

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/12-01/18**  
Date: **10 December 2024**

**TRIAL CHAMBER X**

**Before:** Judge Kimberly Prost, Presiding  
Judge María del Socorro Flores Liera  
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**

**Public redacted version of “Prosecution Sentencing Brief”, 26 August 2024, ICC-01/12-01/18-2642-Conf**

**Source:** The Office of the Prosecutor

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

|                                                                                                                 |                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| <b>The Office of the Prosecutor</b><br>Mr Karim A.A. Khan KC<br>Mr Mame Mandiaye Niang<br>Mr Gilles Dutertre    | <b>Counsel for Dominic Ongwen</b><br>Ms Melinda Taylor<br>Dr Felicity Gerry KC<br>Ms Alka Pradhan |
| <b>Legal Representatives of Victims</b><br>Mr Seydou Doumbia<br>Mr Mayombo Kassongo<br>Mr Fidel Luvengika Nsita | <b>Legal Representatives of Applicants</b>                                                        |
| <b>Unrepresented Victims</b>                                                                                    | <b>Unrepresented Applicants for Participation/Reparation</b>                                      |
| <b>The Office of Public Counsel for Victims</b>                                                                 | <b>The Office of Public Counsel for the Defence</b>                                               |
| <b>States Representatives</b>                                                                                   | <b>Amicus Curiae</b>                                                                              |

|                                                          |                                |
|----------------------------------------------------------|--------------------------------|
| <b>REGISTRY</b>                                          |                                |
| <b>Registrar</b><br>Mr Osvaldo Zavala Giler              | <b>Counsel Support Section</b> |
| <b>Victims and Witnesses Section</b><br>Mr Nigel Verrill | <b>Detention Section</b>       |
| <b>Victims Participation and Reparations Section</b>     | <b>Other</b>                   |

## I. INTRODUCTION

1. On 26 June 2024, Al Hassan was convicted of eight counts of war crimes and crimes against humanity, namely Persecution (Count 13), Torture, Cruel Treatment, Other Inhumane Acts, Outrages upon Personal Dignity (Counts 1-5), Mutilation (Count 14), and Passing of Sentence without due process (Count 6), either as a direct perpetrator, for aiding, abetting or otherwise assisting, or for contributing in any other way to the commission of these crimes under article 25(3)(a), (c) and (d) of the Statute.<sup>1</sup>
2. These crimes were committed between 2 April 2012 and 29 January 2013 in Timbuktu and its region when they were under the control of Ansar Dine/AQIM (“Groups”). The entire population was persecuted, and the harms endure. Al Hassan was a key player within the Islamic Police (“Police”) and contributed to the system of repression created by the Groups in pursuance of their aim of imposing their personal interpretation of religion.<sup>2</sup>
3. In light of, *inter alia*, the gravity of the crimes, and aggravating circumstances, the Prosecution recommends sentences of 22 years of imprisonment for Persecution, 20 years for Torture, 8-9 years for Cruel Treatment, 8-9 years for Other Inhumane Acts, 20 years for Outrages upon Personal Dignity, 15 years for Mutilation, and 20 years for Passing Sentence without due process. The Prosecution recommends a joint sentence of no less than 22 years of imprisonment.
4. All of the crimes are inherently grave – this includes Al Hassan’s high degree of participation in and intent for the commission of the crimes, and their devastating and long-lasting impact on victims. The crimes were also aggravated by various factors including Al Hassan’s zealous support of the Groups’ aims; the discriminatory motives for the crimes, which he shared; the particular cruelty in the way crimes were perpetrated; the multiplicity of victims and defenceless of the victims – including women, children, and the entire population rendered defenceless by armed men invoking and punishing violations of the Groups’ rules and prohibitions in public and in homes. For instance, women and children were amongst those flogged, and those called to watch the public amputation and floggings.
5. There are no mitigating or individual circumstances that warrant a reduction in Al Hassan’s sentence. As the Majority found, Al Hassan voluntarily joined the Groups. There is no evidence on the record that he was under duress when he engaged in the relevant conduct.<sup>3</sup> None of Al Hassan’s individual circumstances, including his family situation or any mental health issues, rise to the level of mitigating circumstances. There has been no clear or genuine expression of remorse, nor has there been any meaningful cooperation. Mitigation is not warranted.

<sup>1</sup> Trial Judgment, ICC-01/12-01/18-2594-Conf (“[Article 74 Judgment](#)”), para. 1785.

<sup>2</sup> [Article 74 Judgment](#), paras. 1294, 1620; 1063, 1065, 1673-1674. Separate and partly dissenting opinion of Judge Tomoko Akane, [ICC-01/12-01/18-2594-OP1](#) (“Judge Akane’s Opinion”), paras. 46-47, 58-62.

<sup>3</sup> [Article 74 Judgment](#), paras. 1751-1762.

## II. SUBMISSIONS

6. The gravity of the crimes, aggravating circumstances, and lack of mitigating circumstances addressed in section III, merit the individual sentences as sought, for each count of which Al Hassan was found guilty.

### A. Persecution

7. Al Hassan was found guilty of the crime against humanity of persecution on religious grounds under article 7(1)(h) of the Statute for contributing to its commission under article 25(3)(d) of the Statute, as of early May 2012.<sup>4</sup> The Prosecution recommends that Al Hassan receive a sentence of 22 years for the crime of persecution.<sup>5</sup>

#### (i) Gravity of the crime<sup>6</sup>

8. Persecution is an inherently grave offence, intended to protect from fundamental rights violations based on discrimination on grounds “universally recognised as impermissible.”<sup>7</sup> The crime is considered a “particularly heinous crime”<sup>8</sup> and “one of the most serious”<sup>9</sup> and “one of the most vicious”<sup>10</sup> of all crimes against humanity.

9. In the concrete circumstances in this case, the gravity of the crime of persecution is very high in light of the following.

#### *The nature of the behaviour, the means employed, circumstances, and scale of the crimes*

10. Ansar Dine/AQIM members targeted the entire population on religious grounds, motivated by their perception that the population was “ignorant” and not “real Muslims”.<sup>11</sup> The whole population was targeted because they were perceived as lacking the “correct” form of religious belief for not adhering to Ansar Dine/AQIM’s vision and interpretation of Sharia; and, failing to behave correctly in conducting their social and personal life.<sup>12</sup> They were forced to follow and behave in accordance with the Groups’ religious precepts, or risk being severely punished.<sup>13</sup> Those who did not obey their rules and prohibitions

<sup>4</sup> [Article 74 Judgment](#), para. 1736, p. 834.

<sup>5</sup> A comparison with other cases can be of limited assistance as each case depends on its facts. *See e.g. Prosecutor v. Delalic et. al (“Celebici”)*, Case No. IT-96-21-A, [Appeal Judgment](#), paras. 718-721; *Semanza v. Prosecutor*, Case No. ICTR-97-20-A, 20 May 2005, [Appeal Judgment](#), para. 394; *cf. Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, [Appeal Judgment](#), 23 October 2001, para. 443. But, *see e.g. Prosecutor v. Ongwen (“Ongwen”)*, [Sentencing judgment](#), paras. 88, 177, 215, 250, 283: 20 years sentence (after granting a one third deduction as he was abducted as a young child); *Prosecutor v. Ntaganda (“Ntaganda”)*, [Sentencing Judgment](#), paras. 176-177: 30 years sentence.

<sup>6</sup> *See e.g. Ongwen*, [Sentencing judgment](#), paras. 46-58. Especially, para. 50: balancing factors; para. 52: defining gravity. The interplay between the factors under article 78(1)(gravity) and rule 146(1)(c) factors are addressed under ‘gravity’.

<sup>7</sup> *Ntaganda*, [Sentencing Judgment](#), para. 175; *Ongwen*, [Sentencing judgment](#), para. 174.

<sup>8</sup> *Ongwen*, [Sentencing Judgment](#), para. 174.

<sup>9</sup> *Ntaganda*, [Sentencing Judgment](#), para. 175.

<sup>10</sup> ICTY, *Kupreškić et al.*, [Trial Judgment](#), para. 751.

<sup>11</sup> [Article 74 Judgment](#), paras. 737, 1528-1530, 1562-1565.

<sup>12</sup> [Article 74 Judgment](#), paras. 1562, 1564-1565.

<sup>13</sup> [Article 74 Judgment](#), paras. 1545, 1563.

were qualified as “stubborn” and punished.<sup>14</sup>

11. They deprived members of the population of numerous fundamental rights, in particular, the right to freedom of thought, conscience and religion,<sup>15</sup> and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and right to bodily integrity.<sup>16</sup> According to the Chamber, underlying acts of persecution include acts perpetrated as part of the imposition, surveillance, and violent enforcement of violations of, the rules and prohibitions, and the conduct underlying the crimes under counts 1 to 5 and 14, connected with crimes, notably crimes under counts 1 to 5 and 14 of which Al Hassan was separately convicted, such as floggings, beatings, ill-treatment, humiliation and an amputation, as discussed below in section B.<sup>17</sup>

12. The crime of persecution was committed forcefully and violently on the entire population. It affected almost all aspects of life, including religious, traditional, social and cultural practices, and daily activities, such as how people celebrated their marriages, their music choices, and even the conduct of their relationships (e.g. prohibition of mixing of females and males, including in schools; of extra-marital sexual relations and/or having children outside of marriage).<sup>18</sup> The behaviour of women and girls was particularly controlled. They were subjected to specific rules and prohibitions that were imposed and especially harsh punishment for non-compliance.<sup>19</sup> Persecution was carried out in a systematic way, through the well-organised system of repression established by the Groups, involving several institutions, including the Police in which Al Hassan played a key role.<sup>20</sup> The underlying acts of persecution were committed repeatedly in Timbuktu and its region, reaching as far as places like Léré,<sup>21</sup> throughout the nine-month period relevant to Al Hassan’s criminal responsibility.<sup>22</sup>

*The extent of the damage caused and the impact of the crimes*

13. Prior to the Groups’ control of the city, the residents of Timbuktu enjoyed freedoms and their fundamental rights were generally respected.<sup>23</sup> After the Groups took control of Timbuktu, the population suffered significant upheaval and harm:<sup>24</sup> “[P]eople felt that everything changed, that they did not have the freedom to do what they wanted to do and that the atmosphere of the city was ‘terror

<sup>14</sup> [Article 74 Judgment](#), para. 1563.

<sup>15</sup> [Article 74 Judgment](#), paras. 1527-1528, 1530-1532.

<sup>16</sup> [Article 74 Judgment](#), paras. 1550-1551.

<sup>17</sup> [Article 74 Judgment](#), paras. 1550-1551, 1562-1565, 1567-1570 and [Judge Akane’s Opinion](#), paras. 98-100, 103.

<sup>18</sup> [Article 74 Judgment](#), paras. 670-733, 1282, 1530-1532, 1562-1565, 1567-1570. [Judge Akane’s Opinion](#), paras. 100, 103.

<sup>19</sup> [Article 74 Judgment](#), paras. 670-733, 1568-1570. [Judge Akane’s Opinion](#), paras. 100, 103.

<sup>20</sup> See e.g. [Article 74 Judgment](#), paras. 1065, 1294, 1674. [Judge Akane’s Opinion](#), paras. 57-62.

<sup>21</sup> See e.g. [Article 74 Judgment](#), para. 721, referring to a police report written by Al Hassan.

<sup>22</sup> See e.g. [Article 74 Judgment](#), paras. 1294-1295.

<sup>23</sup> [Article 74 Judgment](#), para. 414.

<sup>24</sup> [Article 74 Judgment](#), paras. 734-760.

everywhere' and confinement".<sup>25</sup>

14. The rules and prohibitions imposed by the Groups, and the application of violent sanctions in case of non-compliance, had a traumatic effect on the population, who lived in an atmosphere of fear, violence, oppression and humiliation.<sup>26</sup> Many people were afraid to go out because they feared being reprimanded or brutalised. Acts of violence and beatings, involving weapons and whips, were frequent during 2012.<sup>27</sup> There have been lasting effects: many of the physical and psychological scars of these acts on the population remain today.<sup>28</sup> They were also impacted economically, with some jobs disappearing. Women were particularly affected.<sup>29</sup> Many people left Timbuktu because of the violence, or because they did not want to submit themselves to the new rules and prohibitions imposed by the Groups.<sup>30</sup> For example, some parents sent their daughters away, fearing forced marriage;<sup>31</sup> and some musicians left, fearing imprisonment.<sup>32</sup> Those who stayed behind did not necessarily do so voluntarily, but for example, for financial or other constraints.<sup>33</sup>

*Al Hassan's degree of participation and intent*<sup>34</sup>

15. Al Hassan had a high degree of participation in and intent regarding the commission of this crime. Al Hassan meaningfully contributed to the Groups' campaign targeting the civilian population on religious grounds by virtue of his key role in the Police and his involvement in the Groups' imposition and promotion of the rules and measures and in the system of surveillance and punishment, including in multiple instances of violent and public punishments.<sup>35</sup>

16. After voluntarily joining Ansar Dine/AQIM at the end of April 2012,<sup>36</sup> Al Hassan rose rapidly in the hierarchy: from working under Abou Talha to help to differentiate between public items belonging to the Malian government and private goods belonging to locals, to being a member of the Police,<sup>37</sup> signing police reports on its behalf from at least 23 May 2012. While subordinate to Adama and Khaled<sup>38</sup> (the first and second emirs of the Police), he had a leadership role in police operations<sup>39</sup> and was perceived

<sup>25</sup> [Article 74 Judgment](#), para. 738.

<sup>26</sup> [Article 74 Judgment](#), para. 1540.

<sup>27</sup> [Article 74 Judgment](#), paras. 738-739.

<sup>28</sup> [Article 74 Judgment](#), paras. 2, 734-741.

<sup>29</sup> [Article 74 Judgment](#), para. 735.

<sup>30</sup> [Article 74 Judgment](#), para. 740.

<sup>31</sup> [Article 74 Judgment](#), para. 505, fn. 1363.

<sup>32</sup> [Article 74 Judgment](#), para. 725.

<sup>33</sup> [Article 74 Judgment](#), para. 741.

<sup>34</sup> See e.g. Ongwen, [Sentencing Judgment](#), para. 142: relative importance of co-perpetrators contributions should not be given undue weight.

<sup>35</sup> [Article 74 Judgment](#), para. 1734 (the para. refers to the finding by the Majority, but fn. 5231 clarifies that to the extent related to acts which in her view comprise the crime of persecution, Judge Akane agrees with the analysis in section V, C, 3, b, v).

<sup>36</sup> [Article 74 Judgment](#), paras. 1059-1060.

<sup>37</sup> [Article 74 Judgment](#), para. 1060-1061.

<sup>38</sup> [Article 74 Judgment](#), para. 1063.

<sup>39</sup> [Article 74 Judgment](#), para. 1063.

by the local population and by members of the Police as a “key player within the police force”.<sup>40</sup> Toward the very end of Ansar Dine/AQIM control of Timbuktu, Al Hassan was appointed to replace Khaled to lead the Police.<sup>41</sup>

17. Al Hassan continuously contributed to the commission of the crime of persecution until the end of the Groups’ control of Timbuktu through his “key role” in the Police.<sup>42</sup> Al Hassan consistently played a key role in the Police, remaining in position throughout other leadership changes and until the end of the Groups control of Timbuktu in January 2013.<sup>43</sup> This consistency ensured that there was constant Police support in carrying out the Groups’ repressive aims. The Police managed all tasks related to the enforcement of penalties and implemented the decisions of the Islamic Court (“Tribunal”), assisted by other organs of the Groups.<sup>44</sup> It played a “pivotal” role in the system of repression at the heart of which lies notably the commission of the crimes of persecution, torture, other inhumane acts, cruel treatment, outrages upon personal dignity, and mutilation.<sup>45</sup>

18. Al Hassan’s duties and responsibilities included, *inter alia*:

- organising and managing the daily work of the Police, including organising and sending patrols (including those participating in checks and inspections in the streets to ensure application of Ansar Dine/AQIM policy);<sup>46</sup>
- receiving complaints (including criminal and civil) that people lodged in his office; receiving documents;<sup>47</sup>
- issuing summonses;<sup>48</sup>
- participating in arrests of people accused of violating the Groups’ rules;<sup>49</sup>
- participating in, and independently carrying out, investigations and interrogations, questioning suspects/accused and witnesses, with a special focus on admissions of guilt;<sup>50</sup>
- writing and signing numerous police reports, including for cases of individuals found in breach of the rules and prohibitions;<sup>51</sup>
- referring reports and/or transmitting cases to the Tribunal,<sup>52</sup> (including cases involving criminal

<sup>40</sup> [Article 74 Judgment](#), para. 1065.

<sup>41</sup> [Article 74 Judgment](#), para. 1064, fn. 3644.

<sup>42</sup> [Article 74 Judgment](#), paras. 1061, 1063, 1674 and [Judge Akane’s Opinion](#), para. [Article 74 Judgment](#), paras. 1061, 1063, 1674 and [Judge Akane’s Opinion](#), para. 58.

<sup>43</sup> [Article 74 Judgment](#), paras. 1063, 1674.

<sup>44</sup> [Article 74 Judgment](#), para. 586.

<sup>45</sup> [Article 74 Judgment](#), para. 1673 and [Judge Akane’s Opinion](#), para. 61.

<sup>46</sup> [Article 74 Judgment](#), para. 1069; 1083.

<sup>47</sup> [Article 74 Judgment](#), para. 569, 1071, 1073.

<sup>48</sup> [Article 74 Judgment](#), para. 1073.

<sup>49</sup> [Article 74 Judgment](#), para. 1073.

<sup>50</sup> [Article 74 Judgment](#), paras. 582, 678, 1073.

<sup>51</sup> [Article 74 Judgment](#), paras. 620, 1074.

<sup>52</sup> [Article 74 Judgment](#), paras. 620, 1073-1075.

sanctions/*hadd* or *ta'zir* punishment), such as theft and robbery cases;<sup>53</sup> adultery cases;<sup>54</sup> possession of magic items;<sup>55</sup> and cigarette smuggling;<sup>56</sup>

- referring cases to the Tribunal with recommendations regarding punishments;<sup>57</sup>
- supervising people arrested and going through proceedings;<sup>58</sup>
- bringing suspects to and from the Tribunal,<sup>59</sup> or delegating officers to bring them;<sup>60</sup>
- giving evidence as a Police witness;<sup>61</sup>
- assisting, organising, supervising, or participating in execution of sentences, including those decided by the Tribunal.<sup>62</sup> This included:
  - being present during public execution of punishments pronounced by the Tribunal,<sup>63</sup> and carrying a weapon when he was on duty, including during these public punishments;<sup>64</sup>
  - bringing sentenced persons to the punishment sites;<sup>65</sup>
  - being present during *ta'zir* punishments carried out at the Police headquarters, as a leader.<sup>66</sup>

19. Al Hassan, as a member of the Groups, also directly perpetrated part of the underlying acts of persecution, namely floggings of two men accused of drinking alcohol in July 2012, charged under counts 1, 3, 5 and 6.<sup>67</sup>

20. Through his vital role in the Police, Al Hassan knew of, and deliberately took part in, the Groups' control over the population of Timbuktu, including the severe punishments for violation of the Groups' rules and prohibitions.<sup>68</sup> In light of Al Hassan's voluntary joining of Ansar Dine and his important role in the Police, the Chamber also found that Al Hassan: (i) meant to engage in the conduct that constitutes his contribution to the crime under Count 13; and (ii) was aware of the Groups' intention to commit persecutory acts on religious grounds, given also his knowledge of the discriminatory rules and

<sup>53</sup> [Article 74 Judgment](#), para. 1075.

<sup>54</sup> [Article 74 Judgment](#), para. 1075.

<sup>55</sup> [Article 74 Judgment](#), para. 1075.

<sup>56</sup> [Article 74 Judgment](#), para. 1075.

<sup>57</sup> [Article 74 Judgment](#), para. 1075 and fn. 3696.

<sup>58</sup> [Article 74 Judgment](#), para. 1076.

<sup>59</sup> [Article 74 Judgment](#), paras. 649, 1076-1077.

<sup>60</sup> [Article 74 Judgment](#), para. 1076.

<sup>61</sup> [Article 74 Judgment](#), para. 1076. He produced evidence, at least once, during a hearing, clarifying a report and providing additional information.

<sup>62</sup> [Article 74 Judgment](#), paras. 1078, 763, 787, 818 and fn. 3715.

<sup>63</sup> [Article 74 Judgment](#), paras. 1078-1079.

<sup>64</sup> [Article 74 Judgment](#), paras. 585, 684, 1078.

<sup>65</sup> [Article 74 Judgment](#), paras. 585, 684, 1078.

<sup>66</sup> [Article 74 Judgment](#), para. 1079.

<sup>67</sup> [Article 74 Judgment](#), paras. 761-764, 1585-1586.

<sup>68</sup> See e.g. [Article 74 Judgment](#), paras. 1594, 1600, 1674-1689.

prohibitions enforced by the Groups.<sup>69</sup>

21. Al Hassan's high degree of intent is demonstrated by his agreement that behaviour opposed to the Groups' ideology should be repressed, and that he shared the Groups' policy of implementing their repressive rules.<sup>70</sup> For instance, in contemporaneous video interviews in his role as a leader and public spokesman for the Groups, he spoke positively in support of the Groups' objectives and clearly indicated his personal support of, and enthusiastic participation in, the Groups' activities in Timbuktu.<sup>71</sup>

22. In a video recording dated October 2012, Al Hassan explained that since their arrival, the Groups had applied the rules on adultery, women not being veiled, those who drink alcohol, and on thieves by cutting their hand, and on criminals, killers.<sup>72</sup> In another video recording, dated October 2012, Al Hassan spoke proudly of the impact of the Groups' rules on crime rates, claiming that: "*maintenant avec les règles que nous avons imposées... beaucoup de péchés ont baissé ... tels que l'adultère, l'alcool... et autres... grands péchés. Les choses se sont nettement améliorées*".<sup>73</sup>

23. He closely collaborated with other leaders and organs in implementing these restrictions,<sup>74</sup> and defended the application of corporal punishments.<sup>75</sup>

24. His high degree of intent regarding the crime of persecution, is also demonstrated by the fact that he knew that people "could not do anything" concerning the punishments, that "everybody was afraid of the word 'jihadist' or 'terrorist'" and that "people would fear being punished".<sup>76</sup>

## (ii) Aggravating circumstances

25. There are aggravating circumstances that must be considered for the sentence in relation to the crime of persecution, in particular as described below. Al Hassan knew and intended, would have known, or would have foreseen these aggravating circumstances, given his high level position within the Police that was intrinsic to the repressive system in implementing the Groups' rules and prohibitions, his personal involvement in numerous incidents, and the fact that these acts occurred in public.<sup>77</sup>

### Multiple victims of persecution, including the particularly vulnerable and defenceless

26. The crime of persecution for which Al Hassan was convicted affected the **entire** population living

<sup>69</sup> [Article 74 Judgment](#), para. 1735 (while the paragraph refers to the finding by the Majority, fn. 5231 clarifies that to the extent related to acts which in her view comprise the crime of persecution, Judge Akane agrees with the analysis in section V, C, 3, b, v).

<sup>70</sup> [Article 74 Judgment](#), para. 1688.

<sup>71</sup> [Article 74 Judgment](#), paras. 1080-1084.

<sup>72</sup> [Article 74 Judgment](#), para. 1082.

<sup>73</sup> [Article 74 Judgment](#), para. 1081. E.g. Video [MLI-OTP-0069-3710](#), transcript [MLI-OTP-0078-4564](#), translation [MLI-OTP-0078-4629](#), p. 4632, l. 60-64.

<sup>74</sup> [Article 74 Judgment](#), paras. 1063-1064, 1066, 653-656, 1674. See also, Closing Brief, [ICC-01/12-01/18-2475-Conf-Corr2](#), para. 380, and Section IV.

<sup>75</sup> [Article 74 Judgment](#), paras. 1080-1083.

<sup>76</sup> [Article 74 Judgment](#), para. 738, citing P-0398: [MLI-OTP-0051-1099](#), at 1102-1103.

<sup>77</sup> See e.g. *Lubanga* Sentencing AJ, [ICC-01/04-01/06-3122](#), para. 90; see also, *Ntaganda* Sentencing AJ, [ICC-01/04-02/06-2667-Red](#), paras. 2, 49. See para.2, fn. 2 above.

in Timbuktu and its region,<sup>78</sup> which should be considered as an aggravating circumstance under rule 145(2)(b). The whole population was rendered defenceless in the face of heavily armed members of the Groups, who invoked and punished violations of their rules, in public and, for many, even in their homes.<sup>79</sup> Unlike Ansar Dine/AQIM members, who chose to join the Groups and abide by their rules and practices, and had freedom to hold and manifest their own ideology, members of the population had no such choice.<sup>80</sup>

27. Furthermore, it is aggravated by the fact that many of these victims were particularly vulnerable and defenceless, including women, children and the elderly, within the meaning of rule 145(2)(b)(iii). P-0565 was a girl of only 14 years old at the time of her public flogging for “adultery” in June 2012.<sup>81</sup> Another group of children were sentenced to floggings for alleged theft.<sup>82</sup> Foma, an elderly man, was publicly flogged for smoking.<sup>83</sup> It was at least foreseeable to Al Hassan that some victims would be particularly vulnerable and defenceless victims, given that the entire population was targeted.<sup>84</sup>

28. Specific rules and prohibitions were aimed at women and girls, and their violation was repressed with especially harsh punishment and detention conditions, involving gender-specific violence.<sup>85</sup> Those specific rules and prohibitions imposed on women and girls and their enforcement had a significant impact on all aspects of the life of women and girls in Timbuktu.<sup>86</sup> For instance, the Groups considered women should remain at home and they were called to do so.<sup>87</sup> Working women found it difficult to continue their regular trade due to the Groups’ rules and prohibitions. They feared going outside, drastically reducing their activities outside of the home for fear of arrest and punishment. Women also felt that they could be punished “whatever [they] did” to respect the rules and prohibitions, and some women no longer left their home.<sup>88</sup>

#### *Commission of the crime with particular cruelty*

29. The crime of persecution was committed with particular cruelty. This was especially the case with regard to underlying acts amounting to serious crimes under counts 1 to 5 and 14 of which Al Hassan was separately convicted, such as an amputation and public floggings of individuals (including children)

<sup>78</sup> [Article 74 Judgment](#), para. 1559. See also, [MLI-OTP-0065-0655](#), according to which the population of the region of Timbuktu comprised of approximately 780,000 inhabitants in 2013.

<sup>79</sup> See e.g. the cases related to counts 1-5 and 14, discussed in section B. See also e.g. [Article 74 Judgment](#), paras. 557, 666, 746, 1564.

<sup>80</sup> [Article 74 Judgment](#), para. 1564.

<sup>81</sup> [Article 74 Judgment](#), para. 799.

<sup>82</sup> [Article 74 Judgment](#), paras. 985-986.

<sup>83</sup> [Article 74 Judgment](#), para. 854.

<sup>84</sup> *Lubanga*, Appeals Judgment, Sentencing, [ICC-01/04-01/06-3122](#), para. 90; *Ntaganda*, Appeals Judgment, Sentencing, [ICC-01/04-02/06-2667-Red](#), paras. 2, 49. See above para. 26.

<sup>85</sup> [Article 74 Judgment](#), para. 1568. See also, paras. 1569-1570, 689-703.

<sup>86</sup> [Article 74 Judgment](#), paras. 689-703, 1568-1570. [Judge Akane’s Opinion](#), paras. 100, 102.

<sup>87</sup> [Article 74 Judgment](#), para. 702.

<sup>88</sup> [Article 74 Judgment](#), paras. 703, 753, 1570.

accused of violating Ansar Dine/AQIM's rules, and in front of others including children, as discussed below in section B.

*Zealous use of his role to embrace and further Ansar Dine/AQIM's objectives*

30. Throughout the relevant period, Al Hassan zealously used his role within the Police to embrace and further Ansar Dine/AQIM's objectives to impose and implement their ideology and interpretation of religion and to control Timbuktu and its residents for this purpose.<sup>89</sup>

31. His zealousness is shown by his numerous and diverse contributions to the commission of the crimes under counts 1-6 and 13-14, the facts described in paragraphs 15 to 24, and his conduct.

32. For example, Al Hassan chose to start working with Ansar Dine/AQIM after a discussion with the Groups' leaders in which he was told about the obligation of jihad and its doctrine, and about its necessity.<sup>90</sup> Al Hassan was praised by senior leaders, including Abou Zeid, Yahya Abou Al Hammam and Talha, for his work and efforts, as well as some "enthusiastic" soldiers for the way he enforced the bans more strictly and efficiently than Al Mahdi, the first head of the *Hesbah*.<sup>91</sup> After fleeing Timbuktu with the Groups in 2013, Al Hassan "bragged about what he did, the prohibitions he enforced, and how he made sure things were corrected in line with Islamic Sharia – Sharia, as we define it". He "bragged about enforcing Sharia without discrimination".<sup>92</sup>

33. Al Hassan's zeal is also demonstrated by his zealous statements he made as a leader and spokesperson of the Groups in his video-recorded interviews, mentioned at paragraphs 21 to 22. In particular, in one of the videos dated October 2012 he stated that the groups were applying "*la loi islamique*", which they would defend "*jusqu'à la mort*", instead of "*la loi des mécréants*" (that had been applied for the past 120 years). He said a part of the population fled, but "*les vrais musulmans*" stayed.<sup>93</sup> Al Hassan went on to criticise people who grew up with secular education, without knowledge of the Koran, who would engage in practices such as drinking alcohol and smoking. He called them the "enemy" of Islam.<sup>94</sup> In yet another video, dated November 2012, he spoke of the work of the Police to "correct objectionable acts", including "any type of reprehensible act which has been forbidden by Allah [...] such as drinking alcohol, smoking, and a woman adorning herself", saying "we want to be overworked".<sup>95</sup>

<sup>89</sup> [Article 74 Judgment](#), paras. 1620, 1284, 1063-1066, 1674. Para. 47 below. Para. 15-24 above. See e.g. ICTR, *Aloys Simba v. Prosecutor*, Appeals Chamber, [Judgment](#), para. 320.

<sup>90</sup> P-0398: [MLI-OTP-0051-1257](#), p. 1285. See also, [Article 74 Judgment](#), para. 1059.

<sup>91</sup> [Article 74 Judgment](#), para. 1066, citing [REDACTED].

<sup>92</sup> [Article 74 Judgment](#), para. 1093.

<sup>93</sup> [Article 74 Judgment](#), para. 1082. [MLI-OTP-0069-3712](#), transcript [MLI-OTP-0078-4567](#), translation [MLI-OTP-0078-4633](#), p. 4636, l. 60-70.

<sup>94</sup> [MLI-OTP-0069-3712](#), transcript [MLI-OTP-0078-4567](#), translation [MLI-OTP-0078-4633](#), p. 4637, l. 74-82.

<sup>95</sup> [Article 74 Judgment](#), para. 1083. See e.g., [MLI-OTP-0069-7539](#), p. 7543.

## **B. Mutilation, Torture, Cruel Treatment, Other Inhumane Acts, Outrages Upon Personal Dignity (Counts 1 to 5 and 14)**

### **1. Mutilation as a war crime under article 8(2)(c)(i) (count 14)**

34. Al Hassan was found guilty of the war crime of mutilation under article 8(2)(c)(i) of the Statute for contributing to its commission against Dédéou Maiga under article 25(3)(d) of the Statute.<sup>96</sup> The Prosecution recommends that Al Hassan receive a sentence of 15 years for the crime of mutilation.<sup>97</sup>

#### **(i) Gravity of the crime**

35. The war crime of mutilation represents one of the most serious attacks against personal integrity of the victims, because it involves “permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage”.<sup>98</sup> The gravity of this crime, which is inherently high, is further aggravated by the specific circumstances of this case in light of the following factors.

#### *The nature of the behaviour, the means employed and the circumstances*

36. Following his arrest in early August 2012 and his subsequent detention for several weeks,<sup>99</sup> on 16 September 2012, the victim, Dédéou Maiga, had his right hand cut off with a saw/machete as punishment for alleged theft pursuant to a judgement issued by the Tribunal.<sup>100</sup>

37. The amputation and its wide publicization was aimed at deterring the civilian population from breaching its rules and discouraging any opposition against the realisation of what the Groups considered as being their ideal society, by showing the severe consequences of breaching its rules.<sup>101</sup> The very public scrutiny, punishment, and several weeks of his detention, intensified the victim’s associated humiliation and disgrace inflicted upon him.<sup>102</sup> Following the amputation, Dédéou Maiga’s plight was also publicly broadcasted outside of Timbuktu to the rest of the world only exacerbating his public humiliation. His media interview with Group spokesperson Sanda Ould Boumama<sup>103</sup> was internationally reported.<sup>104</sup>

#### *The extent of the damage caused and impact of the crimes*

38. As Dr. Ludes opined, the amputation cut would have caused Dédéou Maiga significant suffering, notably during the amputation, but also during the “secondary therapeutic treatment”, even assuming that

<sup>96</sup> [Article 74 Judgment](#), para. 1690, p. 834.

<sup>97</sup> See fn. 5 above. See, e.g. *Prosecutor v. Augustine Gbao et al.*, [Sentencing Judgment](#), paras. 137, 141, 147-148, 150; pp.94-97. The three accused received the individual sentences of imprisonment of 20, 35, 50 years, respectively, in relation to counts 10 (Violence to life, health and physical or mental well-being of persons, in particular mutilation).

<sup>98</sup> See [ICC Elements of Crimes](#), article 8(2)(c)(i).

<sup>99</sup> [Article 74 Judgment](#), para. 820.

<sup>100</sup> [Article 74 Judgment](#), paras. 822, 826.

<sup>101</sup> [Article 74 Judgment](#), para. 1329.

<sup>102</sup> [Article 74 Judgment](#), para. 1387.

<sup>103</sup> [Article 74 Judgment](#), paras. 830-831, citing *inter alia* [MLI-OTP-0012-1573](#), transcript [MLI-OTP-0069-1832](#), translation [MLI-OTP-0069-1926](#) and Video [MLI-OTP-0012-1569](#), transcript [MLI-OTP-0069-1654](#).

<sup>104</sup> Video [MLI-OTP-0001-7037](#), 00:46:01:00-00:47:25:00, transcript [MLI-OTP-0024-2962](#), pp. 2990-2991, l. 976-1014, translation [MLI-OTP-0024-2910](#), pp. 2939-2940, l. 981-1016.

he might have been drugged. Such an amputation may cause pain in the “phantom limb”.<sup>105</sup> The provision of any *post factum* medical care would have been unable to alleviate the suffering caused to him by the Groups’ amputation of his hand.<sup>106</sup>

39. The amputation also caused significant impact on Dédéou Maiga’s mental health and life.<sup>107</sup> Following his amputation, he was socially rejected.<sup>108</sup> After receiving medical care in 2013, his mental state started to deteriorate.<sup>109</sup> He could no longer work because he had his dominant hand cut off and became partially permanently incapacitated.<sup>110</sup> He then became sick with a suspected chest related illness and died on 29 December 2017.<sup>111</sup>

40. Dédéou Maiga’s amputation also affected his family. For example, P-0595 testified that it hurt the family to see his hand amputated.<sup>112</sup> The heinous crime also had a chilling impact on the population of Timbuktu.<sup>113</sup> For example, P-0654 described how the event broke the morale and spirit of the population, leaving them without hope.<sup>114</sup> [REDACTED] also described: “*C’est comme une douche froide jetée sur la ville.*”<sup>115</sup> The amputation shocked the international community and was strongly condemned.<sup>116</sup>

*Al Hassan’s degree of participation and intent*

41. Al Hassan had a high degree of participation and intent regarding the commission of this crime. It was Al Hassan, together with Adama, who initially arrested Dédéou Maiga in early August 2012, for alleged theft.<sup>117</sup> Al Hassan also admitted having drafted a police report regarding his case before the Tribunal issued the judgement sentencing Dédéou Maiga to the penalty of amputation of his hand.<sup>118</sup> While the Chamber found that Al Hassan did not attend the enforcement of the amputation, members of the Police were present.<sup>119</sup> Al Hassan fully supported the imposition of this cruel punishment, as demonstrated by the video dated October 2012, in which he explained the Groups’ rules imposed, including those on “thieves by cutting their hand”.<sup>120</sup>

<sup>105</sup> [Article 74 Judgment](#), para. 837, citing P-0598’s first expert report [MLI-OTP-0060-9465-R01](#), pp. 9467-9468.

<sup>106</sup> [Article 74 Judgment](#), paras. 1317-1318.

<sup>107</sup> [Article 74 Judgment](#), paras. 833, 835, 837.

<sup>108</sup> [Article 74 Judgment](#), para. 833.

<sup>109</sup> [Article 74 Judgment](#), paras. 834-835.

<sup>110</sup> [Article 74 Judgment](#), paras. 835, 837.

<sup>111</sup> [Article 74 Judgment](#), para. 836.

<sup>112</sup> [Article 74 Judgment](#), para. 833, citing P-0595’s Statement: [MLI-OTP-0058-0196-R02](#), p. 0208, para. 70.

<sup>113</sup> [Article 74 Judgment](#), para. 1541.

<sup>114</sup> P-0654: T-128, p. 73, l. 9-15; p. 74, l. 12-24; Article, [MLI-OTP-0012-1965](#).

<sup>115</sup> [REDACTED] Notebook: [MLI-OTP-0003-0154-R03](#), p. 0178; Transcript: [MLI-OTP-0064-0701-R02](#), p. 0748.

<sup>116</sup> See e.g. UN Press release: [MLI-OTP-0001-1904](#), p. 1906; NGO Report: [MLI-OTP-0001-2393](#), p. 2398.

<sup>117</sup> [Article 74 Judgment](#), para. 820.

<sup>118</sup> P-0398: [MLI-OTP-0060-1298](#), p. 1312, l. 467-471.

<sup>119</sup> [Article 74 Judgment](#), para. 825.

<sup>120</sup> [Article 74 Judgment](#), para. 1082.

**(ii) Aggravating circumstances**

42. There are aggravating circumstances that must be considered for the sentence in relation to the crime of mutilation, in particular as described below. Al Hassan knew and intended, would have known, or would have foreseen these aggravating circumstances.<sup>121</sup>

*Commission of the crime against a particularly defenceless victim*

43. At the time of the amputation of his hand, Dédéou Maiga was particularly defenceless. His hands were tied to a chair; his ankles were chained; his head was covered. He was also surrounded by members of the Groups, some of whom were armed.<sup>122</sup>

*Commission of the crime with particular cruelty*

44. The amputation of his hand was also committed with particular cruelty. While Dédéou Maiga was given a type of injection sometime prior to the amputation, what was administered is unknown. His hand was cut off by a saw/machete and his arm was then put into hot palm oil.<sup>123</sup> It did not diminish the cruelty that a doctor was present at the site of the amputation and Dédéou Maiga was later transported to the hospital where he received medication.<sup>124</sup> It was particularly cruel that members of his family and the population – including children and elderly – were incited to, and did, watch the public amputation. Videos and photos taken at the scenes of the public floggings and amputation show how youth and young children were amongst the crowd gathered to watch this gruesome and humiliating punishment.<sup>125</sup> This would have been highly traumatising to watch, particularly for children. Notably, in *Katanga*, the Chamber characterised as “particularly cruel” acts, those involving use of machetes that caused serious and persistent trauma to the survivors who needed a limb amputated, and to relatives who witnessed it.<sup>126</sup>

*Discriminatory motives*

45. Although discriminatory intent is an element of the crime of persecution, discriminatory motivation may be an aggravating circumstance for other crimes. Any overlap should be taken into account at the time of the determination of the joint sentence. If the aggravating circumstance of discriminatory motive was excluded from the outset from the calculation of any of the individual sentences, then “the true culpability of a convicted person for a particular crime would be unclear”. Instead, the determination of an individual sentence for each crime – that fully reflects the convicted person’s culpability for that particular crime – “necessarily entails an assessment of all the circumstances relevant for that particular crime”.<sup>127</sup>

<sup>121</sup> See e.g., para. 29.

<sup>122</sup> [Article 74 Judgment](#), para. 826. See also, para. 824 and fns. 2650-2651, para. 819 and fns. 2608-2609.

<sup>123</sup> [Article 74 Judgment](#), para. 826.

<sup>124</sup> [Article 74 Judgment](#), paras. 825, 827, 832.

<sup>125</sup> [Article 74 Judgment](#), paras. 824-825. See also, e.g. Video: [MLI-OTP-0009-1749](#).

<sup>126</sup> *Prosecution v. Katanga* Sentencing Judgment, [ICC-01/04-01/07-3484](#), para. 49.

<sup>127</sup> *Ntaganda* Appeals Judgment, Sentencing, [ICC-01/04-02/06-2667-Red](#), paras. 129-130.

46. This mutilation was committed by the Groups members who had discriminatory motives toward the whole population, which they perceived as “ignorant” and not “real Muslims”.<sup>128</sup> The public execution of the *hadd* punishment of amputation was designed to deter the population from not respecting the rules and prohibitions,<sup>129</sup> which the Groups imposed based on their vision of Sharia.<sup>130</sup> This is clear from the interview of Sanda Ould Boumama, explaining the amputation as: “*ça fait dans notre programme de l'application de charia*”.<sup>131</sup> When asked about his message to all Muslims in Timbuktu, Sanda Ould Boumama further stated that: “*on leur dire [phon.] vraiment soyez vraiment musulmans*”.<sup>132</sup>

*Zealous use of his role to embrace and further Ansar Dine/AQIM's objectives*

47. Al Hassan explained zealously, and proudly, in one video how incidents of thefts had reduced, saying: “*tout le monde a peur maintenant... de se voir couper la main... c'est fini maintenant... Dieu merci pour tout*”.<sup>133</sup> See also, paragraphs 34 to 37, above.

**2. Torture as a crime against humanity under article 7(1)(f) and a war crime under article 8(2)(c)(i) (counts 1 and 3)**

48. Al Hassan was found guilty of the crime against humanity of torture under article 7(1)(f) and the war crime of torture under article 8(2)(c)(i) of the Statute as follows:<sup>134</sup>

- for directly perpetrating the crimes against two men accused of drinking alcohol in July 2012 under article 25(3)(a) of the Statute;<sup>135</sup>
- for assisting, under article 25(3)(c) of the Statute, in the commission of the crimes against: (i) P-0565 and P-0557 in June 2012;<sup>136</sup> and (ii) Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad (“three couples”) in November 2012;<sup>137</sup>
- for contributing, under article 25(3)(d) of the Statute, to the commission of the crimes against: (i) Dédéou Maiga; (ii) [REDACTED] (P-0554); and (iii) Madou Traoré.<sup>138</sup>

49. The Prosecution requests that Al Hassan receive a sentence of 20 years for the crime against humanity of torture and a sentence of 20 years for the war crime of torture.<sup>139</sup>

<sup>128</sup> See e.g. [Article 74 Judgment](#), paras. 1559, 1564.

<sup>129</sup> [Article 74 Judgment](#), para. 1538.

<sup>130</sup> [Article 74 Judgment](#), para. 1332.

<sup>131</sup> Video [MLI-OTP-0012-1573](#), transcript [MLI-OTP-0069-1832](#), translation [MLI-OTP-0069-1926](#), p. 1928, l. 7.

<sup>132</sup> Video [MLI-OTP-0012-1573](#), transcript [MLI-OTP-0069-1832](#), translation [MLI-OTP-0069-1926](#), p. 1928, l. 20.

<sup>133</sup> [MLI-OTP-0069-3735](#), transcript [MLI-OTP-0078-4577](#), translation [MLI-OTP-0078-4648](#), p. 4650, l. 23-26.

<sup>134</sup> [Article 74 Judgment](#), p. 832.

<sup>135</sup> [Article 74 Judgment](#), para. 1586.

<sup>136</sup> [Article 74 Judgment](#), para. 1596.

<sup>137</sup> [Article 74 Judgment](#), para. 1602.

<sup>138</sup> [Article 74 Judgment](#), para. 1690.

<sup>139</sup> See fn. 5 above. See e.g. Ongwen, [Sentencing judgment](#), paras. 294, 343, sentencing him to 20 years (for torture including sexual violence); paras. 161, 196, 234, 269, to 14 years (torture in the context of attacks against IDP camps); para. 88: both sentences, after one third deduction for abduction as a young child.

### (iii) Gravity of the crime

50. Torture has been described as “a particularly heinous act”, and an “assault on the personal human dignity, security and mental well-being of the victims”.<sup>140</sup> The right not to be subjected to torture is recognised as *ius cogens* from which no derogation is permitted.<sup>141</sup> The gravity of the crime of torture is “very high”<sup>142</sup> and “among the most serious crimes in international criminal law”.<sup>143</sup> The high gravity of the crime of torture is further heightened by the specific circumstances of this case, as described below.

#### Nature of the behaviour, the means employed, the circumstances, and scale of the crimes

51. All the victims of the crimes of torture were subjected to a violent punishment for violations of the Groups’ rules.<sup>144</sup> The relevant incidents of torture occurred during the period of nearly eight months between June 2012 and January 2013.

52. In all the relevant incidents,<sup>145</sup> the victims were sentenced to corporal punishments by the Tribunal, which did not afford the essential guarantees of independence and impartiality.<sup>146</sup> Accordingly, these punishments were not “lawful” sanctions for the purpose of article 7(2)(e) of the Statute.<sup>147</sup> In the cases of P-0557 and P-0565, and the three couples, they were sentenced to the “*hadd*” punishments (prescribed penalties) of 100 lashes for the offence of extramarital sexual relationship (“adultery”),<sup>148</sup> and in the case of Dédéou Maiga, the “*hadd*” punishment of amputation of a hand for theft.<sup>149</sup> P-0554 and Madou Traoré were sentenced to 95 and 50 lashes, respectively, as a discretionary punishment of “*ta’zir*” because conditions for imposing the “*hadd*” punishment of 100 lashes for “adultery” were not satisfied.<sup>150</sup> Members of the Groups, in particular from the Police and the Security Battalion, participated in securing the location of these punishments, to prevent interruption of the execution of the sanction by members of the attending public who may have opposed it, and to visibly demonstrate the Groups force and authority in Timbuktu.<sup>151</sup>

<sup>140</sup> Ongwen, [Sentencing judgment](#), para. 157.

<sup>141</sup> Ongwen, [Sentencing judgment](#), para. 157. See also, Kosovo Specialist Chambers, Mustafa, [Trial Judgment](#), KSC-BC-2020-05/F00494/RED3/COR, para. 797.

<sup>142</sup> Ongwen, [Sentencing judgment](#), para. 157.

<sup>143</sup> See e.g. *Prosecutor v. Simic*, [Sentencing Judgment](#) (ICTY), para. 34; *Prosecutor v. Zelenovic*, [Sentencing Judgment](#) (ICTY), para. 36; *Prosecutor v. Semanza*, [Judgment and Sentencing](#) (ICTR), para. 564.

<sup>144</sup> [Article 74 Judgment](#), para. 1309.

<sup>145</sup> See [Article 74 Judgment](#), fns. 2333, 4134. Judge Akane considered that the floggings of the two men were *ta’zir* imposed directly by the Police without a Tribunal judgment.

<sup>146</sup> [Article 74 Judgment](#), para. 1305. Required by article 8(2)(c)(iv) of the Statute.

<sup>147</sup> [Article 74 Judgment](#), para. 1305.

<sup>148</sup> [Article 74 Judgment](#), paras. 779, 814-816, 817.

<sup>149</sup> [Article 74 Judgment](#), para. 822.

<sup>150</sup> [Article 74 Judgment](#), paras. 844-845.

<sup>151</sup> [Article 74 Judgment](#), paras. 763, 786-787, 818, 825-826, 847, 1594, 1600.

*Extent of the damage and impact of the crimes*

53. The victims of torture suffered long-lasting physical and mental harm and injuries.<sup>152</sup> They also experienced disruption in their personal relationships and family lives.

54. After P-0557 was flogged 100 times in public as a punishment for “adultery” in June 2012, he had marks all over his body. He still has scars on his shoulders, back and neck from the flogging and the traditional treatment he received following the flogging.<sup>153</sup> After the flogging, P-0565’s whole back and body hurt, with an inflammation and bruising on her back. She had to sleep on her chest.<sup>154</sup> P-0557 testified about the significant difficulties he experienced in his family and social relationships as a result of the flogging and resulting stigma.<sup>155</sup> After being flogged 50 times, P-0554 suffered from injuries and still has painful scars on her back and shoulders. P-0554 also has health issues, including those related to blood pressure.<sup>156</sup> The flogging of two men for consuming alcohol, caused them severe physical pain and suffering due to the “extremely high”<sup>157</sup> number of lashes. The Prosecution disputes that D-0808 is one of the two men depicted in the video,<sup>158</sup> or that his statement is relevant to the extent of harm suffered.<sup>159</sup> But D-0808 supports the accounts of other victims regarding the humiliation they felt during their flogging. He says he received 15 lashes, described the significant shame he felt as well as the marks of the whip and the pain he felt after the flogging.<sup>160</sup>

55. The floggings and amputation, executed in front of the population, had a profound impact on the population in Timbuktu. For example, P-0641 said that the flogging of P-0554 really disgusted everyone and “[r]eally broke his heart”.<sup>161</sup> Timbuktu became a “dead city” or a “ghost town”. Many people were afraid of going out from fear of being reprimanded or brutalised.<sup>162</sup>

*Al Hassan’s degree of participation and intent*

56. Al Hassan had a high degree of participation and intent in the commission of the crimes under Counts 1 and 3. This is demonstrated by his key role and tasks within the Police, described at paragraphs 15 to 23 above. Al Hassan knew that people “could not do anything” concerning the punishments, that

<sup>152</sup> With respect to Dédéou Maiga, see paras. 42-44 above.

<sup>153</sup> [Article 74 Judgment](#), para. 798.

<sup>154</sup> [Article 74 Judgment](#), para. 799.

<sup>155</sup> [Article 74 Judgment](#), para. 798.

<sup>156</sup> [Article 74 Judgment](#), para. 852. See also, P-0984: T-068, p. 73, l. 3-18. Her partner confirms her whole body was in pain.

<sup>157</sup> [Article 74 Judgment](#), para. 1310.

<sup>158</sup> [ICC-01/12-01/18-2619-Conf](#), para. 8. E.g. D-0808 photo: [MLI-D28-0007-0867](#), cf. Video: [MLI-OTP-0018-0693](#), 00:01:55:00 to 00:01:59:00, 00:02:48:00 to 00:03:41:00.

<sup>159</sup> Defence Request, ICC-01/12-01/18-2617-Conf, paras. 16, 21.

<sup>160</sup> [MLI-D28-0008-0006-R02](#), p. 4, paras. 19, 22.

<sup>161</sup> [Article 74 Judgment](#), para. 851.

<sup>162</sup> [Article 74 Judgment](#), para. 738. See e.g. P-0639: T-136, p. 23; V-0002: T-169, p. 89; video [MLI-OTP-0017-0027](#), at 00:01:59:00 to 00:02:27:30, transcript [MLI-OTP-0033-5228](#), translation [MLI-OTP-0033-5405](#). See also, P-0622’s statement, [MLI-OTP-0065-0558-R02](#), at 0563, para. 28; P-0565: T-051, p. 26; P-0547: T-152, p. 6.

“everybody was afraid of the word ‘jihadist’ or ‘terrorist’” and that “people would fear being punished”.<sup>163</sup>

57. Al Hassan’s degree of intent in relation to the crimes under Counts 1 and 3 is also shown by his contemporaneous video interviews. For instance, in the October 2012 video recording, Al Hassan publicly defended and endorsed the imposition of the rules based on Ansar Dine/AQIM’s strict interpretation of Sharia, including the application of corporal punishments (see paragraphs 21 to 23, 36 to 37 above).<sup>164</sup>

58. In relation to the specific incidents of torture under counts 1 and 3, Al Hassan’s high degree of participation and intent are shown, *inter alia*, by the following findings by the Chamber:

- **The two men:** Al Hassan had a notable role in the execution of the floggings against the two young men.<sup>165</sup> Al Hassan oversaw, with Abou Zhar, the execution of the punishment.<sup>166</sup> He gave the key to unlock the handcuffs chaining the two victims so that the punishment could be executed.<sup>167</sup> He personally flogged them, meting out at least 34 and 37 lashes respectively to each victim.<sup>168</sup> He clearly meant to engage in the conduct that inflicted severe pain and suffering on the victims, who showed visible signs of being in pain as they were being whipped;<sup>169</sup>
- **P-0565 and P-0557:** Al Hassan was present at the execution of the sentence of floggings against P-0565 and P-0557, wearing the vest of the Police; he was among the small group of Ansar Dine/AQIM members forming a circle around P-0565 during her flogging to ensure the security of the event and the implementation of the sanction, and was present at the event proximate to the time of P-0557’s flogging.<sup>170</sup> Al Hassan ensured the efficient and effective implementation of the sanction and also its publicity, by participating in the security for the event in his capacity as a key member of the Police;<sup>171</sup>
- **The three couples:** Al Hassan was present during the flogging of at least one of the female victims, among the small group of Ansar Dine/AQIM members forming a circle around her.<sup>172</sup> He drafted and signed a Police report in relation to two of the victims, which was received by the Tribunal before it sentenced them to flogging.<sup>173</sup> His role in ensuring the security of the flogging event facilitated the efficient and effective implementation of the sanction and also its publicity;<sup>174</sup>
- **Dédéou Maiga:** The Prosecution refers to paragraph 41 regarding Al Hassan’s degree of participation

<sup>163</sup> [Article 74 Judgment](#), para. 738, citing Al Hassan’s statement, [MLI-OTP-0051-1099](#), at 1102-1103.

<sup>164</sup> [MLI-OTP-0069-3712](#), transcript [MLI-OTP-0078-4567](#), translation [MLI-OTP-0078-4633](#), p. 4636, l. 53-66.

<sup>165</sup> [Article 74 Judgment](#), para. 1585.

<sup>166</sup> [Article 74 Judgment](#), paras. 763, 1585.

<sup>167</sup> [Article 74 Judgment](#), paras. 763, 1585.

<sup>168</sup> [Article 74 Judgment](#), paras. 764, 1586.

<sup>169</sup> [Article 74 Judgment](#), paras. 764, 1330.

<sup>170</sup> [Article 74 Judgment](#), paras. 787, 1593.

<sup>171</sup> [Article 74 Judgment](#), paras. 1593-1594.

<sup>172</sup> [Article 74 Judgment](#), paras. 818, 1598.

<sup>173</sup> [Article 74 Judgment](#), paras. 816, 1598 regarding Al-Husayn Bin Umar and Halimah Bint Muhammad.

<sup>174</sup> [Article 74 Judgment](#), para. 1600.

in and intent regarding this incident, in particular, his role in arresting Dédéou Maiga and publicly endorsing the amputation of his hand;

- **P-0554 and Madou Traoré:** Members of the Police were present at the flogging of P-0554 and Madou Traoré in January 2013 to secure the site.<sup>175</sup> Al Hassan contributed to the commission of the crimes under counts 1 and 3, including against P-0554 and Madou Traoré, through his conduct in carrying out his duties and responsibilities in the Police as described in paragraph 18 above and his contributions to Ansar Dine/AQIM's integrated system of punishment for violation of its rules and prohibitions.<sup>176</sup>

**(iv) Aggravating circumstances**

59. There are aggravating circumstances that must be considered for the sentence in relation to the crime of torture under counts 1 and 3, in particular as described below. Al Hassan knew and intended, would have known, or would have foreseen these aggravating circumstances.<sup>177</sup>

Multiple victims, including the particularly vulnerable and defenceless

60. The crimes under counts 1 and 3 were committed against 13 victims,<sup>178</sup> including particularly defenceless victims given their status as a detainee and, in some instances, their young age.<sup>179</sup> P-0565 was a child of only 14 years old at the time of her flogging in June 2012,<sup>180</sup> which increased her vulnerability.<sup>181</sup> [REDACTED] and [REDACTED] were also in their early 20s when they were subjected to the floggings.<sup>182</sup> In many cases, the victims had been detained by Ansar Dine/AQIM members before their flogging.<sup>183</sup> All the victims were brought to the site of their punishment, which was secured by members of the Groups so that the victims could not leave the site.<sup>184</sup>

Commission of the crime with particular cruelty

61. In some instances, the crime of torture was committed with particular cruelty. P-0557 was flogged with a rope usually used for beating camels.<sup>185</sup> Both P-0565 and P-0557 were flogged by four persons,

<sup>175</sup> [Article 74 Judgment](#), para. 847.

<sup>176</sup> [Article 74 Judgment](#), para. 1687. *See also* [Judge Akane's Opinion](#), para. 62, in which she based Al Hassan's contribution to these crimes on his role within the Police and the role of the Police in the charged incidents as well as its functions vis-à-vis the Tribunal.

<sup>177</sup> *See e.g.*, para. 29.

<sup>178</sup> Rule 145(2)(b)(iv).

<sup>179</sup> Rule 145(2)(b)(iii).

<sup>180</sup> [Article 74 Judgment](#), para. 799.

<sup>181</sup> *See e.g.* [Article 74 Judgment](#), para. 1419 in which the Chamber considered the young age of the victim of forced marriage to be a relevant factor in assessing their vulnerability and susceptibility to suffering.

<sup>182</sup> [REDACTED] was a young man of 23 years old at the time. *See* [REDACTED]. [REDACTED] was a young woman of 23 years old at the time. *See* [REDACTED].

<sup>183</sup> *See e.g.* [Article 74 Judgment](#), para. 1325. *See also* sentencing judgment, [ICC-01/04-02/06-2442](#), para. 82, in which the Chamber considered as an aggravating circumstance the fact that victims were particularly defenceless, such as "individuals who had been previously captured or detained".

<sup>184</sup> *See e.g.* [Article 74 Judgment](#), para. 1325.

<sup>185</sup> [Article 74 Judgment](#), para. 791.

including by Aboubacar Al Chinguetti in a very forceful manner.<sup>186</sup> P-0554 was visibly in significant pain during her flogging, writhing around and crying out and collapsing on the ground.<sup>187</sup> After her breasts became exposed, her breasts were covered with a jacket, and the flogging continued despite her visible agony and mental suffering.<sup>188</sup> The Prosecution refers to paragraph 48 above, regarding the particular cruelty with which the crime of torture was committed against Dédéou Maiga.

62. The public nature of the amputation and floggings was also particularly cruel. The victims were not flogged in private, but in public spaces including in front of their own communities. The public floggings and the amputation were executed in front of crowds of people, including children.<sup>189</sup> First, it was cruel for the victims, who in many instances were also filmed. Since P-0557 and P-0565's incident was the first public flogging in Timbuktu following the arrival of Ansar Dine/AQIM in April 2012, many people were watching, and it was filmed.<sup>190</sup> Likewise, many were present during the flogging of P-0554, whose flogging and the instant when her breasts were exposed, was filmed.<sup>191</sup> The floggings of the two men, flogged for drinking alcohol, by Al Hassan and others, was also particularly cruel, in that they were walked down the street in handcuffs and were flogged in front of a crowd of people and the flogging was filmed.<sup>192</sup> D-0808, who says he received 15 lashes, also described being flogged in front of a crowd.<sup>193</sup> Second, it was particularly cruel for those "incited" to watch. Youth and young children were amongst the crowds gathered to watch these gruesome, and humiliating, punishments.<sup>194</sup> This would have been highly traumatising to watch, particularly for children.

#### Discriminatory motives

63. The crimes of torture under counts 1 and 3 were committed by Ansar Dine/AQIM members, including Al Hassan, who had discriminatory motives towards the whole population, whom they perceived as "ignorant" and not "real Muslims".<sup>195</sup> In particular, when personally flogging the two men, Al Hassan intentionally targeted them on religious grounds because the consumption of alcohol was prohibited as part of the Groups' imposed rules.<sup>196</sup> This reflected the perpetrators' own understanding and subjective interpretation of Sharia.<sup>197</sup>

<sup>186</sup> [Article 74 Judgment](#), paras. 790, 791.

<sup>187</sup> [Article 74 Judgment](#), para. 851.

<sup>188</sup> [Article 74 Judgment](#), para. 851. See e.g. [MLI-OTP-0018-0402](#); video [MLI-OTP-0072-0240](#), transcript [MLI-OTP-0080-1440](#), translation [MLI-OTP-0080-1444](#).

<sup>189</sup> [Article 74 Judgment](#), paras. 659, 762 (fn. 2338), 824-825, 838, 848 (fn. 2754), 853 (fn. 2775), 1538. See also, e.g. Videos: [MLI-OTP-0009-1749](#).

<sup>190</sup> [Article 74 Judgment](#), paras. 786, 1594.

<sup>191</sup> [Article 74 Judgment](#), paras. 848, 851.

<sup>192</sup> [Article 74 Judgment](#), paras. 762, 1310.

<sup>193</sup> [MLI-D28-0008-0006-R02](#), p. 4, paras. 19, 22.

<sup>194</sup> See para. 48 above.

<sup>195</sup> See e.g. [Article 74 Judgment](#), paras. 1559, 1564. See also, paras. 10, 50 above.

<sup>196</sup> [Article 74 Judgment](#), paras. 686, 1334.

<sup>197</sup> [Article 74 Judgment](#), para. 1332.

*Zealous use of his role to embrace and further Ansar Dine/AQIM's objectives*

64. Al Hassan zealously supported these acts, as described at paragraphs 34 to 37.

**3. Other inhumane acts as a crime against humanity under article 7(1)(k) and cruel treatment as a war crime under article 8(2)(c)(i) (counts 2 and 4)**

65. Al Hassan was found guilty of the crime against humanity of other inhumane acts under article 7(1)(k) and the war crime of cruel treatment under article 8(2)(c)(i) of the Statute for contributing to their commission against an old man called Foma under article 25(3)(d) of the Statute.<sup>198</sup> The Prosecution recommends that Al Hassan receive a sentence of 8-9 years for the crime against humanity of other inhumane acts and a sentence of 8-9 years for the war crime of cruel treatment.<sup>199</sup>

**(v) Gravity of the crimes**

66. The crime against humanity of other inhumane acts is serious because it is of a similar character to other crimes against humanity, where the perpetrator intentionally causes great suffering, or serious injury to body or to mental or physical health.<sup>200</sup> Like the crime of torture, the war crime of cruel treatment is inherently grave because it violates the personal integrity of the victim. The Statute and the Elements of Crimes requires proof of “severe physical or mental pain or suffering” for cruel treatment, as well as torture.<sup>201</sup>

67. The gravity of these crimes is further exacerbated by the nature of the unlawful behaviour, means employed to execute the crime, circumstances, and extent of harm. The old man, Foma, was flogged by Aboubacar Al Chinguetti,<sup>202</sup> with ten lashes for smoking a cigarette. Foma was seen crying after the flogging, and he was unwell following the incident.<sup>203</sup> He was humiliated and shamed.<sup>204</sup>

68. Al Hassan, through his duties and responsibilities in the Police, contributed to the commission of the crimes against Foma.<sup>205</sup> Through his vital role in the Police, Al Hassan knew of and deliberately took part in the Groups’ control over the population of Timbuktu, including the severe punishments for violation of the Groups’ rules and prohibitions.<sup>206</sup> He knew about Abou Zeid’s instructions,<sup>207</sup> which listed “selling or using tobacco” among the violations punishable by *ta’zir*.<sup>208</sup> Aboubacar Al Chinguetti (the Whipper), who flogged Foma - was notorious for flogging people forcefully.<sup>209</sup> This would have

<sup>198</sup> [Article 74 Judgment](#), para. 1690, p. 834.

<sup>199</sup> See fn. 5 above. See e.g., *Prosecutor v. Milorad Krnojelac*, [Judgment](#), paras. 504, 534-536: 7.5 years (cruel treatment; other inhumane acts).

<sup>200</sup> See [ICC Elements of Crimes](#), article 7(1)(k).

<sup>201</sup> [Article 74 Judgment](#), para. 1149. See [ICC Elements of Crimes](#), article 8(2)(c)(i).

<sup>202</sup> [Article 74 Judgment](#), paras. 854, 1343, 1625.

<sup>203</sup> [Article 74 Judgment](#), para. 855.

<sup>204</sup> [Article 74 Judgment](#), para. 1343.

<sup>205</sup> [Article 74 Judgment](#), para. 1687.

<sup>206</sup> [Article 74 Judgment](#), para. 1688.

<sup>207</sup> [Article 74 Judgment](#), para. 666.

<sup>208</sup> Abou Zeid’s Instructions, [MLI-OTP-0001-7193](#), translation [MLI-OTP-0077-2366](#), p. 2367.

<sup>209</sup> See e.g. [REDACTED].

been known to Al Hassan, who saw others flogged by the Whipper, including P-0565 and P-0557.<sup>210</sup>

**(vi) Aggravating circumstances**

69. There are aggravating circumstances that must be considered for the sentence in relation to the crimes of other inhumane acts and cruel treatment under counts 2 and 4. Al Hassan knew and intended, would have known, or would have foreseen these aggravating circumstances.<sup>211</sup> In particular:

- Commission against a particularly defenceless victim: Foma was a thin, short, elderly man, increasing his vulnerability.<sup>212</sup> When he refused to be taken away by force, he fell to the ground;<sup>213</sup>
- Commission of the crimes with particular cruelty: Foma was publicly flogged in the middle of a market.<sup>214</sup> He was flogged forcefully.<sup>215</sup>
- Commission of the crimes with discriminatory motives: like the incidents under counts 1, 3 and 14, the crimes were committed by Aboubacar Al Chinguetti with discriminatory motives toward the population of Timbuktu as a whole, perceived as “ignorant” and not “real Muslims”;<sup>216</sup>
- Al Hassan’s zealous use of his role to embrace and further Ansar Dine/AQIM’s objectives: see paragraphs 34 to 37 above.

**4. Outrages upon personal dignity as a war crime under article 8(2)(c)(ii) (count 5)**

70. With respect to all the incidents included under counts 1-4 and 14 discussed above, Al Hassan was found guilty of the war crime of outrages upon personal dignity under article 8(2)(c)(ii) of the Statute, based on the same modes of liability found applicable to those incidents under counts 1-4 and 14.<sup>217</sup> The Prosecution recommends that Al Hassan receive a sentence of 15 years for the crime of outrages upon personal dignity.<sup>218</sup>

**(vii) Gravity of the crime**

71. The gravity of the war crime of outrages upon personal dignity is inherently high, because the value

<sup>210</sup> [Article 74 Judgment](#), paras. 787, 790-791. *See also*, [REDACTED], referring to [MLI-OTP-0018-0147](#) relating to the flogging of a member of Ansar Dine/AQIM, recognising the person flogging the victim as Aboubacar Al Chinguetti and the person reaching his hand out towards the elbow of the victim after the flogging as Al Hassan.

<sup>211</sup> *See above* para. 29.

<sup>212</sup> [Article 74 Judgment](#), para. 1343.

<sup>213</sup> [Article 74 Judgment](#), para. 854.

<sup>214</sup> [Article 74 Judgment](#), para. 1343.

<sup>215</sup> *See e.g.* [REDACTED].

<sup>216</sup> [Article 74 Judgment](#), para. 1565. *See also*, paras. 10, 50 above.

<sup>217</sup> [Article 74 Judgment](#), paras. 1586, 1596, 1602, 1690, p. 832-833.

<sup>218</sup> *See fn. 5 above. See e.g. Ongwen, Sentencing judgment*, paras. 88, 209-211, 324. Sentence: 14 years. One third deduction, for individual circumstance of abduction as a young child.

protected is human dignity.<sup>219</sup> The gravity of this crime is further heightened by the specific circumstances of this case described below.

72. In all the relevant incidents, victims were subjected to corporal punishments by members of the Groups for a violation of their rules.<sup>220</sup> Victims and others present testified about the degradation and humiliation associated with the floggings and amputation, which were executed violently.<sup>221</sup>

73. P-0565 and P-0557 additionally suffered from the degrading conditions of detention at the Police headquarters, and the indignity of having a marriage imposed on them the same day as the violent exhibition of their floggings, which also made them the object of public speculation about the circumstances surrounding their arrests and their marriage.<sup>222</sup> P-0554 endured the added humiliation of having her breasts exposed during her flogging,<sup>223</sup> which was filmed and distributed.<sup>224</sup> P-0554 also suffered from: (i) the degrading manner in which she was arrested, pushed and beaten such that her clothes and underclothes came open; and (ii) the degrading conditions in which she was detained in an extremely small, barred cell, which smelled dreadful, and without access to sanitary facilities or food.<sup>225</sup>

74. With respect to Al Hassan's degree of participation and intent in relation to this crime, the Prosecution refers to paragraphs 45, 60-62 and 72 regarding the crimes under counts 1-4 and 14. Al Hassan was fully aware of how humiliating and degrading the punishments were. He was present at many. Moreover, he said that the *hadd* punishments were enforced publicly and filmed to dissuade the population from committing crimes,<sup>226</sup> and acknowledged that a person who is publicly punished is a person whose "dignity has been humiliated".<sup>227</sup>

#### **(viii) Aggravating circumstances**

75. Given the overlap in the incidents, the same aggravating circumstances applicable to the crimes under counts 1-4 and 14 apply to the crime under count 5, as discussed in paragraphs 47-51, 64-68 and 73 above. Count 5 was committed against 14 victims, all of whom were rendered vulnerable and defenceless, in the face of armed members of the Groups.<sup>228</sup> Al Hassan knew and intended, would have known, or would have foreseen the multiplicity, vulnerability and defenceless of the victims.<sup>229</sup>

<sup>219</sup> Ongwen, [Sentencing judgment](#), para. 206. See [ICC Elements of Crimes](#), article 8(2)(c)(ii).

<sup>220</sup> [Article 74 Judgment](#), paras. 1383, 1397.

<sup>221</sup> [Article 74 Judgment](#), para. 1397. See, for example, [Article 74 Judgment](#), para. 786, describing how P-0557 felt "afraid and ashamed" when he saw the crowd.

<sup>222</sup> [Article 74 Judgment](#), paras. 1385, 1397.

<sup>223</sup> [Article 74 Judgment](#), paras. 1388, 1397.

<sup>224</sup> Video, [MLI-OTP-0072-0240](#); [REDACTED].

<sup>225</sup> [Article 74 Judgment](#), para. 1388, 1398.

<sup>226</sup> Al Hassan's statement, [MLI-OTP-0062-1257](#), p. 1265, l. 248-266.

<sup>227</sup> [Article 74 Judgment](#), para. 661, citing Al Hassan's statement, [MLI-OTP-0062-1257](#), p. 1266.

<sup>228</sup> [Article 74 Judgment](#), paras. 1406, 1690-1692.

<sup>229</sup> See above para. 29.

### C. Passing of Sentences Without Due Process (Count 6)

76. Al Hassan was found guilty of the war crime of passing of sentences without a previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable under article 8(2)(c)(iv) of the Statute for contributing to its commission against a total of 48 individuals under article 25(3)(d) of the Statute.<sup>230</sup> The Prosecution recommends that Al Hassan receive a sentence of 20 years for this crime.<sup>231</sup>

#### (i) Gravity of the offences

77. The war crime of passing of sentence without due process is an inherently serious crime. It is a serious violation of article 3 common to the four Geneva Conventions of 12 August 1949,<sup>232</sup> which has been recognised as a “minimum yardstick”, binding in all armed conflicts, and as a reflection of “elementary considerations of humanity”.<sup>233</sup> The gravity of this crime is further heightened by the following factors.

#### Nature of the offences, including the manner and means employed, and scale of the crimes

78. This offence was committed in two ways: (i) sentences that were imposed, without any previous judgment pronounced by a court; and, (ii) sentences passed pursuant to a judgment pronounced by a court that was not regularly constituted, *i.e.* a court lacking the essential guarantees of independence and impartiality.<sup>234</sup>

#### *a. Sentences without judgment*

79. There were incidents where victims were punished, which were grave in that there was no judgment at all.<sup>235</sup> Victims, notably Foma, were sentenced and punished without a previous judgment pronounced by a court.<sup>236</sup>

80. Ansar Dine/AQIM members, especially members of the Police and *Hesbah*, including Al Hassan, punished members of the civilian population without any judicial process for some violations of their rules, as discretionary *ta'zir* punishments.<sup>237</sup> How *ta'zir* was applied depended on the assessment of the police member dealing with the problem.<sup>238</sup> The Police were prominent in imposing *ta'zir* in the streets,<sup>239</sup> and occasionally in the Police headquarters in Al Hassan's presence.<sup>240</sup>

<sup>230</sup> [Article 74 Judgment](#), paras. 1704-1706, and Annex 3 para. 12.

<sup>231</sup> See fn. 5 above. See *e.g.* *Prosecutor v. Kaing Guek Eav*, [Judgment](#), paras. 461-463, 467-468, 567. Sentence (Passing of sentences): 35 years.

<sup>232</sup> See [ICC Elements of Crimes](#), article 8(2)(c)(iv).

<sup>233</sup> See *e.g.* International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua case*, Merits, [Judgment](#), 1986, para. 218.

<sup>234</sup> [Article 74 Judgment](#), para. 1475, l. 1157, 1160-1178.

<sup>235</sup> [Article 74 Judgment](#), para. 1477.

<sup>236</sup> [Article 74 Judgment](#), paras. 1693-1694, 1702, 1704, 853-855, fn. 5166. *Cf.* para. 762.

<sup>237</sup> [Article 74 Judgment](#), paras. 584, 663-669, 1079, 1477-1493.

<sup>238</sup> [Article 74 Judgment](#), paras. 1481-1486.

<sup>239</sup> [Article 74 Judgment](#), paras. 584-587, 1294, 1482 and 707-709.

<sup>240</sup> [Article 74 Judgment](#), paras. 584, 665-669, 1079.

***b. Sentences passed by an irregularly constituted court***

81. Sentences were delivered imposing sanctions,<sup>241</sup> by the Tribunal, which is a grave crime, because it was not a regularly constituted court. It was neither independent,<sup>242</sup> nor impartial.<sup>243</sup> The Groups ensured that the Tribunal was “serving Ansar Dine/AQIM’s agenda”,<sup>244</sup> to impose the Groups’ own regime or system upon the population,<sup>245</sup> and their ideology.<sup>246</sup> Local judges were not selected if they disagreed with the Groups’ methods. They needed to be loyal to the Groups.<sup>247</sup> The Groups’ own judges had the decision-making power and control.<sup>248</sup>

82. The lack of judicial guarantees – impacting on victims – is demonstrated, amongst other things, by the following.

- There were no lawyers for suspects arrested/detained, or appearing before the Tribunal; suspects were unable to express themselves, and without interruption; suspects were unable to refuse to answer questions;<sup>249</sup> judges attended court with weapons while hearing cases,<sup>250</sup> and with Ansar Dine/AQIM’s flag displayed.<sup>251</sup>
- The Tribunal’s own “investigative process” could be quick, weak, primitive, and very shaky.<sup>252</sup> Focus was on “confessions”.<sup>253</sup> Witnesses in principle could be called, but could take as little as five minutes.<sup>254</sup> Victims could be sentenced to corporal punishment,<sup>255</sup> based on a confession elicited through torture by Police,<sup>256</sup> based solely on a Police report, simply because they responded “hesitantly or spoke in unconvincing language”,<sup>257</sup> or even where there was no other witness or confession.<sup>258</sup>
- Sometimes, judgements were rendered the same day as the hearing, and in some cases, the same

<sup>241</sup> [Article 74 Judgment](#), paras. 628-650, 1495-1497, 1696.

<sup>242</sup> [Article 74 Judgment](#), paras. 1501-1515.

<sup>243</sup> [Article 74 Judgment](#), paras. 1513-1515.

<sup>244</sup> [Article 74 Judgment](#), paras. 615, 1506. *See also*, para. 1501-1515.

<sup>245</sup> [Article 74 Judgment](#), para. 596.

<sup>246</sup> [Article 74 Judgment](#), paras. 658, 1501-1507.

<sup>247</sup> [Article 74 Judgment](#), para. 607.

<sup>248</sup> [Article 74 Judgment](#), paras. 642, 645-646, 1501-1504. Radwan, Koutaïba, and Abdallah Al Chinguetti. Judges would consult Abou Zeid before issuing judgments.

<sup>249</sup> [Article 74 Judgment](#), paras. 636-637.

<sup>250</sup> [Article 74 Judgment](#), para. 626.

<sup>251</sup> [Article 74 Judgment](#), para. 438 and fn. 1105. [REDACTED]; *See also*, Videos, [MLI-OTP-0018-0102](#), [MLI-OTP-0009-1749](#).

<sup>252</sup> [Article 74 Judgment](#), para. 627.

<sup>253</sup> [Article 74 Judgment](#), para. 632.

<sup>254</sup> [Article 74 Judgment](#), paras. 633, 843.

<sup>255</sup> [Article 74 Judgment](#), para. 635.

<sup>256</sup> [Article 74 Judgment](#), paras. 632, 629.

<sup>257</sup> [Article 74 Judgment](#), paras. 630-631, 633.

<sup>258</sup> [Article 74 Judgment](#), para. 635.

day as the Police report.<sup>259</sup> There was no possibility of appeal.<sup>260</sup> Sentences were generally carried out within one or two days after sentence was passed.<sup>261</sup>

*Extent of the damage and impact of the crimes*

83. The Tribunal condemned and punished suspects even when it accepted that they were unaware of the criminality of their acts under the new rules imposed by the Groups.<sup>262</sup> Before 2012, the *qadis* were not allowed to work on criminal matters,<sup>263</sup> so these punishments were not provided by law.

84. Some instances were particularly grave: such as where Al Hassan's reports (including those based on interrogations tainted by torture), were used by the Tribunal to convict and sentence defendants to severe corporal punishments. For instance, in one incident based on a Police report written and signed by Al Hassan<sup>264</sup> that explicitly mentions use of torture during the interrogation,<sup>265</sup> the Tribunal convicted and sentenced the defendant to flogging. He was also detained for two months after the judgment.<sup>266</sup>

85. Sometimes judgements unduly affected the defendant's family. For example, the family could be required to pay a debt or fine:<sup>267</sup> where a person was imprisoned for failing to pay a debt quickly,<sup>268</sup> or a fine was to be paid,<sup>269</sup> or until they or their family repaid the debt.<sup>270</sup>

*Al Hassan's degree of participation and intent*

86. Al Hassan had a high degree of participation in and intent for these crimes. Al Hassan made contributions to the entire system of punishing violations of the rules imposed by the Groups, and in particular to the operations of the Police and the Tribunal. This included his key role in the work of the Police, and with the Tribunal, as described at paragraphs 17 to 18 and 23 above, which was indispensable to the Tribunal's.<sup>271</sup>

87. His high degree of participation is also seen in cases in which he was directly involved. For instance, the two men he personally flogged.<sup>272</sup> Al Hassan also investigated, wrote and signed police reports and referred cases to the Tribunal, which resulted in:

- *Ta'zir* corporal punishments. For instance:

<sup>259</sup> [Article 74 Judgment](#), para. 628.

<sup>260</sup> [Article 74 Judgment](#), para. 647.

<sup>261</sup> [Article 74 Judgment](#), para. 649.

<sup>262</sup> [Article 74 Judgment](#), para. 603.

[REDACTED]; Judgment, [MLI-OTP-0053-0180](#), translation [MLI-OTP-0077-2414](#).

<sup>263</sup> [Article 74 Judgment](#), paras. 422 and 602.

<sup>264</sup> [Article 74 Judgment](#), para. 343.

<sup>265</sup> [Article 74 Judgment](#), paras. 765-767.

<sup>266</sup> [Article 74 Judgment](#), paras. 767-768.

<sup>267</sup> [Closing Brief](#), para. 313. *E.g.* [REDACTED]; Judgments: [MLI-OTP-0068-4725](#), translation [MLI-OTP-0069-3202](#), [MLI-OTP-0068-4739](#), translation [MLI-OTP-0069-3222](#), [MLI-OTP-0068-4786](#), translation [MLI-OTP-0069-3227](#).

<sup>268</sup> [Article 74 Judgment](#), para. 1013-1014.

<sup>269</sup> [Article 74 Judgment](#), para. 1075, fn. 3693.

<sup>270</sup> [Article 74 Judgment](#), fn. 3394.

<sup>271</sup> [Article 74 Judgment](#), para. 1672; Section III.C.4(b)(v). [Judge Akane's Opinion](#), paras. 61-62.

<sup>272</sup> [Article 74 Judgment](#), para. 1586.

- In *El-Khamis Bin-el-Sabt*, the victim was sentenced the same day of the report to 10 lashes as a *ta'zir*, and dismissed from his job.<sup>273</sup>
- In *Moussa Ben Mohamed el-Joumaa, Abdou, Ali al-Jaw and Adulahi* (Case 43/1433-2012), the victims, who were children, were arrested, judged the same day, and sentenced to *ta'zir* floggings – with 40 lashes for the oldest adolescent, and 20 lashes each for the other children.<sup>274</sup>
- *Ta'zir imprisonments*. For instance:
  - In *Al-Khayr Bin-Sidi* (Case 23/1433-2012), the victim who was accused of possessing an amulet and other items deemed polytheistic, was sentenced to imprisonment as a *ta'zir*.<sup>275</sup>
  - In *Muhammad Bin Musa* (Case 25/1433-2012), the victim was arrested for possessing a bag suspected to contain papers relating to magic.<sup>276</sup> The defendant was brought to the Police headquarters before being transferred to the Tribunal.<sup>277</sup> Two days later the Tribunal sentenced him to three days imprisonment as a *ta'zir*, and required him to repent and recite the *Shahadah* (noting that he was thus spared the death penalty).<sup>278</sup>
  - In *Muhammad Walad, Aghli Asudh and Arjili Bin Aman* (Case 55/1433-2012), the victims were accused of tobacco smuggling/theft and ordered to destroy the tobacco. It was noted they had been imprisoned for one week and it was decided to release them with the pledge they would not commit the act again.<sup>279</sup>
- *Ta'zir fines* (including where victims were first tortured). For instance:
  - In *Yahya Bin-Muhammad, Ousmane and another person* (Case 67/1434-2013), the suspect, accused of burglary, was “made to confess through torture”. The Tribunal decided not to have him amputated because of his “consistent denial”, and the fact “he was tortured and the lack of witnesses against him”. He was nevertheless convicted and sentenced to a fine “in lieu of amputation”.<sup>280</sup>
  - In *Abdelkarim Ascofare* (Case 45/1433-2012), a man found smoking in the street was imprisoned to extract information about the tobacco trader (Abdelkarim Ascofare), who was

<sup>273</sup> [Article 74 Judgment](#), paras. 997-998. P-0398: [MLI-OTP-0060-1511](#), pp. 1512-1519. Report, [MLI-OTP-0001-7527](#), translation [MLI-OTP-0052-0089](#), [MLI-OTP-0001-7528](#), translation [MLI-OTP-0077-2795](#).

<sup>274</sup> [Article 74 Judgment](#), paras. 985-986.

<sup>275</sup> [Article 74 Judgment](#), paras. 983-984.

<sup>276</sup> [Article 74 Judgment](#), paras. 991-992.

<sup>277</sup> [Closing Brief](#), para. 341. P-0398: [MLI-OTP-0060-1605](#), pp. 1607-1608, l. 65-83. Referral, [MLI-OTP-0001-7561](#) to the left of the image, translation [MLI-OTP-0077-2806](#). See also, [Article 74 Judgment](#), paras. 991-992 and fns. 3326-3327.

<sup>278</sup> [Article 74 Judgment](#), paras. 991-992.

<sup>279</sup> [Article 74 Judgment](#) paras. 993-994.

<sup>280</sup> [Article 74 Judgment](#) paras. 995-996. P-0398: [MLI-OTP-0060-1484](#), pp. 1507-1510, l. 768-856.

then arrested and detained, before being sent to the Tribunal. The victim vendor was sentenced to a fine as a *ta'zir* and ordered to pay the fine at the Police.<sup>281</sup>

88. Al Hassan had a high degree of intent. He contributed to these crimes of unlawful passing of sentences, in full knowledge of the impact on his own people in Timbuktu. Al Hassan had lived and been educated in Timbuktu, so he knew the Malian governmental entities existing in Timbuktu, and that secular Malian law applied, before the Groups' arrival.<sup>282</sup>

89. Al Hassan specifically knew that:

- there were punishments for violating the Groups' rules, including *hadd* and *ta'zir*;<sup>283</sup>
- the punishments were new for the Timbuktu population, including himself, and people feared them but were powerless to do anything;<sup>284</sup>
- sentences, and punishments were meted out, with support of the Police.<sup>285</sup> For example, he acknowledged that 10-20 lashes given as *ta'zir* occurred "*tout le temps à la police*", and that such floggings were done in front of Police leaders and members;<sup>286</sup>
- judicial procedures did not include safeguards, e.g. judges relied heavily on Police reports, and merely questioned the accused and witnesses to assess if the report was accurate;<sup>287</sup>
- there was no opportunity for parties to appeal;<sup>288</sup>
- torture was used to extract confessions during police investigations;<sup>289</sup> and, which could be authorised by the Tribunal;<sup>290</sup>
- judges used such confessions in passing sentences;<sup>291</sup> and
- the Tribunal was not independent and impartial.<sup>292</sup>

90. Al Hassan intended and supported these crimes.<sup>293</sup> He supported the aims of the Groups;<sup>294</sup> and

<sup>281</sup> [Article 74 Judgment](#) paras. 987-988. P-0398: [MLI-OTP-0060-1453](#), pp. 1471-1473, l. 574-646, [MLI-OTP-0062-0988](#), pp. 0996-0998, l. 241-328, pp. 0996-1000, l. 241-379.

<sup>282</sup> [Article 74 Judgment](#), paras. 6-7 and 603. [Closing Brief](#), para. 364. P-0398: [MLI-OTP-0051-1099](#), pp. 1113-1114, l. 473-482, [MLI-OTP-0051-1257](#), p. 1280, l. 756-757.

<sup>283</sup> [Article 74 Judgment](#), paras. 657, 670-671. Especially fn. 1985.

<sup>284</sup> [Article 74 Judgment](#), paras. 603, 738, 1541, 1715.

<sup>285</sup> [Article 74 Judgment](#), paras. 586, 763-764, 787, 818, 1078, and fn. 3715. [Closing Brief](#), paras. 372, 381.

<sup>286</sup> [Article 74 Judgment](#), para. 667, fns. 1978-1980; para. 662, fn. 1959. P-0398: [MLI-OTP-0060-1511](#), p. 1531, l. 659-668.

<sup>287</sup> [Article 74 Judgment](#), paras. 630-631 and 633.

<sup>288</sup> [Article 74 Judgment](#), para. 647.

<sup>289</sup> See e.g. [Article 74 Judgment](#), para. 767 and fn. 2359.

<sup>290</sup> [Article 74 Judgment](#), para. 582, fns. 1648-1649. P-0398: [MLI-OTP-0060-1662](#), p. 1670-1680, l. 267-597, [MLI-OTP-0062-1122](#), pp. 1138-1142, l. 513-669 [MLI-OTP-0062-1143](#), pp. 1148-1155, l. 168-402. [REDACTED]; Judgment, [MLI-OTP-0055-0229](#), translation [MLI-OTP-0054-0331](#).

<sup>291</sup> [Article 74 Judgment](#), paras. 632, 637 and 629.

<sup>292</sup> [Article 74 Judgment](#), paras. 646, 1612 and 1501-1515.

<sup>293</sup> [Article 74 Judgment](#), para. 1080.

<sup>294</sup> [Article 74 Judgment](#), paras. 1080-1093.

supported and enthusiastically participated in these Ansar Dine/AQIM activities.<sup>295</sup> He agreed with the Ansar Dine/AQIM's views on repressing behaviour inconsistent with their ideology, and shared their policy to implement repressive rules.<sup>296</sup> He praised the Groups' policy in interviews, endorsing the new restrictions imposed on the civilian population of Timbuktu.<sup>297</sup>

**(ii) Aggravating circumstances**

91. Al Hassan knew and intended, would have known, or would have foreseen these aggravating circumstances, described below.<sup>298</sup>

Multiple victims including the particularly vulnerable and defenceless

92. There were many victims of the unlawful passing of sentences. At least 54 judgments were issued by the Tribunal, as well as discretionary punishments meted out without judgment including by the Police.<sup>299</sup>

93. In terms of lack of judicial guarantees, even children did not receive legal assistance, some of whom the Tribunal sentenced to severe penalties such as flogging and fines.<sup>300</sup> For instance, in the case of Moussa Ben Mohamed el-Joumaa, Abdou, Ali al-Jaw and Adulahi (Case 43/1433-2012), a group of children were sentenced to *ta'zir* punishment of flogging for alleged theft, based on the police report and referral of Al Hassan.<sup>301</sup>

Commission of the crimes with particular cruelty

94. The sentences included particularly cruel decisions. As described at paragraphs 33, 48, 67, and 74, the public nature of the floggings and amputation were inherently cruel. The crowds included children.<sup>302</sup> Additionally, there were arbitrary sentences designed to humiliate their victims. For instance, the Tribunal ordered that a person's head be shaved and covered with tar.<sup>303</sup> Others were sentenced to walk down the street with allegedly stolen items to humiliate them.<sup>304</sup>

Discriminatory Motive

95. These unlawful sentences were passed by the Tribunal, and other institutions including the Police, in furtherance of their aim of imposing on the whole population, their own ideology and religious beliefs, and views of women. For instance, this is clear from Houka Houka's speech stating, that the Judicial Council was just one body established by Ansar Dine; to meet the common goal; and, that Ansar Dine as

<sup>295</sup> [Article 74 Judgment](#), paras. 1080-1084.

<sup>296</sup> [Article 74 Judgment](#), paras. 1080-1084. *See e.g.* fn. 3732.

<sup>297</sup> [Article 74 Judgment](#), paras. 1080-1083. *See above* paras. 21 to 22, 34 to 37.

<sup>298</sup> *See above* para. 29.

<sup>299</sup> [Closing Brief](#), para. 287; [Annex 1 to the closing Brief](#), [Article 74 Judgment](#), paras. 628-650, 1495, 1696, 1477, 1693-1694, 1702, 1704, 853-855.

<sup>300</sup> [Article 74 Judgment](#), paras. 985-986; 1017. *See also*, paras. 83-87 above.

<sup>301</sup> [Article 74 Judgment](#), paras. 985-986.

<sup>302</sup> *See* para. 48 and fn. 125 above.

<sup>303</sup> [Article 74 Judgment](#), paras. 635, 1026.

<sup>304</sup> [Article 74 Judgment](#), paras. 635, 1028-1029.

the “ruling authority [...] is the force that implements the tenets of the Sharia”.<sup>305</sup> Abou Zeid’s written instructions dated 15 August 2012 continued to authorise imposition of *ta’zir* by the Police and the Hesbah (albeit with some restrictions), including against women. The instructions demonstrate the discriminatory aims of imposing sentences and punishments without prior judgment.<sup>306</sup> Al Hassan shared these discriminatory aims.<sup>307</sup>

*Zealous use of his role to embrace and further Ansar Dine/AQIM’s objectives*

96. Al Hassan zealously exercised his position of power as a senior leader with the Police to propagate the Groups’ ideology, and impose their power and control, in his role in conduct of Police investigations (that included use of torture), preparation of reports and referral of cases to the Tribunal, which relied on them for their decisions and sentences (that entailed unlawful passing of sentences).<sup>308</sup>

97. In one report that Al Hassan wrote and signed, the report recommended that the Tribunal be harsh with the debtor.<sup>309</sup>

98. Al Hassan was zealous in his interrogations to extract “confessions”, used for sentencing purposes. For instance, on one occasion, Mr Al Hassan used threats during his interrogation of a suspect, by getting out a knife, telling the suspect to put his hand on the table, and threatening to cut off the man’s hand if he did not tell the truth. Ultimately the individual was able to clear his name such that the threat was never implemented.<sup>310</sup>

### III. POTENTIALLY MITIGATING CIRCUMSTANCES

99. There are no mitigating circumstances or factors, warranting a reduction in sentence. Not every individual circumstance amounts to a mitigating circumstance;<sup>311</sup> and not all mitigating circumstances warrant a reduction of sentence.<sup>312</sup>

100. Contrary to Defence arguments, Al Hassan’s family situation, including the death of his daughter and sickness of his son during his detention, are not exceptional circumstances amounting to mitigating circumstances. Similar arguments were rejected in *Bemba*.<sup>313</sup> Likewise, restrictions on contacts with his family and others, including during the COVID-19 pandemic (maintained partly due to his own violation

<sup>305</sup> [Closing Brief](#), para. 375. See also, [MLI-OTP-0020-0117](#), translation [MLI-OTP-0078-9744](#), p. 9749. [Article 74 Judgment](#), paras. 1502-1505 and 737-741.

<sup>306</sup> [Article 74 Judgment](#), paras. 666-667, 676, 689, 696, 752-760 and 1483. Para. 52 and 68 above.

<sup>307</sup> [Article 74 Judgment](#), paras. 1688, 1731. 1080-1084, 757-760, 665, and fns. 3724-3727. See e.g. video, [MLI-OTP-0069-3712](#), transcript [MLI-OTP-0078-4567](#), translation [MLI-OTP-0078-4633](#), pp. 4636-4637. Although as an aggravating circumstance of the crime it is not necessary to prove he shared the discriminatory aims.

<sup>308</sup> See e.g. paras. 86-90, and 34-37 above.

<sup>309</sup> [Article 74 Judgment](#), fn. 3696.

<sup>310</sup> [Article 74 Judgment](#), para. 1073.

<sup>311</sup> [ICC-01/12-01/18-2621-Conf-Corr](#), para. 14; e.g. [ICC-01-04-02/06-2667-Red](#), para. 174.

<sup>312</sup> [ICC-01/12-01/18-2621-Conf-Corr](#), para. 14, fn. 9; [ICC-01/12-01/18-2630-Conf](#), para. 58.

<sup>313</sup> [ICC-01/05-01/08-3399](#), para. 77-78; [ICC-01/12-01/18-2630-Conf](#), paras. 57-60.

of restrictions); and, any alleged distress arising from COVID-19 related restrictions, are not mitigating.<sup>314</sup>

101. Al Hassan's alleged mental state during his OTP interviews and/or period of ICC detention, and his alleged mental state due to pre-ICC detention, do not warrant a reduction in sentence. The Defence allegations about his mental state are based largely on alleged pre-ICC torture/incommunicado detention and related trauma. This is unrelated to the ICC proceedings, and post-dates the commission of the crimes for which he was convicted. It therefore cannot be considered in mitigation.<sup>315</sup> As the Chamber recently stated, his alleged mental state is not an extreme or exceptional circumstance warranting mitigation, noting among other things the report of the Panel of Experts relevant to his mental health.<sup>316</sup>

102. Many of the assertions related to his alleged mental state are based on Al Hassan's own uncorroborated claims. As he has refused to testify, his statement, which contain these claims, is treated as unsworn and not as evidence.<sup>317</sup>

103. Al Hassan has not shown any genuine remorse,<sup>318</sup> or genuine cooperation,<sup>319</sup> warranting a reduction of his sentence. Any needs for Al Hassan as a convicted person to be rehabilitated should not be given undue weight in mitigation.<sup>320</sup> No time in reduction should be granted, for his prior period in detention in Mali, as it was unrelated to ICC proceedings.<sup>321</sup> Neither Al Hassan nor anybody from Timbuktu can purport to speak on behalf of the victims. In any event, any "forgiveness" that has been purportedly expressed by Defence witnesses does not constitute a request to reduce his sentence and cannot amount to mitigation.<sup>322</sup> His so-called help provided to others was highly selective, and limited to those he knew or who had connections to him.<sup>323</sup> Moreover, even where there are mitigating circumstances, any assessment must be balanced against, and any sentence be proportionate to, the gravity of the crimes and degree of the convicted person's culpability.<sup>324</sup>

<sup>314</sup> [ICC-01/12-01/18-2639](#), paras. 18-20; [ICC-01/12-01/18-2621-Conf-Corr](#), paras. 6-9, 15-22, 25-27; [ICC-01/12-01/18-2630-Conf](#), paras. 47-56; [ICC-01/12-01/18-2636-Conf](#), paras. 45-52.

<sup>315</sup> [ICC-01/12-01/18-2630-Conf](#), paras. 31-35; [ICC-01/12-01/18-2636-Conf](#), paras. 33-39. Al Hassan's arrest/detention by French forces in April 2017, of which it learnt in May 2017, was unrelated to the ICC arrest warrant, dated 2018. Neither Malian or French authorities acted at the OTP's behest. See [ICC-01/12-01/18-1009-Red](#), para. 117.

<sup>316</sup> [ICC-01/12-01/18-2639](#), paras. 18-20; [ICC-01/12-01/18-2630-Conf](#), paras. 31-35, 37-45; [ICC-01/12-01/18-2636-Conf](#), paras. 11-32.

<sup>317</sup> [ICC-01/12-01/18-2633](#); [ICC-01/12-01/18-2630-Conf](#), paras. 2, 18-26, 74-78; [ICC-01/12-01/18-2636-Conf](#), paras. 62-65; [ICC-01/12-01/18-2637-Conf](#), para. 16.

<sup>318</sup> [ICC-01/12-01/18-2630-Conf](#), paras. 61-67; [ICC-01/12-01/18-2624-Conf](#), paras. 4, 26-30.

<sup>319</sup> [ICC-01/12-01/18-2630-Conf](#), paras. 68-69.

<sup>320</sup> [ICC-01/12-01/18-2630-Conf](#), paras. 34, 46.

<sup>321</sup> [ICC-01/12-01/18-2630-Conf](#), paras. 70-73. See also, fn. 315 above.

<sup>322</sup> [ICC-01/12-01/18-2624-Conf](#), paras. 11-18. E.g. [Ongwen Sentencing Judgment](#), para. 14.

<sup>323</sup> [Article 74 Judgment](#), para. 1070. Cf. [Ongwen Sentencing Judgment](#), paras. 126-130.

<sup>324</sup> [ICC-01/12-01/18-2636-Conf](#), paras. 73-76; [ICC-01/12-01/18-2630-Conf](#), para. 46.

#### IV. CONCLUSION AND RECOMMENDED SENTENCES

104. For all of the above reasons, and bearing in mind article 78(3)'s requirement that the Chamber pronounce a sentence "for each crime" as well as a joint sentence specifying the total period of imprisonment, the Prosecution recommends that Al Hassan be sentenced on the various crimes of conviction as follows:

| Count | Crime(s)                             | Recommended Sentence (Years) |
|-------|--------------------------------------|------------------------------|
| 1     | CAH of Torture                       | 20                           |
| 2     | CAH of Other Inhumane Acts           | 8-9                          |
| 3     | WC of Torture                        | 20                           |
| 4     | WC of Cruel Treatment                | 8-9                          |
| 5     | WC of Outrages Upon Personal Dignity | 20                           |
| 6     | WC of Passing of Sentences           | 20                           |
| 13    | CAH of Persecution                   | 22                           |
| 14    | WC of Mutilation                     | 15                           |

105. The Prosecution recommends a total joint sentence of not less than 22 years of imprisonment. The crimes committed by Al Hassan were inherently grave. A whole population – children, elderly and women included – was ruthlessly persecuted, terrorised, paralysed by fear, and subjected to grievous brutality, much of the devastating harms, and literal scars of which have endured till today. Al Hassan was no mere unwilling bystander – he was a zealous perpetrator – with a high degree of participation in and intent to commit the crimes.

106. The recommended joint sentence would appropriately condemn Al Hassan's crimes and recognise the suffering of his victims, while offering him a realistic chance of one day regaining his liberty and reintegrating into, and contributing positively to, his family and his community in Mali.




---

**Karim A.A. Khan KC, Prosecutor**

Dated this 10<sup>th</sup> day of December 2024  
At The Hague, the Netherlands.