

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

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

Date: **17 July 2025**

TRIAL CHAMBER X

Before:

**Judge Kimberly Prost, Presiding Judge
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 “Defence Response to Observations on Reparations”,
ICC-01/12-01/18-2741, 16 July 2025**

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

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

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☒ **Counsel for the Defence**

Al Hassan Defence Team

☒ **Legal Representatives of the Victims**
V43

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants**
(Participation/Reparation)

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☐ **Victims Participation and Reparations Section**

☐ **Other**

I. Introduction

1. In line with the deadline established by the Trial Chamber, the Defence for Mr Al Hassan hereby submits its collective response to the reparations submissions introduced by the Legal Representatives for Victims (“LRVs”), Registry (“VPRS”), Trust Fund for Victims (“TFV”), Prosecution (“OTP”), and the three *amici curiae*.¹
2. The Defence observes that there is a high degree of agreement between the Defence, LRV, OTP and TFV on core issues, including that:
 - The community of Timbuktu (“the Community”) suffered harm in connection with persecution and that such harm can be presumed;
 - The Community extends to persons who were displaced from Timbuktu;
 - The notion of harm should be construed holistically taking account intersectional forms of harm and the experiences of specific vulnerable groups, such as women, children and aged persons, and particular tribes such as Black Tamasheqs/Arabs, who were, and in some cases continue to be, used as slaves, and use affirmative action where appropriate;
 - Reparations should address historical and systemic injustices and not replicate discriminatory practices; and
 - The modalities should respect the *do no harm* principle and avoid any stigmatisation.
3. The Defence further clarifies that it does not oppose the following proposals:
 - The payment of individual financial reparations to victims of counts 1-6, and 14 (as requested by the LRVs); and
 - The extension of the definition of the Community to children subsequently born of community members and recognition of transgenerational harm, consistent with the overarching requirement of ensuring prompt and efficient processes.
4. While the Defence is generally in agreement with the TFV observations, the Trial Chamber should be cautious as concerns *how* the Chamber uses the Sensemaker results collated by the TFV as the samples do not appear to be fully reflective of the different ethnic groups that were present in 2012 and the survey results may conflate the Islamic Police with the *Hesbah*.

¹ [ICC-01/12-01/18-2666](#), para. 11. The Response has been filed confidentially due to the fact that it cites confidential evidence and information concerning victims. The Defence will prepare and file a public redacted version forthwith.

5. As concerns the observations of the Registry (VPRS), in light of the position taken in relation to an indirect victim (a/65005/25) referenced at paragraph 17 of their observations,² the Defence provide further information concerning naming practices within historically discriminated communities. As concerns evidential presumptions proposed by the Registry concerning residence, the Defence underscores the importance of not discriminating against communities that do not have fixed addresses due to poverty or their nomadic nature.
6. While there is also a similar level of convergence as concerns the overall approach to reparations advocated by the Defence and the different *amici curiae*, the Defence expresses concern that some amici submissions are predicated on inaccurate submissions concerning the scope and content of Mr Al Hassan's convictions. These arguments should be disregarded in full. The issue of Mr Al Hassan's potential release falls entirely outside the scope of this proceeding. Further ventilation of such positions during the public reparations hearing would be prejudicial to Mr Al Hassan's rights. The proposition advanced by Queens University that indigent convicted persons should be *required* to contribute financial sums is also unduly punitive and contrary to the rights of the child. The proposition to apply a principle of non-recognition to the judgments of the Islamic Tribunal should also consider the potential ramifications for both the victims and the defendants of the crimes that led to the judgments in question.

II. Submissions

A. Points of agreement

7. The submissions of the Defence, TFV, LRVs, VPRS, and OTP reflect a shared understanding of the broad and multifaceted harm suffered by the community of Timbuktu due to the crimes for which Mr Al Hassan was convicted. They each acknowledge that the harm extended beyond individual incidents to encompass structural, psychological, and group-based dimensions.³ This convergence supports the development of a reparations framework that is both inclusive and transformative.⁴ The OTP and VPRS submissions similarly recognize this multifaceted harm, including structural, psychological, material, and rights-based impacts, thereby reinforcing the

² [ICC-01/12-01/18-2733-Conf-Red](#), para. 17.

³ [ICC-01/12-01/18-2733-Red](#), paras 16-17; [ICC-01/12-01/18-2737](#), paras 16-19, 21.

⁴ [ICC-01/12-01/18-2737](#), paras 16-22; [ICC-01/12-01/18-2729](#), para. 23.

Defence's position on the need for a holistic reparations approach.⁵ The LRVs similarly recognise the serious and severe nature of the harm, particularly among vulnerable groups, which aligns with the Defence's emphasis on prioritisation.⁶

8. With respect to structural and community harm, the submissions recognise the erosion of Timbuktu's social fabric, the collapse of public services, and the marginalisation of minority groups as key contributing factors to the harm experienced. The TFV highlights the "serious (community) harm" to Timbuktu's collective identity and functioning, while the Defence underscores "historic and continued State discrimination" and systematic deficiencies such as the absence of the rule of law and essential services.⁷ This alignment reinforces the appropriateness of collective reparations aimed at addressing root causes and promoting long-term resilience.⁸ The OTP also acknowledges socio-economic harm, including the closure of businesses and destruction of property, which aligns with the Defence's emphasis on the economic disintegration of the community.⁹ The LRVs also refer to material harm, including loss of income and livelihood, which supports the Defence's submissions on economic hardship.¹⁰
9. The parties and participants also acknowledge that psychological and moral harm are central to the victims' suffering. The TFV refers to widespread trauma, stigma, and transgenerational effects, while the Defence observations drew attention to the shame and fear experienced by individuals, particularly those faced by individuals associated with the Islamic Tribunal.¹¹ Although the TFV distinguishes between moral, psychological, and psychosocial harm, and the Defence uses more practical terminology, this difference appears to be one of form rather than substance.¹² The VPRS confirms that victims continue to suffer from psychological issues such as fear, anxiety, and shame, which supports the Defence's submissions on the enduring emotional impact of the crimes.¹³ The LRVs also highlight persistent psychological

⁵ [ICC-01/12-01/18-2737](#), paras 16-22; [ICC-01/12-01/18-2729](#), para. 23; [ICC-01/12-01/18-2734-Conf](#), para. 17; [ICC-01/12-01/18-2733-Red](#), para. 17.

⁶ [ICC-01/12-01/18-2732-Conf](#), paras 39-40.

⁷ [ICC-01/12-01/18-2737](#), para. 16; [ICC-01/12-01/18-2729](#), para. 23.

⁸ *The Prosecutor v. Ntaganda*, Reparations Order, [ICC-01/04-02/06-2659](#), para. 94. ("Ntaganda Reparations Order")

⁹ [ICC-01/12-01/18-2734-Conf](#), para. 19; [ICC-01/12-01/18-2729](#), para. 23.

¹⁰ [ICC-01/12-01/18-2732-Conf](#), paras 35-36, 47.

¹¹ [ICC-01/12-01/18-2737](#), paras 21-22, 31-33; [ICC-01/12-01/18-2729](#), para. 26.

¹² [ICC-01/12-01/18-2737](#), paras 10-12; [ICC-01/12-01/18-2729](#), para. 26.

¹³ [ICC-01/12-01/18-2733-Red](#), para. 16; [ICC-01/12-01/18-2729](#), para. 26.

trauma, including sleep disorders, anxiety, which reinforces the Defense's position on long-term mental health effects.¹⁴

10. The submissions further converge on the disproportionate impact of the crimes on specific groups, including women, children, and religious minorities. Both the TFV and Defence advocate for reparations that are sensitive to the vulnerabilities of these groups and tailored to their specific needs.¹⁵ This shared perspective supports the inclusion of targeted measures within a broader collective reparations programme. The OTP explicitly recognises the gendered and age-related nature of the harm, including the disproportionate impact on women and the long-term effects of school closures on children, which mirrors the Defence's emphasis on group-specific vulnerabilities.¹⁶ The LRVs also emphasize the particular severity of harm suffered by women, young girls, and the elderly, which aligns with the Defence's prioritization of these groups.¹⁷
11. The OTP and the TFV state that "the entire population of Timbuktu" were victims.¹⁸ The TFV suggests that certain individuals may warrant individual consideration as direct victims of persecution, whereas the Defence maintains that the category of "direct victims" remains limited to the 49 identified in the Trial Judgment.¹⁹ While the Defence argued that expanding the number of direct victims could infringe upon Mr Al Hassan's presumption of innocence,²⁰ the Defence proposal that rather than expanding the number of direct victims it may be more appropriate to shift focus on the effects of the harm experienced by the community of Timbuktu ensures that there is no difference in the substantive outcome to reparations.
12. Indeed, both the TFV and the Defence propose that reparations be framed in terms of collective reparations, to account for the harm suffered by the community or affected groups, without attributing individual criminal responsibility to Mr Al Hassan beyond the scope of his conviction.²¹ Both parties could use neutral terminology such as "affected persons" or "community members" to ensure that reparations remain inclusive while respecting legal boundaries.²² The LRVs also support a broad recognition of harm

¹⁴ [ICC-01/12-01/18-2734-Conf](#), paras 36, 39.

¹⁵ [ICC-01/12-01/18-2737](#), paras 25-29; [ICC-01/12-01/18-2729](#), para. 30.

¹⁶ [ICC-01/12-01/18-2734-Conf](#), paras 17-18; [ICC-01/12-01/18-2729](#), para. 30.

¹⁷ [ICC-01/12-01/18-2732-Conf](#), paras 37, 39.

¹⁸ [ICC-01/12-01/18-2737](#), para. 16; [ICC-01/12-01/18-2729](#), para. 40, [ICC-01/12-01/18-2734-Conf](#), para. 6.

¹⁹ [ICC-01/12-01/18-2737](#), paras 32-33; [ICC-01/12-01/18-2729](#), para. 23.

²⁰ [ICC-01/12-01/18-2729](#), para. 23.

²¹ *The Prosecutor v. Al Mahdi*, Reparations Order, [ICC-01/12-01/15-236](#), para. 54. ("Al Mahdi Reparations Order")

²² [ICC-01/12-01/18-2729](#), para. 23; [ICC-01/12-01/18-2737](#), para. 34.

based on the impact of crimes on the community, which complements the Defence's collective framing approach.²³

13. Finally, both the TFV and the Defence call upon a participatory and inclusive approach to reparations. The Defence notes that care must be taken to ensure that eligibility mechanisms do not imply fact finding beyond those established in the conviction.²⁴ Reparations should be designed to restore dignity and social cohesion without undermining the rights of the accused or expanding the scope of liability.
14. With respect to the reliance on factual considerations, the LRV, TFV and the Defence Observations are clearly aligned, with all recognising the applicability of the procedural framework set out in the Ongwen Reparations Order²⁵ for collective community-based reparations.²⁶ The VPRS's submissions go into detail recommending that the chamber presume eligibility for reparations for victims who demonstrate a sufficient link with Timbuktu, especially through residence as the time of Mr Al Hassan's crimes.²⁷
15. The Defence observation has detailed the importance of transformative reparations and the modalities appropriate to address the harm suffered by the crimes for which Mr Al Hassan was convicted.²⁸ The LRV, TFV, and Defence submissions agree on the importance of collective/community-based reparations, a public apology and psychological rehabilitation.²⁹ Though the stances might differ in exact terminology, they converge towards the same goal of targeting the effects of the suffering. The VPRS' submission corroborates on the importance of collective/community-based reparations as well as psychological rehabilitation, however they have emphasized the importance of monetary rehabilitation beyond the other parties.³⁰ Furthermore, as the Defence takes no position on whether victims have previously received reparations or compensation, there is no conflict with any other party's position on the matter.³¹
16. The Defence and the TFV's both acknowledge the complexity of identifying eligible victims in the context of reparations, though they approach the issue from different

²³ [ICC-01/12-01/18-2732-Conf](#), paras 44-46.

²⁴ [ICC-01/12-01/18-2737](#), para. 124; [ICC-01/12-01/18-2729](#), para. 26.

²⁵ *The Prosecutor v. Ongwen*, Reparations Order, [ICC-02/04-01/15-2074](#), para. 575. ("Ongwen Reparations Order")

²⁶ [ICC-01/12-01/18-2729](#), para. 19; [ICC-01/12-01/18-2737](#), paras 53-54; [ICC-01/12-01/18-2732-Conf](#), paras 21-26.

²⁷ [ICC-01/12-01/18-2733-Red](#), paras 20-23.

²⁸ [ICC-01/12-01/18-2729](#), paras 21-25.

²⁹ [ICC-01/12-01/18-2729](#), paras 21-25; [ICC-01/12-01/18-2737](#), paras 87-107.

³⁰ [ICC-01/12-01/18-2733-Red](#), paras 24-26.

³¹ [ICC-01/12-01/18-2729](#), para. 57.

institutional perspectives. The Defence raises concerns that requiring proof of specific rights violations, especially those meeting the threshold of Article 7(1)(h)—would necessitate complex factual adjudications and risk creating a hierarchy of victimhood, contrary to the principle of equal treatment.³² The TFV, while not explicitly addressing the risk of hierarchies, similarly recognizes the practical challenges of formal eligibility processes, especially in the absence of public records.³³ Instead, it proposes locally anchored mechanisms, such as those used in the *Al Mahdi* case, to identify individuals who suffered particularly severe harm.³⁴ The Defence also notes that the VPRS's proposed evidentiary approach, which allows victims to prove residency through a range of flexible documentation such as utility bills, school records, or affidavits, is a practical and inclusive method that avoids overly burdensome proof requirement. This aligns with the Defence's position that eligibility mechanisms should not impose complex factual burdens on victims or reparations.³⁵

17. The Defence supports the TFV's flexible and context-sensitive approach to implementation, particularly its recognition that the need for a formal eligibility process depends on the forms and modalities of reparations ordered by the Chamber.³⁶ The Defence agrees that where collective or symbolic reparations are prioritized, a formal eligibility process may be unnecessary or even counterproductive. In such cases, participatory, community-based mechanisms—like those used to identify beneficiaries of socio-economic support in *Al Mahdi*—may be appropriate, provided they do not result in implied findings of individual harm or responsibility that could prejudice Mr. Al Hassan's rights.³⁷ The Defence also supports the TFV's proposal that, should a formal process be required, the Registry is best placed to manage it, with the TFV contributing as needed.³⁸ This is consistent with the VPRS's role in facilitating documentation and verification in a manner that is accessible to all.³⁹ The LRVs similarly stress the importance of keeping the interests of the victims at the centre of the implementation process and advocate for the Chamber to retain jurisdiction over

³² [ICC-01/12-01/18-2729](#), para. 14.

³³ [ICC-01/12-01/18-2737](#), para. 124.

³⁴ [ICC-01/12-01/18-2737](#), paras 120-124.

³⁵ [ICC-01/12-01/18-2733-Red](#), para. 21.

³⁶ [ICC-01/12-01/18-2737](#), para. 121.

³⁷ [ICC-01/12-01/18-2737](#), para. 123; [ICC-01/12-01/18-2729](#), para. 18.

³⁸ [ICC-01/12-01/18-2737](#), para. 125; [ICC-01/12-01/18-2729](#), para. 18; [ICC-01/12-01/18-2733-Red](#), para. 28.

³⁹ [ICC-01/12-01/18-2733-Red](#), para. 21.

contentious eligibility issues.⁴⁰ They also agree that victims already authorized to participate in the trial must be considered eligible for reparations.⁴¹

18. As concerns the TFV's proposal concerning the importance of symbolic forms of reparation,⁴² Mr Al Hassan confirms his willingness to contribute to future symbolic ceremonies. The Defence notes that the act of "sadaqah" is culturally significant in Islamic communities.⁴³ This concept refers to a voluntary donation, directed to persons in need, and which is motivated by faith, kindness or compassion. Sacrificing livestock and preparing and distributing food for others fall within such type of actions. A potential contribution could consist of the provision of a symbolic number of sheep, for the purpose of distributing as food at such a ceremony or as a charitable donation to poorer members of the community during the local festivals of *Tabaski*⁴⁴ or *Maouloud*.⁴⁵ The Defence understands from consultation that it is typical for the sheep to be killed and its parts distributed uncooked, so that families can preserve the meat for future meals. Such a voluntary contribution could therefore be implemented in a manner that requires minimal logistical support on the ground, and which is consistent with issues militating against Mr Al Hassan's physical presence at such an occasion.
19. The Defence supports the principle that reparations should be responsive to the needs of the most vulnerable victims, in line with the TFV's proposal to adopt a guiding Reparations Principle.⁴⁶ In particular, the Defence agrees that gender sensitivity, child sensitivity, and intersectionality are important considerations in the design and implementation of reparations. While maintaining that victims of sexual and gender-based crimes ("SGBV"), including those subjected to forced marriages and rapes in detention, are not direct victims of the crimes for which Mr. Al Hassan was convicted,⁴⁷ the Defence acknowledges that such individuals may have suffered harm as part of the broader attack on the identity of the targeted group.⁴⁸ This recognition is consistent with a collective understanding of harm. The LRVs similarly emphasize that women and girls were disproportionately affected by the regime in Timbuktu, experiencing heightened economic harm and constant fear due to religious persecution, which

⁴⁰ [ICC-01/12-01/18-2732-Conf](#), para. 126.

⁴¹ [ICC-01/12-01/18-2732-Conf](#), paras 124-125.

⁴² [ICC-01/12-01/18-2737](#), para. 114.

⁴³ Islamic Relief, [Sadaqah - Give Sadaqah Today](#).

⁴⁴ *Tabaski* is the local denomination for *Eid Al-Adha*, which is celebrated by sacrificing and eating sheep.

⁴⁵ *Maouloud* is a local festival, which celebrates the prophet and during which sheep are also typically eaten.

⁴⁶ [ICC-01/12-01/18-2737](#), paras 126-129.

⁴⁷ [ICC-01/12-01/18-2729](#), para. 18.

⁴⁸ [ICC-01/12-01/18-2729](#), para. 18.

supports the Defence's view that gender sensitivity must be central to the reparations design.⁴⁹

20. In this regard, the Defence supports the TFV's recommendation that implementers should be entrusted with prioritising vulnerable victims. This approach aligns with the Defence's position that the identification of such categories should be led by the TFV, the LRVs and the VPRS, whose expertise and mandate are best suited to ensure impartiality and procedural fairness.⁵⁰ The LRVs also agree that prioritization should be given to victims in particularly vulnerable situations, especially women and girls, following the *Lubanga* jurisprudence.⁵¹

B. Specific response to the Trust Fund concerning the Sensemaker results

21. The Defence understands that the goal of the Sensemaker project was to obtain a snapshot of the type of harm suffered during 2012, with a view to identifying how best to repair such harm. While such results may be of assistance in better understanding the different viewpoints and experiences of persons affected by the 2012 events, the Defence cautions against relying on the results for the purposes of drawing judicial conclusions as concerns prioritization of victims or quantifying particular types of harm. This is because notwithstanding the best efforts of the survey collectors, the population sample size does not appear to represent the breakdown of different tribes and ethnicities, which were present in Timbuktu in 2012. [REDACTED]. This is not consistent with evidence that during the time-period in question, the Arab population were the largest group.⁵² The Chamber also received evidence that a significant component of the Arab and Touareg population fled Timbuktu after January/February 2013, due to the risk of retaliation from the Malian army.⁵³ It follows that the current break down between different ethnicities in Timbuktu and Mopti will not reflect the break down that existed in Timbuktu at the time the crimes were committed.
22. [REDACTED]:⁵⁴ [REDACTED].

⁴⁹ [ICC-01/12-01/18-2732-Conf](#), para. 135.

⁵⁰ [ICC-01/12-01/18-2729](#), para. 18.

⁵¹ [ICC-01/12-01/18-2732-Conf](#), paras 135-136.

⁵² P-0150: T-093-Conf, p. 5 line 6 – p. 6 line 3.

⁵³ Trial Judgment, [ICC-01/12-01/18-2594-Conf](#), fn 1045, referring to exile of Touaregs to refugee camps. See also P-0623, T-030, p. 13, line 18- p.14, line 25; P-0065, T-045, p. 46, line 23 – p. 47, line 1.

⁵⁴ [REDACTED].

23. The Chamber should therefore be wary as concerns extrapolating general propositions concerning the experiences of different segments of the population in 2012, based on the Sensemaker results.

C. Specific responses to the Registry (VPRS)

24. As concerns evidential presumptions concerning residence in 2012, the Defence agrees that it is necessary to employ a flexible approach that does not discriminate against specific communities, which did not have a fixed abode in 2012.⁵⁵ As evidenced by contemporaneous documentary materials in 2012, several nomadic families were living in tents ('slums') within the geographic limits of the city, due to a combination of the security situation and poverty,⁵⁶ and may lack the means to obtain documentation as to their presence. Possible forms of verification, in addition to those suggested by the Registry, could include for instance local vendors (from whom they purchased food), or persons in neighbouring habitations (tents).
25. The Defence further wishes to address VPRS submissions concerning the identification of victims, with a view to clarifying the record and facilitating future identification processes. The Defence has now identified and referred six individuals to VPRS for the purpose of facilitating their ability to apply for reparations as either direct victims of the crimes for which Mr Al Hassan was convicted or as relatives of deceased direct victims of the crimes for which Mr Al Hassan was convicted. The details of these individuals are as follows:

Individuals who appear to be direct victims

- [REDACTED]: who appears to be a direct victim of Islamic Police report [REDACTED] Islamic Court judgment, [REDACTED], which is cited in the [Trial Judgment](#) at [REDACTED];
- [REDACTED]: who appears to be a direct victim of Islamic Police report [REDACTED], Islamic Court judgment, [REDACTED], which is cited in the [Trial Judgment](#) at [REDACTED];
- [REDACTED], who appears to be a victim of Islamic Court Judgment [REDACTED], cited in the [Trial Judgment](#) at [REDACTED];

⁵⁵ [ICC-01/12-01/18-2733-Conf-Red](#), paras 21-22.

⁵⁶ Video: MLI-OTP-0015-0495, at 39: 50 minute mark – 41:32; Transcript, MLI-D28-0005-6126.

- [REDACTED]: who appears to be a victim of Islamic Court Judgment [REDACTED], cited in the [Trial Judgment](#) at [REDACTED];

Relatives of deceased individuals who appeared to be direct victims:

- [REDACTED] referred to as such in Islamic Police report [REDACTED] and as [REDACTED] in the Islamic Court judgment, [REDACTED], which is cited in the [Trial Judgment](#) at [REDACTED];
- [REDACTED] in Islamic Court Judgment, [REDACTED], which is cited in the [Trial Judgment](#) at [REDACTED].

26. When referring to [REDACTED] in their observations on reparations, VPRS also observed that it had assisted a “family member of a deceased person, who is presented as another direct victim of the crime for which Mr Al Hassan was convicted but not named by the Chamber in its Judgment”.⁵⁷ Since all individuals identified by the Defence appeared to have a link to direct victims of the crimes for which Mr Al Hassan was convicted, the Defence is concerned that an issue may have arisen as concerns the spelling of the name/s in question. With a view to avoiding potential misunderstanding concerning names of direct victims, the Defence sets out below the following issues related to naming practices in Timbuktu and the transliteration of Tamasheq/Songhai names in Arabic.

27. The last Anames ‘[REDACTED]’ and ‘[REDACTED]’ are frequently used for either Black Tamasheq or Black Arabs (or individuals who are *métisse*), who choose to identify in official documentation as Songhai or Bambara to avoid the discrimination that attaches to Black Tamasheqs and Blacks Arabs, who were used as slaves or treated as emanating from slave castes.⁵⁸ As an example, the Trial Chamber heard evidence [REDACTED], whose Tamasheq name would have been [REDACTED].⁵⁹ [REDACTED] was also named [REDACTED].⁶⁰ [REDACTED].⁶¹ The word ‘dit’ means ‘known as’. Given the multitude of individuals with similar names in Timbuktu, it is common to assign a ‘nick name’ i.e. [REDACTED]. It is also common among the Tamasheq population to use compound first names, where a more specific name is attached to a very common name, resulting in compound names such as [REDACTED].

⁵⁷ [ICC-01/12-01/18-2733-Conf-Red](#), para. 17.

⁵⁸ L. Pelckmans, [Surnames as passports to social mobility? Renaming practices of Fulbe slave descendants in Central Mali](#), 2017.

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

It is reasonable to assume that if individuals were arrested by Arabic or Tamasheq speaking individuals, they may have given the name by which they are known in these communities, rather than the name by which they are known in Songhaï or Bambara communities. This could lead to discrepancies between the names written in Islamic police reports or judgments, as compared to the names set out in official identification documents produced by the Malian authorities.

28. Apart from these cultural issues, it is also necessary to consider the differences in transcription that can arise from first, transcribing Tamasheq or Songhaï names into Arabic, and second, translating Arabic text into latin script. In the Islamic police reports and judgments, Tamasheq/Songhaï names were written in Arabic. In the judgement, the Chamber acknowledged the different spellings of the victims' names, while concluding that they concerned the same individuals.⁶²

D. Specific responses to the *Amici Curiae*

29. As articulated in the *Ongwen* case, the reparations order cannot be predicated on findings of responsibility or acts and conduct that were not established in the Trial Judgment to the standard of beyond reasonable doubt.⁶³ The *Onwgen* Trial Chamber thus rejected amicus submissions predicated on crimes for which the defendant was not convicted.⁶⁴ In line with this approach, the Trial Chamber should also disregard amicus submissions concerning crimes that do not fall within the scope of Mr Al Hassan's convictions. The Defence understands that the Trial Judgment and related opinions are complex and that careful analysis is required to remain within the boundaries of the Chamber's ultimate disposition. As an example, even when the Trial Judgment refers to the 'Majority', if the Majority is comprised of Judge Prost and Judge Mindua, this is in fact a minority of just Judge Prost for conviction purposes because Judge Mindua entered a full acquittal based on Mr Al Hassan's lack of culpable *mens rea*.⁶⁵ A Majority for conviction purposes is only obtained in connection with findings that were joined by Judge Akane. Given the complexity entailed in advancing submissions on fact and

⁶² Trial Judgment, [ICC-01/12-01/18-2594-Conf](#), [REDACTED].

⁶³ [ICC-02/04-01/15-2074](#), para 20, citing *Ntaganda* Judgment on the Appeal against the Decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order', [ICC-01/04-02/06-2782](#), para. 482; *Lubanga* Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para. 311.

⁶⁴ [ICC-02/04-01/15-2074](#), para. 28.

⁶⁵ For example, Trial Judgment, [ICC-01/12-01/18-2594-Conf](#) para. 1734 does not reflect Mr Al Hassan's conviction because Judge Akane expressly dissented from this paragraph (see paragraph 1727) and Judge Mindua entered a full acquittal.

evidence, the Defence respectfully suggests that the Chamber use the *amici curiae* briefs as a reference point for questions of law or implementation and not questions of fact/factual findings. This limitation is required due to the fact that the *amici curiae* briefs mistakenly relied on parts of the Trial Judgment that do not represent the opinion of the Majority or Mr Al Hassan's convictions. This resulted in the statements that do not accurately reflect the Trial Chamber's disposition, which in turn, diminishes the overall validity of submissions addressing questions of fact. It would also be consistent with Mr Al Hassan's innocence protections to take positive steps to assert his innocence to dispel the harm to his reputation caused by the publication of such submissions.⁶⁶

30. While the Defence continues to support a holistic approach to harm, which will encompass individuals who suffered from gender-based harm due to their membership of the community of Timbuktu, it is important that the reparations order does not imply guilt or personal responsibility on the part of Mr Al Hassan for such crimes or employ evidential presumptions that are counter-factual. It is thus essential that these errors and statements, which are not consistent with Mr Al Hassan's acquittals, are rectified both in the ultimate decision of the Chamber and also related outreach activities.⁶⁷ This is important to:

- address the confusion surrounding Mr Al Hassan's innocence for such crimes as being distinct from the convictions;
- accurately uphold the findings of the Trial Judgment and related enforcement of Mr Al Hassan's convictions and acquittals; and
- preserve the momentum to identify and bring to justice the perpetrators of such crimes.

The Queen's University Amicus

31. The Defence will address four issues arising from the Queen's University Belfast Human Rights Centre amicus brief ("Queen's University Amicus"): *first*, the inclusion

⁶⁶ While the amici submissions were not published on the ICC website, the Women's initiative for gender justice published them separately on [their website](#).

⁶⁷ The *Ongwen* Reparations Order is instructive on this point: see [ICC-02/04-01/15-2074](#), para 51: "The Chamber does, however, wish to briefly address those individuals who have experienced harm as a result of the conflict in Northern Uganda but who do not qualify as victims in this case. The Chamber understands that individuals who have experienced harm as a result of the same conflict but are not entitled to reparations in this case may be confused, frustrated and disappointed. The Chamber recognises these individuals and acknowledges their suffering. However, as discussed above, the Court's reparations proceedings are not designed to rectify all harm suffered throughout the conflict in Northern Uganda reparations in this case must be tied to the specific harm caused by Mr Ongwen. The Chamber therefore considers that **clear communication and outreach is essential for communities to understand the limited scope of reparations in this case as compared to the widespread harm caused by the entire conflict.**"

of multiple references to sexual and gender related offences for which Mr Al Hassan was acquitted; *second*, claims concerning Mr Al Hassan’s apologies; *third*, the proposal that indigent persons should be required to contribute to the costs of reparations; and *fourth*, the suggestion of non-recognition of Islamic Court judgments.

32. As concerns the first issue, key conclusions and recommendations are regrettably predicated on allegations that do not represent Mr Al Hassan’s convictions and related personal liability. This includes submissions relating to the rape of women detained by the *Hesbah*,⁶⁸ which fail to acknowledge that the cited sections did not lead to convictions. For instance, while the Queen’s University Amicus references the fact scenario concerning Azahara Abdou, Judge Akane dissented on findings of fact, concluding that there was insufficient evidence to determine that Azhara Abdou was raped while detained in the BMS.⁶⁹ Her dissent, in conjunction with Judge Mindua’s full acquittal, resulted in an acquittal for this charge. As a result of Judge Mindua’s full acquittal and Judge Akane’s separate opinion, Mr Al Hassan was also acquitted for all charges of rape as a crime against humanity.⁷⁰
33. This same issue arises in relation to forced marriage:⁷¹ the Queen’s University Amicus references crime base conclusions drawn by the Trial Chamber in a way that promotes an inaccurate impression of the ultimate disposition. For example, the brief asserts that “the Court’s judgment clearly established that Ansar Dine/AQIM used their extremist religious propaganda to promote forced marriages as a façade for sexual violence”,⁷² and further, that the ‘Majority’ found that Mr Al Hassan “contributed directly” to such forced marriages.⁷³ This assertion fails to acknowledge the combined Majority verdict of Judge Akane and Judge Mindua that there were no culpable contributions from Mr Al Hassan, and thus no foundation for imposing personal liability for restoring the harm caused to victims of these crimes.
34. The Queen’s University Amicus also referenced the destruction of mausoleums and protected sites,⁷⁴ implying the direct culpable involvement of Mr Al Hassan by stating that the destruction of these sites was “carried out with the knowledge and approval of

⁶⁸ At multiple points in the filing there were citations made referring particularly to the case of Azahara Abdou, P-0636, P-0570, and Fadimata Mint Lilli who all alleged that they were raped while detained. See [ICC-01/12-01/18-2730](#), fns 8, 12, 35, 36, and 37.

⁶⁹ Trial Judgment, [ICC-01/12-01/18-2594-Conf](#), fn. 2790.

⁷⁰ Trial Judgment, [ICC-01/12-01/18-2594-Conf](#), para. 1473.

⁷¹ [ICC-01/12-01/18-2730](#), fns 27-32, and 76.

⁷² [ICC-01/12-01/18-2730](#), fn. 27 (citing to Trial Judgment, para. 1418).

⁷³ [ICC-01/12-01/18-2730](#), para. 9.

⁷⁴ [ICC-01/12-01/18-2730](#), fns 22-23.

Mr Al Hassan.”⁷⁵ Again, this submission failed to fairly or accurately reflect the findings of the Trial Judgment that “there is insufficient evidence to establish that Mr Al Hassan took any particular action or had a specific role in relation to the demolition of the mausoleums”.⁷⁶ The Chamber thus acquitted him of the war crime of destruction of protected objects.⁷⁷

35. The Queen’s University Amicus propositions concerning the scope of evidential presumptions and the definition of victims who are eligible for reparations for specific crimes as direct victims are also undermined due to their erroneous conflation of the Islamic Police and *Hesbah*. The Queen’s University Amicus noted that “the judgment found several cases of rape by Islamic Police guards while in custody” and that the “true number of sexual assaults of women in Islamic Police custody is unknown.”⁷⁸ These acts were found to have fallen under responsibility of the *Hesbah*, whose actions were excluded from Mr Al Hassan’s criminal liability by Judge Akane’s Separate Opinion.⁷⁹ Judge Akane determined that such crimes committed by *Hesbah*, including the crimes against women committed under Mohammed Moussa, fell outside the common purpose of Ansar Dine/AQIM,⁸⁰ and further, that “Mr Al Hassan made no contribution to the crime of rape perpetuated in the context of such detention.”⁸¹
36. Turning to the second issue, the Queen’s University Amicus asserts, first, that “Mr Al Hassan has not expressed an apology or remorse”,⁸² and further that “[i]t is unlikely that Mr Al Hassan will apologise to these individual victims or that they would find it helpful.”⁸³ These assertions fail to reflect the current record and speak to the need for such issues to be addressed through the Court’s outreach programme.
37. The Queen’s University Amicus relied on a finding, drawn from the Chamber’s Sentencing Judgment,⁸⁴ which has been superseded by further developments, including the *Defence Notice of Discontinuance of Appeal*, coupled with apology,⁸⁵ which was widely disseminated to the public in multiple languages from December 2024 onwards,

⁷⁵ [ICC-01/12-01/18-2730](#), fn. 23.

⁷⁶ Trial Judgment, [ICC-01/12-01/18-2594-Conf](#), paras 1055

⁷⁷ Trial Judgment, [ICC-01/12-01/18-2594-Conf](#), para. 1181.

⁷⁸ [ICC-01/12-01/18-2730](#), para. 10. See [ICC-01/12-01/18-2730](#), para. 3.

⁷⁹ See Annex A, pp 2-7.

⁸⁰ Akane Separate Opinion, [ICC-01/12-01/18-2594-OPI](#), para. 12.

⁸¹ Akane Separate Opinion, [ICC-01/12-01/18-2594-OPI](#), para. 50.

⁸² [ICC-01/12-01/18-2730](#), para.21.

⁸³ [ICC-01/12-01/18-2730](#), para.25.

⁸⁴ [ICC-01/12-01/18-2662](#), para. 97.

⁸⁵ [ICC-01/12-01/18-2667-AnxA](#), December 2024.

as well as Mr Al Hassan's April 2025 apology,⁸⁶ which publicly acknowledged the facts underpinning his conviction and accepted responsibility for harm suffered.⁸⁷ In these apologies, Mr Al Hassan sought the forgiveness of all victims referenced in the Trial Judgment and Sentencing Decision, an act that extended beyond the scope of his convictions. The *hadith*⁸⁸ cited in Mr Al Hassan's statement is considered the consummate way to seek forgiveness in Islam.⁸⁹ As explained by the [REDACTED], this *hadith* signifies complete repentance and a request for forgiveness from both God and fellow Muslims.⁹⁰ It is the sincerest form of repentance in their faith, representing a commitment, sworn before God, to never repeat the wrongdoing.⁹¹

38. At Mr Al Hassan's request, the Defence communicated these apologies to key notables and community leaders in Timbuktu and, where possible, to direct victims.⁹² The Defence also sought the assistance of the Court's Press and Information Division to [REDACTED].⁹³

39. As to the second assertion that "it is unlikely" that such victims would find Mr Al Hassan's apology "helpful",⁹⁴ acceptance of an apology is a personal matter and not something which either Mr Al Hassan or third persons can predict or speak to. Some victims have indicated that they found the apology to be meaningful,⁹⁵ and civil society leaders and NGOs based in Timbuktu have also opined that the dissemination of his apology would be likely to have a positive impact on local reconciliation efforts.⁹⁶

⁸⁶ [ICC-01/12-01/18-2710-AnxA](#) (Arabic); [ICC-01/12-01/18-2710-AnxB](#) (English) ; [ICC-01/12-01/18-2710-AnxC](#) (French).

⁸⁷ This aligns with the framework for restorative apologies, as set out in human rights law: IACtHR: *Cantoral-Benavides v. Peru*, Judgment of December 3, 2001 (Reparations and Costs), para 81.

⁸⁸ [ICC-01/12-01/18-2667-AnxA](#), p. 2, para. 4.

⁸⁹ [Sahih al-Bukhari 6306 - Book 80, Hadith 3](#).

⁹⁰ [REDACTED] (D-0553): MLI-D28-0008-0012-R01 at 0014, para. 9.

⁹¹ [REDACTED] (D-0533): MLI-D28-0008-0012-R01 at 0014, para. 9.

⁹² It was transmitted, *inter alia*, to the [REDACTED] (D-0809): MLI-D28-0007-0849-R01 at 0852, paras 15-17); [REDACTED] (D-0533): MLI-D28-0008-0012-R01 at 0013, para.5; the [REDACTED] (D-0833): MLI-D28-0008-0052- R01 at 0055, para.19; [REDACTED] (D-0831): MLI-D28-0008- 0023-R01 at 0025, para.12 [REDACTED] (D-0832): MLI-D28-0008-0015-R01 at 0017, paras 11-12; [REDACTED] (D-0834): MLI-D28-0008-0032-R01, at 0035, paras 12-16; [REDACTED] (D-0315): MLI-D28-0008-0091-R01, paras 5-11. It was also transmitted [REDACTED] MLI-D28-0008-0083-R01 [REDACTED] MLI-D28-0008-0064-R01, [REDACTED].

⁹³ MLI-D28-0008-0058 at 0060; AH 09/04/25 (MLI-D28-0008-0068 (Ar), MLI-D28-0008-0072 (Eng) was also transmitted to [REDACTED].

⁹⁴ [ICC-01/12-01/18-2730](#), para.25.

⁹⁵ [ICC-01/12-01/18-2720-Red](#), para.34.

⁹⁶ [ICC-01/12-01/18-2720-Red](#), para.34, fn 146 ; [ICC-01/12-01/18-2640-Red](#), para.1, fn 2 citing Trial Judgment, [ICC-01/12-01/18-2594-Conf](#), para. 1087. See also D-0553: MLI-D28-0005-9325-R01 at 9333, paras. 44-48; D-0809: MLI-D28-0007-0849-R01 at 0851, paras. 11-14; 0852, paras. 15-17.

Noting that an apology can be considered as a form of reparation,⁹⁷ the Defence reiterates its availability to liaise with the Trust Fund and any other relevant actors in connection with the potential incorporation of Mr Al Hassan's apologies into the reparations process, in the manner deemed appropriate by the Trial Chamber and Trust Fund.⁹⁸

40. With respect to the third issue concerning the proposed financing of the Reparations, while Mr Al Hassan's indigence is not a reason to avoid liability for reparations, it must be taken into account.⁹⁹ The Court has a duty to repair the victims at this stage of the proceedings but also to allow Mr Al Hassan to reintegrate into society at the end of his sentence in a manner that is also consistent with the rights of his children, as independent rights' holders. In *Al Mahdi*, the Chamber underscored that "[it] does not intend to impose hardships on Mr Al Mahdi that make it impossible for him to reintegrate into society upon his release."¹⁰⁰ This rationale applies equally to Mr Al Hassan irrespective as to whether he is detained or released. In serving his sentence, Mr Al Hassan is entitled to use any funds earned (below the threshold of indigence) to sustain his family,¹⁰¹ particularly as they have no access to social welfare benefits and are living in very difficult circumstances. A child's right to an adequate standard of living is enshrined in international law.¹⁰² This right naturally extends to their access to economic resources earned by their parents, including remuneration acquired through detention work. This is consistent with human rights principles stipulating that the carceral situation primary caretakers needs to be examined with

⁹⁷ [ICC-01/04-01/07-3728-tENG](#) para. 315; See also AU Panel of the Wise, *Peace, Justice and Reconciliation in Africa*, p. 81: "restorative measures such as (...) **public apology** (...) are equally important ingredients of justice"; UN General Assembly, [U.N. Doc. A/RES/60/147](#), para. 22(e) (referencing an apology as a form of 'satisfaction' within the context of reparations and remedies for victims of gross violations of international human rights).

⁹⁸ See paragraph 18 above.

⁹⁹ *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 114; *Lubanga* Judgment on Principles, [ICC-01/04-01/06-3129](#), paras 102-105.

¹⁰⁰ *Al Mahdi* Reparations Order, [ICC-01/12-01/15-236](#), para. 114. Similarly, while in the *Ntaganda* case, the Second Expert Report suggested that the minimal earnings from detention work could "demonstrate an effort to compensate victims" ([ICC-01/04-02/06-2623-Anx2-Red2](#), para. 90), this proposal was not incorporated into the reparations order ([ICC-01/04-02/06-2659](#)).

¹⁰¹ See for example, Rule 26 of the [Recommendation Rec\(2006\)2-rev of the Committee of Ministers to member States on the European Prison Rules](#), and Rule 103 of [The United Nations Standard Minimum Rules for the Treatment of Prisoners](#), which articulate the prisoner's right to have their remuneration used for their personal and familial expenses.

¹⁰² See [Convention on the Right of the Child](#), Article 27(1)-27(4); [African Charter for the Rights and Welfare of the Child](#), Article 20.

special care for the rights of the child,¹⁰³ and further, that the best interest of the child should be a guiding principle for decisions taken by courts of law.¹⁰⁴

41. Beyond economic well-being, children also have the right to maintain meaningful relationships with their detained parents. This is consistent with international human principles, specifying that a child separated from their parent(s) has the right to “maintain personal relations and direct contact with both parents and direct contact on a regular basis.”¹⁰⁵ This must always be guided by the child’s best interests, as emphasized by General Comment No. 14 and the Committee on the Rights of the Child.¹⁰⁶ The ICRC’s 2014 report echoes this principle, affirming that when a child’s parent is in detention, the child has a fundamental right to maintain family ties.¹⁰⁷ In the 2014 judgment of *Hernandez et al v. El Salvador*, the IACtHR found that a child’s right to maintain family ties is paramount.¹⁰⁸ It found that separating a child from their detained parents constitutes a violation of the right of family life.¹⁰⁹ The Court relied on Article 17(4) of the American Convention on Human Rights, which states that “[...] in case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.”¹¹⁰ The Chamber also noted that when a child is separated from their parent, the State has an obligation to uphold the family’s role in childcare and actively support family unity.¹¹¹ The ICC recognizes that the above child-centred rights impose a positive obligation on the Court to facilitate contacts and family visits for indigent persons such as Mr Al Hassan.¹¹² While such visits are funded while the defendant is detained at the seat of the Court, no such funding is available for convicted persons serving their sentences elsewhere. Mr Al Hassan will therefore need to reserve his personal earnings to fund such visits.

¹⁰³ IACtHR, *Case of Vera Rojas et al. v. Chile*, Judgment of October 1 2021, para. 105; IACtHR, *Case of the Río Negro Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012, para. 120.

¹⁰⁴ IACtHR, Cf. Advisory Opinion [OC-29/22](#) of May 30, 2022, paras 179, 189-192; IACtHR, Cf. Advisory Opinion [OC-17/02](#), Operating Paragraph 2.

¹⁰⁵ [Convention on the Rights of the Child](#), Article 9(3).

¹⁰⁶ [General Comment No. 14 \(2013\) on the Right of the Child to Have His or Her Best Interests Taken as Primary Consideration](#), para. 69; [Committee on the Rights of the Child: Report and Recommendations of the Day of General Discussion on ‘Children of Incarcerated Parents’](#), para. 35.

¹⁰⁷ [Children and Detention](#), p. 18.

¹⁰⁸ IACtHR, *Case of Rohac Hernández et al v. El Salvador*, Judgment of October 14 2014, para. 104.

¹⁰⁹ IACtHR, *Case of Rohac Hernández et al v. El Salvador*, Judgment of October 14 2014, para. 104.

¹¹⁰ [American Convention on Human Rights](#), Article 17(4).

¹¹¹ IACtHR, *Case of Rohac Hernández et al v. El Salvador*, Judgment of October 14 2014, para. 107.

¹¹² *Prosecutor v. Al Hassan*, Decision on the Defence Application for Judicial Review of Registrar’s Decision of 12 August 2021, [ICC-RoR220-03/21](#), paras 21, 30.

42. Regarding the fourth issue (non-recognition of Islamic Court judgments), the Defence respectfully suggests that this is not an issue that can be determined without proper consultation with all individuals implicated by such judgments. While the Trial Chamber ultimately found that the judgments in question were obtained in a manner that failed to satisfy the necessary requirements of Article 8(2)(c)(iv) of the Statute, the Chamber also found that the Islamic Tribunal played an important role in addressing a justice deficit in 2012 and, further, that some individuals came before the Tribunal to obtain justice and to vindicate their rights.¹¹³ While this finding is inapposite in relation to cases concerning violations of moral rules, it is relevant to cases concerning theft, property disputes, and family law, which is regulated by religion or custom under the Malian law.¹¹⁴ In such cases, there may be two different types of victims potentially affected by non-recognition of such judgments:

- The victims or complainants, who brought the matter before the Islamic Police or Tribunal, with a view to seeking a remedy for a crime (such as theft) or violation of their rights; and
- The victims, who received any adverse ruling in relation to such complaints or investigations, and who were recognised as direct victims in the Trial Judgment.

The Redress et al. Amicus

43. The *Redress et al.* amicus seeks to promote an intersectional approach, focussing specifically on the gendered dimensions of crimes, through reliance on factual findings that do not represent the ultimate disposition of the Chamber as concerns the scope and content of Mr Al Hassan's individual liability.¹¹⁵ This is because of the failure to properly demarcate between findings that demonstrate that crimes occurred and those which, after taking into account the dissents from both Judge Akane and Mindua, attach individual criminal liability to Mr Al Hassan.¹¹⁶ As was the case with the Queen's University Amicus, the Defence does not oppose the *approach* advocated by the *Redress et al.* Amicus, but objects to the use of crimes for which Mr Al Hassan was acquitted as the foundation for this approach.

¹¹³ Trial Judgment, [ICC-01/12-01/18-2594-Conf](#) para. 598: "To some extent locals started to believe that they 'would find justice and [...] get confirmation of their rights, which had been ignored in the past' and people came to the Islamic Court 'enthusiastically' because many among the population were hoping to settle cases that had long remained unresolved, irrespective of their ethnic origins."

¹¹⁴ See in this regard articles 5, 280, 288, and 307 (on marriage-related matters) as well as article 751 (on inheritance) of the Malian "[Code des personnes et de la famille](#)."

¹¹⁵ See attached table, Annex A, pp 8-25.

¹¹⁶ See attached table, Annex A, pp 8-25.

44. The *Redress et al.* Amicus also exceeds the scope of authorised submissions by raising issues related to Mr Al Hassan's release, based on filings pending before a different Panel of Judges. Since such submissions also fall outside the allotted number of pages (10, at 1.5 spacing), the most appropriate solution would be to disregard paragraphs 35-39 of the *Redress et al.* Amicus.

RELIEF SOUGHT

45. For the reasons set out above, the Defence for Mr Al Hassan respectfully requests the Trial Chamber to take into consideration this Defence Response to Observations on Reparations.



Melinda Taylor
Lead Counsel for Mr Al Hassan

Dated this 17th day of July 2025
At The Hague, The Netherlands