

**Cour
Pénale
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**International
Criminal
Court**

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Date: **03 September 2024**

TRIAL CHAMBER X

Before: Judge Kimberly Prost, Presiding
Judge Tomoko Akane
Judge Keebong Paek

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF
THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD

Public

With Public Annexes A and B (Table of Authorities and Excerpts)

Public Redacted Version of ‘Defence Submissions on Sentence’

Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

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

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I. INTRODUCTION

1. A sentence should ensure retribution, deterrence and rehabilitation, commensurate to the totality of the individual's culpability and personal circumstances. These goals have been met. Mr Al Hassan has sought the forgiveness of all those in Timbuktu he harmed.¹ The highest religious and [redacted] in Timbuktu have, in turn, expressed forgiveness towards Mr Al Hassan and the wish that no further punishment be imposed on him for the crimes for which he was convicted.² There is a willingness to accept Mr Al Hassan back in Timbuktu in the spirit of forgiveness and the city's proud history of '*vivre ensemble*'.³ Further and disproportionate punishment would be contrary to the goals of reconciliation in Timbuktu and, significantly, would fail to distinguish between the architects of the events of 2012 and locals, like Mr Al Hassan, who were swept up in the maelstrom.⁴ Mr Al Hassan has since spent 7½ years apart from his family: he was powerless to prevent the passing of his beloved daughter [redacted]. Mr Al Hassan is committed to a path of peaceful civilian life, focussing on the well-being of his family and rendering public service to the community.⁵
2. The Defence for Mr Al Hassan seeks a sentence tantamount to time served, due to:
 - (i) Personal remorse and [redacted];
 - (ii) Personal circumstances and hardship in existence at the time of the incidents;
 - (iii) The minimal degree of Mr Al Hassan's role and participation;
 - (iv) The presence of mitigating factors, absence of aggravating factors, and gravity;
 - (v) Special hardship experienced in detention and these proceedings; and
 - (vi) Mr Al Hassan's positive prospects for rehabilitation and reintegration.

The Trial Chamber is further requested to credit Mr Al Hassan for time served in Bamako and The Hague due to the overlap in conduct between the basis for his arrest and detention. Concurrent sentences are appropriate given the overlap in conduct concerning the crimes.

II. SUBMISSIONS

2.1. Personal Remorse and Cooperation

3. In 2012, Mr Al Hassan, a young man, was recently married and relatively new to the heavy responsibilities of fatherhood,⁶ during a time of insecurity and danger. Having witnessed first-hand what transpired in Timbuktu, Mr Al Hassan recognises that while religion can be a

¹ [MLI-D28-0007-0638-R01](#) at 0653-0654. [redacted].

² Trial Judgment, para. 1087. See also D-0553: [MLI-D28-0005-9325-R01](#) at 9333, paras. 44-48; D-0809: [MLI-D28-0007-0849-R01](#) at 0851, paras. 11-14; 0852, paras. 15-17.

³ D-0553: [MLI-D28-0005-9325-R01](#) at 9333, paras. 44-48; [MLI-D28-0005-8901](#); D-0809: [MLI-D28-0007-0849-R01](#) at 0851, paras. 11-14; 0852, paras. 15-17.

⁴ D-0553: [MLI-D28-0005-9325-R01](#) at 9333, paras. 44-48.

⁵ [MLI-D28-0007-0638-R01](#) at 0652.

⁶ Mr Al Hassan's first-born [redacted]: [MLI-D28-0005-3128](#).

powerful tool for good, it can also be manipulated and exploited to commit crimes. Even before the issuance of the ICC arrest warrant in this case, Mr Al Hassan expressed clear opposition to the way women were imprisoned by *Hesbah* in 2012, describing such as contrary to *Sharia*.⁷ His dissociation from such actions is reflected by his steps to facilitate professional training and opportunities for women both before and after 2012.⁸

4. Mr Al Hassan has lived and learned, having seen the heavy toll that his family paid, due to his association with Ansar Dine. This shaped his subsequent choices. Forced to flee following the arrival of the Malian and French forces, his daughter [redacted] died enroute to safety [redacted].⁹ In 2014, Mr Al Hassan returned to Mali,¹⁰ and [redacted] with his family.¹¹ Mr Al Hassan's subsequent involvement in the *Congrès pour la Justice dans l'Azawad* ('CJA') demonstrates his commitment to working within the framework of pro-Government peace frameworks, which respect the Malian constitution and territorial integrity.¹² In this capacity, he cooperated with UN and French forces, working directly with individuals, who were opposed to extremism¹³.

5. Mr Al Hassan has sought the forgiveness of all those he has harmed.¹⁴ This will be conveyed in public during the sentencing hearing. Mr Al Hassan also [redacted], which the Chamber characterised as voluntary,¹⁵ must be assessed as weighty, as reflected by the Chamber's substantial reliance on these interviews in the Trial Judgment.¹⁶ Mr Al Hassan's [redacted], through such interviews, is a substantial mitigating factor.¹⁷ Mr Al Hassan's

⁷ Trial Judgment, para. 1680.

⁸ D-0803: [MLI-D28-0007-0610-R02](#) at 0615-0618, 0623-0624; D-0801, [MLI-D28-0007-0630-R01](#) at 0634-0636.

⁹ D-0803: [MLI-D28-0007-0610-R02](#) at 0621. See also [MLI-D28-0006-4209](#) (English translation: [MLI-D28-0006-4210](#)); [MLI-D28-0006-4262](#) (English translation: [MLI-D28-0006-4264](#)).

¹⁰ D-0246: [MLI-D28-0006-9124-R01](#) at 9130, para. 35.

¹¹ D-0803: [MLI-D28-0007-0610-R02](#) at 0623.

¹² Trial Judgment, fn. 3743 noting Mr Al Hassan's involvement in such groups from at least 2015 and the related evidence concerning the mandate of the CJA; Trial Judgment, fn. 3750 ('P-0065 further explained that "[...] keep saying that Al Hassan was just a regular person, like everyone who was in MNLA and later joined the Azawad Islamist movement, and later on the supreme council for the unity of Azawad, who are known to everyone to have no terrorist or extremist ideologies" (P-0065: T-050, p. 19).'; D-0534: [MLI-D28-0006-4188-R01](#) at 4196-4201.

¹³ Trial Judgment, fn. 3750; D-0246: [MLI-D28-0006-9124-R01](#) at 0130, para. 35; D-0534: [MLI-D28-0006-4188-R01](#) at 4193 lines 6-9, 4196-4201.

¹⁴ [MLI-D28-0007-0638-R01](#) at 0653-0654. In Islam, the act of actively seeking forgiveness is emphasized over merely expressing regret by saying 'I'm sorry'. True repentance involves a deeper process known as *Tawbah*, which includes seeking forgiveness both from Allah and from the person wronged. This is done with the intention of not repeating the offense, acknowledging the wrong, and feeling genuine remorse (*Surah An-Nur* (24:22)). Asking for pardon is a sign of the spiritual expanse of one's heart. It is more respectful to ask for forgiveness rather than to be sorry. See Al-Islam.org, '[Discourse 35: Apologizing to Others and Accepting an Apology](#)'.

¹⁵ [ICC-01/12-01/18-1475-Red](#), para. 52.

¹⁶ [ICC-01/12-01/18-2614-Conf](#), para. 30.

¹⁷ *Katanga Sentencing Decision*, ICC-01/04-01/07-3484, paras. 126-127; *Stanišić Decision on Prosecution's*

assistance to the Trial Chamber's truth finding process in a matter related to [redacted] has also generated substantial collateral consequences as concerns the security of his family, who currently lack his protection and support.¹⁸ Mr Al Hassan's respectful comportment and cooperative attitude in Court proceedings, including voluntary participation in hearings through video-link, must also be assessed in light of the unprecedented difficulties caused by COVID-19.¹⁹

6. [redacted], the Defence sought to identify these individuals to facilitate their right to be heard and recognised as victims. [redacted]²⁰ .D-0808 expressed willingness to forgive the person that flogged him, if the person asks for forgiveness.²¹ Mr Al Hassan has sought the forgiveness of all those in Timbuktu he has harmed.

2.2. Personal circumstances at the time of the events

7. Mr Al Hassan's actions in taking a path that supported and protected his family from harm,²² in the face of external risks, which fell outside his control,²³ warrants lenience and is relevant to the overall context of his culpability.²⁴ Mr Al Hassan, a Tuareg from the Kel Ansar tribe in Northern Mali, bowed to tribal pressures and was convinced to collaborate with Ansar Dine,²⁵ perceived as the least-worst option,²⁶ in the face of a lack of feasible alternatives to support and protect his family. Following past rebellions and ethnic cleansing operations, the fear of being targeted and killed by the Malian army was prevalent among the Tuareg

[Appeal Against Decision Granting Provisional Release](#), paras. 4, 14; *Blagojević & Jokić Appeals Judgment*, para. 344. It is for the Trial Chamber, not the Prosecution, to weigh the extent and value of such cooperation: *Orić Trial Judgment*, para. 749.

¹⁸ For collateral consequences, see: *Bemba et al. Sentencing Judgment*, ICC-01/05-01/13-2123-Corr, para. 141; *Al Mahdi Judgment and Sentence*, ICC-01/12-01/15-171, para. 97.

¹⁹ *Bemba et al.*, *Sentencing Judgment*, ICC-01/05-01/13-2123-Corr, para. 136.

²⁰ Noting the stigma that attaches to excessive drinking or drinking alcohol publicly in Timbuktu (*Trial Judgment*, para. 413, fn. 984) individuals may be reluctant to be associated with such accusation.

²¹ D-0808: [MLI-D28-0008-0006-R01](#) at 0010, para. 29.

²² *Rutaganira Judgment and Sentence*, paras. 160-162; *Bagaragaza Judgment on Sentence*, para. 38, taking in mitigation the fact that accused was 'driven by concern for his own safety and that of his family'.

²³ *Rugambarara Sentencing Judgment*, para. 47 (referencing in mitigation, difficulties created by political environment); *Fofana & Kondewa Sentencing Judgment*, para. 66 (granting mitigation due to fact that difficult circumstances increased likelihood that an inexperienced defendant would make incorrect choices); *Aleksovski Trial Judgment*, para. 235 (peak of hostilities contextualises repetition of wrongful conduct).

²⁴ In *Čelebići*, the Trial Chamber noted that the armed conflict had arisen for circumstances beyond Landzo's choosing and further, that due to this conflict and the blockade imposed on civilians, he was living under conditions of a fear of death or deprivation, and his ethnicity was particularly vulnerable (*Čelebići Trial Judgement*, para. 1284). Hadžihasanović was granted lenience due to the fact that his efforts were directed towards restoring order during a difficult situation (*Hadžihasanović Trial Judgment*, para. 2081). In *Orić*, the Trial Chamber found it necessary to take account of the collapse of law and order as informing the backdrop within which the accused operated (*Orić Trial Judgment*, paras. 768-770, 772 (treating such circumstances as mitigating)). In *Ongwen*, the Trial Chamber found the circumstances of Mr Ongwen's recruitment, albeit not amounting to a total defence, justified mitigation from life to 25 years (*Ongwen Sentencing Judgment*, ICC-02/04-01/15-1819-Red, para. 388).

²⁵ P-0654: T-133, p. 84, line 25 – p. 85, line 16 (Conf); P-0065: T-050, p. 18, lines 14-25 (Conf); D-0611: [MLI-D28-0006-4287-R01](#) at 4306, lines 5-26.

²⁶ P-0065:T-045, p. 15, lines 18-25.

community,²⁷ and as such: ‘Mr Al Hassan may have generally faced a danger from the Malian army’.²⁸ He needed means to help his family flee to a third country,²⁹ but the route to such countries was highly risky while the Malian army was active in the north of Mali, and physically, arduous.³⁰ Mr Al Hassan worked in a pharmacy in [redacted] that was forced to close due to lack of available medicines.³¹ The events of 2012 caused Mr Al Hassan to not only lose his primary livelihood, but also impeding alternative employment opportunities.³² It was extremely difficult for Tuaregs to find alternative sources of income or support in Timbuktu.³³ With no medicine available in [redacted]³⁴ at a time when he had a young son and pregnant wife who later gave birth to a baby girl,³⁵ the protection and support of his family was a critical factor concerning Mr Al Hassan’s decision to stay in Timbuktu and work with Ansar Dine.³⁶

2.3. The minimal nature of Mr Al Hassan’s role and participation

2.3.1 Findings concerning Mr Al Hassan’s involvement and role within Ansar Dine

8. Mr Al Hassan was found to have had no prior involvement with the groups before their arrival in Timbuktu and he was *not* part of the senior level of the leadership structure of Ansar Dine/AQIM.³⁷ When Mr Al Hassan first went to Timbuktu to seek a living, he tried to do so by engaging in commercial transactions.³⁸ However, given the confiscation of Malian army weapons from civilians,³⁹ this was not a sustainable source of income. Members of the group sought to recruit Mr Al Hassan and convinced him of the necessity of working for them.⁴⁰ In contemporaneous communications, Iyad Ag Ghaly told the Timbuktu population their help was needed to ensure the continuation of essential services and the survival of the local population.⁴¹ At this point, Ansar Dine and AQIM were already in control of Timbuktu and its surrounding

²⁷ Trial Judgment, para. 411.

²⁸ Trial Judgment, para. 1754.

²⁹ D-0803: [MLI-D28-0007-0610-R02](#) at 0622, lines 21-23.

³⁰ The Majority did not dismiss Defence arguments that Mr Al Hassan did not have the financial means to relocate or that it would have been dangerous for him to have done so, finding instead, that such arguments failed to satisfy the test for duress as a full defence (Trial Judgment, para. 1761). *See also*: P-0608: T-154, p. 89, lines 13-22 (Conf); P-0065: T-044, p. 44, lines 10-23 (Conf); P-0638: T-059, p. 20, lines 18-23 (Conf); D-0540: T-183, p. 31, line 16 – p. 33, line 11; p. 35, line 15 – p. 37, line 1 (Conf); D-0211: T-190, p. 32, line 21 – p. 33, line 25 (Conf); D-0006: T-205, p. 15, lines 6-18 (lines 12-13).

³¹ Trial Judgment, para. 1059.

³² Trial Judgment, fn. 3620; D-0803, [MLI-D28-0007-0610-R02](#) at 0619 lines 2-5.

³³ D-0540: T-183, p. 12, line 23 – p. 14, line 10; p. 42, lines 7-19; p. 43, lines 16-18; p. 47, lines 3-8 (‘[redacted] [...]’); D-0803: [MLI-D28-0007-0610-R02](#) at 0619, lines 6-8.

³⁴ D-0803: [MLI-D28-0007-0610-R02](#) at 0619, lines 2-5.

³⁵ D-0803: [MLI-D28-0007-0610-R02](#) at 0620, lines 20-27.

³⁶ D-0243: [MLI-D28-0006-0053-R01](#) at 9058, para. 46.

³⁷ Trial Judgment, paras. 458-462.

³⁸ Trial Judgment, fn. 3620.

³⁹ P-0150: T-107, p. 73 lines 14-17, 23.

⁴⁰ Trial Judgment, para. 1059.

⁴¹ P-0150: T-106, p. 76, line 2 – p. 78, line 10.

areas.⁴² When Iyad Ag Ghaly explained the intended role of the group in providing security and justice, the role of AQIM was omitted as was the implementation of prohibitions.⁴³ His promise to provide security and protection was viewed favourably by locals,⁴⁴ and would have resonated with the Touareg community for whom the ‘lack of public services was particularly an issue’.⁴⁵

9. Mr Al Hassan was 34 years old: only two years older than *Blaškić*, *Serushago*, and *Ruzindana*, who all received mitigation due to their age when the crimes were committed.⁴⁶ In group hierarchy terms, he was considered a ‘young man’ when recruited into the group.⁴⁷ Whereas Iyad Ag Ghaly met directly with Sanda, [redacted], Mohamed Moussa, Houka Houka and Daoud Ali Maiga to explain *how* he intended to pursue his agenda,⁴⁸ he did not explain such matters to Mr Al Hassan. Mr Al Hassan played no role in the development of policies concerning the architecture and hierarchy of the groups.

10. Mr Al Hassan sought to work in the hospital in a role no different than Dr Maiga or D-0093, but his request was rebuffed by the groups.⁴⁹ The Trial Chamber found that Mr Al Hassan’s first activities in Ansar Dine were related to security measures,⁵⁰ in the period where the local population expressly requested Ansar Dine to provide security.⁵¹ While characterised as an important task,⁵² its importance derived from its beneficial impact on the population.⁵³ P-0150 described Mr Al Hassan’s tasks at this point as ‘secretarial’.⁵⁴

11. When Mr Al Hassan joined the Islamic police, there were no alternative police services available to secure and protect the population.⁵⁵ The people of Timbuktu had also suffered in preceding years from the effects of trafficking, and ‘a lack of public services, in particular as regards the sectors of education, health care and justice’.⁵⁶ Ansar Dine took positive steps to protect civilians and civilian property from other groups, including bandits and drug

⁴² Trial Judgment, para. 1752.

⁴³ Trial Judgment, para. 471.

⁴⁴ Trial Judgment, para. 472.

⁴⁵ Trial Judgment, para. 411.

⁴⁶ *Blaškić* [Trial Judgment](#), para. 778; *Serushago* [Sentencing Judgment](#), para. 39; *Kayishema & Ruzindana* [Decision on Sentence](#), para. 12 (Ruzindana).

⁴⁷ Trial Judgment, para. 1059.

⁴⁸ Trial Judgment, paras. 473, 474.

⁴⁹ Trial Judgment, para. 1059, referencing Mr Al Hassan’s statement. See [MLI-OTP-0051-1257](#) at 1286, lines 962 (« *J’ai... je leur ai demandé au début que je puisse travailler à l’hôpital pour acquérir plus d’expérience* ») and 966-969 (re Sheik Abdallah taking him to the police station to work as an interpreter, because of language skills).

⁵⁰ Trial Judgment, para. 1060.

⁵¹ Trial Judgment, para. 471.

⁵² Trial Judgment, para. 1060.

⁵³ Trial Judgment, para. 1071. See also fn. 1166.

⁵⁴ P-0150: T-093, p. 14, line 4.

⁵⁵ Trial Judgment, para. 547 (‘At the time of the establishment of Ansar Dine/AQIM’s Islamic Police in Timbuktu, there was no functioning police force within the city as all the governmental services, including the police, left the city before the departure of the Malian army’).

⁵⁶ Trial Judgment, para. 410.

traffickers:⁵⁷ '[o]nce Ansar Dine/AQIM took over Timbuktu, and after the "chaos" created by the MNLA, the population felt that some sort of order and security were restored, as pillages and theft reduced'.⁵⁸ Mr Al Hassan was found to have played a helpful role in disengaging fights and dispersing groups in a peaceful manner.⁵⁹

12. The Trial Chamber found that when Mr Al Hassan joined the Islamic Police, he was assigned larger tasks.⁶⁰ This finding rests on P-0150 testimony, which simply states that joining the Islamic Police was itself a larger task.⁶¹ The Trial Chamber further found that when Mr Al Hassan started with the Islamic Police, he was working as an interpreter,⁶² including for the Emir, Adam.⁶³ [redacted] that Adam and Khaled did not speak local languages; Khaled only spoke Arabic.⁶⁴ Abu Zhar spoke Bambara and a little French.⁶⁵ Mr Al Hassan consequently relayed information to and from other persons.

13. Mr Al Hassan worked as a subordinate of Adam and then Khaled.⁶⁶ The Trial Chamber relied on both the evidence of [redacted] and P-0582 to ascertain the contours of Mr Al Hassan's role in the Islamic Police.⁶⁷ [redacted] gave evidence that when Mr Al Hassan worked for Adam, he functioned primarily as an interpreter and administrative clerk.⁶⁸ This coincided with Al Mahdi's leadership of *Hesbah* under which women were not detained and there was a lenient approach to *ta'zirs*.⁶⁹ [redacted] before the public flogging of P-0565 and P-0557, [redacted] did not recall that punishments were enforced.⁷⁰ Mr Al Hassan had no power to make decisions on detention: any detention that occurred during this period (whether briefly at the BMS or by way of transfer to the grand prison) had to be approved by the Emir of the Islamic Police.⁷¹

14. P-0582 joined the Islamic Police before Ramadan and was well-placed to observe Mr Al Hassan during the following time period,⁷² [redacted].⁷³ The Trial Chamber found that P-0582 gave credible, exculpatory evidence concerning Mr Al Hassan's role,⁷⁴ including that

⁵⁷ Trial Judgment, fn. 1166.

⁵⁸ Trial Judgment, para. 464.

⁵⁹ Trial Judgment, para. 194.

⁶⁰ Trial Judgment, para. 1061.

⁶¹ Trial Judgment fn. 3031, citing P-0150: T-093, p. 14 (see lines 5-7).

⁶² Trial Judgment fn. 3628. See also Trial Judgment, paras. 1067-1068.

⁶³ Trial Judgment, fn. 3656.

⁶⁴ P-0398: [MLI-OTP-0062-1257](#) at 1261; [MLI-OTP-0060-1423](#) at 1433, lines 304-307.

⁶⁵ P-0398: [MLI-OTP-0062-1257](#) at 1261.

⁶⁶ Trial Judgment, para. 1063.

⁶⁷ Trial Judgment, para. 1063, fn. 3642.

⁶⁸ P-0150: T-089, p. 56 lines 16-17.

⁶⁹ Trial Judgment, para. 528.

⁷⁰ P-0398: [MLI-OTP-0051-0912](#) at 0933 lines 702-727.

⁷¹ P-0398: [MLI-OTP-0051-1032](#) at 1047 lines 490-497.

⁷² Trial Judgment, para. 287. P-0582 went for a 2 weeks training after he first arrived.

⁷³ Trial Judgment, para. 72.

⁷⁴ Trial Judgment, para. 289.

Khaled was the only ‘responsible’,⁷⁵ and Mr Al Hassan was unable to regulate matters at the Islamic Police when Khaled was away.⁷⁶ P-0582 gave evidence that no women were detained by the Islamic Police during this period,⁷⁷ and further, that the Islamic Police members were given instructions not to aggress or insult the local population.⁷⁸

15. In terms of Mr Al Hassan’s supervisory role in the Islamic Police, the Trial Chamber’s findings are limited to the following. Mr Al Hassan registered new members of the police such as P-0582, [redacted];⁷⁹ for patrols, following the instructions of the Emir, he transmitted the Emir’s instructions to police members as concerns who would patrol and whether they should go.⁸⁰ Mr Al Hassan sometimes went on patrol although he was mostly at the office;⁸¹ no infractions were witnessed, admonished or punished during the patrols in which he participated.⁸² The Chamber’s findings concerning orders given by Mr Al Hassan is based on a hypothetical scenario devoid of detail concerning context or content,⁸³ and one example of Mr Al Hassan taking steps to protect the civilian population from an Islamic police officer who had unlawfully discharged a firearm.⁸⁴

16. Regarding Mr Al Hassan’s role in writing Islamic Police Reports, the Chamber found that the majority of cases brought before the Islamic Police were civil and social cases initiated by the local population,⁸⁵ which fell within the type of disputes heard by *Qadis* before 2012.⁸⁶ Mr Al Hassan was ordered to write specific reports by the Emir of the Islamic Police.⁸⁷ The Chamber found that the role of the police in resolving minor disputes without further referral⁸⁸ was helpful and resulted in the local population actively seeking Mr Al Hassan out for

⁷⁵ Trial Judgment, fn. 645, citing [MLI-OTP-0062-4117-R02](#) at 4133 (‘[redacted].’); [MLI-OTP-0062-3736-R02](#) at 3749; [MLI-OTP-0062-3820-R02](#) at 3841-3842, 3836-3837 (testifying about the administration of justice in Khaled’s absence and about the selection of members for patrols); [MLI-OTP-0062-3736-R02](#) at 3753 (testifying about instructions given to members relating to civilians); [MLI-OTP-0062-3820-R02](#) at 3833 (Al Hassan’s lack of knowledge about Konna).

⁷⁶ Trial Judgment, fn. 645, citing [MLI-OTP-0062-3820-R02](#) at 3841-3842, 3836-3837 (testifying about the administration of justice in Khaled’s absence and about the selection of members for patrols). *See also* [MLI-OTP-0062-3820](#) at 3831, lines 357-359.

⁷⁷ Trial Judgment, fn. 645, citing [MLI-OTP-0062-3736-R02](#) at 3753.

⁷⁸ Trial Judgment, fn. 645, citing [MLI-OTP-0062-3736-R02](#) at 3753, lines 580-582 (‘[redacted].’).

⁷⁹ Trial Judgment, para. 1069, based on P-0582, who also said that he did not remember Mr Al Hassan performing this role with anyone else: MLI-OTP-0065 0577 at 0584, lines 229-232.

⁸⁰ Trial Judgment, fn. 3659. *See also* fn. 645, citing [MLI-OTP-0062-3820-R02](#) at 3836, lines 557-558 (‘*Euh ... même la décision de patrouille c’est KHALID qui ... qui décide tout*’).

⁸¹ Trial Judgment, fn. 3660 citing [MLI-OTP-0051-0422](#) at 0428.

⁸² [MLI-OTP-0051-0457](#) at 0469 lines 395-399 cited at Trial Judgment fn. 3660.

⁸³ Concerning the scenario if Adam was away, [redacted]’ (D-0605: T-193, p. 13, lines 19-25).

⁸⁴ Trial Judgment, fn. 3662.

⁸⁵ Trial Judgment, fn. 3723. *See also* para. 597.

⁸⁶ Trial Judgment, para. 419. *See also* paras. 597-598.

⁸⁷ *See* Section 2.3 above.

⁸⁸ Trial Judgment, fn. 3723

assistance.⁸⁹ In terms of related interrogations, the Chamber also relied on Mr Al Hassan's statement that he did not use torture in interrogation and it would not have been within his duties to do so.⁹⁰ Mr Al Hassan's role vis-à-vis [redacted] is based on permissions granted to P-0654 and P-0065,⁹¹ both describing him as helpful.⁹² P-0654 confirmed that Mr Al Hassan's assistance facilitated his ability to report the experiences of the local population.⁹³

17. During the relevant events, Mr Al Hassan expressed his belief that the role of the Islamic Police was to provide justice and security for the civilian population, without distinction or discrimination.⁹⁴ He expressed no extremist opinions to his acquaintances during this period.⁹⁵

18. Concerning his knowledge of religious principles followed by the groups, Mr Al Hassan [redacted] did not listen or follow the sermons delivered by *Hesbah* members in the streets,⁹⁶ and only attended one sermon at a mosque.⁹⁷ Regarding his participation in video interviews, [redacted] Khaled (the Emir of the Islamic Police) requested [redacted] to participate in the video where he is questioned by Abdallah al Chinguetti.⁹⁸ Mr Al Hassan had initially refused but was told by Abdallah that he had to speak.⁹⁹ For the second video, Sanda and Radwan ordered Khaled to request Mr Al Hassan to participate.¹⁰⁰ Sanda wrote the text in advance that Mr Al Hassan was required to read.¹⁰¹ Mr Al Hassan was told the subject was 'Azawad'.¹⁰²

19. The Trial Chamber found that in January 2013, Mr Al Hassan replaced Khaled as Emir of the Police.¹⁰³ Since no crimes were committed during this period, no weight can be placed on this factor when ascertaining an appropriate punishment for the conviction crimes.

2.3.2 Findings concerning Mr Al Hassan's contribution to crimes

20. Mr Al Hassan was convicted under Article 25(3)(a) in relation to participation in one flogging incident, Article 25(3)(c) in relation to his presence at two flogging events, and Article

⁸⁹ Trial Judgment, para. 1070. *See also* para. 1071, referring to Mr Al Hassan listening to both sides and instructing the thief to return the stolen goods. In another incident, Khaled and Mr Al Hassan helped two women reconcile and arranged medical assistance for the injured party: Trial Judgment fn. 3669, citing P-0582: [MLI-OTP-0062-3679-R02](#) at 3684-3685; [MLI-OTP-0062-3736-R02](#) at 3739-3741; [MLI-OTP-0062-3760-R02](#) at 3769-3772.

⁹⁰ Trial Judgment, para. 1073.

⁹¹ Trial Judgment, para. 1072.

⁹² P-0065: T-050, p. 18, lines 21-25; P-0654: T-132, p. 27 lines 11-22, T-133, p. 56 lines 1-15.

⁹³ P-0654: T-133, p. 64 lines 3-12. *See also* D-0246: [MLI-D28-0006-9124-R01](#) at 9127-9129, paras. 17, 23, 19-22, 24-28.

⁹⁴ Trial Judgment, para. 1091.

⁹⁵ Trial Judgment, para. 1092 (referring to D-0211&D-0627); D-0272: [MLI-D28-0006-4181-R01](#) at 4183, para. 17.

⁹⁶ P-0398: [MLI-OTP-0051-1124](#) at 1139-1140.

⁹⁷ P-0398: [MLI-OTP-0051-1124](#) at 1141.

⁹⁸ P-0398: [MLI-OTP-0051-0513](#) at 0532 lines 614-617. *See also* [MLI-OTP-0051-0422](#) at 0425, lines 81-84 [redacted] that a police office could speak to a journalist if ordered by the Emir).

⁹⁹ P-0398: [MLI-OTP-0051-0422](#) at 0440, lines 584-588.

¹⁰⁰ P-0398: [MLI-OTP-0051-0422](#) at 0437, line 501 ('[redacted].'); [MLI-OTP-0051-0513](#) at 0532.

¹⁰¹ P-0398: [MLI-OTP-0051-0422](#) at 0437, lines 490-492.

¹⁰² P-0398: [MLI-OTP-0051-0422](#) at 0439, line 567.

¹⁰³ Trial Judgment, para. 1064.

25(3)(d) due to his role in drafting reports and participating in processes related to various judgments. The bulk of convictions arise under forms of liability, described by the Trial Chamber as accessorial or residual.¹⁰⁴ While finding the threshold of Article 25(3)(c) and (d) satisfied, the Majority did not find that such contributions had a substantial or aggravating impact on the commission of the crimes. The Chamber also relied on ‘Mr Al Hassan’s own statements on his own role and functions, which it finds generally credible and reliable’.¹⁰⁵ Mr Al Hassan’s sentence needs to be tailored to his degree of knowledge and actual contributions to the crimes for which he was convicted,¹⁰⁶ based on specific factual findings satisfying the standard of beyond reasonable doubt.

Case of P-0565 and P-0557

21. The Trial Chamber did not find that Mr Al Hassan was either involved in their arrest and detention, or that he was aware that either had been arrested by the Islamic Police or detained at the BMS.¹⁰⁷ Mr Al Hassan [redacted] the first time he saw a woman detained in 2012 was when the wife of [redacted] was detained.¹⁰⁸ Mr Al Hassan also expressed his belief that the detention of women was contrary to *Sharia*.¹⁰⁹

22. Mr Al Hassan was not found to have either drafted a report concerning their case or played a role concerning the hearing at the Islamic Tribunal. Mr Al Hassan was not found to have personal knowledge concerning the way their case was heard at the Islamic Tribunal. The Trial Chamber did not find that the Islamic Police transported P-0565 and P-0557 to the Tribunal or flogging.¹¹⁰ [redacted] (as relied upon by the Trial Chamber), Mr Al Hassan’s only knowledge of the incident arose from his presence at the flogging itself:¹¹¹ he believed he may have been away or on a day off when the arrest transpired.¹¹²

23. While the Chamber found that Mr Al Hassan was part of the security cordon on the day of the flogging, it also found that Talha, an Emir, was responsible for security.¹¹³ [redacted] Talha could also request Islamic Police members to assist with securing sites during public

¹⁰⁴ Trial Judgment, para. 1220.

¹⁰⁵ Trial Judgment, para. 1056.

¹⁰⁶ *Katanga Sentencing Decision*, ICC-01/04-01/07-3484-tENG, para. 43.

¹⁰⁷ Trial Judgment, fn. 2385, referring to Mr Al Hassan’s mistaken belief that they had been arrested by *Hesbah* as he was unaware of any Islamic Police involvement in the arrest. Mr Al Hassan also [redacted] that he was unsure if they had been detained: P-0398: [MLI-OTP-0051-0912](#) at 0925, lines 427-428. *See also*: line 439.

¹⁰⁸ P-0398: [MLI-OTP-0051-1155](#) at 1158, line 92. *See also* at 1157, line 62.

¹⁰⁹ P-0398: [MLI-OTP-0051-1155](#) at 1175.

¹¹⁰ Trial Judgment, fn. 2422.

¹¹¹ P-0398: [MLI-OTP-0051-1184](#) at 1186, line 62. The Trial Chamber relies on Mr Al Hassan’s account: Trial Judgment, fns. 2385, 2391

¹¹² P-0398: [MLI-OTP-0051-0912](#) at 0926, line 475 (‘[redacted]’).

¹¹³ Trial Judgment, para. 142.

floggings.¹¹⁴ Islamic police members would comply with such requests,¹¹⁵ if consistent with the orders of the Emir of the Islamic Police.¹¹⁶ In line with the balance of probabilities threshold, there is evidence that Mr Al Hassan was ordered to be present: a member of the police could not decide to go to such a site of their own volition; they would only be present if ordered to be present by the Emir of the Islamic Police.¹¹⁷ As a member of the Islamic Police, Mr Al Hassan could not disobey an order to attend a flogging or to guard.¹¹⁸ Mr Al Hassan was not armed.¹¹⁹ Nor was he found to have interacted with any civilians or the victims themselves. His minimal presence and role are factors diminishing responsibility.¹²⁰

24. The incident occurred when Adam was Emir of the Islamic Police. The Chamber found that the Islamic Police tried to stop the flogging from being filmed but were overruled.¹²¹ Mr Al Hassan was junior to many others present on the day.¹²² Several members of the Islamic Tribunal were present at the flogging,¹²³ including Koutaiba, who was responsible for ensuring compliance with the Tribunal's judgment.¹²⁴ Mr Al Hassan's reduced level of authority and participation vis-à-vis other members who were present warrants mitigation.¹²⁵ Mr Al Hassan was not found to have played any role in the marriage of P-0565 and P-0557. The Chamber made no findings that Mr Al Hassan was aware of the personal circumstances of the two victims, including the age of P-0565.

The 6 individuals flogged for adultery

25. The Trial Chamber found that four of these individuals were arrested by *Hesbah* and referred to the Islamic Tribunal pursuant to a *Hesbah* complaint.¹²⁶ They were detained at the Islamic Prison. Neither the Islamic Police nor Mr Al Hassan were found to have played any role in their arrest, the complaint or the proceedings at the Islamic Tribunal.¹²⁷ There is no

¹¹⁴ P-0398: [MLI-OTP-0051-0457](#) at 0472 lines. 492-494.

¹¹⁵ P-0398: [MLI-OTP-0051-0513](#) at 0523 lines 308-318.

¹¹⁶ P-0398: [MLI-OTP-0051-0513](#) at 0530.

¹¹⁷ P-0398: [MLI-OTP-0051-0513](#) at 0522, lines 280-292.

¹¹⁸ P-0398: [MLI-OTP-0051-0513](#) at 0532, lines 650-670.

¹¹⁹ Trial Judgment, fn. 2467.

¹²⁰ *Krstić Appeals Judgment*, paras. 272-273 (the fact that the defendant was only present for two hours at the scene where the crimes were committed was a factor that diminished his responsibility).

¹²¹ Trial Judgment, fn. 2376. Abu Zeid gave an order that all *hudud* punishments were to be filmed (P-0398: [MLI-OTP-0062-1257](#) at 1265, lines 259-262).

¹²² Sanda, Koutaiba, Houka Houka and other members of the Islamic Tribunal, Talha, and [redacted] (who had more responsibilities and a higher rank than Mr Al Hassan: Trial Judgment, para. 1757).

¹²³ Houka Houka, [redacted], Mohamed Moussa, Radwan, Koutaiba, and Imam Daoud Ali Al Abou Juma: Trial Judgment, para. 788.

¹²⁴ Trial Judgment, fn. 2471.

¹²⁵ *Blaškić Trial Judgment*, para. 768 (the fact that the defendant did not participate directly in commission may be mitigating, particularly if the defendant has a more junior role vis-à-vis the persons carrying out the crime).

¹²⁶ Trial Judgment, paras. 813-815.

¹²⁷ Mr Al Hassan [redacted] that during the time of Mohamed Moussa, *Hesbah* did not transfer suspects or prisoners to the Islamic Police: [MLI-OTP-0051-1155](#) at 1165-1666.

evidence that Mr Al Hassan was aware of the circumstances of these four individuals.

26. As concerns the Al-Husayn Bin Umar and his half-sister, Halima Bint Muhammad, the Trial Chamber found that this case arose from a complaint filed by [redacted] of Halima Bint Muhammad, in relation to allegations that Al-Husayn had raped and drugged his half-sister.¹²⁸ The Islamic Police were required to submit such cases to the Islamic Tribunal.¹²⁹

27. The Islamic Tribunal conducted its own investigation as reflected by the fact that the Tribunal reached a contrary conclusion concerning the circumstances of the relationship between the individuals.¹³⁰ There is no evidence that Mr Al Hassan was aware of the Tribunal's procedures or decision-making processes: in his statement, he told the Prosecution that he believed that nothing was decided for the woman.¹³¹

28. The Majority found that the evidence only established that Mr Al Hassan was present during the flogging of one of the 6 individuals.¹³² There is no evidence that he witnessed the suffering of the person, who was flogged. This incident occurred when Khaled was the Emir of the Islamic Police. As above, Mr Al Hassan could not be present at a flogging unless ordered by the Emir; such orders could not be disobeyed.

The amputation of Dedeou Maiga

29. The Trial Chamber relied on Mr Al Hassan's statements to conclude that 'the Islamic Police, in particular Adam and Mr Al Hassan, arrested Dedeou Maiga'.¹³³ In his statement, Mr Al Hassan explained that on the day in question, Adam had passed by Mr Al Hassan's house to take him to work.¹³⁴ They passed members of the population pursuing Dedeou Maiga, while accusing him of theft.¹³⁵ Mr Al Hassan's participation was through inadvertence rather than a conscious decision to pursue such an action. Mr Al Hassan played no role in Dedeou Maiga's subsequent arrest, following his attempted escape.

30. As concerns subsequent steps, there is no effective finding that Mr Al Hassan bears responsibility for drafting a report concerning his case since Judge Akane dissented in relation to the underlying factual finding¹³⁶ and Judge Mindua found that Mr Al Hassan had a full excuse to all charged allegations.¹³⁷ The Trial Chamber made no findings that Mr Al Hassan

¹²⁸ Trial Judgment, fn. 2569.

¹²⁹ Trial Judgment, fn. 2585 ('The Chamber further notes that P-0150 testified that if the Police received a complaint of *zina*, it was correct that they were obliged to transmit it to the Islamic Court (P-0150: T-111, p. 30)').

¹³⁰ Trial Judgment, para. 817.

¹³¹ Trial Judgment, fn. 2589.

¹³² Trial Judgment, para. 818.

¹³³ Trial Judgment, para. 820, fn. 2611, citing [MLI-OTP-0051-0658](#) at 0676-0679.

¹³⁴ [MLI-OTP-0051-0658](#) at 0677 line 622.

¹³⁵ [MLI-OTP-0051-0658](#) at 0677 lines 624-627.

¹³⁶ Trial Judgment, fn. 2628.

¹³⁷ ICC-01/12-01/18-2594-OPI3, para. 124.

participated in the processes before the Islamic Tribunal or was aware of such processes or related negotiations conducted between Talha and P-0595.¹³⁸

31. Mr Al Hassan was not present on the day of the amputation itself and was not found to have played any role in its execution,¹³⁹ or the subsequent treatment of Dedeou Maiga. Mr Al Hassan [redacted] was stupefied by the punishment.¹⁴⁰ The amputation occurred when Khaled was the Emir of the Islamic Police.

The cases of Sallaka Bent Al-Khair and Madou Traore

32. Following complaints made by members of the civilian population,¹⁴¹ Sallaka Bent Al-Khair was arrested by members of Ansar Dine/AQIM, who transferred her to *Hesbah*,¹⁴² and detained her at the BMS (under the control of *Hesbah*),¹⁴³ before her case was heard at the Islamic Tribunal. There are no findings that Mr Al Hassan was involved in her arrest, detention, referral to the Islamic Tribunal, conviction, or flogging. When questioned by the Prosecution concerning the video of her flogging, Mr Al Hassan indicated that he had no knowledge of the incident.¹⁴⁴ The Trial Chamber made no findings that Mr Al Hassan participated in Madou Traore's arrest, detention, prosecution at the Islamic Tribunal, or his subsequent flogging. There are also no findings that Mr Al Hassan knew about this incident.¹⁴⁵ These floggings occurred when Khaled was the Emir of the Islamic Police.

The case of old man named Foma

33. Mr Al Hassan was convicted pursuant to Article 25(3)(d). Adam was Emir at the time of this incident. The Chamber made no findings that Mr Al Hassan was present or played a role in the application of the *ta'zir*. It found that the perpetrator was Aboubaccar Al Chinguetti, who was found to have been a member of *Hesbah* before joining the Islamic Police in either June or July.¹⁴⁶ The incident occurred sometime before Ramadan.¹⁴⁷ There was therefore no conclusive finding that Aboubaccar Al Chinguetti was a member of the Islamic Police at the time of the

¹³⁸ Although P-0595 saw a photo of Mr Al Hassan after he was arrested by the ICC, he did not recognise him ([MLI-OTP-0058-0196](#) at 0201, para. 29). P-0595 also stated that he spoke to Adama at the Islamic Tribunal, whom, along with another Bambara corresponding to a photo of Abu Zhar, were described as the *Commissaires* of the Islamic Police ([MLI-OTP-0058-0196-R02](#) at 0201, para. 30). [redacted] ICC Prosecution that he did not know why the Tribunal found as it did, and further, that the question as to whether the criteria for punishment was met was not his speciality ([MLI-OTP-0062-1122](#) at 1134).

¹³⁹ Trial Judgment, para. 825.

¹⁴⁰ P-0398: [MLI-OTP-0062-1122](#) at 1135 line 433.

¹⁴¹ Trial Judgment, fn. 2697.

¹⁴² Trial Judgment, fn. 2708.

¹⁴³ Trial Judgment, para. 841.

¹⁴⁴ [MLI-OTP-0062-1218](#) at 1223, lines 137-145.

¹⁴⁵ See also [MLI-OTP-0062-1218](#) at 1233, lines 137-145.

¹⁴⁶ Trial Judgment, para. 529.

¹⁴⁷ Trial Judgment, para. 854.

incident, particularly as *Hesbah* were responsible for enforcing rules concerning smoking.¹⁴⁸ The Chamber made no findings that Mr Al Hassan was aware of the incident or was present in Timbuktu at the time. There are no findings that Mr Al Hassan was aware that individuals were subjected to *ta'zirs* for smoking, without prior warning or an investigation.¹⁴⁹ In line with the principle of *in dubio pro reo*, the Chamber can only find that Mr Al Hassan's general role and contribution to this incident falls at the lowest point of the spectrum of their findings.

The flogging of two men

34. The Trial Chamber convicted Mr Al Hassan pursuant to Article 25(3)(a). The Trial Chamber did not find that Mr Al Hassan was involved in their arrest nor are there any findings that he played any role in the proceedings before the Islamic Tribunal. Due to the combined operation of Judge Akane's dissent and Judge Mindua's separate opinion, Mr Al Hassan was acquitted of count 6.¹⁵⁰ The flogging was committed along with Abu Zhar, and took place when Adam was Emir. Mr Al Hassan could not be present or participate in such a flogging unless ordered by the Emir¹⁵¹ – such orders could not be disobeyed.

The case of Ibrahim bin Al-Husayn

35. The Trial Chamber convicted Mr Al Hassan pursuant to Article 25(3)(d). The Trial Chamber did not find that Mr Al Hassan was involved in the arrest of Ibrahim bin Al-Husayn,¹⁵² or that he played any role in investigating or questioning the victim. The Trial Chamber found that Ibrahim bin Al-Husayn was tortured outside the Islamic Police¹⁵³ and made no findings, to the standard of beyond reasonable doubt, as concerns *who* tortured him, *when* he was tortured, or *what* such acts involved.

36. Although the Trial Chamber found that Mr Al Hassan drafted the Islamic Police Report,¹⁵⁴ the Trial Chamber made no findings that Mr Al Hassan participated in the proceedings before the Islamic Tribunal or that he was aware of how such proceedings were conducted. The Trial Chamber found that the victim was detained for two months but also concluded that there was insufficient evidence to establish that he was flogged or injured

¹⁴⁸ [MLI-OTP-0024-0015](#) at 0039, discussing *Hesbah*'s role in eliminating alcohol and tobacco. See also P-0654: T-128, p. 57, lines 21-22; T-134, p. 21, lines 21-23 (Conf).

¹⁴⁹ See P-0398: [MLI-OTP-0051-1184](#) at 1208 -1211. See also [MLI-OTP-0051-0891](#) at 0892 (where Mr Al Hassan expresses his belief that the group did not prohibit smoking during the first period); [MLI-OTP-0051-0457](#) at 0471 lines 454-457, where [redacted] he did not recall any instances of the police punishing someone directly while on patrol.

¹⁵⁰ Trial Judgment, fn. 5166.

¹⁵¹ See also P-0398: [MLI-OTP-0051-0513](#) at 0535 lines 720-723.

¹⁵² Trial Judgment, para. 766: Islamic Police arrested him without making findings as concerns who arrested him.

¹⁵³ Trial Judgment, para. 767.

¹⁵⁴ Trial Judgment, para. 767.

pursuant to the Islamic Tribunal's judgment.¹⁵⁵ This incident occurred when Adam was the Emir and Mr Al Hassan's roles included interpreting and administrative assistance.

The Judgments

37. Mr Al Hassan was convicted pursuant to Article 25(3)(d) for his role in writing Islamic Police reports. The Trial Chamber made no findings, to the standard of beyond reasonable doubt, that the judgments were executed in the manner described in the judgments. [redacted] was not present during the deliberation processes: the way such matters were determined went beyond his knowledge of *Sharia*.¹⁵⁶

Judgment of Al-Khayr Bin Sidi, Case 23/1433-2012

38. The Trial Chamber made no findings that Mr Al Hassan was involved in the arrest or interrogation of this individual or that he had any knowledge as concerns how the case was handled at the Islamic Tribunal. The individual was convicted for sorcery and detained for one night, which is more lenient than the penalty under either Malian law or traditional practices in Northern Mali.¹⁵⁷ Khaled was Emir of the Islamic Police at this time.

Judgment of Moussa Ben Mohamed el-Jouuma et al, Case 43/1433-2012

39. The Trial Chamber made no findings that Mr Al Hassan was involved in the arrests and interrogations of these individuals or that he had any knowledge as concerns how the case was handled at the Islamic Tribunal or as concerns what happened afterwards.¹⁵⁸ Khaled was the Emir of the Islamic Police at this time.

Judgment of Abdelkarim Ascofare et al case 45/143-2012

40. The Trial Chamber made no findings that Mr Al Hassan was involved in the arrest, interrogations or detention of these individuals or that he had any knowledge as concerns how the case was handled at the Islamic Tribunal or as concerns what happened afterwards. Khaled was Emir of the Police at this time.

Judgment of Nuh bin Muhammad et al Case 04/1433-2012

41. This case concerns allegations that a jihadist ringleader stole goods from an NGO warehouse. Two of the names were unclear¹⁵⁹ and the Chamber made no findings concerning the status of other members. According to the Islamic Tribunal judgment, the jihadist thieves' excuse – that they thought it was permissible to steal from a Christian NGO – was rejected,¹⁶⁰

¹⁵⁵ Trial Judgment, para. 768.

¹⁵⁶ P-0398: [MLI-OTP-0051-0631](#) at 0646, lines 491-504.

¹⁵⁷ Malian law set outs 6 months to 2 years jail and traditionally, the local population would beat the jinn out of a suspected magician (a practice Ansar Dine banned). See [ICC-01/12-01/18-2485-Conf-Corr](#), para. 374.

¹⁵⁸ Mr Al Hassan [redacted] had no knowledge of such details: [MLI-OTP-0060-1605](#) at 1617-1618.

¹⁵⁹ Trial Judgment, fn. 3319.

¹⁶⁰ [MLI-OTP-0001-7487](#) ([MLI-OTP-0077-2322](#) at 2323, translation).

and they were sentenced to study the Koran, which teaches respect for other religions.¹⁶¹ The Trial Chamber made no findings that Mr Al Hassan was involved in the arrests and interrogations of these individuals or that he had any knowledge as concerns how the case was handled at the Islamic Tribunal. The Trial Chamber acknowledged the ambiguity as concerns whether Mr Al Hassan's responses [redacted] concerned this case or another.¹⁶² Adam was the Emir.

Judgment of Muhammad Bin Musa case 25/1433-2012

42. Khaled was the Emir of the Islamic Police at this time.¹⁶³ The Trial Chamber appears to have accepted that Mr Al Hassan was not the sole drafter of the report related to this case.¹⁶⁴ The Trial Chamber made no findings that either the Islamic Police or Mr Al Hassan were involved in the arrest. There were no findings that Mr Al Hassan was involved in his interrogation or that he had any knowledge as concerns how the case was handled at the Islamic Tribunal or as concerns what happened afterwards. The individual was convicted for sorcery and sentenced to three days detention,¹⁶⁵ which in effect, was time served,¹⁶⁶ a more lenient penalty than either Malian law or traditional practices in Northern Mali.¹⁶⁷

Judgment of Muhammed Walad et al Case 55/1433-2012

43. This case concerns stolen tobacco smugglers, who appears to have been associated with an armed group or militia.¹⁶⁸ [redacted] the Emir of the Islamic Police instructed Mr Al Hassan that the case had to be referred to the Tribunal for reasons unknown to Mr Al Hassan.¹⁶⁹ The Trial Chamber made no findings that Mr Al Hassan was aware of the processes before the Tribunal or as concerns what occurred subsequently. Khaled was the Emir of the Police at this time.¹⁷⁰

Judgment of Yahya Bin-Muhammad et al Case 67/1434-2013

44. This case arose through a complaint filed by a civilian.¹⁷¹ The Trial Chamber made no

¹⁶¹ The Quran contains verses that discuss the relationship between Islam and other religions, emphasizing freedom of belief, respect for others, and the principle that there should be no compulsion in religion. [Surah Al-Baqarah \(2:256\)](#): 'There is no compulsion in religion. The right path has become distinct from the wrong path...' This verse underscores the principle that faith should be a matter of personal choice, without force or coercion. [Surah Al-Kafirun \(109:6\)](#): 'For you is your religion, and for me is my religion.'

¹⁶² Trial Judgment, fn. 3317.

¹⁶³ The police report was drafted on the same day as the Muhammad Walad case (3 December 2012).

¹⁶⁴ Trial Judgment, fn. 3326, referring to Mr Al Hassan's statement that 'we drafted' the report.

¹⁶⁵ Trial Judgment, para. 992.

¹⁶⁶ Trial Judgment, fn 3332.

¹⁶⁷ Malian law set outs 6 months -2 years jail and traditionally, the local population would beat the jinn out of a suspected magician (a practice Ansar Dine banned). See [ICC-01/12-01/18-2485-Conf-Corr](#), para. 374.

¹⁶⁸ Trial Judgment, para. 339, referencing the fact that the judgment ordered their weapons be returned to them.

¹⁶⁹ [MLI-OTP-0060-1453](#) at 1470, lines 556-563; [ICC-01/12-01/18-2485-Conf-Corr3](#), para. 303.

¹⁷⁰ See fn. 169 above concerning Mr Al Hassan's reference to the role of the Emir in directing him..

¹⁷¹ [MLI-OTP-0001-7538](#) (translation: [MLI-OTP-0034-0173](#)), referring to complaint filed by the shop-owner.

findings that Mr Al Hassan was aware of any issues or developments concerning this case apart from those reflected in the contents of the Islamic Police Report. Given that the *hadd* was avoided, the defendant was only sentenced to a fine.¹⁷² The report was issued on the same day as the case of Muhammed Waled (3 December 2012), when Khaled was the Emir.

Judgment of El-Khamis Bin-el-Sabt

45. This case concerns a guard, who stole mosquito nets from the pharmacy, when Adam was Emir. The guard was employed by Ansar Dine/the groups as reflected by his statement.¹⁷³ The Trial Chamber relied on Mr Al Hassan's statement,¹⁷⁴ [redacted] the Islamic Tribunal designated investigators,¹⁷⁵ and further, that the Emir had *demande*d that he take on the case.¹⁷⁶ The latter constitutes a clear order from a superior for the purposes of mitigation due to superior orders. The report appears to be a verbatim account from the accused guard, setting out extenuating circumstances, including that he stole due to insufficiency of funds, to support his family.¹⁷⁷ The investigation as to whether the guard was lying was done by the persons who arrested the guard: 'they' called [redacted] who confirmed the guard was lying. The accused guard was given the opportunity to sign the statement, before submission to the Tribunal. [redacted], a civilian, was given the option to pardon the guard, which would avoid the implementation of punishment.¹⁷⁸ Mr Al Hassan [redacted] recalled that the individual was released – he could not recall that he was detained.¹⁷⁹

Judgment of Yusfi 'Uthman et al Case 09/1433-2012

46. There is no Islamic Police Report corresponding to this judgment. The Islamic Tribunal Judgment makes no references to either such a report or the Islamic Police.¹⁸⁰ The Trial Chamber made no findings that Mr Al Hassan played a role in this case or that he had any knowledge as concerns what transpired at the Islamic Police or at the Islamic Tribunal. In the absence of a date of arrest, it cannot be established that Mr Al Hassan was in Timbuktu when

¹⁷² Trial Judgment, para. 996.

¹⁷³ [MLI-OTP-0001-7527](#) (translation: [MLI-OTP-0052-0089](#) at 0090); [MLI-OTP-0001-7527](#) (translation: [MLI-OTP-0052-0089](#) at 0090). '[redacted].' In Arabic, the second person pronoun differs between singular and plural. In all of this report, the 'you' is used in a plural way, most likely referring to the Islamic Police rather than Al Hassan as an individual. See also P-0150: T-111, p. 58 lines 7-10 ([redacted] that the group paid the guards, which guarded public entities such as the hospital); p. 59.

¹⁷⁴ Trial Judgment, para. 997.

¹⁷⁵ [MLI-OTP-0060-1511](#) at 1513-1514. [redacted]: Trial Judgment footnote 3352, citing T-111, p. 60 lines 11-12.

¹⁷⁶ '[redacted].' ([MLI-OTP-0060-1511](#) at 1515 line 106).

¹⁷⁷ [MLI-OTP-0001-7257](#) (translation: [MLI-OTP-0052-0089](#) at 0090).

¹⁷⁸ Trial Judgment, para. 998.

¹⁷⁹ P-0398: [MLI-OTP-0051-0513](#) at 0517 lines 175-180.

¹⁸⁰ [MLI-OTP-0001-7482](#), translation [MLI-OTP-0077-2251](#).

this occurred.¹⁸¹ This case occurred when Adam was the Emir.

Judgment of Halimah Samak & Braym Mik, case 11/1433-2012

47. The Trial Chamber made no findings that either Mr Al Hassan or the Islamic Police played any role in bringing this case before the Islamic Tribunal. The Trial Chamber made no findings that Mr Al Hassan had any knowledge of this case. Adam was the Emir.

Judgment of al-Hasan Bin Irzaq & Halimah bint Sali case 13/1433-2012

48. There is no Islamic Police Report. The Trial Chamber made no findings that either Mr Al Hassan or the Islamic Police played any role in bringing this case before the Islamic Tribunal. The Trial Chamber made no findings that Mr Al Hassan had any knowledge of this case. This occurred when Adam was the Emir of the Islamic Police.

Judgment of Muhammad case 15/1433-2012

49. There is no Islamic Police Report. The individual was detained when Mr Al Hassan was not present in Timbuktu.¹⁸² The Trial Chamber made no findings that either Mr Al Hassan or the Islamic Police played any role in bringing this case before the Islamic Tribunal, or that Mr Al Hassan had any knowledge of this case. Adam was the Emir.

Judgment of Sha'ban Bin Sidi case 16/1433-2012

50. There is no Islamic Police Report. The Trial Chamber made no findings that either Mr Al Hassan or the Islamic Police played any role in bringing this case before the Islamic Tribunal. The Islamic Tribunal Judgment references an investigation conducted by the Tribunal itself.¹⁸³ The Trial Chamber made no findings that Mr Al Hassan had any knowledge of this case. This occurred when Adam was the Emir of the Islamic Police.

Judgment of Umar Anjami case 18/1433-2012

51. There is no Islamic Police Report. The Trial Chamber made no findings that either Mr Al Hassan or the Islamic Police played any role in bringing this case before the Islamic Tribunal, or that Mr Al Hassan had any knowledge of this case. Adam was the Emir.

Judgment of Infa Muammad Ali case 19/1433-2012

52. There is no Islamic Police Report. The Trial Chamber made no findings that either Mr Al Hassan or the Islamic Police played any role in bringing this case before the Islamic Tribunal

¹⁸¹ Mr Al Hassan was [redacted] for Ramadan between 14 -18 August 2012: [ICC-01/12-01/18-2485-Conf](#), [redacted]. The date of arrest and detention is not included in [MLI-OTP-0001-7361](#).

¹⁸² On the basis of call data records, there are reasonable grounds to conclude that Mr Al Hassan was outside of Timbuktu during this time period: 9 September 2012 at 04:34 to 10 September 2012 at 10:54 (being in [redacted]); [MLI-OTP-0061-1933](#) (Location), rows 9439-9577. Activated Cell IDs: [redacted] to be read in conjunction with [MLI-OTP-0056-0297](#), rows 85, 78-80, 30, and 32, respectively; [redacted] to be read in conjunction with [MLI-OTP-0031-0661](#) (Feuil1), row 6.

¹⁸³ Trial Judgment, para. 1009.

or that Mr Al Hassan had any knowledge of this case. Adam was the Emir.

Judgment of Halle Bin Hanay case 21/1433-2012

53. There are reasonable grounds to conclude that Mr Al Hassan was not in Timbuktu when the individual was detained on 10 September 2012.¹⁸⁴ There is no Islamic Police Report. The Trial Chamber made no findings that either Mr Al Hassan or the Islamic Police played a role in bringing this case before the Islamic Tribunal, or that Mr Al Hassan had any knowledge of this case. Adam was Emir.

Judgment of Asya Bint 'Umar case 29/1433-2012

54. There is no Islamic Police Report. The Trial Chamber made no findings that Mr Al Hassan or the Islamic Police played a role in bringing this case before the Islamic Tribunal or that Mr Al Hassan had any knowledge of this case. Khaled was Emir of the Islamic Police.

Judgment of Muhammad Bin Musa et al case 33/1433-2012

55. There are reasonable grounds to conclude that Mr Al Hassan was not in Timbuktu when these individuals, from Timbuktu, were detained on 9 September 2012.¹⁸⁵ The judgment refers to Muhammad Bin Musa as a 'guard',¹⁸⁶ leading to the reasonable inference that he was a member of Ansar Dine/AQIM security forces responsible for guarding the EDM.¹⁸⁷ There is no Islamic Police Report. The Trial Chamber made no findings that either Mr Al Hassan or the Islamic Police played a role in bringing the case to the Islamic Tribunal, or that Mr Al Hassan had any knowledge of this case. Adam was Emir at the time of arrest.

Judgment of Moukhtar Ould M'barakou case 46/2012

56. The Trial Chamber did not find that Mr Al Hassan wrote the report related to this case, which arose from a complaint and cross-complaint filed by locals, with one complaining about theft and the other, that he had been unpaid.¹⁸⁸ The Trial Chamber made no findings that Mr Al Hassan had any knowledge of this case. Khaled was the Emir at this time.

Judgment of Mohamed Ben el-Gaw et al.

57. The Trial Chamber made no findings that Mr Al Hassan wrote the report related to this case or that he was involved in the defendants' arrest or the proceedings before the Islamic Tribunal. Adam was the Emir of the Islamic Police at this time.

¹⁸⁴ Al Hassan was in [redacted] on 9-10 September 2012 (see fn. 182 above). The individual was detained in Timbuktu ([MLI-OTP-0001-7361](#), cited at Trial Judgment, fn. 3397).

¹⁸⁵ See fn. 182 above: Al Hassan was in [redacted] on 9-10 September 2012 (T-214, p. 51, lines 1-3). The individuals were detained on 9 September and are listed as being [redacted], Timbuktu ([MLI-OTP-0001-7361](#), cited at Trial Judgment, fn. 3412).

¹⁸⁶ Trial Judgment, para. 1020, citing [MLI-OTP-0001-7456](#) (translation: [MLI-OTP-0077-2307](#) at 2308)

¹⁸⁷ Trial Judgment, para. 464, citing, *inter alia*, D-0529: T-189, pp. 26, 28, 37.

¹⁸⁸ [MLI-OTP-0001-7554](#) (translation: [MLI-OTP-0052-0107](#)).

2.4. Presence of mitigating factors, absence of aggravating factors, and gravity

2.4.1 Presence of mitigating factors

Steps taken by Mr Al Hassan to help the local population during the events

58. The Trial Chamber found that:¹⁸⁹

In Timbuktu, Mr Al Hassan was known to be easy to approach and have good inter-personal skills: he was described as someone polite, nice with the population, and keen to help. He was generally well liked by the population, notably because he was considered by many as someone who would (try to) help the people who sought him out. Locals who knew Mr Al Hassan, or had connections to him, sought him out when they had a problem and he would intervene on their behalf.

59. Steps taken to prevent or alleviate the commission of crimes are mitigating.¹⁹⁰ Mr Al Hassan's sentence should thus be reduced to reflect the positive contributions that Mr Al Hassan made to the protection and security of the civilian population.¹⁹¹ These efforts were directed to all segments of society: women, children and elderly. While persons who knew him were more likely to seek him out, he provided help, where he could, in a non-discriminatory manner.¹⁹²

60. Through his role in the Islamic Police, Mr Al Hassan assisted members of the local population to obtain a remedy. This included the rape committed by a member of the Islamic Police,¹⁹³ and also the family of a civilian who had been killed in a car accident.¹⁹⁴ Through his knowledge of local languages and customs, Mr Al Hassan also acted as a buffer between the local population and foreigners, aiding the locals to avoid or lessen punishment.¹⁹⁵ Mr Al Hassan counselled P-0582 to interpret in a manner favouring and assisting the local population.¹⁹⁶ Towards the end of the events (when Khaled was away), Mr Al Hassan tried to help a detained Arab, who was at risk of amputation,¹⁹⁷ and a Tamasheq who risked punishment.¹⁹⁸ D-0093 testified that Adam and Al Hassan helped him to avoid punishment for smoking.¹⁹⁹ The Trial Chamber also found that Mr Al Hassan helped a local man avoid the *hadd* by assisting him to establish a protection (that he was from a slave caste).²⁰⁰ Mr Al Hassan explained local customs concerning the role of women in cleaning houses, to help another couple avoid accusations of adultery.²⁰¹

¹⁸⁹ Trial Judgment, para. 1070.

¹⁹⁰ *Blagojević & Jokić Appeals Judgment*, para. 342.

¹⁹¹ *Hadžihasanović Trial Judgment*, para. 2080.

¹⁹² Trial Judgment, para. 1091.

¹⁹³ Trial Judgment, para. 678.

¹⁹⁴ Trial Judgment, para. 1075, fn. 3692.

¹⁹⁵ Trial Judgment, fn. 3668, referring *inter alia* to D-0514: T-209, p. 18.

¹⁹⁶ Trial Judgment, fn. 3668, citing P-0582's statement [MLI-OTP-0062-3820-R02](#) at 3831.

¹⁹⁷ Trial Judgment, fn. 645, citing [MLI-OTP-0062-3820-R02](#) at 3833, lines 426-427.

¹⁹⁸ P-0582: [MLI-OTP-0062-3820-R02](#) at 3831.

¹⁹⁹ Trial Judgment, fn. 3668.

²⁰⁰ Trial Judgment, fn. 3681.

²⁰¹ Trial Judgment, fn. 3681.

61. Mr Al Hassan [redacted] asked the Emir of the Police to intervene and help free the wife of [redacted].²⁰² This was corroborated by D-0544, who testified that he informed Mr Al Hassan of [redacted] arrest and she was subsequently freed.²⁰³ Mr Al Hassan also helped a member of his tribe, who had been arrested for stealing weapons.²⁰⁴ Prior to the execution of Musa, Mr Al Hassan tried to save him, by facilitating an agreement with the victim's family.²⁰⁵ Mr Al Hassan [redacted] also counselled Musa's brother to seek the intervention of Iyad Ag Ghaly.²⁰⁶

62. Mr Al Hassan helped protect the property of the local population and facilitated the peaceful resolution of disputes,²⁰⁷ in a non-discriminatory manner.²⁰⁸ Mr Al Hassan helped elderly people around the BMS and gave food to neighbouring persons.²⁰⁹ The Islamic Police gave food and alms to poor persons,²¹⁰ and drove sick people to the hospital.²¹¹ Even after Mr Al Hassan moved to Timbuktu and started working with Ansar Dine, he continued to help people in [redacted] obtain access to free medicine, health care and food.²¹²

63. Mr Al Hassan helped local and foreign journalists to report the actions of Ansar Dine and AQIM. [redacted] was directed towards helping the civilian population and further, that Mr Al Hassan aided their work.²¹³ [redacted] provided important supplementary context. [redacted] [redacted] of [redacted], an easy hostage target.²¹⁴ [redacted] and in turn, [redacted] obtained footage used as critical Prosecution evidence in this case.

Reduced degree of knowledge of culpability

64. Mr Al Hassan's conviction is the first under Article 8(2)(c)(iv) and the first to hold an individual criminally responsible for applying *Sharia*. A defendant's awareness of the seriousness of their conduct informs the Chamber's assessment of the degree of culpability.²¹⁵ Factors such as the defendant's education, experience, and cultural background may reduce

²⁰² P-0398: [MLI-OTP-0051-1155](#) at 1166, lines 346-367 ('[redacted].')

²⁰³ Trial Judgment, fn. 3668.

²⁰⁴ Trial Judgment, fn. 5273.

²⁰⁵ D-0605: T-193, p. 52, lines 13-21.

²⁰⁶ Mr Al Hassan stated that Iyad possibly did not have the power to do so because it concerned a civilian death: P-0398: [MLI-OTP-0051-0658](#) at 0684-0686.

²⁰⁷ Trial Judgment, para. 1071. *See also* para. 194 and fn. 3668 referring to Mr Al Hassan's assistance in protecting the property of [redacted] (D-0272) and Mr Al Hassan's peaceful resolution of a debt situation (D-0312). [redacted] was a member of the Kel Inokandar (noir) tribe: D-0272, [MLI-D28-0006-4181-R01](#) at 4184, para. 22.

²⁰⁸ Trial Judgment, para. 1091; Trial Judgment, fn. 3758.

²⁰⁹ P-0608: T-154, p. 58, lines 8-14.

²¹⁰ [MLI-OTP-0078-9836-R01](#) (Arabic: [MLI-OTP-0018-1152-R01](#)); P-0150: T-106, p. 34, line 20 – p. 35, line 19.

²¹¹ Trial Judgment, para. 464, fn. 1228.

²¹² D-0627: [MLI-D28-0006-5699-R01](#) at 5703 para. 22.

²¹³ *See* para. 17 above.

²¹⁴ [redacted]: [MLI-D28-0006-9124-R01](#) at 9128-9129.

²¹⁵ *Lubanga*, [Sentencing Decision](#), ICC-01/04-01/06-2901, para. 56.

blameworthiness.²¹⁶ When a mistake of law is not admitted as a complete defence, a lesser degree of knowledge can be mitigating,²¹⁷ or eliminate the need for further punishment.²¹⁸

65. The context in 2012 as well as Mr Al Hassan's own lived experience temper the extent to which he appreciated the blameworthiness of his acts at the time.²¹⁹ Mr Al Hassan [redacted],²²⁰ where punishments pursuant to *Sharia* constituted the law of the land. He had medical training and worked as a pharmacist;²²¹ he was neither a jurist nor a religious scholar. Mr Al Hassan had no prior police experience or training in civilian protection,²²² and was 'propelled' into his position without prior training,²²³ in an unprecedented situation of insecurity.²²⁴

66. Judge Akane and Judge Mindua found that Mr Al Hassan was either not aware of the specific procedures applied at the Islamic Tribunal, or operating under a mistake of law.²²⁵ Both agreed that floggings did not necessarily fall outside the ambit of lawful sanctions.²²⁶ As someone who was not a lawyer, Sheik or Cadi, Mr Al Hassan was ill-equipped to assess the extent of culpability that would attach to processes, mandated by the Koran.²²⁷ The Trial Chamber found that the process of being brought before a *Qadi* was common among certain Tuareg tribes, such as Mr Al Hassan's.²²⁸ *Qadis* exercised a significant degree of influence in Timbuktu before 2012,²²⁹ and it was typical and accepted to resort to traditional justice for a range of disputes, including debts, family matters and personal conflicts, as well as complex

²¹⁶ A. Coco, [The Defence of Mistake of Law in International Criminal Law: A Study on Ignorance and Blame](#), OUP (2022), p. 166. In post-WWII trials concerning the war crime of denying a fair trial, the fact that the officer acting as a judge had no legal training was mitigating: US Military Commission, *Sawada et al.*, p. 7.

²¹⁷ See, e.g., A. Coco, [The Defence of Mistake of Law in International Criminal Law: A Study on Ignorance and Blame](#) (OUP 2022), p. 69; E. Sliedregt, [Individual Criminal Responsibility in International Law](#) (OUP 2012), p. 280. See also *travaux préparatoires*: 1996 PrepCom Report, Vol. II (Suppl.), proposal 4, which in the end prevailed, stated that '[a]voidable mistake of fact or of law may be considered in mitigation of punishment'. On duress, see Ongwen [Sentencing Judgment](#), ICC-02/04-01/15-1819-Red, para. 108.

²¹⁸ See e.g. **Germany**: [Case: 151 Ns 169/11; criminal matter of defendant Dr K](#) (2012) (the case of a doctor who practiced a circumcision in Germany – albeit illegal, the act had been done for so long that it seemed legal).

²¹⁹ Human agency and appreciation of legal obligations can increase or diminish based on situational pressures. See A. Coco, [The Defence of Mistake of Law in International Criminal Law: A Study on Ignorance and Blame](#) (OUP 2022), p. 229.

²²⁰ Trial Judgment, para. 7.

²²¹ Trial Judgment, para. 7.

²²² *Kvočka et al.* [Trial Judgment](#), para. 732 (granting mitigation to Kos for such reasons). Similarly, the fact that Čerkez had no prior experience in command justified a lesser sentence vis-a-vis *Kordić* (*Kordić & Čerkez* [Trial Judgment](#), para. 855).

²²³ P-0150: T-095, p. 60, lines 15-17 (Conf).

²²⁴ *Fofana & Kondewa* [Sentencing Judgment](#), para. 66.

²²⁵ Trial Judgment, paras. 1611-1612. Separate Opinion Judge Mindua, [ICC-01/12-01/18-2594-OPI3](#), para. 124.

²²⁶ Trial Judgment, paras. 1138, 1140 and fn. 3836, 3839. See also ICC-01/12-01/18-2594-OPI, paras. 70- 78; ICC-01/12-01/18-2594-OPI3, paras. 72, 124.

²²⁷ *Ruggiu* [Judgment on Sentence](#), para. 63 ('The Chamber takes into account that the accused was not sufficiently knowledgeable to be able to make informed assessments of the situation.').

²²⁸ Trial Judgment, para. 419, fn. 1021.

²²⁹ Trial Judgment, para. 402.

cases of inheritance or divorce.²³⁰ The newly created Islamic Court of Timbuktu primarily heard disputes on civil and social cases, which were dealt with by *Qadis* before 2012.²³¹ The bulk of Mr Al Hassan's responsibilities related to such matters.²³² Traditional justice was applied to criminal law matters and adultery in remote areas, especially those west of Timbuktu.²³³ The step-brother *zina* case originated [redacted], which is west of Timbuktu. Alcohol consumption was dealt with more strictly in Tamasheq and Arab communities, especially outside Timbuktu.²³⁴

Superior orders constraining Mr Al Hassan's freedom to depart from rules

67. The existence of such orders can be mitigating, even for grave crimes,²³⁵ while also lessening the importance of deterrence.²³⁶ Mr Al Hassan was ordered by the Emir to draft reports and refer them to the Tribunal.²³⁷ The prescription of social cases and regulation of morality was condoned within Mr Al Hassan's tribal milieu,²³⁸ which in turn, influenced his capacity to assess the extent of culpability attaching to compliance with such orders. Mr Al Hassan played no role in the formulation of rules and had no power to change them.²³⁹ Mr Al Hassan attended public punishments under order of the Emir.²⁴⁰

2.4.2 Absence of aggravating factors

68. There are no aggravating factors in respect of the sentence that should be imposed on Mr Al Hassan. Aggravating circumstances must relate to the commission of the offences 'of which the accused was convicted, or to the convicted person him- or herself',²⁴¹ and cannot be established in relation to uncharged allegations at the time of the events, or facts relied upon to establish responsibility or an element of the offence.²⁴² Aggravating circumstances must be

²³⁰ Trial Judgment, paras. 419-421. *See also* paras. 597-598.

²³¹ Trial Judgment, para. 597.

²³² *See also* Trial Judgment, paras. 597-598.

²³³ Trial Judgment, fn. 1035.

²³⁴ Trial Judgment, fn. 982.

²³⁵ In *Sawada et al.* concerning the war crime of denial of a fair trial, the defendant's actions in committing the crime 'largely from obedience to the laws and instructions of their Government and their Military Superiors' without 'initiative to any marked degree' did 'compel unusually strong mitigating consideration' (US Military Commission, *Sawada et al.*, pp. 7, 13). *See also* *Limaj et al.* [Trial Judgment](#), para. 732; *Limaj et al.* [Appeals Judgment](#), para. 133.

²³⁶ *Čelebići* [Trial Judgment](#), para. 1234.

²³⁷ *See* section 2.3 above.

²³⁸ Trial Judgment, para. 413.

²³⁹ *Ruggiu*, [Judgment on Sentence](#) para. 75.

²⁴⁰ *See* section 2.3 above.

²⁴¹ *Bemba et al.*, [Sentencing Judgment](#), ICC-01/05-01/08-2123-Corr, para. 25. *See further* *Al Mahdi* [Judgment and Sentence](#), ICC-01/12-01/15-171, para. 73.

²⁴² *Ntaganda* [Sentencing Decision](#), ICC-01/04-02/06-2442, para. 18; *Bemba et al.* [Sentencing Appeal Judgment](#), ICC-01/05-01/13-2276-Red, paras. 113, 120.

proven ‘beyond a reasonable doubt’:²⁴³ in that it is the only reasonable conclusion to be drawn from the evidence provided.²⁴⁴ Even where a Trial Chamber’s factual findings suggest that certain offenses may have occurred, if no conviction was entered, no aggravating circumstances may be inferred from those findings.²⁴⁵ Thus, only those findings made by the Majority and memorialized in the Trial Judgment as entailing culpability beyond a reasonable doubt, may be relied upon in sentencing.

2.4.3 Gravity

69. Mr Al Hassan was convicted for participation in the execution of punishments issued by the Islamic Tribunal under Counts 1 and 3, and the process of determining those punishments, under Count 6 (Article 8(2)(c)(iv)). To avoid impermissible cumulative convictions, the culpable conduct underlining different actions must be different. In distinguishing between the punishments and the process of determining such punishments, the Chamber explained that the gravamen of Article 8(2)(c)(iv) was the lack of due process not the nature of the penalty.²⁴⁶ This determination characterizes Article 8(2)(c)(iv) as a prescription of means, which typically attracts a lower penalty.²⁴⁷ A lower quantum of specific gravity for the judgments is also warranted in light of the absence of proof concerning if and how the sentences were executed.

2.5. Special hardship experienced in connection with detention and these proceedings

70. Mitigation is warranted due to the extreme effects of COVID-19 restrictions on Mr Al Hassan’s well-being and core right to family life.²⁴⁸ Such issues warrant consideration in any sentence imposed as they directly relate to Mr Al Hassan’s individual circumstances,²⁴⁹ and were exceptional in nature. The gravity of the offence is not reduced by mitigation nor does it preclude mitigation.²⁵⁰ The Court must balance the gravity of the offence against the mitigating factors, with a view to ensuring a proportionate sentence.

71. Although COVID-19 was global in nature, detainees experienced the effects in a

²⁴³ *Lubanga* [Sentencing Decision](#), ICC-01/04-01/06-2901, para. 33.

²⁴⁴ *Al Bashir*, [Judgment on appeal for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir](#), ICC-02/05-01/09-73, para. 33. Reliance on hearsay evidence in reaching this standard should be avoided wherever possible, since it has less probative value than other types of evidence: *Gbagbo*, [Decision adjourning the hearing on the confirmation of charges](#), ICC-02/11-01/11-432, para. 28.

²⁴⁵ *Ntaganda* [Sentencing Decision](#), ICC-01/04-02/06-2442, para. 18; *Bemba et al.*, [Sentencing Appeal Judgment](#), ICC-01/05-01/13-2276-Red, para. 113.

²⁴⁶ Trial Judgment, para. 1165.

²⁴⁷ *Orić* [Trial Judgment](#), para. 724.

²⁴⁸ Mitigating circumstances need not relate to the offence for which the defendant was convicted: *Bemba et al.*, [Sentencing Appeal Judgment](#), ICC-01/05-01/13-2276-Red, para. 188.

²⁴⁹ Article 78(1) Statute, Rule 145(1)(b) RPE.

²⁵⁰ *Ruggiu*, [Judgment on Sentence](#), para. 80.

disproportionately severe manner.²⁵¹ The restrictions faced by Mr Al Hassan for a period of 16 months were significant and exceptional and included a total suspension of all in-person visits (including family visits, spiritual visits and privileged visits with the Defence team), general social distancing and a suspension of all recreational activities ('the Restrictions').²⁵² Mr Al Hassan remains appreciative to the Court for its assistance in the face of the unforeseen circumstances brought on by COVID-19. The fact that the Restrictions were necessary does not eliminate their relevance in mitigating his sentence.²⁵³ The Restrictions resulted in highly onerous and excessively burdensome detention conditions for Mr Al Hassan, compounding underlying anxiety arising from prolonged separation from his family (including a son he had never met) and the death of his daughter.²⁵⁴ [redacted].²⁵⁵ Mr Al Hassan noted his fear of contracting COVID and the resultant quarantine measures, the extreme restrictions which isolated him from his defence team and family, and the suspension of all daily activities,²⁵⁶ with the result that '[redacted]'.²⁵⁷ The Restrictions directly contributed to Mr Al Hassan being unable to have a family visit for approximately 2.5 years.²⁵⁸

72. Mitigation is consistent with the Chamber's recognition of the direct linkage between in person family visits, the mental well-being of the defendant, and their ability to enjoy the right to family life.²⁵⁹ Al Madhi's lengthy separation from his family was thus treated as

²⁵¹ [MLI-D28-0007-0638-R01](#) at 0642, para. 21 («[redacted]»); UN ESCR, [Statement on the coronavirus \(COVID-19\) pandemic on economic, social and cultural rights](#), para. 5; UN HRC, [Impact of the coronavirus disease \(COVID-19\) pandemic on the enjoyment of human rights around the world, including good practices and areas of concern](#), paras. 29-31; HRC, Presidential Statement: [Human rights implications of the COVID-19 pandemic](#), A/HRC/PRST/43/1, 2 June 2020, preamble; WHO, [UNODC, WHO, UNAIDS, OHCHR joint statement on COVID-19 in prisons and other closed settings](#), 13 May 2020. See further OHCHR/WHO Inter-Agency Standing Committee, [Interim Guidance: COVID-19: Focus on Persons Deprived of Their Liberty](#), 27 March 2020.

²⁵² See [MLI-D28-0007-0588](#); [MLI-D28-0007-0598](#) at 0598 ('[redacted] [...]'); [MLI-D28-0007-0196](#) at 0196 ('[redacted]'). See further [MLI-D28-0007-0176](#); [MLI-D28-0007-0180](#); [MLI-D28-0007-0182](#); [MLI-D28-0007-0184](#); [MLI-D28-0007-0186](#); [MLI-D28-0007-0188](#); [MLI-D28-0007-0190](#); [MLI-D28-0007-0192](#); [MLI-D28-0007-0194](#).

²⁵³ [Bagaragaza Judgment on Sentence](#) para. 39; [Rašić Appeals Judgment](#), para. 31.

²⁵⁴ [MLI-D28-0007-0638-R01](#) at 0643, para. 31.

²⁵⁵ [MLI-D28-0007-0638-R01](#) at 0642, para. 22. See further ICC-01/12-01/18-2634-Conf, fns. 80-81 (referencing [redacted]).

²⁵⁶ [MLI-D28-0007-0638-R01](#) at 0641-0642, paras. 19-20.

²⁵⁷ [MLI-D28-0007-0638-R01](#) at 0642, para. 22.

²⁵⁸ See ICC-01/12-01/18-791-Conf-Red, para. 35; [MLI-D28-0007-0203](#) at 0204 (family visit 13 November 2021). Even when the Restrictions eased, there were ongoing difficulties in approving a visit, due to an increased demand from all the detainees for family visits and insufficient funds: [MLI-D28-0007-0591](#) at 0591 (re insufficient funds); See further [MLI-D28-0007-0596](#); [MLI-D28-0007-0585](#); [MLI-D28-0007-0589](#); [MLI-D28-0007-0604](#); [MLI-D28-0007-0606](#) (re funding of Mr Al Hassan's family visit).

²⁵⁹ ICC-01/12-01/18-1611, para. 9; ICC-01/12-01/18-871-Red4, paras. 15, 52, 54; ICC-01/12-01/18-2100-Conf, para. 9; ICC-01/12-01/18-2614-Conf, paras. 33-34. See also [Katanga & Ngudjolo, Decision on Complaint against the Registrar's Decision](#), ICC-RoR217-02/08-8, paras. 31-35; [Ntaganda, Decision on Review of Registrar's Decision](#), ICC-RoR220-01/19-2-Red, paras. 19-21.

mitigating in the sentencing assessment.²⁶⁰ International Tribunals have reduced sentences, where the defendant was impacted by specific detention conditions, outside the defendant's control.²⁶¹ The heightened isolation caused by an inability to have social visits due to COVID-19 restrictions was recognised by numerous domestic jurisdictions as an exceptional circumstance for the purposes of mitigation.²⁶² It was not necessary to prove a worsening or development of a recognised psychiatric disorder, to receive mitigation. The totality of COVID-19 limitations was considered to have resulted in exceptionally burdensome custodial conditions for detainees,²⁶³ justifying enhanced credit for pre-sentence detention.²⁶⁴ These precedents inform the Chamber's assessment of a proportionate sentence based on personal circumstances.

73. The Restrictions were not caused by Mr Al Hassan's actions. They applied as an additional layer to monitoring measures,²⁶⁵ which do not form the basis of the request for mitigation. Phone or video calls, whether monitored or not, also cannot be considered a substitute for in-person visits,²⁶⁶ which were curtailed due to the Restrictions. Hardship experienced by Mr Al Hassan cannot be remedied by future enforcement conditions because it cannot be undone.

74. Arbitrary delays and related uncertainty in both the lead up to judgment and subsequent sentencing phase warrant mitigation.²⁶⁷ Such delays were arbitrary because no legitimate reasons were communicated to Mr Al Hassan in a clear and timely manner, and he was not afforded procedural rights or remedies concerning Judge Mindua's replacement.²⁶⁸ Financial considerations do not justify such delays.²⁶⁹ The anxiety triggered by suspensions and delays

²⁶⁰ *Al Mahdi*, [Judgment and Sentence](#), ICC-01/12-01/15-171, para. 109.

²⁶¹ *Bagaragaza* [Judgment on Sentence](#), para. 39 (referring, in mitigation, to detention measures for protection); *Rašić* [Appeals Judgment](#), para. 31 (referencing mitigation given the subjective impact of detention environment); *Bangura et al.* [Trial Judgment](#), para. 100 (two week reduction due to change in detention conditions).

²⁶² See ICC-01/12-01/18-2611-Conf, para. 8 and fn. 9. See further **Australia**: *Brown v The Queen* [2020] VSCA 60, paras. 33, 48; *Astbury v The Queen* [No 2] [2020] VSCA 158 at para. 33; **Canada**: *R v MacDougall* 2020 ONSC 4989, paras. 47, 49.

²⁶³ See ICC-01/12-01/18-2611-Conf, para. 8 and fns. 10-13. See further **Australia**: *Astbury v The Queen* [No 2] [2020] VSCA 158, para. 33; *R v Wood*, *R v Hays*, *R v McLachlan*, *R v Hardin*, *R v Farnsworth* (No 2) [2024] NSWSC 545, paras. 269-275; **France**: *Ordonnance n° 2020-303 du 25 mars 2020*.

²⁶⁴ **NZ**: *Hayden v R* [2020] NZCA 369, paras. 3, 57; **Canada**: *R v O.K* 2020 ONCJ 189, paras. 41-42, 45.

²⁶⁵ Cf ICC-01/12-01/18-2636-Conf, paras. 45-52.

²⁶⁶ *Katanga & Ngudjolo*, [Decision on Complaint against the Registrar's Decision](#), ICC-RoR217-02/08-8, para.36.

²⁶⁷ In *Blaškić*, the sentence was mitigated due to the delays in the appellate proceedings caused by issues outside the parties' control (*Blaškić* [Appeals Judgment](#), para. 728); Lubanga was granted mitigation due to his cooperative attitude in the face of procedural delays not caused by the Defence (*Lubanga*, [Sentencing Appeal Judgment](#), ICC-01/04-01/06-3122, para. 110); the Presiding Judge in *Šešelj* indicated that a remedy was required due to delays caused by the replacement of a judge (*Šešelj*, [Decision on Continuation of Proceedings, Concurring Opinion of Judge Antonetti](#), pp. 37-38). See also **UK**: *R v Mills (Kenneth Anthony) v HM Advocate* (No 2) [2002] UKPC D2.

²⁶⁸ ICC-01/12-01/18-2607.

²⁶⁹ HRC: *Bernard Lubuto v Zambia*, para. 7.3.

has not been redressed through *ad hoc* sentencing procedures, which lack predictability and certainty. Expediting the proceedings to avoid further delay does not extinguish the right to a remedy:²⁷⁰ such an approach may in fact aggravate the violation by exposing the Defence to the invidious position of curtailing necessary preparation time to compensate other lost time.²⁷¹ A measurable sentence reduction is required,²⁷² even if Mr Al Hassan is given a sentence lengthier than time served,²⁷³ because the right to an expeditious resolution of his penalty applies independently of his protection against unreasonably lengthy detention.²⁷⁴

2.6. Mr Al Hassan's positive prospects for rehabilitation and peaceful reintegration

75. In deciding a proportionate sentence, the Chamber should be guided by Mr Al Hassan's past record and future commitment to public service, positive indicia concerning his reintegration into society, and strong family bonds, militating against the risk of reoffence.

76. Mr Al Hassan was not engaged in extremist acts prior to the arrival of the groups in Timbuktu. D-0807, [redacted], described Mr Al Hassan as an open-minded person, who was always respectful of his differing religious practices.²⁷⁵ Mr Al Hassan had no prior convictions and was a pillar of his community. D-0627, whom the Chamber assessed as credible,²⁷⁶ described Mr Al Hassan as very community-oriented – 'the village healer' – who would often bring medicines to the village or bring people to hospital.²⁷⁷ D-0803 corroborated this description,²⁷⁸ noting that he that would treat everyone equally, regardless of gender, age or ethnicity.²⁷⁹ Following his return to [redacted], Mr Al Hassan continued his commitment to community service, providing free assistance, medicine and services to the local health centre.²⁸⁰ Mr Al Hassan's contribution to his community was substantial, and he was missed after his arrest.²⁸¹ Mr Al Hassan's genuine endeavours in assisting his community in a non-discriminatory manner demonstrate his potential for reintegration and rehabilitation,²⁸² and are

²⁷⁰ ECtHR: [Cocchiarella v. Italy](#), para. 76.

²⁷¹ The Defence has not received any Arabic translations of the Trial Judgment, impeding preparation.

²⁷² ECtHR: [Cocchiarella v. Italy](#), para. 77. See also [Kajelijeli Appeals Judgement](#), paras. 250-255; [Rwamakuba, Appeals Chamber Decision on Remedy](#), paras. 27-28.

²⁷³ ECtHR: [Cocchiarella v. Italy](#), para. 77.

²⁷⁴ The right to an expeditious resolution of the charges also encompasses the sentencing phase: ECtHR: [Eckle v. Germany](#), para. 77; [Ringelsen v. Austria](#), para. 110; [V. v. the United Kingdom](#), para. 109.

²⁷⁵ D-0807: [MLI-D28-0007-0855-R01](#) at 0857, paras. 15, 20. Absence of bias is mitigating, particularly if accused was motivated by security concerns ([Bagaragaza Judgment on Sentence](#), para. 38). An absence of prior ethnic bias is mitigating in relation to persecution conviction ([Kupreškić. Trial Judgment](#), para. 856).

²⁷⁶ Trial Judgment, fn. 1019.

²⁷⁷ D-0627: [MLI-D28-0006-5699-R01](#) at 5703.

²⁷⁸ D-0803: [MLI-D28-0007-0610-R02](#) at 0615-0618.

²⁷⁹ D-0803: [MLI-D28-0007-0610-R02](#) at 0617, lines 1 – 0618, line 25; 0625, lines 19-24.

²⁸⁰ D-0803: [MLI-D28-0007-0610-R02](#) at 0624-0625; 0627, lines 16-17.

²⁸¹ D-0803: [MLI-D28-0007-0610-R02](#) at 0627, lines 22-26.

²⁸² [Erdemović Sentencing Judgment](#), pp. 13-14: the accused's 'circumstances and character indicate that he is reformable and should be given a second chance to start his life afresh upon release, whilst still young enough'.

also mitigating.²⁸³

77. The concept of retribution takes account of the promotion of ‘the restoration of peace and reconciliation’ and the ‘desire to ease that person’s reintegration into society’.²⁸⁴ Contribution to peace and reconciliation within the affected community is therefore a relevant consideration,²⁸⁵ as is the defendant’s strong family bonds, reputation before and after the crimes were committed, and positive contributions to his community.²⁸⁶ Islam places great weight on the value of reconciliation and pardon, preferring both to dispute and conflict.²⁸⁷ The Trial Chamber found that Mr Al Hassan espoused this position in mediating disputes in 2012,²⁸⁸ and it further reflects his own willingness to pardon those who tortured him.²⁸⁹ The people of Timbuktu favour reconciliation and are willing to forgive those who come forward to receive their pardon.²⁹⁰ D-0809, [redacted], stated that Mr Al Hassan’s return to Timbuktu could positively contribute to achieve peace and reconciliation.²⁹¹ Mr Al Hassan also respects the sensitivities of the people of Timbuktu: it is a city he loves, but he will keep his distance if it serves the best interests of victims.²⁹²

78. Mr Al Hassan’s family situation militates in favour of his rehabilitation and reintegration.²⁹³ Mr Al Hassan, a loving father of [redacted] children under the age of 18, wishes nothing more than to be reunited with his family,²⁹⁴ so that he can ensure that his sons and daughter have access to a public (non-religious) education and a fixed roof over their heads.²⁹⁵ Their dependence on Mr Al Hassan informs the Chamber’s assessment of a proportionate sentence in light of his personal circumstances.²⁹⁶ The aim of individual deterrence is to ensure that the person will not re-offend.²⁹⁷ Mr Al Hassan has received severe punishment, including through prolonged separation from his family, and presents no risk of re-offence. His faith has helped him accept difficult events, such as the tragic daughter, to

²⁸³ *Blagojević & Jokić Appeals Judgment*, paras. 328-331 (mitigation for post-crime demining efforts).

²⁸⁴ *Al Mahdi Judgment and Sentence*, ICC-01/12-01/15-171, para. 67.

²⁸⁵ *Katanga Sentencing Decision*, ICC-01/04-01/07-3484-tENG, paras. 38, 91.

²⁸⁶ *Katanga Sentencing Decision*, ICC-01/04-01/07-3484-tENG, para. 88.

²⁸⁷ P-0150: T-120, p. 4, lines 13-15.

²⁸⁸ Trial Judgment, fn. 3669, referring to P-0582: [MLI-OTP-0062-3736-R02](#) at 3739-3741.

²⁸⁹ Mr Al Hassan’s statement: [MLI-D28-0007-0638-R01](#) at 0643, paras. 27-31; 0651-0652, paras. 48-51.

²⁹⁰ D-0809: [MLI-D28-0007-0849-R01](#) at 0851-0852.

²⁹¹ D-0809: [MLI-D28-0007-0849-R01](#) at 0852, para. 17.

²⁹² Mr Al Hassan’s statement: [MLI-D28-0007-0638-R01](#) at 0653-0654, paras. 56-59.

²⁹³ *Bemba et al. Sentencing Decision*, ICC-01/05-01/13-2123-Corr, paras. 62, 90 (acknowledging good character and family circumstances as relevant). See also *Bisegimana Judgement and Sentence*, paras. 143-144; *Katanga Sentencing Decision*, ICC-01/04-01/07-3484, paras. 84-85; *Kunarac et al. Appeals Judgment*, para. 362; *Vasiljević Trial Judgment*, para. 300; *Rutaganira Judgement and Sentence*, paras. 120-121.

²⁹⁴ [MLI-D28-0007-0638-R01](#) at 0652; [MLI-D28-0005-3128](#) to [MLI-D28-0005-3133](#).

²⁹⁵ [MLI-D28-0007-0638-R01](#) at 0652, para. 52-54.

²⁹⁶ General Comment 1 on Article 30 [ACERWC/GC/01](#) (2013), paras. 7, 14-15, 36, 39.

²⁹⁷ *Kordić & Čerkez Trial Judgment*, para. 1077.

forgive people who tortured him in Mali,²⁹⁸ while seeking the forgiveness of all those he harmed.

2.7. Sentencing credit for detention in Mali & irregularities in execution of his arrest

79. From 21 April 2017 until 30 March 2018, Mr Al Hassan was detained in connection with same conduct, which underpinned the proceedings against him at the ICC. Mr Al Hassan should be extended full credit for this time-period and a reduction in sentence to remedy violations of his right to receive the reasoned decision on his arrest, prior to surrender.

80. The conduct underpinning Mr Al Hassan's domestic detention falls squarely within precedents where credit was granted pursuant to Article 78(2).²⁹⁹ In *Ongwen*, the Trial Chamber noted that while part of his domestic detention 'had not been pursuant to an order of this Court, it was in any case due to his status as an LRA commander and for his acts and conduct performed in this role': discretionary credit was thus granted.³⁰⁰ The evidential foundation was simply the fact of his detention and the absence of any alternative bases for it.³⁰¹ Citing Article 78(2) of the ICC Statute, the ECCC Supreme Court credited *Duch* fully for detention by domestic authorities in relation to conduct "broadly similar" to those giving rise to the proceedings before the ECCC'.³⁰² *Tadić* was granted credit for pre-surrender detention in Germany, because 'the criminal proceedings in the Federal Republic of Germany emanated from substantially the same criminal conduct for which he now stands convicted by the Tribunal'.³⁰³

81. The available evidence indicates that Mr Al Hassan's domestic detention was related to his position in Ansar Dine and actions in 2012, which led to his convictions before the ICC. When the Prosecution applied for an ICC arrest warrant, it confirmed an overlap in conduct between existing domestic proceedings related to Mr Al Hassan and the case it wished to bring before the ICC.³⁰⁴ This overlap was born out through the fact that several Prosecution witnesses previously gave evidence in domestic proceedings related to Mr Al Hassan or participated in related complaints and the Prosecution chose to introduce domestic court records to

²⁹⁸ [MLI-D28-0007-0638-R01](#) at 0643, paras. 27-31; 0651-0652, paras. 48-51.

²⁹⁹ Article 78(2) of the Statute specifies that '[t]he Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime'.

³⁰⁰ *Ongwen*, [Sentencing Judgment](#), ICC-02/04-01/15-1819-Red, para. 402.

³⁰¹ *Ongwen* [Defence Brief on Sentencing](#), ICC-02/04-01/15-1809-Corr-Red, para. 57.

³⁰² *Duch* [Supreme Court Judgment](#), para. 402. See also *Kajelijeli* [Trial Judgment](#), para. 966 (granting credit for detention related to a Rwandan arrest warrant).

³⁰³ *Tadić* [Judgement in Sentencing Appeals](#), paras. 38, 75.

³⁰⁴ The Pre-Trial Chamber acknowledged this overlap: [ICC-01/12-01/18-35-Red2-tENG](#), para. 29.

substantiate the current conviction.³⁰⁵ The Malian Ministry of Justice also confirmed that there was no *other* domestic case file related to Mr Al Hassan.³⁰⁶ The French Ministry of the Interior asserted that the conduct underpinning Mr Al Hassan's domestic detention was the same as the charges described in the ICC arrest warrant.³⁰⁷ While Mr Al Hassan was never charged in Mali, the *Ongwen*, *Duch* and *Tadić* precedents do not require such a step.³⁰⁸ While the Trial Chamber found that the ICC bears no responsibility for the conditions of Mr Al Hassan's detention in Mali, his experience in such conditions militates against any *further* punishment to ensure the goals of deterrence or retribution.³⁰⁹

82. Mr Al Hassan's statutory rights were violated due to the Pre-Trial Chamber's failure to issue a formal arrest warrant decision, prior to his ICC transfer.³¹⁰ Mr Al Hassan was transferred three days after the issuance of the provisional arrest warrant despite not waiving his right under Article 92(3).³¹¹ This requires a measurable remedy,³¹² such as sentencing reduction.³¹³

2.8. Concurrent sentences are appropriate due to the overlap in conduct

83. The total sentence must not exceed the degree of punishment commensurate with the defendant's individual culpability ('the totality principle').³¹⁴ The guiding factor is the conduct underpinning such crimes not the number of crimes or counts. There is a substantial degree of overlap due to **first**, the fact that convictions have been entered for similar conduct under different provisions,³¹⁵ and **second**, Mr Al Hassan's personal responsibility arises from his position and functions in the Islamic Police.³¹⁶ The ICC has consistently imposed non-consecutive sentences where there was an overlap in conduct, basing the total on the highest

³⁰⁵ [MLI-OTP-0024-2768](#); [MLI-OTP-0024-2814](#) P-0636, P-0520, P-0547, P-0538, P-0602, P-0957, P-0610, P-0570.

³⁰⁶ ICC-01/12-01/18-885-Conf-Red-Corr; ICC-01/12-01/18-1-Conf-Exp-Red, paras. 300-301.

³⁰⁷ [MLI-D28-0007-0671](#) at 0675-0677.

³⁰⁸ The 'clock' tolls as soon as the person's liberty rights are substantially affected by the investigation in question. ECtHR: *Mamič v. Slovenia*, paras. 23-24; *Liblik and Others v. Estonia*, para. 94.

³⁰⁹ ICC-01/12-01/18-2614-Conf; [MLI-D28-0007-0638-R01](#) at 0645-0651, paras. 37-45, referring to [MLI-D28-0007-0656](#) to [MLI-D28-0007-0666](#).

³¹⁰ Kreß & Prost, 'Article 92' in O. Triffterer & K. Ambos (eds), Rome Statute of the International Criminal Court: A Commentary, CH Beck (3rd ed., 2016), p. 2076, see Annex B.

³¹¹ Article 92(3) specifies that the provisionally arrested person may only surrender to the ICC, prior to the receipt of a detailed decision, if the person consents. The reasoned written decision was issued on 27 May 2018.

³¹² *Semanza Appeals Decision*, para. 125; *Rwamakuba, Trial Judgement*, para. 218.

³¹³ *Barayagwiza, Decision on Prosecution's Request for Review or Reconsideration*, paras. 74-75; *Kajelijeli Appeals Judgement*, para. 255.

³¹⁴ *Čelebići Appeals Judgment*, para. 429.

³¹⁵ *Krnjelac Decision on Form of Indictment*, para. 10; *Gatete Appeals Judgment*, para. 265 and fn. 642.

³¹⁶ See [ICC-01/12-01/18-601-Red](#), para. 123 ('Mr Al Hassan is correct in arguing that there is a large degree of overlap in the factual allegations supporting the 13 counts').

individual penalty rather than an aggregate of penalties.³¹⁷



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Dated this 3rd day of September 2024
At The Hague, The Netherlands

³¹⁷ *Lubanga*, [Sentencing Decision](#), ICC-01/04-01/06-2901, paras. 98-99; *Bemba et al.* [Sentencing Judgment](#), ICC-01/05-01/13-2123-Corr, para. 249; *Ntaganda* [Sentencing Decision](#), ICC-01/04-02/06-2442, paras. 26, 249-250. See also ICTY practice: *Kupreškić et al.* [Trial Judgment](#), para. 866.