

**SEPARATE AND PARTLY DISSENTING OPINION
OF JUDGE KIMBERLY PROST**

I. INTRODUCTION

1. The Majority, for different reasons, acquits Mr Al Hassan of a number of charges under Counts 2, 4, 5, 6 and 8-12. With respect, I am unable to join these findings and hereby set out my views on these issues pursuant to Article 74(5) of the Statute which provides, *inter alia*, that '[w]hen there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority'.¹
2. As set out in section II below, there is common ground between the Majority in acquitting Mr Al Hassan of contributing to rape as a war crime and a crime against humanity (Counts 11-12), in relation to detained women, in that my colleagues agree that elements of the mode of liability under Article 25(3)(d) of the Statute are not satisfied. For the reasons set out below, I disagree and would have convicted Mr Al Hassan on these counts and charges.
3. Further, as noted in the Trial Judgment and Judge Mindua's separate and dissenting opinion, it is Judge Mindua's view that Mr Al Hassan is not guilty of *all* charges because of the application of certain defences namely duress (applicable to all charges) and mistake of law (applicable to some charges).² With respect, in relation to all of the charges, I consider that position to be devoid of legal reasoning and without any evidentiary support. I would have convicted Mr Al Hassan on the counts and charges as detailed below in section III. These are the counts and charges on which there is no common ground in the Majority's reasoning in acquitting Mr Al Hassan and for which Judge Mindua joins the Majority solely on the basis of the application of these defences.

¹ Apart from these issues that are addressed in the present opinion, I have also appended some dissenting opinions by way of footnotes to the Trial Judgment (*see* notably Trial Judgment, footnotes 2597, 4844).

² *See* Trial Judgment, section V.D; Opinion individuelle et partiellement dissidente du Juge Antoine Kesia-Mbe Mindua.

II. RAPE AS A WAR CRIME AND A CRIME AGAINST HUMANITY (COUNTS 11-12) IN RELATION TO DETAINED WOMEN

4. I respectfully disagree with the Majority's conclusion that Mr Al Hassan is not guilty of contributing to the rape of women who were arrested and detained by Ansar Dine/AQIM members for violation of the dress code rules.³
5. I consider, for the reasons set out in the Trial Judgment, by a Majority formed with Judge Mindua, that the elements of crime are met⁴ and that rape, committed against the victims while they were in detention, formed part of Ansar Dine/AQIM's common purpose.⁵ I disagree with the Majority's finding that Mr Al Hassan did not have the requisite knowledge under Article 25(3)(d) of the Statute in relation to these charges.⁶ Not only do I consider that Mr Al Hassan made a requisite contribution to the crime of rape under Article 25(3)(d) of the Statute, committed against detained women, but I consider that he did so with the required knowledge, for the reasons set out in detail below.
6. In my view the facts must be interpreted bearing in mind the intention and plain wording of Article 25(3)(d) of the Statute. As noted by the Chamber, this article, drawn from counter terrorism instruments,⁷ adds an additional distinct mode of liability covering those who otherwise contribute to the commission of the crime. The applicable *mens rea* is framed in the alternative and includes a contribution which is made in the knowledge of the intention of the group to commit the crime.⁸ No further requirements are attached to this form of liability under Article 25(3)(d), in particular there is no need that the perpetrator intends to facilitate the crime or that his acts were intended to support its commission.
7. I note initially the context in which these crimes of rape were committed. Each of the victims Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547) were arrested and detained at the BMS when it was controlled by the *Hesbah*. As discussed in the Trial Judgment, during the time that Mohammed Moussa was emir of the *Hesbah*,

³ See Trial Judgment, sections V.A.2, V.B.8, V.C.3.a).iii, V.C.3.b).iv, V.D. Specifically, the Majority finds Mr Al Hassan not guilty pursuant to Article 25(3)(d) of the Statute of contributing to rape as a crime against humanity, under Article 7(1)(g) (Count 11), and as a war crime, under Article 8(2)(e)(vi) (Count 12), committed by members of Ansar Dine/AQIM against Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547).

⁴ See Trial Judgment, sections V.A, V.B.8.

⁵ See Trial Judgment, section V.C.3.a).iii.

⁶ See Trial Judgment, section V.C.3.b).iv.

⁷ See Trial Judgment, para. 1231.

⁸ See Trial Judgment, paras 1247-1248.

many people, men and women, were detained there - a fact which was well known, including to Mr Al Hassan.⁹ This practice of detention of women sparked a discussion amongst the leadership, the ultimate outcome of which was that the emirs specifically authorised the detention of women as part of the acceptable measures to be employed in the enforcement of the rules and prohibitions.¹⁰ Further, as discussed in the Trial Judgment, these rapes were not committed as random acts by individuals but rather were carried out in a systematic manner by the members of the *Hesbah*, including by their emir Mohammed Moussa, relying on the coercive environment in the context of detentions authorised by the leadership.¹¹ In addition, in the combined circumstances, as found by the Majority, Ansar Dine/AQIM knew that these acts of rape would be perpetrated against detained women in the ordinary course of events.¹²

8. I recall that, in the Trial Judgment, Mr Al Hassan's conduct in carrying out his duties and responsibilities in the Islamic Police was found to have meaningfully and directly contributed to Ansar Dine/AQIM's integrated system of punishment for violation of its rules and prohibitions, wherever the detentions and punishments were carried out, including at the *Hesbah*.¹³ As stated in the Trial Judgment, with respect to these crimes, the *Hesbah*, the Islamic Police and the Islamic Court all collaborated to ensure that the repression system would result in their commission.¹⁴ I also recall the finding that Mr Al Hassan's contribution allowed not only the Islamic Police to work effectively but also allowed the other institutions, including the *Hesbah*, to perform their duties in an organised way and to maintain the coercive environment imposed on the population.¹⁵ Specifically, the Majority found that the crimes committed by the *Hesbah* during arrests, detentions and punishments were inherent to the enforcement of the entire repression system.¹⁶ I note that this finding encompassed the crimes of other inhumane acts as a crime against humanity, cruel treatment as a war crime and outrages upon personal dignity.¹⁷ In the case of detained persons these acts factually included the sexual violence perpetrated by members of the *Hesbah* against detained women.¹⁸ In these combined

⁹ See Trial Judgment, paras 535-537.

¹⁰ See Trial Judgment, para. 541.

¹¹ See Trial Judgment, para. 1651, sections III.E.1.j), III.E.1.k), III.E.1.n), III.E.1.o).

¹² See Trial Judgment, para. 1655.

¹³ See Trial Judgment, para. 1687.

¹⁴ See Trial Judgment, section III.C.4.d)ii.

¹⁵ See Trial Judgment, para. 1686.

¹⁶ See Trial Judgment, para. 1686.

¹⁷ See Trial Judgment, paras 1626, 1691.

¹⁸ See Trial Judgment, para. 1625.

circumstances, I consider that Mr Al Hassan's contribution to Ansar Dine/AQIM's integrated system of punishment for violation of its rules and prohibitions in and of itself equally constituted a direct and meaningful contribution to these crimes of rape committed against detained women.

9. Further, and even more specifically in terms of contribution, I recall that Mr Al Hassan was aware of, and intricately involved in responding to, on behalf of Ansar Dine/AQIM, the women's march, which was held in protest of, *inter alia*, the detention of women and the violence of Mohammed Moussa's men against women.¹⁹ In my view, Mr Al Hassan's participation on that occasion included contributing to the general system of repression through security actions by the Islamic Police but also went further.²⁰ Mr Al Hassan was present when leaders of Ansar Dine/AQIM, including Mohammed Moussa, met with women's march participants who were detained during the course of events.²¹ While it was Mohammed Moussa who generally engaged with them in the discussion, it was Mr Al Hassan who, at the end of the meeting, issued the warning to the women that they would be punished if they held any future protests of this nature without permission.²² In so doing, Mr Al Hassan made a direct contribution in support of the actions of the *Hesbah* in the detention of women and the ensuing violence against them by repressing attempts on the part of the women to put an end to these practices.
10. Considering the foregoing, I would have found that Mr Al Hassan contributed under Article 25(3)(d) of the Statute to the crimes of rapes committed by members of Ansar Dine/AQIM against Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547).
11. In relation to the mental elements, as noted by the Majority in the Trial Judgment,²³ there is no direct evidence that Mr Al Hassan knew of complaints relating to sexual harassment or rape of detained women. However, this evidently is not determinative as all the surrounding circumstances must be considered holistically. I recall the Majority's findings in the Trial Judgment that through his vital role in the Islamic Police, Mr Al Hassan knew of and deliberately took part in Ansar Dine/AQIM's control over the

¹⁹ See Trial Judgment, paras 753-760.

²⁰ See Trial Judgment, paras 753-760.

²¹ See Trial Judgment, para. 759.

²² See Trial Judgment, paras 759-760.

²³ See Trial Judgment, para. 1722.

population of Timbuktu, including the severe punishments for violation of the groups' rules and prohibitions.²⁴ Further, as found by the Majority, Mr Al Hassan was fully aware of the coercive atmosphere this created and the fear that was generated by Ansar Dine/AQIM's control of the city and its particular impact on women.²⁵

12. Moreover, as noted above, Mr Al Hassan knew that the *Hesbah* under Mohammed Moussa's tenure was detaining people, including women, and did not transfer arrested persons to the Islamic Police.²⁶ As discussed in the Trial Judgment, Mr Al Hassan was surprised by this not because he found the detentions objectionable *per se* but because he considered it was the function of the Islamic Police to imprison people.²⁷ This is consistent with the fact that detention, including the detention of women, was authorised by the emirs as outlined above. Rather, his concerns about the detentions stemmed from the specific practices of Mohammed Moussa which Mr Al Hassan commented upon in some detail. Notably, Mr Al Hassan opined that a lot of Mohammed Moussa's actions in this respect were contrary to *Sharia*.²⁸ Mr Al Hassan further stated that women were detained by Mohammed Moussa for one or two days²⁹ and that he was aware of complaints both from members of Ansar Dine/AQIM and the public in relation to Mohammed Moussa's practice of imprisoning women at the *Hesbah*.³⁰ Moreover, Mr Al Hassan himself received complaints about Mohammed Moussa's extremism during the latter's tenure as emir of the *Hesbah* and he described Mohammed Moussa's behaviour as 'draconian'.³¹ These statements, coming from Mr Al Hassan himself, demonstrate that he, as an insider of the groups, was well aware of the abuses being perpetrated by the *Hesbah* and the nature and scope of the same. Further, as mentioned, Mr Al Hassan was directly involved with the women's march and knew that this was partially motivated by protests related to detention and violence against women by Mohammed Moussa and his men.
13. As to the physical circumstances of the detentions, while Mr Al Hassan stated that he was too busy to have time to go the *Hesbah* and only went there once, the conditions of the

²⁴ See Trial Judgment, para. 1688.

²⁵ See Trial Judgment, para. 1715.

²⁶ See Trial Judgment, paras 535, 538.

²⁷ See Trial Judgment, para. 535.

²⁸ See Trial Judgment, para. 535.

²⁹ See Trial Judgment, para. 537, footnote 1466.

³⁰ See Trial Judgment, paras 538-539, footnotes 1471, 1473.

³¹ See Trial Judgment, para. 534, 538.

ATM room were exposed to the public and were obvious for the people of Timbuktu and in particular Mr Al Hassan to see.³² Moreover, in his position with the Islamic Police, he had worked at the BMS initially, where on occasion individuals were detained and he was familiar with the facilities, including the ATM room.³³ In my view, this evidence establishes that Mr Al Hassan was completely cognisant of the general conditions in which the women were being detained.

14. In reaching their finding on knowledge, my colleagues have placed considerable weight on the rape investigation which led to the punishment of a member of the Islamic Police, Mr Al Hassan's involvement in the case and the fact that he was angry with the conduct of the Police officer.³⁴ I do not ignore this incident however, I consider it to be of limited relevance in assessing Mr Al Hassan's knowledge of the rapes being committed in detention. Notably, it is significant that this individual case of rape occurred in an entirely different context from the rapes in detention. This was an instance of a rape committed by a member of the Islamic Police against a girl from the community, and the same region as Mr Al Hassan, in the context of the general interactions between the members of the armed groups and the civilian population.³⁵ The girl was brought to the Islamic Police and identified her attacker and Mr Al Hassan was actively involved in the investigation in his role with the organisation and was very angry about what had happened in this particular instance.³⁶ These facts may provide some evidence as to his personal views about the crime of rape but not as to his knowledge about the rapes being committed in detention. It is significant in this respect that Mr Al Hassan expressed clearly that he disagreed with what Mohammed Moussa was doing, even expressing the view that his actions were in large part contrary to *Sharia*. Moreover, I would highlight that with respect to liability under Article 25(3)(d) of the Statute, the mental element does not require that Mr Al Hassan shared the common purpose, or supported or agreed with it or with the criminal activity that was committed in pursuit of it. He need only have made his contribution intentionally and with the knowledge that the crime was intended as part of the common purpose or that it would occur in the ordinary course of events.

³² See Trial Judgment, para. 537.

³³ See Trial Judgment, paras 560, 579.

³⁴ See Trial Judgment, para. 1724.

³⁵ See Trial Judgment, para. 678.

³⁶ See Trial Judgment, para. 678.

15. I also have considered that in his statements, Mr Al Hassan indicated that apart from the case of rape noted above, he did not hear of any other rapes.³⁷ In assessing this statement I note the factual findings of the Chamber as to the multiple instances of rape and sexual violence during Ansar Dine/AQIM's control of Timbuktu.³⁸ In this period Mr Al Hassan occupied a senior position in the Islamic Police where he was engaging with the public. He had as well, as discussed above, a detailed awareness and direct involvement in the complaints brought against Mohammed Moussa, including those that were a motivation for the women's march. In the combined circumstances, I find it untenable that Mr Al Hassan was unaware of any rapes and in particular those committed against detained women and I consider that statement to be without credibility.
16. Looking at the totality of circumstances - the widespread knowledge of the abuses of Mohammed Moussa, Mr Al Hassan's insider role, the direct complaints he received and the others he was informed about, the only reasonable conclusion to be drawn is that Mr Al Hassan was aware that acts of rape were being and would be committed by members of Ansar Dine/AQIM against detained women in the ordinary course of events and he contributed to the crime with this knowledge.³⁹
17. Accordingly, I would have found that Mr Al Hassan's culpable conduct was deliberate and made with the required knowledge of the groups' intent to commit the crime of rape.⁴⁰ I also consider that no defences are applicable.⁴¹ Accordingly, I would have found Mr Al Hassan guilty in relation to these charges.

³⁷ See Trial Judgment, para. 678.

³⁸ See Trial Judgment, sections III.E.1.j), III.E.1.k), III.E.1.n), III.E.1.o), III.E.1.s), III.E.1.t), III.E.1.u), III.E.1.v), III.E.1.w).

³⁹ *Contra* [Defence Final Brief](#), para. 286.

⁴⁰ With respect to the intention of the group to commit the crime, I rely on the definition set out in Article 30(2)(b) of the Statute that the group meant to cause the consequence or was aware that it would occur in the ordinary course of events.

⁴¹ See Trial Judgment, section V.D.

III. OTHER COUNTS AND CHARGES FOR WHICH JUDGE MINDUA JOINS THE MAJORITY SOLELY ON THE BASIS OF THE APPLICATION OF DEFENCES

A. Other inhumane act of forced marriage as a crime against humanity (Count 8) and associated sexual slavery and rape as war crimes and crimes against humanity (Counts 9-12)

18. In the case of these crimes involving sexual violence,⁴² I am of the view there is not a scintilla of evidence that Mr Al Hassan or any member of Ansar Dine/AQIM faced any form of compulsion to commit or contribute to these violent acts, let alone that which would meet the definition of duress under Article 31(1)(d) of the Statute.
19. Further I must observe that I find particularly incongruous the defence of duress to the crime of forced marriage in this case. By its very nature, forced marriage involves violation of the fundamental right of every person to enter a marriage with free and full consent.⁴³ The people under duress in this case were the vulnerable women and girls of Timbuktu who were forced against their wills, in a coercive environment and through the use of threats and violence, to marry members of Ansar Dine/AQIM;⁴⁴ victims who were then deprived of their liberty, subjected to horrific sexual violence at the hands of their new 'husbands', and discarded afterwards.⁴⁵ In the context of this case I fail to see how Mr Al Hassan – an important member of the Islamic Police, working daily to sustain the coercive environment created in Timbuktu,⁴⁶ who actively supported and facilitated Ansar Dine/AQIM's practice of '*jihadi* marriages'⁴⁷ and directly contributed, with knowledge, to the pressure brought to bear on women and their families which facilitated forced marriages⁴⁸ - was under duress in contributing to this crime.
20. I consider, for the reasons set out in the Trial Judgment, by a Majority formed with Judge Mindua, that the elements of crime for forced marriage (Count 8), sexual slavery (Counts 9-10) and rape (Counts 11-12) are met,⁴⁹ that the crimes were part of Ansar

⁴² Other inhumane act of forced marriage as a crime against humanity pursuant to Article 7(1)(k) of the Statute (Count 8), sexual slavery as a crime against humanity pursuant to Article 7(1)(g) of the Statute and as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Counts 9-10) and rape as a crime against humanity pursuant to Article 7(1)(g) of the Statute and as a war crime (Counts 11-12).

⁴³ See Trial Judgment, para. 1187.

⁴⁴ See Trial Judgment, section V.B.6.

⁴⁵ See Trial Judgment, sections V.B.6, V.B.7, V.B.8.

⁴⁶ See Trial Judgment, para. 1674.

⁴⁷ See Trial Judgment, para. 1711.

⁴⁸ See Trial Judgment, para. 1713-1717.

⁴⁹ See Trial Judgment, sections V.A, V.B.6, V.B.7, V.B.8.

Dine/AQIM's common purpose,⁵⁰ that Mr Al Hassan made an intentional contribution to these crimes pursuant to Article 25(3)(d) of the Statute,⁵¹ and, in further findings made by a Majority formed with Judge Akane, that no defences are applicable.⁵² Accordingly, I would have found and declared Mr Al Hassan guilty in relation to these charges.

B. Other inhumane acts as a crime against humanity (Count 2), cruel treatment as a war crime (Count 4) and outrages upon personal dignity as a war crime (Count 5), in relation to the detained women

21. I respectfully disagree with the Majority's conclusion that Mr Al Hassan is not guilty of contributing to other inhumane acts as a crime against humanity (Count 2), cruel treatment as a war crime (Count 4), and outrages upon personal dignity as a war crime (Count 5) against the abovementioned women arrested and detained for violation of Ansar Dine/AQIM's dress code rules.⁵³

22. I consider, for the reasons set out in the Trial Judgment, by a Majority formed with Judge Mindua, that the elements of crime are met,⁵⁴ that these crimes were part of Ansar Dine/AQIM's common purpose,⁵⁵ that Mr Al Hassan made an intentional contribution to these crimes pursuant to Article 25(3)(d) of the Statute,⁵⁶ and, in further findings made by a Majority formed with Judge Akane, that no defences are applicable.⁵⁷ Accordingly, I would have found and declared Mr Al Hassan guilty in relation to these charges.

C. Sentencing without due process as a war crime (Count 6)

23. I respectfully disagree with the Majority's conclusion that Mr Al Hassan is not guilty pursuant to Article 25(3)(c) of the Statute of aiding, abetting or otherwise assisting in the commission of the war crime of sentencing without due process (Count 6).⁵⁸ I consider,

⁵⁰ See Trial Judgment, section V.C.3.a).ii.

⁵¹ See Trial Judgment, section V.C.3.b).iii.

⁵² See Trial Judgment, section V.D.

⁵³ See Trial Judgment, sections V.C.3.a).i, V.C.3.b).i, V.D. Specifically, the Majority finds Mr Al Hassan not guilty pursuant to Article 25(3)(d) of the Statute of contributing to other inhumane acts as a crime against humanity, under Article 7(1)(k) (Count 2), cruel treatment as a war crime, under Article 8(2)(c)(i) (Count 4), and outrages upon personal dignity as a war crime, under Article 8(2)(c)(ii) (Count 5), all committed against Azahara Abdou (P-1134), P-0636, P-0570, and Fadimata Mint Lilli (P-0547).

⁵⁴ See Trial Judgment, sections V.A, V.B.2, V.B.3, V.B.4.

⁵⁵ See Trial Judgment, section V.C.3.a).i.

⁵⁶ See Trial Judgment, section V.C.3.b).i.

⁵⁷ See Trial Judgment, section V.D.

⁵⁸ See Trial Judgment, sections V.C.2.b), V.D. Specifically, the Majority finds Mr Al Hassan not guilty pursuant to Article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting Islamic Court members in the commission of the war crime of sentencing without due process, under Article 8(2)(c)(iv) of the Statute (Count 6),

for the reasons set out in the Trial Judgment, by a Majority formed with Judge Mindua, that the elements of crime are met,⁵⁹ that Mr Al Hassan intentionally aided, abetted or otherwise assisted the commission of this crime pursuant to Article 25(3)(c) of the Statute,⁶⁰ and, in further findings made by a Majority formed with Judge Akane, that no defences are applicable.⁶¹ While I join Judge Akane in concluding that Mr Al Hassan is guilty in relation to these cases under Article 25(3)(d) of the Statute,⁶² I would have instead found and declared Mr Al Hassan guilty under Article 25(3)(c) of the Statute in relation to these cases.

24. I also respectfully disagree with the Majority's conclusion that Mr Al Hassan is not guilty of contributing to the war crime of sentencing without due process (Count 6) pursuant to Article 25(3)(d) of the Statute for certain cases.⁶³ I consider, for the reasons set out in the Trial Judgment, by a Majority formed with Judge Mindua, that the elements of crime are met,⁶⁴ that these crimes were part of Ansar Dine/AQIM's common purpose,⁶⁵ that Mr Al Hassan made an intentional contribution to these crimes pursuant to Article 25(3)(d) of the Statute,⁶⁶ and, in further findings made by a Majority formed with Judge Akane, that no defences are applicable.⁶⁷ Accordingly, I would have found and declared Mr Al Hassan guilty in relation to these charges.

in relation to the individuals in the following nine cases: (i) Ibrahim bin Al-Husayn; (ii) Al-Husayn Bin 'Umar and Halimah Bint Muhammad; (iii) Al-Khayr Bin-Sidi; (iv) Moussa Ben Mohamed el-Joumaa or Muhammad Musa Muhammad al-Jam'at, 'Abdu, 'Ali al-Jaw and Adulahi; (v) Abdelkarim Ascofare or 'Abd-al-Karim Iskufari; (vi) Muhammad Bin Musa; (vii) Muhammad Walad, Aghli Asudh and Arjili Bin Aman; (viii) Yahya Bin-Muhammad or his companion; and (ix) El-Khamis Bin-el-Sabt.

⁵⁹ See Trial Judgment, sections V.A, V.B.9.

⁶⁰ See Trial Judgment, section V.C.2.b).

⁶¹ See Trial Judgment, section V.D.

⁶² See Trial Judgment paras 1706, 1737, footnote 5173.

⁶³ See Trial Judgment, sections V.C.3.b).ii, V.D. Specifically, the Majority finds Mr Al Hassan not guilty pursuant to Article 25(3)(d) of the Statute for contributing to the war crime of sentencing without due process, under Article 8(2)(c)(iv) (Count 6), in the cases of: Azahara Abdou (P-1134); P-0636; P-0570; Fadimata Mint Lilli (P-0547); Salamata Warnamougrez (P-1710); Hady Aguisa (P-1711); Mahmud Bin al-Mustafa; Boune Ould Hassan; Ali al-Haji and 'Ali Shayban; 'Abdullah Kuni; Abou-Bakr Soumboulou; and Dawoud Oulale.

⁶⁴ See Trial Judgment, sections V.A, V.B.9.

⁶⁵ See Trial Judgment, section V.C.3.a).i.


⁶⁶ See Trial Judgment, section V.C.3.b).ii.

⁶⁷ See Trial Judgment, section V.D.

D. Persecution as a crime against humanity (Count 13)

25. Mr Al Hassan is charged with the crime against humanity of persecution on religious and/or gender grounds (Count 13). I respectfully disagree with the Majority's conclusion, based on different reasons, to limit the scope of Mr Al Hassan's conviction for the crime of persecution to religious grounds only.⁶⁸
26. In the Trial Judgment I formed a Majority with Judge Mindua in finding that, in addition to, and in the context of, targeting on religious grounds, women and girls were not only particularly affected, but they were also specifically targeted on the basis of their gender.⁶⁹ Accordingly the facts of this case support a conviction for the crime against humanity of persecution on the basis of two inseparable grounds: gender and religion. In particular, the conviction for persecution should reflect the multiple and intersecting nature of the targeting of women and girls by Ansar Dine/AQIM. In my view, the elements of the crime of persecution on the basis of gender were met⁷⁰ and a conviction on that basis would have more accurately recognised the harm suffered by female victims in Timbuktu at the time.

Done in English. A French translation will be prepared, but the English version remains authoritative.



Judge Kimberly Prost

Dated this Wednesday, 26 June 2024

At The Hague, The Netherlands

⁶⁸ See Trial Judgment, sections V.B.10, V.C.3.a).iv, V.C.3.b).v, V.D.

⁶⁹ See Trial Judgment paras 1566-1574.

⁷⁰ See Trial Judgment, sections V.A.2, V.B.10, V.C.3.a).iv, V.C.3.b).v.