed.¹¹⁶⁶
[REDACTED]
[REDACTED].¹¹⁶⁷ [REDACTED]

¹¹⁶¹ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹¹⁶² Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7480](#), translation MLI-OTP-0034-0157, p. 0158.

¹¹⁶³ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7480](#), translation MLI-OTP-0034-0157, p. 0158.

¹¹⁶⁴ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹¹⁶⁵ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7478](#), translation MLI-OTP-0034-0155, p. 0156.

¹¹⁶⁶ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7478](#), translation MLI-OTP-0034-0155, p. 0156.

¹¹⁶⁷ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7478](#), translation MLI-OTP-0034-0155, p. 0156.

[REDACTED]

[REDACTED],¹¹⁶⁸

(h) Case of [REDACTED]

[REDACTED]¹¹⁶⁹

438. As a preliminary remark, the Chamber notes that the surname of the person against whom judgment is given is partially illegible.¹¹⁷⁰ Yet the Prosecutor alleges his name to be [REDACTED] without explaining how she so concluded.¹¹⁷¹ The Chamber will therefore rely on the name which appears on the item of evidence provided.

439. Thus on [REDACTED] the Islamic Court of Timbuktu, after investigation, issued a judgment sentencing [REDACTED] to [REDACTED] lashes of the whip for [REDACTED]

[REDACTED].¹¹⁷² [REDACTED]

[REDACTED]¹¹⁷³

(i) Case of [REDACTED]

[REDACTED]¹¹⁷⁴

440. On [REDACTED] the Islamic Court of Timbuktu, after investigation, issued a judgment sentencing [REDACTED] to an “[TRANSLATION] Islamic discretionary” penalty of imprisonment [REDACTED]

¹¹⁶⁸ See, below, para. 441.

¹¹⁶⁹ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 110-121; Defence Final Written Submissions, paras. 112-113.

¹¹⁷⁰ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7476](#), translation [MLI-OTP-0034-0153](#), p. 0154.

¹¹⁷¹ DCC, paras. 435, 1061.

¹¹⁷² Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7476](#), translation [MLI-OTP-0034-0153](#), p. 0154.

¹¹⁷³ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7476](#), translation [MLI-OTP-0034-0153](#), p. 0154.

¹¹⁷⁴ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066.

[REDACTED] .¹¹⁷⁵

[REDACTED]

[REDACTED] .¹¹⁷⁶ [REDACTED]

[REDACTED] .¹¹⁷⁷

**(j) Case of Dédéou Muhammad Maiga, court case 17/1433-2012,
12 September 2012¹¹⁷⁸**

441. As stated above, Dédéou Maiga was arrested by Mr Al Hassan and Adama and taken to the police station, where he confessed; he spent a total of several months in detention before appearing before the Islamic Court.¹¹⁷⁹ On 12 September 2012 the Islamic Court issued a judgment sentencing Dédéou Muhammad Maiga to amputation of the hand for theft.¹¹⁸⁰ The judgment specifies that the requirements for the application of that prescribed punishment were fulfilled and that the accused confessed to the crime.¹¹⁸¹ While in detention and on the day of the amputation itself, Dédéou Maiga learned from the judges and the Islamic Police that they were going to apply sharia and subject him to amputation.¹¹⁸² Moreover, the Chamber observes, although the Prosecutor did not raise it, that the accused appears on a list of detained

¹¹⁷⁵ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7475](#), translation [MLI-OTP-0034-0151](#), p. 0152.

¹¹⁷⁶ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7475](#), translation [MLI-OTP-0034-0151](#), p. 0152.

¹¹⁷⁷ See, below, para. 441.

¹¹⁷⁸ DCC, paras. 431, 435, 1061; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 99, line 10 to p. 100, line 11; Prosecutor's Final Written Submissions, paras. 24-25, 27; Defence Final Written Submissions, paras. 112-113, 119-120.

¹¹⁷⁹ See, above, paras. 310-312.

¹¹⁸⁰ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0002-0051](#); translation, [MLI-OTP-0039-0893](#).

¹¹⁸¹ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0002-0051](#); translation, [MLI-OTP-0039-0893](#).

¹¹⁸² [REDACTED]
[REDACTED] Video, [MLI-OTP-0001-7077](#), 00:19:43:00-00:19:58:00.

persons.¹¹⁸³ From a comparison of the Islamic Court judgment against the list, and specifically from the accused's name, the date and the nature of the offence, the Chamber determines to the standard required that the same person is at issue.

[REDACTED]

[REDACTED]¹¹⁸⁴ [REDACTED]

[REDACTED]

[REDACTED]¹¹⁸⁵ [REDACTED]

[REDACTED]

[REDACTED]¹¹⁸⁶

(k) Case [REDACTED]

[REDACTED]¹¹⁸⁷

442. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to a “[TRANSLATION] discretionary” penalty of [REDACTED] imprisonment [REDACTED].¹¹⁸⁹ The judgment further states that upon investigation the evidence was insufficient, given that the accused denied the allegations, but the accusation was “[TRANSLATION] strong”.¹¹⁹⁰ [REDACTED]

¹¹⁸³ Table, MLI-OTP-0001-7361, translation [MLI-OTP-0034-0063](#), p. 0064.

¹¹⁸⁴ Written record of interview of Dédéou Maiga, MLI-OTP-0032-0320-R01, p. 0321.

¹¹⁸⁵ See, above, para. 94.

¹¹⁸⁶ See, above, para. 68.

¹¹⁸⁷ DCC, paras. 435, 463, 1061; Defence Final Written Submissions, paras. 112-113.

¹¹⁸⁸ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7473](#), translation [MLI-OTP-0034-0147](#), p. 0148.

¹¹⁸⁹ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7473](#), translation [MLI-OTP-0034-0147](#), p. 0148.

¹¹⁹⁰ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7473](#), translation [MLI-OTP-0034-0147](#), p. 0148.

[REDACTED]

[REDACTED],¹²⁰⁰

(n) Case [REDACTED]

[REDACTED]¹²⁰¹

445. From the document provided,¹²⁰² the Chamber sees that the name of the person against whom judgment was given is partially illegible. Yet the Prosecutor alleges his name to be [REDACTED] without explaining how she so concluded. The Chamber will therefore rely on the name which appears on the item of evidence provided.

446. Thus the Chamber concludes that on [REDACTED] the Islamic Court of Timbuktu issued a judgment convicting [REDACTED]

[REDACTED].¹²⁰³ [REDACTED]

[REDACTED].¹²⁰⁴ The judgment states that [REDACTED]

[REDACTED] investigation [REDACTED]

[REDACTED]

[REDACTED]¹²⁰⁵ [REDACTED]

[REDACTED].¹²⁰⁶ [REDACTED]

¹²⁰⁰ See, below, para. 441.

¹²⁰¹ DCC, paras. 371, 435, 437-438, 443, 445-446, 1061, 1066; Defence Written Submissions, para. 21.

¹²⁰² Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7469](#), translation [MLI-OTP-0034-0143](#), p. 0144.

¹²⁰³ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7469](#), translation [MLI-OTP-0034-0143](#), p. 0144.

¹²⁰⁴ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7469](#), translation [MLI-OTP-0034-0143](#), p. 0144.

¹²⁰⁵ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7469](#), translation [MLI-OTP-0034-0143](#), p. 0144.

¹²⁰⁶ [REDACTED]

[REDACTED]¹²⁰⁷ [REDACTED]¹²⁰⁸ [REDACTED]¹²⁰⁹
 [REDACTED]¹²¹⁰

(o) Case [REDACTED]
 [REDACTED]¹²¹¹

447. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to a “[TRANSLATION] discretionary” penalty of [REDACTED] imprisonment for [REDACTED].¹²¹² The accused maintained that he would repent and [REDACTED]
 [REDACTED]¹²¹³

(p) Case [REDACTED]
 [REDACTED]¹²¹⁴

448. On [REDACTED] the Islamic Court of Timbuktu, after investigation, issued a judgment sentencing [REDACTED] to [REDACTED] imprisonment by way of “[TRANSLATION] *ta’zir*” [REDACTED].¹²¹⁵ The judgment states that the accused admitted to [REDACTED]

¹²⁰⁷ [REDACTED]; Statement of P-0398, [MLI-OTP-0051-0658](#), p. 0665, lines 225-228.

¹²⁰⁸ Statement of P-0398, [MLI-OTP-0051-0658](#), p. 0668, lines 325-333.

¹²⁰⁹ Statement of P-0398, [MLI-OTP-0051-0658](#), pp. 0665-0676, lines 225-603; [REDACTED]

¹²¹⁰ Statement of P-0398, [MLI-OTP-0051-0658](#), pp. 0665-0676, lines 225-234.

¹²¹¹ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹²¹² Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0002-0082](#), translation [MLI-OTP-0068-0101](#), p. 0102.

¹²¹³ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0002-0082](#), translation [MLI-OTP-0068-0101](#), p. 0102.

¹²¹⁴ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Prosecutor’s Final Written Submissions, paras. 24-25; Defence Final Written Submissions, paras. 112-113.

¹²¹⁵ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7465](#), translation [MLI-OTP-0069-2050](#), p. 2051.

[REDACTED].¹²¹⁶ The judgment states that his life was spared because he repented before the “[TRANSLATION] Group” and recited two *Shahadas*.¹²¹⁷

[REDACTED].¹²¹⁸

(q) Case of [REDACTED]

[REDACTED]¹²¹⁹

449. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to a “[TRANSLATION] discretionary” penalty of [REDACTED] lashes of the whip and to a fine of [REDACTED].¹²²⁰

[REDACTED].¹²²²

(r) Case [REDACTED]

[REDACTED]¹²²³

450. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to [REDACTED] lashes of the whip by way of “[TRANSLATION] *ta’zir*”

¹²¹⁶ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7465](#), translation [MLI-OTP-0069-2050](#), p. 2051.

¹²¹⁷ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7465](#), translation [MLI-OTP-0069-2050](#), p. 2051.

¹²¹⁸ See, below, para. 441.

¹²¹⁹ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹²²⁰ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7461](#), translation [MLI-OTP-0034-0139](#), p. 0140.

¹²²¹ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7461](#), translation [MLI-OTP-0034-0139](#), p. 0140.

¹²²² Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7461](#), translation [MLI-OTP-0034-0139](#), p. 0140.

¹²²³ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

[REDACTED]¹²²⁴ [REDACTED]
 [REDACTED]
 [REDACTED]¹²²⁵

(s) Case of [REDACTED]
 [REDACTED]¹²²⁶

451. On [REDACTED] the Islamic Court of Timbuktu, after investigation, issued a judgment sentencing [REDACTED] [REDACTED] to [REDACTED] and, in [REDACTED]'s case [REDACTED] to [REDACTED] lashes of the whip [REDACTED]¹²²⁷ [REDACTED]
 [REDACTED]¹²²⁸ [REDACTED]
 [REDACTED]¹²²⁹

(t) Case of [REDACTED]
 [REDACTED]
 [REDACTED]¹²³⁰

452. To begin, the Prosecutor alleges the accused's name to be [REDACTED] [REDACTED] without explaining how she so concluded.¹²³¹ The Chamber will therefore rely on the names which appear on the evidence provided.

¹²²⁴ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7460](#), translation [MLI-OTP-0069-2048](#), p. 2049.

¹²²⁵ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7460](#), translation [MLI-OTP-0069-2048](#), p. 2049.

¹²²⁶ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹²²⁷ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7456](#), translation [MLI-OTP-0034-0137](#), p. 0138.

¹²²⁸ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7456](#), translation [MLI-OTP-0034-0137](#), p. 0138.

¹²²⁹ See, below, para. 441.

¹²³⁰ DCC, paras. 435, 437-438, 443, 445-446, 464, 1061, 1066; Defence Final Written Submissions, para. 109.

¹²³¹ DCC, paras. 435, 1061.

453. The Chamber points out that the Prosecutor has alleged that the crime was also [REDACTED].¹²³² The Chamber observes however that it appears from the documents provided [REDACTED] [REDACTED].¹²³³ Moreover the Chamber notes the Prosecutor [REDACTED] [REDACTED].¹²³⁴ These observations notwithstanding the Chamber will base its determination on the charges as stated by the Prosecutor [REDACTED] [REDACTED].

454. Thus the Chamber finds that on [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED]¹²³⁵ or [REDACTED]¹²³⁶ to a “[TRANSLATION] discretionary” penalty of [REDACTED] lashes of the whip and [REDACTED] by way of “[TRANSLATION] *ta'zir*”. [REDACTED] [REDACTED].¹²³⁷ The judgment¹²³⁸ and police report¹²³⁹ state that [REDACTED].

¹²³² DCC, paras. 435, 1061.

¹²³³ See Judgment of the Islamic Court, [REDACTED], [REDACTED]; Islamic Police report, [REDACTED]; Statement of P-0398, [REDACTED].

¹²³⁴ Islamic Police report, [REDACTED], [REDACTED].

¹²³⁵ Name appearing in the Judgment of the Islamic Court, [REDACTED].

¹²³⁶ Name appearing in the Islamic Police report, [REDACTED], [REDACTED].

¹²³⁷ Judgment of the Islamic Court, [REDACTED], [REDACTED].

¹²³⁸ Judgment of the Islamic Court, [REDACTED], [REDACTED].

¹²³⁹ Islamic Police report, [REDACTED], [REDACTED].

[REDACTED]
[REDACTED]. In determining the sentence the judges were mindful that [REDACTED]
[REDACTED]

[REDACTED].¹²⁴⁰ [REDACTED] does not think the Islamic Court made an investigation, as the report and judgment are dated the same day.¹²⁴¹

(u) Case of [REDACTED]

[REDACTED]¹²⁴²

455. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to [REDACTED] days' imprisonment and payment [REDACTED]
[REDACTED]

[REDACTED].¹²⁴³ [REDACTED]

[REDACTED].¹²⁴⁴

(v) Case [REDACTED]¹²⁴⁵ or [REDACTED]¹²⁴⁶

[REDACTED]¹²⁴⁷

456. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to pay [REDACTED] to the

¹²⁴⁰ Judgment of the Islamic Court, [REDACTED], [REDACTED]
[REDACTED].

¹²⁴¹ [REDACTED]

¹²⁴² DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹²⁴³ Judgment of the Islamic Court, [REDACTED], [REDACTED]
[REDACTED].

¹²⁴⁴ Judgment of the Islamic Court, [REDACTED], [REDACTED]
[REDACTED].

¹²⁴⁵ Name appearing in the Islamic Police report, [REDACTED], [REDACTED]
[REDACTED].

¹²⁴⁶ Name appearing in the Judgment of the Islamic Court, [REDACTED],
[REDACTED].

¹²⁴⁷ DCC, paras. 435, 437-438, 443, 445-446, 455, 1061, 1066; Defence Final Written Submissions, para. 110.

Islamic Police as a “[TRANSLATION] discretionary” penalty for [REDACTED].¹²⁴⁸ The police report dated the same day specifies that the accused was convicted on the basis of [REDACTED] information [REDACTED].¹²⁴⁹

(w) Case [REDACTED]
[REDACTED]¹²⁵⁰

457. As a preliminary point the Chamber notes that the Prosecutor maintains that the victim of the alleged sentencing crime is named [REDACTED].¹²⁵¹ Yet the Chamber does not see the name anywhere in the item of evidence in support of the allegation. The Chamber further notes that the document furnished by the Prosecutor is unclear: while at the beginning of the document it seems that the accused is [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. That said, on the basis of the document as a whole, the Chamber finds substantial grounds to believe that the victim of the crime of sentencing is [REDACTED].

458. Thus the Chamber finds that on [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing, [REDACTED], one person, [REDACTED]

¹²⁴⁸ Judgment of the Islamic Court, [REDACTED], [REDACTED]
[REDACTED].

¹²⁴⁹ Islamic Police report, [REDACTED], [REDACTED]
[REDACTED].

¹²⁵⁰ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹²⁵¹ DCC, paras. 435, 1061.

██████████ to ██████████'s imprisonment and ██████████
 ██████████.¹²⁵² The judgment specifies that the accused confessed.¹²⁵³

(x) Case of ██████████
 ██████████¹²⁵⁴

459. On ██████████ the Islamic Court of Timbuktu issued a judgment sentencing ██████████, ██████████ ██████████ to ██████ lashes of the whip each ██████████
 ██████████.¹²⁵⁵ The judgment states that both accused confessed before the *Hisbah* and the Islamic Court.¹²⁵⁶ ██████████
 ██████████.¹²⁵⁷

(y) Case of ██████████
 ██████████¹²⁵⁸

460. On ██████████ the Islamic Court of Timbuktu issued a judgment sentencing ██████████ ██████████ ██████████ to a "[TRANSLATION] statutory" penalty of ██████
 lashes of the whip each ██████████.¹²⁵⁹
 The judgment specifies that the accused persons confessed before the "[TRANSLATION]

¹²⁵² Judgment of the Islamic Court, ██████████, [MLI-OTP-0001-7434](#), translation [MLI-OTP-0034-0128](#), p. 0130.

¹²⁵³ Judgment of the Islamic Court, ██████████, [MLI-OTP-0001-7434](#), translation [MLI-OTP-0034-0128](#), p. 0130.

¹²⁵⁴ DCC, paras. 435, 1061; Defence Final Written Submissions, paras. 112-113, 121-122.

¹²⁵⁵ Judgment of the Islamic Court, ██████████, [MLI-OTP-0001-7431](#), translation [MLI-OTP-0034-0125](#), p. 0126.

¹²⁵⁶ Judgment of the Islamic Court, ██████████, [MLI-OTP-0001-7431](#), translation [MLI-OTP-0034-0125](#), p. 0126.

¹²⁵⁷ See, above, paras. 306-308.

¹²⁵⁸ DCC, paras. 435, 1061; Defence Final Written Submissions, paras. 112-113, 123-124.

¹²⁵⁹ Judgment of the Islamic Court, ██████████, [MLI-OTP-0001-7431](#), translation [MLI-OTP-0034-0125](#), p. 0127.

Sharia police” and the Islamic Court. [REDACTED]

[REDACTED]¹²⁶⁰

(z) Case of [REDACTED]

[REDACTED]¹²⁶¹

461. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to a

“[TRANSLATION] statutory” penalty of [REDACTED] lashes of the whip, [REDACTED]

[REDACTED]¹²⁶² [REDACTED]¹²⁶³ The judgment states that both accused confessed.¹²⁶⁴ [REDACTED] said the acts [REDACTED]

[REDACTED]¹²⁶⁵ [REDACTED]

[REDACTED]¹²⁶⁶ [REDACTED]

[REDACTED]. Moreover the Chamber has also found that Mr Al Hassan signed the police report and thus participated, at the very least by writing that report, in the investigation process.¹²⁶⁷

¹²⁶⁰ See, above, paras. 306-308.

¹²⁶¹ DCC, paras. 435, 465, 1061; Defence Final Written Submissions, paras. 111, 125-126.

¹²⁶² Judgment of the Islamic Court, [REDACTED]

¹²⁶³ Judgment of the Islamic Court, [REDACTED]

¹²⁶⁴ Judgment of the Islamic Court, [REDACTED]

¹²⁶⁵ [REDACTED]

¹²⁶⁶ See, above, paras. 306-308.

¹²⁶⁷ See, above, para. 307.

(aa) Case of [REDACTED][REDACTED]¹²⁶⁸

462. On [REDACTED] the Islamic Court of Timbuktu ordered [REDACTED]

[REDACTED]¹²⁶⁹**(bb) Case of** [REDACTED][REDACTED]¹²⁷⁰

463. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to a “[TRANSLATION] discretionary” penalty of [REDACTED] lashes of the whip and CFA [REDACTED] and [REDACTED] to [REDACTED] lashes of the whip and CFA [REDACTED]

[REDACTED]¹²⁷¹[REDACTED]¹²⁷²**(cc)** [REDACTED][REDACTED]¹²⁷³

464. On [REDACTED] the Islamic Court of Timbuktu, after investigation, issued a judgment sentencing [REDACTED] to a “[TRANSLATION] discretionary” penalty of [REDACTED]

¹²⁶⁸ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066.

Judgment of the Islamic Court, [REDACTED]

¹²⁷⁰ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹²⁷¹ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7419](#), translation [MLI-OTP-0034-0113](#), p. 0114.

¹²⁷² Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7419](#), translation [MLI-OTP-0034-0113](#), p. 0114.

¹²⁷³ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

lashes of the whip [REDACTED].¹²⁷⁴ [REDACTED]
 [REDACTED].¹²⁷⁵ [REDACTED]
 [REDACTED].¹²⁷⁶

(dd) Case of [REDACTED],¹²⁷⁷ [REDACTED],
 [REDACTED].¹²⁷⁸

465. On [REDACTED], the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to [REDACTED] lashes of the whip for [REDACTED].¹²⁷⁹ The Chamber is not in a position to determine the exact circumstances of the arrest which preceded the judgment.¹²⁸⁰ The judgment [REDACTED].¹²⁸¹ [REDACTED]
 [REDACTED]
 [REDACTED].¹²⁸² [REDACTED]

¹²⁷⁴ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7419](#), translation [MLI-OTP-0034-0113](#), p. 0114.

¹²⁷⁵ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7419](#), translation [MLI-OTP-0034-0113](#), p. 0114.

¹²⁷⁶ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7419](#), translation [MLI-OTP-0034-0113](#), p. 0114.

¹²⁷⁷ The Chamber notes that the name of the person against whom the judgment is given is illegible. However, considering that the date and the description of the facts agree in every respect with the information contained in the other evidence presented by the Prosecutor, the Chamber determines that this document is the judgment handed down against [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED].

¹²⁷⁸ DCC, paras. 435, 459-460, 1061; Defence Final Written Submissions, paras. 112-113, 127-128.

¹²⁷⁹ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7413](#), translation [MLI-OTP-0034-0106](#), p. 0107; for the date of the incident, see also the Chamber's analysis, above, footnote 904.

¹²⁸⁰ See, above, para. 317.

¹²⁸¹ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7413](#), translation [MLI-OTP-0034-0106](#), p. 0107.

¹²⁸² Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7413](#), translation [MLI-OTP-0034-0106](#), p. 0107.

[REDACTED]

[REDACTED].¹²⁹¹

(ff) Case of [REDACTED] [REDACTED]¹²⁹²

468. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to a “[TRANSLATION] discretionary” penalty of [REDACTED] lashes of the whip by way of “[TRANSLATION] *ta’zir*” and to a fine of [REDACTED].¹²⁹³

[REDACTED].¹²⁹⁴

[REDACTED].¹²⁹⁵

(gg) Case [REDACTED]¹²⁹⁶

469. On [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to [REDACTED] lashes of the whip by way of [REDACTED].¹²⁹⁷

[REDACTED].¹²⁹⁸

¹²⁹¹ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7413](#), translation [MLI-OTP-0034-0106](#), p. 0108.

¹²⁹² DCC, paras. 435, 461, 1061; Defence Final Written Submissions, paras. 112-113, 129-130.

¹²⁹³ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7411](#), translation [MLI-OTP-0067-1887](#), p. 1888.

¹²⁹⁴ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7411](#), translation [MLI-OTP-0067-1887](#), p. 1888.

¹²⁹⁵ [REDACTED]

¹²⁹⁶ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Prosecutor’s Final Written Submissions, para. 29; Defence Final Written Submissions, paras. 112-113.

¹²⁹⁷ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323.

¹²⁹⁸ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323.

(hh) Case ██████████¹²⁹⁹

470. On ██████████ the Islamic Court of Timbuktu issued a judgment sentencing

██████████ to the “[TRANSLATION] *ta’zir*” ██████████

██████████¹³⁰⁰ ██████████

██████████

██████████

██████████¹³⁰¹ ██████████

██████████¹³⁰²

(ii) Case of ██████████¹³⁰³

471. On ██████████ was sentenced to ██████ lashes of the whip by way

of “[TRANSLATION] *ta’zir*”.¹³⁰⁴ The document states that the accused confessed and that

██████████

██████████¹³⁰⁵ ██████████

██████████¹³⁰⁶

¹²⁹⁹ DCC, paras. 435, 437-438, 443, 445-446, 452-454, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹³⁰⁰ Judgment of the Islamic Court, ██████████, [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323.

¹³⁰¹ Judgment of the Islamic Court, ██████████, [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323.

¹³⁰² Judgment of the Islamic Court, ██████████, [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323.

¹³⁰³ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Defence Final Written Submissions, paras. 112-113.

¹³⁰⁴ Judgment of the Islamic Court on ██████████, [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323.

¹³⁰⁵ Judgment of the Islamic Court on ██████████, [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323.

¹³⁰⁶ Judgment of the Islamic Court on ██████████, [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323.

(jj) Case of [REDACTED]

[REDACTED]¹³⁰⁷

472. [REDACTED] the Islamic Court of Timbuktu issued a judgment sentencing [REDACTED] to [REDACTED] lashes of the whip by way of “[TRANSLATION] *ta’zir*” [REDACTED].¹³⁰⁸ [REDACTED]

[REDACTED]¹³⁰⁹ [REDACTED]

[REDACTED]¹³¹⁰

iv. Analysis pertaining to the elements of crimes common to all the cases which are based on a written judgment

473. The Defence argues that the Prosecutor has not established that legal and factual requirements are met as regards the judgments which she alleges constitute sentences within the meaning of article 8(2)(c)(iv) of the Statute.¹³¹¹

474. In the Chamber’s view the body of evidence adduced is sufficient to establish to the standard required that the judgments were pronounced by the Islamic Court – the body instituted by the armed groups Ansar Dine/AQIM to settle legal cases.

¹³⁰⁷ DCC, paras. 435, 437-438, 443, 445-446, 1061, 1066; Prosecutor’s Final Written Submissions, paras. 30-31; Defence Final Written Submissions, paras. 112-113.

¹³⁰⁸ Judgment of the Islamic Court [REDACTED], [MLI-OTP-0001-7376](#), translation [MLI-OTP-0069-2489](#), p. 2490.

¹³⁰⁹ Judgment of the Islamic Court [REDACTED], [MLI-OTP-0001-7376](#), translation [MLI-OTP-0069-2489](#), p. 2490.

¹³¹⁰ Judgment of the Islamic Court [REDACTED], [MLI-OTP-0001-7376](#), translation [MLI-OTP-0069-2489](#), p. 2490.

¹³¹¹ Defence Final Written Submissions, paras. 21, 107-114.

Specifically, with the exception of four judgments,¹³¹² all of the documents enumerated above were signed by Judge Houka Houka.¹³¹³

475. The Chamber finds that the foregoing discussions show in each case the passing of a sentence pursuant to a written judgment pronounced by the Islamic Court.

476. The Chamber notes a set of recurring and concordant indicators of the authenticity of the judgments concerning each of the above-mentioned court cases, including the signature of Presiding Judge Houka Houka,¹³¹⁴ the stamp of the Islamic Court,¹³¹⁵ the name of the group Ansar Dine and references to the religion of Islam.¹³¹⁶

Moreover, [REDACTED]

¹³¹² Judgment of the Islamic Court [REDACTED] [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323 [REDACTED]; Judgment of the Islamic Court [REDACTED], [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323 [REDACTED]; Judgment of the Islamic Court [REDACTED], [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323 [REDACTED]; Judgment of the Islamic Court [REDACTED] [MLI-OTP-0001-7376](#), translation [MLI-OTP-0069-2489](#), p. 2490 [REDACTED]

¹³¹³ As regards the judgments in [REDACTED] [MLI-OTP-0068-4693](#) [REDACTED] and [REDACTED], [MLI-OTP-0001-7490](#) [REDACTED] having compared the originals with the rest of the judgments submitted by the Prosecutor, the Chamber is of the view that the signature resembles in every respect the signature on the judgments where Judge Houka Houka was presiding (see [MLI-OTP-0002-0051](#), [MLI-OTP-0001-7413](#), [MLI-OTP-0001-7411](#); [REDACTED]

¹³¹⁴ The documents are signed and state that Judge “Sheikh Muhammad Bin al-Husayn, nickname Hakuhaka” or “Sheikh Muhammad Bin al-Husayn, alias Haku Haka” served as Presiding Judge. For the Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0068-4693](#), [MLI-OTP-0001-7489](#), translation [MLI-OTP-0069-2491](#), p. 2492 [REDACTED] on a comparison of the original with the rest of the judgments presented by the Prosecutor, the Chamber is of the view that there are substantial grounds to believe that the judgment bears the same signature.

¹³¹⁵ The words “[TRANSLATION] Islamic Justice” are stamped in Arabic and French.

¹³¹⁶ The documents contain, at the head and foot of the page, phrases such as “[TRANSLATION] In the name of Allah, the Merciful, the Compassionate”, “[TRANSLATION] In the name of Allah, the Lord of mercy, the Giver of mercy”, “[TRANSLATION] Success is through Allah, praise be to Allah, the Cherisher and Sustainer of the Worlds”, and “[TRANSLATION] In Allah we seek guidance. Praise be to Allah Lord of the Worlds”.

478. As regards the case [REDACTED],¹³²⁴ the Chamber is of the view that the victim, as an [REDACTED]
[REDACTED]
[REDACTED] and that, therefore, the crime cannot be regarded as made out.¹³²⁵

479. As regards the case of [REDACTED]
[REDACTED],¹³²⁶ the Chamber agrees with the Defence¹³²⁷ that the victim, as an [REDACTED]
[REDACTED]
[REDACTED] and that, therefore, the crime cannot be regarded as established.

480. As regards the case of [REDACTED],¹³²⁸ the Chamber agrees with the Defence¹³²⁹ that the victim, as an [REDACTED]
[REDACTED]
[REDACTED] and that, therefore, the crime cannot be regarded as made out.

¹³²⁴ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0068-4693](#), [MLI-OTP-0001-7489](#), translation [MLI-OTP-0069-2491](#), p. 2492.

¹³²⁵ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹³²⁶ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7484](#), translation MLI-OTP-0034-0161, p. 1062 [REDACTED]
[REDACTED]

¹³²⁷ Defence Written Submissions, para. 21.

¹³²⁸ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7469](#), translation [MLI-OTP-0034-0143](#), p. 0144 [REDACTED]

¹³²⁹ Defence Written Submissions, para. 21.

481. In all the other cases whose facts have been found above to be established, the Chamber finds, contrary to the Defence's contention,¹³³⁰ that the persons on whom the Islamic Court of Timbuktu passed sentence were civilians taking no active part in the hostilities within the meaning of article 8(2)(c) of the Statute. In reaching that finding the Chamber has considered the repeated interactions between the armed groups and the victims and the fact that the acts are consistent with the evidence on Ansar Dine/AQIM's modus operandi, and their motives. Furthermore the Chamber refers to its findings on the object of the widespread and systematic attack by the armed groups Ansar Dine/AQIM.¹³³¹

482. As to the issue of whether the judgments were delivered by a "regularly constituted court" the Chamber notes that the Islamic Court did not systematically apply the laws duly promulgated in accordance with the constitution of the State in question.¹³³² However, in line with the applicable law,¹³³³ it is the Chamber's view that such considerations are neither relevant nor necessary here.

483. That being so, the Chamber refers to its findings on the lack of independence and impartiality of the Islamic Court of Timbuktu.¹³³⁴ In addition, on the evidence relating to each of the judicial proceedings adverted to above the Chamber determines, contrary to what the Defence claims,¹³³⁵ that the judicial guarantees generally recognized as indispensable under international law within the meaning of article 8(2)(c)(iv) of the Statute were denied. Thus in specific cases the Chamber identifies

¹³³⁰ Defence Written Submissions, paras. 10, 21; Transcript of Hearing of 11 July 2019, ICC-01/12-01/18-T-006-CONF-FRA, p. 20, lines 4-5.

¹³³¹ See, above, paras. 176-179.

¹³³² DCC, paras. 423, 486-488; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-CONF-FRA, p. 39, line 24 to p. 52, line 11.

¹³³³ See, above, paras. 376-377.

¹³³⁴ See, above, paras. 416-428.

¹³³⁵ Defence Final Written Submissions, para. 110.

violations of the presumption of innocence,¹³³⁶ failure to respect the right to have adequate time and facilities for the preparation of one's defence,¹³³⁷ denial of the right to remain silent and not to incriminate oneself¹³³⁸ and violation of the right to trial without undue delay.¹³³⁹ Moreover in all of the aforementioned court cases, the Chamber notes that there was no counsel and no opportunity to challenge the decisions of the court – a violation of the right to defend oneself in person or through legal assistance of one's choosing and of the right to be advised, on conviction, of one's judicial and other remedies and of the time-limits within which they may be exercised. In this regard, the Chamber notes several pieces of information corroborating the fact that none of the accused had access to counsel¹³⁴⁰ or the right to appeal.¹³⁴¹

¹³³⁶ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7482](#), translation MLI-OTP-0069-2055, p. 2056 [REDACTED]

[REDACTED] Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7473](#) translation [MLI-OTP-0034-0147](#), p. 0148 [REDACTED]: the judgment states that upon investigation the evidence was insufficient, given that the accused denied the allegations, but that the charge was "[TRANSLATION] strong".

¹³³⁷ Judgment of the Islamic Court, [REDACTED] [REDACTED] and Islamic Police report, signed by Al Hassan, dated [REDACTED] [REDACTED] are dated the same day; Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7431](#), translation [MLI-OTP-0034-0125](#), p. 0126 [REDACTED]; Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7431](#), translation [MLI-OTP-0034-0125](#), p. 0127 [REDACTED]; Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7425](#), translation [MLI-OTP-0034-0117](#), p. 0118 [REDACTED]

¹³³⁸ Judgment of the Islamic Court, [REDACTED] [REDACTED]; [REDACTED]; Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7413](#), translation [MLI-OTP-0034-0106](#), p. 0108 [REDACTED]

¹³³⁹ Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0002-0051](#); translation [MLI-OTP-0039-0893](#) (Dédéou Muhammad Maiga).

¹³⁴⁰ [REDACTED]

¹³⁴¹ [REDACTED]

Furthermore, as discussed above,¹³⁴² the Chamber emphasizes that the principle of legality of the offence and the penalty must be adhered to as a generally recognized judicial guarantee within the meaning of article 8(2)(c)(iv) of the Statute. That said, having regard to the violations already found and the threshold relied upon to determine violations of judicial guarantees¹³⁴³ the Chamber sees no need to embark on an assessment against that particular principle.

484. As to the *mens rea* required of the perpetrators of the crime – *viz.*, the members of the Islamic Court and Judge Houka Houka in particular, since he signed nearly all of the judgments¹³⁴⁴ – the Chamber considers that the intent and knowledge in respect of the passing of a sentence in the absence of judicial guarantees can be inferred from the factual circumstances set out above, in particular given the content of the judgments showing the course the proceedings took and from the presence, almost without exception, of a signature. Given the role of the Islamic Court, which was duty-bound to give effect to the armed groups Ansar Dine/AQIM’s way of thinking on the religion, its members could not have been unaware of interference from outside members in the work of the Islamic Court or the fact that essential procedural guarantees were being denied.

485. Moreover the Chamber concludes that, in relation to the facts found, the perpetrators were aware of the victims’ status as civilians or persons taking no active part in the hostilities. The Chamber is also satisfied that the perpetrators of

¹³⁴² See, above, para. 384.

¹³⁴³ See, above, para. 385.

¹³⁴⁴ With the exception of four judgments: Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323 [REDACTED]; Judgment of the Islamic Court, [REDACTED] [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323 [REDACTED]; Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7373](#), translation [MLI-OTP-0054-0322](#), p. 0323 [REDACTED]; Judgment of the Islamic Court [REDACTED] [MLI-OTP-0001-7376](#), translation [MLI-OTP-0069-2489](#), p. 2490 [REDACTED]
[REDACTED]

those crimes, all of whom were combatants belonging to Ansar Dine/AQIM, 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.

486. Lastly, whereas the Defence argues that some of the cases relating to the sentencing crimes as set out above,¹³⁴⁵ or the offences which brought them before the Islamic Court (“adultery”, selling alcohol)¹³⁴⁶ were not associated with the armed conflict, the Chamber recalls that it is the conduct proscribed by the Statute – the sentences, in this instance – which must be associated with the armed conflict. Thus the Chamber notes that the aforementioned sentences were passed in Timbuktu and the Timbuktu Region – in a place under the control of the armed groups Ansar Dine/AQIM.¹³⁴⁷ Accordingly, the Chamber determines that all of the conduct set out above took place in the context of and was associated with a non-international armed conflict.

v. **Cases of passing of sentences pursuant to a written or oral judgment**

(a) **Case of P-0557¹³⁴⁸**

487. As to the facts pertaining to the situation of P-0557, the Chamber refers to the facts found above and in particular to the fact that in about [REDACTED], Judge Houka Houka sentenced P-0557 to [REDACTED] lashes of the whip for [REDACTED]

[REDACTED].¹³⁴⁹

¹³⁴⁵ Defence Final Written Submissions, paras. 109-110.

¹³⁴⁶ Defence Final Written Submissions, para. 111.

¹³⁴⁷ See, above, paras. 212, 214, 217.

¹³⁴⁸ DCC, paras. 443, 456-458; Defence Final Written Submissions, paras. 116-118.

¹³⁴⁹ See, above, paras. 272-276.

488. The Chamber also notes that P-0557 was taken to the BMS where he was placed in police custody for [REDACTED] days¹³⁵⁰ without being informed of the exact reason for his arrest. ¹³⁵¹ P-0557 did not dare ask anything whatsoever during that time, “[TRANSLATION] out of fear of being punished further”.¹³⁵² P-0557 was then brought before the Islamic Court¹³⁵³ [REDACTED]
[REDACTED].¹³⁵⁴ [REDACTED]
[REDACTED]
[REDACTED].” ¹³⁵⁵ P-0557 explains that [REDACTED]
[REDACTED] during the hearing.¹³⁵⁶ P-0557 states that he was not informed of an investigation concerning him or of how the judges learned of [REDACTED].¹³⁵⁷ Moreover, P-0557 says that “[TRANSLATION] no one [could] ask anything whatsoever”.¹³⁵⁸ P-0557 also states that [REDACTED]
[REDACTED].¹³⁵⁹ As found above, [REDACTED]
[REDACTED].¹³⁶⁰ [REDACTED]
[REDACTED]

¹³⁵⁰ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8847, para. 13, p. 8851, paras. 34, 38, p. 8852, para. 41.

¹³⁵¹ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8850, paras. 26-27.

¹³⁵² Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8852, para. 38.

¹³⁵³ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8852, paras. 41-42.

¹³⁵⁴ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8852, para. 42.

¹³⁵⁵ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), pp. 8852-8853, paras. 42, 44.

¹³⁵⁶ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8853, para. 42.

¹³⁵⁷ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8853, para. 42.

¹³⁵⁸ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8853, para. 46.

¹³⁵⁹ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8849, p. 21, p. 8850, para. 28.

¹³⁶⁰ See, above, para. 274.

██████████¹³⁶¹ ██████████

██████████¹³⁶² ██████████

██████████¹³⁶³

489. Witness P-0557 identifies ██████████ as the perpetrator of his sentence. The Chamber therefore finds that the perpetrator of the aforementioned acts belonged to the Islamic Court and to the armed groups Ansar Dine/AQIM.

490. The Chamber notes in that respect that the Prosecutor has not provided proof of a written judgment. It finds nevertheless that the circumstances described above on the basis of P-0557's statement, in particular his appearance before the Islamic Court, show the passing of a sentence pursuant to a judgment of the Islamic Court. The Chamber further recalls that, in any event, an oral judgment also constitutes a "judgment" within the meaning of article 8(2)(c)(iv) of the Statute.¹³⁶⁴ The Chamber points out in this connection ██████████

491. Furthermore, in view of the circumstances of this case and the information about him, the Chamber considers that P-0557 was a civilian within the meaning of article 8(2)(c)(iv) of the Statute.

492. As to the matter of whether the judgment was pronounced by a "regularly constituted court", the Chamber refers to its findings on the lack of independence and impartiality of the Islamic Court of Timbuktu.¹³⁶⁵ In addition, on the facts found, the Chamber determines that the following judicial guarantees were denied: the right to a fair trial (including proceedings that afford notice and the opportunity to be heard and a judicial decision that is reasoned), the right to be afforded all necessary rights

¹³⁶¹ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8856, para. 63.

¹³⁶² Statement of P-0557, [MLI-OTP-0046-8845-R01](#), pp. 8856-8857, para. 65.

¹³⁶³ Statement of P-0557, [MLI-OTP-0046-8845-R01](#), p. 8857, para. 64

¹³⁶⁴ See, above, para. 370.

¹³⁶⁵ See, above, para. 416-428.

and means of defence (including the right to be informed without delay of the nature and cause of the offence alleged, the right to have adequate time and facilities for the preparation of the defence and to communicate with the counsel of one's choosing, the right to defend oneself in person or through legal assistance of one's choosing) and the right to be advised, on conviction, of one's remedies and of the time limits within which they may be exercised.

493. As to the *mens rea* required of the perpetrator of the crime, the Chamber considers that the intent to pass a sentence in the absence of regulatory and procedural guarantees, and the knowledge the perpetrator had, can be inferred from the factual circumstances set out above, in particular in view of the content of the witness statements describing the course of the proceedings. Furthermore, the Chamber considers that the perpetrators were aware of P-0557's civilian status. What is more, considering the role of the Islamic Court, which was duty-bound to give effect to Ansar Dine/AQIM's way of thinking on the religion, the perpetrators of the crime could not have been unaware of interference from outside members in the work of the Islamic Court and the fact that essential procedural guarantees were being denied. The Chamber is also satisfied that the perpetrators of those crimes, all of whom were combatants belonging to Ansar Dine/AQIM, 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.

494. Lastly, the Chamber notes that the aforementioned sentence was carried out in Timbuktu, in a place run by the armed groups Ansar Dine/AQIM.¹³⁶⁶ Consequently, contrary to what the Defence contends,¹³⁶⁷ the Chamber considers that the conduct

¹³⁶⁶ See, above, paras. 212, 214, 217.

¹³⁶⁷ Defence Final Written Submissions, paras. 109-111.

described above took place in the context of and was associated with a non-international armed conflict.

(b) Case of P-0565¹³⁶⁸

495. As to the facts pertaining to the situation of P-0565, the Chamber refers to the facts as found above, in particular to the fact that in about [REDACTED] she was brought before a judge [REDACTED] in the presence of [REDACTED] [REDACTED], who ordered that she be flogged for [REDACTED] [REDACTED].¹³⁶⁹ The Chamber also recalls that [REDACTED] [REDACTED].¹³⁷⁰

496. Moreover, the Chamber notes that P-0565 was informed of the reason for her arrest once she arrived at the BMS.¹³⁷¹ P-0565 says that at no time was she informed of her rights.¹³⁷² P-0565 describes the judge before whom she appeared as [REDACTED] [REDACTED].¹³⁷³ The judge recited the Qur'an in Arabic [REDACTED] [REDACTED].¹³⁷⁴ None of the others in attendance spoke.¹³⁷⁵ P-0565 states that she was not aware of any investigation into her case, nor did she know how the judges learned of [REDACTED].¹³⁷⁶

¹³⁶⁸ DCC, paras. 443, 456-458, 1062; Defence Final Written Submissions, paras. 116-118.

¹³⁶⁹ See, above, paras. 272-276.

¹³⁷⁰ See, above, para. 273.

¹³⁷¹ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8885, paras. 23, 25, p. 8886, para. 27.

¹³⁷² Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8887, para. 32.

¹³⁷³ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8887, para. 35.

¹³⁷⁴ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8887, paras. 35, 39.

¹³⁷⁵ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8887, paras. 36-37.

¹³⁷⁶ Statement of P-0565, [MLI-OTP-0046-8881-R01](#), p. 8889, para. 53.

497. From the victim's description of the perpetrator and of the circumstances, the Chamber finds that the perpetrator of the aforementioned acts belonged to the armed groups Ansar Dine/AQIM.

498. The Chamber notes that the Prosecutor has not provided proof of a written judgment. The Chamber nevertheless recalls that an oral judgment is a factor in determining whether the sentencing crime within the meaning of article 8(2)(c)(iv) of the Statute is made out.¹³⁷⁷ The Chamber finds that the circumstances which P-0565's statement establishes, in particular her formal appearance before a judge at the BMS, show that a sentence in the form of a judgment was passed.

499. Furthermore, in view of the circumstances of this case and the information about it, the Chamber considers that P-0565 was a civilian within the meaning of article 8(2)(c) of the Statute.

500. Turning to the matter of whether the judgment was pronounced by a "regularly constituted court", the Chamber refers to its findings on the lack of independence and impartiality of the Islamic Court of Timbuktu.¹³⁷⁸ In addition, the Chamber determines that the following judicial guarantees were denied: the right to a fair trial (including proceedings that afford notice and an opportunity to be heard and a judicial decision that is reasoned), the right to be afforded all necessary rights and means of defence (including the right to be informed without delay of the nature and cause of the offence alleged, the right to have adequate time and facilities for the preparation of the defence and to communicate with the counsel of one's choosing, the right to defend oneself in person or through legal assistance of one's choosing) and the right to be advised, on conviction, of one's remedy and the time limit within which it may be exercised.

¹³⁷⁷ See, above, para. 370.

¹³⁷⁸ See, above, paras. 416-428.

501. As to the *mens rea* required of the perpetrator of the crime, the Chamber considers that the intent to pass a sentence in the absence of regulatory and judicial guarantees, and the knowledge the perpetrator had, can be inferred from the factual circumstances set out above, in particular given the content of the witness statements describing the course of the proceedings. Furthermore, the Chamber considers that the perpetrator was aware of P-0565's civilian status. The Chamber is also of the view that the perpetrator could not have been unaware of interference from outside members in the work of the Islamic Court or the fact that essential procedural guarantees were being denied. The Chamber is also satisfied that the perpetrators of those crimes, all of whom were combatants belonging to Ansar Dine/AQIM, 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.

502. Lastly, for the same reasons set out above,¹³⁷⁹ the Chamber considers that the conduct described above took place in the context of and was associated with a non-international armed conflict.

(c) Case of P-0580¹³⁸⁰

503. As to the facts pertaining to the situation of P-0580, the Chamber refers to the facts as found above.¹³⁸¹

504. The Chamber notes that, under her charges relating to the sentencing crime, the Prosecutor includes the case of P-0580 as one “[TRANSLATION] case among others in which torture was used during investigations which were followed by judgment”, and does so in the following terms:

¹³⁷⁹ See, above, para. 494.

¹³⁸⁰ DCC, paras. 449-451, 1062; Transcript of Hearing, 9 July 2019, ICC-01/12-01/18-T-004-FRA, p. 28, lines 7-16; Defence Final Written Submissions, paras. 153-156.

¹³⁸¹ See, above, paras. 285-297.

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] The Islamic Court therefore did not give consideration to the defence raised by P-0580 – that he had [REDACTED] before the armed groups arrived. Instead, he was returned to detention at the BMS and flogged [REDACTED]
 [REDACTED]¹³⁸²

505. On the basis of this excerpt from the DCC regarding the case of P-0580, it is the Chamber's understanding that, out of P-0580's entire account of his time in the hands of the members of the armed groups, the Prosecutor is referring only, first, [REDACTED]
 [REDACTED]
 [REDACTED],¹³⁸³ and, second, [REDACTED]
 [REDACTED]
 [REDACTED].¹³⁸⁴

506. Regarding the first episode, the Chamber considers, first of all, that P-0580's account does not establish [REDACTED] as alleged by the Prosecutor¹³⁸⁵ but [REDACTED]. Having examined the rest of P-0580's statement, the Chamber considers that since he subsequently spent [REDACTED],¹³⁸⁶ he was in a position to differentiate between that place and the Islamic Court and that the Prosecutor was therefore incorrect in her factual allegations. The Chamber thus finds that the circumstances described above are not capable of showing that a sentence in the form of a judgment was passed. Yet, if the Chamber looks to [REDACTED]
 [REDACTED] as a factor that goes to proof that a sentence was passed, it must

¹³⁸² DCC, para. 450.

¹³⁸³ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0032, para. 61.

¹³⁸⁴ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0032, para. 63.

¹³⁸⁵ DCC, para. 450.

¹³⁸⁶ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0033, paras. 68-70, p. 0035, paras. 76-77.

be satisfied that the punishment carried out did result from a sentence. However, the Chamber notes [REDACTED]

[REDACTED].¹³⁸⁷ P-0580 states: [REDACTED]

[REDACTED].¹³⁸⁸

507. Similarly in the second episode, the Chamber notes that [REDACTED]

[REDACTED].¹³⁸⁹ The Chamber also notes that P-0580 says that, later,

[REDACTED].¹³⁹⁰

508. In the opinion of the Chamber, these factual circumstances show the continuous nature of [REDACTED] aim of extracting confessions [REDACTED]. The Chamber construes these acts of violence as a means of coercion rather than of punishment or even deterrence. The Chamber is of the view that the facts found are insufficient to establish that a sentence was passed and that, consequently, the first constituent element of the sentencing crime, required by article 8(2)(c)(iv) of the Statute, is not met.

¹³⁸⁷ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0032, para. 61.

¹³⁸⁸ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0032, para. 61.

¹³⁸⁹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0032, para. 63.

¹³⁹⁰ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), p. 0032, para. 64.

(d) Case of ██████ men flogged on or about ██████ 2012¹³⁹¹

509. As to the facts pertaining to the situation of the ██████ men, the Chamber refers to the facts as found above,¹³⁹² in particular to the fact ██████ that the flogging was decided by the Islamic Court and that either the emir of the police or, if he was absent, Abou Dhar gave the order to execute the flogging and designated those who were to carry it out.

510. Absent documentary evidence of the passing of the sentence, the Chamber finds that ██████ claim in ██████ statement suffices to show that a sentence in the form of a judgment was passed by the Islamic Court. In that respect, the Chamber considers that the information provided by the Prosecutor is not capable of establishing the form – written or oral – of the judgment issued by the Islamic Court, but recalls that an oral judgment is a factor in determining whether the sentencing crime within the meaning of article 8(2)(c)(iv) of the Statute is made out.¹³⁹³

511. Furthermore, in view of the circumstances of this case and the information about it, the Chamber considers that the ██████ men were civilians within the meaning of article 8(2)(c) of the Statute.

512. Turning to the matter of whether the judgment was pronounced by a “regularly constituted court”, the Chamber refers to its findings on the lack of independence and impartiality of the Islamic Court of Timbuktu.¹³⁹⁴

513. As to the *mens rea* required of the perpetrator of the crime, the Chamber considers that the intent to pass a sentence in the absence of regulatory and judicial guarantees, and the knowledge the perpetrator had, can be inferred from the factual circumstances set out above. Furthermore, the Chamber considers that the perpetrator

¹³⁹¹ DCC, paras. 466, 477-478, 1063; Defence Final Written Submissions, para. 137.

¹³⁹² See, above, paras. 278-279.

¹³⁹³ See, above, para. 370.

¹³⁹⁴ See, above, paras. 416-428.

was aware of both victims' civilian status. Moreover, considering the role of the Islamic Court, which was duty-bound to give effect to the armed groups Ansar Dine/AQIM's way of thinking on the religion, the perpetrator could not have been unaware of interference from outside members in the work of the Islamic Court or the fact that essential procedural guarantees were being denied to the accused persons. The Chamber is also satisfied that the perpetrators of those crimes, all of whom were combatants belonging to Ansar Dine/AQIM, 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.

514. Lastly, for the same reasons set out above,¹³⁹⁵ the Chamber determines that all of the conduct set out above took place in the context of and was associated with a non-international armed conflict.

3. The Chamber's findings

515. 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 of 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 391 to 514, to be established, constituting the war crime of passing of sentences without a 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:

- the [REDACTED] men flogged on or about [REDACTED] 2012;
- P-0547;
- P-0574;
- [REDACTED]

¹³⁹⁵ See, above, para. 494.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- P-0557; and
- P-0565.

516. 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 can 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, within the meaning of article 8(2)(c)(iv) of the Statute, in respect of the following victims:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- P-0580.

517. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.¹³⁹⁸

(C) Facts pertaining to count 7: attacking protected objects

1. Applicable law

518. The Chamber refers to the definition of the crime of "attacking protected objects" as set out in article 8(2)(e)(iv) of the Statute and in the Elements of Crimes. The Prosecutor seeks confirmation of the charge relating to the demolition of the mausoleums (count 7) under the legal characterization provided for in article 8(2)(e)(iv) of the Statute.¹³⁹⁹ The Chamber nonetheless notes that the suitability of this characterization is a matter of dispute between the parties.¹⁴⁰⁰

519. The Prosecutor contends that "[TRANSLATION] for the purposes of article 8(2)(e)(iv) of the Statute, the perpetrator need only direct a violent act of any kind against the protected object".¹⁴⁰¹ The Prosecutor submits that the concept of "attack" must be interpreted according to international humanitarian law "[TRANSLATION] both customary and treaty", which "[TRANSLATION] establishes absolute protection of cultural objects against intentional acts of violence, irrespective of which belligerent party controls the object in question".¹⁴⁰² The Prosecutor asserts that article 8(2)(e)(iv)

¹³⁹⁸ See [VIII. Responsibility](#).

¹³⁹⁹ DCC, para. 1074. See also paras. 637-748, 1067-1073.

¹⁴⁰⁰ DCC, paras. 687-715; Prosecutor's Final Written Submissions, paras. 143-155; Defence Written Submissions, paras. 136-137; Defence Final Written Submissions, paras. 37-44. See also the following article to which the parties refer: W. Schabas, *Al Mahdi Has Been Convicted of a Crime He Did Not Commit*, *Case Western Reserve Journal of International Law* 49 (2017).

¹⁴⁰¹ DCC, para. 688. See also Prosecutor's Final Written Submissions, para. 143.

¹⁴⁰² DCC, paras. 693-694 and references therein. The Prosecutor submits that article 8(2)(e) of the Statute must be interpreted "[TRANSLATION] in the context of international humanitarian law", and she makes reference to the chapeau of article 8(2)(e) of the Statute, which expressly states that the provisions it contains must be interpreted "in the established framework of international law" – a requirement, in her view, affirmed by previous rulings of the Appeals Chamber. See DCC, para. 693, referring to, *inter alia*, the *Ntaganda* Appeal Judgment of 15 June 2017, paras. 53-55. See also Prosecutor's Final Written Submissions, para. 144.

of the Statute does not require the perpetrator to have acted during the “[TRANSLATION] conduct of hostilities”, and that international humanitarian law has previously used the term “attack” to denote both “[TRANSLATION] acts directed against civilians and objects of a civilian character” and “[TRANSLATION] acts of the occupying power in the occupied territory”.¹⁴⁰³ According to the Prosecutor,¹⁴⁰⁴ the framers of the Statute wished to reflect in article 8(2)(e)(iv) of the Statute the gamut of protection afforded by international law to cultural objects, and drew on both article 27¹⁴⁰⁵ and article 56 of the Regulations annexed to the Hague Convention IV of 1907.¹⁴⁰⁶ The Prosecutor concludes that “[TRANSLATION] any other reading of the term ‘attack’ in article 8(2)(e)(iv)” of the Statute “[TRANSLATION] would be tantamount [...] to adopting an interpretation that has been obsolete for over a century”.¹⁴⁰⁷

520. The Defence contends that, where ambiguity arises as to the interpretation of the Statute, article 22(2) requires, pursuant to the principle of legality, that the definition of the crime at issue be “interpreted in favour of the person being investigated, prosecuted or convicted”.¹⁴⁰⁸ The Defence maintains that where, for a specific crime, it was the wish of the framers of the Statute not to require a nexus with an armed attack, they did so by express use of the term “destruction” (for example, in

¹⁴⁰³ DCC, paras. 688, 691.

¹⁴⁰⁴ Prosecutor’s Final Written Submissions, paras. 145-153.

¹⁴⁰⁵ Article 27 of the Regulations annexed to the Hague Convention IV of 1907 provides: “*In sieges and bombardments, all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments [...]*”, emphasis added. The Second International Peace Conference, The Hague, 15 June - 18 October 1907, Acts and Documents, The Hague, 1907, Vol. I, pp. 627-631.

¹⁴⁰⁶ Article 56 of the Regulations annexed to the Hague Convention IV of 1907 provides: “The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property. All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.” The Second International Peace Conference, The Hague, 15 June - 18 October 1907, Acts and Documents, The Hague, 1907, Vol. I, pp. 627-631.

¹⁴⁰⁷ DCC, p. 219.

¹⁴⁰⁸ Defence Final Written Submissions, para. 40. See also Defence Written Submissions, para. 137.

articles 8(2)(b)(xiii) and 8(2)(e)(xii) of the Statute).¹⁴⁰⁹ The Defence is also of the view that article 8(2)(e)(i) of the Statute is clearly the offspring of article 27, not article 56, of the Regulations annexed to the Hague Convention of 1907.¹⁴¹⁰

521. The category of attacking protected objects (article 8(2)(e)(iv) of the Statute) was chosen in *Al Mahdi*, first by this Chamber in its previous composition¹⁴¹¹ and later by Trial Chamber VIII.¹⁴¹² In *Ntaganda*, Trial Chamber VI recalled that the crime of attacking protected objects belonged to the category of offences committed during the actual conduct of hostilities but noted that this interpretation did not find application in cases where protected cultural objects enjoying a special status were the object of the attack.¹⁴¹³

522. The Chamber subscribes to the analysis of Trial Chamber VIII in *Al Mahdi*, which held that “the element of ‘direct[ing] an attack’ encompasses any acts of violence against protected objects”¹⁴¹⁴ and that no distinction need be made as to whether these acts “w[ere] carried out in the conduct of hostilities or after the object had fallen under the control of an armed group”. Trial Chamber VIII highlighted that “[t]his reflect[ed] the special status of religious, cultural, historical and similar objects” and, recalling that the Statute made no such distinction, it considered that “the Chamber should not change this status by making distinctions not found in the language of the Statute.”¹⁴¹⁵

¹⁴⁰⁹ Defence Final Written Submissions, para. 38.

¹⁴¹⁰ Defence Final Written Submissions, para. 41.

¹⁴¹¹ *Al Mahdi* Decision.

¹⁴¹² *Al Mahdi* Trial Judgment.

¹⁴¹³ *Ntaganda* Trial Judgment, para. 1136 and footnote 3147.

¹⁴¹⁴ *Al Mahdi* Trial Judgment, para. 15.

¹⁴¹⁵ *Al Mahdi* Trial Judgment, para. 15. See also, paras. 14, 16-17.

2. Analysis

523. The evidence adduced by the Prosecutor establishes the following facts to the standard required.

524. The uniqueness and immense cultural and historic value of the mausoleums of the city of Timbuktu are acknowledged and are what brought it renown.¹⁴¹⁶ For this reason they were afforded national¹⁴¹⁷ and international protection; nine of the ten monuments listed below¹⁴¹⁸ have, since 1988, been classified as World Heritage by the United Nations Educational, Scientific and Cultural Organization (UNESCO).¹⁴¹⁹ The mausoleums housed the tombs of Timbuktu's "great men", who were elevated to the status of "[TRANSLATION] saint" by the population¹⁴²⁰ and became the "[TRANSLATION] protectors" of the city;¹⁴²¹ Timbuktu was also known as the "city of 333 saints".¹⁴²² These saints are buried in modest tombs, within their own homes and, in the case of the most prominent, in dedicated mausoleums, or in mosques – as is true of Sidi Yahiya, the patron saint of the city.¹⁴²³ The inhabitants of Timbuktu would engage in

¹⁴¹⁶ See, e.g., Algérie1.com, online media report, "Mali : L'Algérie condamne la destruction de mausolées à Tombouctou", 1 July 2012, [MLI-OTP-0023-0055](#); Report of expert P-0104, [MLI-OTP-0028-0586](#) ("[MLI-OTP-0028-0586](#)"); UNESCO, *Etude sur les mausolées de Tombouctou*, 1 January 2014, [MLI-OTP-0015-0081](#) ("[MLI-OTP-0015-0081](#)"), p. 0092; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0017, para. 59.

¹⁴¹⁷ *Registre des éléments matériels et immatériels classés dans le patrimoine culturel national*, Ministry of Culture of Mali, March 2011, [MLI-OTP-0009-1607](#), pp. 1609-1614, 1630-1632.

¹⁴¹⁸ See, below, para. 528.

¹⁴¹⁹ UNESCO, Report, *Les sites du patrimoine mondial au Mali—architectures de terre et paysages culturels. Questions de sauvegarde et de revitalisation*, July 2002, [MLI-OTP-0013-3630](#), pp. 3717-3719.

¹⁴²⁰ See [MLI-OTP-0028-0586](#), p. 0596 ("[TRANSLATION] The saints are men, generally scholars, who during their lifetime, left a lasting impression on the society of the city through their conduct, the depth of their faith, the calibre of their teachings, and deeds that may be likened to miracles."); France 24, online media report, "Destruction des mausolées à Tombouctou : "Que peut-on contre des hommes armés ?", [MLI-OTP-0009-1743](#), ("[MLI-OTP-0009-1743](#)"), p. 1743 ("[TRANSLATION] it is the population who, for centuries, has elevated 'pious, poor men [...] of unimpeachable moral character' to the rank of 'saint'.").

¹⁴²¹ [MLI-OTP-0015-0081](#), p. 0086.

¹⁴²² [MLI-OTP-0028-0586](#), p. 0596; Statement of [REDACTED]

¹⁴²³ [MLI-OTP-0028-0586](#), p. 0596.

spiritual contemplation at the mausoleums on Fridays;¹⁴²⁴ this practice, consisting of addressing God through these saints, is called “*Tawassul*” and could involve votive offerings.¹⁴²⁵ These practices were considered contrary to Ansar Dine/AQIM’s definition of sharia for two main reasons: the “saints” were worshipped and the population could pray to them; and the structures exceeded the authorized height above ground for any tomb, of a few dozen centimetres.¹⁴²⁶

525. So, at the behest of Abou Zeid and for one month, Al Mahdi went to the mausoleums on Fridays to prohibit the population from engaging in these practices considered to be heretical; announcements were also made over the radio and imams were asked to address the issue during Friday prayers to gauge the reaction of the faithful.¹⁴²⁷

526. Al Mahdi and Abdallah Al Chinguetti researched religious doctrine and discussions took place to determine whether religious theory prescribed the destruction of the mausoleums.¹⁴²⁸ The decision to destroy them was then taken by Iyad Ag Ghaly after consulting with Abou Zeid, and with Abdallah Al Chinguetti who

¹⁴²⁴ Statement of [REDACTED]; see Video, [MLI-OTP-0018-0366-R01](#), transcript, [MLI-OTP-0022-0563](#), translation, [MLI-OTP-0022-0567](#).

¹⁴²⁵ [MLI-OTP-0028-0586](#), p. 0596.

¹⁴²⁶ See the remarks of Abou Al Baraa, a “[TRANSLATION] member of Ansar Dine”, explaining the reasons for the destruction, broadcast during the 13.00 news bulletin on France 2, Video, [MLI-OTP-0001-6926](#) at 00:00:41:00 (“[TRANSLATION] Qur’anic law says that a tomb, any tomb, must measure only a few centimetres above ground and that in no case must it be worshipped because only God can be worshipped. That is why we are destroying them.”); Video [MLI-OTP-0018-0356-R01](#), transcript, [MLI-OTP-0025-0057](#), translation, [MLI-OTP-0025-0043](#). See the statements of Al Mahdi explaining why the mausoleums had to be destroyed, Video, [MLI-OTP-0018-0358-R01](#), transcript, [MLI-OTP-0025-0360](#), translation, [MLI-OTP-0025-0330](#), p. 0332, lines 8-9; Video, M6, 21 October 2012, [MLI-OTP-0001-7037](#) 00:45:08:23 to 00:45:15:00, transcript, [MLI-OTP-0024-2962](#), translation, [MLI-OTP-0024-2910](#); [REDACTED]

¹⁴²⁷ Statement of [REDACTED]; [REDACTED]

¹⁴²⁸ Statement of [REDACTED]; MLI-OTP-0002-0757, translation, [MLI-OTP-0034-1363](#); Statement of P-0010, [MLI-OTP-0002-0126-R01](#).

served as a religious authority on the matter.¹⁴²⁹ Abou Zeid ordered Al Mahdi to see to it that they were destroyed as it was a task for the *Hisbah*.¹⁴³⁰ The stated objective was to combat superstition among the populace.¹⁴³¹

527. The first wave of destructions in April and May 2012 reportedly targeted several monuments and mausoleum doors,¹⁴³² ostensibly to “test” the population.¹⁴³³ UNESCO responded by inscribing Timbuktu on the List of World Heritage in Danger, at the request of the Government of Mali.¹⁴³⁴

528. An analysis of the Prosecutor’s evidence establishes that there are substantial grounds to believe that the following monuments of Timbuktu were destroyed during the second wave of destructions between 30 June and 11 July 2012 (destruction in respect of which the Prosecutor requests the confirmation of charges):¹⁴³⁵

- The Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit Mausoleum located in the Sidi Mahamoud Cemetery, on or about 30 June 2012.¹⁴³⁶ Two members of

¹⁴²⁹ Statement of [REDACTED]

¹⁴³⁰ Statement of [REDACTED]

¹⁴³¹ France 2, Video, [MLI-OTP-0009-1749](#), 00:14:13:00 to 00:14:30:00, transcript, [MLI-OTP-0028-0839](#); TV5 Monde, Video, [MLI-OTP-0001-6945](#), at 00:01:04:21, transcript, [MLI-OTP-0030-0111](#), p. 0112, lines 6-97; Video, [MLI-OTP-0001-6926](#) at 00:00:41:00.

¹⁴³² Statement of [REDACTED]

[REDACTED] TV5 Monde, Video, [MLI-OTP-0001-6945](#), at 00:01:04:21, transcript, [MLI-OTP-0030-0111](#), p. 0112, lines 6-97; UNESCO, “*Irina Bokova s’inquiète de l’aggravation des menaces sur le patrimoine culturel au Mali*”, 4 May 2012, [MLI-OTP-0006-3280](#); Jeune Afrique, media report, “*Mali: Tombouctou sous le choc après la profanation d’un mausolée par AQMI*”, 6 May 2012, [MLI-OTP-0001-3666](#); “Mali: Islamists Burn World Heritage Site in Timbuktu”, 7 May 2012, [MLI-OTP-0001-3670](#); RFI, media report, “*Mali: Chronologie d’une crise/Profanation de tombes à Tombouctou*”, 5 May 2012, [MLI-OTP-0012-1069](#); Video, posted on YouTube on 6 May 2012, [MLI-OTP-0011-0402](#), transcript, [MLI-OTP-0011-0402](#); Malijet, media report, “*Mali: les islamistes détruisent le monument des martyrs de Tombouctou*”, 23 May 2012, [MLI-OTP-0001-3813](#).

¹⁴³³ Statement of [REDACTED]

¹⁴³⁴ [MLI-OTP-0015-0081](#), p. 0085.

¹⁴³⁵ See DCC, para. 1074.

¹⁴³⁶ UNESCO, *Études sur les mausolées de Tombouctou*, 2014, [MLI-OTP-0020-0127](#), p. 0150; Government of Mali, Intelligence Bulletin/A/S0177/DSM/security situation in northern Mali, 3 July 2012, [MLI-OTP-](#)

the Islamic Police, recognizable by their vests marked “[TRANSLATION] Islamic Police”, were present;¹⁴³⁷ one of them took part in the destruction using what resembles an iron bar;¹⁴³⁸

- The Sheikh Mohamed Mahmoud Al Arawani Mausoleum, on or about 30 June 2012;¹⁴³⁹
- The Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum, on or about 30 June 2012.¹⁴⁴⁰ An Islamic Police officer was present during the destruction of the mausoleum;¹⁴⁴¹

[0012-0462](#) (“[MLI-OTP-0012-0462](#)”), pp. 0463-0464; [MLI-OTP-0028-0586](#), p. 0599; Report of expert P-0064, Analysis of Satellite Imagery for Timbuktu, Republic of Mali, 13 July 2014, [MLI-OTP-0017-0029](#) (“[MLI-OTP-0017-0029](#)”), p. 0036; UNESCO, media report, “UNESCO Director-General calls for a halt to destruction of cultural heritages in Timbuktu”, 30 June 2012, [MLI-OTP-0001-1944](#) (“[MLI-OTP-0001-1944](#)”); Video [MLI-OTP-0018-0360-R01](#) at 00:00:07:21, transcript, [MLI-OTP-0033-5454](#), p. 5456, lines 1-2; [MLI-OTP-0001-6926](#), at 00:00:55:00; [MLI-OTP-0018-0359-R01](#), à 00:00:13:00, transcript, [MLI-OTP-0033-5756](#), translation, [MLI-OTP-0033-5451](#).

¹⁴³⁷ Video, [MLI-OTP-0001-6926](#), at 00:00:30:00 and 00:00:55:00. Regarding the presence of members of the Islamic Police, the Chamber underscores the following considerations: First, the Chamber chose to rely on this video because the documentary states that the images are of the destruction of this specific mausoleum – something which is more difficult to ascertain from the other videos to which the Prosecutor refers. Second, the Prosecutor claims that Abou Dhar, a member of the Islamic Police, was at the scene and took part in the destruction of the mausoleums. See DCC, paras. 655-656. Nonetheless, the Chamber notes that, because the Prosecutor did not carry out the necessary identification work, it has no basis for saying that Abou Dhar is in the images apart from the Prosecutor’s claim to that effect.

¹⁴³⁸ Video, [MLI-OTP-0018-0363-R01](#), at 00:00:08:03, transcript, [MLI-OTP-0024-2300](#); Video, [MLI-OTP-0018-0361-R01](#), at 00:00:14:07.

¹⁴³⁹ Report of expert P-0102, *Examen de scènes de crimes à Tombouctou et ses environs*, Republic of Mali, MLI-OTP-0029-0493, 14 August 2015, pp. 0644-0654; see also [MLI-OTP-0028-0586](#), pp. 0599, 0766; Statement of [REDACTED]

¹⁴⁴⁰ [MLI-OTP-0020-0127](#), p. 0151; [MLI-OTP-0028-0586](#), p. 0599; [MLI-OTP-0017-0029](#), p. 0040; Ministry of Culture of Mali, *Relevés architecturaux / État des lieux des mausolées détruits à Tombouctou et Evaluation du coût de leur reconstruction / Réhabilitation* (survey carried out by an architectural practice), September 2013, [MLI-OTP-0020-0188](#) (“[MLI-OTP-0020-0188](#)”), p. 0197; [MLI-OTP-0012-0462](#), pp. 0463-0464; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0019, para. 69; [MLI-OTP-0001-1944](#).

¹⁴⁴¹ Video, [MLI-OTP-0025-0113](#), 00:00:08:19 to 00:00:27:00.

- The Sheikh Alpha Moya Mausoleum, on or about 30 June 2012.¹⁴⁴² The Prosecutor alleges that “[TRANSLATION] members of the Islamic Police wearing their vests” were present but, from what the Chamber can tell, none of them appears in the videos referred to in support of this allegation;¹⁴⁴³
- The Sheikh Mouhamad El Micky Mausoleum, on or about 1 July 2012;¹⁴⁴⁴
- The Sheikh Abdoul Kassim Attouaty Mausoleum, on or about 1 July 2012;¹⁴⁴⁵
- The Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum, on or about 1 July 2012;¹⁴⁴⁶
- The door of the Sidi Yahia Mosque, on or about 2 July 2012¹⁴⁴⁷ (which, according to local belief, had to remain shut lest the end of the world and the Last Judgment ensue);¹⁴⁴⁸
- The two mausoleums adjoining the Djingareyber Mosque – the Sheikh Ahamed Fulane Mosque and the Sheikh Bahaber Babadié Mausoleum – on or about 11

¹⁴⁴² UNESCO, *Mission conjointe de l’UNESCO et du Mali en vue de l’évaluation du patrimoine culturel malien et des manuscrits anciens*, 28 May 2013, [MLI-OTP-0014-6070](#), p. 6076; [MLI-OTP-0020-0127](#), p. 0151; [MLI-OTP-0028-0586](#), p. 0599; [MLI-OTP-0017-0029](#), p. 0041; [MLI-OTP-0020-0188](#), p. 0197; [MLI-OTP-0012-0462](#), pp. 0463-0464; [MLI-OTP-0001-1944](#).

¹⁴⁴³ See DCC, para. 664, and see Video, [MLI-OTP-0012-1780-R01](#), at 00:00:09:13; Video, [MLI-OTP-0012-1792-R01](#) at 00:00:15:08; M6, Video, 21 October 2012, [MLI-OTP-0001-7037](#), 00:45:02:00 to 00:45:06:20.

¹⁴⁴⁴ [MLI-OTP-0014-6070](#), p. 6075; [MLI-OTP-0020-0127](#), p. 0150; [MLI-OTP-0028-0586](#), p. 0599; [MLI-OTP-0017-0029](#), p. 0038; [MLI-OTP-0020-0188](#), p. 0197; [MLI-OTP-0012-0462](#), pp. 0463-0464.

¹⁴⁴⁵ [MLI-OTP-0014-6070](#), p. 6075; [MLI-OTP-0020-0127](#), p. 0150; [MLI-OTP-0028-0586](#), p. 0599; [MLI-OTP-0017-0029](#), p. 0038; [MLI-OTP-0020-0188](#), p. 0197.

¹⁴⁴⁶ [MLI-OTP-0014-6070](#), p. 6075; [MLI-OTP-0020-0127](#), p. 0150; [MLI-OTP-0028-0586](#), p. 0599; [MLI-OTP-0017-0029](#), p. 0037; [MLI-OTP-0020-0188](#), p. 0197; Video, [MLI-OTP-0012-1801-R01](#), at 00:00:07:08; Video, [MLI-OTP-0012-1806-R01](#); Video, [MLI-OTP-0012-1802-R01](#); Video, [MLI-OTP-0012-1808-R01](#); Video, [MLI-OTP-0012-1803-R01](#); Video, [MLI-OTP-0012-1805-R01](#).

¹⁴⁴⁷ [MLI-OTP-0014-6070](#), p. 6077; Video, [MLI-OTP-0018-0149-R01](#), at 00:02:12:06, 00:05:20:15, 00:06:35:18, 00:08:40:13, 00:01:35:16, 00:02:29:00, 00:07:35:17, 00:10:45:00.

¹⁴⁴⁸ Statement of [REDACTED] France 24, Video, [MLI-OTP-0001-6956](#), 00:00:32:00 to 00:00:47:00, transcript, [MLI-OTP-0033-5195](#), p. 5196; France 2, Video, 31 January 2013, [MLI-OTP-0009-1749](#), 00:14:13:00 to 00:14:30:00, transcript, [MLI-OTP-0028-0839](#). See also Statement of [REDACTED]

July 2012.¹⁴⁴⁹ The evidence submitted by the Prosecutor is not capable of establishing the presence of members of the Islamic Police during the destruction, contrary to what the Prosecutor alleges.¹⁴⁵⁰

529. The evidence shows that these monuments were destroyed using picks, axes, hammers and iron bars.¹⁴⁵¹ The destruction dealt a deep emotional blow to part of the population of Timbuktu and was met with dismay in some quarters of the national and international community.¹⁴⁵²

530. On the facts found above, the Chamber determines that in addition to the attack resulting in partial or full demolition of the mausoleums, the other elements of the crime under article 8(2)(e)(iv) of the Statute are met: the mausoleums were buildings dedicated to religion and were historic monuments; they were not military objectives; and the perpetrators intended them to be the object of the attack and cause their demolition. Additionally, the majority, if not all, the direct perpetrators of the crimes

¹⁴⁴⁹ [MLI-OTP-0028-0586](#), p. 0599; [MLI-OTP-0017-0029](#), p. 0035; [MLI-OTP-0020-0188](#), p. 0197; Video, [MLI-OTP-0018-0148-R01](#), transcript, [MLI-OTP-0025-0354-R01](#), translation, [MLI-OTP-0025-0337-R01](#).

¹⁴⁵⁰ See DCC, para. 683. The Prosecutor alleges that Abou Dhar, a member of the Islamic Police, was present during the destruction, and to support that allegation, adverts to video footage in which two people, whose faces are completely covered, can be seen carrying out the destruction. This is insufficient for the Chamber to identify Abou Dhar to the standard required. See DCC, para. 683, footnote 1698 referring to Video, [MLI-OTP-0018-0148-R01](#), at 00:11:07:00. The same is true of the supposed presence of Adama; the Prosecutor adverts to video footage in which no face can be seen. See DCC, para. 683, footnote 1702 referring to Video, [MLI-OTP-0018-0148-R01](#), at 00:03:35:00.

¹⁴⁵¹ Video, [MLI-OTP-0018-0359-R01](#); Video, [MLI-OTP-0018-0360-R01](#); Video, [MLI-OTP-0018-0363-R01](#); Video, [MLI-OTP-0012-1792-R01](#); M6, Video, 21 October 2012, [MLI-OTP-0001-7037](#); Video, [MLI-OTP-0001-6926](#), at 00:27:13:00; Video, [MLI-OTP-0012-1801-R01](#); Video, [MLI-OTP-0018-0148-R01](#); Video [MLI-OTP-0025-0010](#) at 00:13:00:00; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0019, para. 69.

¹⁴⁵² See Written Observations of Legal Representatives of Victims, paras. 48-50. See also the following evidence: RFI, media report, “*Au Mali, les islamistes s’en prennent à la grande mosquée de Tombouctou*”, 10 July 2012, [MLI-OTP-0001-3779](#); France 24, video, [MLI-OTP-0001-6956](#), 00:00:32:00 to 00:00:47:00, transcript, [MLI-OTP-0033-5195](#), p. 5196; RFI, media report, “*Mali : la destruction des mausolées de Tombouctou par Ansar Dine sème la consternation*”, 30 June 2012, [MLI-OTP-0007-0228](#); France 24, Video, [MLI-OTP-0025-0110](#); TV5 Monde, Video, 30 June 2012, [MLI-OTP-0001-6945](#), 00:01:48:00 to 00:02:07:00. For the international community, See, e.g., UN, United Nations Security Council, Resolution 2056 (2012), UN, [MLI-OTP-0006-2722](#), p. 272; [MLI-OTP-0001-2113](#), p. 211.

were members of AQIM/Ansar Dine and, as explained in greater detail above,¹⁴⁵³ their conduct clearly took place in the context of an armed conflict not of an international character and the perpetrators were aware of the factual circumstances that established the existence of an armed conflict. The fact that the demolition of mausoleums, perpetrated by the members of the armed groups Ansar Dine/AQIM, had a nexus with the armed conflict, is also established by the fact that it served the same objective as the armed combat,¹⁴⁵⁴ *viz.* to take control of the territories in order to impose on the population their newly prescribed rules and prohibitions, which included the prohibition on engaging in spiritual contemplation at the mausoleums and on worshipping the saints buried inside.¹⁴⁵⁵

3. The Chamber's findings

531. The Chamber finds that there are substantial grounds to believe that, between 30 June and 11 July 2012 in the city of Timbuktu and the Region of the same name, members of Ansar Dine/AQIM committed, as part of a non-international armed conflict, the demolition of the following mausoleums – acts found, at paragraphs 524 to 530 above, to be established – constituting the war crime of “intentionally directing attacks against buildings dedicated to religion [...], historic monuments” within the meaning of article 8(2)(e)(iv) of the Statute:

- The Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit Mausoleum located in the Sidi Mahamoud Cemetery, on or about 30 June 2012;

¹⁴⁵³ See, above, para. 226.

¹⁴⁵⁴ *Ntaganda* Appeal Judgment of 15 June 2017, para. 68, citing in part ICTY, *Kunarac et al.* Appeal Judgment, para. 59 (“In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, *inter alia*, the following factors: the fact that the perpetrator is a combatant; [...] the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator’s official duties.”).

¹⁴⁵⁵ See, above, paras. 524, 526.

- The Sheikh Mohamed Mahmoud Al Arawani Mausoleum, on or about 30 June 2012;
- The Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum, on or about 30 June 2012;
- The Sheikh Alpha Moya Mausoleum, on or about 30 June 2012;
- The Sheikh Mouhamad El Micky Mausoleum, on or about 1 July 2012;
- The Sheikh Abdoul Kassim Attouaty Mausoleum, on or about 1 July 2012;
- The Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum, on or about 1 July 2012;
- The door of the Sidi Yahia Mosque, on or about 2 July 2012;
- The two mausoleums adjoining the Djingareyber Mosque – the Sheikh Ahamed Fulane Mausoleum and the Sheikh Bahaber Babadié Mausoleum – on or about 11 July 2012.

532. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.¹⁴⁵⁶

(D)Facts pertaining to counts 8 to 12: rape, sexual slavery and other inhumane act in the form of forced marriage

1. Applicable law

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

533. The Chamber refers to the definition of the crime of rape as set out in articles 7(1)(g) and 8(2)(e)(vi) of the Statute and in the Elements of Crimes.

¹⁴⁵⁶ See [VIII. Responsibility](#).

534. Since the elements of the crimes for the crime against humanity of rape and the war crime of rape are identical, the Chamber considers the discussion below to be equally applicable to both crimes.

535. The first requirement for the crime of rape is invasion of the body of a person resulting in penetration, however slight.¹⁴⁵⁷

536. The second material element of rape enumerates the circumstances and conditions which give a criminal character to the invasion of the person's body. Thus, invasion of the body must be committed under at least one of the following four conditions: (i) by force; (ii) by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person; (iii) by taking advantage of a coercive environment; or (iv) against a person incapable of giving genuine consent.¹⁴⁵⁸

537. As the Trial Chamber of the ICTR in *Akayesu* has explained, "[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or [...] military presence".¹⁴⁵⁹ Other factors may contribute to a coercive environment, such as detention,¹⁴⁶⁰ psychological oppression, abuse of power,¹⁴⁶¹ the number of persons involved in the commission of the crime, whether the rape was committed during or immediately following a combat situation, or was

¹⁴⁵⁷ *Katanga* Trial Judgment, para. 963.

¹⁴⁵⁸ *Katanga* Trial Judgment, para. 965; see also *Ntaganda* Trial Judgment, para. 934; *Bemba* Trial Judgment, para. 102.

¹⁴⁵⁹ ICTR, *Akayesu* Trial Judgment, para. 688; see also *Ntaganda* Trial Judgment, para. 935; *Bemba* Trial Judgment, para. 103; ICTR, *Prosecutor v. Emmanuel Rukundo*, 27 February 2009, "Judgement", ICTR-2001-70-T, para. 382; *Katanga and Ngudjolo* Decision, para. 440; *Bemba* Decision, para. 162; ICTY, *Kunarac et al.* Appeal Judgment, para. 129.

¹⁴⁶⁰ ICTY, *Kunarac et al.* Trial Judgment, para. 759.

¹⁴⁶¹ *Katanga* Trial Judgment, para. 965.

committed together with other crimes.¹⁴⁶² In relation to the requirement of the existence of a “coercive environment”, it must be proved that the perpetrator’s conduct involved “taking advantage” of such a coercive environment.¹⁴⁶³

538. Save in the specific situation of a victim’s incapacity, the Elements of Crimes do not refer to lack of consent on the part of the victim and therefore this need not be proved.¹⁴⁶⁴

539. Nor is a victim expected to put up continuous resistance to make lack of consent clear to the perpetrator.¹⁴⁶⁵ It suffices to establish one of the coercive circumstances or conditions stated in the second element, as set out above, for penetration to constitute rape within the meaning of articles 7(1)(g) and 8(2)(e)(vi) of the Statute.¹⁴⁶⁶

540. With respect to the mental element, regard must be had to article 30 of the Statute.

541. As to the intent required in relation to the conduct, it must be proved that the perpetrator deliberately invaded a person’s body. Intent will be established where it is proved that the perpetrator meant to engage in the conduct. As to the knowledge required in relation to a consequence, the Prosecutor must prove that the perpetrator meant to cause that consequence, *viz.* intended the invasion of a person’s body to occur, or that the perpetrator was aware that that consequence would occur in the ordinary course of events.

¹⁴⁶² SCSL, *Brima et al.* Trial Judgment, paras. 694-695; see also *Ntaganda* Trial Judgment, para. 935; *Bemba* Trial Judgment, para. 104.

¹⁴⁶³ *Bemba* Trial Judgment, para. 104; see also *Ntaganda* Trial Judgment, para. 935.

¹⁴⁶⁴ *Katanga* Trial Judgment, paras. 965-966; see also *Ntaganda* Trial Judgment, para. 934; *Bemba* Trial Judgment, paras. 105-106.

¹⁴⁶⁵ SCSL, *Prosecutor Against Charles Taylor*, “Judgment”, 18 May 2012, SCSL-03-01-T (“*Taylor* Trial Judgment”), para. 416; ECCC, *Duch* Trial Judgment, para. 363; ICTY, *Kunarac et al.* Appeal Judgment, paras. 128-129.

¹⁴⁶⁶ *Katanga* Trial Judgment, para. 965; see also *Ntaganda* Trial Judgment, para. 934; *Bemba* Trial Judgment, para. 108.

542. Lastly, when it comes to the knowledge required, in accordance with article 30(3) of the Statute, it must be proved that the perpetrator was aware that the invasion was effected under the coercive circumstances or conditions described above or that it would be thus effected “in the ordinary course of events”.¹⁴⁶⁷

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

543. The Chamber refers to the definition of the crime of sexual slavery as set out in articles 7(1)(g) and 8(2)(e)(vi) of the Statute and in the Elements of Crimes.

544. Since the elements of the crimes for the crime against humanity of sexual slavery and the war crime of sexual slavery are identical, the Chamber considers the discussion below to be equally applicable to both crimes.

545. Sexual slavery is a particular form of enslavement,¹⁴⁶⁸ which requires that the perpetrator exercise, over at least one person, powers attaching to the right of ownership and the commission of at least one act of a sexual nature.

546. The exercise over a person of powers attaching to the right of ownership may consist of the “use, enjoyment and disposal of a person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy”.¹⁴⁶⁹ Alternatively, the Elements of Crimes require a “similar deprivation of liberty”, which may in certain circumstances include exacting forced

¹⁴⁶⁷ *Katanga and Ngudjolo* Decision, para. 441; see also *Bemba* Trial Judgment, paras. 110-112; *Katanga* Trial Judgment, paras. 969-970; *Bemba* Decision, para. 163.

¹⁴⁶⁸ See Systematic rape, sexual slavery and slavery-like practices during armed conflict: final report, presented by Ms Gay J. McDougall, Special Rapporteur, 28 May 1998, E/CN.4/Sub.2/1998/13 (“Ms McDougall’s Report”), para. 29; see also article 1(1) of the Slavery Convention of 25 September 1926, article 4(2)(f) of Protocol II; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, “Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9”, 4 January 2017, ICC-01/04-02/06-1707, paras. 46, 51; *Katanga and Ngudjolo* Decision, para. 430 and reference therein.

¹⁴⁶⁹ *Katanga* Trial Judgment, para. 975.

labour or otherwise reducing a person to servile status. Proof of the exercise of any one or all of the attributes of the rights of ownership requires scrutiny of the specific nature of the relationship between the perpetrator and the victim by considering together various factors identified in international authority as symptomatic of the crime.¹⁴⁷⁰

547. The Chamber notes that the expression “similar deprivation of liberty” has been construed as applicable to situations in which the victim was not physically confined but was unable to escape the assailant’s control because the victim had nowhere else to go and feared for her or his life.¹⁴⁷¹ Imposition of deprivation of liberty may take various forms.¹⁴⁷² In that respect, the Chamber considers that it may take into account the subjective nature of such deprivation, that is, the person’s perception of his or her situation as well as his or her fear.¹⁴⁷³

548. The second element of sexual slavery requires that the perpetrator cause the victim to engage in one of more acts of a sexual nature. This means that, in addition to the exercise of powers attaching to the right of ownership, force is exercised over the victim, depriving him or her of the ability to decide the conditions in which he or she engages in sexual activity of any kind.¹⁴⁷⁴

¹⁴⁷⁰ See Ms McDougall’s Report, paras. 28, 45 and annex, para. 22; Update to the final report, 6 June 2000, E/CN.4/Sub.2/2000/21, para. 8; see also *Ntaganda* Trial Judgment, para. 952; *Katanga* Trial Judgment, para. 975; SCSL, *Taylor* Trial Judgment, para. 420; SCSL, *Brima et al.* Trial Judgment, para. 709; ICTY, *Kunarac et al.* Trial Judgment, paras. 542-543; ICTY, *Kunarac et al.* Appeal Judgment, para. 119; see also *Ntaganda* Trial Judgment, para. 952; *Katanga* Trial Judgment, para. 976; SCSL, *Sesay et al.* Trial Judgment, para. 160; SCSL, *Taylor* Trial Judgment, para. 420; *Ntaganda* Decision, para. 53; *Katanga and Ngudjolo* Decision, para. 432.

¹⁴⁷¹ SCSL, *Sesay et al.* Trial Judgment, para. 161; SCSL, *Brima et al.* Trial Judgment, para. 709 and references therein; see also *Ntaganda* Trial Judgment, para. 952; Ms McDougall’s Report, para. 29; ICTY, *Kunarac et al.* Trial Judgment, para. 740.

¹⁴⁷² See also, e.g., *Katanga* Trial Judgment, para. 977, SCSL, *Taylor* Trial Judgment, para. 420; SCSL, *Brima et al.* Trial Judgment, para. 709; see also *Ntaganda* Trial Judgment, para. 952.

¹⁴⁷³ SCSL, *Taylor* Trial Judgment, para. 420; *Katanga* Trial Judgment, para. 977.

¹⁴⁷⁴ *Katanga and Ngudjolo* Decision, para. 432; see also *Katanga* Trial Judgment, para. 978.

549. It should be noted that consent cannot be inferred from a victim's silence, lack of resistance, words or conduct where force, threat of force or the taking advantage of a coercive environment undermined the victim's ability.¹⁴⁷⁵

550. Article 30 of the Statute governs the mental element of the crime of sexual slavery.

551. Like Trial Chamber II, the Chamber considers that the perpetrator must have been aware of individually or collectively exercising one of the powers attaching to the right of ownership over a person and of causing such person to engage in one or more acts of a sexual nature. Therefore, the perpetrator must have been aware that he or she was exercising such powers and have acted with intent in order to cause the person concerned to engage in acts of a sexual nature or in the knowledge that such a consequence would occur in the ordinary course of events.¹⁴⁷⁶

(c) Other inhumane act in the form of forced marriage

552. The Chamber refers to the definition of the crime of other inhumane acts as set out in article 7(1)(k) of the Statute and in the Elements of Crimes.

553. The Chamber considers that the discrete crime of "forced marriage" falls under the category of other inhumane acts in that it differs from the other crimes enumerated in the Statute in terms of conduct, protected interests, harm suffered,¹⁴⁷⁷ and objectives sought, beyond just sexual relations. The conduct consists of the imposition of marriage, a quite distinctive aspect of the relationship between the perpetrator and the victim who are thus "spouses". The concept of forced marriage is thus construed

¹⁴⁷⁵ Rule 70 of the Rules.

¹⁴⁷⁶ *Katanga* Trial Judgment, para. 981.

¹⁴⁷⁷ *Ongwen* Decision, para. 92.

more broadly whereby not only is the sexual component of the conduct taken into account, but also the entire social and domestic dimension that it encompasses, in particular the marital status imposed on the victim by the fact that the victim is, in public or in private, described as the perpetrator's conjugal partner.¹⁴⁷⁸

554. The interests which the criminalization of forced marriage protects go to, *inter alia*, the violation of the right to marry, the right to choose a spouse and the right to found a family consensually, which are recognized in international human rights law.¹⁴⁷⁹ As Pre-Trial Chamber II underscores, at issue is a basic right "distinct from e.g. physical or sexual integrity, or personal liberty that demands protection through the appropriate interpretation of article 7(1)(k) of the Statute."¹⁴⁸⁰

555. The harm suffered from "forced marriage" consists of a quite distinctive form of stigmatization, which goes beyond the harm suffered in sexual violence on its own, since it encroaches on the social dimension¹⁴⁸¹ as a result of the status of wife. Use of that term can result in the victims being ostracized from their communities;¹⁴⁸² "the conjugal association forced upon the victims carried with it a lasting social stigma

¹⁴⁷⁸ See SCSL, *Brima et al.* Appeal Judgment, para. 195; *Ongwen* Decision, para. 93; SCSL, *Sesay et al.* Trial Judgment, para. 1296.

¹⁴⁷⁹ Article 16 of the Universal Declaration of Human Rights (GA/RES/217 A(III) of 10 December 1948); ("Universal Declaration of Human Rights"); article 23(3) of the International Covenant; article 10(1) of the International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations Treaty Series, vol. 993, no. 14531 (ICESCR); Human Rights Committee, General Comment 28, 29 March 2000, HRI/GEN/1/Rev.9, vol. I; article 1(1) of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, United Nations Treaty Series, vol. 521, p. 231; article 16(1)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women, United Nations Treaty Series, vol. 1249, p. 13; article 6(2)(a) of the United Nations Declaration on the Elimination of Discrimination Against Women, A/RES/22/2263 of 7 November 1967; article 6 of the Protocol of the African Charter on the Rights of Women in Africa; article 19(i) of the Islamic Declaration of Human Rights; article 33(1) of the Arab Charter on Human Rights, 22 May 2004; article 17(3) of the American Convention on Human Rights; article 8 of the European Convention on Human Rights; article 5 of Protocol no. 7 of the European Convention on Human Rights, 22 November 1984.

¹⁴⁸⁰ *Ongwen* Decision, para. 94.

¹⁴⁸¹ *Ongwen* Decision, paras. 93-94.

¹⁴⁸² SCSL, *Brima et al.* Appeal Judgment, para. 199.

which hampers their recovery and reintegration into society”.¹⁴⁸³ In cases where the victims became pregnant from the forced marriages, both they and their children suffered long-term social stigmatization.¹⁴⁸⁴ The classification of forced marriage as an other inhumane act therefore acknowledges not only the long-term stigmatization of the woman who was subjected to the union but also that of the children born of the forced union. Furthermore, the Special Court for Sierra Leone (SCSL) has noted in this respect that some victims were psychologically traumatized from being forced to be reduced to the status of “rebel wives”. The term “wife” can be a deliberate and strategic choice of psychological manipulation.¹⁴⁸⁵

556. As regards the criminal conduct, the Chamber is of the view that proof of a marriage does not necessarily require a formal or official marriage but may be bound up with the subjective view of the victim, third parties and the perpetrator of the crime and with the perpetrator’s intention to consider the couple married.¹⁴⁸⁶

557. Accordingly, the fact that the “marriage” is not recognized in national law is of no consequence.¹⁴⁸⁷

558. In a forced marriage, some spousal rights and obligations inherent to certain notions of the institution of marriage will be observed while others will be transgressed.¹⁴⁸⁸ Such factors may nonetheless be of use in showing a marital bond between perpetrator and victim. The Chamber shares the view of the SCSL¹⁴⁸⁹ and Pre-

¹⁴⁸³ SCSL, *Sesay et al.* Trial Judgment, para. 1296.

¹⁴⁸⁴ SCSL, *Brima et al.* Appeal Judgment, para. 199.

¹⁴⁸⁵ SCSL, *Sesay et al.* Trial Judgment, para. 1466.

¹⁴⁸⁶ Melanie O’Brien, “‘Don’t kill them, let’s choose them as wives’: the development of the crimes of forced marriage, sexual slavery and enforced prostitution in international criminal law”, *The International Journal of Human Rights*, no. 20, 2015, p. 391.

¹⁴⁸⁷ *Ongwen* Decision, para. 93.

¹⁴⁸⁸ See *Ongwen* Decision, para. 93.

¹⁴⁸⁹ SCSL, *Brima et al.* Appeal Judgment, para. 195; SCSL, *Sesay et al.* Trial Judgment, para. 2307.

Trial Chamber II¹⁴⁹⁰ that the idea of exclusivity may serve to characterize the forced conjugal union between victim and perpetrator. The Chamber considers, however, that exclusivity between spouses is but one indicator among others which allows a situation of forced marriage to be discerned. The same holds true for “domestic duties”¹⁴⁹¹ and the observance of traditions or any other way of marking the union between two people.

559. As Pre-Trial Chamber II has said, the specific conduct proscribed by article 7(1)(k) of the Statute, in the form of a forced marriage, consists of compelling a person, regardless of his or her will, into a conjugal association with another person by the use of force – physical or psychological – the threat of force or by taking advantage of a coercive environment.¹⁴⁹² However, for the crime of other inhumane acts through conduct categorized as “forced marriage”, proof of a lack of consent on the victim’s part is not required.¹⁴⁹³

560. Turning lastly to the elements specific to the characterization of other inhumane acts, the Chamber concurs with the view of Pre-Trial Chamber II that the conduct consisting of “forced marriage” may constitute an act similar in character to those explicitly enumerated in article 7(1) of the Statute and may intentionally cause great suffering.¹⁴⁹⁴ This applies in particular to an absence of choice as to spouse or timing of procreation, as well as to miscarriages and stigmatization.¹⁴⁹⁵

¹⁴⁹⁰ *Ongwen* Decision, para. 93.

¹⁴⁹¹ Generally referred to in a variety of ways, as the case may be: *Ongwen* Decision, para. 92: “domestic duties” or “duties that are associated with marriage”; SCSL, *Brima et al.* Trial Judgment, para. 704: “conjugal duties”; SCSL, *Brima et al.* Appeal Judgment, para. 195: “forced labour”, “domestic duties”.

¹⁴⁹² SCSL, *Sesay et al.* Trial Judgment, paras. 1295, 2307; SCSL, *Brima et al.* Appeal Judgment, para. 195; *Ongwen* Decision, para. 93.

¹⁴⁹³ SCSL, *Sesay et al.* Trial Judgment, paras. 736-740.

¹⁴⁹⁴ *Ongwen* Decision, para. 91.

¹⁴⁹⁵ SCSL, Opinion of Judge Doherty, para. 51; SCSL, *Sesay et al.* Trial Judgment, para. 1296.

561. With regard to the application of the gravity threshold required under article 7(1)(k) of the Statute the Chamber considers, in line with the ECCC¹⁴⁹⁶ and Pre-Trial Chamber II,¹⁴⁹⁷ that the commission of inhumane acts through forced marriage, whereby victims endure an outrage upon human dignity, may reach a degree of gravity comparable to that of other crimes against humanity. The Chamber will address the nature of the perpetrator's conduct and specifically the atmosphere in which the victims were married, their possible vulnerability and the effects on their physical and mental health.¹⁴⁹⁸

562. That exercise will entail making a case-by-case determination on the facts insofar as the available evidence amply shows that the conduct under consideration constitutes an inhumane act, within the meaning of the crime defined at article 7(1)(k) of the Statute, in the form of forced marriage.

2. Analysis

563. The Prosecutor alleges that the acts ensued from a marriage system introduced by the armed groups Ansar Dine/AQIM¹⁴⁹⁹ and that the crimes of forced marriages enabled the crimes of sexual slavery, rape and persecution on gender grounds to be committed.¹⁵⁰⁰ The Defence contends that it is for the Prosecutor to show how the constituent elements of the different crimes are established.¹⁵⁰¹

¹⁴⁹⁶ ECCC, *Nuon Chea and Khieu Samphan* Trial Judgment, paras. 3691-3692.

¹⁴⁹⁷ *Ongwen* Decision, para. 91.

¹⁴⁹⁸ SCSL, *Brima et al.* Appeal Judgment, para. 200.

¹⁴⁹⁹ DCC, para. 796; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 10, lines 19-27.

¹⁵⁰⁰ DCC, para. 792.

¹⁵⁰¹ Defence Written Submissions, paras. 25, 30.

(a) General remarks on the practice of forced marriage in Timbuktu

564. The Chamber notes that before the armed groups arrived in Timbuktu, people could form a relationship as a couple without being wed. The Chamber points out that many couples at that time were not married, [REDACTED].¹⁵⁰²

565. Moreover, before the armed groups arrived, marriage required the consent of the families and sometimes of the women themselves,¹⁵⁰³ and often involved a traditional ceremony.¹⁵⁰⁴ However the armed groups Ansar Dine/AQIM prohibited gatherings and marriages took place in a different way, at the mosque.¹⁵⁰⁵

566. The Chamber considers that the armed groups Ansar Dine/AQIM instituted a widespread practice of forced marriage among the local population in the city of Timbuktu and the Region of the same name.¹⁵⁰⁶

¹⁵⁰² Statement of [REDACTED]; Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0411, paras. 60-61.

¹⁵⁰³ Statement of [REDACTED] Statement of [REDACTED]

¹⁵⁰⁴ Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9426, paras. 49-50; Statement of [REDACTED]

¹⁵⁰⁵ Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9426, paras. 49-50; Statement of [REDACTED]

¹⁵⁰⁶ Summary of statement of [REDACTED]; Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0409, paras. 47-48; Statement of P-0610, [MLI-OTP-0062-0670-R01](#), p. 0677, para. 37; Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0076, para. 22; Statement of P-0553, [MLI-OTP-0039-1048-R01](#), pp. 1056, 1059, paras. 41, 51; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9428, paras. 57, 73; Statement of [REDACTED]; Summary of statement of P-0147, [MLI-OTP-0066-0569](#), p. 0571; UNGA/UNSC, Sexual Violence in Conflict - Report of the Secretary-General, A/67/792-S/2013/149, 14 March 2013, [MLI-OTP-0033-1978](#), p. 1989, para. 54; [MLI-OTP-0001-2113](#), para. 24; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali, A/HRC/22/33, 7 January 2012, [MLI-OTP-0033-1110](#) ("[MLI-OTP-0033-1110](#)"), p. 1120, para. 34; Statement of P-0398, [MLI-OTP-0051-0891](#), pp. 0896-0897, lines 161-187; Statement of [REDACTED] Statement of [REDACTED] Statement of [REDACTED] Statement of [REDACTED] Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0875, paras. 50-51; [REDACTED] 12 November 2014, [MLI-OTP-0024-2768](#), p. 2779;

568. The Chamber also takes note of a women’s demonstration which took place in October 2012 to protest against the *Hisbah*’s acts of violence against women.¹⁵¹⁷

569. The Chamber considers that, from the evidence showing that forced marriage was common in Timbuktu, it can also be inferred that this practice was common knowledge. Witness ██████ stated that everyone knew that go-betweens, or intermediaries,¹⁵¹⁸ were putting pressure on families to marry off their daughters.¹⁵¹⁹

570. Moreover, the Chamber is satisfied that, as the Prosecutor submits,¹⁵²⁰ the members of the armed groups used the institution of marriage during the material period, in the city of Timbuktu and the Timbuktu Region, with the intention of embedding themselves in the population so as to tighten further their grip on the territories they controlled.¹⁵²¹ For example, Witness ██████ explains that marriages in Timbuktu were instituted with several purposes in mind:¹⁵²² religious considerations aside,¹⁵²³ they served to blend the “jihadis” with the population and so create a new generation.¹⁵²⁴

571. The Prosecutor identifies a second purpose: the marriages were a means for these armed groups to reward their men by allowing them to satisfy their

¹⁵¹⁷ Slate Afrique, “Nord-Mali – Les femmes de Tombouctou contre-attaquent”, 9 October 2012, [MLI-OTP-0033-4305](#); Video, MLI-OTP-0033-2814.

¹⁵¹⁸ See, above, para. 580.

¹⁵¹⁹ Statement of ██████

¹⁵²⁰ DCC, paras. 170, 767, 789, 834; Prosecutor’s Final Written Submissions, paras. 10-11.

¹⁵²¹ Africa Security Brief, Report “West Africa’s Growing Terrorist Threat: Confronting AQIM’s Sahelian Strategy”, 11 February 2011, [MLI-OTP-0001-5776](#), p. 5778; Center for Strategic & International Studies, Report “Al Qaeda in the Islamic Maghreb”, September 2011, [MLI-OTP-0001-6174](#), p. 6176; Report “If our men won’t fight, we will, A gendered analysis of the armed conflict in Northern Mali”, FOI-R—4121—SE, November 2015, [MLI-OTP-0070-1292](#), p. 1343.

¹⁵²² Statement of ██████

¹⁵²³ Statement of ██████

¹⁵²⁴ Statement of ██████, ██████

“[TRANSLATION] sexual needs” through so-called marriages.¹⁵²⁵ The Chamber recalls Witness ██████’s explanation that marriages were instituted in Timbuktu because the men were encouraged to “[TRANSLATION] marry”,¹⁵²⁶ irrespective of whether they were already married before they arrived.¹⁵²⁷ Like the Prosecutor¹⁵²⁸ and the Legal Representative of Victims,¹⁵²⁹ the Chamber considers that the marriages were used as “gateways” to “legitimize” situations of sexual and gender-based abuse so as to be in religious compliance.¹⁵³⁰ Witness ██████ explained that a man who managed to get married officially would be able to avoid committing sins.¹⁵³¹ The Chamber recalls in that respect its finding that the armed groups’ policy strictly regulated relations between men and women.¹⁵³² The Chamber also agrees with the Prosecutor¹⁵³³ that the ephemeral nature of these “marriages”¹⁵³⁴ and the fact that the women thus “married” were subjected to sexual violence by men other than their “spouses” indicate that these “marriages” served as a “gateway” for the commission of other sexual and

¹⁵²⁵ DCC, paras. 750, 765-766, 790, 834, Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 9, line 26 to p. 10, line 8, p. 14, lines 13-20.

¹⁵²⁶ Statement of ██████

Statement of ██████

Statement of ██████

¹⁵²⁷ Statement of ██████

¹⁵²⁸ DCC, paras. 170, 757, 766, 790, 792, 834.

¹⁵²⁹ Written Observations of the Legal Representatives of Victims, paras. 35, 40.

¹⁵³⁰ Statement of ██████ [MLI-OTP-0033-1110](#), p. 1120, para. 34; [MLI-OTP-0001-2113](#), p. 1121, paras. 24, 34; Statement of ██████ [MLI-OTP-0033-1110](#); Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0408, para. 38; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9428, para. 57; Video, [MLI-OTP-0039-0574](#), 00:16:22:00 to 00:17:16:00 and 00:18:25:00 to 00:20:57:22, transcript, [MLI-OTP-0069-0494](#), p. 0508, lines 458-483, pp. 0510-0511, 521-573; see also, below, all the incidents constituting rape, sexual slavery and other inhumane act in the form of forced marriage, paras. 584-625, 632-637.

¹⁵³¹ Statement of ██████

¹⁵³² See, above, paras. 180-184.

¹⁵³³ DCC, paras. 756, 766, 773, 783, 845, Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 10, lines 9-15.

¹⁵³⁴ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0875, para. 51; Statement of ██████ [MLI-OTP-0039-0861-R01](#); Statement of P-0398, [MLI-OTP-0051-0891](#), p. 0909, lines 600-627; Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0409, para. 44; Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1875, para. 69.

gender-based crimes.¹⁵³⁵ Witness ██████ acknowledges that most of the members of the armed groups entered into “[TRANSLATION] interim marriages” that were in line with their religion, i.e. no end date was set,¹⁵³⁶ meaning that the marriage was supposed to last only as long as the husbands, members of the armed groups, were physically present in Timbuktu.¹⁵³⁷

572. The Chamber notes two other purposes underlying the practice of forced marriage by the armed groups. The United Nations High Commissioner for Human Rights has reported another form of sexual violence consisting of acts of punitive rape for failure to observe the norms imposed by the rebels, such as the dress code.¹⁵³⁸ According to some of the testimony by collected by the High Commissioner, rapes were committed on ethnic grounds, as the victims were usually “dark-skinned” people, considered inferior by their “fair-skinned” assailants.¹⁵³⁹

573. The Chamber is further of the opinion that a fund or financial assistance provided by the armed groups Ansar Dine/AQIM was used to carry out these marriages.¹⁵⁴⁰

574. On that subject, Witness ██████ says that members of armed groups who married local women would generally receive housing.¹⁵⁴¹ Government buildings were converted into housing, especially those such as the tax offices or the education budget offices, which could be split into several bedrooms.¹⁵⁴² Abou Dhar, Adama and

¹⁵³⁵ Statement of ██████
 ██████ see also, below, the situation experienced by witnesses P-0538, para. 612 and P-0553, paras. 618-622.

¹⁵³⁶ Statement of ██████

¹⁵³⁷ Statement of ██████

¹⁵³⁸ [MLI-OTP-0033-1110](#), p. 1120, para. 33.

¹⁵³⁹ [MLI-OTP-0033-1110](#), p. 1120, para. 32.

¹⁵⁴⁰ Statement of ██████
 Statement of ██████

¹⁵⁴¹ Statement of ██████

¹⁵⁴² Statement of ██████

Abou Baccar Al Chinguetti, moreover, lived at the Governorate, the Governor's residence, with their spouses.¹⁵⁴³

575. Besides the conclusions drawn regarding the conditions in which the armed groups were financed,¹⁵⁴⁴ the Chamber would point out that that the leaders of the armed groups, including Iyad Ag Ghaly, Yahia Abou Al Hammam and Abou Zeid, had the funds to finance the armed groups' operations and other food or logistical expenses.¹⁵⁴⁵ Someone by the name of "Yazid" was responsible for managing the fund for Timbuktu.¹⁵⁴⁶

576. Some members of the Islamic Police received such funds to be able to get married. Upon request to Abou Zeid or to their emir, money was disbursed to members of the armed groups who could not afford to wed, so as to facilitate their marrying into the local population,¹⁵⁴⁷ or to men who were already married, so that their wives and children could be brought to Timbuktu.¹⁵⁴⁸

577. These funds were used for marriage payments: a marriage payment was common practice upon marriage during the time frame in question.¹⁵⁴⁹ By way of

¹⁵⁴³ Statement of P-0398, [MLI-OTP-0051-0891](#), pp. 0910-0911, lines 644-676.

¹⁵⁴⁴ See, above, paras. 208, 213.

¹⁵⁴⁵ Statement of P-0398, [MLI-OTP-0051-0376](#), pp. 0405-0406, lines 983-1008; Statement of [REDACTED]
[REDACTED] Summary of statement of [REDACTED]
[REDACTED]; Statement of [REDACTED]

¹⁵⁴⁶ Statement of [REDACTED] Statement of [REDACTED]
[REDACTED] Statement of [REDACTED]
[REDACTED] Statement of P-0398, [MLI-OTP-0051-0407](#), pp. 0409-0410, lines 37-72.

¹⁵⁴⁷ Statement of [REDACTED] Statement
of [REDACTED] Statement of [REDACTED]
[REDACTED] Statement of [REDACTED]
Statement of P-0398, [MLI-OTP-0051-0891](#), p. 0900, lines 283-290, p. 0901, lines 330-342, p. 0902, lines 366-370.

¹⁵⁴⁸ Statement of P-0398, [MLI-OTP-0051-0891](#), pp. 0899-0901, lines 270-315, p. 0903, lines 389-394.

¹⁵⁴⁹ Statement of P-0398, [MLI-OTP-0051-0891](#), pp. 0899-0900, lines. 270-282; Statement of [REDACTED]
[REDACTED] Statement of [REDACTED]
[REDACTED]

examples, the Chamber adverts to the facts described below, in which some victims confirmed that members of the armed groups had made or wanted to make a marriage payment before marrying.¹⁵⁵⁰

578. For example, in the case of Witness ██████ who states that, after the case of the police officer from Burkina Faso apprehended for “[TRANSLATION] adultery”, all the unmarried members of the Islamic Police received, through Khalid, 300,000 CFA francs from Abou Zeid so that they could get married.¹⁵⁵¹ Witness ██████ thinks that this practice was seen as necessary to prevent “[TRANSLATION] adultery” from reoccurring.¹⁵⁵² ██████ two police officers who approached Adama about getting married: a certain “Al Hajj” (possibly Demba Demba)¹⁵⁵³ and Abou Dhar for whom Adama made a marriage payment.¹⁵⁵⁴ Witness ██████ recalls that a member of the Islamic Police, someone by the name of ██████, married a young girl for a sum of money that the police gave her family as marriage payment.¹⁵⁵⁵

579. Mr Al Hassan also wrote requests for money on behalf of other people which they could submit to the emir.¹⁵⁵⁶

580. Members of the armed groups likewise made use of “[TRANSLATION] mediation” through local volunteers in order to convince families to marry off their daughters.¹⁵⁵⁷ In fact, ██████ Houka Houka, and Daoud Ali served as

¹⁵⁵⁰ See, below, the cases of P-0602, P-0610, P-0538 and P-0553, paras. 596, 601, 609, 617.

¹⁵⁵¹ Summary of statement of ██████

¹⁵⁵² Summary of statement of ██████

¹⁵⁵³ ██████

¹⁵⁵⁴ ██████

¹⁵⁵⁵ Summary of statement of ██████

¹⁵⁵⁶ See, below, paras. 990.

¹⁵⁵⁷ Statement of ██████

Statement of ██████

██████ Statement of ██████ Statement of ██████

██████

agree to return to their husbands.¹⁵⁶⁷ According to ██████, it was primarily in this context that Mr Al Hassan interacted with the local population occurred, by putting pressure on the women and attempting to resolve the matter before it got to court.¹⁵⁶⁸ Witness ██████ further states that many women often made their discontent known, by complaining to their relatives and the emirs and at protests because the Islamic Police was helping their husbands to reassert control over them and they were being required to marry men whom they did not want.¹⁵⁶⁹

(b) Case-by-case analysis

583. In this section, the Chamber will first, taking each case separately, make findings as to the facts alleged by the Prosecutor, and will then perform an overall analysis of the facts against the other constituent elements of the crimes.

i. Case of P-0520¹⁵⁷⁰

584. The Chamber sees that the only piece of evidence adduced by the Prosecutor in support of the facts alleged in relation to the case of P-0520 is the statement of the victim, who is an anonymous witness. That notwithstanding, as it is not circumstantial evidence,¹⁵⁷¹ but comes from the direct victim of the alleged acts, and considering the personal nature of the account given by P-0520 of the events, which lends credibility

¹⁵⁶⁷ Statement of ██████

¹⁵⁶⁸ Statement of ██████

██████ see also, below, para. 997.

¹⁵⁶⁹ Statement of ██████

¹⁵⁷⁰ DCC, paras. 760, 762-763, 773-774, 776, 785-786, 799, 802, 805, 810, 829, 865, 1085, 1087; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 5, line 28 to p. 6, line. 2, p. 6, lines 11-15, p. 7, line 27 to p. 8, line 1; Defence Final Written Submissions, para. 80.

¹⁵⁷¹ Decision of 19 July 2018, para. 18.

to her statement,¹⁵⁷² the Chamber considers the following facts to be established to the standard required.

585. [REDACTED] following the arrival of the armed groups in Timbuktu,¹⁵⁷³ [REDACTED] P-0520 went to a house [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED].¹⁵⁷⁴

586. At nightfall, one of the men, who was armed, came to her house and said to her “[TRANSLATION] our leader said he likes you”. P-0520’s reply that she was not interested was met with the retort: “[REDACTED] [REDACTED]”.¹⁵⁷⁵ P-0520 also says that “[TRANSLATION] [e]veryone feared them: they had the power because they had the weapons and there was nothing we could do”.¹⁵⁷⁶ Later that day, the same man returned to P-0520’s home, along with other armed men, and [REDACTED].¹⁵⁷⁷ One of the men told her that had she been “[REDACTED] [REDACTED] [REDACTED]”.¹⁵⁷⁸ One of the men announced that he had come to ask to marry P-0520, but P-0520¹⁵⁷⁹ and another person refused.¹⁵⁸⁰ The men then veiled her, “[TRANSLATION] flung [her] into the vehicle”¹⁵⁸¹ and took her [REDACTED]

¹⁵⁷² Accordingly, the Chamber rejects the Defence’s arguments. See Defence Final Written Submissions, para. 80.

¹⁵⁷³ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1860, para. 19.

¹⁵⁷⁴ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1860-1861, paras. 20 and 21.

¹⁵⁷⁵ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1861, para. 22.

¹⁵⁷⁶ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1861-1862 and 1864, paras. 22-23, 31.

¹⁵⁷⁷ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1862, paras. 23-25.

¹⁵⁷⁸ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1862, para. 23.

¹⁵⁷⁹ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1862, para. 24.

¹⁵⁸⁰ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1862, para. 24.

¹⁵⁸¹ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1862, para. 24.

[REDACTED]
[REDACTED]¹⁵⁸²

587. Upon arrival, while P-0520 was refusing to alight from the car, one of the men said to her “[REDACTED]” and [REDACTED] before training his weapon on her.¹⁵⁸³ The man then ordered her into a room, making it clear that he had brought her “[TRANSLATION] for his needs” and that she would not return home until he had finished.¹⁵⁸⁴ He carried her to the bed, ripped her clothes off and “[TRANSLATION] threw himself on top of” her several times.¹⁵⁸⁵ P-0520 says she was crying and that she tried to push him away in vain.¹⁵⁸⁶

588. In the morning, P-0520 [REDACTED]
[REDACTED]
[REDACTED], despite P-0520’s protests.¹⁵⁸⁸ [REDACTED]
they [REDACTED] where he again “[TRANSLATION] threw himself on top of her” while playing with her “[TRANSLATION] like a doll.”¹⁵⁸⁹ [REDACTED]
[REDACTED]
[REDACTED]¹⁵⁹¹

589. [REDACTED], P-0520 was driven [REDACTED]¹⁵⁹² where she was locked up [REDACTED]¹⁵⁹³ during which “[TRANSLATION] he was always on

¹⁵⁸² Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1862-1863, 1865, paras. 26, 27, 34.

¹⁵⁸³ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1863, para. 26.

¹⁵⁸⁴ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1863, para. 27.

¹⁵⁸⁵ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1863-1864, paras. 28-29, 31.

¹⁵⁸⁶ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1863-1864, paras. 27-28.

¹⁵⁸⁷ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1864, para. 31.

¹⁵⁸⁸ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1865, para. 32.

¹⁵⁸⁹ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1865, para. 32.

¹⁵⁹⁰ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1865, para. 33.

¹⁵⁹¹ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1865, para. 34.

¹⁵⁹² Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1865-1866, paras. 34, 36, 38.

¹⁵⁹³ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1866-1868, paras. 36-37, 42, p. 1871, para. 57.

top of [her].”¹⁵⁹⁴ One day, P-0520 told him to stay away from her, saying [REDACTED]

[REDACTED].¹⁵⁹⁵ At that, her assailant [REDACTED]
[REDACTED] and then resumed “[TRANSLATION] what he had to do” .¹⁵⁹⁶

590. P-0520 also heard that her “[TRANSLATION] husband” [REDACTED]
[REDACTED].¹⁵⁹⁷ She also states that in the building where she stayed there were [REDACTED]
[REDACTED] men,¹⁵⁹⁸ each of whom had “[TRANSLATION] his wife”.¹⁵⁹⁹

591. One day, because she had talked to a man, P-0520 was [REDACTED]
[REDACTED].¹⁶⁰⁰ She was then
[REDACTED].¹⁶⁰¹ [REDACTED]
[REDACTED].¹⁶⁰²

592. [REDACTED].¹⁶⁰³ [REDACTED]
[REDACTED] called her husband who came to threaten her.¹⁶⁰⁴ P-0520
was [REDACTED] where he “[TRANSLATION] locked” her and
“[TRANSLATION] touched her again”, although she was saying that she wished to go
home.¹⁶⁰⁵ [REDACTED].¹⁶⁰⁶ P-0520 was [REDACTED] several times

¹⁵⁹⁴ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1866-1867, paras. 36-40, p. 1869, para. 47.

¹⁵⁹⁵ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1868, para. 43.

¹⁵⁹⁶ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1868, para. 43.

¹⁵⁹⁷ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1868-1869, para. 45.

¹⁵⁹⁸ In this respect, P-0520 specified: “[REDACTED]”, see
Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1862, para. 25.

¹⁵⁹⁹ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1867, paras. 38-39.

¹⁶⁰⁰ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1870, para. 51.

¹⁶⁰¹ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1870-1871, paras. 52-54.

¹⁶⁰² Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1871, para. 56.

¹⁶⁰³ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1871-1872, para. 57.

¹⁶⁰⁴ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1872, para. 58.

¹⁶⁰⁵ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1873, paras. 60-61.

¹⁶⁰⁶ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1873, para. 62.

where she was raped,¹⁶⁰⁷ threatened¹⁶⁰⁸ [REDACTED].¹⁶⁰⁹ In P-0520's estimation, all in all, [REDACTED] "[TRANSLATION] in their hands".¹⁶¹⁰

593. P-0520 has suffered considerably in a physical sense – she could no longer "[TRANSLATION] stand up"¹⁶¹¹ and describes herself as a "[TRANSLATION] corpse"¹⁶¹² – and in a mental sense – it "[TRANSLATION] ruined her entire life".¹⁶¹³ P-0520 says that people shun her¹⁶¹⁴ and that her reputation has altered since the events: "[TRANSLATION] People ... think that what happened to me was because it was something I wanted".¹⁶¹⁵

594. Taking into account the victim's description of her assailants and the places where she stayed, the Chamber considers that the perpetrator of the above-mentioned acts was a member of the armed groups Ansar Dine/AQIM who at the time controlled the city of Timbuktu and the Timbuktu Region.

ii. Case of P-0602¹⁶¹⁶

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

596. During the month [REDACTED], [REDACTED] "[TRANSLATION] mujahidin" in a car stopped P-0602 to tell her to cover head with her veil, then they followed her¹⁶¹⁷ and

¹⁶⁰⁷ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1875-1876, paras. 67, 71.

¹⁶⁰⁸ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1874, para. 62.

¹⁶⁰⁹ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1874, para. 64, p. 1876, para. 71.

¹⁶¹⁰ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1875, para. 69.

¹⁶¹¹ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), pp. 1863-1864, para. 28.

¹⁶¹² Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1873, para. 60.

¹⁶¹³ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1864, para. 30, p. 1877, para. 78.

¹⁶¹⁴ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1878, para. 80.

¹⁶¹⁵ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1877, para. 78.

¹⁶¹⁶ DCC, paras. 762-763, 773, 776, 783, 792, 799, 802, 805, 811, 865, 870-871, 1085 and 1087; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 5, line 28 to p. 6, line. 1, p. 12, lines 25-27; Defence Written Submissions, para. 19; Defence Final Written Submissions, para. 81.

¹⁶¹⁷ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0405, paras. 22-24.

went to her home to ask to marry her, to which¹⁶¹⁸ P-0602 and another person present did not agree.¹⁶¹⁹ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED].¹⁶²² P-0602 stated: “[TRANSLATION] I knew that we had no choice. They were armed and there was nothing we could do against them. All I could do was cry”.¹⁶²³ By way of marriage payment, the leader gave a sum of money.¹⁶²⁴ The following day, P-0602’s “[TRANSLATION] husband” came to take her to his home against her will. She cried as she left with them.¹⁶²⁵

597. P-0602 and her husband spent [REDACTED] P-0602 had to repel his persistent and violent advances.¹⁶²⁶ “[TRANSLATION] He said that

[REDACTED]”.¹⁶²⁷ [REDACTED] P-0602’s husband forced her into sexual relations with him, training his weapon on her [REDACTED] whip [REDACTED].¹⁶²⁸ P-0602

[REDACTED].¹⁶²⁹ The situation lasted [REDACTED] until he no longer came

¹⁶¹⁸ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0405, para. 25.

¹⁶¹⁹ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0405, para. 25.

¹⁶²⁰ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0405, para. 26.

¹⁶²¹ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0405, para. 27.

¹⁶²² Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0406, para. 28.

¹⁶²³ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0406, para. 28.

¹⁶²⁴ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0406, para. 29.

¹⁶²⁵ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0406, paras. 31-32.

¹⁶²⁶ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0407, paras. 35-38.

¹⁶²⁷ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0408, para. 38.

¹⁶²⁸ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0408, paras. 39-42.

¹⁶²⁹ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0408, para. 42.

back.¹⁶³⁰ P-0602 says she suffers from sleep disorders and faints because of the incident.¹⁶³¹

598. P-0602 describes the individuals as comprised of “[TRANSLATION] some light-skinned and some dark-skinned ones”, who were always armed,¹⁶³² spoke Tamasheq and Arabic,¹⁶³³ and wore vests and cropped trousers similar to those they imposed on the men of Timbuktu.¹⁶³⁴ P-0602 adds that the mujahidin belonged to several groups such as MUJAO, the MNLA, Ansar Dine or AQIM.¹⁶³⁵ She also says that their leader was called “Sanda”.¹⁶³⁶ She describes her “[TRANSLATION] husband” as being [REDACTED]

[REDACTED].¹⁶³⁷ P-0602 agrees that the vest which was shown to her¹⁶³⁸ resembles the one her husband wore every day.¹⁶³⁹ Accordingly, considering the appearance of the vests of members of the Islamic Police and the *Hisbah*,¹⁶⁴⁰ in the Chamber’s view, P-0602’s description establishes that the perpetrator of the crime was a member of the group Ansar Dine/AQIM.

¹⁶³⁰ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0409, para. 44.

¹⁶³¹ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0409, para. 45.

¹⁶³² Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0405, para. 22.

¹⁶³³ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0405, para. 24.

¹⁶³⁴ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0405, para. 26.

¹⁶³⁵ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0403, para. 14.

¹⁶³⁶ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0407, para. 34.

¹⁶³⁷ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0406, para. 30, p. 0407, para. 33.

¹⁶³⁸ Video, [MLI-OTP-0015-0495](#), 00:27:26:08 shows two men wearing blue vests marked “[TRANSLATION] Islamic Police” in Arabic and French.

¹⁶³⁹ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0412, para. 67.

¹⁶⁴⁰ See Video, [MLI-OTP-0009-1749](#), at 00:07:30:14; Statement of [REDACTED] Statement of [REDACTED] Statement of [REDACTED] Statement of [REDACTED] Statement of P-0398, [MLI-OTP-0051-1155](#), pp. 1175-1176, lines. 671-708.

iii. Case of P-0610¹⁶⁴¹

599. 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.

600. [REDACTED],¹⁶⁴² in Timbuktu,¹⁶⁴³ Witness P-0610 [REDACTED]
[REDACTED],¹⁶⁴⁴ was forcibly married to an [REDACTED].¹⁶⁴⁵

601. P-0610 states that [REDACTED] Islamists came to her home for the first time, while she was absent, with the intention of marrying her to one of them.¹⁶⁴⁶ They returned later with money, insisting that the marriage be finalized as soon as possible.¹⁶⁴⁷ [REDACTED]

[REDACTED] someone [REDACTED] told P-0610 that she had no choice.¹⁶⁴⁸ [REDACTED]
[REDACTED]
[REDACTED].¹⁶⁴⁹

602. In the evening of the marriage, P-0610 was taken to a house¹⁶⁵⁰ where her “husband” joined her.¹⁶⁵¹ [REDACTED].¹⁶⁵² The following day, her husband came to see her [REDACTED]
[REDACTED].¹⁶⁵³ [REDACTED]

¹⁶⁴¹ DCC, paras. 763, 773, 776, 783, 785-787, 800, 802, 805, 812, 835, 865, 870, 1085, 1087; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 5, line 28 to p. 6, line 1, p. 6, lines 17-20; Defence Final Written Submissions, para. 82.

¹⁶⁴² Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0673, para. 21, p. 0678, para. 42.

¹⁶⁴³ Statement of P-0610, [MLI-OTP-0062-0670-R01](#), p. 0673, para. 21, p. 0678, para. 42.

¹⁶⁴⁴ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0672, para. 14, p. 0678, para. 42, p. 0680, para. 54.

¹⁶⁴⁵ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0677, para. 37, p. 0678, para. 42.

¹⁶⁴⁶ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0677, para. 37, p. 0678, para. 43.

¹⁶⁴⁷ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0678, paras. 44-45.

¹⁶⁴⁸ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0678, para. 45.

¹⁶⁴⁹ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0678, para. 46.

¹⁶⁵⁰ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0679, para. 47.

¹⁶⁵¹ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0679, paras. 48-49.

¹⁶⁵² Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0679, para. 50.

¹⁶⁵³ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0679, para. 50.

[REDACTED]
[REDACTED].¹⁶⁵⁴

603. [REDACTED] P-0610 says she was raped.¹⁶⁵⁵ Although she cried and tried to resist, the man closed the door, slapped her and forcibly undressed her.¹⁶⁵⁶ He “[TRANSLATION] spent the whole night with [her] in bed” and “[TRANSLATION] wounded her inside.¹⁶⁵⁷ P-0610 acknowledges that she finds it uncomfortable to speak about the topic.¹⁶⁵⁸ The following morning, P-0610 explains that [REDACTED] [REDACTED].¹⁶⁵⁹ P-0610 adds that she felt so unwell [REDACTED].¹⁶⁶⁰ Her husband came [REDACTED] once [REDACTED] [REDACTED].¹⁶⁶¹ P-0610 explains [REDACTED] and she still fears that he might come to get her.¹⁶⁶²

604. Regarding the identity of the man to whom she was married, P-0610 says that his name was [REDACTED], that he was [REDACTED], meaning [REDACTED], and that he spoke [REDACTED].¹⁶⁶³ She states that she does not know whether he was “[TRANSLATION] with the courts, the police or the gendarmerie”.¹⁶⁶⁴

605. P-0610 discloses that she was affected by some people talking about her, saying that she was married to an Islamist.¹⁶⁶⁵

¹⁶⁵⁴ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0679, para. 51.

¹⁶⁵⁵ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0680, para. 53.

¹⁶⁵⁶ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0680, para. 53.

¹⁶⁵⁷ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0680, paras. 54-55; Annex A to Statement of P-0160, [MLI-OTP-0062-0686](#).

¹⁶⁵⁸ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0680, para. 54, p. 0681, para. 61.

¹⁶⁵⁹ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0680, para. 56.

¹⁶⁶⁰ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), pp. 0680-0681, paras. 56-57.

¹⁶⁶¹ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0681, paras. 58-59.

¹⁶⁶² Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0681, para. 59.

¹⁶⁶³ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0679, para. 49, p. 0681, para. 60.

¹⁶⁶⁴ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0681, para. 60.

¹⁶⁶⁵ Statement of P-0160, [MLI-OTP-0062-0670-R01](#), p. 0682, para. 62.

606. In light of the foregoing, the Chamber considers, contrary to the Defence's view,¹⁶⁶⁶ that the evidence presented by the Prosecutor suffices to establish that the perpetrator was a member of the armed groups Ansar Dine/AQIM.¹⁶⁶⁷

iv. Case of P-0538¹⁶⁶⁸

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

608. ██████████ after arriving in the city,¹⁶⁶⁹ hence ██████████ 2012, several "[TRANSLATION] rebels" went to P-0538's home.¹⁶⁷⁰ She describes them as all wearing the same clothing, some as dark-skinned and some as white-skinned, as speaking Tamasheq and Arabic, and with an open-back vehicle.¹⁶⁷¹ One of them ██████████ ██████████, while ██████████ others entered the courtyard of her house.¹⁶⁷² One of them wanted to marry P-0538.¹⁶⁷³ They wanted to put P-0538 in their vehicle there and then but she protested and cried.¹⁶⁷⁴ ██████████

¹⁶⁶⁶ Defence Final Written Submissions, para. 82.

¹⁶⁶⁷ Accordingly, the Chamber sees a person named ██████████ on the list of persons which the Prosecutor (in her "*Neuvième communication du Bureau du Procureur concernant la divulgation d'éléments de preuve à charge*", ICC-01/12-01/18-82-Conf-AnxA) claims to have found at the BMS. In the original version of the document, the only version filed by the Prosecutor, the Chamber sees that the table compiled links the persons to firearms. This information suggests that the persons listed were not members of the *Hisbah*. That notwithstanding, the Chamber is not satisfied to the standard required that the two persons referred to in the statement of P-0160 and in the list are one and the same.

¹⁶⁶⁸ DCC, paras. 760, 763, 776, 783, 785, 799, 802-803, 807, 813, 829, 835, 848, 865, 871-873, 1085 and 1087; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 6, lines 2 and 3, p. 8, lines 2-4, and p. 12, lines 23 and 24; Defence Final Written Submissions, para. 83.

¹⁶⁶⁹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0076, para. 24, p. 0077, para. 27.

¹⁶⁷⁰ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, para. 27.

¹⁶⁷¹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, para. 28, p. 0078, para. 33.

¹⁶⁷² Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, para. 28.

¹⁶⁷³ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), pp. 0077-0078, paras. 27, 33.

¹⁶⁷⁴ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, para. 28.

[REDACTED].¹⁶⁷⁵ [REDACTED].¹⁶⁷⁶
 [REDACTED].¹⁶⁷⁷ P-0538 was
 “[TRANSLATION] flung” into the vehicle, threatened with death¹⁶⁷⁸ and taken to a
 house.¹⁶⁷⁹

609. P-0538 asked her “husband” to leave her alone and told him that she wished to
 return home,¹⁶⁸⁰ but he replied that if she objected [REDACTED].¹⁶⁸¹
 [REDACTED].¹⁶⁸²
 [REDACTED].¹⁶⁸³
 [REDACTED].¹⁶⁸⁴
 [REDACTED].¹⁶⁸⁵
 [REDACTED].¹⁶⁸⁶
 [REDACTED] the men left.¹⁶⁸⁷

610. [REDACTED] P-0538 [REDACTED] for
 refusing to marry one of them.¹⁶⁸⁸ P-0538 states that her husband did not allow [REDACTED]
 [REDACTED] and did not take her to her home [REDACTED]
 [REDACTED].¹⁶⁸⁹

¹⁶⁷⁵ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0078, para. 30.

¹⁶⁷⁶ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0078, para. 31.

¹⁶⁷⁷ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, para. 27.

¹⁶⁷⁸ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0078, para. 31.

¹⁶⁷⁹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0078, para. 32.

¹⁶⁸⁰ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0078, para. 33.

¹⁶⁸¹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0078, para. 33.

¹⁶⁸² Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0078, para. 34.

¹⁶⁸³ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0079, paras. 36-38.

¹⁶⁸⁴ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0079, para. 36.

¹⁶⁸⁵ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0079, para. 36.

¹⁶⁸⁶ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0079, para. 36.

¹⁶⁸⁷ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0079, para. 36.

¹⁶⁸⁸ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0079, paras. 36-38.

¹⁶⁸⁹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0080, para. 40.

611. [REDACTED].¹⁶⁹⁰ [REDACTED]
 [REDACTED].¹⁶⁹¹ [REDACTED] the “[TRANSLATION]
 rebels” insisted that P-0538 agree to marry.¹⁶⁹² They threatened her with a rifle,¹⁶⁹³
 insulted her and spat on her.¹⁶⁹⁴ The day of her release, her husband [REDACTED]
 [REDACTED].¹⁶⁹⁵

612. P-0538 was [REDACTED].¹⁶⁹⁶ That is when,
 on several occasions, her husband and [REDACTED] other men¹⁶⁹⁷ took turns in forcing her to
 have sexual relations.¹⁶⁹⁸ On each occasion, P-0538 refused but her husband beat
 her;¹⁶⁹⁹ they were armed,¹⁷⁰⁰ “[TRANSLATION] stronger”; they overpowered her,
 [REDACTED]¹⁷⁰¹ and insulted her. They told P-0538 that they were acting that way
 because she had refused to marry.¹⁷⁰²

613. P-0538 was subsequently released [REDACTED].¹⁷⁰³ Her family
 estimates that her marriage, from the time of the demand until her release, lasted [REDACTED]

¹⁶⁹⁰ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0080, para. 41.

¹⁶⁹¹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), pp. 0080- 0081, paras. 41-44.

¹⁶⁹² Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0081, paras. 44-45.

¹⁶⁹³ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0081, para. 44.

¹⁶⁹⁴ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0081, para. 45.

¹⁶⁹⁵ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0081, para. 45.

¹⁶⁹⁶ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0081, paras. 46-47.

¹⁶⁹⁷ The Chamber notes that the Prosecutor alleges that P-0538 was raped by [REDACTED] members of the armed groups (see DCC, paras. 813, 1085). However, the Chamber sees that P-0538’s statement mentions [REDACTED] and also [REDACTED] individuals as her assailants (see Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0081, paras. 47-49, and p. 0083, para. 55). Taking P-0538’s statement as a whole, the Chamber determines that there are substantial grounds to believe that [REDACTED] men, including her “husband”, had sexual relations with P-0538

¹⁶⁹⁸ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), pp. 0081-0082, paras. 46-49, 52.

¹⁶⁹⁹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0081, para. 47.

¹⁷⁰⁰ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0083, para. 55.

¹⁷⁰¹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0082, para. 49.

¹⁷⁰² Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0082, para. 49.

¹⁷⁰³ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0082, para. 51.

██████████¹⁷⁰⁴ P-0538 considers that she was not married as she had not consented.¹⁷⁰⁵

██████████ after her release, P-0538 went to the doctor who informed her that she ██████████

██████████¹⁷⁰⁶ ██████████¹⁷⁰⁷

614. P-0538 describes her ██████████ “[TRANSLATION] husband”¹⁷⁰⁸ ██████████¹⁷⁰⁹ who was dressed the same, bore the same weapons, brandished the same flag¹⁷¹⁰ and belonged to the same group as the other rebels.¹⁷¹¹ She describes the ██████████ men with whom she had sexual relations as ██████████

██████████¹⁷¹² P-0538 adds that they belonged ██████████¹⁷¹³ ██████████ at the time ██████████¹⁷¹⁴ and to which ██████████ belonged.¹⁷¹⁵

615. Even though P-0538 identifies the perpetrators as belonging ██████████ ██████████¹⁷¹⁶ the Chamber notes that P-0538 perceives her assailants’ group as including ██████████¹⁷¹⁷ However, the Chamber has already concluded that Houka Houka was part of the armed groups Ansar Dine/AQIM.¹⁷¹⁸ Accordingly, and considering P-0538’s description of her assailants, the Chamber is of the view that this perception

¹⁷⁰⁴ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0082, paras. 50, 52.

¹⁷⁰⁵ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0082, para. 52.

¹⁷⁰⁶ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), pp. 0082-0083, paras. 53-54.

¹⁷⁰⁷ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0083, para. 54.

¹⁷⁰⁸ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0078, para. 33.

¹⁷⁰⁹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0080, para. 39.

¹⁷¹⁰ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0080, paras. 39-40.

¹⁷¹¹ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0080, para. 39.

¹⁷¹² Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0083, para. 55.

¹⁷¹³ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0083, para. 55, p. 0084, para. 58.

¹⁷¹⁴ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0084, para. 57.

¹⁷¹⁵ Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0083, para. 56.

¹⁷¹⁶ Defence Final Written Submissions, para. 83; DCC, para. 813.

Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0083, para. 56.

¹⁷¹⁸ See, above, paras. 75-76, 122.

boils down to a misnomer on the part of P-0538 and that the perpetrators of the crimes were members of the armed groups Ansar Dine/AQIM.

v. Case of P-0553¹⁷¹⁹

616. The Chamber sees that the only evidence adduced by the Prosecutor in support of the facts alleged in relation to the case of P-0553 is the statement of the victim, who is an anonymous witness. That notwithstanding, as it is not circumstantial evidence¹⁷²⁰ but comes from the direct victim of the alleged acts and considering the personal nature of the account given by P-0553 of the events which lends credibility to her statement,¹⁷²¹ the Chamber finds the following facts to be established to the standard required.

617. In [REDACTED] 2012,¹⁷²² Witness P-0553 encountered for the first time [REDACTED]
[REDACTED]
[REDACTED],¹⁷²³ and whom she has identified as [REDACTED],¹⁷²⁴ in a car of the same kind the “[TRANSLATION] rebels” usually drove around in after their arrival.¹⁷²⁵ In the evening, the individuals came to her home¹⁷²⁶ to marry her and threatened her and her parents with death if they refused.¹⁷²⁷ They gave [REDACTED]
[REDACTED].¹⁷²⁸ P-0553 states that she and her family were powerless and

¹⁷¹⁹ DCC, paras. 760-761, 763, 767, 776, 783, 785, 785, 790, 799, 802, 805-807, 814, 865, 872, 1085, 1087; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 5, lines 19-22, p. 6, lines 3-6, p. 12, lines. 23-24; Defence Final Written Submissions, para. 84.

¹⁷²⁰ See Decision of 19 July 2018, para. 18.

¹⁷²¹ Accordingly, the Chamber rejects the Defence’s arguments. See Defence Final Written Submissions, para. 84.

¹⁷²² P-0553 estimates that her marriage lasted [REDACTED]. On the basis of January 2013, the Chamber therefore dates the start of this relationship [REDACTED].

¹⁷²³ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1052, paras. 19-20, p. 1054, paras. 25, 30.

¹⁷²⁴ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1054, para. 30.

¹⁷²⁵ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1052, paras. 19-20.

¹⁷²⁶ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1052, paras. 21-23.

¹⁷²⁷ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1052, para. 23.

¹⁷²⁸ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1052, para. 23.

scared,¹⁷²⁹ adding that “[TRANSLATION] Timbuktu had become lawless, they married me by force”.¹⁷³⁰

618. P-0553 explains that the individuals put her in the car and took her to a house.¹⁷³¹ After taking her to a room and [REDACTED] they ordered her: “[REDACTED]! Undress! And fast!”¹⁷³² The [REDACTED] men beat her [REDACTED] and took turns in having sexual relations with her.¹⁷³³ [REDACTED] [REDACTED] to the house where they kept her [REDACTED].¹⁷³⁵ After a while, P-0553 was no longer captive, but she points out: “[TRANSLATION] I didn’t try to run away because wherever I might have gone, they would have found me”.¹⁷³⁶ Armed guards were posted in front of the house.¹⁷³⁷

619. P-0553 was threatened with death, beaten and sexually assaulted several times.¹⁷³⁸ P-0553 states [REDACTED],¹⁷³⁹ [REDACTED] [REDACTED],¹⁷⁴⁰ [REDACTED].¹⁷⁴¹ P-0553 describes her physical and mental suffering, her pain, her cramps, her fear and her scars.¹⁷⁴²

¹⁷²⁹ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1053, para. 28, p. 1054, para. 33.

¹⁷³⁰ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1052, para. 23.

¹⁷³¹ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1053, para. 24.

¹⁷³² Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1053, para. 25.

¹⁷³³ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1053, paras. 25, 27.

¹⁷³⁴ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1053, para. 28.

¹⁷³⁵ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1053, paras. 29-30.

¹⁷³⁶ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1054, para. 33.

¹⁷³⁷ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1054, para. 32.

¹⁷³⁸ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), pp. 1053-1054, para. 30.

¹⁷³⁹ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), pp. 1054-1055, paras. 32, 35, 37.

¹⁷⁴⁰ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1054, para. 32.

¹⁷⁴¹ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1055, para. 35.

¹⁷⁴² Statement of P-0553, [MLI-OTP-0039-1048-R01](#), pp. 1053, 1055, paras. 26, 38.

620. P-0553 also states that she sometimes tidied the house where she was being held and [REDACTED] when they asked her to do so.¹⁷⁴³

621. P-0553 estimates that her marriage lasted [REDACTED] [REDACTED] [REDACTED].¹⁷⁴⁴

622. The Chamber considers, contrary to the Defence's contention,¹⁷⁴⁵ from the particulars of P-0553's description, specifically their clothing and paraphernalia, and, since there were no other armed groups in Timbuktu during the time frame under consideration, that the four individuals who attacked her were members of Ansar Dine/AQIM.

vi. Case of [REDACTED]¹⁷⁴⁶

623. The Chamber notes that the evidence presented by the Prosecutor is, in part, circumstantial evidence from an anonymous witness. Nonetheless, the Chamber sees that P-0553 herself had been forcibly married and subjected to sexual crimes¹⁷⁴⁷ and states that the same fate befell [REDACTED].¹⁷⁴⁸ Accordingly, and considering that P-0553 witnessed some of these events [REDACTED] the Chamber finds the facts described below to be established to the standard required.

624. After she was married off herself [REDACTED] [REDACTED] P-0553 saw [REDACTED] "[TRANSLATION] rebels" come [REDACTED] to marry her [REDACTED].¹⁷⁴⁹

¹⁷⁴³ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1055, para. 35.

¹⁷⁴⁴ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1055, para. 36.

¹⁷⁴⁵ Defence Final Written Submissions, para. 84.

¹⁷⁴⁶ DCC, paras. 776, 785, 799, 802, 807, 818, 865, 872, 969-970, 1085, 1087; Defence Final Written Submissions, para. 85.

¹⁷⁴⁷ See, above, [REDACTED]

¹⁷⁴⁸ See, e.g., "[TRANSLATION] She was married to [REDACTED] rebels too", Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1056, para. 40.

¹⁷⁴⁹ Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1056, para. 39.

627. The Chamber notes that the only document that the Prosecutor provides to substantiate her allegations is [REDACTED]

[REDACTED] The Chamber would point out that, as a consequence, it [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] cannot constitute evidence that is reliable and probative to the standard required for the confirmation of the charges.

628. Accordingly, the Chamber concludes that the evidence presented by the Prosecutor is insufficient to establish, to the standard required, the facts alleged in relation to P-0577.

viii. Young girl whom P-0160 met¹⁷⁶¹

629. As part of an investigation to gather information on human rights violations perpetrated against women and young girls in Mali,¹⁷⁶² P-0160 spoke to a young girl.¹⁷⁶³ P-0160 states that in [REDACTED] 2012, in Timbuktu,¹⁷⁶⁴ [REDACTED] was “[TRANSLATION] married” after her father gave in to death threats from [REDACTED]. The young girl remained [REDACTED] where her “[TRANSLATION] husband” would come to spend the night. During those nights, she would “[TRANSLATION] cater to the needs” of her husband and perform “[TRANSLATION] her conjugal duties” meaning that she could not reject his sexual

¹⁷⁶¹ DCC, paras. 785, 787, 799, 802, 817, 829, 1085, 1087; Defence Final Written Submissions, para. 88.

¹⁷⁶² Statement of P-0160, [MLI-OTP-0046-8685-R01](#), p. 8687, para. 13, p. 8689, para. 19, p. 8692, para. 33.

¹⁷⁶³ Statement of P-0160, [MLI-OTP-0046-8685-R01](#), p. 8701, para. 69, p. 8703, para. 76, p. 8704, para. 80.

¹⁷⁶⁴ Statement of P-0160, [MLI-OTP-0046-8685-R01](#), p. 8704, para. 80.

advances. Moreover, her “husband” did not allow her [REDACTED]
 [REDACTED] This situation lasted until [REDACTED] when her
 “[TRANSLATION] husband” [REDACTED].¹⁷⁶⁵

630. The Chamber sees that the only evidence on which the Prosecutor relies in her DCC is a piece of circumstantial evidence from an anonymous witness about an anonymous victim. And yet throughout these proceedings,¹⁷⁶⁶ the Chamber has underscored that, as other Pre-Trial Chambers have held, no conclusion can be drawn on the sole basis of circumstantial evidence from anonymous sources and that such evidence can be used only to corroborate other evidence. The Chamber is mindful of rule 63(4) of the Rules, which lays down that “a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.” However, absent any evidence from a known source or first hand from the victim, the Chamber cannot attach any probative value to that document.

631. Accordingly, the Chamber concludes that the evidence presented by the Prosecutor is insufficient to establish to the standard required the facts alleged in relation to the young girl whom P-0160 met.

ix. Case of P-1162¹⁷⁶⁷

632. The Chamber notes that the evidence presented by the Prosecutor is, in part, circumstantial evidence from an anonymous witness about an anonymous victim. To

¹⁷⁶⁵ Statement of P-0160, [MLI-OTP-0046-8685-R01](#), p. 8704, para. 80.

¹⁷⁶⁶ See “Decision on the Prosecution Motion for Authorization to File an Anonymous Summary concerning Witness [REDACTED] and references therein; see also “Decision on the Prosecution Request for Leave Not to Disclose the Identity of Witness MLI-OTP-P-0431”, 19 July 2018, ICC-01/12-01/18-88-Conf-Exp-tENG, para. 18 and references therein.

¹⁷⁶⁷ DCC, paras. 774, 776, 785, 800, 802, 815, 865, 1085, 1087; Defence Final Written Submissions, paras. 89 and 90.

be specific, the information provided by Witness P-0520 is based on an account from another person or sometimes consists of just assumptions. Nonetheless, the Chamber observes that Witness P-0520, who recounts the events, was also forcibly married and subjected to sexual crimes¹⁷⁶⁸ and that she states that the members of the armed groups who occupied ██████████ each had their own “wife” whose lot, at that time and place, was, on the whole, the same. Accordingly, and in view of the particularly detailed and consistent nature of P-0520’s statement, the Chamber finds the facts described below to be established.

633. During her time ██████████ that is, as of the period from ██████████ ██████████,¹⁷⁶⁹ P-0520 ██████████ P-1162 ██████████.¹⁷⁷⁰ ██████████ ██████████¹⁷⁷¹ and had heard at the time that P-1162 was “[TRANSLATION] married to the Islamics”.¹⁷⁷² P-0520 states that she heard P-1162 screaming ██████████.¹⁷⁷³ And so P-0520 believes that whenever a particular person approached P-1162, she would scream.¹⁷⁷⁴

634. Given the Chamber’s findings regarding Witness P-0520, especially taking into account the fact that the ██████████ house was occupied ██████████ men, each of whom had a wife of his own,¹⁷⁷⁵ the Chamber considers that the perpetrator was a member of the armed groups Ansar Dine/AQIM.

¹⁷⁶⁸ See, above, paras. 584-.

¹⁷⁶⁹ See, above, paras. 585, 589-592.

¹⁷⁷⁰ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1867, para. 41.

¹⁷⁷¹ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1867, para. 41.

¹⁷⁷² Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1867, para. 41.

¹⁷⁷³ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1867, para. 41.

¹⁷⁷⁴ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1867, para. 41.

¹⁷⁷⁵ Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1867, paras. 38 and 39.

x. Case of P-1460¹⁷⁷⁶

635. The Chamber notes that the evidence presented by the Prosecutor is, in part, circumstantial evidence in the form of hearsay from an anonymous witness. Nonetheless, the Chamber finds that the following facts can be regarded as established on the basis of the particularly detailed and consistent nature of P-0570's statement, in particular the fact that P-1460 [REDACTED] the description of P-1460's abduction and her state upon her return, and the fact that P-1460 [REDACTED] [REDACTED].

636. Between 1 April 2012 and 28 January 2013, several persons came to P-1460's home with the intention of marrying her.¹⁷⁷⁷ They brought a sum of money by way of a marriage payment and threw it at the father.¹⁷⁷⁸ The father refused the marriage payment and objected to the marriage of his daughter.¹⁷⁷⁹ The abductors [REDACTED] [REDACTED] and "[TRANSLATION] everyone screamed."¹⁷⁸⁰ P-0570 states that the abductors [REDACTED] and left with her.¹⁷⁸¹ When they subsequently brought her back, P-1460 [REDACTED].¹⁷⁸² According to P-0570, they had "[TRANSLATION] destroyed"¹⁷⁸³ her to the extent that she resembled a [TRANSLATION] corpse".¹⁷⁸⁴ While P-1460 [REDACTED] P-0570 [REDACTED].¹⁷⁸⁵ Sometime later, P-1460 told her [REDACTED]

¹⁷⁷⁶ DCC, paras. 763, 774, 776, 785, 799, 802, 807, 816, 829, 865, 1085, 1087;

Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 6, lines 20-23; Defence Final Written Submissions, para. 91.

¹⁷⁷⁷ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0059, para. 48.

¹⁷⁷⁸ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0059, para. 48.

¹⁷⁷⁹ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0059, para. 48.

¹⁷⁸⁰ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0059, para. 48.

¹⁷⁸¹ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0059, para. 48.

¹⁷⁸² Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0059, para. 48.

¹⁷⁸³ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0059, para. 48.

¹⁷⁸⁴ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0059, para. 48.

¹⁷⁸⁵ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), pp. 0059-0060, para. 48.

██¹⁷⁸⁶ and P-0570 states that ██████████
 ██████████¹⁷⁸⁷.

637. Regarding the identification of the perpetrators, the Chamber notes that Witness P-0570's statement mentions only the pronoun "[TRANSLATION] they". In this regard, the Prosecutor asserts that it is apparent from P-0570's account that they are members of the armed groups since, for example, she also uses the word "[TRANSLATION] they" earlier in her statement in reference to another incident in which they took ██████ women to the ██████.¹⁷⁸⁸ In the light of the facts found, the general context in Timbuktu during the time frame under consideration, the consistency of the above facts with a practice adopted by the armed groups Ansar Dine/AQIM¹⁷⁸⁹ and the findings regarding the other victims, the Chamber considers that the perpetrators were members of the armed groups Ansar Dine/AQIM.

**(c) Analysis pertaining to the elements of crimes
 which are common to all the cases**

638. The Chamber notes that, for each case found above to be established, the Prosecutor has brought cumulative charges, arguing that each case constitutes, at the same time, the crimes of rape (articles 7(1)(g) and 8(2)(e)(vi) of the Statute), sexual slavery (articles 7(1)(g) and 8(2)(e)(vi) of the Statute), and other inhumane acts in the form of forced marriages (article 7(1)(k) of the Statute).¹⁷⁹⁰ As the elements of crimes differ for each of the crimes, the Chamber will consider each crime in turn.

¹⁷⁸⁶ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0060, para. 48.

¹⁷⁸⁷ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0060, para. 48.

¹⁷⁸⁸ DCC, para. 816.

¹⁷⁸⁹ See, above, paras. 564-580.

¹⁷⁹⁰ DCC, para. 1087.

i. The crime of rape

639. The Chamber considers that the facts found show invasion of the bodies of all the above-mentioned victims by conduct resulting in penetration. In addition, the Chamber notes such invasion was often perpetrated multiple times,¹⁷⁹¹ sometimes by several perpetrators in turn¹⁷⁹² and sometimes resulted in pregnancy.¹⁷⁹³

640. 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 (training their weapon), and taking advantage of the coercive environment prevailing in Timbuktu. The particulars in the statements attest to the violent treatment inflicted on them, which caused them great pain and resulted in severe trauma. Furthermore, the Chamber notes the vulnerability of the victims who had valid reasons to fear for their lives. Moreover, at times the coercion was all the more significant in that these the acts were committed collectively against a single victim.¹⁷⁹⁴

641. Regarding P-1162, the Chamber notes that P-0520, who recounts what happened to P-1162, was subjected to sexual violence herself and she points out that the lot of women ██████████ at that time was, on the whole, the same, stating that P-1162 screamed ██████████. Accordingly, the Chamber considers that the evidence taken as a whole is sufficient to establish coercive conditions.

642. Regarding P-1460, the Chamber considers that the fact that she and her family screamed, ██████████ and the fact that P-1460 returned ██████████ shows that the act was committed by force.

¹⁷⁹¹ P-0520, P-0538, P-0553, P-0602, P-0610.

¹⁷⁹² P-0538, P-0553.

¹⁷⁹³ ██████████

¹⁷⁹⁴ P-0538, P-0553.

643. 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.¹⁷⁹⁵ 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. Nonetheless they deliberately engaged in sexual relations with them. The Chamber is also satisfied that the perpetrators of those crimes, all combatants belonging to Ansar Dine/AQIM, 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.

ii. The crime of sexual slavery

644. The facts found make clear that all of the victims mentioned were deprived of liberty and control over their daily lives. Certain victims were, moreover, taken away by force.¹⁷⁹⁶ The victims were all at the service of their “husbands” and had to remain at their disposal. Some perpetrators simply gave orders and did not address their victims by name.¹⁷⁹⁷ 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.

645. 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.

¹⁷⁹⁵ P-0520, P-0602, P-0610, P-1162.

¹⁷⁹⁶ P-0520, P-1460.

¹⁷⁹⁷ P-0520, P-0553, P-0602.

646. Lastly, in the view of the Chamber, by abducting the victims,¹⁷⁹⁸ holding them captive in a house, in a prison or [REDACTED] [REDACTED] [REDACTED]¹⁷⁹⁹ or [REDACTED],¹⁸⁰⁰ 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. In addition, the items of evidence, taken together, establish that the perpetrators deliberately caused their victims to have sexual relations with them. For instance, P-0602's assailant [REDACTED] [REDACTED]. 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. The Chamber is also satisfied that the perpetrators of those crimes, all combatants belonging to Ansar Dine/AQIM, 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.

iii. The crime of other inhumane acts in the form of forced marriage

647. In the view of the Chamber, several pieces of evidence go to establish that there was a marriage in each of the cases described above, in particular the fact that a marriage “[TRANSLATION] proposal” was made to the victims and the families, a marriage payment was offered or made,¹⁸⁰¹ [REDACTED]¹⁸⁰² [REDACTED]

¹⁷⁹⁸ P-0520, P-1460.

¹⁷⁹⁹ P-0602.

¹⁸⁰⁰ P-0553, [REDACTED].

¹⁸⁰¹ P-0538, P-0553, P-0602, P-0610, P-1460.

¹⁸⁰² P-0520.

██████████¹⁸⁰³ ██████████¹⁸⁰⁴ In addition, the Chamber has taken into consideration the perceptions of the victims,¹⁸⁰⁵ perpetrators¹⁸⁰⁶ and third parties,¹⁸⁰⁷ as revealed above by their conduct and the terms they used.

648. The Chamber finds furthermore that the marriages were imposed on the above victims who were compelled by force or threats, through the words and conduct of the perpetrator. Moreover, certain victims or their families stated their opposition,¹⁸⁰⁸ while others, aware of the risks they ran if they refused to comply, had no choice but to suffer in silence. The Chamber further refers to its findings on the powers attaching to the right of ownership exercised over them by the perpetrators.¹⁸⁰⁹

649. In sum, the Chamber considers 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 to found a family consensually; ██████████ and the stigmatization suffered by the victims ██████████.¹⁸¹⁰

650. 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.

651. Lastly, 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

¹⁸⁰³ P-0538.

¹⁸⁰⁴ P-0610.

¹⁸⁰⁵ P-0553.

¹⁸⁰⁶ P-0520, P-0602, P-0610.

¹⁸⁰⁷ ██████████, P-0610, P-1162.

¹⁸⁰⁸ P-0538, P-0602, P-0610, P-1460.

¹⁸⁰⁹ See, above, para. 819.

¹⁸¹⁰ ██████████

“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”.

iv. The contextual elements of the crimes against humanity and the war crimes

652. Regarding all the cases described above, in accordance with article 7(1) of the Statute, the Chamber finds that the acts of rape, sexual slavery and forced marriage were committed as part of the widespread and systematic attack carried out against the civilian population of Timbuktu and the Timbuktu Region, between 1 April 2012 and 28 January 2013. The evidence disclosed by the Prosecutor shows that the acts were committed in places such as the city of Timbuktu and the Region of the same name, which were the objects of the attacks carried out by the armed groups Ansar Dine/AQIM during the time frame under consideration. Those acts were committed at a time when the armed groups were imposing their way of thinking on sharia in the region. The acts at issue were committed by persons who took part in that operation. On the available evidence, the Chamber considers that the crimes were committed “pursuant to or in furtherance of [...] [an] organizational policy to commit such attack”, as laid down by article 7(2)(a) of the Statute. Specifically, the Chamber considers that, at the very least, the furtherance of their policy¹⁸¹¹ led the armed groups to commit the acts of rape, sexual slavery and forced marriage.

653. When it comes to knowledge of the attack, the Chamber considers that from the circumstances described above,¹⁸¹² viz. the widespread character of the attack and

¹⁸¹¹ See, above, paras. 180-184.

¹⁸¹² See, above, paras. 188-191.

the modus operandi of the armed groups, it can be inferred that the members of the armed groups had knowledge of the attack on the population of Timbuktu. In addition, the Chamber notes that the attack attracted national¹⁸¹³ and international¹⁸¹⁴ media coverage, and that Ansar Dine/AQIM had their own media apparatus.¹⁸¹⁵ Accordingly, the Chamber determines that the perpetrators of the crimes had knowledge of the attack and knew that their conduct formed part of or intended their conduct to be part of an attack directed against the civilian population.

654. Turning lastly to the war-crime contextual element required by article 8 of the Statute, the Chamber notes that the acts of rape, sexual slavery and forced marriage described above were committed in Timbuktu and the Timbuktu Region, in a place then controlled by the armed groups Ansar Dine/AQIM.¹⁸¹⁶ Accordingly, the Chamber determines that the acts described above took place in the context of and were associated with a non-international armed conflict.

3. The Chamber's findings

655. In 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 584-654, to be established, constituting the crime against humanity and war crime of rape under article 7(1)(g) of the Statute and article 8(2)(e)(vi) of the Statute, against the following victims:

¹⁸¹³ See, e.g., Inter Press Service News Agency, media report, "*Les islamistes imposent la charia dans le nord et le voile aux femmes*", 5 April 2012, [MLI-OTP-0023-0323](#).

¹⁸¹⁴ RtbfMonde, media report, "*Mali: confusion à Tombouctou où une police islamique impose la charia*", 28 April 2012, [MLI-OTP-0033-2995](#); Jeune Afrique, media report, "*Mali – Tombouctou: 100 coups de fouet pour avoir conçu un enfant hors mariage*", 20 June 2012, [MLI-OTP-0001-3767](#) ("[MLI-OTP-0001-3767](#)").

¹⁸¹⁵ See, above, paras. 124-128, 184.

¹⁸¹⁶ See, above, paras. 212, 214, 217.

- P-0520;
- P-0602;
- P-0610;
- P-0538;
- P-0553;
- ██████████
- P-1162; and
- P-1460.

656. 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 626 and 629 can be characterized as rape within the meaning of article 7(1)(g) of the Statute and article 8(2)(e)(vi) of the Statute, in respect of the following victims:

- P-0577; and
- young girl whom P-0160 met.

657. The Chamber also finds that there are substantial grounds to believe that between 1 April 2012 and 28 January 2013, in the city of Timbuktu and in 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 584-654, to be established, constituting the crime against humanity and war crime of sexual slavery under article 7(1)(g) of the Statute and article 8(2)(e)(vi) of the Statute, against the following victims:

- P-0520;
- P-0602;
- P-0610;
- P-0538;

- P-0553;
- ██████████
- P-1162; and
- P-1460.

658. 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 626 and 629 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-0577; and
- young girl whom P-0160 met.

659. The Chamber also finds that there are substantial grounds to believe that between 1 April 2012 and 28 January 2013, in the city of Timbuktu and in 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 584-654 to be established, constituting the crime against humanity of other inhumane acts in the form of forced marriage under article 7(1)(k) of the Statute, against the following victims:

- P-0520;
- P-0602;
- P-0610;
- P-0538;
- P-0553;
- ██████████
- P-1162; and
- P-1460.

660. 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 626 and 629 can be characterized as other inhumane acts in the form of forced marriage within the meaning of article 7(1)(k) of the Statute, in respect of the following victims:

- P-0577; and
- young girl whom P-0160 met.

661. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.¹⁸¹⁷

(E) Facts pertaining to count 13: persecution

1. Applicable law

662. The Chamber refers to the definition of the crime of persecution as set out at article 7(1)(h) of the Statute and in the Elements of Crimes.

663. The crime of persecution has been described as an "umbrella crime"¹⁸¹⁸ that constitutes a severe attack on the fundamental rights appertaining to any human being, and is perpetrated with the aim of excluding a person from society on discriminatory grounds.¹⁸¹⁹ The crime is committed either through a single act or a series of acts.¹⁸²⁰

¹⁸¹⁷ See VIII. Responsibility.

¹⁸¹⁸ See ICTY, *Prosecutor v. Kupreškić et al.*, "Appeal Judgement", 23 October 2001, IT-95-16-A, ("*Kupreškić et al.* Appeal Judgment") para. 98; *Prosecutor v. Popović et al.*, "Judgement", 10 June 2010, IT-05-88-T ("*Popović et al.* Trial Judgment"), para. 965.

¹⁸¹⁹ See, similarly, ICTY, *Prosecutor v. Kupreškić et al.*, "Judgement", 14 January 2000, IT-95-16-T ("*Kupreškić et al.* Trial Judgment"), para. 621.

¹⁸²⁰ Decision Pursuant to Article 15 of the Rome Statute in the Situation in Burundi, para. 130; see, similarly, ECCC, *Prosecutor v. Kaing Guek Eav alias "Duch"*, "Appeal Judgement", 3 February 2012, 001/18-07-2007-ECCC/SC, ("*Duch* Appeal Judgment"), para. 258; ICTY, *Kupreškić et al.* Trial Judgment, para. 97.

(a) Material elements

664. First, not every human rights violation is concerned: only cases of “severe deprivation” of “[a person’s] *fundamental* rights contrary to international law”.¹⁸²¹ Persecution may affect a wide variety of rights, whether derogable or not,¹⁸²² such as the right to life; the right not to be subjected to torture or cruel, inhuman or degrading treatment; the right not to be subjected to arbitrary detention; the right to freedom of expression; to freedom of assembly and association; the right to private property; and the right to education.¹⁸²³

665. The group or collectivity must be identifiable by any of the characteristics mentioned in article 7(1)(h) of the Statute. The victim must be defined by *the perpetrator* as belonging to a group on the basis of one of the article 7(1)(h) grounds, which¹⁸²⁴ in the present context, are religious and gender grounds.¹⁸²⁵

¹⁸²¹ Decision Pursuant to Article 15 of the Rome Statute in the Situation in Burundi, para. 132, emphasis added. *Ntaganda* Trial Judgment, para. 991. The Chamber has regard to, for example, the Universal Declaration of Human Rights, the International Covenant, the ICESCR, the African Charter, the American Convention on Human Rights and the European Convention on Human Rights.

¹⁸²² ECCC, *Duch* Appeal Judgment, para. 254; ICTY, *Stakić* Trial Judgment, para. 773.

¹⁸²³ Decision Pursuant to Article 15 of the Rome Statute in the Situation in Burundi, para. 132; *Ntaganda* Trial Judgment, para. 991. The Chamber will have regard to, for example, the Universal Declaration of Human Rights; the International Covenant; the ICESCR; the African Charter; the American Convention on Human Rights and the European Convention on Human Rights. For the right to education, See, e.g., article 26 of the Universal Declaration of Human Rights; article 13 of the ICESCR; articles 28 and 29 of the Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, no. 27531; article 5(e)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, United Nations, Treaty Series, vol. 660, no. 9464, p. 195; article 13 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, or “Protocol of San Salvador”, 17 November 1988, OAS Treaty Series, no. 69; article 17 of the African Charter; article 11 of the African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/153/Rev.2 (1990); article 2 of Protocol No. 1 to the European Convention on Human Rights.

¹⁸²⁴ Decision Pursuant to Article 15 of the Rome Statute in Burundi, para. 133; see, similarly, ECCC, *Duch* Appeal Judgment, para. 272; ICTY, *Blagojević and Jokić* Trial Judgment, para. 583.

¹⁸²⁵ DCC, paras. 878-976.

666. As regards gender-based persecution, the Chamber first notes that article 7(3) of the Statute provides: “For the purpose of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.”

667. The Chamber further acknowledges that persecution may be gender-based “where male and female members of the same group and targeted in different ways or for different forms of violence depending on their gender (i.e. killing the men and raping the women).”¹⁸²⁶ In that regard, the Chamber notes the ruling of the Trial Chamber of the ICTY in *Kvočka et al.*, where that Chamber found that the alleged crimes were discriminatory since rape and other forms of sexual violence had been committed only against women.¹⁸²⁷ The Chamber also takes note of the Committee on the Elimination of Discrimination of Against Women’s definition of violence against women: violence that is directed against a woman because she is a woman or that affects women disproportionately.¹⁸²⁸

668. Acts of persecution are not limited to the crimes enumerated in the Statute but may take various forms, not necessarily physical, violating individual freedoms, or resulting in the destruction or seizure of property.¹⁸²⁹

669. Lastly, the conduct constituting persecution must have been committed in connection with any other crime within the jurisdiction of the Court (connection

¹⁸²⁶ K. Ambos, O. Triffterer (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (Baden Baden Nomos Verlagsgesellschaft, 2015), p. 225.

¹⁸²⁷ ICTY, *Kvočka et al.* Trial Judgment, para. 520.

¹⁸²⁸ Committee on the Elimination of Discrimination against Women, General recommendation no. 19, Convention on the Elimination of All Forms of Discrimination against Women, eleventh session, U.N. Doc. CEDAW/C/1992/1.L.II Add. 15 (1992).

¹⁸²⁹ ECCC, *Duch* Appeal Judgment, para. 253; *Duch* Trial Judgment, para. 387; ICTY, *Karadžić* Trial Judgment, para. 498; *Popović et al.* Trial Judgment, para. 966; *Brđanin* Appeal Judgment, para. 296; *Stakić* Trial Judgment, para. 735; *Kupreškić et al.* Appeal Judgment, para. 97; *Blaškić* Trial Judgment, paras. 218-234.

requirement),¹⁸³⁰ thus filtering out discriminatory measures that would not fall within the Court's jurisdiction if committed without such connection.

(b) Mental elements

670. The perpetrator must have committed the act of persecution intentionally, within the meaning of article 30 of the Statute, by acting deliberately, or the perpetrator must have been aware that such a consequence would occur in the ordinary course of events.

671. In addition, the perpetrator must have acted with discriminatory intent, i.e. the specific intent to discriminate against the persons targeted on any of the grounds enumerated in article 7(1)(h) of the Statute. The perpetrator targets the victim *by reason of the identity of a group or a particular collectivity*.¹⁸³¹ The special intent may be inferred from the perpetrator's general attitude and the circumstances surrounding the commission of the crime.¹⁸³² The presence of personal motives does not exclude discriminatory intent, as such motives do not enter the equation in determining whether the crime of persecution was committed.¹⁸³³

2. Analysis

(a) Severe deprivation of fundamental rights

672. Before considering this element, the Chamber would agree with the Prosecutor that,¹⁸³⁴ to make a finding of grave violations of fundamental rights, it may take into

¹⁸³⁰ Decision Pursuant to Article 15 of the Rome Statute in the Situation in Burundi, para. 131. This connection requirement has its origins in article 6(c) of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945 (U.N.T.S., vol. 82, p. 279).

¹⁸³¹ See, similarly, ICTY, *Popović et al.* Trial Judgment, para. 968.

¹⁸³² See, similarly, ICTY, *Popović et al.* Appeal Judgment, para. 713; *Prosecutor v. Kvočka et al.*, "Judgement", 28 February 2005, IT-98-30/1-A ("*Kvočka et al.* Appeal Judgment"), para. 460.

¹⁸³³ See, similarly, ICTY, *Kvočka et al.* Appeal Judgment, para. 463.

¹⁸³⁴ Prosecutor's Final Written Submissions, para. 128; Defence Written Submissions, paras. 31-32.

account the cumulative effect of the underlying acts.¹⁸³⁵ With that in mind, the Chamber takes the view that all the underlying acts need not be exhaustively listed; it suffices to rely on categories of acts and to present relevant evidence by way of illustration. The Chamber underlines that, contrary to what the Defence argues,¹⁸³⁶ each individual underlying act of persecution need not correspond to an act enumerated in article 7(1) of the Statute or to another crime within the jurisdiction of the Court.¹⁸³⁷ It suffices that the underlying acts were committed in connection with a crime falling within the jurisdiction of the Court, and this is so in the case at bar, as discussed below.

673. 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 in counts 1 to 12 and finds that those acts constitute a severe deprivation of fundamental rights contrary to international law.

674. In addition, contrary to what the Defence submits,¹⁸³⁸ it is the Chamber's view that the acts which it may consider for persecution are not limited to the specific criminal acts contained in counts 1 to 12.¹⁸³⁹ The Chamber notes in this respect that it is apparent from the evidence presented that, during the time frame in question, members of Ansar Dine/AQIM also committed other acts which constitute a severe deprivation of fundamental rights, contrary to international law. The Chamber

¹⁸³⁵ *Ntaganda* Trial Judgment, para. 992. See, similarly, ECCC, *Duch* Appeal Judgment, para. 257; ICTY, *Kvočka et al.* Appeal Judgment, para. 321; *Stakić* Trial Judgment, para. 736; *Kupreškić et al.* Trial Judgment, para. 622; ICTR, *The Prosecutor v. Nahimana et al.*, "Judgement", 28 November 2007, ICTR-99-52-A ("*Nahimana et al.* Appeal Judgment"), para. 987.

¹⁸³⁶ Defence Written Submissions, paras. 31-32; Defence Written Submissions, para. 90; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-CONF-FRA, p. 44, line 1 to p. 45, line 4.

¹⁸³⁷ See, similarly, ECCC, *Duch* Appeal Judgment, para. 261; ICTY, *Popović et al.* Trial Judgment, para. 966; *Brđanin* Appeal Judgment, para. 296; ICTR, *Nahimana et al.* Appeal Judgment, para. 985.

¹⁸³⁸ Defence Written Submissions, para. 37.

¹⁸³⁹ See Decision Pursuant to Article 15 of the Rome Statute in the Situation in Burundi, paras. 134-136.

considers that those acts have been set out for Mr Al Hassan in sufficient detail¹⁸⁴⁰ and are established to the standard required.

675. In that connection, the Chamber notes the following categories of acts causing physical and mental suffering: flogging,¹⁸⁴¹ ill-treatment,¹⁸⁴² and detention in inhumane conditions¹⁸⁴³ (no water and food,¹⁸⁴⁴ no access to toilets,¹⁸⁴⁵ in a cell that was sometimes overcrowded).¹⁸⁴⁶

676. The Chamber also sees that the Prosecutor alleges that victims P-0570, P-0547, P-0574 and P-0542 were raped during the time frame in question.¹⁸⁴⁷ When asked why she had not chosen the legal characterization of “rape” within the meaning of articles 7(1)(g) and 8(2)(e)(vi) of the Statute for victims P-0542, P-0570 and P-0574,¹⁸⁴⁸ the Prosecutor replied that she had opted to characterize the rapes as underlying acts of persecution.¹⁸⁴⁹ The Prosecutor also pointed out that she was not including the rape

¹⁸⁴⁰ See, similarly, ICTY, *Kupreškić et al.* Trial Judgment, para. 626; ICTY, *Stakić* Trial Judgment para. 735; ICTY, *Popović et al.* Trial Judgment, para. 965; ECCC, *Nuon Chea and Khieu Samphan* Trial Judgment, para. 431.

¹⁸⁴¹ [REDACTED]; Statement of P-0398, [MLI-OTP-0051-0741](#), pp. 0760-0765, lines 651-814. [REDACTED]

¹⁸⁴² See, e.g., [REDACTED] 6 March 2015, [MLI-OTP-0024-2814](#), pp. 2826-2835, 2391; [REDACTED] 27 March 2014, [MLI-OTP-0022-0625-R01](#), pp. 0651-654.

¹⁸⁴³ P-0542, P-0570, P-0547 and P-0574 state that other women were kept at the sites where they were locked up. See, e.g., Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0174, para. 34; [REDACTED] 6 March 2015, [MLI-OTP-0024-2814](#), pp. 2826-2835, 2391; [REDACTED] 27 March 2014, [MLI-OTP-0022-0625-R01](#), pp. 0651-654; Statement of P-0570, [MLI-OTP-0049-0047-R01](#), paras. 24, 29-41; Statement of P-0547, [MLI-OTP-0039-0861-R01](#), paras. 34, 40-49.

¹⁸⁴⁴ See, e.g., [REDACTED] Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0174, paras. 32-33; Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0872-0874, paras. 40-49.

¹⁸⁴⁵ See, e.g., Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0174, para. 34; [REDACTED]

¹⁸⁴⁶ Statement of [REDACTED] Statement of [REDACTED] [REDACTED]; Statement of P-0574, [MLI-OTP-0049-0098-R01](#), pp. 0108-0102, paras. 21, 30, 39-46.

¹⁸⁴⁷ DCC, paras. 963, 964, 970, 973.

¹⁸⁴⁸ See List of questions from the Chamber, para. 2.

¹⁸⁴⁹ Prosecutor’s Final Written Submissions, para. 5.

during detention alleged by P-0547 under counts 2 and 5.¹⁸⁵⁰ The Chamber accordingly analyses these allegations below.

677. During her detention ██████████ in about ██████████ 2012, P-0570 was taken to a room in which ██████████ forced her to have sexual relations at gunpoint, threatening to kill her if she did not obey. ██████████ told her to lie on the mattress and then “[TRANSLATION] threw himself on top of” her. When ██████████ ██████████ left, a second armed man entered and [TRANSLATION] did the same thing as ██████████ [...] he got with [her]”, threatening to kill her. A third man entered and “[TRANSLATION] laid” and “[TRANSLATION] got” with P-0570 ██████████ violently. P-0570 explained that if he had not had a rifle, she would have fought and that she had screamed but nobody heard her. P-0570 ██████████

██████████¹⁸⁵¹

678. During P-0547’s detention at the BMS in about ██████████ 2012, she was brought to another room by a man who “[TRANSLATION] was wearing the Islamists’ usual garb”. The man told her to sleep with him or else he would kill her. He “[TRANSLATION] laid down on top of” her and, according to P-0547, raped her before taking her back to the room where she was held with the other women.¹⁸⁵²

679. P-0574 explains that ██████████ her detention at the BMS in around ██████████ 2012, ██████████ “[TRANSLATION] Islamists” “[TRANSLATION] threw themselves” on top of her in turn. P-0574 specifies that had she refused, they would have beaten or even killed her. ██████████ as she was going to bed, a man “[TRANSLATION] threw himself” on top of her “[TRANSLATION] as the others had done the previous night” in the room she was sharing with other women.¹⁸⁵³

¹⁸⁵⁰ Prosecutor’s Final Written Submissions, para. 6.

¹⁸⁵¹ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), pp. 0052-0057, paras. 24, 29-41.

¹⁸⁵² Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0869-0874, paras. 34, 40-49.

¹⁸⁵³ Statement of P-0574, [MLI-OTP-0049-0098-R01](#), pp. 0102-0108, paras. 21, 30, 39-47.

680. During P-0542's detention at the BMS, after the MNLA had left Timbuktu, she had sexual relations with an "[TRANSLATION] Islamist" [REDACTED]. She explains that [REDACTED] in prison [REDACTED] P-0542 [REDACTED] the next day without her clothes and with blood on her thighs. [REDACTED] that he had [REDACTED] [REDACTED] undressed her and slept with her. P-0542 [REDACTED] [REDACTED].¹⁸⁵⁴

681. The Chamber notes that the incidents described by these three victims show invasion of their bodies resulting in penetration.¹⁸⁵⁵ The Chamber further notes that for two of the victims such invasion occurred several times and that [REDACTED] [REDACTED]. The Chamber finds that the conditions and circumstances in which of invasion of the victims' bodies took place show that the act was committed by force, threat of force against them or by taking advantage of the prevailing coercive environment in Timbuktu. The Chamber observes in that respect that these acts were committed while the victims were in detention, fully in their jailer's control, and notes the vulnerability of the victims who had valid reasons to fear for their lives. The Chamber underlines that the coercion was all the more significant in that these acts were committed collectively against a single victim. Moreover, the Chamber finds that the subjective elements required by article 30 of the Statute are also established since the assailants themselves, members of Ansar Dine/AQIM, inflicted, physically and psychologically, acts of violence and humiliation. They could not have been unaware that the victims had expressed their objection verbally and physically. The perpetrators were aware of the circumstances in which these victims

¹⁸⁵⁴ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), pp. 0171-0173, paras. 22, 24, 26-30.

¹⁸⁵⁵ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0873, para. 43; Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0054-0055, paras. 31-33; Statement of P-0542, [MLI-OTP-0039-0167-R01](#), pp. 0172-0173, paras. 27-28; Statement of P-0574, [MLI-OTP-0049-0098-R01](#), p. 0107, para. 42.

found themselves and of the force, threats and duress they were exerting on them, given that the acts were committed while the victims were detained at the BMS [REDACTED] and, generally, given the prevailing coercive environment in Timbuktu.

682. The Chamber determines that the elements of the crime against humanity of rape within the meaning of article 7(1)(g) of the Statute and the elements of the war crime of rape within the meaning of article 8(2)(e)(vi) of the Statute are satisfied to the standard required. The Chamber does not, however, consider that these crimes belong under counts 11 and 12, but regards them as underlying acts constituting the crime against humanity of persecution at article 7(1)(h) of the Statute, in line with how the Prosecutor has presented them in her DCC. The Chamber would however 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 legal recharacterization pursuant to regulation 55 of the Regulations of the Court, preferably at the start of the trial proceedings.

683. The Chamber moreover notes the following categories of acts that violate individual freedoms: the prohibition of traditional and cultural practices (such as the wearing of talismans and amulets or the practice of magic and sorcery),¹⁸⁵⁶ the prohibition of religious and cultural practices (such as prayer at the sites of mausoleums and tombs, the way in which prayer was performed and the celebration

¹⁸⁵⁶ See, e.g., Islamic Court Judgment, [REDACTED], [MLI-OTP-0002-0052](#), translation, [MLI-OTP-0034-0208](#), p. 0209; Statement of [REDACTED]; France 2, Video, 12 April 2012, [MLI-OTP-0001-6931](#) (“[MLI-OTP-0001-6931](#)”) 00:02:16:00 to 00:02:28:15, transcript, [MLI-OTP-0056-0581](#), p. 0583, lines 66-74, translation, [MLI-OTP-0061-1139](#), p. 1142, lines 68-76; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9435, para. 84; Islamic Police report, [MLI-OTP-0001-7543](#), translation, [MLI-OTP-0052-0029](#), p. 0030; Statement of P-0398, MLI-OTP-0060-1580, pp. 1599-1604, lines 619-795.

of religious festivals),¹⁸⁵⁷ curbs on educational freedoms (the prohibition of co-education, the closure of secular public schools and the imposition of education centred on the organization Ansar Dine/AQIM's thinking on the religion and on its ideology),¹⁸⁵⁸ restrictions on freedom of association and movement (the prohibition of public gatherings¹⁸⁵⁹ and the prohibition on men and women who were not married to each other or related going about together).¹⁸⁶⁰

684. The Chamber notes lastly the following categories of acts causing the destruction or seizure of property: confiscation and destruction of amulets,¹⁸⁶¹ cigarettes¹⁸⁶² and alcohol.¹⁸⁶³

685. The Chamber considers that, between 1 April 2012 and 28 January 2013, members of Ansar Dine/AQIM severely deprived the inhabitants of Timbuktu and the Timbuktu Region of their fundamental rights, contrary to international law, by dint of all of the aforementioned acts. The fundamental rights included 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 freedom of expression, to

¹⁸⁵⁷ See, e.g., Statement of [REDACTED]; Statement of [REDACTED]; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9426, para. 50; Statement of [REDACTED].

¹⁸⁵⁸ See, e.g., Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0074, para. 13; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), pp. 9435-9436, para. 86; L'Express, media report, "Mali : Tombouctou dans l'enfer du djihad", 12 December 2012, [MLI-OTP-0001-4887](#), p. 4889; Statement of [REDACTED].

¹⁸⁵⁹ See, e.g., Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1058, para. 46; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9427, para. 52.

¹⁸⁶⁰ See, e.g., Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0010, para. 28; Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0411, paras. 60-61.

¹⁸⁶¹ See, e.g., Statement of [REDACTED]; Video, [MLI-OTP-0001-6931](#), 00:02:16:00 to 00:02:28:15, transcript, [MLI-OTP-0056-0581](#), p. 0583, lines 66-74, translation, [MLI-OTP-0061-1139](#), p. 1142, lines 68-76.

¹⁸⁶² See, e.g., Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0565, paras. 38-39; "Challenges", media report, 19 March 2015, "Un juge raconte l'horreur de l'occupation djihadiste à Tombouctou", [MLI-OTP-0033-4314](#) ("[MLI-OTP-0033-4314](#)"), p. 4315.

¹⁸⁶³ See, e.g., Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9435, para. 84; L'Express, media report, "Mali : Tombouctou dans l'enfer du djihad", 12 December 2012, [MLI-OTP-0001-4887](#), p. 4889.

freedom of assembly and association, the right to private property and the right to education.

(b) Connection with any act referred to in article 7(1) of the Statute or any crime within the jurisdiction of the Court

686. By way of preliminary remark, the Chamber recalls that the conduct must have been committed in connection with any act referred to in article 7(1) of the Statute or *any crime within the jurisdiction of the Court*. Accordingly, the act referred to may have been committed in connection with the war crimes set forth in the Statute.

687. The Chamber considers that the aforementioned acts of persecution were committed in connection with the crimes being prosecuted in the case *sub judice*, namely, the crimes against humanity of other inhumane acts under article 7(1)(k), torture referred to in article 7(1)(f), sexual slavery under article 7(1)(g) and rape under article 7(1)(g), in addition to the war crimes of torture under article 8(2)(c)(i), cruel treatment under article 8(2)(c)(i), outrages upon personal dignity under article 8(2)(c)(ii), sentencing under article 8(2)(c)(iv), attacking protected objects under article 8(2)(e)(iv), sexual slavery under article 8(2)(e)(vi) and rape under article 8(2)(e)(vi) of the Statute.

(c) Targeting of the population of Timbuktu on religious and/or gender grounds

688. It is the Chamber's view that the civilian population of Timbuktu was targeted by Ansar Dine/AQIM because it was perceived as not adhering to their religious ideology.¹⁸⁶⁴ P-0125's statements illustrate Ansar Dine/AQIM's religious motive. According to that witness, Iyad Ag Ghali declared, on the day that Timbuktu was

¹⁸⁶⁴ The Chamber notes in this respect that the target group may be defined in a negative or positive manner (*Ntaganda* Trial Judgment, para. 1009. See also DCC, paras. 899-901).

captured, that he had come “[TRANSLATION] to institute Islam” and that any transgressor of the new rules would have “[TRANSLATION] problems with him and his group [...]”.¹⁸⁶⁵

689. The aim of Ansar Dine/AQIM was to institute in Timbuktu and the Timbuktu Region a new apparatus of power on the basis of the religious ideology of Ansar Dine/AQIM and, to compel, if necessary by the use and threat of force, the civilian population of Timbuktu and the Timbuktu Region to submit to it.¹⁸⁶⁶ This ideology was intended to regulate every aspect of the lives of the population of Timbuktu and the Timbuktu Region.¹⁸⁶⁷ The thinking was conveyed through the promulgation of religious opinions of Ansar Dine/AQIM grandees and was disseminated at gatherings with the civilian population of Timbuktu, including with the most influential members of society, as well as over the radio and via street preachers.¹⁸⁶⁸ The goal of the bodies created by Ansar Dine/AQIM was to ensure that the new rules and prohibitions were disseminated and observed and all transgressors were punished.¹⁸⁶⁹

¹⁸⁶⁵ Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0012, para. 36, p. 0011, para. 30.

¹⁸⁶⁶ See, above, paras. 77-139, 179-185. See, below, paras. 816-835.

¹⁸⁶⁷ Summary of statement of P-0147, [MLI-OTP-0066-0569](#), p. 0569; Maurinews, media report, “In a long interview a commander from the Sahara Emirate talks about the Islamists’ rule over northern Mali”, 24 December 2013, [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#); [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040. See also General instructions for the Islamic Jihadist Project in Azawad/Al-Qaeda in the Islamic Maghreb, 20 July 2012, [MLI-OTP-0024-2320](#), p. 2329, translation, [MLI-OTP-0027-0964](#), p. 0974; Audio recording dated 24 May 2012, [MLI-OTP-0038-0886](#), 00:13:52:00 to 00:18:32:00, transcript [MLI-OTP-0056-0843](#), translation, [MLI-OTP-0063-1029](#), pp. 1034-1035, line 237. ██████████ recognized the voice of Iyad Ag Ghali in this recording (Statement of ██████████ Government of Mali, *Note sur la situation sécuritaire dans les régions du nord du Mali*, 15 May 2012, [MLI-OTP-0001-0167](#); Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9428, para. 57 and see also pp. 9427-9428, paras. 54-56, 58.

¹⁸⁶⁸ See paras. 75, 184, 820-832.

¹⁸⁶⁹ See paras. 75, 86-139.

690. These rules and prohibitions went beyond purely religious practices; they encroached on civilian life.¹⁸⁷⁰ For instance, some traditional and cultural practices particular to the population of Timbuktu were considered heretical and were prohibited.¹⁸⁷¹ They included the wearing of talismans and amulets and the practice of magic and sorcery.¹⁸⁷² The practice of magic and sorcery attracted harsh punishment, for instance.¹⁸⁷³ Similarly, the educational system was reorganized in order to spread Ansar Dine/AQIM's religious and ideological thinking, with the closure of secular public schools.¹⁸⁷⁴ Bans were imposed on other prevalent cultural practices such as music, television, radio, sports, games and leisure activities, in addition to men's and women's dress.¹⁸⁷⁵ Mixing between the sexes and relations outside marriage was strictly prohibited.¹⁸⁷⁶ Lastly, the use of tobacco and alcohol and other acts considered immoral were punished severely.¹⁸⁷⁷

¹⁸⁷⁰ [REDACTED], 1 July 2012, [REDACTED], p. 0015; [MLI-OTP-0001-2298](#), p. 2313.

¹⁸⁷¹ See, e.g., Islamic Court Judgment, [REDACTED], [MLI-OTP-0001-7465](#), with an official document [MLI-OTP-0002-0052](#), translation, [MLI-OTP-0034-0208](#), p. 0209; Statement of [REDACTED]

¹⁸⁷² See, e.g., Video, [MLI-OTP-0001-6931](#), 00:02:16:00 to 00:02:28:15, transcript, [MLI-OTP-0056-0581](#), p. 0583, lines 66-74, translation, [MLI-OTP-0061-1139](#), p. 1142, lines 68-76; Statement of [REDACTED]

¹⁸⁷³ See, e.g., [REDACTED]

¹⁸⁷⁴ See, e.g., [REDACTED]; Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0074, para. 13.

¹⁸⁷⁵ See, e.g., Statement of P-0538, [MLI-OTP-0039-0072-R01](#), p. 0077, para. 29; Statement of [REDACTED]; Statement of [REDACTED]

¹⁸⁷⁶ See, e.g., Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0564, para. 35; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0010, para. 28. See also Government of Mali, *Note sur la situation sécuritaire dans les régions du nord du Mali*, 15 May 2012, [MLI-OTP-0001-0167](#); [REDACTED] 1 July 2012, [MLI-OTP-0001-0006](#).

¹⁸⁷⁷ See, e.g., Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0565, paras. 38-39; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9435, para. 84.

691. For the civilian population, these rules and prohibitions had for the most part been “[TRANSLATION] unprecedented until then”.¹⁸⁷⁸ Previously, women had not been subject to a strict dress code and could dress as they wished.¹⁸⁷⁹ They enjoyed other freedoms such as being able to move about in the city,¹⁸⁸⁰ work at the market without restrictions¹⁸⁸¹ and interact freely with men.¹⁸⁸² Couples could choose not to get married,¹⁸⁸³ even if in principle marriage required the consent of the family¹⁸⁸⁴ as well as a ceremony.¹⁸⁸⁵ As a result, “[TRANSLATION] life changed for the population in Timbuktu with the arrival of the Islamists”.¹⁸⁸⁶

692. People defied the religious ideology of Ansar Dine/AQIM.¹⁸⁸⁷ As Ansar Dine/AQIM saw it, the population was not sufficiently versed in the religion¹⁸⁸⁸ or

¹⁸⁷⁸ See, e.g., Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0563, para. 30; Video, [MLI-OTP-0018-0379-R01](#), transcript, [MLI-OTP-0034-1281](#), translation, [MLI-OTP-0067-1896](#), p. 1898, lines 26-30; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0010, para. 28.

¹⁸⁷⁹ Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9426, para. 49; Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1860, para. 19; Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0169, paras. 12-13.

¹⁸⁸⁰ Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0169, paras. 12-13; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9425, para. 45, p. 9427, para. 52; Video, [MLI-OTP-0015-0495](#).

¹⁸⁸¹ Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9427, para. 55, p. 9428, para. 58.

¹⁸⁸² Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0169, paras. 12-13; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9425, para. 45.

¹⁸⁸³ Statement of [REDACTED]; Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0411, paras. 60-61.

¹⁸⁸⁴ Statement of [REDACTED]; [REDACTED].

¹⁸⁸⁵ Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9426, para. 50; Statement of [REDACTED].

¹⁸⁸⁶ Statement of P-0610, [MLI-OTP-0062-0670-R01](#), p. 0674, para. 25; see also Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1051, para. 15; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9426, paras. 49-50.

¹⁸⁸⁷ See e.g., [MLI-OTP-0001-0167](#), p. 0168; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9426, para. 50. See also [REDACTED] 15 May 2012, [MLI-OTP-0001-0167](#).

¹⁸⁸⁸ See General instructions for the Islamic Jihadist Project in Azawad/Al –Qaeda in the Islamic Maghreb, 20 July 2012, [MLI-OTP-0024-2320](#), p. 2329, translation, [MLI-OTP-0027-0964](#), p. 0974; Audio recording dated 24 May 2012, [MLI-OTP-0038-0886](#), 00:13:52:00 to 00:18:32:00, transcript, [MLI-OTP-0056-0843](#), translation, [MLI-OTP-0063-1029](#), pp. 1034-1035, line 237. [REDACTED] recognized the voice of Iyad Ag Ghali in this recording (Statement of [REDACTED]).

sufficiently observant.¹⁸⁸⁹ The Muslim population often visited the mausoleums as a sign of faith,¹⁸⁹⁰ reflecting a local practice of Islam.¹⁸⁹¹ The non-Muslim population also visited the mausoleums as a sign of the collective identity of Timbuktu.¹⁸⁹² But because this practice was regarded as contrary to Ansar Dine/AQIM's avowed religious ideology, the mausoleums were damaged and destroyed.¹⁸⁹³

693. Some women complained of the jihadis' behaviour towards them.¹⁸⁹⁴ The population expressed its disgust at the punishment and suffering of their fellows.¹⁸⁹⁵

694. According to some, the jihadis had a "[TRANSLATION] real obsession" with cigarettes.¹⁸⁹⁶ As a result, the sale or use of tobacco incurred a prison sentence or fines,¹⁸⁹⁷ spawning a black market in cigarettes.¹⁸⁹⁸

695. Thus, people who did not comply with the code of religious conduct would as a rule be met with violent repression.¹⁸⁹⁹

¹⁸⁸⁹ Statement of P-0603, [MLI-OTP-0059-0361-R01](#), p. 0367, para. 29; Video, [MLI-OTP-0018-0209-R01](#), transcript, [MLI-OTP-0033-5744](#), translation, [MLI-OTP-0033-5439](#).

¹⁸⁹⁰ Statement of [REDACTED]; Statement of [REDACTED]

¹⁸⁹¹ See Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0018, para. 65; Expert report in *Al Mahdi* at the reparations phase, ICC-01/12-01/15-214-AnxIRed3, 27 April 2017, [MLI-OTP-0067-1395](#), p. 1413.

¹⁸⁹² Expert report in *Al Mahdi* at the reparations phase, ICC-01/12-01/15-214-AnxIRed3, 27 April 2017, [MLI-OTP-0067-1395](#), p. 1414.

¹⁸⁹³ See, above, paras. 523-531.

¹⁸⁹⁴ Statement of [REDACTED]. For the women's demonstration of 6 October 2012, see Slate Afrique, "Nord-Mali – Les femmes de Tombouctou contre-attaquent", 9 October 2012, [MLI-OTP-0033-4305](#) ("[MLI-OTP-0033-4305](#)"); [REDACTED], 8 October 2012, [MLI-OTP-0012-0975](#); Summary of statement of [REDACTED]

¹⁸⁹⁵ Statement of P-0602, [MLI-OTP-0059-0401-R01](#), p. 0411, paras. 60-61.

¹⁸⁹⁶ Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0565, paras. 38-39.

¹⁸⁹⁷ [MLI-OTP-0033-4314](#), p. 4315.

¹⁸⁹⁸ Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0565, paras. 38-39.

¹⁸⁹⁹ See, above, VII. The crimes (A) Facts pertaining to counts 1 to 5: torture, other inhumane acts, cruel treatment and outrages upon dignity, paras. 269-337.

696. The strict regulation of relations between men and women also meant that several women were married by force.¹⁹⁰⁰

697. The Chamber considers moreover that, between 1 April 2012 and 28 January 2013, Ansar Dine/AQIM targeted 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.¹⁹⁰¹

698. According to the evidence adduced, women and young girls were routinely attacked for the slightest transgression – however minor – of the rules laid down by Ansar Dine/AQIM.¹⁹⁰² Even when they wore a veil to comply with Ansar Dine/AQIM's rules but the type of veil was considered inappropriate for being too pretty¹⁹⁰³ or too revealing, the women were beaten, pursued to their homes and detained in premises specifically reserved for women, sometimes for several days in inhumane conditions.¹⁹⁰⁴ In that respect, P-0547 states: “[TRANSLATION] I didn't dare go out anymore. I shut myself away at home watching television. I didn't want to put myself at risk. I knew that it didn't matter how I was dressed, they would think that I wasn't covered enough.”¹⁹⁰⁵ In comparison, when members of Ansar Dine/AQIM caught men

¹⁹⁰⁰ See, above, VII. The crimes (D) Facts pertaining to counts 8 to 12: rape, sexual slavery and other inhumane act in the form of forced marriage, paras. 533-560. See also para. 582 for the pressure exerted on women to return to their husbands.

¹⁹⁰¹ See Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1051, paras. 16-17; Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0867, para. 26.

¹⁹⁰² Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9428, para. 57, pp. 9427-9428, paras. 54-56, 58-59; Statement of P-0553, [MLI-OTP-0039-1048-R01](#), pp. 1058, para. 46; [MLI-OTP-0003-0195-R01](#), p. 0195.

¹⁹⁰³ Statement of P-0603, [MLI-OTP-0059-0361-R01](#), p. 0371, para. 53; Statement of P-0542, [MLI-OTP-0039-0167-R01](#), p. 0171, paras. 22, 23.

¹⁹⁰⁴ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), paras. 24, 29-41; Statement of P-0547, [MLI-OTP-0039-0861-R01](#), paras. 34, 40-49; Statement of P-0574, [MLI-OTP-0049-0098-R01](#), paras. 21 30, 39-46.

¹⁹⁰⁵ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0868, para. 27; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9428, para. 57.

violating the dress code by wearing trousers that they considered too long, all they did was cut the trousers.¹⁹⁰⁶

699. The Chamber likewise notes, by way of gender-specific punishment, the rape of women in detention¹⁹⁰⁷ and the instances of incarcerated women [REDACTED]
[REDACTED].¹⁹⁰⁸

700. The evidence presented also shows that in the context of the forced marriages women were treated violently and raped by several members of Ansar Dine/AQIM and held against their will.¹⁹⁰⁹ That, in the Chamber's view, also constitutes persecution on gender grounds in that the women were treated like objects.

701. What is more, the persecution suffered by the women deprived them of their social status within the civilian population of Timbuktu.¹⁹¹⁰ Women who were victims of sexual violence were stigmatized within their families and marginalized within society.¹⁹¹¹ The violence to which they were subjected also led many women to leave

¹⁹⁰⁶ Statement of P-0547, [MLI-OTP-0039-0861-R01](#), p. 0867, para. 26; Statement of P-0608, [MLI-OTP-0060-9414-R01](#), pp. 9427-9428, paras. 54-59; Statement of P-0553, [MLI-OTP-0039-1048-R01](#), p. 1058, para. 46.

¹⁹⁰⁷ Statement of P-0570, [MLI-OTP-0049-0047-R01](#), paras. 24, 29-41; Statement of P-0547, [MLI-OTP-0039-0861-R01](#), paras. 34, 40-49; Statement of P-0574, [MLI-OTP-0049-0098-R01](#), paras. 21, 30, 39-46; Audio recording, [MLI-OTP-0033-1289](#), 00:02:00:00 to 00:02:55:00, transcript, [MLI-OTP-0069-1670](#), pp. 1671-1672, lines 33-45; [REDACTED]; Statement of P-0538, [MLI-OTP-0039-0072-R01](#), pp. 0081-0083, paras. 47-49.

¹⁹⁰⁸ [REDACTED], 6 March 2015, [MLI-OTP-0024-2814](#), pp. 2833, 2837; Statement of P-0547, [MLI-OTP-0039-0861-R01](#), pp. 0868-0869, para. 31, p. 0870, para. 37, p. 0871, paras. 38-39.

¹⁹⁰⁹ See, e.g., the accounts given by [REDACTED].

¹⁹¹⁰ See, above, para. 691. See also Video, [MLI-OTP-0015-0495](#). See, moreover, para. 582 for the pressure exerted on women to return to their husbands.

¹⁹¹¹ Statement of P-0160, [MLI-OTP-0046-8685-R01](#), p. 8693, para. 35; Statement of P-0570, [MLI-OTP-0049-0047-R01](#), p. 0057, para. 42. See also Wildaf-Mali, *Monitoring et documentation des violations des droits humains, Violations commises à Tombouctou suite à la crise de 2012*, January 2016, [MLI-OTP-0039-0920](#), p. 0928.

Timbuktu under difficult conditions.¹⁹¹² Despite the risk of repression, women of Timbuktu did not hesitate to protest against their persecutors on 6 October 2012.¹⁹¹³

702. Lastly, the Chamber notes that the violence inflicted on women may also have been motivated by considerations related to their skin colour, as dark-skinned women were more affected than others by such violence. The same was true for dark-skinned men who, according to some witnesses, were persecuted more than the light-skinned men.¹⁹¹⁴

(d) Mental elements

703. The Chamber considers that there are 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 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 verbally, the aforementioned acts of violence, oppression and intimidation against the civilian population of Timbuktu.¹⁹¹⁵

¹⁹¹² [MLI-OTP-0003-0195-R01](#), p. 0195.

¹⁹¹³ [MLI-OTP-0033-4305](#); Jeune Afrique, media report, "Mali : à Tombouctou, près de 200 femmes marchent contre les islamistes", 8 October 2012, [MLI-OTP-0033-4306](#) ("[MLI-OTP-0033-4306](#)"); Government of Mali, Dispatch no. 1029/DSM, 8 October 2012, [MLI-OTP-0012-0975](#) ("[MLI-OTP-0012-0975](#)"); Summary of statement of [REDACTED]

¹⁹¹⁴ Statements of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9436, paras. 87, 89, 91-92; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0025, para. 97. See also Statement of P-0520, [MLI-OTP-0060-1857-R01](#), p. 1869, para. 48; Statement of P-0610, [MLI-OTP-0062-0670-R01](#), p. 0677, para. 39. See also [MLI-OTP-0033-1110](#), p. 1120, para. 32; Country reports on human rights practices for 2012: Mali, MLI-OTP-0033-2112.

¹⁹¹⁵ See, above, paras. 74-140, 342-350, 412, 414-415, 484-486, 489, 493-494, 497, 501, 513, 530, 594, 598, 606, 615, 622, 625, 634, 643, 651, 652, 654.

704. The Chamber considers that the discriminatory intent can be seen from the many statements made by the members of Ansar Dine/AQIM,¹⁹¹⁶ the general attitude of those individuals and the circumstances surrounding the commission of the acts of persecution.¹⁹¹⁷ The Chamber has particular regard to their violent treatment of elderly persons,¹⁹¹⁸ pregnant women¹⁹¹⁹ and even children.¹⁹²⁰

(e) Contextual elements of the crimes against humanity

705. For all of the acts described above, in terms of the nexus required by article 7 of the Statute between the conduct and the attack described above,¹⁹²¹ the Chamber finds that the acts of persecution were committed as part of the widespread and systematic attack carried out against the civilian population of Timbuktu, which took place between 1 April 2012 and 28 January 2013. The evidence presented by the Prosecutor shows that the acts were committed in localities, such as Timbuktu or other localities in the Timbuktu Region, which were the objects of the attacks carried out by Ansar Dine/AQIM during the time frame under consideration and upon which the organization Ansar Dine/AQIM imposed its religious ideology. The acts at issue took place after the city of Timbuktu was captured and by persons who took part in that operation.

¹⁹¹⁶ See, e.g., above, paras. 823, 825. See also Video, [MLI-OTP-0015-0495](#); Statement of P-0623, [MLI-OTP-0068-4352-R01](#), p. 4362, para. 69; Video, [MLI-OTP-0018-0379-R01](#), transcript, [MLI-OTP-0034-1281](#), translation, [MLI-OTP-0067-1896](#).

¹⁹¹⁷ See, e.g., the manner in which the victims were treated in detention, paras. 286-298, 676-680 and the manner in which the members of Ansar Dine/AQIM treated the women they married by force, VII. The crimes (D) Facts pertaining to counts 8 to 12: rape, sexual slavery and other inhumane act in the form of forced marriage, paras. 533-560.

¹⁹¹⁸ See, above, paras. ██████████

¹⁹¹⁹ See, e.g., the ill-treatment to which ██████████ and the ██████████ women were subjected in detention, above, paras. 287, 699.

¹⁹²⁰ See, e.g. the ill-treatment to which ██████████ subjected, paras. ██████████

¹⁹²¹ See, above, VI. (A) Contextual elements of crimes against humanity, paras. 172-192.

706. When it comes to knowledge of the attack, the Chamber considers that the circumstances described above,¹⁹²² *viz.* the widespread character of the attack and the *modus operandi* of the armed groups, establish that the members of Ansar Dine/AQIM had knowledge of the attack on the civilian population of Timbuktu and the Timbuktu Region. In addition, the Chamber sees that the attack attracted national¹⁹²³ and international media coverage.¹⁹²⁴ The Chamber therefore determines that there are substantial grounds to believe that the perpetrators had knowledge of the attack and knew that their conduct formed part of or intended their conduct to be part of an attack directed against the civilian population.

3. The Chamber's findings

707. The Chamber finds that all of the acts described above in paragraphs 673, 675, 677-680, 683-684 constitute severe deprivations of fundamental rights, contrary to international law, such as the right to freedom of expression, 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 grounds and/or on grounds of gender. 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. Lastly, the Chamber is 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. Accordingly,

¹⁹²² See, above, paras. 188-191.

¹⁹²³ See, e.g. Inter Press Service News Agency, media report, "*Les islamistes imposent la charia dans le nord et le voile aux femmes*", 5 April 2012, [MLI-OTP-0023-0323](#).

¹⁹²⁴ See, e.g. RTBFMonde, media report, "*Mali : confusion à Tombouctou où une police islamique impose la charia*", 28 April 2012, [MLI-OTP-0033-2995](#); [MLI-OTP-0001-3767](#).

the Chamber finds that there are substantial grounds to believe that the crime against humanity of persecution referred to in article 7(1)(h) of the Statute, was 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 part of a widespread and systematic attack against the civilian population of Tombouctou.

708. Mr Al Hassan’s individual responsibility in relation to the facts found above will subsequently be considered.¹⁹²⁵

VIII. Responsibility

709. Before considering in turn the various possible forms of responsibility which the Prosecutor associates with the factual allegations brought against Mr Al Hassan in her DCC ¹⁹²⁶ (article 25(3)(a): direct perpetration, and direct and indirect co-perpetration; article 25(3)(b): soliciting and inducing; article 25(3)(c): aiding, abetting or otherwise assisting; and article 25(3)(d): contribution in any other way), the Chamber sees fit to ascertain the specific role played by Mr Al Hassan during the events which took place in Timbuktu and the Timbuktu Region between 1 April 2012 and 28 January 2013 in order to undertake a normative assessment of his role vis-à-vis the specific circumstances of the case.¹⁹²⁷

¹⁹²⁵ See, below, [VIII. Responsibility](#).

¹⁹²⁶ DCC, paras. 209-420, 502-527, 594-622, 626-627, 630, 633, 636, 717-748, 821-824, 875-877, 975-1017, 1022-1043, 1058, 1066, 1074, 1087, 1094.

¹⁹²⁷ *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction”, 1 December 2014, ICC-01/04-01/06-3121-Conf (“*Lubanga Appeal Judgment*”), para. 473.

(A) Findings of fact**1. 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**

710. Having considered the relevant evidence, the Chamber determines that the following facts are established to the standard required at this stage of the proceedings.

711. Mr Al Hassan joined the Islamic Police shortly after Ansar Dine/AQIM came to Timbuktu, to be specific, he was working for it by 7 May 2012.¹⁹²⁸

¹⁹²⁸ The Chamber makes that finding, in the first instance, on the basis of document [MLI-OTP-0001-7563](#) (Islamic Police report, [MLI-OTP-0001-7563](#), translation, [MLI-OTP-0052-0113](#)). It contains a colour photograph showing a pile of papers, which includes, in the foreground to the left, a sheet of white, ruled, perforated paper, whose spiral edge is torn, and which bears handwriting in Arabic script and a signature, and, to the right, a sheet of white narrow-grid paper bearing handwriting in Arabic script and stamped “[TRANSLATION] Islamic Police” in Latin and Arabic scripts. The edge on the spiral side of the first sheet is torn. (For the contents of this type of document see, below, paras. 95-96). The Chamber notes that the Prosecutor has submitted a report on the technical examination of several documents so as to detect any tampering and of the analysis of the graphic features of the signature on the documents so as to determine the likelihood of Mr Al Hassan being the author of the signature affixed to all or some of the documents in question (Handwriting analysis report, [MLI-OTP-0064-0175](#), the “Handwriting Analysis Report”). Regarding document [MLI-OTP-0001-7563](#) (Islamic Police report, [MLI-OTP-0001-7563](#), translation, [MLI-OTP-0052-0113](#)), the Handwriting Analysis Report concludes “[TRANSLATION] that it is impossible to identify the main features [of the] document[s] from that type of medium” and, as regards the analysis of the signature on the right-hand page which it contains, that “[TRANSLATION] [i]t has not been possible to establish whether the signature[...] affixed [...] to [the] document [...] listed [...] could have been made [...] by the person at issue” (Handwriting Analysis Report, [MLI-OTP-0064-0175](#), pp. 0127-0128). [REDACTED]

[REDACTED] The Chamber also notes that, upon acquainting himself with document [MLI-OTP-0001-7563](#), [REDACTED] that it pertained to an incident reported by the husband of a deceased woman about children who had thrown stones at his pregnant wife. The woman allegedly gave birth to twin girls – one live-born, the other still-born – and, 10 days after the incident, the woman allegedly died [REDACTED]. See also Islamic Police report, [MLI-OTP-0001-7563](#), translation, [MLI-OTP-0052-0113](#)). The Chamber notes that document MLI-OTP-0001-7563 is undated. Nonetheless, it sees that document [MLI-OTP-0001-7369](#) contains the colour image of an opened spiral-bound notebook in which the right-hand page contains handwriting in Arabic script. The translation of this document shows that written on the left-hand page

712. As to the length of time for which he served in the Islamic Police, the Chamber begins by noting that other documents have features similar to document MLI-OTP-0001-7563,¹⁹²⁹ viz. handwritten annotations in Arabic script, a date, a stamp which reads “[TRANSLATION] ISLAMIC POLICE” in Arabic and Latin scripts and a signature which could belong to Mr Al Hassan. The findings of the Handwriting Analysis Report regarding certain documents make apparent that they are original documents, that there is no sign of tampering and that “[TRANSLATION] [c]onsidering the graphic elements which have been identified and are consistent with the comparison signatures, it may be established that the signatures of question listed below could have been made by [Mr Al Hassan]”. [REDACTED]

[REDACTED]. [REDACTED] says in that regard that he used any kind of paper to produce those documents.¹⁹³⁰ Thus it is established to the standard required that Mr Al Hassan wrote and signed those documents stamped

(in the translated version) are a date, “[TRANSLATION] 7 May 2012” and the headings “[TRANSLATION] Registry of the Judiciary” and “[TRANSLATION] Members”, followed by a numbered list of names with the words “[TRANSLATION] Senior Judge”, “[TRANSLATION] Deputy judge” or “[TRANSLATION] Member” appearing next to each name. On the page to the right, the text “[TRANSLATION] Index” and “[TRANSLATION] In this booklet” appears, followed by a list of the titles of cases, the last of which is “[TRANSLATION] The case involving the murder of a pregnant woman” ([MLI-OTP-0034-0071](#)). The Chamber also notes documents [MLI-OTP-0001-7399](#) and [MLI-OTP-0001-7400](#). They contain a colour image of what appears to be the same spiral-bound notebook aforementioned ([MLI-OTP-0001-7369](#)) but lying open at different pages. Documents [MLI-OTP-0001-7399](#) and [MLI-OTP-0001-7400](#) contain handwriting in Arabic script. The translation shows that the title, “[TRANSLATION] The case of the death of the pregnant woman” ([MLI-OTP-0069-2724](#)), and the text that follows, describe the same facts as given above by Mr Al Hassan in document MLI-OTP-0001-7563. [REDACTED] that he wrote reports in the last two to three months before he left the city of Timbuktu [REDACTED]

[REDACTED] but the aforementioned evidence shows that he started producing that type of document as of 7 May 2012. The Chamber points out that these documents were collected [REDACTED]

¹⁹²⁹ See, above, footnote 1928.

¹⁹³⁰ [REDACTED] See also the Islamic Police reports.

“[TRANSLATION] ISLAMIC POLICE” and, hence, that he worked for the Islamic Police on the dates stated therein.¹⁹³¹

713. The Chamber further notes the existence of similar documents bearing a date, a signature which could belong to Mr Al Hassan and a stamp which reads “[TRANSLATION] ISLAMIC POLICE ” in Arabic and Latin scripts, but sees that they were not shown to Mr Al Hassan. The Chamber considers that their clear resemblance to the aforementioned documents and the fact that their source is identical establish that Mr Al Hassan wrote and signed them and, hence, that he worked for the Islamic Police on the dates stated in the documents.¹⁹³²

714. Document [MLI-OTP-0001-7528](#) contains two sheets: the one on the right is ruled and perforated, and the one on the left is narrow grid paper. The left-hand sheet bears handwritten annotations in Arabic script, a date (“23/05/2012”), two signatures beneath the words “[TRANSLATION] the accused” and beneath the words “[TRANSLATION] the investigator”, but does not bear a stamp of the Islamic Police. Out of all of the documents of that kind which were disclosed, this sheet appears to be alone in bearing Mr Al Hassan’s signature beneath the word “investigator”.¹⁹³³ In it

¹⁹³¹ See, below, para. 718.

¹⁹³² See, below, para. 719.

¹⁹³³ Islamic Police report of 23 May 2012, [MLI-OTP-0001-7528](#), translation, [MLI-OTP-0069-2075](#), p. 2077 (██████████); Handwriting Analysis Report, [MLI-OTP-0064-0175](#), p. 0302: “[TRANSLATION] Of the signatures provided in the form of images for expert examination, we have disregarded the signatures affixed to the documents listed below as their visual quality is insufficient for analysis or because of a duplicate image”; Islamic Police report dated 23 May 2012, [MLI-OTP-0001-7527](#), translation, [MLI-OTP-0052-0089](#), p. 0090 (██████████), corresponding judgment [MLI-OTP-0001-7373](#), translation, [MLI-OTP-0034-0076](#), p. 0077 (██████████); Handwriting Analysis Report, [MLI-OTP-0064-0175](#), p. 0302: “[TRANSLATION] Considering the graphic elements which have been identified and are consistent with the reference signatures, it may be established that the signatures of (sic) question listed below could have been made by the person in question”. Documents [MLI-OTP-0001-7528](#) and [MLI-OTP-0001-7527](#) appear to be the same. Document [MLI-OTP-0001-7528](#) contains an additional document bearing the signature of Judge Houka Houka, dated 22 May 2012, pertaining to the theft of ██████████’s property, which is unconnected to the subject of the report on the page to the left.

the theft of “three rolls of mosquito netting” and the account given by the person accused are described. ■■■ Regarding document [MLI-OTP-0001-7528](#), ■■■

■■■¹⁹³⁵ ■■■
■■■ it may be inferred that Mr Al Hassan wrote and signed the document for the Islamic Police.¹⁹³⁶

715. The Chamber also bases its findings on documents containing colour images of printed documents entitled “[TRANSLATION] Permit to Dig a Well”. The documents contain printed and handwritten text in Arabic and Latin scripts, dates, stamps which read “[TRANSLATION] Islamic Police” and “[TRANSLATION] Islamic Security” in Arabic and Latin scripts, and two signatures, one of which could belong to Mr Al Hassan.

■■■. Accordingly, it is established that Mr Al Hassan worked for the Islamic Police on the dates stated in the documents. As to the documents of that kind which were not shown to Mr Al Hassan, the Chamber considers that given their clear resemblance (including as regards Mr Al Hassan’s signature) to the aforementioned documents and the fact that that they were provided by the same source (■■■), and having regard to the standard required at this stage of the proceedings, the documents

¹⁹³⁴ [MLI-OTP-0069-2075](#).

¹⁹³⁵ Statement of P-0398, MLI-OTP-0060-1511, pp. 1512-1518, lines 24-206.

¹⁹³⁶ The Chamber sees that some of the other documents are undated; however, as they contain similar features (Mr Al Hassan’s signature is not always present but they do bear the stamp of the Islamic Police) they may serve to enumerate the types of cases which the Islamic Police handled. See, e.g., Islamic Police report, [MLI-OTP-0001-7515](#), translation, [MLI-OTP-0052-0019](#), p. 0020 (Statement of P-0398, MLI-OTP-0060-1605, pp. 1622-1627, lines 573-740); Islamic Police report, [MLI-OTP-0001-7543](#), translation, [MLI-OTP-0052-0029](#), p. 0030 (Statement of P-0398, [MLI-OTP-0060-1580](#), pp. 1599-1604, lines 619-795); Islamic Police report, [MLI-OTP-0001-7572](#), translation, [MLI-OTP-0052-0121](#), p. 0122.

establish that Mr Al Hassan signed them and, hence, that he worked for the Islamic Police on the dates stated therein.¹⁹³⁷

716. The Chamber's findings are also made on the basis of a document which includes a colour image of a printed document entitled "[TRANSLATION] Summons", containing printed and handwritten text in Arabic and Latin scripts, a date (3 September 2012), a stamp which reads "[TRANSLATION] Islamic Police " in Arabic and Latin scripts and a signature which could belong to Mr Al Hassan.¹⁹³⁸ [REDACTED]

[REDACTED].¹⁹³⁹ Accordingly, it is established that Mr Al Hassan wrote and signed the summons dated 3 September 2012.

717. The Chamber further relies on a document containing a colour image of a printed document entitled [REDACTED] [REDACTED] containing handwritten annotations in Arabic script and [REDACTED] in Latin script; "[REDACTED] dec 2012" stamped in red; a stamp which reads "The Ansar Eddine Organisation, Tombouctou, Media Office"; beneath that stamp, a stamp which reads "[TRANSLATION] Islamic Security" and a signature; a stamp which reads "[TRANSLATION] Islamic Police" with another signature which could belong to Mr Al Hassan; and a further signature beneath "[TRANSLATION] Signature of Applicant".¹⁹⁴⁰ The document concerns [REDACTED]

¹⁹³⁷ See, below, paras. 718-719.

¹⁹³⁸ Summons dated 3 September 2012, [MLI-OTP-0001-7585](#), translation, [MLI-OTP-0052-0125](#), p. 0126.

¹⁹³⁹ [REDACTED]

¹⁹⁴⁰ [REDACTED], [MLI-OTP-0002-0016](#), p. 0016, translation, [MLI-OTP-0034-0202](#), p. 0203.

19 November,¹⁹⁵³ 20 November,¹⁹⁵⁴ 26 November,¹⁹⁵⁵ 3 December,¹⁹⁵⁶ 4 December¹⁹⁵⁷ and 11 December 2012.¹⁹⁵⁸

719. From the similarities of the following documents with the documents referred to in the previous paragraph, the Chamber finds that Mr Al Hassan also wrote and completed documents for the Islamic Police on 16 July 2012,¹⁹⁵⁹ 6 August,¹⁹⁶⁰

¹⁹⁵³ Islamic Police report dated 19 November 2012, [MLI-OTP-0001-7555](#), translation, [MLI-OTP-0034-0181](#), p. 0182; [REDACTED]; Islamic Police report dated 19 November 2012, [MLI-OTP-0001-7552](#), translation, [MLI-OTP-0034-0179](#), p. 0180; Statement P-0398, [MLI-OTP-0060-1605](#), p. 1617, lines 384-403.

¹⁹⁵⁴ Islamic Police report dated 20 November 2012, [MLI-OTP-0001-7550](#), translation, [MLI-OTP-0052-0101](#), p. 0102; see Handwriting Analysis Report.

¹⁹⁵⁵ Islamic Police report dated 26 November 2012, [MLI-OTP-0001-7549](#), translation, [MLI-OTP-0034-0177](#), p. 0178; [REDACTED].

¹⁹⁵⁶ Islamic Police report dated 3 December 2012, [MLI-OTP-0001-7542](#), translation, [MLI-OTP-0034-0175](#), p. 0176; Islamic Police report dated 3 December 2012, [MLI-OTP-0001-7538](#), translation, [MLI-OTP-0034-0173](#), p. 0174; [REDACTED].

¹⁹⁵⁷ Islamic Police report dated 4 December 2012, [MLI-OTP-0001-7539](#), translation, [MLI-OTP-0052-0091](#), p. 0092; Statement of P-0398, [MLI-OTP-0060-1423](#), p. 1438, lines 492, 496.

¹⁹⁵⁸ [REDACTED] dated [REDACTED] December 2012, [MLI-OTP-0002-0016](#), p. 0016, translation, [MLI-OTP-0034-0202](#), p. 0203; [REDACTED]

¹⁹⁵⁹ Islamic Police report dated 16 July 2012, [MLI-OTP-0001-7511](#), translation, [MLI-OTP-0052-0075](#), p. 0076.

¹⁹⁶⁰ Islamic Police report dated 6 August 2012, [MLI-OTP-0002-0034](#), translation, [MLI-OTP-0034-0206](#), p. 0207.

1 October,¹⁹⁶¹ 2 October,¹⁹⁶² 8 October,¹⁹⁶³ 18 October,¹⁹⁶⁴ 28 October,¹⁹⁶⁵ 5 November,¹⁹⁶⁶ 6 November,¹⁹⁶⁷ 26 November¹⁹⁶⁸ and 27 November 2012.¹⁹⁶⁹

720. The Chamber notes in that connection that, according to [REDACTED], the number of reports written on a daily basis could vary – on some days there would be none, on others it could be five or ten.¹⁹⁷⁰

721. The Chamber also takes into account witnesses' statements that Mr Al Hassan worked at the Islamic Police¹⁹⁷¹ and [REDACTED] said that he was persuaded to work with Ansar Dine/AQIM after Abdallah Al Chinguetti spoke to him about the jihad and asked him to work with them.¹⁹⁷²

¹⁹⁶¹ Islamic Police report dated 1 October 2012, [MLI-OTP-0001-7564](#), translation, [MLI-OTP-0052-0115](#), p. 0116.

¹⁹⁶² Islamic Police report dated 2 October 2012, [MLI-OTP-0001-7558](#), translation, [MLI-OTP-0052-0109](#), p. 0110.

¹⁹⁶³ Islamic Police report dated 8 October 2012, [MLI-OTP-0001-7562](#), translation, [MLI-OTP-0052-0111](#), p. 0112.

¹⁹⁶⁴ Permit to dig a well dated 18 October 2012, [MLI-OTP-0001-7209](#); MLI-OTP-0069-1686.

¹⁹⁶⁵ Islamic Police report dated 18 October 2012, [MLI-OTP-0001-7529](#), translation, [MLI-OTP-0034-0171](#), p. 0172.

¹⁹⁶⁶ Islamic Police report dated 5 November 2012, [MLI-OTP-0001-7569](#), translation, [MLI-OTP-0052-0117](#), p. 0118; Islamic Police report dated 5 November 2012, [MLI-OTP-0001-7571](#), translation, [MLI-OTP-0052-0119](#), p. 0120; Permit to dig a well dated 5 November 2012, [MLI-OTP-0001-7204](#), translation, [MLI-OTP-0069-1680](#), p. 1681.

¹⁹⁶⁷ Permit to dig a well dated 6 November 2012, [MLI-OTP-0001-7203](#), translation, [MLI-OTP-0034-0043](#), p. 0044.

¹⁹⁶⁸ Islamic Police report dated 26 November 2012, [MLI-OTP-0001-7548](#), translation, [MLI-OTP-0052-0099](#), p. 0100.

¹⁹⁶⁹ Islamic Police report dated 27 November 2012, [MLI-OTP-0001-7551](#), translation, [MLI-OTP-0052-0103](#), p. 0104.

¹⁹⁷⁰ [REDACTED] In video [MLI-OTP-0018-0379-R01](#), [REDACTED] also stated that every day a crowd of Timbuktu residents would come to the Islamic Police to raise their problems (Transcript of video [MLI-OTP-0018-0379-R01](#), [MLI-OTP-0067-1892](#), translation, [MLI-OTP-0067-1896](#), p. 1899, lines 58-61).

¹⁹⁷¹ See also, below, VIII. (A) 2. Duties performed and powers exercised by Mr Al Hassan in the Islamic Police between 1 April 2012 and 28 January 2013.

¹⁹⁷² Statement of P-0398, [MLI-OTP-0051-1257](#), pp. 1275-1285, lines 590-945.

722. [REDACTED] worked at the Islamic Police until he left Timbuktu in January 2013, “[TRANSLATION] at the time of the French intervention”.¹⁹⁷³ The Chamber recalls in this regard that Ansar Dine/AQIM were ousted from Timbuktu on 28 January 2013 by the Malian Army with French troop support.¹⁹⁷⁴ The Chamber further notes that, in the aftermath of the events which took place in Timbuktu from 1 April 2012 to 28 January 2013, Mr Al Hassan fled to Libya, before resuming his activity with the armed groups led by Iyad Ag Ghali in the winter of 2014.¹⁹⁷⁵

723. Having regard to the foregoing, the Chamber determines that there are substantial grounds to believe that Mr Al Hassan joined the Islamic Police shortly after Ansar Dine/AQIM came to Timbuktu, to be specific, he was working for it on a daily basis by 7 May 2012 until Ansar Dine/AQIM left the city on 28 January 2013.

2. Duties performed and powers exercised by Mr Al Hassan in the Islamic Police between 1 April 2012 and 28 January 2013

724. Having considered the relevant evidence, the Chamber finds that the facts set out in this section, which addresses Mr Al Hassan’s duties and powers, are established to the standard required.

¹⁹⁷³ [REDACTED]. See also Summary of statement of P-0147, [MLI-OTP-0066-0569](#), p. 0573; [REDACTED]; [REDACTED]. See also, below, VIII. Responsibility (A) 2. Duties performed and powers exercised by Mr Al Hassan in the Islamic Police between 1 April 2012 and 28 January 2013.

¹⁹⁷⁴ See, above, para. 70.

¹⁹⁷⁵ Statement of P-0398, [MLI-OTP-0051-1067](#), p. 1070, lines 96-155, pp. 1074-1075, lines 226-253; [MLI-OTP-0051-1032](#), p. 1064, lines 1063-1078; [MLI-OTP-0060-1791](#), p. 1793, line 45-66; Government of Mali, [MLI-OTP-0066-0452](#), p. 0453.

(a) Interpreter

725. Among the tasks he performed, Mr Al Hassan acted as interpreter for his superiors in the Islamic Police in their contact and dealings with the population of Timbuktu;¹⁹⁷⁶ he did so upon joining the Islamic Police,¹⁹⁷⁷ owing to his command of local languages,¹⁹⁷⁸ which the first emir of the Islamic Police, Adama, and his successor, Khaled Abou Souleymane, among others, lacked.¹⁹⁷⁹ [REDACTED] the first duty he performed in the Islamic Police [REDACTED] with Ansar Dine/AQIM.¹⁹⁸⁰

(b) Receiving Timbuktu residents at the Islamic Police

726. Mr Al Hassan, alone or with the emirs of the Islamic Police and Abou Dhar,¹⁹⁸¹ met with Timbuktu residents at the headquarters of the Islamic Police, to receive their

¹⁹⁷⁶ Bamada.net, media report, MLI-OTP-0059-0348; Statement of P-0398, [MLI-OTP-0051-1213](#), p. 1217, lines 112-121; [MLI-OTP-0051-0557](#), pp. 0562-0565, lines 155-273; [MLI-OTP-0051-0571](#), pp. 0576-0584, lines 163-410; [MLI-OTP-0060-1423](#), pp. 1427-1428, lines 111-165, p. 1429, lines 184-191, pp. 1432-1433, lines 281-320; [MLI-OTP-0060-1729](#), pp. 1737-1741; Summary of Statement of [REDACTED].

¹⁹⁷⁷ [REDACTED]. [REDACTED], he worked as an interpreter for Adama “[TRANSLATION] for two or three months” or “[TRANSLATION] a short while” ([REDACTED]).

¹⁹⁷⁸ Statement of [REDACTED]; see also [REDACTED]; Summary of statement of [REDACTED]; Statement of P-0398, [MLI-OTP-0051-1257](#), p. 1267, lines 316-323, pp. 1286-1287, lines 951-981; [MLI-OTP-0051-1184](#), pp. 1199-1200, lines 502-509, p. 1201, lines 546-553; [MLI-OTP-0051-1032](#), p. 1035, lines 98-125; [MLI-OTP-0051-0571](#), p. 0586, lines 507-508.

¹⁹⁷⁹ Statement of P-0398, [MLI-OTP-0051-0571](#), p. 0586, lines 492-508; Summary of statement of [REDACTED].

¹⁹⁸⁰ [REDACTED]

¹⁹⁸¹ [REDACTED]

reports of incidents.¹⁹⁸² According to [REDACTED], Mr Al Hassan was much liked by the population.¹⁹⁸³

727. Mr Al Hassan received such persons at the BMS and at the Governorate, in an office which he shared with the first emir of the Islamic Police and with his successor,

[REDACTED]
[REDACTED]
[REDACTED] [MLI-OTP-0051-1155](#), pp. 1172-1173, lines 566-586; [MLI-OTP-0051-1213](#), p. 1217, lines 112-121; [MLI-OTP-0060-1423](#), pp. 1424-1425, lines 30-51); [REDACTED]
[REDACTED] According to [REDACTED] incidents were reported to the “[TRANSLATION] head” of the Islamic Police and, in his absence, to Mr Al Hassan pending the head’s return. The problem was handled upon his return (see also Summary statement of [REDACTED].

[REDACTED] The Chamber is also of the view that, on account of his knowledge of languages, Abou Dhar could also have been one of the persons who received civilians at the headquarters of the Islamic Police (see Statement of P-0398, [MLI-OTP-0060-1423](#), pp. 1432-1433, lines 281-320; Statement of [REDACTED]. That said, the Chamber notes that there are no documents bearing Abou Dhar’s signature.

¹⁹⁸² Statement of P-0398, [MLI-OTP-0051-1155](#), pp. 1172-1173, lines 566-586; [MLI-OTP-0060-1423](#), pp. 1424-1425, lines 30-51; [MLI-OTP-0060-1446](#), pp. 1447-1449, lines 26-80 and p. 1452, lines 131-196; [MLI-OTP-0060-1453](#), pp. 1456-1458, lines 101-149, lines 149-268, (MLI-OTP-0001-7510, MLI-OTP-0002-0037), pp. 1463-1466, lines 319-412, pp. 1473-1475, lines 659-807; [MLI-OTP-0060-1484](#), pp. 1492-1494, lines 264-320; [MLI-OTP-0060-1605](#), pp. 1622-1627, lines 573-740; [MLI-OTP-0060-1729](#), pp. 1733-1734, lines 125-158; [MLI-OTP-0062-1037](#), pp. [REDACTED]

[REDACTED] and [REDACTED]; Statement of [REDACTED]
[REDACTED]
[REDACTED]; Summary of statement of [REDACTED]. See also Transcript of video [MLI-OTP-0018-0379-R01](#), [MLI-OTP-0067-1892](#), translation, [MLI-OTP-0067-1896](#), p. 1899, lines 58-61; Bamada.net, media report, MLI-OTP-0059-0348.

¹⁹⁸³ Statement of [REDACTED]. According to [REDACTED], Mr Al Hassan was a shy man and with no problems (Statement of [REDACTED]). See also Statement of [REDACTED].

and Abou Dhar and “[TRANSLATION] its Secretariat”.¹⁹⁸⁴ A case of non-payment of weapons sold was reported to Mr Al Hassan on 12 June 2012 at the BMS office.¹⁹⁸⁵

728. Like the first emir of the Islamic Police and his successor, Mr Al Hassan acted as a mediator in cases concerning debt. If the agreement reached by the parties concerned was not adhered to within the time set, Mr Al Hassan could refer such cases to the Islamic Court.¹⁹⁸⁶

¹⁹⁸⁴ Statement of P-0398, [MLI-OTP-0060-1453](#), pp. 1456-1458, lines 149-268; [MLI-OTP-0060-1453](#), pp. 1459-1461, lines 177-268; [MLI-OTP-0060-1631](#), pp. 1643-1644, lines 383-440; Video, [MLI-OTP-0041-0605](#) showing Mr Al Hassan at the BMS, seated at a table with two persons opposite, transcript [MLI-OTP-0069-1674](#), p. 1675.

¹⁹⁸⁵ Video, [MLI-OTP-0041-0605](#), transcript, [MLI-OTP-0069-1674](#), p. 1675. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; [REDACTED], 6 March 2015, [MLI-OTP-0024-2814](#), p. 2834 ([REDACTED]).

¹⁹⁸⁶ Document [MLI-OTP-0001-7550](#) contains an agreement for repayment of debt, dated 5 October 2012, and a handwritten annotation “When the deadline arrived, nothing was [illegible] and they were referred to you” with the date 20 November 2012 (Islamic Police report dated 20 November 2012, [MLI-OTP-0001-7550](#), translation, [MLI-OTP-0052-0101](#), p. 0102. The Handwriting Analysis Report disregarded the first signature on the sheet which bears the date 5 October 2012 on account of insufficient visual quality, but in relation to the second signature concluded that: “[TRANSLATION] Considering the graphic elements which have been identified and are consistent with the reference signatures, it may be established that the signatures of (sic) question listed below could have been made by the person in question.” Accordingly, the Chamber finds that at least the second part of the report was written and signed by Mr Al Hassan. Document [MLI-OTP-0001-7571](#) (Islamic Police report dated 5 November 2012, [MLI-OTP-0001-7571](#), translation, [MLI-OTP-0052-0119](#), p. 0120) also contains an agreement to repay debts. The Chamber notes in particular the comment “Our attempt at reconciliation between the two of them has failed”. Video [MLI-OTP-0041-0605](#) (dated 11 June 2012, according to the Prosecutor), as explained above, contains a scene which was shot in the BMS office. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] The Chamber has no information about the outcome of the case. Document [MLI-OTP-0001-7546](#) also contains a police report on a debt case (Islamic Police report dated 19 June 2012, [MLI-OTP-0001-7546](#), translation, [MLI-OTP-0054-0014](#), p. 0015). [REDACTED]
[REDACTED] that they

729. Furthermore, Mr Al Hassan acted on behalf of the first emir of the Islamic Police and his successor in that he was authorized to call on the Islamic Police, for example, to issue permits to dig wells and an authorization to [REDACTED]. That role involved filling out permits to dig wells and signing them with the Security Battalion.¹⁹⁸⁷ [REDACTED] states that the permits were initially issued by the Islamic Police, but that they later came within the remit of the Islamic Court.¹⁹⁸⁸ The documents before the Chamber fall within a 12 June to 9 November 2012 time frame. Aside one document which appears to have been signed by someone else,¹⁹⁸⁹ all of the documents from the Prosecutor containing permits to dig a well were filled out and signed by Mr Al Hassan (as regards the documents issued by the Islamic Police).

signed as witnesses ([MLI-OTP-0060-1423](#), pp. 1436-1441, paras. 408-597). The page on the right contains an agreement dated 19 June 2012 between the parties for repayment of the debt, and Mr Al Hassan and Adama signed as witnesses. It also contains the comment “The above term expired without the man paying anything. I urge the members of the Court to be harsher with this man because he has taken money from a lot of people” [REDACTED]

[REDACTED] also describes one instance where Khaled Abou Souleymane decided a matter concerning debts in the presence of Mr Al Hassan (Summary of statement of [REDACTED]). For the sending of the reports of the Islamic Court, see, below, paras. 754-758.

¹⁹⁸⁷ See, above, paras. 715, 718-719.

¹⁹⁸⁸ [REDACTED]

¹⁹⁸⁹ Permit to dig a well dated 19 October 2012, [MLI-OTP-0001-7207](#), translation, [MLI-OTP-0069-1684](#), p. 1685. The signature on the “[TRANSLATION] Islamic Police” stamp does appear to differ greatly from Mr Al Hassan’s signature. Moreover, contrary to what he says about other documents, [REDACTED]

[REDACTED] states that both the head of the Police (who, according to him, was Khaled Abou Souleymane,) and the superintendent (who, according to him, was Mr Al Hassan) wrote documents in Arabic at the Islamic Police (Summary of statement of [REDACTED]). [REDACTED] states that “[TRANSLATION] [...] Lhassane could not give out official papers, the Mauritanian did” (Statement of [REDACTED]). The Chamber also gives consideration to the fact that P-0007 states that [REDACTED] journalists [REDACTED] took documents from the sites of the events in Timbuktu (Statement of P-0007, [MLI-OTP-0001-7182-R01](#), p. 7185, para. 25).

Lastly, Mr Al Hassan, with the Security Battalion, signed [REDACTED]
 [REDACTED].¹⁹⁹⁰ [REDACTED] states that the [REDACTED]
 [REDACTED] and that [REDACTED].¹⁹⁹¹

(c) Patrols and provision of security in the city

i. Organization of the work of the Islamic Police: patrols and guarding

730. Aside administrative tasks,¹⁹⁹² Mr Al Hassan was involved in organizing the patrols and guarding, by assigning members of the Islamic Police to daily patrol and guard shifts.¹⁹⁹³

731. Mr Al Hassan would, from time to time, also take part in the Islamic Police's patrols.¹⁹⁹⁴

ii. Provision of security in the city of Timbuktu

732. On the basis of the fact Mr Al Hassan took part in and organized patrols, the Chamber finds that, as a member of the Islamic Police, Mr Al Hassan also had a part

¹⁹⁹⁰ [REDACTED], [MLI-OTP-0002-0016](#), p. 0016, translation, [MLI-OTP-0034-0202](#), p. 0203; [REDACTED]

¹⁹⁹¹ [REDACTED]

¹⁹⁹² Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]. See also 726-729, 733-736, 754-758, 785-786.

¹⁹⁹³ [REDACTED]; Statement of [REDACTED] (According to [REDACTED], if an event occurred, Mr Al Hassan went to the site, made a report and issued orders); Statement of [REDACTED]: "[w]e didn't have a difference between the head of the police and a member of the police [...] [e]xcept that at the level of him being responsible for distributing the work"; Statement of [REDACTED]; Summary of statement of [REDACTED]. For the role of Abou Dhar in the conduct of patrols, see Statement of [REDACTED]

¹⁹⁹⁴ [REDACTED]

in the provision of security in the city of Timbuktu,¹⁹⁹⁵ including prior to the distribution of aid by the Crisis Committee¹⁹⁹⁶ and during a demonstration staged by women of Timbuktu on 6 October 2012.¹⁹⁹⁷

(d) Writing of the Islamic Police reports

733. Mr Al Hassan made a written record of the accounts given by persons who reported incidents and by suspects in relation to cases which arose in Timbuktu.¹⁹⁹⁸ The number of reports the Islamic Police wrote could vary from none to five or ten.¹⁹⁹⁹

734. Mr Al Hassan also wrote some reports for the Islamic Police on incidents which took place elsewhere in the Timbuktu Region,²⁰⁰⁰ specifically in Rharous,²⁰⁰¹ Léré²⁰⁰² and Goundam.²⁰⁰³

¹⁹⁹⁵ For the role of the Islamic Police in maintaining security in Timbuktu, see Transcript of video [MLI-OTP-0018-0379-R01](#), [MLI-OTP-0034-1281](#) and [MLI-OTP-0067-1892](#), translation, [MLI-OTP-0067-1896](#), pp. 1898-1899, lines 26-30.

¹⁹⁹⁶ For the provision of security for the site's perimeters before the Crisis Committee distributed aid, see [REDACTED].

¹⁹⁹⁷ [MLI-OTP-0033-4305](#); [MLI-OTP-0033-4306](#); [MLI-OTP-0012-0975](#); Summary of statement of [REDACTED]

¹⁹⁹⁸ [REDACTED]
[REDACTED]
[REDACTED]; [REDACTED]
[REDACTED]; Statement of [REDACTED]
[REDACTED]; Summary of statement of [REDACTED].

¹⁹⁹⁹ See, above, para. 720.

²⁰⁰⁰ [REDACTED]

²⁰⁰¹ Islamic Police report, [MLI-OTP-0002-0037](#), translation, [MLI-OTP-0052-0039](#), p. 0040; [REDACTED]

²⁰⁰² Islamic Police report, [MLI-OTP-0001-7543](#), translation, [MLI-OTP-0052-0029](#), p. 0030; [REDACTED]

²⁰⁰³ Islamic Police report, [MLI-OTP-0002-0041](#); MLI-OTP-0069-2112; [REDACTED]
[REDACTED]; Islamic Police report dated 26 November 2012, [MLI-OTP-0001-7549](#), translation, [MLI-OTP-0034-0177](#), p. 0178; [REDACTED]
[REDACTED]

735. Mr Al Hassan affixed his own signature to the Islamic Police's reports.²⁰⁰⁴ In the absence of the emir of the Islamic Police, he could receive people and write and sign reports.²⁰⁰⁵ On that subject, he states: "[TRANSLATION] My signature suffices".²⁰⁰⁶

(e) Criminal cases

i. Summonses

736. Mr Al Hassan summonsed people to the headquarters of the Islamic Police.²⁰⁰⁷

ii. Arrests and detention

737. On numerous occasions Mr Al Hassan, together with other persons, arrested ██████ and detained ██████ for a considerable length of time, including at the BMS.²⁰⁰⁸ Mr Al Hassan had a part in the arrest and detention ██████.²⁰⁰⁹

738. The Prosecutor refers to one instance of Mr Al Hassan imprisoning a member of the Islamic Police.²⁰¹⁰ The Chamber notes that Mr Al Hassan and Abou Dhar had a part in the arrest of ██████, a member of the Islamic Police, who was accused of rape.²⁰¹¹

²⁰⁰⁴ See, above, footnote 1928 and paras. 712-719.

²⁰⁰⁵ ██████
██████

²⁰⁰⁶ ██████
██████

²⁰⁰⁷ ██████; Statement of ██████
██████

²⁰⁰⁸ See, above, paras. 296-298.

²⁰⁰⁹ See, above, para. 292.

²⁰¹⁰ Prosecutor's Final Written Submissions, para. 65 referring to Statement ██████
██████.

²⁰¹¹ Statement of P-0398, [MLI-OTP-0051-1184](#), pp. 1204-1205, lines 660-676; Statement of P-0398, [MLI-OTP-0051-0457](#), pp. 0476-0481, lines 645-801; Statement of ██████
██████; Judgment of 27 August 2012, [MLI-OTP-0001-7483](#), translation, [MLI-OTP-0034-0159](#).
██████ also spoke of that particular case, which concerned a rape. ██████ the rapist was a member of the Islamic Police called ██████
██████ (who was still taking part in patrols and owned a motorbike). The rape victim and her father

739. Dédéou Maiga was arrested for the first time by Mr Al Hassan and Adama for theft of property from his neighbour's house and one tonne of rice.²⁰¹² Mr Al Hassan had a part in the detention of other persons,²⁰¹³ including at least one other woman.²⁰¹⁴

iii. Investigations (in the sense that he asked questions and interrogated)

740. Mr Al Hassan "investigated" at the request of the emirs of the Islamic Police, made a written record of the facts reported and signed the documents which he compiled as an investigator.²⁰¹⁵

reported [REDACTED] to the Islamic Police. [REDACTED] (the Islamic Police) contacted the hospital, an ambulance brought the victim and the doctors confirmed the rape. The victim stated that she would be able to recognize the perpetrator. The emir of the Islamic Police then assemble all members of that body and asked the victim in question to point at the culprit. She pointed at [REDACTED] twice. [REDACTED] states that he and Abou Dhar then took [REDACTED] to Adama, who was in his office, and the suspect admitted to having perpetrated the rape. [REDACTED] was then taken to "[TRANSLATION] the central prison". He fled, was later found and sentenced by the Islamic Court to 100 lashes of the whip and banishment.

²⁰¹² [REDACTED].

²⁰¹³ [REDACTED]; Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0015, para. 53. The witness recognized Mr Al Hassan from photo MLI-OTP-0022-0482 (Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0042). See also Statement of [REDACTED]

²⁰¹⁴ Statement of P-0623, [MLI-OTP-0068-4352-R01](#), p. 4362, paras. 66-68.

²⁰¹⁵ [REDACTED]; Islamic Police report of 23 May 2012, [MLI-OTP-0001-7528](#), translation, [MLI-OTP-0069-2075](#), p. 2077; Islamic Police report dated 23 May 2012, [MLI-OTP-0001-7527](#), translation, [MLI-OTP-0052-0089](#), p. 0090 (For the authenticity of Islamic Police reports see, above paras. [REDACTED] 712-715, 718 and footnote 1928. According to [REDACTED], after being dismissed from the position of superintendent of the Islamic Police, Adama became "[TRANSLATION]

741. The Chamber bases its understanding of the term “to investigate” on the fact that, like the first emir of the Islamic Police and his successor, Mr Al Hassan interviewed and questioned those who reported incidents²⁰¹⁶ and interviewed and questioned suspects,²⁰¹⁷ including Adama, the first emir of the Islamic Police,²⁰¹⁸ in the presence of, amongst others, the emirs,²⁰¹⁹ or alone,²⁰²⁰ at the headquarters of the Islamic Police.

742. Mr Al Hassan also took down the statement of Talha Al Chinguetti, the emir of the Security Battalion.²⁰²¹

743. [REDACTED] was interrogated by Mr Al Hassan and others [REDACTED] [REDACTED].²⁰²²

iv. Ill-treatment of persons held by the Islamic Police

744. The Chamber recalls that, in its view, it is established to the standard required at this stage of the proceedings that the Islamic Police ill-treated those it held,

inspector with responsibility for investigations, also in the police” (Statement of [REDACTED]

²⁰¹⁶ [REDACTED];
²⁰¹⁷ [REDACTED]; Statement of [REDACTED];
 [REDACTED]; Summary of statement of [REDACTED];
 [REDACTED]; Summary of statement of [REDACTED];
 [REDACTED]

²⁰¹⁸ Statement of P-0398, [MLI-OTP-0060-1605](#), pp. 1622-1628, lines 573-752; Islamic Police report, [MLI-OTP-0001-7515](#), translation, [MLI-OTP-0052-0019](#), p. 0020 [REDACTED].

²⁰¹⁹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), paras. 55, 64, 66-60, 70, 76; Summary of statement of [REDACTED]

²⁰²⁰ Statement of [REDACTED]; Statement of P-0580, [MLI-OTP-0051-0018-R01](#), para. 55; Summary of statement of [REDACTED];
 Statement of [REDACTED]

²⁰²¹ [REDACTED]; Islamic Police report, [MLI-OTP-0002-0031](#), translation, [MLI-OTP-0052-0037](#).

²⁰²² Statement of P-0580, [MLI-OTP-0051-0018-R01](#), paras. 55, 64, 66-60, 70, 76.

including to obtain confessions.²⁰²³ According to ██████████, the authorization of a judge was a pre-requisite to subjecting a suspect to such treatment.²⁰²⁴ The practice was familiar to Mr Al Hassan.²⁰²⁵

745. Mr Al Hassan had a part in the physical and psychological ill-treatment of P-0580 during his lengthy detention, *viz.*, floggings on a number of occasions,²⁰²⁶ ██████████,²⁰²⁷ death threats and ██████████,²⁰²⁸

²⁰²³ See, above, paras. 266-267; Statement of P-0398, [MLI-OTP-0060-1511](#), p. 1525, lines 446-470; For the case ██████████, see the description of the facts found above at para. 270 and Islamic Police reports dated ██████████ (The Handwriting Analysis Report does not confirm that the signature on this document belongs to Mr Al Hassan but ██████████

██████████ states that he does not recall if anyone instructed him as to what was permissible in obtaining confessions from a suspect and that he never saw the Islamic Police use force to that end (Summary of statement of ██████████). Elsewhere, ██████████ states that if the Islamic Police reckoned that a person had been lying in their statement the person would, after an investigation had been undertaken, receive 10 lashes of the whip – the punishment carried out by the Islamic Police for petty breaches of sharia (Summary of statement of ██████████

²⁰²⁴ ██████████

²⁰²⁵ ██████████; For the case ██████████; see the description of the facts found above at para. 270 and Islamic Police reports dated ██████████ (The Handwriting Analysis Report does not confirm that the signature on this document belongs to Mr Al Hassan but ██████████, Handwriting Analysis Report, [MLI-OTP-0064-0175](#), p. 0302; ██████████

██████████ states that he does not recall if anyone instructed him as to what was permissible in obtaining confessions from a suspect and that he never saw the Islamic Police use force to that end (Summary of statement of ██████████). Elsewhere, ██████████ states that if the Islamic Police reckoned that a person had been lying in their statement, the person would, after an investigation had been undertaken, receive 10 lashes of the whip as *ta'zir* (Summary of statement of ██████████).

²⁰²⁶ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), paras. 56, 57, 63, 78, 91, 119; ██████████. See also Photographs of the scars on P-0580's body: [MLI-OTP-0051-0071](#), [MLI-OTP-0051-0072](#) and [MLI-OTP-0051-0082](#).

²⁰²⁷ ██████████; ██████████

²⁰²⁸ ██████████; ██████████, 6 March 2015, [MLI-OTP-0024-2814](#), p. 2835.

psychological abuse, due in particular to the uncertainty about the fate awaiting him [REDACTED] and denial of food and water.²⁰²⁹

746. Mr Al Hassan also took part in the investigation process in which [REDACTED] [REDACTED] was tortured; he did so at least by writing the Islamic Police report.²⁰³⁰

(f) Punishments

i. Punishments ordered and administered by the Islamic Police

747. As aforementioned, the Islamic Police could take decisions on the application of *ta'zir* and have *ta'zir* carried out on the premises of the Islamic Police.²⁰³¹

748. [REDACTED] cites the example of [REDACTED] who had gone to the Islamic Police, then located at the Governorate, [REDACTED]. Mr Al Hassan explained to them the religious precept which applied to their case. Mr Al Hassan translated, *inter alia*, the parties' statements for Khaled Abou Souleymane, the second emir of the Islamic Police, who was also present. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED].²⁰³²

749. Detention was another measure used by the Islamic Police. For example, [REDACTED] [REDACTED] for no apparent reason.²⁰³³ [REDACTED]

²⁰²⁹ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), paras. 53, 56, 65, 76, 106.

²⁰³⁰ For a description of the facts see, above, para. 270. See also Islamic Police reports dated [REDACTED]

²⁰³¹ See, above, paras. 94, 132.

²⁰³² Summary of statement of [REDACTED]

²⁰³³ [REDACTED]

presence of the emir of the Islamic Police, [REDACTED]
[REDACTED] but he did not take a decision on the application of a punishment.

752. According to [REDACTED], the first emir of the Islamic Police and his successor issued the instructions for carrying out punishment at the body's headquarters, but he does not recall having seen Mr Al Hassan do so.²⁰³⁸ [REDACTED], however, states that Mr Al Hassan carried out the punishment or delegated the task.²⁰³⁹

ii. Punishments ordered by the Islamic Court

753. The involvement of Mr Al Hassan in carrying out the punishments ordered by the Islamic Court is addressed in Section VII The crimes.²⁰⁴⁰

(g) Activities connected to the Islamic Court

i. Sending of the Islamic Police reports to the Islamic Court

754. [REDACTED]
[REDACTED].²⁰⁴¹ [REDACTED] names the recipients of Islamic

²⁰³⁸ Summary of statement of [REDACTED]

²⁰³⁹ Statement of [REDACTED]

²⁰⁴⁰ See, above, paras. 273-276, 279, 307-308.

²⁰⁴¹ [REDACTED]
[REDACTED]

[REDACTED]. In relation to certain documents, [REDACTED] the Islamic Police report or the case were sent to the Islamic Court ([MLI-OTP-0060-1605](#), p. 1628, lines 753-758 (in connection with [MLI-OTP-0001-7515](#)); [MLI-OTP-0060-1539](#), p. 1543, lines 114-118 (in connection with [MLI-OTP-0002-0031](#)); [MLI-OTP-0060-1580](#), pp. 1599-1604, lines 619-795 (in connection with [MLI-OTP-0001-7543](#)). Several documents which the Prosecutor given the title "[TRANSLATION] Islamic Police reports" contain a colour image of a pile of sheets bearing handwriting in Arabic script, with a sheet to the right in the foreground containing the "report" and a sheet to the left in the foreground bearing the handwritten annotation "To the Islamic court" in Arabic script (Left-hand page of the Islamic Police report dated 23 July 2012, [MLI-OTP-0001-7510](#), translation, [MLI-OTP-0052-0017](#), p. 0018; Left-hand page of the Islamic Police report, [MLI-OTP-0001-7515](#), translation, [MLI-OTP-0052-0019](#), p. 0020). In the view of the Chamber, these documents show that some Islamic Police reports were sent to the Islamic Court.

Police reports as Houka Houka, Abdallah Al Chinguetti, Al Mahdi, Mohamed Moussa, Daoud and Radwan.²⁰⁴²

755. [REDACTED] wrote a report on a complaint lodged by a certain [REDACTED] against Adama, the first emir of the Islamic Police, [REDACTED]. According to [REDACTED], the report was sent by “[TRANSLATION] the police” to the Islamic Court but he did not follow the case after it was transferred.²⁰⁴³

756. Document [MLI-OTP-0001-7546](#) also contains an Islamic Police report on a debt case.²⁰⁴⁴ The comment “The above term expired without the man paying anything. I urge the members of the Court to be harsher with this man because he has taken money from a lot of people”, written by Mr Al Hassan at the behest of the emir of the Islamic Police,²⁰⁴⁵ makes clear that the case was referred to the Islamic Court with a recommendation.

757. The issue arises as to whether Mr Al Hassan could decide on the transfer of a case to the Islamic Court, since his signature invariably appears on the Islamic Police reports considered by the Chamber. Such a decision would, in the first instance, depend on the punishment applicable to the case: *ta'zir* or *hadd*. The emir of the Islamic Police would decide on the punishment with reference to the document written by

²⁰⁴² Statement of P-0398, [MLI-OTP-0051-1032](#), pp. 1039-1040, lines 222-266.

²⁰⁴³ [REDACTED]; [REDACTED].

²⁰⁴⁴ Islamic Police report dated 19 June 2012, [MLI-OTP-0001-7546](#), translation, [MLI-OTP-0054-0014](#), p. 0015. [REDACTED]

²⁰⁴⁵ [REDACTED]

Abou Zeid setting out the instructions to be followed in the event of an offence.²⁰⁴⁶ As regards the Islamic Police report dated 16 September 2012 on a traffic accident, [REDACTED] states that the emir of the Islamic Police ordered [REDACTED] to transfer the case to the Islamic Court.²⁰⁴⁷ The Chamber sees, however, that elsewhere Mr Al Hassan employs a phrase which intimates that he could act independently. [REDACTED]

[REDACTED]
[REDACTED].²⁰⁴⁸ [REDACTED]
[REDACTED]

[REDACTED].²⁰⁴⁹ Although Mr Al Hassan and [REDACTED] state that the incidents reported by Timbuktu residents were resolved upon the return of the emir of the Islamic Police,²⁰⁵⁰ [REDACTED] and P-0125 gave accounts of two instances where it appears that Mr Al Hassan acted independently.²⁰⁵¹

758. As to the Islamic Police reports which were written and signed by Mr Al Hassan and which, he explained, were sent to the Islamic Court by virtue of the fact his signature on the reports *sufficed*,²⁰⁵² having regard to the foregoing, the Chamber determines that it is established to the standard required that Mr Al Hassan acted on behalf of the Islamic Police and had authorization to act independently as regards the sending, on some occasions at least, of the Islamic Police reports to the Islamic Court.

²⁰⁴⁶ Statement of P-0398, [MLI-OTP-0051-1184](#), pp. 1205-1211, lines 678-686, pp. 1209-1211, lines 835-894; Statement of [REDACTED] [MLI-OTP-0001-7193](#), translation, [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation, [MLI-OTP-0034-0039](#), p. 0040.

²⁰⁴⁷ Islamic Police report dated 16 July 2012, [MLI-OTP-0001-7522](#), translation, [MLI-OTP-0052-0083](#), p. 0084; [REDACTED]

²⁰⁴⁸ [REDACTED]

²⁰⁴⁹ [REDACTED]

²⁰⁵⁰ See footnote 1981.

²⁰⁵¹ See para. 750 and footnote 2013.

²⁰⁵² See, above, para. 843.

ii. Transportation of suspects and accused persons

759. Mr Al Hassan brought accused persons to the Islamic Court and back to prison.²⁰⁵³ The Chamber also underscores that Mr Al Hassan took part in the transportation to the Islamic Police of a man who was whipped in a public square on [REDACTED] 2012.²⁰⁵⁴

760. The Chamber concludes that one of Mr Al Hassan's tasks was to escort suspects and accused persons to prison, to the Islamic Court and to the site where the punishment was to be carried out in public.

iii. Provision of security while punishment ordered by the Islamic Court was being carried out

761. [REDACTED] states that an "[TRANSLATION] Enforcement Committee", headed by an "[TRANSLATION] emir", brought the sentenced person to the site where the punishment ordered by the Islamic Court was to be carried out and that one of the tasks of the Islamic Police was "[TRANSLATION] security of the site".²⁰⁵⁵

762. In the case of P-0565 and P-0557 and that of the [REDACTED] flogged on or about [REDACTED] 2012,²⁰⁵⁶ Mr Al Hassan was among the men who formed a "[TRANSLATION] security cordon" between those being flogged and the onlookers.

²⁰⁵³ Statement of [REDACTED]; Summary of statement of [REDACTED]; Statement of P-0398, [MLI-OTP-0051-1032](#), pp. 1041-1042, lines 296-297.

²⁰⁵⁴ [REDACTED] Statement of P-0398, [MLI-OTP-0051-0741](#), pp. 0760-0765, lines 651-814. [REDACTED] relates to the same incident, [REDACTED]. Since Mr Al Hassan has identified himself in [REDACTED] he is recognizable in [REDACTED].

²⁰⁵⁵ [REDACTED]

²⁰⁵⁶ See, above, paras. 273-276, 307-308.

(h) Power of decision and authority over the members of the Islamic Police

763. Throughout the time that he performed his duties, Mr Al Hassan served as a subordinate to the emirs of the Islamic Police and also to the emirs who headed other bodies such as the Security Battalion, and to Abou Zeid.²⁰⁵⁷ According to ██████████, Mr Al Hassan was respected by his superiors, who trusted and heeded him.²⁰⁵⁸

764. Taken together, Mr Al Hassan's power of decision and degree of autonomy over the organization of his daily work in the Islamic Police were confined to managing²⁰⁵⁹ administrative tasks²⁰⁶⁰ and matters related to the patrols.²⁰⁶¹ Mr Al Hassan also appears to have handled certain cases *independently*, for instance once he had questioned two persons, he ordered their detention following their arrest;²⁰⁶² moreover he had authorization to act independently in sending, on some occasions at least, the reports of the Islamic Police to the Islamic Court. The

²⁰⁵⁷ Statement of ██████████; Summary of statement of ██████████. Summary of statement of ██████████; Statement of P-0398, [MLI-OTP-0051-0513](#), p. 0529, lines 518-538; [MLI-OTP-0051-1184](#), pp. 1200-1201, lines 546-553, p. 1203, lines 621-625; Statement of P-0398, [MLI-OTP-0051-0741](#), pp. 0760-0765, lines 651-814; Statement of P-0398, [MLI-OTP-0051-0513](#), pp. 0529-0535, lines 529-751; Statement of P-0398, [MLI-OTP-0051-0741](#), pp. 0760-0765, lines 651-814. See, e.g., Statement of P-0398, [MLI-OTP-0051-0537](#), p. 0555, lines 606-613; Statement of P-0398, [MLI-OTP-0060-1729](#), pp. 1737-1738, lines 257-281; Statement P-0398, [MLI-OTP-0051-0912](#), pp. 0930-0931, lines 624-633; Summary of statement of ██████████.

²⁰⁵⁸ Statement of ██████████

²⁰⁵⁹ Statement ██████████

²⁰⁶⁰ Statement of ██████████; Statement of ██████████. See also 726-729, 733-736, 754-758, 785-786

²⁰⁶¹ Statement of P-0398, [MLI-OTP-0051-1257](#), p. 1287, lines 1008-1034; [MLI-OTP-0051-1032](#), pp. 1035-1036, lines 88-125; [MLI-OTP-0051-0457](#), p. 0466, lines 278-292; Statement of ██████████, [MLI-OTP-0062-3187-R01](#), p. 3207, lines 720-725; Statement of ██████████; Summary of statement of ██████████

²⁰⁶² See para. 750 and footnote 2013. See also Statement of ██████████

instructions he could issue to members of the Islamic Police were confined to certain spheres, for instance conduct vis-à-vis the population of Timbuktu during patrols, particularly when they caught people breaking the rules, or in relation to the summoning of people to the premises of the Islamic Police.²⁰⁶³ Generally speaking, the emirs of the Islamic Police themselves issued instructions directly to members of the Islamic Police, including in relation to how *ta'zir* was to be carried out on the premises of the Islamic Police.²⁰⁶⁴ The members of the Islamic Police could nonetheless approach Mr Al Hassan about certain matters but, when it came to taking decisions of any import, he deferred to his superiors – the first emir of the Islamic Police and his successor – and to Abou Zeid and Yahia Al Hammam.²⁰⁶⁵ The Chamber has not seen any example of Mr Al Hassan himself ordering disciplinary action to be taken against a member of the Islamic Police.²⁰⁶⁶ The manner in which the crimes found above to

²⁰⁶³ ██████ regarded Mr Al Hassan as his hierarchical superior (Summary of statement of ██████; Summary of statement of ██████; Summary of statement of ██████). The Chamber concludes from ██████'s statements that "Khalid" and Khaled Abou Souleymane are the same person, that is, the second emir of the Islamic Police. Summary of statement of ██████; see, above, para. 736. For the role of Abou Dhar in the conduct of the patrols, see Statement of ██████; Summary of statement of ██████; Statement of ██████. See also Maurineews, media report, "In a long interview a commander from the Sahara Emirate talks about the Islamists' rule over northern Mali", 24 December 2013, [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 0029; Statement of ██████

²⁰⁶⁴ See, above, paras. 106, 752.

²⁰⁶⁵ Statement of ██████; Statement of ██████; Summary of statement of ██████

²⁰⁶⁶ ██████ describes the disciplinary action imposed on member of the Islamic Police named ██████ ██████ to the Islamic Police. The Chamber cannot, however, make a determination to the standard of proof required that it was Mr Al Hassan who took the decision on the disciplinary action to be imposed ██████ (Summary of statement of ██████). See also Statement of ██████, whose account differs.

have been established were carried out shows that, on the whole, the bodies' members obeyed the orders from their superiors.

765. When punishment ordered by the Islamic Court was to be administered in public, Mr Al Hassan's role was to execute it: Mr Al Hassan personally inflicted a flogging in one instance;²⁰⁶⁷ in two other instances he was present with others to form a security cordon between the onlookers and those being flogged;²⁰⁶⁸ he escorted the suspects and accused persons to the site where the punishment was to be carried out and to prison.²⁰⁶⁹ Nor does the evidence brought by the Prosecutor make clear that Mr Al Hassan acted as "emir" while flogging was carried out in public.²⁰⁷⁰

766. Mr Al Hassan kept his position in the Islamic Police until Ansar Dine/AQIM left Timbuktu on 28 January 2013. His role changed over the course of the months but he was never appointed emir of the Islamic Police.

(i) Contact with his superiors

i. Means of communication

767. According to ██████, the members of the Islamic Police informed Mr Al Hassan and Khaled Abou Souleymane of their activities by telephone or walkie-talkie. Also in ██████'s opinion, Mr Al Hassan and Khaled Abou Souleymane gave mobile telephones to members of the Islamic Police going on assignment.²⁰⁷¹

768. As to who had custody of the Islamic Police's telephone, ██████ explains that the telephone was placed in the office which the emirs and Mr Al Hassan shared at

²⁰⁶⁷ See, above, para. 279.

²⁰⁶⁸ See, above, paras. 273-276, 307-307.

²⁰⁶⁹ See, above, para. 759.

²⁰⁷⁰ See, above, para. 121.

²⁰⁷¹ Summary of statement of ██████

the premises of the Islamic Police. When the telephone rang, he said, “[TRANSLATION] anybody [...] in the police could pick up”.²⁰⁷²

ii. Analysis of telephone data

769. The Prosecutor alleges that Mr Al Hassan was in constant communication with “[TRANSLATION] the senior leadership” of Ansar Dine/AQIM during the events which took place in Timbuktu between 1 April 2012 and 28 January 2013.²⁰⁷³

770. The Chamber notes that in the DCC the Prosecutor cites in support a report on the analysis of telephone data,²⁰⁷⁴ to which Excel spreadsheets²⁰⁷⁵ and files containing charts showing the relationships between various telephone numbers are appended,²⁰⁷⁶ and an excerpt of said charts in Annex F to the DCC.²⁰⁷⁷ The Chamber further points out that the Prosecutor has disclosed many documents containing raw telephone data.²⁰⁷⁸

771. Regarding telephone number “79262392”, which she attributes to Mr Al Hassan, the Prosecutor refers to document [MLI-OTP-0001-7323](#), which includes a colour photograph of a notebook containing handwritten notes and numbers in Arabic script, including “79262392”, and the name “[TRANSLATION] Al-Hassan”,²⁰⁷⁹

²⁰⁷² Summary of statement of [REDACTED]

²⁰⁷³ DCC, paras. 27, 356.

²⁰⁷⁴ Report on analysis of telephone data, 29 June 2018, [MLI-OTP-0061-1643](#). See DCC, footnotes 75, 156, 863-864.

²⁰⁷⁵ [MLI-OTP-0061-1933](#). See DCC, footnotes 1363, 1483, 1800.

²⁰⁷⁶ [MLI-OTP-0061-1932](#). See DCC, footnote 1800.

²⁰⁷⁷ Annex F to the DCC, ICC-01/12-01/18-335-Conf-AnxF. See DCC, See DCC, para. 187, and footnotes 75, 415.

²⁰⁷⁸ See, e.g., corrected version of Annex A to “*Dix-neuvième communication du Bureau du Procureur concernant la divulgation d’éléments de preuve à charge*”, 6 November 2018, ICC-01/12-01/18-170-Conf-AnxA-Corr.

²⁰⁷⁹ [MLI-OTP-0001-7323](#), translation, [MLI-OTP-0034-0053](#).

and she points out that that same number was displayed on a sign indicating the Islamic Police premises.²⁰⁸⁰

772. Mr Al Hassan states that he used that telephone number [REDACTED] time".²⁰⁸¹ Accordingly, the Chamber considers that there is sufficient evidence to establish substantial grounds to believe that Mr Al Hassan used the number "79262392" "most of the time".

773. Regarding the other members of Ansar Dine/AQIM and the [REDACTED], the Chamber notes that the Prosecutor makes specific reference in the DCC to Annex F. The Chamber sees that the chart in that annex does not state the names of the Ansar Dine/AQIM members and the Prosecutor has not accounted for how she attributed the telephone numbers in the chart to the various members of Ansar Dine/AQIM. The Chamber underscores that the Prosecutor undertook that exercise only during the confirmation hearing and in her written submissions.²⁰⁸²

774. That notwithstanding, having regard to the duties performed by Mr Al Hassan in the Islamic Police the Chamber determines that there are substantial grounds to believe that Mr Al Hassan was in contact with members of Ansar Dine/AQIM, including some of his superiors, such as Adama and Khaled Abou Souleymane, in connection with his activities in the Islamic Police. The Chamber also underscores that Mr Al Hassan went to the Islamic Court to escort suspects. He took part in at least one meeting with a delegation of the Crisis Committee, which Abou Zeid attended, and in

²⁰⁸⁰ Photograph, [MLI-OTP-0012-1914-R01](#).

²⁰⁸¹ [REDACTED];
[REDACTED]
[REDACTED]
[REDACTED]

²⁰⁸² Prosecutor's Written Submissions, paras. 116-126.

the making of propaganda videos with Sanda Ould Bouamama and Abdallah Al Chinguetti.

(j) Other activities

i. Meetings

775. Mr Al Hassan attended the following meetings at least: a meeting on the withdrawal of the MNLA from Timbuktu with Sanda Ould Bouamama,²⁰⁸³ in about May to June 2012;²⁰⁸⁴ a meeting on the premises of the Islamic Police, that is, at the Governorate, with a delegation from the Crisis Committee, in the presence of Abou Zeid, on the subject of the opening of the “[TRANSLATION] main City Hall” and the solemnization of marriages, and the acts of violence which the “[TRANSLATION] Islamists” had inflicted on the civilian population, in August 2012;²⁰⁸⁵ a meeting at “[TRANSLATION] Boctou Hotel” between Songhays and the Crisis Committee, where his task was to report back on the meeting;²⁰⁸⁶ and a meeting with the Crisis Committee for the purpose of spurring the population of Timbuktu into demonstrating against the intervention by “[TRANSLATION] France” in Mali, in January 2013, before the groups Ansar Dine/AQIM withdrew from the city of Timbuktu; he interpreted for Adama at that meeting.²⁰⁸⁷

²⁰⁸³ Statement of P-0398, [MLI-OTP-0051-0557](#), pp. 0562-0565, lines 155-273.

²⁰⁸⁴ The Chamber dates that meeting to about May or June 2012 on the basis of the fact that the MNLA withdrew from Timbuktu Airport on or about 28 June 2012 (See, above, para. 70).

²⁰⁸⁵ [REDACTED] Minutes of the Crisis Committee, 12 August 2012 session, [MLI-OTP-0030-1044-R01](#), pp. 1068. According to [REDACTED], that meeting took place in about the final three months of the takeover of the city (Statement of P-0398, [MLI-OTP-0051-0571](#), p. 0577, lines 191-192).

²⁰⁸⁶ Statement of P-0398, [MLI-OTP-0051-0557](#), pp. 0562-0565, lines 155-273.

²⁰⁸⁷ Statement of P-0398, [MLI-OTP-0051-0598](#), pp. 0614-0615, lines 522-586. According to [REDACTED], when Malian and French forces deployed in Timbuktu, Adama “[TRANSLATION] steered”, meaning that he was in charge (Statement of [REDACTED]). He also speaks of a meeting in January 2013 [REDACTED]

[REDACTED] (Statement of [REDACTED]).

ii. Assignments outside of Timbuktu

776. [REDACTED] went on assignment as an interpreter, with the emir of the Islamic Police, Adama, and Abou Dhar to Goundam concerning a case in which the MNLA was accused of stealing property from the local population. [REDACTED] [REDACTED] went to Koriamine, 15 kilometres from the city, because of a road accident, with a group of members of the Islamic Police. [REDACTED] went on assignment to Kabara [REDACTED].²⁰⁸⁸

777. With authorization from the emir of the Islamic Police, Mr Al Hassan also went on assignment with the group from the “[TRANSLATION] army” tasked with the arrest of [REDACTED] [REDACTED] – an Ansar Dine member with responsibility for one of the group’s weapons depots – on the ground that he had sold weapons from the depot; Mr Al Hassan went out of fear that the group might beat [REDACTED].²⁰⁸⁹

778. Mr Al Hassan [REDACTED] [REDACTED], and on that occasion he received instructions about the role of the Islamic Police. That assignment took place after [REDACTED].²⁰⁹⁰

iii. Media interviews

779. On several occasions, [REDACTED] Mr Al Hassan [REDACTED] about the general situation in Timbuktu, the punishments imposed for offences, the arrests

²⁰⁸⁸ [REDACTED]

²⁰⁸⁹ [REDACTED]

²⁰⁹⁰ Statement of [REDACTED]

made and the detention of women.²⁰⁹¹ During the [REDACTED], Mr Al Hassan confirmed his identity to [REDACTED] and the fact that he was the chief of the Islamic Police.²⁰⁹²

780. In a video interview, where he can be seen seated next to Abou Dhar at a table, Mr Al Hassan [REDACTED] answered questions from Abdallah Al Chinguetti, one of the leaders of Ansar Dine/AQIM, about the role of the Islamic Police in Timbuktu, the punishments imposed on certain offenders and the drop in offences as a result of the punishments carried out.²⁰⁹³

781. Mr Al Hassan appeared in another video, [REDACTED] at the request of Sanda Ould Bouamama, the emir of the Media Commission, he recited a pre-prepared text, decrying the hostile actions of the Malian Government towards the peoples of the Azawad region and putting forward a road map so that the peoples could live in freedom “under the umbrella of the Islamic Sharia”.²⁰⁹⁴

²⁰⁹¹ [REDACTED]

²⁰⁹² [REDACTED]

²⁰⁹³ Video, [MLI-OTP-0018-0379-R01](#), transcript, [MLI-OTP-0034-1281](#) and [MLI-OTP-0067-1892](#), translation, [MLI-OTP-0067-1896](#); [REDACTED]

[REDACTED] recognized the voice of the person asking Mr Al Hassan questions in the video as belonging to Abdallah Al Chinguetti, who cannot be seen in the footage (Summary of statement of [REDACTED] [MLI-OTP-0070-0929](#), p. 0934). Regarding the date when the video was filmed, the Chamber notes that [REDACTED] that interview took place when Adama was emir of the Islamic Police, whereas [REDACTED] the interview took place when Khaled Abou Souleymane was emir of the Islamic Police [REDACTED] [REDACTED]). As stated above, Adama held the position of emir of the Islamic Police until about June/July/August 2012 (see para. 104) and the Islamic Police moved premises in about August/September 2012 (see para. 92). The metadata of the video ([MLI-OTP-0018-0379-R01](#)) give a date of 11 November 2012.

²⁰⁹⁴ Video [MLI-OTP-0018-0091-R01](#), transcript, [MLI-OTP-0052-0053](#), translation, [MLI-OTP-0052-0055](#). [REDACTED]. The metadata of the video give a date of 11 December 2012.

782. [REDACTED] he could have refused to take part in the videos.²⁰⁹⁵ [REDACTED]
[REDACTED] the fact that Adama, the first emir of the Islamic Police, did not want to be in the media spotlight.²⁰⁹⁶

783. The Chamber takes the view that the two videos were intended to promote the goals of the armed groups Ansar Dine and AQIM among the population of Timbuktu. For instance, in the first video, Mr Al Hassan extols the success of Ansar Dine and AQIM in running the city.²⁰⁹⁷ Mr Al Hassan also downplays the number of persons flogged,²⁰⁹⁸ whereas in [REDACTED] that there were numerous cases of flogging.²⁰⁹⁹

iv. Requests for money in order to get married and participation in negotiating Abou Dhar's marriage

784. The Chamber refers to the facts found regarding the assistance provided by Mr Al Hassan in securing funds so that members of the Islamic Police could get married and his participation in negotiating Abou Dhar's marriage.²¹⁰⁰

v. Transfer of money to the *Hisbah*

785. According to [REDACTED], certain members of the Islamic Police, namely Mr Al Hassan, Abou Dhar and a person by the name of [REDACTED], would bring

²⁰⁹⁵ [REDACTED]
[REDACTED]

²⁰⁹⁶ [REDACTED]
²⁰⁹⁷ Transcript of video [MLI-OTP-0018-0379-R01](#), [MLI-OTP-0034-1281](#) and [MLI-OTP-0067-1892](#), translation, [MLI-OTP-0067-1896](#), pp. 1898-1899, lines 31-40.

²⁰⁹⁸ Mr Al Hassan states that two or three persons were flogged for having had sexual relations outside marriage (Transcript of video [MLI-OTP-0018-0379-R01](#), [MLI-OTP-0034-1281](#) and [MLI-OTP-0067-1892](#), translation, [MLI-OTP-0067-1896](#), p. 1899, paras. 49-53).

²⁰⁹⁹ [REDACTED]
[REDACTED]

²¹⁰⁰ See, below, paras. 990-991.

to the *Hisbah* money which they had received at the Islamic Police, for the purpose of funding the two bodies.²¹⁰¹ ██████████ does not know the source of that money.²¹⁰²

vi. **Registration of new members with the Islamic Police**

786. ██████████ states that he saw candidates' applications to join Ansar Dine/AQIM on the desk which Mr Al Hassan used at the Islamic Police. According to ██████████, Mr Al Hassan registered the new members of the Islamic Police in a log and in a computer.²¹⁰³ ██████████ states that upon completing his training, he was assigned to the Islamic Police and it was ██████████.²¹⁰⁴

(B) Responsibility of Mr Al Hassan as a direct perpetrator within the meaning of article 25(3)(a) of the Statute

1. Applicable law

787. According to article 25(3)(a) of the Statute, "a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person [c]ommits such a crime [...] as an individual". The Chamber recalls that, for a person to be held criminally responsible as a direct perpetrator within the meaning of article 25(3)(a) of the Statute, he or she must physically carry out the material elements of the offence in person and act with the requisite mental elements, *viz.*, intent and/or knowledge as defined at article 30 of the Statute.²¹⁰⁵

²¹⁰¹ Statement of ██████████

²¹⁰² Statement of ██████████

²¹⁰³ Summary of statement of ██████████

²¹⁰⁴ Summary of statement of ██████████

²¹⁰⁵ *Lubanga* Decision, para. 332; *Ntaganda* Decision, para. 136; *Katanga and Ngudjolo* Decision, paras. 488, 527; see also, *Bemba* Decision, para. 353.

2. Counts 1 to 5: torture, other inhumane acts, cruel treatment and outrages upon personal dignity

(a) Case of the █████ men flogged on or about █████ 2012

788. On the facts found at paragraph 279 of this decision, the Chamber determines that there are substantial grounds to believe that, for inflicting dozens of lashes of the whip on the █████ men who can be seen in document █████ Mr Al Hassan is criminally responsible as a direct perpetrator within the meaning of article 25(3)(a) of the Statute for the commission of the war crimes of torture under article 8(2)(c)(i), cruel treatment under article 8(2)(c)(i) of the Statute and outrages upon personal dignity under article 8(2)(c)(ii), as well as for the commission of the crimes against humanity of torture under article 7(1)(f) and other inhumane acts under article 7(1)(k) of the Statute.

(b) Case █████

789. Having considered the facts found at paragraph 270 of this decision, the Chamber is not of the view that, as the Prosecutor claims, █████ █████". The Chamber sees that █████

█████²¹⁰⁶.

790. Accordingly, the Chamber determines that it is not established to the standard required that Mr Al Hassan himself administered the flogging to which █████ █████ subjected. The Chamber does not, therefore, find that Mr Al Hassan bears individual criminal responsibility as a direct perpetrator under article 25(3)(a) of the Statute. It will, nonetheless, consider Mr Al Hassan's individual criminal

²¹⁰⁶ See DCC, para. 554, █████

responsibility for that criminal act in terms of the other forms of responsibility defined at provisions (c) and (d) of article 25(3) of the Statute.

3. Count 13: persecution

791. It is the Prosecutor's view that Mr Al Hassan must be found to bear individual criminal responsibility as a direct perpetrator within the meaning of article 25(3)(a) of the Statute for the commission of the crime against humanity of persecution on religious and gender grounds within the meaning of article 7(1)(h) of the Statute, by dint of the following acts: participation in Islamic Police patrols, which were aimed at, *inter alia*, applying the rules laid down by Ansar Dine/AQIM; participation in the arrest and incarceration of ██████ and ██████ and in the interrogation of and investigation concerning ██████; and the writing and signing of Islamic Police reports on a range of offences against Ansar Dine/AQIM's thinking on the religion, such as the use of amulets, magic and cigarettes.²¹⁰⁷

792. The Chamber sees fit to look at the criminal responsibility of Mr Al Hassan in terms of his contribution to the acts of persecution committed by the members of Ansar Dine/AQIM in Timbuktu and the Timbuktu Region from April 2012 to January 2013, and not in terms of the commission of those acts as a direct perpetrator. This is because, in the Chamber's opinion, it is the entirety of the underlying acts of persecution perpetrated by the members of Ansar Dine/AQIM that establishes the commission of the crime against humanity of persecution under article 7(1)(h) of the Statute.²¹⁰⁸

793. Accordingly, the Chamber does not consider that Mr Al Hassan bears individual criminal responsibility as a direct perpetrator within the meaning of article 25(3)(a) for the commission of the crime against humanity of persecution under article

²¹⁰⁷ DCC, paras. 210, 976.

²¹⁰⁸ See, above, paras. 672, 685, 707.

7(1)(h) of the Statute. It will however consider Mr Al Hassan's individual criminal responsibility in terms of the other forms of criminal responsibility defined at provisions (b), (c) and (d) of article 25(3) of the Statute.

(C) Responsibility of Mr Al Hassan as a direct and/or an indirect co-perpetrator within the meaning of article 25(3)(a) of the Statute

794. The Prosecutor submits that Mr Al Hassan has incurred responsibility on the basis of article 25(3)(a) of the Statute as a direct²¹⁰⁹ and an indirect²¹¹⁰ co-perpetrator for committing the crimes which lie before the Chamber for consideration. It is the Prosecutor's position that there are substantial grounds to believe that there was a common plan whose implementation occasioned the commission of the crimes and that Mr Al Hassan made an essential contribution to the common plan.

1. Applicable law

795. According to article 25(3)(a) of the Statute, "a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person [c]ommits such a crime [...] jointly [...] with another person". Co-perpetration – the commission of a crime "jointly" with another person – denotes a situation where at least two persons act together to commit the crime such that the sum of their coordinated individual contributions results in the realization of the material elements of the crime.²¹¹¹

(a) Concept of "control over the crime"

796. The Chamber points out that the Court has eschewed the subjective approach adopted by the ad hoc international criminal tribunals in the form of the concept of

²¹⁰⁹ DCC, paras. 211-358.

²¹¹⁰ DCC, paras. 359-398.

²¹¹¹ *Al Mahdi* Decision, para. 24.

joint criminal enterprise, which places an emphasis on the mental element, whilst dispensing with the execution of the material elements of the crimes as the criterion which differentiates between perpetrators of and accessories to a crime.²¹¹² Specifically, the view has been taken that that approach cannot be reconciled with the law which the Court must apply since the mental element defined in article 30 of the Statute applies equally to perpetrators within the meaning of article 25(3)(a) and to accessories, including those falling within article 25(3)(d), insofar as the text of the article leaves the volitional element unspecified.²¹¹³

797. Instead, the Court has settled upon the approach which takes exercise of *control over the crime* as a decisive criterion for differentiating the responsibility of a principal from that of an accessory where an offence is committed by a plurality of persons.²¹¹⁴ The Court has, on a number of occasions, explained that this criterion is rooted in the principle of the division of essential tasks for the purpose of committing a crime between two or more persons acting in a concerted manner. Hence, although none of the participants exercises overall control over the offence, that is to say individually, because they all depend on one another for its commission, they all share control because *each of them* could frustrate the commission of the crime by not carrying out his or her task.²¹¹⁵ In those circumstances, a person making a contribution “can be held

²¹¹² *Lubanga* Decision, paras. 329-335; *Katanga and Ngudjolo* Decision, paras. 480-486; *Katanga* Trial Judgment, paras. 1390-1396.

²¹¹³ *Lubanga* Decision, paras. 329-335; *Katanga and Ngudjolo* Decision, paras. 480-486; *Katanga* Trial Judgment, paras. 1390-1396.

²¹¹⁴ For an analysis of this defining criterion, see *Lubanga* Appeal Judgment, paras. 469-472; *Katanga* Trial Judgment, paras. 1382-1396; *Lubanga* Decision, paras. 327-338; *Katanga and Ngudjolo* Decision, paras. 480-486; *Bemba* Decision, paras. 347-348.

²¹¹⁵ *Lubanga* Decision, para. 342; see also *Lubanga* Appeal Judgment, para. 469; *Lubanga* Trial Judgment, para. 994; *Katanga and Ngudjolo* Decision, paras. 520-521; Trial Chamber VII, *The Prosecutor v. Bemba et al.*, *Bemba et al.* Trial Judgment, dated 19 October 2017, French version registered on 19 December 2017, ICC-01/05-01/13-1989-Red, para. 62.

vicariously responsible for the contributions of all the others and, as a result, can be considered as a principal to the whole crime.”²¹¹⁶

(b) Direct co-perpetration

798. The Chamber recalls the settled view of this Court that to hold a person criminally responsible as a co-perpetrator on the basis of the concept of “control over the crime”, the Chamber must be satisfied that (i) there was a common plan between at least two persons and (ii) that the contribution of the co-perpetrators was essential.

i. The suspect must be part of a common plan or an agreement with one or more persons

799. As to the first objective element, the Chamber must be satisfied that the suspect and at least one other person worked together (“jointly”) to commit the offence on the basis of an agreement or a common plan.²¹¹⁷ The agreement or the common plan connects the co-perpetrators and justifies reciprocal imputation of their respective acts.²¹¹⁸ Therefore, participation in the commission of a crime without coordination with the co-perpetrators falls outside the scope of co-perpetration.²¹¹⁹

²¹¹⁶ *Lubanga* Appeal Judgment, para. 445; *Bemba et al.* Trial Judgment, para. 62; *Lubanga* Decision, para. 326.

²¹¹⁷ Appeals Chamber, *The Prosecutor v. Bemba et al.*, “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 Statut’, 8 March 2018, ICC-01/05-01/13-2275-Conf (“*Bemba et al.* Appeal Judgment”), para. 818; *Lubanga* Appeal Judgment, paras. 445, 446; *Ntaganda* Trial Judgment, para. 775; *Bemba et al.* Trial Judgment, para. 65; *Lubanga* Trial Judgment, paras. 980-981; *Bemba* Decision, para. 350; *Ruto and Sang* Decision, para. 301; *Blé Goudé* Decision, para. 134; *Al Mahdi* Decision, para. 24.

²¹¹⁸ *Bemba et al.* Appeal Judgment, para. 818; *Lubanga* Appeal Judgment, para. 445; *Ntaganda* Trial Judgment, para. 775; *Bemba et al.* Trial Judgment, para. 65; *Lubanga* Trial Judgment, para. 981; *Al Mahdi* Decision, para. 24.

²¹¹⁹ *Bemba et al.* Trial Judgment, para. 65; *Lubanga* Decision, para. 343; *Katanga and Ngudjolo* Decision, para. 522.

800. The agreement or the common plan may be express or implied, previously arranged or may materialize extemporaneously.²¹²⁰ Its existence may be inferred from subsequent concerted action of the co-perpetrators²¹²¹ and proven by direct evidence or inferred from circumstantial evidence.²¹²²

801. The agreement or the common plan need not be specifically directed at the commission of a crime and may include non-criminal goals²¹²³ but it must include a “critical element of criminality”.²¹²⁴ In inquiring into the existence and scope of the agreement or the common plan, regard may be had to the manner in which the agreement or the common plan is mirrored in the co-perpetrators’ *mens rea* (whether they know that implementation of the common plan will result in the commission of the offences under consideration).²¹²⁵ The standard of foreseeability of future events is that of “virtual certainty”.²¹²⁶ That standard presupposes that “the consequence will

²¹²⁰ *Lubanga* Appeal Judgment, para. 445; *Lubanga* Trial Judgment, para. 988 (see also paras. 980-981); *Ntaganda* Trial Judgment, para. 775; *Bemba et al.* Trial Judgment, para. 66; *Katanga and Ngudjolo* Decision, para. 523; *Ruto and Sang* Decision, para. 301; *Al Mahdi* Decision, para. 2; see also *Muthaura et al.* Decision, para. 399.

²¹²¹ *Lubanga* Decision, para. 345; *Katanga and Ngudjolo* Decision, para. 523; *Ruto and Sang* Decision, para. 301; *Bemba et al.* Trial Judgment, para. 66. See also *Bemba et al.* Appeal Judgment, para. 1306: “The Appeals Chamber recalls that there is no bar to a trial chamber using evidence to infer, either backwards of forward in time, an accused’s involvement in a common plan.”

²¹²² *Lubanga* Trial Judgment, para. 988; *Bemba et al.* Trial Judgment, para. 66. See also *Bemba et al.* Appeal Judgment, para. 763. In *Bemba et al.*, the Appeals Chamber rejected the ground of appeal raised by the Defence for Mr Bemba in which it was argued that in making a determination as to the whether existence of a common plan had been established, the Trial Chamber had erred by taking into account the actions of Mr Babala, who was not a member of the common plan, and the concerted action of Mr Babala and Mr Bemba, that “[...] the relation of the three co-perpetrators with third persons may be relevant to proving, by inference, the existence of the common plan [...]” (see *Bemba et al.* Appeal Judgment, para. 764).

²¹²³ *Lubanga* Appeal Judgment, para. 446; *Ntaganda* Trial Judgment, para. 776; *Bemba et al.* Trial Judgment, para. 67; *Lubanga* Trial Judgment, para. 984; *Lubanga* Decision, para. 344.

²¹²⁴ *Lubanga* Appeal Judgment, para. 446; *Ntaganda* Trial Judgment, para. 776; *Bemba et al.* Trial Judgment, para. 67; *Lubanga* Trial Judgment, paras. 984-985; *Ruto and Sang* Decision, para. 301.

²¹²⁵ *Lubanga* Appeal Judgment, paras. 446, 451; *Ntaganda* Trial Judgment, para. 776; *Lubanga* Trial Judgment, para. 985.

²¹²⁶ *Lubanga* Appeal Judgment, paras. 447, 451; *Ntaganda* Trial Judgment, para. 776; *Lubanga* Trial Judgment, para. 985.

follow, barring an unforeseen or unexpected intervention that prevent[s] its occurrence".²¹²⁷ Otherwise put, it was virtually certain that implementation of the common plan would result in the commission of the crimes.

ii. The suspect and the other co-perpetrator(s) must make an essential and coordinated contribution resulting in the realization of the material elements of the crime

802. As to the second objective element of co-perpetration based on joint control over the crime, the Chamber must be satisfied that, within the framework of the agreement or the common plan, the suspect made an essential contribution in a coordinated manner, which resulted in the realization of the material elements of the offence and without which the commission of the offence would not have been possible.²¹²⁸ If so satisfied, the Chamber will find that the person committed the crime, and not that he or she contributed to a crime committed by another person.

803. The requirement that the contribution of the co-perpetrator be "essential" has been enounced by the Court on a number of occasions.²¹²⁹ That requirement

²¹²⁷ The Chamber subscribes to earlier decisions which construe the expression "will occur in the ordinary course of events" as requiring "virtual certainty". Thus, the standard required for occurrence of the consequence in question is near but not absolute certainty. Otherwise put, "[TRANSLATION] the consequence will follow barring an unforeseen or unexpected intervention to prevent its occurrence. In other words, it is nigh on impossible for him or her to envisage that the consequence will not occur" (*Lubanga* Appeal Judgment, para. 447; *Bemba et al.* Trial Judgment, para. 29; *Katanga* Trial Judgment, para. 777; *Bemba* Decision, para. 362).

²¹²⁸ *Bemba et al.* Appeal Judgment, paras. 810, 819; *Lubanga* Appeal Judgment, paras. 7, 468, 469, 473; *Bemba et al.* Trial Judgment, para. 68; *Lubanga* Trial Judgment, paras. 989 *et seq.*; *Lubanga* Decision, para. 346; *Bemba* Decision, para. 350. *Al Mahdi* Decision, para. 24. *Blé Goudé* Decision, paras. 135, 141, *Ongwen* Decision, para. 38.

²¹²⁹ *Bemba et al.* Appeal Judgment, para. 810; *Lubanga* Appeal Judgment, paras. 468, 469, 473; *Lubanga* Decision, para. 346; *Katanga and Ngudjolo* Decision, paras. 524-525; *Bemba* Decision, para. 350; *Abu Garda* Decision, para. 153; *Mbarushimana* Decision, paras. 273, 279; *Ruto and Sang* Decision, para. 305; *Muthaura et al.* Decision, paras. 297, 401-404, 419; *Ongwen* Decision, para. 38; *Al Mahdi* Decision, para. 24.

presupposes that only those to whom tasks said to be “essential” have been assigned and who, consequently, are in a position to frustrate the commission of the crime by not performing their tasks can be regarded as having joint control over the crime.²¹³⁰ There is no need for each co-perpetrator to commit the crime personally and directly or to be at the *locus criminis*, as long as he or she exercised, jointly with others, control over the crime.²¹³¹ What is required is a normative assessment of the role and activities of a suspect vis-à-vis the specific circumstances of the case, where consideration is afforded to the division of tasks:²¹³²

[I]n circumstances where a plurality of persons was involved in the commission of crimes under the Statute, the question of whether an accused ‘committed’ a crime – and therefore not only contributed to the crime committed by someone else – cannot only be answered by reference to how close the accused was to the actual crime and whether he or she directly carried out the incriminated conduct. Rather, what is required is a normative assessment of the role of the accused person in the specific circumstances of the case. The Appeals Chamber considers that the most appropriate tool for conducting such an assessment is an evaluation of whether the accused had control over the crime, by virtue of his or her essential contribution to it and the resulting power to frustrate its commission, even if that essential contribution was not made at the execution stage of the crime.²¹³³

804. The assessment must inquire into whether the suspect exercised control over the crime by virtue of his or her essential contribution.²¹³⁴ According to that approach, a person who, for example, jointly with others, formulates the relevant strategy or plan, contributes to directing or controlling other persons, or decides the roles of those

²¹³⁰ *Bemba et al.* Trial Judgment, para. 69; *Lubanga* Decision, para. 347.

²¹³¹ *Bemba et al.* Appeal Judgment, para. 1304; *Lubanga* Appeal Judgment, paras. 458, 460, 465, 466; *Lubanga* Trial Judgment, paras. 1003-1005; *Bemba et al.* Trial Judgment, para. 69. In support of that interpretation, the Appeals Chamber drew on the third possibility foreseen by article 25(3)(a) of the Statute, which provides for the commission of a crime “through another person”. It underscored that a perpetrator who did not engage in the criminal conduct may be as blameworthy, perhaps more so, than the person who actually committed the crime (*Lubanga* Appeal Judgment, para. 465).

²¹³² *Lubanga* Appeal Judgment, paras. 466, 473; *Bemba et al.* Appeal Judgment, para. 820; *Ntaganda* Trial Judgment, para. 779; *Lubanga* Trial Judgment, paras. 1000, 1001; *Bemba et al.* Trial Judgment., para. 69.

²¹³³ *Lubanga* Appeal Judgment, para. 473; see also *Ntaganda* Trial Judgment, para. 779; *Bemba et al.* Appeal Judgment, paras. 810, 819-820.

²¹³⁴ *Lubanga* Appeal Judgment, para. 473.

who participate in the crime, may also be held responsible.²¹³⁵ The assumption is that the co-perpetrator may compensate for his or her lack of contribution at the execution stage of the crime if, by virtue of his or her essential contribution, he or she nevertheless had control over the crime.²¹³⁶ Thus, the essential contribution may be provided as of the planning and the preparation stage of the crime until the execution stage.²¹³⁷

805. In the *Bemba et al.* Appeal Judgment, the Appeals Chamber recently pointed out:

Given that the essential contribution does not have to be made at the execution stage, it is clear that acts that do not, as such, form the *actus reus* of the crime or offence in question may nevertheless be taken into account when determining whether the accused has made an essential contribution to that crime or offence. The Appeals Chamber considers, therefore, that the essential contribution may take many forms and need not be “criminal” in nature.²¹³⁸

806. The Appeals Chamber further specified that

provided that the incidents occur within the framework of a criminal common plan, to which the co-perpetrator made an essential contribution with intent and knowledge, it is not necessary for the co-perpetrator to make an essential contribution to each criminal incident.²¹³⁹

807. In the same judgment, the Appeals Chamber underlined:

Depending on the circumstances, co-perpetration may cover situations in which, at the time the common plan is conceived, the exact contours of all the crimes or offences that will be committed as part of the plan’s implementation are not yet known; in addition, actions of an accused person not made at the execution stage may nevertheless be a basis for finding that he or she made an essential contribution. Requiring that each co-perpetrator make an intentional contribution to each of the specific crimes or offences that

²¹³⁵ *Lubanga* Trial Judgment, para. 1004.

²¹³⁶ *Lubanga* Appeal Judgment, para. 469; *Bemba et al.* Appeal Judgment, para. 819; Trial Judgment *Lubanga*, para. 1004. See also *Lubanga* Decision, para. 348.

²¹³⁷ *Lubanga* Appeal Judgment, para. 469; *Bemba et al.* Appeal Judgment, paras. 810, 819; *Lubanga* Decision, para. 348; *Katanga and Ngudjolo* Decision, para. 526.

²¹³⁸ *Bemba et al.* Appeal Judgment, para. 810.

²¹³⁹ *Bemba et al.* Appeal Judgment, para. 812.

were committed on the basis of the common plan would be clearly incompatible with the above.²¹⁴⁰

808. Lastly, the Appeals Chamber held:

The decisive consideration for determining whether an accused person must be qualified as a co-perpetrator is whether the individual contribution of the accused within the framework of the agreement was such that without it, the crime could not have been committed or would have been committed in a significantly different way.²¹⁴¹

(c) Indirect co-perpetration

809. In addition to the three forms foreseen at article 25(3)(a) of the Statute, the Prosecutor alleges that Mr Al Hassan is also responsible for certain acts as an “indirect co-perpetrator”. Although it does not appear in the Statute, “indirect co-perpetration” has been regarded by some Chambers as a “particular form of co-perpetration” and used in the Court’s decisions to denote situations in which a person commits a crime “jointly with” someone else and “through” someone else pursuant to article 25(3)(a) of the Statute.²¹⁴²

810. The Pre-Trial Chambers and Trial Chamber VI have held that this form of responsibility amalgamates commission of a crime “jointly with another person” (where a plurality of persons had the ability to frustrate the commission of the crime, in the way it was carried out, by not performing the coordinated acts whereby they made their contribution as part of an agreement between them) with commission of a crime “through another person” (where a person committed a crime, not directly, but by subjugating the will of another person).²¹⁴³

²¹⁴⁰ *Bemba et al.* Appeal Judgment, para. 821.

²¹⁴¹ *Bemba et al.* Appeal Judgment, para. 820; see also *Blé Goudé* Decision, paras. 135, 141.

²¹⁴² *Ntaganda* Trial Judgment, para. 773; *Ongwen* Decision, para. 38.

²¹⁴³ *Katanga and Ngudjolo* Decision, paras. 480-521; *Lubanga* Decision, paras. 326-341; “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir” (“Warrant of Arrest for Al Bashir”), 4 March 2009, para. 210; *Bemba* Decision, para. 348; *Ruto and Sang* Decision, paras. 289-290; *Muthaura et al.* Decision, para. 297; *Blé Goudé* Decision, para. 136; *Gbagbo* Decision, para. 230, footnote 538; *Ongwen* Decision, paras. 38-41; *Ntaganda* Trial Judgment, para. 772; see also *Katanga*

811. This form of responsibility requires that the co-perpetrators acted by exerting joint control over the action of another person such that the will of that person becomes irrelevant and her or his action must be attributed to the co-perpetrators as if it were their doing.²¹⁴⁴ Where there are multiple direct perpetrators, it is not required that each co-perpetrator has been individually in a position to exert control over some or all of the direct perpetrators.²¹⁴⁵ The decisive consideration is that the co-perpetrators exerted joint control over the direct perpetrators, whom they used to commit the crimes.²¹⁴⁶

812. This form of responsibility may arise, *inter alia*, through an organized apparatus of power or through an organization such that the leadership may be assured that the members will effect the material elements of the crime (*Organisationsherrschaft*).²¹⁴⁷ In that scenario, the exertion of control over an apparatus of power or over an organization allows control over the crimes committed by its members.²¹⁴⁸ Put otherwise, the crime is committed through the control which the indirect co-perpetrator exercises over the organization. That being so, whereas the potential

Trial Judgment, paras. 1398-1415; *Ngudjolo* Trial Judgment, in particular paras. 492, 496, 501-503. The Chamber further notes that “[v]iews have also been expressed in the Court’s jurisprudence that article 25 (3) (a) of the Statute provides for a fourth form of commission liability, whereby a perpetrator may commit a crime jointly with another person, where that other person commits the crime “through [yet] another person” (*Lubanga* Appeal Judgment, footnote 863).

²¹⁴⁴ *Katanga* Trial Judgment, para. 777; *Ongwen* Decision, para. 39; *Blé Goudé* Decision, para. 136; *Katanga and Ngudjolo* Decision, paras. 520-521; see also Warrant of Arrest for Al Bashir, para. 213; *Ruto and Sang* Decision, paras. 291-292; *Muthaura et al.* Decision, para. 297.

²¹⁴⁵ *Blé Goudé* Decision, para. 136. See *Katanga and Ngudjolo* Decision, paras. 492-493, 500; see also *Lubanga* Decision, para. 325.

²¹⁴⁶ *Blé Goudé* Decision, para. 136.

²¹⁴⁷ *Katanga* Trial Judgment, paras. 1402-1403; see also paras. 1398-1415 referring to the theory of “control over the organization” (*Organisationsherrschaft*) enounced by Claus Roxin; *Katanga and Ngudjolo* Decision, paras. 500-518; *Ntaganda* Decision, para. 104, footnote 500 referring to *Katanga and Ngudjolo* Decision, para. 516.

²¹⁴⁸ *Katanga* Trial Judgment, para. 1405; *Katanga and Ngudjolo* Decision, paras. 511-518.

physical perpetrators in an organized power are interchangeable,²¹⁴⁹ the criterion of control must be construed as requiring that the indirect perpetrator use at least part of the apparatus of power subordinate to him or her, so as to steer it intentionally towards the commission of a crime, without leaving one of the subordinates at liberty to decide whether the crime is to be executed.²¹⁵⁰ Compliance with his or her orders must include the commission of any of the crimes within the jurisdiction of this Court.²¹⁵¹

813. In the light of the foregoing, the Chamber has regard to the following material and mental elements for indirect co-perpetration through an organization: the suspect must be part of a common plan or an agreement with one or more persons; the suspect and the other co-perpetrator(s) must make an essential and coordinated contribution resulting in the realization of the material elements of the crime; the suspect must exercise control over the organization; the organization must be an organized and hierarchical apparatus of power; the execution of the crimes must be secured by near-automatic obedience to the orders given by the suspect; the suspect must meet the subjective elements of the crimes, *viz.* the requirements of intent and knowledge laid down at article 30 of the Statute; the suspect and the other co-perpetrators must be mutually aware and mutually accept that implementation of the common plan will result in the realization of the material elements of the crimes; and the suspect and the

²¹⁴⁹ Interchangeability requires that the organization be large enough to provide a significant supply of subordinates: if a subordinate fails to comply with an order, he or she can simply be replaced by one who is compliant. *Ntaganda* Trial Judgment, para. 778; *Katanga* Trial Judgment, para. 1408; *Katanga and Ngudjolo* Decision, paras. 511-518.

²¹⁵⁰ *Ntaganda* Trial Judgment, para. 778; *Katanga* Trial Judgment, para. 1411; *Katanga and Ngudjolo* Decision, paras. 511-518.

²¹⁵¹ *Katanga and Ngudjolo* Decision, para. 514.

other co-perpetrators must be aware of the factual circumstances which allow them to exert jointly control over the commission of the crime through one or more persons.²¹⁵²

814. As said, the linchpin which defines this form of responsibility is control over the organization.²¹⁵³ In this regard, the Chamber sees that the essential contribution is often made by virtue of a position of power within the organization.²¹⁵⁴ Only those who head the organization generally exercise control over the organization, and, hence, are in a position to make an essential contribution to the crime.

2. Analysis

815. In arriving at a determination as to whether Mr Al Hassan is, as the Prosecutor claims, responsible as a direct or indirect co-perpetrator within the meaning of article 25(3)(a) of the Statute, the Chamber will, in the first instance, look at whether Mr Al Hassan and the other potential co-perpetrators agreed on a common plan.

(a) Existence of an agreement or a common plan

816. The Chamber considers that there is sufficient evidence to establish substantial grounds to believe that between 1 April 2012 and 28 January 2013, a plan was devised and put in place by members of the groups Ansar Dine/AQIM,²¹⁵⁵ with the aim of

²¹⁵² *Katanga* Trial Judgment, paras. 1398-1415; *Ruto and Sang* Decision, para. 292; *Bemba* Decision, paras. 350-351; *Katanga and Ngudjolo* Decision, paras. 500-539; *Lubanga* Decision, paras. 349-365; *Ntaganda* Decision, para. 104; Warrant of Arrest for Al Bashir, paras. 210-213.

²¹⁵³ *Katanga and Ngudjolo Chui* Decision, para. 500.

²¹⁵⁴ *Ntaganda* Decision, paras. 108, 120; *Ruto and Sang* Decision, paras. 306-307 and 314.

²¹⁵⁵ Maurinews, media report, "In a long interview a commander from the Sahara Emirate talks about the Islamists' rule over northern Mali", 24 December 2013, [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), pp. 1026, 1041; UN, Security Council Committee, Narrative Summary of reasons for listing, 20 March 2013, [MLI-OTP-0066-0391](#); Maliweb, media report, "Portrait de Cheick Haoussa - Le vrai chef de la rébellion au nord", 9 July 2012, [MLI-OTP-0001-5400](#); [MLI-OTP-0038-0870](#), translation, [MLI-OTP-0039-0937](#), pp. 0871-0872, p. 0938. [REDACTED];

Nouakchott News Agency, media report, "Leader Abu-al-Fadl addresses the people of the Islamic Emirate", 4 April 2012, [MLI-OTP-0038-0870](#), p. 0939; see also "Transcript of the audio message of Iyad Ag Ghaly Amir of Ansar Al-Din movement to the people of Timbuktu", [MLI-OTP-0049-0137](#), p. 0138;

securing control over the city of Timbuktu and the Region of the same name and of instituting an apparatus of power on the basis of their own religious ideology (which the large majority of the civilian population of Timbuktu did not espouse),²¹⁵⁶ thereby violating the constitution of Mali.²¹⁵⁷

817. Iyad Ag Ghali and Abou Zeid, as well as Yahia Abou Al Hammamet Abdallah Al Chinguetti not only devised the plan²¹⁵⁸ but also took the lead in executing it.²¹⁵⁹

818. The agreement or the common plan was imposed on the civilian population of Timbuktu and the Timbuktu Region by any means, including by dint of acts and measures which entailed the violation of fundamental human rights and the commission of the crimes charged in the case *sub judice*, viz. torture, other inhumane acts, cruel treatment and outrages upon personal dignity, persecution on religious and gender grounds, rape, sexual slavery and other inhumane acts in the form of forced marriages, the passing of sentences without previous judgment pronounced by a regularly constituted court and affording all judicial guarantees which are generally recognized as indispensable (committed in Timbuktu and the Timbuktu Region, Mali, between 1 April 2012 and 28 January 2013), and attacking protected objects (committed in Timbuktu, Mali, between late June 2012 and mid-July 2012).

“Al-Qaeda and its allies in the sahel and the Sahara”, Al Jazeera Centre for Studies Report, 1 May 2012, [MLI-OTP-0001-3758](#), p. 3763.

²¹⁵⁶ [REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED] Video, [REDACTED]
[REDACTED]; [REDACTED]
[REDACTED]

²¹⁵⁷ Audio recording, [MLI-OTP-0038-0886](#), 00:13:52:00 to 00:18:32:00 transcript [MLI-OTP-0056-0843](#), translation, [MLI-OTP-0063-1029](#), pp. 1034-1035, lines 207-208; Interview of Sanda Ould Bouamama with the newspaper Sahara Media, 16 April 2012, [MLI-OTP-0001-3271](#), p. 3272.

²¹⁵⁸ See, below, paras. 819-824.

²¹⁵⁹ See, above, paras. 77-85, 116, 122, 134.

819. The plan predated the capture of Timbuktu – the statements of those behind the plan, such as Iyad Ag Ghali and Abou Zeid, so attest. According to them, the group Ansar Dine was founded with the objective of instituting, in the Azawad region (made up of the Timbuktu, Kidal and Gao Regions), northern Mali, an apparatus of power on the basis of their religious ideology and of imposing it on all the peoples throughout those territories,²¹⁶⁰ and of establishing an Islamic State there, in which “sharia” in accordance with the avowed religious ideology of Ansar Dine and AQIM would govern every aspect of life.²¹⁶¹

820. The existence of the plan is also apparent from the statements of the emir of Ansar Dine, Iyad Ag Ghali, and those of other members of Ansar Dine and AQIM.

821. For instance, on or about 11 March 2012, before the capture of Timbuktu, “Sheikh Ag Aoussa”, a senior member of the Ansar Dine movement, declared it the duty of Ansar Dine, under Iyad Ag Ghali’s leadership, to apply sharia.²¹⁶²

²¹⁶⁰ Regarding Abou Zeid, see [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1027, p. 1031: “Ansar Dine is an Islamic group which believes that jihad is a means for establishing the religion [...]”. Regarding Iyad Ag Ghali, see Audio recording of Iyad Ag Ghali, [MLI-OTP-0038-0888](#), transcript, [MLI-OTP-0056-0851](#), translation, [MLI-OTP-0063-1041](#), p. 1044, lines 55-73 (Iyad Ag Ghali states: “[TRANSLATION] let us give thanks to Allah, that is one example of the expedition undertaken by the group called Ansar Dine, whose goal since its inception was to apply the religion of Allah, the Almighty. (...). The group Ansar Dine has four founding principles: jihad, to repudiate the tyrant (to repudiate the Constitution, the laws established by the legislature, secularism and democracy, adjudication by sharia and application of the religion to ourselves.”); [MLI-OTP-0001-3758](#), p. 3763.

²¹⁶¹ “Transcript of the audio message of Iyad Ag Ghaly Amir of Ansar Al-Din movement to the people of Timbuktu”, [MLI-OTP-0049-0137](#), p. 0138; *Protocole d’entente entre : le Mouvement National de Libération de l’Azawad (MNLA) et Anssar Addine*, [MLI-OTP-0018-1226](#); RFI, “Mali: le MNLA et Ansar Dine signent un protocole d’accord aux contours encore flous”, 27 May 2012, [MLI-OTP-0001-3895](#); AQIM, General Instructions for the Islamic Jihadist Project in Azawad, 20 July 2012, [MLI-OTP-0024-2320](#), translation, [MLI-OTP-0027-0964](#); [MLI-OTP-0001-3758](#), p. 3763; [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1034: “We members of the Ansar Dine group, strive for the application of islamic Sharia on out territory and resort to Islam govern all our affairs in accordance with the Almighty's words”. [REDACTED] (“Islamic jihadi project in Azawad”).

²¹⁶² Video posted by the group Ansar Dine on 11 March 2012 on YouTube, [MLI-OTP-0011-0007](#) 00:06:59:00 to 00:09:00:00, transcript [MLI-OTP-0040-0425](#), p. 0428, lines 99-109, translation, [MLI-OTP-0040-0430](#), p. 0434, lines 103-113. For the date the video was posted, as proof that “Sheikh Ag Aoussa”

822. In the days that followed the capture of Timbuktu, Iyad Ag Ghali addressed the population of Timbuktu in a radio message, which announced that Ansar Dine had come to implement “[TRANSLATION] sharia” and to fight those who oppose it.²¹⁶³

Iyad Ag Ghali stated that they would avail themselves of

all possible and legitimate means [...] teaching people the laws of their religion and the tradition of their Prophet, [...] promoting virtue and preventing vice. [...] Yet our greatest tool for establishing the rule of religion is jihad and fighting against those who oppose Sharia, so as to prevent civil strife and ensure that the only prevailing religion is that of Allah Almighty [...].²¹⁶⁴

823. P-0125 states that on the day of the capture of Timbuktu, he went to the military camp with 20 or so people to meet Iyad Ag Ghali. Iyad Ag Ghali declared himself the new leader and that his group, Ansar Dine, was in charge of the city,²¹⁶⁵ that he had come “[TRANSLATION] to institute Islam” and that any transgressor of the new rules would have “[TRANSLATION] problems with him and his group [...]”.²¹⁶⁶ P-0147 states that he heard Iyad Ag Ghali and other leaders speak over the radio about the new rules which were to be followed on pain of arrest, such as the prohibition on alcohol consumption, smoking cigarettes, listening to music and engaging in sexual relations outside of marriage, and the dress to be worn by men and women and the segregation of men and women into different spheres.²¹⁶⁷ P-0147 states that, upon arriving in

does appear in it and as proof of his rank in Ansar Dine, see the following documents: Video, Jeune Afrique, “Mali: Iyad Ag Ghali, le leader d’Ansar Dine, se met en scène”, 15 March 2012, [MLI-OTP-0001-3418](#); [MLI-OTP-0001-5400](#); [REDACTED]

²¹⁶³ [MLI-OTP-0038-0870](#), pp. 0871-0872, translation, [MLI-OTP-0039-0937](#), p. 0939; see also “Transcript of the audio message of Iyad Ag Ghaly Amir of Ansar Al-Din movement to the people of Timbuktu”, [MLI-OTP-0049-0137](#).

²¹⁶⁴ [MLI-OTP-0038-0870](#), translation, [MLI-OTP-0039-0937](#).

²¹⁶⁵ [REDACTED]

²¹⁶⁶ Statement of P-0125, [MLI-OTP-0023-0004-R01](#), p. 0012, para. 36, p. 0011, para. 30.

²¹⁶⁷ Summary of statement of P-0147, [MLI-OTP-0066-0569](#), p. 0569.

Timbuktu, the “[TRANSLATION] Islamists” started to impose those rules, in particular, as regards how women had to dress.²¹⁶⁸

824. On or about 24 May 2012, Iyad Ag Ghali delivered the same speeches to his members during training.²¹⁶⁹ On 4 November 2012, Iyad Ag Ghali made official his allegiance to AQIM and his espousal of the religious ideology of AQIM.²¹⁷⁰

825. In an interview he gave on April 2012, Sanda Ould Bouamama, emir of the Media Commission and spokesperson for Ansar Dine/AQIM, said

we in the Jamaat Ansar Al-Din movement seek to establish the religion [...] [W]e reject all the imported ideas and solutions that contradict with our religion and Aqeeda like democracy and secularism [...] What we demand and work for is to live under the shadow and rule of the Islamic Sharia, and we reject every constitution or sytem except the Sharia of Islam [...].²¹⁷¹

In another interview given on 30 June 2012, responding to a journalist about the fact that the mausoleums were listed as UNESCO heritage, Sanda Ould Bouamama said: “[TRANSLATION] That is no business of ours. The point is that we have said that we are there to apply sharia, where in our view, sharia is the be-all-and-end-all. We will do our best and try to follow every exhortation, and not leave anything”.²¹⁷² In another

²¹⁶⁸ Summary of statement of P-0147, [MLI-OTP-0066-0569](#), p. 0569.

²¹⁶⁹ Audio recording, [MLI-OTP-0038-0886](#), transcript, [MLI-OTP-0056-0843](#), translation, [MLI-OTP-0063-1029](#), p. 1035, line 237, p. 1036, lines 264-266.

²¹⁷⁰ Audio recording dated 4 November 2012, [MLI-OTP-0038-0888](#), transcript, [MLI-OTP-0056-0851](#), translation, [MLI-OTP-0063-1041](#), pp. 1052-1053, lines 375-384 (Iyad Ag Ghali states: “[TRANSLATION] we have everything in common with Al-Qaida, we have the religion in common, we have the same approach in common, we have the doctrine in common, we have everything in common”); p. 1054, lines 421-422 (Iyad Ag Ghali then goes on to say that “[TRANSLATION] it is no secret and, as of today, our position is no longer a secret, until our death and beyond, we will be joined to Al-Qaida”); [MLI-OTP-0066-0391](#), p. 0392.

²¹⁷¹ Interview of Sanda Ould Bouamama with the newspaper Sahara Media, 16 April 2012, [MLI-OTP-0001-3271](#), p. 3272. See also the statements of Omar Ould Hamaha, a member of Ansar dine (“*Enquête Exclusive*”, Video, broadcast on 21 October 2012, [MLI-OTP-0001-7037](#), transcript, [MLI-OTP-0024-2962](#), pp. 2977-2978, lines 507-525).

²¹⁷² Audio recording, [MLI-OTP-0007-0228](#), transcript, [MLI-OTP-0020-0584](#), p. 0585, lines 7-9 (in connection with RFI, “*Mali: la destruction des mausolées de Timbuktu par Ansar Dine sème la consternation*”, 30 June 2012, [MLI-OTP-0007-0228](#), pp. 0228-0229).

interview in around June 2012, Sanda Ould Bouamama said on camera that Ansar Dine/AQIM would cut off hands, and heads too, should “[TRANSLATION] sharia” prescribe them to do so.²¹⁷³ In another interview he gave on 11 September 2012, Sanda Ould Bouamama announced “[TRANSLATION] we have cut off the hand of a thief, flogged alcohol drinkers, [...] an unmarried couple, and destroyed the mausoleums which are a heresy against true Islam”.²¹⁷⁴

826. Sanda Ould Bouamama also spoke in defence of the destruction of the mausoleums.²¹⁷⁵ In a video report by ORTM, posted on YouTube on 6 May 2012, Sanda Ould Bouamama stated, after the attack on the Al Farouk monument, that Ansar Dine/AQIM wanted people to devote themselves to Allah instead of to a symbol.²¹⁷⁶

827. In footage shot in August 2012, Abdallah Al Chinguetti can be seen giving a sermon in a mosque in Timbuktu and prevailing upon the population to follow him.²¹⁷⁷

828. Such announcements and statements were repeated by local radio stations Radio Bouctou and Radio Al Farouk which were under the control of Ansar Dine/AQIM until the end of the takeover of Timbuktu and were then broadcasting

²¹⁷³ Video, [MLI-OTP-0001-0052](#) 01:21:08:00 to 01:21:30:10, transcript, [MLI-OTP-0033-5148](#), translation, [MLI-OTP-0033-5296](#), p. 5330, lines 1263-1265.

²¹⁷⁴ “Ansar Dine au Nord-Mali: les talibans comme modèle”, 11 September 2012, [MLI-OTP-0037-1567](#), p. 1567; see also Video, Africa-United TV, “Exclusivité Africa N1 Entretien avec Sanda Ould Bouamama porte-parole du groupe Ansar Dine”, 13 January 2013, [MLI-OTP-0010-0076](#), 00:00:30:00 to 00:00:57:00, transcript, [MLI-OTP-0033-5201](#), translation, [MLI-OTP-0033-5346](#).

²¹⁷⁵ RFI, “Mali: la destruction des mausolées de Timbuktu par Ansar Dine sème la consternation”, 30 June 2012, [MLI-OTP-0007-0228](#), pp. 0228-0229; Audio recording, [MLI-OTP-0007-0228](#) transcript [MLI-OTP-0020-0584](#); see also audio recording, [MLI-OTP-0001-6944](#) and transcript [MLI-OTP-0001-6944](#), [MLI-OTP-0020-0582](#).

²¹⁷⁶ Video, posted on YouTube on 6 May 2012, [MLI-OTP-0011-0402](#), 00:00:50:00 to 00:01:06:00.

²¹⁷⁷ Video, France 2, “Sous le règne des islamistes”, 31 January 2013, [MLI-OTP-0009-1749](#), 00:08:57:00 to 00:09:04:01, transcript, [MLI-OTP-0028-0839](#), p. 0846, lines 202-209.

only sermons or religious music in Tamasheq, Songhay and Arabic²¹⁷⁸ and which propagated the new rules and the prohibitions.²¹⁷⁹ [REDACTED] states that in the week before 1 July 2012 he heard in particular sermons on the fact the tombs in Timbuktu were not in keeping with the avowed religious ideology of Ansar Dine/AQIM.²¹⁸⁰

829. Such announcements and statements were also repeated on the streets of Timbuktu.²¹⁸¹ P-0608 states that he saw Adama, the first emir of the Islamic Police, holding pamphlets containing the rules on women's clothing in French.²¹⁸²

830. The existence of the common plan is further apparent from the meetings which Iyad Ag Ghali and Ansar Dine/AQIM members held, from the outset of the takeover of Timbuktu and while running the city and the Timbuktu Region, with influential figures of Timbuktu civil society – civic leaders, imams, scholars and educators – so as to explain to them their aim of governing the city in accordance with their religious ideology,²¹⁸³ to seek their assistance,²¹⁸⁴ and to request the cooperation of the population²¹⁸⁵ and to promise protection in return.²¹⁸⁶

²¹⁷⁸ [REDACTED]

²¹⁷⁹ [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1045.

²¹⁸⁰ [REDACTED]

²¹⁸¹ [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1045. A video shot during the capture of Timbuktu shows a preacher proclaiming to some local people: “[TRANSLATION] it is out of the question to forgive local women who are dressed improperly [...] and should someone find something on the ground and appropriate it, such as a ring, for instance, that person's hand will be cut off” (France 2, video report, “*Sous le règne des islamistes*”, 31 January 2013, [MLI-OTP-0009-1749](#), 00:08:57:00 to 00:09:04:01, transcript, [MLI-OTP-0028-0839](#), p. 0845).

²¹⁸² Statement of P-0608, [MLI-OTP-0060-9414-R01](#), p. 9434 para. 79, p. 9445, paras. 127-129.

²¹⁸³ Summary of statement of [REDACTED]

[REDACTED]; Government of Mali, Dispatch no. 0774/DSM, 3 April 2012, [MLI-OTP-0012-0933](#).

²¹⁸⁴ [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1033.

²¹⁸⁵ [MLI-OTP-0010-0088](#), translation, [MLI-OTP-0012-1024](#), p. 1033.

²¹⁸⁶ [REDACTED]

831. For instance, on 2 April 2012, the leader of Ansar Dine, Iyad Ag Ghali, came to Timbuktu with Abou Zeid²¹⁸⁷ and held a meeting to inform the population about his mission to see to it that “sharia” was applied throughout the region.²¹⁸⁸ In return, the population asked to be allowed to move around freely and go about their daily business, for greater security for the city’s hospitals and the electricity plant and for the protection of people and their property.²¹⁸⁹ According to [REDACTED], at the [REDACTED] meeting held by Iyad Ag Ghali and Abou Zeid, only a handful of local leaders such as Houka Houka agreed with the avowed religious ideology of Ansar Dine/AQIM – most did not approve.²¹⁹⁰

832. A billboard campaign also makes clear the intentions of Ansar Dine/AQIM. A video shot on or about 9 June 2012 in Timbuktu shows a sign which reads “[TRANSLATION] Islam is the foundation of the city of Timbuktu and Islamic law will be its only judge [...]”.²¹⁹¹

833. The existence of a common plan is also established by the religious instruction²¹⁹² dispensed to new recruits to Ansar Dine/AQIM in Timbuktu, in

²¹⁸⁷ Jeune Afrique, Iyad Ag Ghali: “*Ansar dine ne connaît que le Mali et la charia*”, 8 April 2012, [MLI-OTP-0001-3551](#), p. 3551.

²¹⁸⁸ Government of Mali, Dispatch no. 0774/DSM, 3 April 2012, [MLI-OTP-0012-0933](#); Jeune Afrique, 8 April 2012, [MLI-OTP-0001-3551](#), p. 3551; [REDACTED]

²¹⁸⁹ Government of Mali, Dispatch no. 0774/DSM, 3 April 2012, [MLI-OTP-0012-0933](#).

²¹⁹⁰ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²¹⁹¹ Video, [REDACTED]
[REDACTED]

²¹⁹² [REDACTED]
[REDACTED]; Statement of [REDACTED]
[REDACTED]; [REDACTED]
[REDACTED]

Timbuktu Region. This they generally did by fostering a coercive environment²¹⁹⁷ and through the commission of crimes such as:

- the judgments given by the Islamic Court, prescribing the administration of floggings;²¹⁹⁸
- the public flogging of P-0557 and P-0565, at which a judgment was read out, setting out the reasons for imposing the punishment;²¹⁹⁹
- the amputation of Dédéou Maiga's hand in mid-September 2012,²²⁰⁰ followed by an interview given by Sanda Ould Bouamama, who explains that the punishment was part of Ansar Dine's religious project;²²⁰¹ and
- the destruction of the mausoleums in June and July 2012,²²⁰² which was accompanied by religious explanations from Abdallah Al Chinguetti²²⁰³ and Sanda Ould Bouamama.²²⁰⁴

836. Mr Al Hassan had no part in devising the common plan. The Chamber nonetheless considers that Mr Al Hassan subscribed to the common plan when he joined the Islamic Police, *viz.* by 7 May 2012, and that he worked for it until 28 January 2013. Here the Chamber draws attention [REDACTED]

²¹⁹⁷ See, above, 93-94, 98, 109 (the conducting of patrols in the city of Timbuktu); paras. 273, 282, 465, 675 (the numerous cases of arrests and detention); paras. 272-277, 487-502 (the corporal punishment inflicted). VII. The crimes (D) Facts pertaining to counts 8 to 12: rape, sexual slavery and other inhumane act in the form of forced marriage paras. 533-560. See P-0580's account, paras. 286-298.

²¹⁹⁸ Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7431](#), translation, [MLI-OTP-0034-0125](#), p. 0127; Judgment of the Islamic Court, [REDACTED], [MLI-OTP-0001-7425](#), translation, [MLI-OTP-0034-0117](#), p. 0118.

²¹⁹⁹ See, above, paras. 272-277.

²²⁰⁰ See, above, paras. 311-313.

²²⁰¹ "Ansar Dine au Nord-Mali: les talibans comme modèle", 11 September 2012, [MLI-OTP-0037-1567](#), p. 1567.

²²⁰² For the destruction of the mausoleums, see, above, paras. 523-531.

²²⁰³ [MLI-OTP-0002-0757](#), translation, [MLI-OTP-0034-1363](#); see also Statement of P-0010, [MLI-OTP-0002-0126-R01](#); [REDACTED]

²²⁰⁴ "Ansar Dine au Nord-Mali: les talibans comme modèle", 11 September 2012, [MLI-OTP-0037-1567](#), p. 1567.

[REDACTED]

[REDACTED].²²⁰⁵ Mr Al Hassan took part in the implementation of the common plan by participating in the daily activities of the Islamic Police. Furthermore, the Chamber adverts to Section (A) Findings of fact. The Chamber further notes that, in the aftermath of the events which took place in Timbuktu from 1 April 2012 to 28 January 2013, Mr Al Hassan fled to Libya, before resuming his activity with the armed groups led by Iyad Ag Ghali in the winter of 2014.²²⁰⁶

(b) As to whether Mr Al Hassan made an “essential” contribution to the crimes

837. Certain witnesses described Mr Al Hassan, depending on the time frame concerned, as one of the emirs of the Islamic Police,²²⁰⁷ the deputy superintendent,²²⁰⁸

2205 [REDACTED]

2206 [REDACTED]

[REDACTED]; Government of Mali, [MLI-OTP-0066-0452](#), p. 0453.

²²⁰⁷ Statement of P-0580, [MLI-OTP-0051-0018-R01](#), para. 51. At times P-0580 described Al Hassan as the chief of the police officers who were at the BMS and at times as the “[TRANSLATION] superintendent at the Police” (Statement of P-0580, [MLI-OTP-0051-0018-R01](#), para. 64). He also stated that Adama was the Islamic Police “[TRANSLATION] superintendent at the time” (Statement of P-0580, MLI-OTP-0067-1806-R01, para. 113); [REDACTED]

[REDACTED]; Statement of P-0623, [MLI-OTP-0068-4352-R01](#), p. 4362, para. 65 (According to P-0623, [REDACTED], Mr Al Hassan confirmed to [REDACTED] that he was the emir of the Islamic Police [REDACTED]

[REDACTED]; Summary of statement of P-0626, [MLI-OTP-0070-0929](#), p. 0931.

2208 [REDACTED]

journalist to make a media report; he registered the new members of the Islamic Police in a log and in a computer; and he brought money to the *Hisbah* on at least one occasion).²²¹²

840. He also allowed himself to be filmed for two videos (propaganda, in all likelihood) made by Ansar Dine/AQIM, and in one, he, *inter alia*, extolled the success of the groups since their arrival in Timbuktu.²²¹³ [REDACTED]

[REDACTED].²²¹⁴

841. Moreover, Mr Al Hassan took part in patrols and the provision of security in the city, including during the demonstration which the women staged on 6 October 2012, and in assignments outside of Timbuktu. Mr Al Hassan escorted suspects to the Islamic Court and the sites where punishment was carried out, and brought them back to prison.²²¹⁵ The Chamber has made a finding of only one instance of his personally administering floggings as result of a punishment imposed by the Islamic Court.²²¹⁶ He was present at two instances of flogging in public, forming a “[TRANSLATION] security cordon” between those being flogged and the onlookers. He was present at and took part in the ill-treatment to which [REDACTED] subjected.²²¹⁷ With other members of Ansar Dine/AQIM he took part in the arrest and detention of a number of persons.²²¹⁸

842. Furthermore, Mr Al Hassan wrote, for members of the Islamic Police who did not have the money to get married, requests for money that they could then submit to

²²¹² See, above, paras. 726-729, 733-736, 754-758, 785-786.

²²¹³ See, above, paras. 780-783.

²²¹⁴ See, above, para. 779.

²²¹⁵ See, above, paras. 759-760.

²²¹⁶ See, below, para. 778.

²²¹⁷ See, below, paras. [REDACTED]

²²¹⁸ See, above, paras. 737-739.

the emir of the Police or to Abou Zeid ([REDACTED]) and he took part in the negotiation of two marriages; one of the negotiations failed.²²¹⁹

843. Mr Al Hassan also acted as a mediator in cases concerning debt.²²²⁰ [REDACTED] his signature (which appears in most of the documents relating to the Islamic Police presented by the Prosecutor) was “sufficient” and that he could sign on behalf of the emir of the Islamic Police: he was therefore authorized to act on behalf of the Islamic Police in situations, such as when issuing a permit to dig a well or when sending the reports of the Islamic Police to the Islamic Court.²²²¹ One document at least bears a signature other than that of Mr Al Hassan, thus confirming that he was not alone in having the power to sign that type of document.²²²²

844. Several witnesses nonetheless concur that the suspect deferred to his superiors when it came to taking decisions.²²²³ [REDACTED] all decisions were taken by his superiors, for example as regards punishment, arrangements for the punishments to be carried out at the Islamic Police and the referral of cases to the Islamic Court.²²²⁴ One of the witnesses, [REDACTED], states that “[TRANSLATION] the Algerians outranked [Mr Al] Hassan. They seemed to exert a certain authority and to be self-assured”.²²²⁵ [REDACTED] also shares that view of the hierarchical structure of Ansar Dine/AQIM. Aside the settling of disputes about debt,²²²⁶ an analysis of the evidence has shown, that out of the many cases settled by

²²¹⁹ See, below, paras. 990-991.

²²²⁰ See, above, para. 728.

²²²¹ See, above, paras. 729, 758.

²²²² [REDACTED]

²²²³ See, above, para. 764.

²²²⁴ See, above, paras. 757, 764 and footnote 1981.

²²²⁵ [REDACTED]

²²²⁶ See, above, para. 728.

the Islamic Police, there are only two instances of Mr Al Hassan *independently* deciding the outcome of a case.²²²⁷

845. As to his organizational role, the Prosecutor has, at most, shown that Mr Al Hassan assisted the emirs in organizing patrols by members of the Police and guard shifts, but did not organize the patrols himself.²²²⁸

846. [REDACTED] every time a punishment ordered by the Islamic Court was to be carried out, an emir would be designated to make the arrangements and take the lead in it. There is nothing in the evidence to show that Mr Al Hassan played such a role during a public flogging.²²²⁹

847. Turning lastly to his relations with the Ansar Dine/AQIM hierarchy, aside his contact with the emirs of the Islamic Police, Mr Al Hassan was in contact with Abdallah Al Chinguetti in the making of a video; with Sanda Ould Bouamama in the making of another video; with Talha Al Chinguetti, while a flogging was being carried out in public; and with Abou Zeid at a meeting on the premises of the Islamic Police. However, the Prosecutor has not presented any evidence to show that Mr Al Hassan generally took part in meetings where important decisions were made about the running of the city of Timbuktu. At the sole meetings which could be so described, Mr Al Hassan attended, as he puts it, as an interpreter or to report back on the meeting.²²³⁰ According to [REDACTED], Mr Al Hassan also travelled with others in late October 2012 to see a person by the name of [REDACTED] in order to receive instructions about the role of the Islamic Police and the *Hisbah*.²²³¹

²²²⁷ See, above, footnote 2013.

²²²⁸ See, above, para. 730.

²²²⁹ See, above, paras. 765.

²²³⁰ See, above, para. 775.

²²³¹ See, above, para. 778.

3. The Chamber's findings

848. The Chamber notes that, as the Prosecutor has pointed out and as found above to be established,²²³² Mr Al Hassan made a contribution to the crimes as part of his daily work for the Islamic Police. Thus, the Chamber considers that Mr Al Hassan played an important role in the Islamic Police.

849. That notwithstanding, the contribution of Mr Al Hassan to the crimes occasioned by the implementation of the "common plan" does not qualify as essential. In that connection, the Chamber notes that a great many bodies and their respective members implemented the common plan and committed the crimes.²²³³ Mr Al Hassan contributed directly or indirectly to the crimes which were found, at paragraphs 228-707, to be established. From the fact that Mr Al Hassan made a contribution to those crimes it cannot, however, be concluded that Mr Al Hassan exercised control "over the crimes" or "[TRANSLATION] over the course of events which led to the crimes".

850. The Chamber determines that, in this instance, the Prosecutor has not, contrary to what the Court has consistently required, shown that Mr Al Hassan possessed the power to frustrate the commission of the crimes or even that, without his contribution, the crimes would have been committed in a significantly different way.

851. To be specific, the Chamber sees that the Prosecutor is silent on this criterion in her DCC.²²³⁴ Aside the reference to the ability of Mr Al Hassan "[TRANSLATION] to frustrate with the other co-perpetrators" two *cases* – the flogging of P-0565 and P0557²²³⁵ and that of [REDACTED]²²³⁶ – the Prosecutor does not state how, without Mr Al Hassan's contribution, the crimes found, at paragraphs 228-707, to be

²²³² See, above, (A) Findings of fact.

²²³³ See, above, VII. The crimes, paras. 228-707.

²²³⁴ See DCC, paras. 211-398.

²²³⁵ DCC, para. 603.

²²³⁶ DCC, para. 608.

established would not have taken place or that, without his contribution, these crimes would have been committed in a significantly different way. It is the view of the Chamber that, in any event, the exercise of control over two cases (supposing that such control were established) does not equate to the exercise of control over the sum total of the crimes committed by the organization. Furthermore, the Chamber is of the opinion that, contrary to what the Prosecutor argues, the ability “[TRANSLATION] to frustrate with the other co-perpetrators” the commission of the crime is not what must be proven. As the Chamber sees it, it is the power of the suspect to *independently* frustrate the commission of the crimes or alter the commission of the crimes in a significantly different way which qualifies his or her participation as essential.

852. Having regard to the foregoing, the Chamber determines that Mr Al Hassan did not make an “essential contribution” that resulted in the realization of the material elements of the crimes found above to be established.

853. Since both direct co-perpetration and indirect co-perpetration require an “essential contribution” on the part of the suspect, and having regard to the Chamber’s finding that Mr Al Hassan did not make an essential contribution to the crimes, indirect co-perpetration is also not established. That notwithstanding, the Chamber sees fit to look at the criterion of “control over the organization” – the linchpin of indirect co-perpetration – vis-à-vis the Prosecutor’s submissions that Mr Al Hassan is criminally responsible under the head of indirect co-perpetration for the crimes committed *by Islamic Police personnel*, as well as those committed *by members of the bodies* and those committed *by members of Ansar Dine/AQIM*.²²³⁷

854. It is recalled that a contribution to the crimes through the “organization” – in this instance, Ansar Dine/AQIM,²²³⁸ which itself had established various bodies to

²²³⁷ DCC, paras. 359-398.

²²³⁸ See, above, paras. 206-214.

secure control over the population – is required for a finding that a suspect is an indirect co-perpetrator within the meaning of article 25(3)(a) of the Statute.²²³⁹

855. The Chamber begins by reminding that the Prosecutor herself said that the Islamic Police was one of at least seven bodies tasked with executing the “common plan”.²²⁴⁰ The Chamber sees that the evidence makes plain that the city was run by means of close cooperation between the various bodies. What is more, all of the cases which gave rise to the crimes found, at paragraphs 228-707, to be established, including those that took place at the two headquarters of the Islamic Police, involved a combination of individuals from the various bodies – the *Hisbah*, the Islamic Police, the Security Battalion and the Islamic Court. The Chamber also underscores that each body was headed by one person; the bodies themselves were headed by Abou Zeid, as well as Abdallah Al Chinguetti and Yahia Abou Al Hammam; and at the apex stood Iyad Ag Ghali.²²⁴¹

856. In the view of the Chamber, the action of all of these bodies, and not that of a single body acting in isolation, allowed the crimes to be committed. Although the Prosecutor lays weight on the importance of the Islamic Police within Ansar Dine/AQIM, the evidence does not allow sufficient distinction to be drawn between the role of the *Hisbah*, the Islamic Police, the Security Battalion and the Islamic Court: as underlined above, their remits overlapped.²²⁴² The evidence presented by the Prosecutor does not, moreover, support a finding to the standard required that one of

²²³⁹ Whereas, in principle, control over part of the apparatus of power suffices, the Chamber is of the view that said part must have implemented the common plan which resulted in the commission of the crimes. See, above, para. 812.

²²⁴⁰ Transcript of Hearing of 8 July 2019, ICC-01/12-01/18-T-003-FRA, p. 47, lines 11-18; see also DCC, paras. 114-117. The Chamber is also treating the detention sites as an eighth body.

²²⁴¹ See, above, paras. 74-85.

²²⁴² See, above, paras. 131-139. [REDACTED]

these bodies (including the Islamic Court) played a manifestly more important role in the commission of the crimes than the others.

857. Having regard to Mr Al Hassan's duties and powers, as found above to be established, the Chamber concludes that Mr Al Hassan exerted some level of control over the Islamic Police, that is, he oversaw the administrative activities of the Islamic Police and organized some of the daily activities of members of the Islamic Police. The evidence does not however make apparent that Mr Al Hassan issued orders or instructions to members of the Islamic Police which had as a direct consequence the commission of the crimes of which he stands charged.²²⁴³ In any event, the exercise of some level of control over the Islamic Police does not equate to the exercise of control over the entirety of the bodies tasked with implementing the "common plan". The Prosecutor has not adduced any evidence in that connection to show that Mr Al Hassan issued orders and instructions to the various members of the bodies set up by Ansar Dine/AQIM and that near-automatic obedience on their part ensued.

858. In the circumstances, having regard to the set-up which Ansar Dine/AQIM established, the Chamber is of the view that, in principle, only the persons at the apex of the organization – that is, those whose authority encompasses the entirety of the "organization" or at least the entirety of the bodies tasked with implementing the common plan – could have frustrated the commission of the crimes or affected in a considerable way the course of the events which took place in Timbuktu between 1 April 2012 and 28 January 2013.

859. Since the Prosecutor has not shown that Mr Al Hassan made an essential contribution to the commission of the crimes – a factor which alone suffices to rule out responsibility on his part under the head of article 25(3)(a) as a direct or indirect co-

²²⁴³ See, above, para. 764.

perpetrator – or shown that Mr Al Hassan exercised control over the organization, the subjective elements of direct or indirect co-perpetration need not be entertained.

860. Accordingly, the Chamber excludes responsibility on the part of Mr Al Hassan as a principal, save in respect of the flogging which he personally inflicted upon the ■■■ men on or about ■■■ 2012.²²⁴⁴ The Chamber does however regard Mr Al Hassan's contribution to be that of an accessory. Thus, as set out below, the Chamber considers that, save for those criminal acts which, it regards as established under article 25(3)(c),²²⁴⁵ article 25(3)(d) provides a better gauge of the role Mr Al Hassan played during the events which took place in Timbuktu and the Timbuktu Region between 1 April 2012 and 28 January 2013.

(D) Responsibility of Mr Al Hassan under article 25(3)(b) of the Statute

1. Applicable law

861. Article 25(3)(b) of the Statute provides that “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person [...] [o]rders, solicits or induces the commission of such a crime which in fact occurs or is attempted”.

862. As other Chambers have said, this form of responsibility is designed essentially to capture the conduct of prompting another person to commit a crime within the jurisdiction of the Court.²²⁴⁶

²²⁴⁴ See, above, para. 788.

²²⁴⁵ See, below, paras. 910-929, 932.

²²⁴⁶ *Bemba et al.* Trial Judgment, paras. 73-74; *Al Mahdi* Decision, para. 25; see also *Ntaganda* Decision, para. 153; *Gbagbo* Decision, para. 243; *Bemba et al.* Decision, para. 34; *Mbarushimana* Decision, footnote 661: “For instigating (roughly analogous to soliciting or inducing in article 25(3)(b) of the Statute)”; *Blé Goudé* Decision, para. 159; *Ongwen* Decision, para. 42.

863. Of relevance to the present decision are the latter two of the three forms of accessoryship contemplated at paragraph (b), *viz.* soliciting and inducing.

864. “Soliciting” and “inducing” fall into the broader category of “instigating” or “prompting another person to commit a crime” in the sense that they refer to a form of conduct by which a person exerts psychological influence over another person, as a result of which the criminal act is committed.²²⁴⁷

865. “Soliciting” and “inducing” differ from responsibility for “ordering” in that they do not require the perpetrator to hold a position of authority *vis-à-vis* the physical perpetrator.²²⁴⁸ In other words, the Chamber need not establish that there is a superior-subordinate relationship between the “instigator” and the physical perpetrator, as required in “ordering”. In comparison with the other two forms of responsibility, responsibility for “ordering” reflects the strongest form of influence over another person.²²⁴⁹

866. “Soliciting” occurs where a perpetrator asks or urges the physical perpetrator to commit the criminal act. It does not presuppose a certain relationship between the accessory and the physical perpetrator of the offence.²²⁵⁰

867. “Inducing” occurs where an accessory exerts influence over the physical perpetrator, either by strong reasoning, by persuasion or by conduct prompting the commission of the offence. Compared to the form of responsibility of “soliciting”, “inducing” represents a stronger method of instigation. Exertion of influence by the

²²⁴⁷ *Bemba et al.* Appeal Judgment, para. 847; *Bemba et al.* Trial Judgment, para. 73; *Gbagbo* Decision, para. 243.

²²⁴⁸ *Bemba et al.* Trial Judgment, para. 77; *Gbagbo* Decision, para. 243; *Blé Goudé* Decision, para. 159; *Ntaganda* Decision, paras. 145, 153; Decision Pursuant to Article 58 in *Mudacumura*, para. 6.

²²⁴⁹ *Bemba et al.* Trial Judgment, para. 77.

²²⁵⁰ *Bemba et al.* Trial Judgment, para. 75.

accessory over the physical perpetrator is not required when the accessory simply “solicits”, i.e. asks that the criminal act be committed.²²⁵¹

868. The objective element of “soliciting” or “inducing” may be effected by any means, by implied or express conduct.²²⁵²

869. Moreover, the accessory is held responsible only if the crime in fact occurs or is attempted.²²⁵³

870. It follows from the foregoing that the instigator does not carry out the crime and has no control over it. Control over the crime lies squarely with the physical perpetrator. This factor helps to demarcate the forms of responsibility under article 25(3)(b) of the Statute from those under article 25(3)(a).²²⁵⁴

871. However, the “soliciting” or the “inducing” must have had a direct effect on the commission or attempted commission of the crime.²²⁵⁵ The Appeals Chamber has specified that “[TRANSLATION] what matters is that there is a causal relationship between the act of prompting and the commission of the crime, in the sense that the accused person’s actions led the principal perpetrator to commit the crime or offence”.²²⁵⁶ In other words, the instigator, that is to say the *auteur intellectuel*, but for whom the offence would not have been committed, or not in that form, prompts the commission of the offence.

872. Even if the physical perpetrator was already generally pondering the commission of an offence, the instigator must have generated the final determination

²²⁵¹ *Bemba et al.* Trial Judgment, para. 76.

²²⁵² *Bemba et al.* Trial Judgment, para. 78, referring to decisions of the ICTY and ICTR; *Bemba et al.* Appeal Judgment, para. 848.

²²⁵³ *Bemba et al.* Trial Judgment, para. 79; *Ntaganda* Decision, para. 153.

²²⁵⁴ *Bemba et al.* Trial Judgment, para. 80.

²²⁵⁵ *Bemba et al.* Trial Judgment, para. 81; *Gbagbo* Decision, para. 243; Decision Pursuant to Article 58 in *Mudacumura*, para. 63; *Ntaganda* Decision, paras. 145 and 153.

²²⁵⁶ *Bemba et al.* Appeal Judgment, para. 848, referring to decisions of the ICTY and ICTR.

to commit the concrete offence. If, on the other hand, the physical perpetrator is already determined to commit the crime, the instigator's contribution does not have a direct effect on its commission.²²⁵⁷ In that case, the encouragement or moral support may qualify as "abetting" within the meaning of article 25(3)(c) of the Statute.²²⁵⁸

873. The means by which the influence is communicated or the instigation performed need not itself be direct, provided that the acts had the desired effect on the principal perpetrator of the offence.²²⁵⁹ The Appeals Chamber has specified that "[TRANSLATION] [...] [the] act of prompting does not need to be performed directly on the principal perpetrator, but may be performed by intermediaries."²²⁶⁰

874. As to the subjective elements, the perpetrator had the intent to "solicit" or "induce" the commission of the crime, or must at least have been aware that the crime or crimes would be committed "in the ordinary course of events" as a consequence of his or her act or omission.²²⁶¹

2. Counts 1 to 5: torture, other inhumane acts, cruel treatment and outrages upon personal dignity

875. The Chamber considers that the conduct described at paragraphs 307-308 of the decision, which relates to the flogging of the ██████████ on or about ██████████ ██████████ does not, contrary to the Prosecutor's assertion,²²⁶² constitute soliciting or inducing within the meaning of article 25(3)(b) of the Statute. In the Chamber's view, it is not established to the standard required that Mr Al Hassan's conduct on the day

²²⁵⁷ *Bemba et al.* Trial Judgment, para. 81, referring to decisions of the ICTY; see also para. 86.

²²⁵⁸ *Bemba et al.* Trial Judgment, para. 81, referring to decisions of the ICTY; see also *Bemba et al.* Trial Judgment, para. 86.

²²⁵⁹ See *Bemba et al.* Appeal Judgment, para. 847.

²²⁶⁰ *Bemba et al.* Appeal Judgment, para. 848, referring to decisions of the ICTY and ICTR; see also Decision Pursuant to Article 58 in *Mudacumura*, para. 63.

²²⁶¹ *Bemba et al.* Trial Judgment, para. 82; *Ntaganda* Decision, para. 153; Decision Pursuant to Article 58 in *Mudacumura*, para. 6.

²²⁶² DCC, para. 615.

the [REDACTED] were flogged *prompted* the commission of those criminal acts or *generated* the final determination to commit those concrete criminal acts. Accordingly, the Chamber does not find that Mr Al Hassan bears individual criminal responsibility for soliciting or inducing, within the meaning of article 25(3)(b) of the Statute, the commission of the flogging of the [REDACTED] on or about [REDACTED]. The Chamber will, nonetheless, consider Mr Al Hassan's individual criminal responsibility in terms of the other forms of responsibility defined at provisions (c) and (d) of article 25(3) of the Statute.

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

(a) Analysis

876. The Prosecutor argues that Mr Al Hassan also solicited or induced, within the meaning of article 25(3)(b) of the Statute, the commission of the war crime of sentencing under article 8(2)(c)(iv) of the Statute.²²⁶³ The Chamber notes the Defence's position that article 8(2)(c)(iv) of the Statute must be read as ruling out responsibility on the part of persons who do not possess a legal background. The Chamber points out, however, that the elements of the crime contain no such limitation and that it is, therefore, of the view that, provided that all the elements of the crime are satisfied, any person may be held responsible for the war crime at article 8(2)(c)(iv) of the Statute of passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

²²⁶³ DCC, paras. 508-514, 1066.

i. Passing of sentences pursuant to a previous written judgment and in respect of which Mr Al Hassan wrote an Islamic Police report

(a) [REDACTED]

877. As regards the case of the passing of sentence pursuant to previous written judgment concerning [REDACTED], the Defence submits that the judgment makes no reference to the Islamic Police report adverted to by the Prosecutor and that the Prosecutor has not established that the report or Mr Al Hassan played any role in the adjudication by the Islamic Court.²²⁶⁴

878. Since the facts described agree with the date stated in the Islamic Police report²²⁶⁵ and the judgment of the Islamic Court,²²⁶⁶ the Chamber is of the view that it is established to the standard required that Mr Al Hassan wrote and signed²²⁶⁷ the report, which was sent to the Islamic Court and that a written judgment was subsequently issued by the Islamic Court. Regarding this court case, [REDACTED]

[REDACTED].²²⁶⁸

(b) [REDACTED]

879. As regards the case of the passing of sentence pursuant to previous written judgment concerning (1) [REDACTED], (2) anonymous and (3) anonymous, the Defence submits that

²²⁶⁴ Defence Final Written Submissions, para. 108.

²²⁶⁵ Islamic Police reports dated [REDACTED].

²²⁶⁶ Judgment of the Islamic Court, [REDACTED].

²²⁶⁷ [REDACTED].

²²⁶⁸ [REDACTED].

the judgment makes no reference to the Islamic Police report adverted to by the Prosecutor; that the judgment contains information that appears to come from an investigation that was separate from the information contained in the Islamic Police report; and that the Prosecutor has not established that the report or Mr Al Hassan played any role in the adjudication by the Islamic Court.²²⁶⁹

880. Since the facts described agree with the date stated in the Islamic Police report²²⁷⁰ and the judgment of the Islamic Court,²²⁷¹ the Chamber is of the view that it is established to the standard required that Mr Al Hassan wrote and signed the report, which was sent to the Islamic Court,²²⁷² and that a written judgment was subsequently issued by the Islamic Court. The Chamber further notes that Mr Al Hassan made a connection between the report and the judgment when the Prosecutor's investigator showed him the two documents in the course of questioning. [REDACTED] the judgment in question was issued the same day as the report of the Islamic Police and attributes the swiftness to the fact that the sentenced persons had confessed.²²⁷³ Since the report and the judgment are of the same date, [REDACTED] does not think that the Islamic Court made an investigation.²²⁷⁴ [REDACTED]

[REDACTED] .²²⁷⁵

²²⁶⁹ Defence Final Written Submissions, para. 109.

²²⁷⁰ Islamic Police report [REDACTED], [REDACTED].

²²⁷¹ Judgment of the Islamic Court, [REDACTED], [REDACTED].

²²⁷² Statement P-0398, [REDACTED]; see also Statement P-0398, [REDACTED].

²²⁷³ [REDACTED], [REDACTED].

²²⁷⁴ [REDACTED], [REDACTED].

²²⁷⁵ [REDACTED], [REDACTED].

(c) [REDACTED]

881. As regards the case of the passing of sentence pursuant to previous written judgment concerning [REDACTED], the Defence submits that the judgment makes no reference to the Islamic Police report adverted to by the Prosecutor; that the judgment, furthermore, contains information which suggests that the Islamic Court undertook a separate investigation to that of the Islamic Police; and that the Prosecutor has not established that the report or Mr Al Hassan played any role in the adjudication by the Islamic Court.²²⁷⁶

882. Since the facts described agree with the date stated in the Islamic Police report²²⁷⁷ and the judgment of the Islamic Court,²²⁷⁸ the Chamber is of the view that it is established to the standard required that Mr Al Hassan wrote and signed the report, which was then sent to the Islamic Court,²²⁷⁹ and that a written judgment was issued thereafter by the Islamic Court.

(d) [REDACTED]

883. As regards the case of the passing of sentence pursuant to previous written judgment concerning [REDACTED], the Defence submits that the Prosecutor has not established a causal nexus between the Islamic Police report, which she points to as having been written by Mr Al Hassan, and the judgment; that the Islamic Police report, furthermore, contains merely notes on the incident and makes no mention of action taken by Mr Al Hassan; that the judgment, moreover, makes no reference to the Islamic Police report adverted

²²⁷⁶ Defence Final Written Submissions, para. 110.

²²⁷⁷ Islamic Police report, [REDACTED], [REDACTED].

²²⁷⁸ Judgment of the Islamic Court, [REDACTED], [REDACTED].

²²⁷⁹ [REDACTED], [REDACTED].

to by the Prosecutor; and that the Prosecutor has not shown that Mr Al Hassan played any role in the proceedings before the Islamic Court.²²⁸⁰

884. The Chamber notes that since the facts described in the Islamic Police report²²⁸¹ and the judgment of the Islamic Court agree,²²⁸² it is established to the standard required that Mr Al Hassan wrote and signed the report, which was then sent to the Islamic Court,²²⁸³ and that a written judgment was subsequently issued by the Islamic Court.

(e) [REDACTED]

885. In addition to the cases aforementioned, the Chamber notes a further Islamic Police report²²⁸⁴ and, since the facts described in the report and the written judgment of the Islamic Court concerning [REDACTED] agree,²²⁸⁵ it is of the view that it is established to the standard required that Mr Al Hassan wrote and signed the report, which was then sent to the Islamic Court, and that a written judgment was subsequently issued by the Islamic Court.²²⁸⁶

(f) The Chamber's findings

886. The Chamber concludes, as regards the above-mentioned passing of sentences pursuant to previous written judgment, that there are substantial grounds to believe

²²⁸⁰ Defence Final Written Submissions, para. 111.

²²⁸¹ Islamic Police report dated [REDACTED], [REDACTED].

²²⁸² Judgment of the Islamic Court, [REDACTED], [REDACTED].

²²⁸³ [REDACTED], [REDACTED].

²²⁸⁴ [REDACTED].

²²⁸⁵ Judgment of the Islamic Court, [REDACTED], [REDACTED].

²²⁸⁶ The Chamber sees that this document [REDACTED]. From the document's resemblance to the other documents in that category (see, above, paras. [REDACTED] 712-715, 718 and footnote 1928), the Chamber concludes that it is established to the standard required that this document is a report prepared by Mr Al Hassan concerning a case dealt with by the Islamic Police.

that Mr Al Hassan participated in the investigations conducted in those cases, at the very least by writing the reports. The Chamber finds, furthermore, that those cases were referred to the Islamic Court and resulted in the commission of the crimes.

887. In the Chamber's view, however, the act of writing reports does not constitute soliciting or inducing within the meaning of article 25(3)(b) of the Statute. The Chamber does not consider that this conduct *prompted* the commission of the crimes or that Mr Al Hassan, by virtue of his conduct, *generated* the final determination to commit those concrete crimes. The Chamber would point out, first, that the Islamic Police reports merely contain a short description of the facts of each case. Secondly, even on the assumption that it was Mr Al Hassan who decided whether to send a case to the Islamic Court, the Chamber considers that Mr Al Hassan was bound by pre-established procedure and, in particular, by Abou Zeid's instructions.²²⁸⁷ Furthermore, the Chamber does not have before it evidence on which to determine to the standard required that Mr Al Hassan could decline to refer a case to the Islamic Court where circumstances required him to do so.

888. What is more, the Chamber does not have before it evidence on which to determine to the standard required that Mr Al Hassan exerted any influence whatsoever over the members of the Islamic Court – the physical perpetrators of the acts enumerated. The Chamber sees that, at best, there is document [MLI-OTP-0001-7546](#), containing an Islamic Police report on a debt case,²²⁸⁸ whose connection to a written judgment of the Islamic Court is not established. From the annotation – “[TRANSLATION] The above term expired without the man paying anything. I urge the members of the Court to be harsher with this man because he has taken money from

²²⁸⁷ [MLI-OTP-0001-7193](#), translation [MLI-OTP-0039-1036](#), p. 1037; [MLI-OTP-0001-7194](#), translation [MLI-OTP-0034-0039](#), p. 0040.

²²⁸⁸ Islamic Police report dated 19 June 2012, [MLI-OTP-0001-7546](#), translation [MLI-OTP-0054-0014](#), p. 0015; [REDACTED]

a lot of people” – made by Mr Al Hassan at the behest of the emir of the Islamic Police,²²⁸⁹ it appears that the case was referred to the Islamic Court with a recommendation. The Prosecutor has not, however, established whether the Islamic Court considered itself bound by that recommendation.

ii. Other cases

889. As to the case of the passing of sentence pursuant to previous written judgment concerning Dédéou Muhammad Maiga (court case 17/1433-2012), the Chamber considers that Mr Al Hassan’s contribution, *viz.* his participation in the first arrest of this person, did not prompt the commission of the crime or generate the final determination on the part of the physical perpetrators to commit the crime.

890. For the other cases of the passing of sentences pursuant to a previous written judgment, the Chamber notes that the conduct ascribed to Mr Al Hassan stems from the important role he played in the Islamic Police, in particular as part of his activities connected to the writing of Islamic Police reports. Although the means by which the influence is exerted need not be direct, the Chamber is of the view that, for the same reasons as above,²²⁹⁰ the Prosecutor has not established that this general contribution on Mr Al Hassan’s part had an effect on the physical perpetrators of the crimes and thereby prompted the commission of the crimes in question.

891. Lastly, for the same reasons as above, when it comes to the cases of the passing of sentences without previous judgment concerning P-0542, P-0547, P-0570, P-0574, [REDACTED] and the passing of sentences pursuant to previous oral judgment concerning P-0557, P-0565 and the men flogged on or about [REDACTED], the Chamber determines that the Prosecutor has not established that Mr

²²⁸⁹ [REDACTED]

²²⁹⁰ See, above, paras. 887-888.

Al Hassan solicited or induced, within the meaning of article 25(3)(b) of the Statute, the commission of those criminal acts.

(b) The Chamber's findings

892. Accordingly, the Chamber does not find that Mr Al Hassan bears individual criminal responsibility for soliciting or inducing, within the meaning of article 25(3)(b), the commission of the war crime of passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees generally recognized as indispensable, under article 8(2)(c)(iv) of the Statute.

893. That notwithstanding, the Chamber will consider Mr Al Hassan's individual criminal responsibility for those criminal acts in terms of the other forms of responsibility defined at provisions (c) and (d) of article 25(3) of the Statute.

4. Count 13: persecution

894. The Prosecutor argues that by virtue of the duties he performed in the Islamic Police Mr Al Hassan solicited or induced, within the meaning of article 25(3)(b) of the Statute, the commission of the crime against humanity of persecution under article 7(1)(h) of the Statute.²²⁹¹

895. The Chamber is of the view that Mr Al Hassan's actions in the Islamic Police do not constitute soliciting or inducing within the meaning of article 25(3)(b) of the Statute. In the Chamber's view, it is not established to the standard required that Mr Al Hassan's conduct *prompted* the commission of the acts of persecution referred to in article 7(1)(h) of the Statute or *generated* the final determination to commit those concrete acts. Accordingly, the Chamber does not find that Mr Al Hassan bears individual criminal responsibility, within the meaning of article 25(3)(b)

²²⁹¹ DCC, paras. 998-1002.

of the Statute, for the commission of the crime against humanity under article 7(1)(h) of the Statute. Mr Al Hassan's individual criminal responsibility will, nonetheless, be considered below in terms of the other forms of responsibility defined at provisions (c) and (d) of article 25(3) of the Statute.

(E) Responsibility of Mr Al Hassan pursuant to article 25(3)(c) of the Statute

1. Applicable law

896. Under article 25(3)(c) of the Statute, individual criminal responsibility accrues to a person who, for the purpose of facilitating the commission of a crime within the jurisdiction of the Court, "aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission".

897. As Pre-Trial Chamber I pointed out in a different case, "[i]n essence, what is required for this form of responsibility is that the person provides assistance to the commission of a crime and that, in engaging in this conduct, he or she intends to facilitate the commission of the crime".²²⁹² The assistance need not be "substantial"; nor need it be characterized by anything other than the specific intent to facilitate the commission of the crime (as opposed to a requirement for shared intent on the part of the perpetrators).²²⁹³

898. Article 25(3)(c) of the Statute provides for accessorial responsibility,²²⁹⁴ holding anyone who assists the principal perpetrator of an offence responsible. As the plain wording of the article makes clear, criminal responsibility thereunder is dependent on the commission, or at least the attempted commission, of an offence by the

²²⁹² *Al Mahdi* Decision, para. 26, referring to *Blé Goudé* Decision, para. 167; *Bemba et al.* Appeal Judgment, para. 1329; *Bemba et al.* Decision, para. 35; *Ongwen* Decision, para. 43.

²²⁹³ *Bemba et al.* Appeal Judgment, para. 1326; *Al Mahdi* Decision, para. 26.

²²⁹⁴ *Bemba et al.* Trial Judgment, para. 84; *Lubanga* Trial Judgment, paras. 997, 999.

principal.²²⁹⁵ However, accessorial responsibility may be established regardless of whether the principal is identified, charged or convicted.²²⁹⁶

899. By comparison with article 25(3)(a) of the Statute, the assistance-based form of responsibility under article 25(3)(c) of the Statute entails a lesser degree of blameworthiness.²²⁹⁷ A co-perpetrator who makes an essential contribution to the commission of the offence in execution of a common plan exerts control over the offence jointly with others. The co-perpetrator has the power to frustrate the commission of the offence by not performing his or her task.²²⁹⁸ An accessory within the meaning of article 25(3)(c) exerts no such control; he or she merely contributes to or otherwise assists in an offence committed by the principal.

900. By comparison with article 25(3)(b) of the Statute, the form of responsibility defined by article 25(3)(c) entails, again, a lesser degree of blameworthiness. This follows from the fact that the instigator, the *auteur intellectuel* of the offence, directly prompts its commission, whereas the contribution of the person who assists hinges on the determination of the principal to commit the offence.²²⁹⁹

901. Turning first to the material elements, the Statute lists “aids”, “abets” and “otherwise assists” disjunctively, as discrete terms. Although each of the terms “aids”, “abets” and “otherwise assists” has a distinct meaning, all three nonetheless fall under

²²⁹⁵ *Bemba et al.* Appeal Judgment, para. 1329; *Bemba et al.* Trial Judgment, para. 84; *Lubanga* Trial Judgment, para. 998; *Katanga* Trial Judgment, para. 1385.

²²⁹⁶ *Bemba et al.* Trial Judgment, para. 84 and references therein.

²²⁹⁷ *Lubanga* Appeal Judgment, para. 462; *Bemba et al.* Trial Judgment, para. 85.

²²⁹⁸ See, above, paras. 795-814.

²²⁹⁹ *Bemba et al.* Trial Judgment, para. 86.

the broader head of assisting in the commission or attempted commission of an offence.²³⁰⁰

902. The Chamber is of the view that “aids”, read in the context of the other two forms of responsibility set out at article 25(3)(c) of the Statute, entails the giving of practical or material assistance.²³⁰¹ It is recalled that article 25(3)(c) specifies a typical form of providing assistance, *viz.* providing the means for the commission of a crime within the jurisdiction of the Court. In this regard, the term “aids” overlaps with “otherwise assists” within the meaning of article 25(3)(c) of the Statute.

903. To the Chamber’s understanding, the term “abets” refers to moral or psychological assistance which the accessory gives to the principal by encouraging, or being sympathetic to, the commission of the particular offence.²³⁰² The encouragement or support shown need not be explicit. Under certain circumstances, mere presence at or near the *locus criminis* as a “silent spectator” may be construed as tacit approval or encouragement.²³⁰³

904. Pre-Trial Chamber II has held that the assistance must have an effect on the commission of the offence.²³⁰⁴ Whereas this general causal requirement is undisputed in the decisions of the Court, the level of assistance required remains unsettled. Some Chambers have taken the view that article 25(3)(c) of the Statute encompasses a

²³⁰⁰ *Bemba et al.* Trial Judgment, para. 87.

²³⁰¹ *Bemba et al.* Trial Judgment, para. 88 and references therein.

²³⁰² *Bemba et al.* Appeal Judgment, para. 1330; *Bemba et al.* Trial Judgment, para. 88.

²³⁰³ *Bemba et al.* Trial Judgment, para. 88 and references therein. For instance, the Appeals Chamber of the ICTR put it thus: “It has been the authority of the accused combined with his presence on (or very near to) the crime scene, especially if considered with his prior conduct, which all together allow the conclusion that the accused’s conduct amounts to official sanction of the crime and this substantially contributes to it” (*Prosecutor v. Grégoire Ndahimana*, “Judgement”, 16 December 2013, ICTR-01-68-A, para. 147 (“*Ndahimana* Appeal Judgment”)).

²³⁰⁴ *Bemba et al.* Decision, para. 35.

requirement for a “substantial” character which distinguishes it from the other forms of responsibility under article 25. In that vein, Pre-Trial Chamber I in *Mbarushimana* held that “a substantial contribution to the crime may be contemplated”,²³⁰⁵ and Trial Chamber I in *Lubanga* held that article 25(3)(c) requires a “substantial” contribution on the part of the accessory.²³⁰⁶

905. In the Court’s most recent decisions, however, other Chambers have not elaborated further on the assistance and have adverted instead to the plain wording of the provision.²³⁰⁷

906. The Chamber considers that the form of contribution defined at article 25(3)(c) of the Statute does not require a specific threshold to be met.²³⁰⁸

907. Furthermore, in the Chamber’s view, the assistance may be given before, during or after the commission of the offence.²³⁰⁹ None of the three forms of responsibility set out at article 25(3)(c) requires the perpetrator to be present in person when the offence is committed.²³¹⁰ The accessory may provide assistance to the principal or the intermediary perpetrator.²³¹¹

908. Turning next to the subjective elements, article 30 of the Statute applies to all forms of participation under article 25, including those at article 25(3)(c),²³¹² “unless otherwise provided”. Unlike other international instruments, article 25(3)(c)

²³⁰⁵ *Mbarushimana* Decision, para. 280.

²³⁰⁶ *Lubanga* Trial Judgment, para. 997.

²³⁰⁷ *Bemba et al.* Decision, para. 35; *Blé Goudé* Decision, para. 167; *Bemba et al.* Appeal Judgment, para. 1326.

²³⁰⁸ The Chamber adopts the reasoning of Pre-Trial Chamber II in *Bemba et al.* Decision, paras. 35 *et seq.*

²³⁰⁹ *Bemba et al.* Appeal Judgment, para. 1399 (see SCSL, *Sesay et al.* Trial Judgment, para. 278; ECCC, *Nuon Chea and Khieu Samphan* Trial Judgment, paras. 712, 713, referring to *Blaškić* Appeal Judgment, para. 48, SCSL, *Taylor* Trial Judgment, para. 484).

²³¹⁰ *Bemba et al.* Trial Judgment, para. 96 and references therein.

²³¹¹ *Bemba et al.* Trial Judgment, para. 96 and references therein.

²³¹² *Bemba et al.* Trial Judgment, para. 97; *Mbarushimana* Decision, para. 289.

expressly requires the person to have acted with a specific “purpose”: “for the purpose of facilitating the commission of such a crime”.²³¹³ This wording introduces a more stringent subjective mental element and means that the accessory must have lent his or her assistance with the aim of facilitating the offence. It is not sufficient that the accessory merely knows that his or her conduct will assist the principal in the commission of the offence. Mindful of the accessory’s twofold intent – first, vis-à-vis the principal offence and, second, vis-à-vis his or her own conduct – the Chamber points out that this elevated subjective standard relates to the accessory’s facilitation of the commission, and not to the principal offence.

909. In addition, to find an accessory responsible for aiding and abetting the commission of an offence requires proof also that he or she had intent vis-à-vis the principal offence, in accordance with article 30 of the Statute, which applies by default. This means that the aider or abettor must at least be aware that the principal’s offence would occur in the ordinary course of events. Finally, the accessory need not know the precise offence which was to be committed and, in the specific circumstances, was committed, but he or she must be aware of its essential elements.²³¹⁴

²³¹³ *Bemba et al.* Trial Judgment, para. 97; *Mbarushimana* Decision, paras. 274, 281.

²³¹⁴ *Bemba et al.* Trial Judgment, para. 98; *Bemba et al.* Appeal Judgment, para. 1400: “The Appeals Chamber recalls that article 25 (3) (c) of the Statute requires that the aider and abettor act ‘[f]or the purpose of facilitating the commission of [...] a crime’. However, this does not mean that the aider and abettor must know all the details of the crime in which he or she assists. A person may be said to be acting for the purpose of facilitating the commission of a crime, even if he or she does not know all the factual circumstances in which it is committed”.

2. Counts 1 to 5: torture, other inhumane acts, cruel treatment and outrages upon personal dignity

(a) Case of the ██████████ flogged on or about ██████████ 2012

910. The Prosecutor furthermore alleges that Mr Al Hassan is responsible under article 25(3)(c) of the Statute for aiding the commission of the acts of violence to which the ██████████ were subjected on or about ██████████ 2012.²³¹⁵

911. The Defence maintains that Mr Al Hassan had no control or power over the Islamic Court and neither the power nor the possibility to refuse to carry out the punishment which it ordered.²³¹⁶ The Defence contends that the Islamic Court judgments concerning these two couples refer to the role of the *Hisbah*, but not the Islamic Police, in the investigations relating to them.²³¹⁷ The Defence also argues that the Prosecutor has adduced no evidence as to the identities of the perpetrators of the flogging and that Mr Al Hassan's presence at the site of the flogging cannot by itself attract responsibility in any form.²³¹⁸

912. On the facts found at paragraphs 307-308 of this decision, the Chamber considers that it need not be shown in this particular case that the crimes were committed by members of the Islamic Police, firstly because the circumstances establish to the standard required that the physical perpetrators of the crime and the persons on hand to ensure it was executed were members of Ansar Dine/AQIM, including members of the Islamic Police. Secondly the Chamber does not attribute responsibility to Mr Al Hassan on the basis of any authority he might have had over members of the Islamic Police. The Chamber does, however, have regard to the fact that, when ██████████ flogged, Mr Al

²³¹⁵ DCC, para. 618.

²³¹⁶ Defence Final Written Submissions, para. 126.

²³¹⁷ Defence Final Written Submissions, paras. 121, 123.

²³¹⁸ See Defence Final Written Submissions, paras. 122, 124.

Hassan was there in connection with one of his duties in the Islamic Police, *viz.* to provide security when punishment ordered by the Islamic Court was being carried out in public. The Chamber considers it reasonable, given the circumstances, to infer that he also performed this role when the other two couples were flogged on [REDACTED] 2012. The Chamber therefore considers that, by virtue of his role, which consisted of forming a “security cordon” with other members of the Islamic Police, including Abou Dhar and Abdallah Burkini, between those being flogged and the onlookers, Mr Al Hassan provided “practical assistance” which had an effect on the commission of the offence, and that he did so “for the purpose of facilitating” the commission of the floggings of [REDACTED]

[REDACTED]. The Chamber points out in this regard that the form of contribution defined at article 25(3)(c) of the Statute does not require a specific threshold to be met. The Chamber also notes that Mr Al Hassan signed the Islamic Police report concerning [REDACTED].²³¹⁹

913. Accordingly, the Chamber finds, in respect of those criminal acts, that Mr Al Hassan bears individual criminal responsibility within the meaning of article 25(3)(c) of the Statute for the war crimes of torture under article 8(2)(c)(i), cruel treatment under article 8(2)(c)(i) and outrages upon personal dignity under article 8(2)(c)(ii), and for the crimes against humanity of torture under article 7(1)(f) and other inhumane acts under article 7(1)(k) of the Statute. The Chamber will subsequently also consider Mr Al Hassan’s individual criminal responsibility under article 25(3)(d) of the Statute for the acts of violence to which [REDACTED]

²³¹⁹ Islamic Police report dated [REDACTED]
[REDACTED]; [REDACTED]

_____ subjected.

(b) Case of P-0565 and P-0557 _____

914. The Prosecutor alleges that Mr Al Hassan is responsible under article 25(3)(c) of the Statute for aiding the commission of the flogging of P-0565 and P-0557.²³²⁰ The Prosecutor alleges that Mr Al Hassan was present at the scene of the flogging, in proximity to the victims and interacting with the direct perpetrators, and that he was there as part of the provision of security in respect of all the assembled townspeople. She also alleges that he necessarily provided moral support to the direct perpetrators by virtue of his status as de facto police superintendent whose duties included investigating instances of conduct regarded as prohibited.²³²¹

915. The Defence maintains that Mr Al Hassan's presence at the site of the flogging cannot by itself constitute responsibility in any form.²³²²

916. On the facts found at paragraphs 272-276 of this decision, considering that he was in a central position in relation to the flogging and given that he was wearing the Islamic Police vest, the Chamber concludes that Mr Al Hassan was present at the site of the flogging for the purpose of forming, with other Ansar Dine/AQIM members, including at least one member of the Islamic Police, a "security cordon" between those being flogged and the onlookers.²³²³ The Chamber considers that by virtue of this conduct Mr Al Hassan provided assistance which had an effect on the commission of the offence, and that he did so "for the purpose of facilitating" the flogging. The

²³²⁰ DCC, para. 617.

²³²¹ DCC, para. 617.

²³²² See Defence Final Written Submissions, paras. 116-118.

²³²³ The Chamber also notes the existence of an Islamic Police report written and signed by Mr Al Hassan which records facts similar to those concerning P-0565 and P-0557 ([MLI-OTP-0002-0040](#), translation [MLI-OTP-0069-2110](#); _____)

Chamber points out in this connection that the form of contribution defined at article 25(3)(c) of the Statute does not require a specific threshold to be met. The Chamber also notes that he was present when P-0565 and P-0557 [REDACTED].

917. The Chamber notes the Prosecutor's further allegation that Mr Al Hassan necessarily provided moral support to the direct perpetrators by virtue of his status of de facto police superintendent, whose duties included investigating conduct regarded as prohibited. On the supposition that the Prosecutor's allegation refers to "abet[ting]" under article 25(3)(c) of the Statute, the Chamber points out that, while a suspect's mere presence at the *locus criminis* may constitute "abetting" the commission of a crime, it will do so only in certain circumstances.²³²⁴ The suspect's position of authority vis-à-vis those who physically perpetrated the offence will for instance be determinative. Here the Chamber is not in a position to make any findings as to the exact identities of the physical perpetrators of the flogging beyond the fact that they belonged to Ansar Dine/AQIM. Therefore it is not in a position to give further consideration to the Prosecutor's allegation.

918. The Chamber also rejects the Defence's arguments for the same reasons given in the case of the [REDACTED] flogged on or about [REDACTED], namely that the Chamber does not attribute responsibility to Mr Al Hassan on the basis of any authority he might have had over members of the Islamic Police.

919. Accordingly, the Chamber finds, on account of the acts of violence to which P-0565 and P-0557 were subjected, that Mr Al Hassan bears individual criminal responsibility within the meaning of article 25(3)(c) of the Statute for the war crimes of torture under article 8(2)(c)(i), cruel treatment under article 8(2)(c)(i) and outrages upon personal dignity under article 8(2)(c)(ii), and for the crimes against humanity of torture under article 7(1)(f) and other inhumane acts under article 7(1)(k) of the Statute.

²³²⁴ See, above, para. 907. See also ICTY, *Ndahimana* Appeal Judgment, para. 147.

The Chamber will subsequently also consider Mr Al Hassan's individual criminal responsibility under article 25(3)(d) of the Statute.

(c) Case ██████████

920. The Prosecutor alleges that Mr Al Hassan is criminally responsible under article 25(3)(c) of the Statute for the acts of violence to which ██████████ subjected.²³²⁵

921. On the facts found at paragraph 270 of this decision, the Chamber considers that Mr Al Hassan's writing and signing of the Islamic Police report constitutes a form of aid "after the crime" understood as having been given "[f]or the purpose of facilitating the commission of such a crime". The Appeals Chamber in *Bemba et al.* confirmed in this regard that assistance given after the commission of the crime could be compatible with the requirement that the person acted with a specific purpose, *viz.* "for the purpose of facilitating the commission of such a crime". However, it underscored that such would be the case

if there was a prior offer of assistance or an agreement between the principal perpetrator and the accessory that the latter would lend assistance after the commission of the crime or offence, that conduct can be said to have amounted to assistance in the commission of the crime because the principal perpetrator committed it, knowing that he or she would receive assistance in the aftermath.²³²⁶

The Chamber finds, on the basis of the circumstances under consideration, that prior to the commission of the offence, there was such an offer or an agreement between Mr Al Hassan and the physical perpetrators of the crime.

922. First, the Chamber observes that by ██████████ Mr Al Hassan had already produced reports for the Islamic Police, whose practice was to record all the relevant facts of a case reported to the Islamic Police.²³²⁷ Secondly, the Chamber notes that

²³²⁵ DCC, para. 619.

²³²⁶ *Bemba et al.* Appeal Judgment, para. 1399.

²³²⁷ See, above, paras. 718, 733-735.

██████████ torture was a “routine” method of interrogation used by the Islamic Police to obtain suspects’ confessions.²³²⁸ The Chamber is therefore unpersuaded in this regard by the Defence’s reading that the fact that Mr Al Hassan produced the Islamic Police report referring to the use of torture does not support the inference that he approved of that method of interrogation. The Chamber recalls that ██████████ that a person who did not confess under torture had to be released,²³²⁹ thus suggesting that it was a “routine” interrogation method and that if the Islamic Police report stated that the suspect had been tortured then it clearly did so because the outcome achieved (confession or no confession) was regarded as indicative of the person’s guilt or innocence. ██████████

██████████ the relevant particulars of the investigation process and thus it is established that he knew that torture was used as a method of interrogation.²³³⁰

923. Accordingly, the Chamber finds, in respect of those criminal acts, that Mr Al Hassan bears individual criminal responsibility within the meaning of article 25(3)(c) of the Statute for the war crimes of torture under article 8(2)(c)(i), cruel treatment under article 8(2)(c)(i) and outrages upon personal dignity under article 8(2)(c)(ii), and for the crimes against humanity of torture under article 7(1)(f) and other inhumane acts under article 7(1)(k) of the Statute. The Chamber will subsequently also consider Mr Al Hassan’s individual criminal responsibility under article 25(3)(d) of the Statute as regards this case.

²³²⁸ ██████████

²³²⁹ ██████████ ██████████

²³³⁰ See in this respect Defence Final Written Submissions, para. 138.

article 7(1)(k) of the Statute. The Chamber will subsequently also consider Mr Al Hassan's individual criminal responsibility under article 25(3)(d) of the Statute as regards this case.

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

928. The Prosecutor alleges that Mr Al Hassan is criminally responsible under article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting in the commission of the war crime of sentencing under article 8(2)(c)(iv) of the Statute.²³³³ The Chamber determines that there are substantial grounds to believe that Mr Al Hassan "aid[ed], abet[ted] or otherwise assist[ed]", within the meaning of article 25(3)(c) of the Statute, the commission of the cases of passing of sentences pursuant to a previous written judgment concerning ██████████ (██████████); (1) ██████████ ██████████, (2) anonymous and (3) anonymous (██████████); ██████████ ██████████ (██████████); ██████████ ██████████ (██████████); and ██████████ (██████████). The Chamber considers that the acts of writing and signing the Islamic Police reports about these cases and, where applicable, the sending of the reports to the Islamic Court²³³⁴ constitute "practical assistance" which had an effect on the commission of the criminal acts. The Chamber underscores in this regard that the form of contribution defined at article 25(3)(c) of the Statute does not require a specific threshold to be met.

²³³³ DCC, paras. 515-521, 1066.

²³³⁴ See, above, paras. 877-885.

929. Accordingly, the Chamber finds, on account of those criminal acts, that Mr Al Hassan bears individual criminal responsibility for providing “practical assistance” and for doing so “[f]or the purpose of facilitating” the commission of the war crime, under article 8(2)(c)(iv) of the Statute, of passing sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees generally recognized as indispensable. The Chamber will also consider Mr Al Hassan’s individual criminal responsibility under article 25(3)(d) of the Statute as regards this case.

930. As regards the case of the passing of sentence pursuant to previous written judgment concerning Dédéou Muhammad Maiga (██████████), the Chamber considers that the Prosecutor has not established to the standard required that Mr Al Hassan’s contribution, *viz.* his participation in the first arrest of this person, who subsequently escaped before being recaptured and returned to prison by some Timbuktu inhabitants, constitutes “aid[ing], abet[ting] or otherwise assist[ing]”, within the meaning of article 25(3)(c) of the Statute, which had an effect on the commission of the criminal act. Therefore, the Chamber does not find that Mr Al Hassan bears individual criminal responsibility in respect of that criminal act. That notwithstanding, the Chamber will consider Mr Al Hassan’s individual criminal responsibility regarding that criminal act in terms of article 25(3)(d) of the Statute.

931. As to the other cases of the passing of sentences pursuant to a previous written judgment,²³³⁵ the conduct ascribed to Mr Al Hassan stems from the important role he played in the Islamic Police, in particular in all of his activities connected to the writing of Islamic Police reports. In the Chamber’s view, however, the Prosecutor has not established that this general contribution constitutes “aid[ing], abet[ting] or otherwise assist[ing]”, within the meaning of article 25(3)(c) of the Statute, which had an effect

²³³⁵ See, above, para. 515.

on the commission of the acts, and that he engaged in the conduct “[f]or the purpose of facilitating” the commission of the crime at article 8(2)(c)(iv) of the Statute. Accordingly, the Chamber does not find that Mr Al Hassan bears individual criminal responsibility within the meaning of article 25(3)(c) of the Statute for the commission of those criminal acts. Mr Al Hassan’s individual criminal responsibility will nonetheless be subsequently considered in terms of article 25(3)(d) of the Statute.

932. As to the second and third cases of sentences without previous judgment concerning ██████████, the Chamber underscores that Mohamed Moussa, the physical perpetrator of the sentence, was called at Mr Al Hassan’s behest in order to deal with the case of ██████████.²³³⁶ The Chamber determines that the act constitutes “aid[ing], abet[ting] or otherwise assist[ing]”, within the meaning of article 25(3)(c) of the Statute, which had an effect on the commission of those specific acts and that Mr Al Hassan engaged in that act “[f]or the purpose of facilitating” the commission of the crime defined at article 8(2)(c)(iv) of the Statute. The Chamber points out in this regard that, in its view, the Statute does not require the contribution under article 25(3)(c) to reach a minimum threshold. Accordingly, the Chamber finds that Mr Al Hassan bears individual criminal responsibility within the meaning of article 25(3)(c) of the Statute for the commission of these criminal acts. The Chamber will also consider Mr Al Hassan’s individual criminal responsibility under article 25(3)(d) of the Statute regarding that case.

933. As to the cases of passing sentences without previous judgment concerning P-0542, P-0547, P-0570, P-0574, ██████████ (first sentence) and the cases of passing sentences by previous oral judgment concerning P-0557, P-0565 and the ██████ men flogged on or about ██████ 2012,²³³⁷ the Chamber considers for

²³³⁶ See, above, para. 292. Statement of P-0580, [MLI-OTP-0051-0018-R01](#), para. 84.

²³³⁷ See, above, para. 515.

the same reasons given above²³³⁸ that the Prosecutor has not established that Mr Al Hassan engaged in “aid[ing], abet[ting] or otherwise assist[ing]” within the meaning of article 25(3)(c) of the Statute which had an effect on the commission of the criminal acts or that he acted “[f]or the purpose of facilitating” the commission of the crime under article 8(2)(c)(iv) of the Statute. Accordingly, the Chamber does not find that Mr Al Hassan bears individual criminal responsibility within the meaning of article 25(3)(c) of the Statute for the commission of those criminal acts. Mr Al Hassan’s individual criminal responsibility will nonetheless be subsequently considered in terms of article 25(3)(d) of the Statute.

4. Count 13: persecution

934. The Prosecutor alleges that by virtue of his duties performed in the Islamic Police Mr Al Hassan “aid[ed], abet[ted] or otherwise assist[ed]” within the meaning of article 25(3)(c) of the Statute which had an effect on the commission of the criminal acts, and that he acted “[f]or the purpose of facilitating” the commission of the crime of persecution under article 7(1)(h) of the Statute.²³³⁹

935. The Chamber is of the view that the duties which Mr Al Hassan performed in the Islamic Police during the time frame in question,²³⁴⁰ such as writing reports and sending them to the Islamic Court, taking part in the administration of floggings either personally or by providing security at the sites where they were carried out, and participating in the organization of patrols, constitute “otherwise assist[ing]” within the meaning of article 25(3)(c) which had an effect on the commission of the crime against humanity of persecution under article 7(1)(h) of the Statute.

²³³⁸ See, above, para. 930.

²³³⁹ DCC, paras. 1003-1011, 1094.

²³⁴⁰ See, above, (A) Findings of fact.

936. However, the Chamber considers that it has insufficient evidence to establish substantial grounds to believe that Mr Al Hassan acted with the specific intent to discriminate on religious and/or gender grounds and “[f]or the purpose of facilitating” the commission of the crime against humanity under article 7(1)(h) of the Statute. The Chamber will, nevertheless, subsequently consider Mr Al Hassan’s individual criminal responsibility for the commission of this crime in terms of the form of responsibility defined at article 25(3)(d) of the Statute.

(F) Responsibility of Mr Al Hassan pursuant to article 25(3)(d) of the Statute

1. Applicable law

937. Article 25(3)(d) of the Statute recognizes as a mode of participation in an offence the act of contributing “[i]n any other way” to the commission of a crime by a group of persons acting with a common purpose. Article 25(3)(d) of the Statute provides for a “residual” form of individual criminal responsibility.

938. The following elements must be established: a crime within the jurisdiction of the Court was attempted or committed; the commission or attempted commission of such a crime was carried out by a group of persons acting with a common purpose; the person contributed “[i]n any other way” to the commission of the crime; the contribution shall be intentional; and the person made the contribution either with the aim of furthering the criminal activity or criminal purpose, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court (article 25(3)(d)(i)), or in the knowledge of the intention of the group to commit the crime (article 25(3)(d)(ii)).²³⁴¹

939. The Chamber will look at each of these criteria in turn, except the first.

²³⁴¹ *Katanga* Trial Judgment, paras. 1617, 1620; *Al Mahdi* Decision, para. 27. *Ongwen* Decision, para. 44; *Ruto and Sang* Decision, paras. 353, 354; *Ntaganda* Decision, para. 158; *Blé Goudé* Decision, para. 172.

(a) The commission or attempted commission of such a crime was carried out by a group of persons acting with a common purpose

940. A *sine qua non* of the application of article 25(3)(d) of the Statute is proof of the existence of a group of persons driven by and acting with a common purpose. The Chamber has regard to the fact that the common purpose need not be explicit and that its existence may be inferred from the subsequent concerted action of the group.²³⁴² The purpose must be to commit, or must include the carrying out of, a crime, although it need not be specifically directed at the commission of a crime.²³⁴³ It is not necessary to establish that the group of persons acting with a common purpose was organized along military, political or administrative lines.²³⁴⁴ Furthermore, it is the view of the Chamber that the participants in the common purpose must harbour the same intent: they must “in relation to that consequence” “mea[n] to cause th[e] consequence” that is the crime or know that the crime “will occur in the ordinary course of events”.²³⁴⁵

941. To be satisfied that the perpetrator of the crime’s acts were encompassed by the common purpose, the Prosecutor must also show that the crime in question formed part of the common purpose.²³⁴⁶

²³⁴² *Katanga* Trial Judgment, paras. 1626-1627 and references therein; *Mbarushimana* Decision, para. 271; *Lubanga* Decision, para. 344.

²³⁴³ *Katanga* Trial Judgment, para. 1627 and references therein; *Mbarushimana* Decision, para. 271. See also *Lubanga* Decision, paras. 343-345.

²³⁴⁴ *Katanga* Trial Judgment, para. 1626 and references therein; *Mbarushimana* Decision, para. 27.

²³⁴⁵ *Katanga* Trial Judgment, para. 1627 (such shared intent may be established by, *inter alia*, the group’s collective decisions and actions, or its omissions) and references therein; *Mbarushimana* Decision, para. 271.

²³⁴⁶ *Katanga* Trial Judgment, para. 1630.

942. Moreover, the Chamber underscores that, correctly interpreted, this form of responsibility must apply irrespective of whether the person is a member of the group acting with a common purpose.²³⁴⁷

943. Lastly, the Chamber considers that those crimes which form part of the common purpose but to which a person charged pursuant to article 25(3)(d) did not contribute cannot be attributed to that suspect such that individual criminal responsibility accrues.²³⁴⁸

**(b) The person contributed “in any other way”
to the commission of the crime**

944. The Chamber begins by noting that the person must contribute to the commission of a crime “in any other way”, that is, otherwise than in the ways set out at article 25(3)(a) to (c). This brings the Chamber to consider the other forms of responsibility with which the person stands charged before turning its attention to article 25(3)(d) of the Statute.

945. Furthermore, the suspect’s contribution must be connected to the commission of the crime and not solely to the group’s activities in a general sense.²³⁴⁹ It is a requirement of article 25(3)(d) that the suspect “[i]n any other way contributes to the commission [...] of [...] a crime”. Hence, contribution to a crime must be shown. However, a direct nexus between the conduct of the accessory and that of the physical

²³⁴⁷ *Mbarushimana* Decision, paras. 272-275; see also *Katanga* Trial Judgment, para. 1631.

²³⁴⁸ *Katanga* Trial Judgment, para. 1619; see also *Mbarushimana* Decision, paras. 282, 284-285. The Chamber observes that this form of responsibility differs from “joint criminal enterprise”, as defined by the *ad hoc* tribunals, inasmuch as the suspect will not be considered responsible for all of the crimes which form part of the common purpose, but only for those to whose commission he or she contributed. Accordingly, a person who stands charged pursuant to article 25(3)(d) will not incur individual criminal responsibility for crimes which form part of the common purpose but to which he or she did not contribute. See on the subject ICTY, *Brdanin* Appeal Judgment, para. 431; *Tadić* Appeal Judgment, para. 227; *Mbarushimana* Decision, para. 282.

²³⁴⁹ *Katanga* Trial Judgment, para. 1632.

perpetrator need not be established.²³⁵⁰ Nor is the presence of the suspect at the *locus criminis* a prerequisite to holding him or her responsible.²³⁵¹

946. The contribution may be connected either to the material elements of the crimes (it may thus, for instance, take the form of provision of resources, such as weapons) or to their subjective elements (it may involve encouragement).²³⁵²

947. Lastly, as with “aiding” within the meaning of article 25(3)(c) of the Statute, the suspect’s contribution may be made before, during or after its commission. Contribution after commission supposes proof of a prior (at least implicit) agreement between the group acting with a common purpose and the suspect, *viz.* that the suspect would make a particular contribution.²³⁵³

948. As to the level of contribution required to find that responsibility has accrued under article 25(3)(d) of the Statute, the Chamber subscribes to the holding of Pre-Trial Chambers I and II, as they were then composed, that the Statute does not require the contribution under article 25(3)(d) to be “significant” or to reach a minimum threshold.²³⁵⁴ However, the contribution must be such that it influences the commission of the crime. In other words, if the conduct of the suspect has no causal effect on the commission of the crimes, it cannot qualify as a “contribution” within the meaning of article 25(3)(d) of the Statute.

949. In *Katanga*, Trial Chamber II, in its previous composition, determined the activity in which Germain Katanga had engaged in connection with preparations for the operation against Bogoro of 24 February 2003 to be the contribution to the crimes

²³⁵⁰ *Katanga* Trial Judgment, para. 1635.

²³⁵¹ *Katanga* Trial Judgment, para. 1636.

²³⁵² *Katanga* Trial Judgment, para. 1635.

²³⁵³ *Mbarushimana* Decision, paras. 286-287.

²³⁵⁴ *Ongwen* Decision, para. 44; *Al Mahdi* Decision, para. 27. See *Ruto and Sang* Decision, paras. 353-354. For a different approach, see the detailed analysis by Pre-Trial Chamber I, in its previous composition, in *Mbarushimana* Decision, paras. 276-285. See also *Katanga* Trial Judgment, para. 1632.

committed by the Ngiti combatants, without a showing of a nexus to each criminal act.²³⁵⁵

950. The Chamber will apply that line of reasoning to the case *sub judice* and will look at Mr Al Hassan's contribution to each crime encompassed by the common purpose – torture, cruel treatment, outrage upon dignity and other inhumane acts; sentencing; attacking protected objects; rape, sexual slavery and other inhumane acts (forced marriages); and persecution. Accordingly, the Chamber does not consider it necessary to explore the nexus between Mr Al Hassan's contribution and each of the criminal acts constituting those crimes. The Chamber will find that Mr Al Hassan bears responsibility for each crime upon a showing, to the standard required at this stage of the proceedings, that he made a contribution to the crime concerned. As explained above, the contribution may be connected to the material or to the mental elements of the crimes.²³⁵⁶

951. The Chamber takes the view that this approach is justified in the case at bar on account of the duties which, as found above, Mr Al Hassan performed *on a daily basis* in the Islamic Police. In this regard, the Chamber underscores that these were Mr Al Hassan's duties from 7 May 2012 until 28 January 2013 when Ansar Dine/AQIM left Timbuktu, that is to say practically for the entire duration of the events which took place in Timbuktu between 1 April 2012 and 28 January 2013 and which are the subject of the case *sub judice*. Thus, the Chamber recalls that Mr Al Hassan played an important role in the Islamic Police.

²³⁵⁵ At the reparations phase, Trial Chamber II held that, from the standpoint of reparations, the showing of a nexus to the Attack on Bogoro sufficed for the various harm suffered by an applicant for reparations to be considered. (Order for Reparations in *Katanga*, paras. 164-167).

²³⁵⁶ See, above, para. 946.

(c) The contribution was intentional

952. As regards the relevant mental element, this form of responsibility requires, in the first place, that the person's contribution be *intentional*. The Chamber notes that article 25(3)(d) specifies a mental element different to that for which article 30 of the Statute makes provision. Article 25(3)(d) is, therefore, a provision which departs from the general rule laid down by article 30. When considered on the basis of article 25(3)(d), the suspect's individual criminal responsibility may, therefore, be made out absent a showing of all the requirements of article 30 of the Statute. The fact remains that the Chamber may nonetheless refer to and draw on the definitions provided by that article in construing the terms "intention" and "knowledge" which appear in article 25(3)(d).

(d) The suspect's contribution was made either with the aim of furthering the criminal activity or criminal purpose, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court (article 25(3)(d)(i)), or in the knowledge of the intention of the group to commit the crime (article 25(3)(d)(ii))

953. In addition to being intentional, the person's contribution must be made either (i) with the aim of furthering the objective or activity of the group, where there is a common criminal purpose or common criminal activity entailing the commission of crimes within the jurisdiction of the Court (article 25(3)(d)(i)), or (ii) in the knowledge of the intention of the group to commit the crimes (article 25(3)(d)(ii)).²³⁵⁷

²³⁵⁷ *Katanga* Trial Judgment, paras. 1637-1638; *Al Mahdi* Decision, para. 27; *Ongwen* Decision, para. 44; *Blé Goudé* Decision, para. 172. See also *Ntaganda* Decision, para. 158; *Mbarushimana* Decision, para. 288.

2. Analysis

(a) Crimes within the jurisdiction of the Court were committed

954. On this point the Chamber adverts to its findings on all of the crimes listed under counts 1 to 13, where it determined that crimes within the jurisdiction of the Court were committed.²³⁵⁸

(b) The persons who committed the crimes belonged to a group acting with a common purpose

955. The Chamber recalls, first, its finding that the persons who captured and controlled the city of Timbuktu and the Timbuktu Region between 1 April 2012 and 28 January 2013 belonged to Ansar Dine/AQIM and that those two entities constituted armed groups under the law of armed conflict²³⁵⁹ and an organization for the purposes of article 7(2)(a) of the Statute.²³⁶⁰

956. Further, the evidence before the Chamber clearly establishes that during that period the crimes enumerated in counts 1 to 13 were committed by members of Ansar Dine/AQIM.²³⁶¹ In that regard the Chamber takes the view that it need not be invariably proved that each individual pledged allegiance to Ansar Dine/AQIM (the formal path to official membership of the groups). Rather the Chamber regards as sufficient a finding that all these individuals worked and carried out tasks for Ansar Dine/AQIM, applying the new rules which Ansar Dine/AQIM had laid down. In so doing they subscribed to Ansar Dine/AQIM's common criminal purpose which included the commission of the crimes described in counts 1 to 13.

²³⁵⁸ See, below, VII. The crimes.

²³⁵⁹ See, above, paras. 206, 208, 211-214.

²³⁶⁰ See, above, paras. 206-214.

²³⁶¹ See, above, paras. 74-140, 342-350, 412, 414-415, 484-486, 489, 493-494, 497, 501, 513, 530, 594, 598, 606, 615, 622, 625, 634, 643, 651, 652, 654.

957. In addition, the Chamber is of opinion that the members of Ansar Dine/AQIM harboured their own design which, while being part of a wider design to establish an Islamic State in the region of Azawad, was to institute in Timbuktu and the Timbuktu Region a new apparatus of power on the basis of the religious ideology of Ansar Dine/AQIM and to compel, by the use and threat of force, the civilian population of Timbuktu to comply with it (“common purpose”).

958. By way of illustration of the objective of imposing new rules and prohibitions on the civilian population of Timbuktu and the Timbuktu Region by threats and force, the Chamber refers to its set of findings on the existence of a policy within the meaning of article 7(2)(a) of the Statute²³⁶² and the existence of a common plan within the meaning of article 25(3)(a) of the Statute, which, it determined above, is established.²³⁶³

959. In the Chamber’s view, the manner in which Ansar Dine/AQIM imposed their power, namely through coercion, violence and the threat of force,²³⁶⁴ and the fact that the civilians of Timbuktu and the Timbuktu Region, though living in fear of retaliation, attempted to resist this power and its manifestations (hence the demonstrations and the Crisis Committee),²³⁶⁵ confirms the existence of a common purpose vis-à-vis the civilian population of Timbuktu and the Timbuktu Region which involved the commission of crimes within the jurisdiction of the Court.

960. Lastly the Chamber considers that each of the crimes – torture, cruel treatment, outrages upon personal dignity and other inhumane acts; sentencing; attacking

²³⁶² See, above, paras. 180-185.

²³⁶³ See, above, paras. 816-835. See also *Katanga* Trial Judgment, para. 1629; *Mbarushimana* Decision, para. 271: “Though it appears in a discussion of co-perpetration liability, the *Lubanga* Confirmation Decision’s concept of a ‘common plan’ is functionally identical to the statutory requirement of article 25(3)(d) of the Statute that there be a ‘group of persons acting with a common purpose’.”

²³⁶⁴ See, above, VII. The crimes.

²³⁶⁵ See, above, paras. 701 and footnote 1128.

protected objects, rape, sexual slavery and forced marriage as an other inhumane act, and persecution – established under counts 1 to 13 formed part of the common purpose. In the light of the evidence establishing the contrivance of the design to take control of Timbuktu and the Timbuktu Region and to subject its civilian population to new rules and prohibitions, it is apparent that the members of Ansar Dine/AQIM harboured the intention to punish all transgressors of those rules – if need be, by coercion, force and the threat of force – and to destroy the mausoleums of Timbuktu so as to put an end to the religious, social and cultural practices of the civilian population of Timbuktu and the Timbuktu Region, which they regarded as antithetical to their ideology, and more specifically that they knew that such acts would occur in the ordinary course of events. Accordingly the Chamber is of the view that the crimes committed under counts 1 to 13 formed part of the common purpose which was specific to Ansar Dine/AQIM.

(c) Mr Al Hassan contributed to the crimes

961. The Chamber begins by recalling its finding that Mr Al Hassan joined the Islamic Police by 7 May 2012 and worked there until Ansar Dine/AQIM left Timbuktu on 28 January 2013.²³⁶⁶ The question considered below is whether, as the Prosecutor alleges, Mr Al Hassan contributed “in any other way” under article 25(3)(d) of the Statute to the crimes contained in counts 1 to 13.²³⁶⁷

i. Counts 1 to 5: torture, other inhumane acts, cruel treatment and outrages upon personal dignity

962. The Chamber recalls its finding that there are substantial grounds to believe that in Timbuktu and the Timbuktu Region, between 1 April 2012 and 28 January 2013,

²³⁶⁶ See, above, VIII. (A) 1. 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.

²³⁶⁷ DCC, paras. 1066, 1074, 1087, 1094.

as part of a widespread and systematic attack directed against the civilian population and a non-international armed conflict, members of the armed groups Ansar Dine/AQIM committed the acts found, at paragraphs 264-355, to be established, constituting, as set out in counts 1 to 5, the crimes against humanity of torture under article 7(1)(f) of the Statute and other inhumane acts under article 7(1)(k) of the Statute and the war crimes of torture under article 8(2)(c)(i), cruel treatment under article 8(2)(c)(i) and outrages upon personal dignity under article 8(2)(c)(ii). The Chamber also recalls its finding that these crimes formed part of the common purpose which was specific to Ansar Dine/AQIM.

963. It is the Chamber's view that Mr Al Hassan made a contribution to the commission of the crimes in the following way. When some of the punishments ordered by the Islamic Court were applied Mr Al Hassan was on hand to form, with other members of Ansar Dine/AQIM and members of the Islamic Police in particular, a "security cordon" between those being flogged and the onlookers.²³⁶⁸ He personally inflicted lashes of the whip as punishment ordered by the Islamic Court.²³⁶⁹ He took part in the ill-treatment to which P-0580 ██████████ subjected.²³⁷⁰ He also gave the order to send for Mohamed Moussa to deal with a case concerning violation of the dress code.²³⁷¹ He took part in the arrest and detention of individuals suspected of offences.²³⁷² Lastly, Mr Al Hassan wrote Islamic Police reports on civil and criminal cases and sent them to the Islamic Court.²³⁷³

²³⁶⁸ See, above, paras. 273-275, 307-308, 912, 916.

²³⁶⁹ See, above, paras. 279, 788.

²³⁷⁰ See, above, paras. 286-298, 926.

²³⁷¹ See, above, para. 292. Statement of P-0580, [MLI-OTP-0051-0018-R01](#), para. 84.

²³⁷² See, above, paras. 737-739.

²³⁷³ See, above, paras. 726-729, 733-736, 754-758, 785-786. See also the case ██████████ para. 270.

964. The Chamber observes that the crimes in counts 1 to 5 were committed by the members of Ansar Dine/AQIM working for the bodies, the Islamic Police included. In this connection, the Chamber refers to its findings set out above 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 that took place in Timbuktu and the Timbuktu Region, which establish the importance of his role in that body.²³⁷⁴

965. In this connection the Chamber notes, regarding the cases of P-0542 and the “[REDACTED]”, the Defence’s assertion that because the material time is given only as a date range (April 2012 to January 2013) encompassing a period for which the Prosecutor has not established that Mr Al Hassan was working for the Islamic Police (before mid-May 2012), and in accordance with the principle of *in dubio pro reo* (that the benefit of the doubt must go to the accused), Mr Al Hassan’s criminal responsibility for this incident should be excluded.²³⁷⁵ In the Chamber’s opinion, the vagueness about the exact date of the events related to those two cases does not throw doubt on the existence of substantial grounds to believe that the events occurred *at the time* Mr Al Hassan was performing his duties in the Islamic Police, *viz.* between 7 May 2012 and 28 January 2013.

966. Lastly the Chamber points out that, in its view, the Statute does not require the contribution under article 25(3)(d) to reach a minimum threshold.

967. The Chamber determines that the conduct of Mr Al Hassan described above constitutes a contribution “in any other way” within the meaning of article 25(3)(d) of the Statute to the commission of the crimes which are set out at counts 1 to 5 and the Chamber has found to be made out.

²³⁷⁴ See, above, (A) Findings of fact.

²³⁷⁵ Defence Final Written Submissions, para. 158.

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

968. The Chamber recalls its finding that there are substantial grounds to believe that in Timbuktu and the Timbuktu Region, between 1 April 2012 and 28 January 2013, as part of a non-international armed conflict, members of the armed groups Ansar Dine/AQIM committed the acts found, at paragraphs 417-516, to be established, constituting, as set out in count 6, the war crime of passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees generally recognized as indispensable, under article 8(2)(c)(iv) of the Statute. The Chamber also recalls its finding that this crime formed part of the common purpose which was specific to Ansar Dine/AQIM.

969. As to Mr Al Hassan's role in the commission of this crime, the Chamber notes that the Islamic Police, the *Hisbah* and the Islamic Court were the bodies empowered to investigate offences committed by the inhabitants of Timbuktu, i.e. to interrogate and obtain confessions from suspects.²³⁷⁶ Likewise the Chamber recalls that part of the remit assigned to the Islamic Police was to arrest, detain and question persons suspected of, for instance, "adultery", theft or practices which Ansar Dine/AQIM regarded as sorcery, and ultimately to obtain their confessions.²³⁷⁷ The Chamber

²³⁷⁶ See, above, paras. 110, 740-743. See also Judgment of the Islamic Court, [REDACTED]; Judgment of the Islamic Court, [REDACTED]; Judgment of the Islamic Court, [REDACTED]; Judgment of the Islamic Court, [REDACTED] (Islamic Court); Judgment of the Islamic Court in [REDACTED]; Judgment of the Islamic Court, [REDACTED]; Judgment of the Islamic Court, [REDACTED]; Judgment of the Islamic Court, [REDACTED] (*Hisbah*).

²³⁷⁷ See, above, paras. 94-95.

further notes that the reports recording the facts of a case which were prepared by Mr Al Hassan, for the Islamic Police, and by the *Hisbah*, were then sent to the Islamic Court.²³⁷⁸

970. The Chamber points out in this connection that, in the cases of [REDACTED] [REDACTED] ([REDACTED]); (1) [REDACTED] [REDACTED], (2) anonymous and (3) anonymous ([REDACTED] [REDACTED]); [REDACTED] ([REDACTED] [REDACTED]); [REDACTED] ([REDACTED] [REDACTED]); and [REDACTED] ([REDACTED]), Mr Al Hassan wrote and signed the Islamic Police reports on those cases and, where necessary, sent them to the Islamic Court.²³⁷⁹

971. The Chamber further recalls that the Islamic Police and the *Hisbah* could independently impose penalties for violations of the rules laid down by Ansar Dine/AQIM.²³⁸⁰

972. The Chamber refers 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, which show that he played an important role in the Islamic Police.²³⁸¹

973. As to the cases of P-0542 and [REDACTED], in the Chamber's opinion, for the reasons already set out,²³⁸² the vagueness about the exact date of the events related to those two cases does not throw doubt on the existence of substantial grounds to believe that the events occurred *at the time* Mr Al Hassan was performing his duties in the Islamic Police, *viz.* between 7 May 2012 and 28 January 2013.

²³⁷⁸ See, above, paras. 110, 754-758.

²³⁷⁹ See, above, paras. 877-885.

²³⁸⁰ See, above, paras. 94, 109, 132, 747-752.

²³⁸¹ See, above, (A) Findings of fact.

²³⁸² See, above, para. 965.

974. Lastly the Chamber points out that, in its view, the Statute does not require the contribution under article 25(3)(d) to reach a minimum threshold.

975. Accordingly the Chamber determines that there is sufficient evidence to establish substantial grounds to believe that Mr Al Hassan made a contribution “in any other way” within the meaning of article 25(3)(d) to the commission of the crime which is set out at count 6 and the Chamber has found to be made out.

iii. Count 7: attacking protected objects

976. The Chamber recalls its finding that there are substantial grounds to believe that in Timbuktu, between 30 June and 11 July 2012, as part of a non-international armed conflict, members of the armed groups Ansar Dine/AQIM committed the acts found, at paragraphs 523-531, to be established, constituting, as set out in count 7, the war crime of “attacking protected objects” under article 8(2)(e)(iv) of the Statute. The Chamber also recalls its finding that this crime formed part of the common purpose which was specific to Ansar Dine/AQIM.

977. Regarding Mr Al Hassan’s part in the commission of the crime, the Chamber notes, first, that the *Hisbah* was the body tasked with destroying the mausoleums²³⁸³ but that other members of Ansar Dine/AQIM also participated.²³⁸⁴

978. As to Mr Al Hassan’s alleged presence at the scene when the mausoleums were destroyed, the evidence adduced by the Prosecutor is insufficient to establish this fact to the standard required. [REDACTED] he was already working for the Islamic Police when the mausoleums were destroyed²³⁸⁵ but that he was not at the

²³⁸³ See, above, para. 526.

²³⁸⁴ See, above, para. 530.

²³⁸⁵ [REDACTED]

scene when the destruction took place.²³⁸⁶ [REDACTED] states that he did not see Mr Al Hassan during the destruction or in the videos which the Prosecutor showed him.²³⁸⁷

979. [REDACTED],²³⁸⁸ an anonymous witness, tells of seeing Mr Al Hassan aboard a vehicle heading towards Alpha Moya,²³⁸⁹ and of seeing in a video report entitled “*Le Désert de tous les dangers*” that Mr Al Hassan was present during the destruction.²³⁹⁰ Mr Al Hassan does not seem to appear in that video, which the Prosecutor has entered into the record;²³⁹¹ nor, moreover, does the Prosecutor refer to the video in support of her allegation that Mr Al Hassan was at the scene when the mausoleums were destroyed.²³⁹² An anonymous witness’s uncorroborated claim that Mr Al Hassan was seen in a car “heading” towards the Alpha Moya Mausoleum – it being unknown whether Alpha Moya was his true destination and, if so, why and to what end – remains insufficient in the eyes of the Chamber to establish substantial grounds to believe that Mr Al Hassan was present during the mausoleums’ destruction.

980. As to the fact that the telephone SIM card which the Prosecutor attributes to Mr Al Hassan was used in proximity to the Sidi Mahmoud cemetery 10 days before that

²³⁸⁶ [REDACTED]; MLI-OTP-0060-1374, p. 1381. Mr Al Hassan [REDACTED] merely passed by the Djingareyber Mosque, where a tomb was being destroyed.

²³⁸⁷ [REDACTED].

²³⁸⁸ As to [REDACTED]’s identification of Mr Al Hassan, the Chamber sees that the Prosecutor did not show the witness any photographs, and that the witness claimed that Mr Al Hassan had been killed by the French military. See [REDACTED]. That notwithstanding, it seems from the witness’s other statements about Mr Al Hassan that the witness’s ability to identify him can be regarded as established. [REDACTED].

²³⁸⁹ [REDACTED].

²³⁹⁰ [REDACTED].

²³⁹¹ See Video “*Enquête Exclusive*”, broadcast on 21 October 2012, [MLI-OTP-0001-7037](#), 00:19:21 to 00:20:10, 00:44:26:00 to 00:45:25:00, transcript [MLI-OTP-0024-2962](#), translation [MLI-OTP-0024-2910](#).

²³⁹² See DCC, paras. 728-734.

mausoleum was destroyed,²³⁹³ this evidence does not, in the Chamber’s view, substantiate the Prosecutor’s contention to the standard required. Even if it is taken as established that the suspect was at the site *10 days before* the destruction, there is no indication why he would have gone there.

981. The Chamber underlines, however, that Mr Al Hassan’s presence at the site of the destruction is not decisive to holding him responsible under article 25(3)(d) of the Statute.²³⁹⁴ The Chamber will therefore proceed with its analysis.

982. On the same subject, the Chamber notes that [REDACTED], although claiming to be “[TRANSLATION] sure” that Mr Al Hassan was in agreement and participated in the destruction,²³⁹⁵ elsewhere says that [REDACTED] does not recall Mr Al Hassan playing any role at all in taking the decision or in carrying out the destruction.²³⁹⁶

983. The Chamber also notes that, whereas [REDACTED] says people took part in the destruction²³⁹⁷ on a voluntary basis and the Islamic Police as a body played no role,²³⁹⁸ [REDACTED] states that the Islamic Police participated in the destruction given that Talha Al Chinguetti, emir of the Security Battalion, came to the premises of the Islamic Police, asking to use police officers to which the emir of the Islamic Police agreed.²³⁹⁹

²³⁹³ DCC, para. 727.

²³⁹⁴ See, above, para. 945.

²³⁹⁵ [REDACTED].

²³⁹⁶ [REDACTED].

²³⁹⁷ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

²³⁹⁸ [REDACTED].

²³⁹⁹ [REDACTED].

states [REDACTED]
 [REDACTED].²⁴⁰⁰ The Chamber concludes furthermore that the fact that video footage shows members of the Islamic Police armed and wearing their Islamic Police vests²⁴⁰¹ establishes to the standard required that they were on duty. The Chamber recalls in this connection that one of the tasks of the Islamic Police was to provide security in the city and when punishments ordered by the Islamic Court were being carried out.²⁴⁰²

984. The Chamber refers, moreover, 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, which show that he played an important role in the Islamic Police, and notes that Mr Al Hassan was already working for the Islamic Police in about June and July 2012, the period when the mausoleums were destroyed.²⁴⁰³

985. The Chamber also notes that calls between the telephone number attributed to [REDACTED]²⁴⁰⁴ and the number which Mr Al Hassan [REDACTED] used "[TRANSLATION] most of the time"²⁴⁰⁵ were more frequent than usual²⁴⁰⁶ during the time frame in question.

986. Lastly the Chamber points out that, in its view, the Statute does not require the contribution under article 25(3)(d) to reach a minimum threshold.

²⁴⁰⁰ [REDACTED].

²⁴⁰¹ See, above, para. 528.

²⁴⁰² See, above, para. 93.

²⁴⁰³ See, above, (A) Findings of fact.

²⁴⁰⁴ Having considered the evidence, the Chamber finds it established to the standard required that the telephone number "[REDACTED]" belonged to [REDACTED].

²⁴⁰⁵ [REDACTED].

²⁴⁰⁶ [MLI-OTP-0061-1933](#).

987. In the light of the foregoing the Chamber is satisfied that there are substantial grounds to believe 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 crime which is set out at count 7 and the Chamber has found to be made out.

iv. **Counts 8 to 12: rape, sexual slavery and other inhumane act in the form of forced marriage**

988. The Chamber recalls its finding that there are substantial grounds to believe that in Timbuktu and the Timbuktu Region, between 1 April 2012 and 28 January 2013, as part of a widespread and systematic attack directed against the civilian population and a non-international armed conflict, members of the armed groups Ansar Dine/AQIM committed the acts found, at paragraphs 564-655, to be established, constituting, as set out in counts 8 to 12, the crimes against humanity and war crimes of sexual slavery and rape (articles 7(1)(g) and 8(2)(e)(vi) of the Statute) and the crime against humanity of other inhumane acts, in the form of forced marriages, under article 7(1)(k) of the Statute.

989. As to Mr Al Hassan’s role in the commission of these crimes, the Chamber adverts first to its findings on the existence of a practice of forced marriage during the time frame in question and on the fact that this practice was widespread and common knowledge.²⁴⁰⁷ The Chamber underlines in this regard the fact that, by virtue of the duties he performed in the Islamic Police from 7 May 2012 to 28 January 2013, Mr Al Hassan came into contact with the population of Timbuktu on a daily basis and, as a result, that he must have been familiar with the population’s grievances and concerns.²⁴⁰⁸ Accordingly the Chamber finds established to the standard required that

²⁴⁰⁷ See, above, paras. 564-582.

²⁴⁰⁸ See, above, paras. 726-728.

Mr Al Hassan was also familiar with the circumstances in which marriages between Ansar Dine/AQIM members and the women of Timbuktu were entered into.

990. Next, the Chamber underscores that Mr Al Hassan contributed to bringing about marriages between Ansar Dine/AQIM members and women of Timbuktu. For one thing, Mr Al Hassan personally wrote, on behalf of some members of the Islamic Police who could not afford to get married, requests for money which they were to present to the emir of the Islamic Police or to Abou Zeid so that they could marry.²⁴⁰⁹ [REDACTED] writing a joint request which he submitted to the then emir of the Police, Adama,²⁴¹⁰ shortly before Adama's dismissal.²⁴¹¹ Adama in turn passed the request on to Abou Zeid who arranged a monthly salary of 40,000 CFA francs for each of the requesters.²⁴¹² [REDACTED] also [REDACTED] that a person named "Mohamed" asked him to address, on his behalf, a written request for a marriage payment to Abou Zeid after the emir of the Police at the time, Khaled Abou Souleymane, had told him he had no money to give him.²⁴¹³ This person met with Abou Zeid who gave him some money and the marriage was agreed.²⁴¹⁴

991. In addition Mr Al Hassan also acted as a go-between to persuade some families to marry their daughters.²⁴¹⁵ For example, he accompanied one Tuareg person from Ansar Dine to request a girl in marriage; her family refused and the marriage did not take place.²⁴¹⁶ Mr Al Hassan also had a part in [REDACTED] marriage.²⁴¹⁷ He and the then emir of the Islamic Police, Adama, went to the home of a girl's family and Adama

2409 [REDACTED]

2410 [REDACTED]

2411 [REDACTED]

2412 [REDACTED]

2413 [REDACTED]

2414 [REDACTED]

2415 [REDACTED].

2416 [REDACTED]

2417 [REDACTED]

gave them a marriage payment of [REDACTED].²⁴¹⁸ Although unable to say whether the marriage was celebrated [REDACTED] was involved in the religious marriage contract.²⁴¹⁹

992. The Chamber additionally refers to its findings above 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.²⁴²⁰ The Defence asserts regarding the case of P-1460 that the material date is unspecified and Mr Al Hassan's responsibility for the incident should be excluded.²⁴²¹ In the Chamber's opinion the vagueness about the exact date of the events related to that case does not throw doubt on the existence of substantial grounds to believe that the events occurred *at the time* Mr Al Hassan was performing his duties in the Islamic Police, *viz.* between 7 May 2012 and 28 January 2013. The same holds true in respect of victims P-0520, P-0553, [REDACTED] and P-1162.

993. Lastly the Chamber points out that, in its view, the Statute does not require the contribution under article 25(3)(d) to reach a minimum threshold.

994. The Chamber determines that the conduct of Mr Al Hassan described above constitutes a contribution "in any other way" within the meaning of article 25(3)(d) of the Statute to the commission of the crimes which are set out at counts 8 to 12 and the Chamber has found to be made out.

v. Count 13: persecution

995. The Chamber recalls its finding that there are substantial grounds to believe that, in Timbuktu and the Timbuktu Region, between 1 April 2012 and 28 January

²⁴¹⁸ [REDACTED]

²⁴¹⁹ [REDACTED]

²⁴²⁰ See, above, (A) Findings of fact.

²⁴²¹ Defence Final Written Submissions, para. 91.

2013, as part of a widespread and systematic attack directed against the civilian population, members of Ansar Dine/AQIM committed the acts found, at paragraphs 673-707, to be established, constituting, as set out in count 13, the crime against humanity of persecution under article 7(1)(h) of the Statute. The Chamber also recalls its finding that these crimes formed part of the common purpose which was specific to Ansar Dine/AQIM.

996. As to Mr Al Hassan's role in the commission of this crime, the Chamber adverts first to its findings concerning his contributions to the crimes stated in counts 1 to 12. The Chamber notes in this regard that Mr Al Hassan contributed directly to some of the acts referred to in counts 1 to 12 by applying lashes of the whip and forming a security cordon during public floggings.²⁴²²

997. The Chamber considers that by virtue of the duties he performed and the powers he exercised in the Islamic Police from 7 May 2012 to 28 January 2012 Mr Al Hassan participated as follows in the general oppression of the civilian population of Timbuktu and in restricting its freedoms. Mr Al Hassan prepared reports on cases of "sorcery"²⁴²³ and "adultery",²⁴²⁴ practices which Ansar Dine/AQIM prohibited. Mr Al Hassan took part in the making of a propaganda video in which he stated that the Islamic Police's mission was to punish the conduct prohibited by Ansar Dine/AQIM.²⁴²⁵ Mr Al Hassan also defended to ██████████ the practice of detaining

²⁴²² See, above, paras. 270, 276, 279, 286, 289, 290-291, 295, 297, 298, 307-308.

²⁴²³ Islamic Police report, [MLI-OTP-0001-7543](#), translation [MLI-OTP-0052-0029](#), p. 0030; ██████████

²⁴²⁴ Islamic Police report, [MLI-OTP-0001-7509](#), translation [MLI-OTP-0034-016Z](#), p. 0168; ██████████; Islamic Police report dated 26 November 2012, [MLI-OTP-0001-7549](#), translation [MLI-OTP-0034-017Z](#), p. 0178; ██████████

²⁴²⁵ Transcript of video [MLI-OTP-0018-0379-R01](#), [MLI-OTP-0034-1281](#) and [MLI-OTP-0067-1892](#), translation [MLI-OTP-0067-1896](#), pp. 1898-1899, lines 26-30.

women when they would not obey the rules imposed by Ansar Dine/AQIM.²⁴²⁶ In addition to helping the emir of the Islamic Police organize patrols and guard shifts, Mr Al Hassan personally participated in Islamic Police patrols of the city, whose aim was to ensure the inhabitants of Timbuktu complied with the new rules and to arrest transgressors.²⁴²⁷ Mr Al Hassan also took part in the arrest, detention and interrogation of Timbuktu inhabitants, including women, for alcohol consumption, smoking, sexual relations outside marriage and not wearing the veil in the way that Ansar Dine/AQIM required.²⁴²⁸ He assisted the emirs when punishments ordered by the Islamic Court were being carried out in front of the civilian population of Timbuktu.²⁴²⁹ The Chamber refers also to the facts found with regard to Mr Al Hassan's help in obtaining funds so that members of the Islamic Police could marry and to his involvement in the negotiation of Abou Dhar's marriage.²⁴³⁰ Lastly the Chamber adverts to ██████'s statement that as part of his work for the Islamic Police Mr Al Hassan helped put pressure on women who had left their husbands to return to them, in an effort to settle such matters before they reached court.²⁴³¹

998. Regarding the cases of P-1460, P-0520, P-0553, ██████, P-1162, P-0542 and ██████, in the Chamber's opinion, for the reasons already set out,²⁴³² the vagueness about the exact date of the events related to those cases does not throw doubt on the existence of substantial grounds to believe that the events occurred at the time Mr Al Hassan was performing his duties in the Islamic Police, *viz.* between 7 May 2012 and 28 January 2013.

²⁴²⁶ Statement of P-0623, [MLI-OTP-0068-4352-R01](#), p. 4362, para. 69.

²⁴²⁷ See, above, paras. 730-732.

²⁴²⁸ See, above, paras. 737-743. See generally the Islamic Police reports.

²⁴²⁹ See, above, paras. 273-276, 307-308, 759-760.

²⁴³⁰ See, below, paras. 990-991.

²⁴³¹ See, above, para. 582.

²⁴³² See, above, para. 965.

by Ansar Dine/AQIM and that corporal punishment (flogging) could be used. The Chamber notes in this regard that it was Abdallah Al Chinguetti, one of Ansar Dine/AQIM's leaders, who explained to Mr Al Hassan Ansar Dine/AQIM's objective in Timbuktu, and it was on the basis of that discussion that Mr Al Hassan decided to work for those groups.²⁴³⁶ Moreover the Chamber points out that the Security Battalion, the Islamic Police and the Islamic Court were operating by the time Mr Al Hassan joined the Islamic Police,²⁴³⁷ and the members of the Security Battalion set to work immediately, beating anyone caught drinking alcohol or smoking.²⁴³⁸ The Chamber also notes that the *Hisbah*, the Islamic Police, the Security Battalion and the Islamic Court worked together on a daily basis²⁴³⁹ and furthermore that, according to Mr Al Hassan, a document detailing the types of penalty applicable to each sort of offence already existed when he joined the Islamic Police.²⁴⁴⁰ Lastly the Chamber notes that Mr Al Hassan himself contributed directly to the commission of numerous criminal acts²⁴⁴¹ and that he knew that the Islamic Police used torture to obtain suspects' confessions.²⁴⁴² Hence he knew of the bodies' remit and specifically that of the Islamic Police.

1004. As well as that, the Chamber considers that Mr Al Hassan, being from Timbuktu, knew that northern Mali was the theatre of a conflict involving the Government of Mali and various armed groups – a conflict which attracted national and international media coverage – and that Ansar Dine/AQIM were imposing practices which were foreign

²⁴³⁶ [REDACTED]

²⁴³⁷ See, above, paras. 86-140.

²⁴³⁸ See, above, para. 87.

²⁴³⁹ See, above, paras. 86-140.

²⁴⁴⁰ [REDACTED]

²⁴⁴¹ See, above, paras. 788, 963.

²⁴⁴² See, above, paras. 744-746.

to the local civilian population.²⁴⁴³ Additionally, Mr Al Hassan's role meant that he came into contact with the civilian population of Timbuktu on a daily basis,²⁴⁴⁴ participated in a number of Crisis Committee meetings²⁴⁴⁵ and was present during the women's demonstration of 6 October 2012.²⁴⁴⁶ In the final analysis, Mr Al Hassan knew of the climate of fear, violence and oppression created by Ansar Dine/AQIM²⁴⁴⁷ and of the fact that the local population defied the rules of conduct prescribed by the groups and, as result, was met with violent repression in which he took part.²⁴⁴⁸ Mr Al Hassan nonetheless continued in his duties for Ansar Dine/AQIM until Ansar Dine/AQIM left Timbuktu.²⁴⁴⁹

1005. It is also the view of the Chamber that, by virtue of his role in preparing and sending Islamic Police reports to the Islamic Court and in bringing suspects to the Islamic Court and to the sites of detention and of punishment, Mr Al Hassan knew of the proceedings taking place before the Islamic Court.²⁴⁵⁰ The Chamber notes in this

²⁴⁴³ See, e.g., [REDACTED] For Mr Al Hassan's trajectory prior to the events which took place in Timbuktu, see [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

²⁴⁴⁴ See, above, paras. 726-728.

²⁴⁴⁵ See, above, para. 775. [REDACTED]; [MLI-OTP-0033-4305](#); [MLI-OTP-0033-4306](#); [MLI-OTP-0012-0975](#).

²⁴⁴⁶ [REDACTED].
²⁴⁴⁷ Video, [MLI-OTP-0017-0027](#), 00:01:44:00 to 00:02:27:30, transcript [MLI-OTP-0033-5228](#), p. 5231, lines 52-73, translation [MLI-OTP-0033-5405](#), p. 5409, lines 63-74; [REDACTED]; Statement of P-0622, [MLI-OTP-0065-0558-R01](#), p. 0563, para. 28; see, also, Statement of P-0603, [MLI-OTP-0059-0361-R01](#), p. 0371, para. 51.

²⁴⁴⁸ See, above, VII. The crimes.

²⁴⁴⁹ See paras. 710-723.

²⁴⁵⁰ See, above, paras. 733-762. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 to 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 generally recognized as indispensable under article 8(2)(c)(iv), attacking protected objects under article 8(2)(e)(iv) and rape and sexual slavery under article 8(2)(e)(vi) of the Statute.

1010. Accordingly, the Chamber finds that Mr Al Hassan bears individual criminal responsibility under article 25(3)(d) of the Statute for the crimes which are set out at counts 1 to 13 and the Chamber has found to be made out.

IX. Confidentiality

1011. The Chamber would underline that the present decision is issued as “confidential” for its reference to information in documents likewise classified. It considers nonetheless that, for the purpose of the publicity of the hearings, a public version of this decision must be issued. To such end, the Chamber instructs the parties and participants to file a public redacted version of their written submissions. The Chamber also instructs the parties and participants to submit proposed redactions on which basis it will issue a public redacted version of this decision.

FOR THESE REASONS, THE CHAMBER

CONFIRMS as follows the charges brought against Mr Al Hassan:

Contextual elements set forth at articles 7 and 8 of the Statute

Between 1 April 2012 and 28 January 2013, the armed groups Ansar Dine/AQIM, constituting an organization described at paragraphs 172-173,²⁴⁵⁵ carried out a widespread and systematic attack, described at paragraphs 174-192, against the civilian population of Timbuktu and the Timbuktu Region. During that time frame Ansar Dine/AQIM imposed their ideology on the population and, to this end, members of Ansar Dine/AQIM committed multiple acts referred to in article 7(1) of the Statute pursuant to or in furtherance of the policy of these armed groups to commit such attack. The acts alleged, as described at paragraphs 264-355, 564-660 and 673-707, were committed as part of the attack. As set out at paragraphs 344, 653 and 706, the perpetrators – members of Ansar Dine/AQIM, including Mr Al Hassan – knew that their conduct formed part of, or intended their conduct to be part of, the attack.

The crimes under article 8(2)(c) and (e) of the Statute with which Mr Al Hassan is charged were committed in the context of an armed conflict not of an international character taking place in Mali during the time frame under consideration and are associated with that conflict, as set out at paragraphs 205-227. The acts alleged, as described at paragraphs 264-355, 523-531, 415, 486, 494, 502, 514 and 654, were committed in the context of and were associated with the armed conflict. As set out at paragraphs 346, 414, 484, 493, 501, 513, 530, 643 and 646, the perpetrators of the crimes – members of Ansar Dine/AQIM, including Mr Al Hassan – were aware of the factual circumstances that established the existence of the said armed conflict.

²⁴⁵⁵ Note from the Chamber: the references made in the confirmed charges to certain paragraphs also apply to the other parts or paragraphs of the present decision to which they refer.

The counts

Count 1: torture 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, for the crime against humanity of torture under article 7(1)(f) of the Statute, as set out at paragraphs 264-355, vis-à-vis the following victims:

- the ██████ men flogged on or about ██████ 2012, as described at paragraphs 279-280 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(a), as a direct perpetrator, as set out at paragraph 788;
- ████████████████████, as described at paragraphs 270-271 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 921-923;
- P-0565 and P-0557, as described at paragraphs 273-277 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 916 and 919;
- P-0580, as described at paragraphs 286-300 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 926-927;
- P-0574, as described at paragraphs 282-284 and 350;
- ████████████████████, as described at paragraphs 286-304 and 350;
- ████████████████████, as described at paragraphs 286-304, 301-304 and 350;

- [REDACTED] (the [REDACTED] flogged on or about [REDACTED] 2012), as described at paragraphs 305-309 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 912-913;
- Dédéou Maiga, as described at paragraphs 311-314 and 350;
- [REDACTED], as described at paragraphs 317-320 and 350; and
- [REDACTED], as described at paragraphs 322-324 and 350.

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, for the crime against humanity of other inhumane acts under article 7(1)(k) of the Statute, as set out at paragraphs 264-355, vis-à-vis the following victims:

- the [REDACTED] men flogged on or about [REDACTED] 2012, as described at paragraphs 279-280 and 352; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(a), as a direct perpetrator, as set out at paragraph 788;
- [REDACTED], as described at paragraphs 270-271 and 352; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 921-923;

paragraphs 954-1010, for the war crime of torture under article 8(2)(c)(i) of the Statute, as set out at paragraphs 264-355, vis-à-vis the following victims:

- the [REDACTED] men flogged on or about [REDACTED] 2012, as described at paragraphs 279-280 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(a), as a direct perpetrator, as set out at paragraph 788;
- [REDACTED], as described at paragraphs 270-271 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 921-923;
- P-0565 and P-0557, as described at paragraphs 273-277 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 916 and 919;
- P-0580, as described at paragraphs 286-300 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 926-927;
- P-0574, as described at paragraphs 282-284 and 350;
- [REDACTED], as described at paragraphs 286-304 and 350;
- [REDACTED], as set out at paragraphs 286-304 and 350;
- [REDACTED]
[REDACTED] (the [REDACTED] flogged on or about [REDACTED]), as described at paragraphs 305-309 and 350; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 912-913;

- Dédéou Maiga, as described at paragraphs 311-314 and 350;
- ██████████, as described at paragraphs 317-320 and 350; and
- ██████████, as described at paragraphs 322-324 and 350.

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, for the war crime of cruel treatment under article 8(2)(c)(i) of the Statute, as set out at paragraphs 264-355, vis-à-vis the following victims:

- the ██████ men flogged on or about ██████ 2012, as described at paragraphs 279-280 and 354; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(a), as a direct perpetrator, as set out at paragraph 788;
- ██████████, as described at paragraphs 270-271 and 354; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 921-923;
- P-0565 and P-0557, as described at paragraphs 273-277 and 354; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 916 and 919;
- P-0580, as described at paragraphs 286-300 and 354; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 926-927;
- P-0574, as described at paragraphs 282-284 and 354;

- P-0570, as described at paragraphs 334-335 and 355; and
- P-0547, as described at paragraphs 337-338 and 355.

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, for the war crime of sentencing under article 8(2)(c)(iv) of the Statute, as set out at paragraphs 417-516, vis-à-vis the following victims:

- P-0547, as described at paragraphs 337 and 393-394;
- P-0574, as described at paragraphs 282 and 395-397;
- ██████████, as described at paragraphs 287, 292, 398-401 (for the three sentences); Mr Al Hassan is also found to bear criminal responsibility for the second and third sentences pursuant to article 25(3)(c), as set out at paragraph 932;
- ██████████, as described at paragraphs 294 and 402-403;
- P-0570, as described at paragraphs 334 and 404-405;
- P-0542, as described at paragraphs 331 and 406-407;
- ██████████, as described at paragraphs 326, 408-409;
- ██████████, ██████████, as described at paragraphs 270 and 431; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 878 and 928-929;

- [REDACTED]
[REDACTED], [REDACTED],
as described at paragraph 433;
- [REDACTED], [REDACTED], as described at
paragraph 435;
- [REDACTED], [REDACTED], as described at
paragraph 436;
- [REDACTED], [REDACTED], as
described at paragraph 437;
- [REDACTED], [REDACTED], as described at paragraphs 438-439;
- [REDACTED], [REDACTED], as described at paragraph 440;
- Dédéou Muhammad Maiga, court case 17/1433-2012, as described at
paragraphs 311-312 and 441;
- [REDACTED], [REDACTED], as described at paragraph 442;
- [REDACTED], [REDACTED], as described at paragraph 443;
- [REDACTED], [REDACTED], as described at paragraph 444;
- [REDACTED], [REDACTED], as described at paragraph 447; Mr
Al Hassan is also found to bear criminal responsibility for this incident
pursuant to article 25(3)(c), as set out at paragraphs 885 and 928-929;
- [REDACTED], [REDACTED], as described at paragraph 448;
- [REDACTED], [REDACTED], as described at
paragraph 449;

- [REDACTED], [REDACTED], as described at paragraph 450;
- [REDACTED], [REDACTED], as described at paragraph 451;
- [REDACTED], (2) anonymous and (3) anonymous, [REDACTED], as described at paragraphs 452-454; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 880, 928-929;
- [REDACTED], [REDACTED], as described at paragraph 455;
- [REDACTED], [REDACTED], as described at paragraph 456; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 882 and 928-929;
- [REDACTED], [REDACTED], as described at paragraphs 457-458;
- (1) [REDACTED] and (2) [REDACTED], [REDACTED], as described at paragraph 459;
- (1) [REDACTED] and (2) [REDACTED], [REDACTED], as described at paragraph 460;
- (1) [REDACTED] and (2) [REDACTED], [REDACTED], as described at paragraph 461; Mr Al Hassan is also found to bear criminal responsibility for this incident pursuant to article 25(3)(c), as set out at paragraphs 884 and 928-929;

- (1) [REDACTED], (2) [REDACTED] and (3) [REDACTED], [REDACTED], as described at paragraph 462;
- (1) [REDACTED] and (2) [REDACTED], [REDACTED], as described at paragraph 463;
- [REDACTED], [REDACTED], as described at paragraph 464;
- [REDACTED], [REDACTED], as described at paragraph 465;
- [REDACTED], [REDACTED], as described at paragraphs 466-467;
- [REDACTED], [REDACTED], as described at paragraphs 322-323 and 468;
- [REDACTED], as described at paragraph 469;
- [REDACTED], as described at paragraph 470;
- [REDACTED], as described at paragraph 471;
- (1) [REDACTED] and (2) [REDACTED], as described at paragraph 472;
- P-0557, as described at paragraphs 273-276 and 487-489;
- P-0565, as described at paragraphs 273-276 and 495-497; and
- the [REDACTED] men flogged on or about [REDACTED] 2012, as described at paragraphs 279 and 509.

Count 7: attacking protected objects 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, for the war crime of attacking protected objects under article 8(2)(e)(iv) of the Statute, as set out at paragraphs 523-531, on account of the demolition of the mausoleums in about June and July 2012, as described at paragraphs 528 and 531.

Count 8: other inhumane acts in the form of forced marriage 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, for the crime against humanity of other inhumane acts under article 7(1)(k) of the Statute, as set out at paragraphs 564-660, vis-à-vis the following victims:

- P-0520, as described at paragraphs 585-594;
- P-0602, as described at paragraphs 596-598;
- P-0610, as described at paragraphs 600-606;
- P-0538, as described at paragraphs 608-615;
- P-0553, as described at paragraphs 617-622;
- ██████████, as described at paragraphs 624-625;
- P-1162, as described at paragraphs 633-634; and
- P-1460, as described at paragraphs 636-637.

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, for the crime against humanity of sexual slavery under article 7(1)(g) of the Statute, as set out at paragraphs 564-660, vis-à-vis the following victims:

- P-0520, as described at paragraphs 585-594;
- P-0602, as described at paragraphs 596-598;
- P-0610, as described at paragraphs 600-606;
- P-0538, as described at paragraphs 608-615;
- P-0553, as described at paragraphs 617-622;
- ██████████, as described at paragraphs 624-625;
- P-1162, as described at paragraphs 633-634; and
- P-1460, as described at paragraphs 636-637.

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, for the war crime of sexual slavery under article 8(2)(e)(vi) of the Statute, as set out at paragraphs 564-660, vis-à-vis the following victims:

- P-0520, as described at paragraphs 585-594;
- P-0602, as described at paragraphs 596-598;
- P-0610, as described at paragraphs 600-606;
- P-0538, as described at paragraphs 608-615;
- P-0553, as described at paragraphs 617-622;

- ██████████, as described at paragraphs 624-625;
- P-1162, as described at paragraphs 633-634; and
- P-1460, as described at paragraphs 636-637.

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, for the crime against humanity of rape under article 7(1)(g) of the Statute, as set out at paragraphs 564-660, vis-à-vis the following victims:

- P-0520, as described at paragraphs 585-594;
- P-0602, as described at paragraphs 596-598;
- P-0610, as described at paragraphs 600-606;
- P-0538, as described at paragraphs 608-615;
- P-0553, as described at paragraphs 617-622;
- ██████████, as described at paragraphs 624-625;
- P-1162, as described at paragraphs 633-634; and
- P-1460, as described at paragraphs 636-637.

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, for the war crime of rape under article 8(2)(e)(vi) of the Statute, as set out at paragraphs 564-660, vis-à-vis the following victims:

- P-0520, as described at paragraphs 585-594;
- P-0602, as described at paragraphs 596-598;
- P-0610, as described at paragraphs 600-606;
- P-0538, as described at paragraphs 608-615;
- P-0553, as described at paragraphs 617-622;
- ██████████, as described at paragraphs 624-625;
- P-1162, as described at paragraphs 633-634; and
- P-1460, as described at paragraphs 636-637.

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, for the crime against humanity of persecution on religious and/or gender grounds under article 7(1)(h) of the Statute on account of the acts referred to at counts 1 to 12 and those referred to at paragraphs 673-707.

Mr Al Hassan's criminal responsibility

The Chamber finds that Mr Al Hassan bears the criminal responsibility stated in the confirmed charges for the crimes under counts 1 to 13, committed between 7 May 2012 and 28 January 2013 in the city of Timbuktu and in the Region of the same name.

DECLINES to confirm the remaining charges;

COMMITTS Mr Al Hassan to a Trial Chamber for trial on the charges as confirmed;

REMAINS SEIZED of the case until the present decision and the record of the proceedings have been sent to the Presidency in accordance with rule 129 of the Rules;

INSTRUCTS the parties and participants to file public redacted versions of their written submissions by 11 October 2019; and

INSTRUCTS the parties and participants to submit to the Chamber proposals for redactions to the present decision by 11 October 2019.

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 13 November 2019

At The Hague, Netherlands