

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date 28 July 2026

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
Judge Tomoko Akane
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN MALI

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

Public

OPCV Appeal Brief against the Reparations Order

Source: Office of Public Counsel for Victims

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

- | | |
|--|--|
| ☒ The Office of the Prosecutor | ☒ Counsel for the Defence |
| ☒ Legal Representatives of the Victims | ☐ Legal Representatives of the Applicants |
| ☐ Unrepresented Victims | ☐ Unrepresented Applicants (Participation/Reparation) |
| ☒ The Office of Public Counsel for Victims | ☒ Trust Fund for Victims |
| ☐ States' Representatives | ☐ Amicus Curiae |

REGISTRY

- | | |
|---|--|
| Registrar
Mr Zavala Giler, Osvaldo | ☐ Counsel Support Section |
| ☐ Victims and Witnesses Unit | ☐ Detention Section |
| ☒ Victims Participation and Reparations Section | ☐ Public Information and Outreach Section |

I.	INTRODUCTION	4
II.	PROCEDURAL HISTORY	5
III.	STANDARDS OF APPELLATE REVIEW	7
a)	Errors of law	8
b)	Errors of fact	8
c)	Procedural errors.....	9
d)	Errors in the exercise of discretion.....	10
e)	Substantiation of arguments.....	11
IV.	GROUND OF APPEAL.....	11
	Ground 1: The Chamber committed a combination of errors of law or fact, and procedure by finding that only the 49 individuals specifically referred to in the Trial Judgment and in the Sentencing Decision are eligible for reparations as direct victims of the crimes under Counts 1-6 and 14.	11
	Ground 2: The Chamber committed a combination of errors of fact and procedure by failing to recognise material harm suffered by direct victims (sub-ground 1) and indirect victims (sub-ground 2) of the crimes under Counts 1-6 and Count 14.	26
	<i>Sub-Ground 2-1: The Chamber committed a combination of errors of fact and procedure by failing to recognise the material harm suffered by direct victims of the crimes under Counts 1-6 and 14.</i>	<i>26</i>
	<i>Sub-Ground 2-2: The Chamber committed a combination of errors of fact and procedure by failing to recognise material harm suffered by indirect victims of the crimes under Counts 1-6 and 14.</i>	<i>31</i>
	Ground 3: The Chamber committed an error of fact and procedure by failing to rule on the appropriate type and modality of reparations for victims having suffered material harm as a result of the crimes under Counts 1-6 and 14.	33
	Ground 4: The Chamber committed a combination of errors of fact and procedure by failing to recognise that direct victims of the crime under Count 6 suffered physical harm.	35
	Ground 5: The Chamber committed a combination of errors of law or fact or procedure by failing to properly address and consider that, in the circumstances of the present case, victims suffered transgenerational harm.	37
	<i>a) The Chamber erred by disregarding its own findings and by failing to engage with the evidence demonstrating transgenerational harm.....</i>	<i>38</i>
	<i>b) The Chamber erred by conflating the existence of harm with its mitigation.</i>	<i>41</i>
	<i>c) The Chamber erred by inconsistently applying its own legal framework governing the recognition of harm and failing to provide a reasoned decision.....</i>	<i>43</i>
V.	CONCLUSION.....	45
VI.	RELIEF SOUGHT.....	49

I. INTRODUCTION

1. Counsel from the Office of Public Counsel for Victims (the “OPCV or the “Office”), representing four victims in the proceedings,¹ file their appeal against parts of the “Reparations Order” (the “Impugned Decision”) issued on 28 April 2026 by Trial Chamber X (the “Chamber”) in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*.²

2. The appeal is brought under article 82(4) of the Rome Statute (the “Statute”), rules 150(1) and 150(3) of the Rules of Procedure and Evidence (the “Rules”) and regulation 57 of the Regulations of the Court. It will demonstrate that:

- **Ground 1:** The Chamber committed a combination of errors of law or fact and procedure by finding that only the 49 individuals specifically referred to in the Trial Judgment and in the Sentencing Decision are eligible for reparations as direct victims of the crimes under Counts 1-6 and 14.
- **Ground 2:** The Chamber committed a combination of errors of fact and procedure by failing to recognise the material harm suffered by direct victims (sub-ground 1) and indirect victims (sub-ground 2) of the crimes under Counts 1-6 and Count 14.
- **Ground 3:** The Chamber committed an error of fact and procedure by failing to rule on the appropriate type and modality of reparations for victims having suffered material harm as a result of the crimes under Counts 1-6 and 14.

¹ See the “Decision on the LRV’s submission on a potential conflict of interest” (Trial Chamber X), [No. ICC-01/12-01/18-2728-Conf](#), 5 June 2025. A public redacted version [No. ICC-01/12-01/18-2728-Red](#), was filed the same day (the “Decision of 5 June 2025”).

² See the “Reparations Order” (Trial Chamber X), [No. ICC-01/12-01/15-2872](#), 28 April 2026 (the “Impugned Decision”).

- **Ground 4:** The Chamber committed a combination of errors of fact and procedure by failing to recognise that direct victims of the crime under Count 6 suffered physical harm.
- **Ground 5:** The Chamber committed a combination of errors of law or fact and procedure by failing to properly address and consider that, in the circumstances of the present case, victims suffered transgenerational harm.

II. PROCEDURAL HISTORY

3. On 26 June 2024, the Chamber, by majority, convicted Mr Al Hassan of some of the charges of war crimes and crimes against humanity committed between 2 April 2012 and 29 January 2013 in Timbuktu, Mali (the “Judgment”).³

4. On 20 November 2024, the Chamber sentenced Mr Al Hassan to a joint sentence of 10 years of imprisonment.⁴

5. On 13 December 2024, the Chamber issued an order for submission on reparations.⁵

6. On 5 June 2025, the Chamber appointed Counsel from the OPCV to represent certain victims, and to make submissions on reparations by 22 August 2025.⁶

7. On 11 June 2025, 13 June 2025 and 16 June 2025, the parties, participants and *amici curiae* filed their submissions on reparations.⁷

³ See the “Trial Judgment” (Trial Chamber X), with three public annexes, [No. ICC-01/12-01/18-2594-Conf](#), 26 June 2024. A public redacted version [No. ICC-01/12-01/18-2594-Red](#) was filed the same day (the “Judgment”).

⁴ See the “Sentencing Decision” (Trial Chamber X), [No. ICC-01/12-01/18-2662](#), 20 November 2024 (the “Sentencing Decision”).

⁵ See the “Order for Submission on Reparations” (Trial Chamber X), [No. ICC-01/12-01/18-2666](#), 13 December 2024, para. 3 (the “Order for Submission on Reparations”).

⁶ See the Decision of 5 June 2025, *supra* note 1, disposition.

⁷ See the “Defence Observations on Reparations”, with public annexes A to J, [No. ICC-01/12-01/18-2729](#), 11 June 2025 (the “Defence Observations on Reparations”); the Queen’s University Belfast Human

8. On 16 July 2025, the Legal Representatives of the main group of victims (the “LRV”) and the Defence filed additional submissions on reparations.⁸
9. On 23 July 2025, the Panel of Judges appointed for the review concerning reduction of sentence, issued its decision reducing Mr Al Hassan’s sentence by 12 months, and setting the date for completion of his sentence to 28 March 2027.⁹
10. On 22 August 2025, the OPCV filed its Submissions on Reparations, and on 27 August 2025, it filed a corrected version thereof.¹⁰
11. On 17 September 2025, the Chamber held a hearing on reparations.¹¹

Rights Centre Submission on Reparations”, [No. ICC-01/12-01/18-2730](#), 13 June 2025; the “*Observations de l’un des Représentant légal des victimes sur les réparations relatives aux victimes du Burkina Faso, du Niger et du Mali*”, [No. ICC-01/12-01/18-2731-Conf](#), 13 June 2025; the “*Observations des Représentants légaux des victimes en exécution de l’Ordonnance aux fins de présentation d’observations relatives aux réparations*” (ICC-01/12-01/18-2666)” with one public annex, [No. ICC-01/12-01/18-2732-Conf](#). A public redacted version [No. ICC-01/12-01/18-2732-Red](#) was filed on 18 June 2025 (the “LRV Observations on Reparations”). See also, the “Registry Submissions on Reparations”, [No. ICC-01/12-01/18-2733-Conf](#), 16 June 2025. A public redacted version [No. ICC-01/12-01/18-2733-Red](#) was filed the same day. See also, the “Prosecution Submission on Reparations”, [No. ICC-01/12-01/18-2734-Conf](#), 16 June 2025. A public redacted version [No. ICC-01/12-01/18-2734-Red](#) was filed on 9 July 2025. See also, the Mama Koité Doumbia *et al.* “Amici Curiae Observations pursuant to Article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence”, [No. ICC-01/12-01/18-2735](#), 16 June 2025; the “Amicus Curiae Observations on Reparations from Dr Jean-Benoît Falisse and Dr Simeon Koroma, The University of Edinburgh”, [No. ICC-01/12-01/18-2736](#), 16 June 2025; and the “Trust Fund for Victims’ Observations relevant to Reparations with Annexes A, D and E and Confidential Annexes B and C”, [No. ICC-01/12-01/18-2737](#), 16 June 2025 (notified on 17 June 2025) (the “TFV Submissions on Reparations”).

⁸ See the “*Réponse des Représentants légaux des victimes aux observations des parties et des participants en exécution de l’ « Ordonnance aux fins de présentation d’observations relatives aux réparations »*” (ICC-01/12-01/18-2666)”, [No. ICC-01/12-01/18-2740](#), 16 July 2025. See also, the “Defence Response to Observations on Reparations”, [No. ICC-01/12-01/18-2741-Conf](#) 16 July 2025. A public redacted version [No. ICC-01/12-01/18-2741-Red](#) was filed on 17 July 2025 (the “Defence Response on Reparations”).

⁹ See the “Decision on the review concerning reduction of sentence of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud” (Three Judges of the Appeals Chamber appointed for the review concerning Reduction of Sentence”), [No. ICC-01/12-01/18-2743-Conf](#), 23 July 2025. A public redacted version [No. ICC-01/12-01/18-2743-Red](#) was filed the same day.

¹⁰ See the “Corrected version of “The OPCV’s Submissions on Reparations” (ICC-01/12-01/18-2747-Conf, 22 August 2025)”, [No. ICC-01/12-01/18-2747-Conf-Corr](#), 27 August 2025, paras. 32-34. A public redacted version [No. ICC-01/12-01/18-2747-Corr-Red](#) was filed the same day (the “OPCV Submissions”).

¹¹ See the “Order on the conduct of the reparations hearing” (Trial Chamber X), [No. ICC-01/12-01/18-2742](#), 16 July 2025.

12. On 28 April 2026, the Chamber issued the Impugned Decision.¹²

13. On 28 May 2026, Mr Al Hassan filed its Notice of Appeal Against the Impugned Decision.¹³

14. On 29 May 2026, the OPCV¹⁴ and the LRV¹⁵ filed their respective Notices of Appeal against the Impugned Decision.

15. On 2 June 2026, the Appeals Chamber issued the Decision on the Presiding Judge in the appeal.¹⁶

III. STANDARDS OF APPELLATE REVIEW

16. The Appeals Chamber has previously articulated the relevant standards of review for the distinct categories of errors – namely, law, facts and procedure – that may affect a chamber’s decision. In the context of reparations proceedings, the jurisprudence has recognised that a chamber may rely on findings made in the trial judgment and in the sentencing decision when determining a reparations order, as those findings constitute the basis upon which the convicted person was found guilty and sentenced.¹⁷

¹² See the “Impugned Decision”, *supra* note 2.

¹³ See the “Defence Notice of Appeal Against the Reparations Order (ICC-01/12-01/18-2782)”, [No. ICC-01/12-01/18-2784](#), 28 May 2026.

¹⁴ See the “OPCV Notice of Appeal against the Reparations Order”, [No. ICC-01/12-01/18-2786](#), 28 May 2026.

¹⁵ See the “Acte d’appel des Représentants légaux des victimes de l’Ordonnance de réparations rendue par la Chambre de première instance X (ICC-01/12-01/18-2782)”, 29 May 2026, [No. ICC-01/12-01/18-2785](#).

¹⁶ See the “Decision on the Presiding Judge of the Appeals Chamber”, [No. ICC-01/12-01/18 A3 A4 A5](#), 2 June 2026.

¹⁷ See the “Reparations Order, with Confidential *Ex Parte* Annex I only available to the Legal Representatives of Victims, the Common Legal Representative of Victims, the Defence, and the Registry and Public Annexes II and III”, [No. ICC-02/04-01/15-2074](#), 28 February 2024, para. 21. See also, the Impugned Decision, *supra* note 2, para. 28.

17. In both the *Ntaganda*¹⁸ and *Ongwen* cases,¹⁹ the Appeals Chamber summarised the applicable standard of review and outlined the requirements for properly substantiating grounds of appeal against reparations orders.

a) Errors of law

18. With respect to alleged errors of law, the Appeals Chamber will not defer to the first instance chamber's interpretation of the law; rather, it will arrive at its own conclusions as to the applicable law and determine whether or not said chamber misinterpreted or misapplied it.²⁰ Where a legal error is established, the Appeals Chamber will intervene only if the error materially affected the impugned decision.²¹

19. A decision is materially affected by an error of law if the first instance chamber would have rendered a ruling substantially different from the one affected by the error, had it not made such error.²²

b) Errors of fact

20. With respect to alleged errors of fact, the Appeals Chamber will not interfere with factual findings of the first instance chamber unless it is shown that the latter clearly misappreciated the facts, took into account irrelevant facts, or failed to take into account relevant facts.²³ As to the misappreciation of facts, the Appeals Chamber will not disturb a factual finding simply because it might have come to a different

¹⁸ See the "Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'" (Appeals Chamber), [No. ICC-01/04-02/06-2782 A4 A5](#), 12 September 2022, paras. 28-37 (the "*Ntaganda* Reparations Appeals Judgment").

¹⁹ See the "Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 28 February 2024 entitled 'Reparations Order'" (Appeals Chamber), [No. ICC-02/04-01/15-2108 A A3](#), 7 April 2025, paras. 25-31 (the "*Ongwen* Reparations Appeals Judgment").

²⁰ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 29; and the *Ongwen* Reparations Appeals Judgment, *supra* note 19, para. 26.

²¹ *Ibid.*

²² *Ibid.*

²³ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 30; and the *Ongwen* Reparations Appeals Judgment, *supra* note 19, para. 27.

conclusion.²⁴ Rather, it will intervene only where it is unable to discern how the conclusion in question could reasonably have been reached from the evidence before the chamber.²⁵

21. The Appeals Chamber has further emphasised that factual findings underpinning a decision under article 74 of the Statute are made on the basis of the “beyond reasonable doubt” standard in accordance with article 66(3), whereas decisions under article 75 of the Statute are governed by the lower “balance of probabilities” standard.²⁶ Consequently, the standard of appellate review applicable to alleged errors of fact in appeals against reparations orders differs from that applied in appeals against article 74 decisions.²⁷

22. With regard to factual presumptions drawn by a trial chamber in reparations proceedings, the reasonableness of any such presumption will depend upon the circumstances of the case.²⁸ Accordingly, a party challenging a factual presumption must demonstrate that no reasonable trier of fact could have formulated the presumption in question in light of the particular circumstances of the case.²⁹

c) Procedural errors

23. With respect to alleged procedural errors, as with errors of law, the Appeals Chamber will only reverse the decision, if it is materially affected by the error. Therefore, the appellant needs to demonstrate that, in the absence of the procedural error, the decision would have substantially differed from the one rendered.³⁰

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 31.

²⁷ *Ibid.*

²⁸ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 32; and the *Ongwen* Reparations Appeals Judgment, *supra* note 19, para. 27.

²⁹ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 32; and the *Ongwen* Reparations Appeals Judgment, *supra* note 19, para. 84.

³⁰ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 33; and the *Ongwen* Reparations Appeals Judgment, *supra* note 19, para. 29.

d) Errors in the exercise of discretion

24. With respect to decisions involving the exercise of discretion in a judgment, the Appeals Chamber will not interfere with a chamber's discretionary determination merely because it might have reached a different conclusion had it been deciding the matter itself.³¹ Rather, it will only intervene where it is shown that an error of law, fact or procedure was made. In particular, the Appeals Chamber will disturb a discretionary decision only where it is shown that the exercise of discretion was based upon: (i) an erroneous interpretation of the law; (ii) a patently incorrect conclusion of fact; or (iii) the decision amounts to an abuse of discretion.³²

25. The Appeals Chamber has further explained that where the alleged error concerns a discretionary decision founded on an erroneous interpretation of the law or an incorrect conclusion of fact, it will apply the standards of review governing errors of law and errors of fact, respectively.³³

26. An abuse of discretion arises when the decision is so unfair or unreasonable, that it compels the conclusion that the first instance chamber failed to exercise its discretion judiciously.³⁴ In assessing whether there has been an abuse of discretion, the Appeals Chamber will also consider whether the chamber gave weight to extraneous or irrelevant considerations, or failed to give weight or sufficient weight to relevant considerations in exercising its discretion.³⁵ Furthermore, even where it is established that a chamber erred in the exercise of its discretion, the Appeals Chamber must be satisfied that the error materially affected the decision.³⁶

³¹ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 34; and the *Ongwen* Reparations Appeals Judgment, *supra* note 19, para. 30.

³² *Ibid.*

³³ *Ibid.*

³⁴ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 35; and the *Ongwen* Reparations Appeals Judgment, *supra* note 19, para. 30.

³⁵ *Ibid.*

³⁶ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 34.

e) *Substantiation of arguments*

27. Lastly, with respect to the substantiation of appellate arguments, an appellant is required to: (i) identify, by reference to the relevant part(s) of the record, or any other document or source of information, the factual basis of the challenge and to cite any relevant provisions or other applicable law, and any authority in support in relation to legal issues; (ii) specify the finding or ruling being challenged, with precise reference to the relevant page(s) and paragraph number(s) of the decision; (iii) present cogent arguments identifying the alleged error and explaining how the chamber erred; (iv) where alleging that a factual finding is unreasonable, explain why this is so - for example, by demonstrating that it was contrary to logic, common sense, scientific knowledge and experience; (v) direct the Appeals Chamber to all relevant aspects of the record or evidence supporting the submissions relating to the impugned factual finding; and (vi) demonstrate how the alleged error materially affected the impugned decision.³⁷

IV. GROUNDS OF APPEAL

Ground 1: The Chamber committed a combination of errors of law or fact, and procedure by finding that only the 49 individuals specifically referred to in the Trial Judgment and in the Sentencing Decision are eligible for reparations as direct victims of the crimes under Counts 1-6 and 14.

28. Mr Al Hassan was convicted for his contribution to the commission of eight counts of war crimes and crimes against humanity committed in Timbuktu (Mali) from early May 2012 until 28 January 2013 as a result of his “*vital and important role in the Islamic Police*”.³⁸

³⁷ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, paras. 36-37. See also, regulation 58(2) of the Regulations of the Court.

³⁸ See the Sentencing Decision, *supra* note 4, para. 37.

29. In the Impugned Decision, however, the Chamber ruled that only the 49 victims explicitly identified in the Judgment and in the Sentencing Decision qualified as direct victims of the crimes under Counts 1-6 and 14, whereas it found that the entire population of Timbuktu qualified as direct victim of the crime of persecution under Count 13.³⁹ The Chamber reached this restrictive conclusion on the basis that victim status must be established through a causal link between the harm suffered and the crime(s) underlying the conviction. It reasoned that the Judgment and the Sentencing Decision contained specific findings regarding only a limited number of individuals, rather than an open-ended description of the victim population.⁴⁰

30. This constitutes an error. It is inconsistent with the Chamber's own approach to the crime of persecution under Count 13, the scope and delineation of the charges, the evidentiary record, the applicable standard of proof, the objectives of the reparations system before the Court, and the broader purpose of the Statute.

31. First, the Chamber erred in adopting inconsistent approaches to the determination of the categories of eligible direct victims. In relation to Count 13, it identified the victim population, by considering its findings, the evidence and relevant factual circumstances as a whole, adopting a broad and contextual approach. By contrast, in relation to Counts 1-6 and 14, it applied an unduly narrow approach. The Chamber failed to provide any reasoning to justify this divergence. As a result, the reasoning underpinning its conclusions on victims' eligibility is neither coherent nor discernible.

32. In the "Updated self-contained set of charges" annexed to the Judgment,⁴¹ Counts 1-6 and 14, on the one hand, and Count 13, on the other hand, contained a list of incidents. Although Count 13 contained only one incident, this did not prevent the Chamber from concluding that all victims of the crime of persecution in Timbuktu

³⁹ See the Impugned Decision, *supra* note 2, paras. 64-66.

⁴⁰ *Ibid.*, para. 65.

⁴¹ See the Judgment, *supra* note 3, para. 13. See also, Annex 3 to the Judgment.

were eligible for reparations. In reaching that inclusive conclusion, the Chamber relied on its findings in the Sentencing Decision that the “*number of victims of the crimes of persecution is very high*”.⁴² As observed by the Defence,⁴³ however, those findings were themselves derived from the Chamber’s “*general findings*” concerning persecution, rather than from the individual incident identified in the charge.

33. By contrast, in relation to Counts 1-6 and 14, the Chamber erroneously confined its analysis to the individuals expressly identified in the incidents listed, without considering whether its own broader factual findings elsewhere in the Judgment pointed to a wider category of victims. The Chamber failed to explain why it adopted a different methodology for these counts than for Count 13. Such a distinction lacks any principled basis. As a matter of coherence, internal consistency, common sense and judicial logic, the same interpretative methodology should have been applied across all counts underlining the conviction. In determining the category of eligible direct victims of the crimes under Counts 1-6 and 14, and in sharp contrast to its approach in relation to Count 13, the Chamber erred by limiting its analysis to the individuals specifically referred to in the respective incidents and by failing to take due account of the entirety of its findings and the relevant factual circumstances set out elsewhere in the Judgment and in the Sentencing Decision.

34. Second, the Chamber erred by conflating the requirement that an accused receive prompt and sufficient notice of the charges under article 67(1)(a) of the Statute for the purpose of trial with the distinct question of how the scope of the charges must be delineated for the purpose of article 74 and, *a fortiori*, article 75 of the Statute. The two inquiries serve different functions and should not have been treated as interchangeable.

⁴² See the Impugned Decision, *supra* note 2, para. 56, relying on the Sentencing Decision, *supra* note 4, para. 71.

⁴³ See the Defence Observations on Reparations, *supra* note 7, para. 8. See also, the Impugned Decision, *supra* note 2, footnote 113 and in general paras. 55-62 discussing the Defence’s submissions and rejecting them.

35. As regard the required specificity of the charges, the Appeals Chamber has clarified that:

*“For the purposes of article 74(2) of the Statute, the charges must be described in such a way that the trial chamber as well as the parties and participants are able ‘to determine with certainty which sets of historical events, in the course of which crimes under the jurisdiction of the Court are alleged to have been committed form part of the charges, and which do not’. It is not necessarily the case that such determination is possible only where the charging documents list all criminal acts underlying each charge exhaustively. Depending on the circumstances of the case, the charges may be described in a less specific manner, for instance, by specifying a period of time during which and an area where criminal acts were allegedly committed by an identifiable group of perpetrators against an identifiable group of victims. While in such a case the document containing the charges may also list or make reference to specific criminal acts, the scope of the case is not necessarily limited to them – “other criminal acts not mentioned in the document containing the charges may still fall within the – broadly described – facts and circumstances of the charges”. Whether such description of the charges is sufficient for purposes of article 74(2) of the Statute will depend, inter alia, on the scale of criminality and the mode of individual criminal responsibility alleged”.*⁴⁴

36. The Pre-Trial Chamber in the *Duterte* case likewise recognised that the list of incidents presented by the Prosecution was not exhaustive and served merely as a tool for identifying the historical events encompassed by the charges.⁴⁵ The inclusion of specific incidents does not, without more, delimit the full scope of the conduct alleged. Most recently, in the *El Hishri* case, the Pre-Trial Chamber clarified that the number of

⁴⁴ See the “Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red](#), 30 March 2021, paras. 5 and 336 (the “*Ntaganda* Appeals Judgment”) (emphasis added).

⁴⁵ See the “Public redacted version of ‘Decision on the confirmation of charges against Mr Rodrigo Roa Duterte’, 23 April 2026” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-417-Red](#), 23 April 2026, para. 24.

victims mentioned in the charges, while providing an indication of the scope of the charged crimes, sets neither the upper nor the lower limit.⁴⁶

37. There is no reason to interpret the list of incidents in the present case differently. This is particularly so in light of the Chamber's own findings concerning the role of Mr Al Hassan and the functions of the Islamic Police during the relevant period. The Chamber found that *"Mr Al Hassan had a vital and important role in the Islamic Police : he was not a simple Police officer but rather was a key player in the system put into place by Ansar Dine/AQIM, and he chose to participate in this system in an active manner. Mr Al Hassan's conduct in carrying out his duties and responsibilities in the Islamic Police 'meaningfully and directly' contributed to Ansar Dine/AQIM's system of repression"*.⁴⁷

38. The Chamber also made detailed findings concerning the functions of the Islamic Police, including Mr Al Hassan's role within it.⁴⁸ In particular, it found that the Islamic Police operated a detention facility, that detainees were held in degrading and unsanitary conditions, that they were not informed of their rights,⁴⁹ and that the Islamic Police, including Mr Al Hassan, conducted investigations, *"with a special focus on admissions of guilt"*, at times resorting to torture.⁵⁰ Lastly, it found that the Islamic Police was responsible for securing punishment sites and the execution of punishments, that imprisonment and punishment were Islamic Police's fundamental functions and that Mr Al Hassan was present during such punishments.⁵¹

39. These findings are difficult to reconcile with the conclusion that the incidents expressly identified in the Judgment represent the entirety of the historical events encompassed by the charges. On the contrary, the incidents should have been

⁴⁶ See the "Decision on the confirmation of the charges against Mr Khaled Mohamed Ali El Hishri" (Pre-Trial Chamber I), [No. ICC-01/11-01/25-143](#), 16 July 2026, paras. 40-42 (the *"El Hishri Confirmation Decision"*).

⁴⁷ See the Sentencing Decision, *supra* note 4, para. 35.

⁴⁸ See the Judgment, *supra* note 3, paras. 564-587.

⁴⁹ *Ibid.*, paras. 578-581.

⁵⁰ *Ibid.*, para. 582.

⁵¹ *Ibid.*, paras. 584-587.

understood as illustrative examples of a broader pattern of criminality perpetrated through the Islamic Police and attributed to Ansar Dine/AQIM, to which Mr Al Hassan's contribution was found to have been "*vital and important*".⁵²

40. This distinction assumes particular importance in the reparations proceedings. Incidentally, the requirements concerning the specificity of the charges have been developed primarily in the context of article 74(2) of the Statute, which purpose is to ensure that an accused is tried only on the basis of the facts and circumstances described in the charges. Article 75 contains no comparable limitation. It requires only that reparations are ordered against a convicted person for the crime(s) for which they were convicted. Neither article 75, nor any other relevant provision stipulate that the identification of eligible victims must be confined to those persons expressly referenced in the incidents relied upon for charging purposes.

41. In this regard, it is of paramount importance to recall that reparations proceedings are distinct from trial proceedings. Unlike the determination of criminal responsibility, reparations proceedings are informed by international human rights law and principles, including the *pro homine* principle, which require the Chamber to interpret and apply the reparations framework in a manner that gives full effect to the rights of victims.⁵³

42. The Chamber's restrictive approach introduces an unwarranted conflation between the function of the charges and the identification of victims entitled to reparations. The definition of charges serves to ensure clarity regarding the facts attributed to an accused. They were not designed to function as an exclusionary mechanism for determining victims' eligibility, particularly where the crimes are, by their very nature, systematic or widespread, and, in the case at hand, where the crimes

⁵² See *supra* para. 37.

⁵³ See in that sense, the Separate Opinion of Judge Luz del Carmen Ibáñez Carranza to the "Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'" (Appeals Chamber), [No. ICC-01/04-01/06-3466-AnxII A7 A8](#), 16 September 2019, paras. 76.

underlying the conviction formed part of a broader system of repression affecting an identifiable population. By treating the list of incidents as determinative of the universe of eligible victims, the Chamber adopted an approach that is unsupported by the Statute, inconsistent with its own factual findings, and contrary to the remedial objectives of the Court's reparations regime.

43. Third, the Chamber erred in law by misapplying the applicable standard of proof. The Court's legal framework is clear that the determination of victims' eligibility for reparations is governed by the balance of probabilities standard.⁵⁴ The question at the reparations stage is therefore not whether the harm suffered by a victim was established beyond reasonable doubt during the criminal proceedings, but whether it is more likely than not that the victim suffered harm as a result of the crimes underlying the conviction.

44. By limiting eligibility in respect of Counts 1-6 and 14 to those individuals expressly identified in the Judgment, the Chamber effectively transformed the reparations inquiry into an extension of the criminal proceedings. In practice, it required that a victim's harm had already been established beyond reasonable doubt during the criminal proceedings on the merits before that victim could qualify as an eligible beneficiary for reparations. This approach is inconsistent with the legal framework governing reparations and imposes a significantly higher threshold than that prescribed by the Court's jurisprudence.

45. In doing so, the Chamber deprived the applicable balance of probabilities standard of any meaningful effect. If only those victims whose harm was specifically established in the Judgment can qualify for reparations, there is no independent role left for the evidentiary assessment that is required at the reparations stage. The Chamber's approach rendered the applicable standard effectively redundant, as

⁵⁴ See the Impugned Decision, *supra* note 2, para. 20.

eligibility became dependent not on proof adduced during reparations proceedings, but on whether a victim happened to have been expressly identified in the judgment.

46. This error is particularly consequential in a case involving crimes committed in the context of a broader system of repression affecting a large and identifiable population. By confining eligibility to victims expressly mentioned in the Judgment, the Chamber excluded potentially numerous victims from consideration without assessing whether they could establish, on a balance of probabilities, that they suffered harm causally linked to the crimes underlying the conviction. Such an approach is incompatible with the reparative function of article 75 of the Statute and with the Court's established practice of assessing victims' eligibility on the basis of evidence presented during the reparations proceedings. The Chamber treated the findings made at trial as an exhaustive and closed list of victims, thereby substituting the criminal standard applied at the conviction stage for the lower standard specifically applicable to reparations. In so doing, it committed an error of law warranting appellate intervention.

47. The Chamber, further, rejected the parties' submissions that victims of the crimes under Counts 1-6 and 14 - who were not among the 49 specifically identified in the Judgment - should nevertheless be considered eligible for reparations. In doing so, it reasoned that "[i]t must not expand the scope of Mr Al Hassan's conviction".⁵⁵ This conclusion reflects a fundamental misinterpretation of the nature and purpose of reparations proceedings before the Court. While the trial phase is concerned with determining the criminal responsibility of the accused and the scope of the conviction, the reparations phase aims at identifying and remedying, to the fullest extent possible, the harm suffered by victims as a result of the crimes for which a conviction was entered. As Chambers have repeatedly recognised, reparations serve a restorative,

⁵⁵ *Ibid.*, para. 65.

rather than punitive function.⁵⁶ Their primary purpose is to acknowledge victims' sufferings and provide appropriate redress for the consequences of the crimes established through the conviction.

48. Against this background, the Chamber erred in treating the recognition of additional victims as tantamount to an impermissible expansion of Mr Al Hassan's conviction. Determining that a person suffered harm as a result of crimes for which Mr Al Hassan has already been convicted does not alter the legal or factual scope of that conviction. Nor does it result in any additional finding of criminal responsibility. The conviction remains unchanged. The only question at the reparations stage is whether a victim has established, on the applicable standard of proof, a sufficient causal nexus between the harm suffered and the crimes for which the conviction was entered.

49. The number of victims ultimately found eligible for reparations therefore has no bearing on the scope of the conviction itself. A finding that victims beyond the 49 individuals expressly identified in the Judgment suffered harm resulting from the crimes under Counts 1–6 and 14 would not expand the factual basis of the conviction, create new crimes, or attribute additional criminal conduct to Mr Al Hassan. It would merely give effect to the remedial purpose of article 75 of the Statute by ensuring that all victims who can demonstrate, on a balance of probabilities, that they suffered harm arising from the crimes underlying the conviction are afforded the opportunity to obtain reparative relief.

50. By treating the identification of additional eligible victims as an unlawful enlargement of the conviction, the Chamber conflated the distinct objectives of

⁵⁶ See the "Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 and public annexes 1 and 2" (Appeals Chamber), [No. ICC-01/04-01/06-3129 A A2 A3](#), 3 March 2015, (the "*Lubanga* 2015 Appeals Judgment on Reparations"), with AMENDED order for reparations (Annex A) [No. ICC-01/04-01/06-3129-AnxA A A2 A3](#), (the "*Lubanga* Amended Order for Reparations"), para. 1. See also, the "Reparations Order" (Trial Chamber VIII), [No. ICC-01/12-01/15-236](#), 17 August 2016, para. 28.

conviction and reparations. This error unduly curtailed the scope of the reparations exercise and prevented the Chamber from carrying out the assessment required by article 75 of the Statute. In doing so, it undermined the Court's obligation to ensure that reparations meaningfully address the consequences of the crimes for all victims able to demonstrate a causal link between their harm and the crimes underlying the conviction.

51. Fourth, the Chamber erred by failing to give proper consideration⁵⁷ to relevant facts and circumstances that it had acknowledged in the Judgment and in the Sentencing Decision, including, *inter alia*, the temporal and territorial extent of the system of repression imposed by Ansar Dine/AQIM in Timbuktu between May 2012 and 28 January 2013.⁵⁸ Nor did it adequately consider other evidence in the record of the case demonstrating the breadth of victimisation arising from that system, including material submitted by the Trust Fund for Victims (the "TFV"), which indicates that the number of persons affected by the crimes other than persecution substantially exceeds the 49 individuals identified in the incidents specifically discussed in the Judgment and ranges between 1,210 for Count 6 to 9,677 for Counts 1-5.⁵⁹ While the Defence challenged the credibility of this evidence, the Chamber nevertheless found it to be "*credible, reliable, and capable of illustrating the nature of the harm*".⁶⁰

52. Taken together, this evidence clearly establishes, at a minimum on a balance of probabilities, that it is more likely than not that the number of individuals who suffered harm as a result of the crimes under Counts 1-6 and 14 was significantly higher than the number of victims specifically identified in the Judgment. Yet, rather than assessing whether additional victims could satisfy the applicable eligibility

⁵⁷ See the Impugned Decision, *supra* note 2, para. 28.

⁵⁸ See *infra* paras. 53-54 and references contained therein.

⁵⁹ See Annex C to the "Trust Fund for Victims' Observations relevant to Reparations with Annexes A, D and E and Confidential Annexes B and C", [No. ICC-01/12-01/15-2737](#), 16 June 2025 (notified on 17 June 2025), for instance, pp. 12 and 42 (the "Voices that count study").

⁶⁰ See the Impugned Decision, *supra* note 2, para. 34.

criteria on the basis of the available evidence, the Chamber effectively excluded them from consideration altogether.

53. The findings made at trial further underscore the error in the Chamber's approach. It found that Mr Al Hassan had an office in the first and second police locations, namely the BMS and the governorate;⁶¹ that he was perceived both by the local population and by members of the Islamic Police as a key figure within the Ansar Dine/AQIM;⁶² that he was diligent in the performance of his duties and was praised for the strict enforcement of prohibitions.⁶³ He supervised members of the Islamic Police;⁶⁴ he conducted investigations in the office of the Islamic Police; participated in the arrest of persons accused of violating the imposed rules;⁶⁵ and admitted that interrogations could involve "threat" and, where such threats proved ineffective, torture.⁶⁶ Mr Al Hassan also drafted and signed police reports;⁶⁷ escorted sentenced persons to the punishment site, and was present during the implementation of several public punishments.⁶⁸

54. In addition, the Chamber found that Mr Al Hassan acted as one of the persons responsible for communicating on behalf of Ansar Dine/AQIM;⁶⁹ and publicly discussed the types of conducts prohibited handled by the Islamic Police.⁷⁰ These findings demonstrate his central role in the implementation and enforcement of the system of repression established in Timbuktu throughout the relevant period.

55. Viewed as a whole, the evidence adduced at trial, demonstrates that the 49 incidents discussed in details in the Judgment, were not isolated or exceptional

⁶¹ See the Judgment, *supra* note 3, para. 1062.

⁶² *Ibid.*, para. 1064.

⁶³ *Ibid.*, para. 1066.

⁶⁴ *Ibid.*, para. 1069.

⁶⁵ *Ibid.*, para. 1073.

⁶⁶ *Ibid.*, para. 1073, relying on Mr Al Hassan's statement.

⁶⁷ *Ibid.*, paras. 1074-1075, including findings on events not specifically included in the charges.

⁶⁸ *Ibid.*, paras. 1078-1079, including findings on events not specifically included in the charges.

⁶⁹ *Ibid.*, para. 1080.

⁷⁰ *Ibid.*, para. 1080-1084 and references discussed therein.

occurrences. Rather, they formed part of a broader and organised pattern of criminal conduct carried out through the Islamic Police in furtherance of Ansar Dine/AQIM's common purpose. The Chamber itself found that the crimes under Counts 1-6 and 14 were committed in order to enforce the rules and prohibitions imposed by Ansar Dine/AQIM and were consistent with the punishments prescribed by that organisation.⁷¹ It further concluded that *"through his role as a senior member of senior member of the Islamic Police, and the individual acts and conduct discussed above [referring to paragraphs 1674-1683], Mr Al Hassan had a leading role in the implementation of the repression system put into place by Ansar Dine/AQIM in Timbuktu"*.⁷² The Chamber also found that he was instrumental in the various forms of repression carried out by the members of the groups, notably corporal punishments, such as floggings and one case of mutilation, as well as other forms of violence committed by Ansar Dine/AQIM members, both in detention and in public places.⁷³

56. It was not necessary for every eligible victim to have been individually identified at the time of the issuance of the Impugned Decision. Reparations proceedings before the Court routinely contemplate the subsequent identification, assessment and verification of victims during the implementation phase. The relevant question was, therefore, not whether a person had already been individually recognised in the Judgment, but whether they could establish, on the balance of probabilities, that (i) they suffered harm as a result of a conduct falling under Counts 1-6 and 14; (ii) said conduct was committed between May 2012 and 28 January 2013; (iii) it occurred in Timbuktu; and (iv) it formed part of the activities of the Islamic Police for which Mr Al Hassan was convicted.

57. Lastly, the Chamber's erred by disturbing the balance between the rights and interests of victims and those of the accused, as required by article 68(3), and the

⁷¹ *Ibid.*, paras. 1636-1638 and reasoning leading thereto.

⁷² *Ibid.*, para. 1684. See also, para. 1702 concerning Count 6.

⁷³ *Ibid.*, para. 1685. See also, para. 1702 concerning Count 6.

overarching objectives of the Statute. In adopting an unduly restrictive approach to victims' eligibility, the Chamber gave disproportionate weight to concerns relating to the scope of the conviction while failing to give adequate effect to the rights of victims to benefit from the Court's reparations framework.

58. Indeed, the Court was established to adjudicate large-scale and systemic forms of criminality. Crimes against humanity and war crimes are, by nature, often committed pursuant to broader policies, practices, or patterns of conduct affecting significant segments of the civilian population. Confining such criminality to a closed and exhaustive list of identified incidents risks disregarding the very characteristics that distinguish international crimes from ordinary criminal conduct.⁷⁴ In the present case, the Chamber's approach fragmented a system of repression - that it had itself recognised as widespread and organised - into a limited number of discrete incidents, thereby failing to capture the broader reality of the criminality established by the conviction.

59. Such an approach undermines the coherence of the Statute's framework and diminishes the practical significance of one of its most innovative features: the meaningful recognition of victims within international criminal proceedings. At the symbolic level, it also risks conveying the message that harm suffered outside the narrow confine of specifically identified incidents lacks legal relevance, notwithstanding its clear connection to the crimes underlying the conviction. This outcome sits uneasily with the restorative and acknowledgment-based purposes of reparations before the Court.

60. The Chamber's drastic restriction of the category of victims eligible for reparations is difficult to reconcile with article 75(3) of the Statute, and rule 85 of the Rules. It is also inconsistent with the rationale underlying the victim-centred provisions of the Statute. The preparatory works demonstrate a clear intention to avoid

⁷⁴ See the *El Hishri* Confirmation Decision, *supra* note 46, para. 20.

reproducing the distance between international criminal justice and affected communities that had characterized earlier models of international justice. The participation and recognition of victims were conceived as central features of the Court's mandate rather than as exceptional or peripheral elements.

61. The *travaux préparatoires* show that the inclusion of victims' rights reflects a deliberate political and normative choice made by States and civil society actors.⁷⁵ The notion that international justice should provide a forum not only for the determination of criminal responsibility but also for the public acknowledgment and recognition of the harm form part of the foundational consensus underpinning the Court. Interpreting the reparations framework so narrowly that only those victims expressly identified in the trial judgment may benefit from it risks undermining that foundational compromise. It reduces a structural feature of the system to a narrowly circumscribed procedural mechanism and deprives many victims of the recognition that the Statute was designed to afford.

62. Moreover, the collective dimension of international crimes must not be overlooked. Such crimes are not merely the aggregate of isolated incidents affecting individual victims; they are the manifestation of broader policies or patterns of violence against the civilian population. Limiting victims' recognition and participation to those specifically identified in a select number of incidents effectively treats structural phenomena as if they were a sum of individualized common crimes.

⁷⁵ The review of the *travaux préparatoires* shows that the victim participation and reparations regime was the product of sustained negotiation among States. The successive drafts of article 68 and 75 demonstrate that the provisions were adopted as the result of conscious political compromise rather than incidental drafting. See, *inter alia*, the Report of the Preparatory Committee on the Establishment of an International Criminal Court, [UN Doc. A/CONF.183/2/Add.1](#) (14 April 1998), containing alternative draft provisions on victims' participation and protection (future Article 68), notably pages 108-109 concerning future Article 68 and 116-118 concerning future Article 75; Report of the Working Group on Procedural Matters, UN Doc. [A/CONF.183/C.1/WGPM/L.58](#) (6 July 1998), transmitting a proposal concerning Article 68, UN Doc. A/CONF.183/C.1/WGPM/L.30, 28 June 1998 proposing alterations concerning a comprehensive reparations regime that formed the basis of Article 75; and Working Paper on Article 73 (Reparations to Victims), UN Doc. [A/CONF.183/C.1/WGPM/L.63](#) (8 July 1998), reflecting the Working Group's negotiated compromise on the provision subsequently adopted as article 75.

Such an approach fails to reflect the true nature of the crimes adjudicated by the Court and risks diminishing the capacity of international criminal justice to capture the scale, gravity, and societal impact of the violence. This undermines the legitimacy of international criminal law, which lies in its capacity to reflect the systemic nature of the evil it adjudicates,⁷⁶ and thus prevents the trivialization of the scale and depth of the violence it seeks to address.

63. The errors identified under the present Ground materially affect the Impugned Decision. As a result of those errors, victims of the crimes under Counts 1-6 and 14 – other than the 49 individuals specifically identified in the Judgment – were deprived of formal recognition and the acknowledgement of the multidimensional harm they suffered, notwithstanding the fact that such recognition constitutes, in and of itself, a satisfaction measure.⁷⁷ Moreover, the Chamber's approach prevented it from recognising and addressing the full scope of the victimisation arising from the crimes underlying the conviction, contrary to the fundamental objectives of the Court's reparations system.⁷⁸ Unless corrected on appeal, the Impugned Decision risks establishing a precedent that could significantly undermine the effectiveness and integrity of the reparations framework. In future cases, particularly those not involving crimes such as persecution, victims whose harm is not expressly reflected in the trial judgment may be excluded from reparations despite being able to demonstrate, on a balance of probabilities, that they suffered harm resulting from the crimes underlying the conviction. Such an outcome would be inconsistent with both the letter and the spirit of the Statute.

⁷⁶ See Stahn, C. (Ed.). (2015). *The Law and Practice of the International Criminal Court*. Oxford: Oxford University Press. <https://doi.org/10.1093/law/9780198705161.001.0001>; Triffterer, O. & Ambos, K. (2016). *The Rome Statute of the International Criminal Court: A Commentary*. Oxford: Oxford University Press, available at <https://doi.org/10.1093/law/9780198298625.001.0001>

⁷⁷ See the Impugned Decision, *supra* note 2, para. 74.

⁷⁸ See, *inter alia*, the "Reparations Order" (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021, paras. 1-3 (the "Ntaganda Reparations Order").

Ground 2: The Chamber committed a combination of errors of fact and procedure by failing to recognise material harm suffered by direct victims (sub-ground 1) and indirect victims (sub-ground 2) of the crimes under Counts 1-6 and Count 14.⁷⁹

Sub-Ground 2-1: The Chamber committed a combination of errors of fact and procedure by failing to recognise the material harm suffered by direct victims of the crimes under Counts 1-6 and 14.

64. The Chamber erred in its conclusion concerning the material harm suffered by direct victims of the crimes under Counts 1-6 and 14. First, it failed to determine whether direct victims of Count 6 suffered material harm, notwithstanding its recognition of the relevant categories of material harm.⁸⁰ Second, it erroneously concluded that certain victims of the crimes under Counts 1-5 and 14 did not suffer any material harm as a result of what they endured.⁸¹ In recognising material harm for certain victims of the crimes under Counts 1-5 and 14, the Chamber introduced the notion of *persisting* harm and interpreted it in an unduly restrictive manner, effectively limiting it only to situations in which victims incurred medical expenses directly arising from the flogging,⁸² or the payment of fines.⁸³ Third, in reaching those conclusions, the Chamber failed to give due consideration to relevant evidence on the record demonstrating both the existence of material harm and its continuing effects on the victims.

65. In particular, the Chamber erred by failing to rule on the victims' express request that it recognises the material harm they suffered as the result of the crimes.⁸⁴ This omission is inconsistent with the Court's established jurisprudence, which requires a trial chamber, when issuing a reparations order, to identify and define the

⁷⁹ See the Impugned Decision, *supra* note 2, paras. 128-138; in particular paras. 136-137 (for victims of the crime under Counts 6); paras. 141-175 (direct victims of the crimes under Counts 1-5 and 14); and paras. 169-171 (for indirect victims).

⁸⁰ *Ibid.*, paras. 128-138, in particular paras. 136-137.

⁸¹ *Ibid.*, paras. 145-146, paras. 147-150 concerning P-0556 (because she did not show payment of medical expenses contrary to P-0557); paras. 151-153, 166-167.

⁸² *Ibid.*, paras. 147-150 concerning P-0557 (payment of medical expenses); paras. 154-161, 162-165.

⁸³ *Ibid.*, paras. 162-165.

⁸⁴ See the OPCV Submissions, *supra* note 10, paras. 32-34.

harm suffered by direct and indirect victims as a consequence of the crimes for which the accused was convicted.⁸⁵

66. The Appeals Chamber has held that “[t]he extent of the reasoning will depend on the circumstances of the case, but it is essential that it indicates with sufficient clarity the basis of the decision. Such reasoning will not necessarily require reciting each and every factor that was before the Pre-Trial Chamber to be individually set out, but it must identify which facts it found to be relevant in coming to its conclusion”.⁸⁶ Although this standard was developed in the context of establishing the criminal responsibility of the accused, the same principle applies to reparations proceedings.⁸⁷

67. Article 75(1) of the Statute expressly requires a trial chamber to “determine the scope and extent of any damage, loss and injury to, or in respect of victims. In doing so, a trial chamber must establish the types or categories of harm caused by the crimes for which the accused was convicted, on the basis of all relevant information before it, including the judgment, sentencing decision, submissions of the parties and participants, expert evidence and the victims’ applications for reparations”.⁸⁸ The determination of the harm suffered by direct and indirect victims is one of the indispensable elements of a reparations order. The absence of a judicial determination on this issue constitutes a failure to resolve a matter that lies at the heart of the Court’s reparative mandate.⁸⁹

68. In the *Lubanga* case, the Appeals Chamber stressed that all five elements of a reparations order, including the harm suffered by direct and indirect victims, must be judicially determined. It explained that their inclusion is “vital to [the] proper implementation” of the reparations order and ensures that “the critical elements of the

⁸⁵ See the *Lubanga* 2015 Appeals Judgment on Reparations, para. 1 with the *Lubanga* Amended Order for Reparations, *supra* note 56.

⁸⁶ See the *Ntaganda* Reparations Appeals Judgment, *supra* note 18, para. 58.

⁸⁷ *Ibid.*, para. 60.

⁸⁸ *Ibid.*, para. 147 (emphasis added).

⁸⁹ *Ibid.*, paras. 149, 168, 170 and 173. See also, the *Lubanga* 2015 Appeals Judgment on Reparations, *supra* note 56, paras. 1 and 32.

order are subject to judicial control". It further held that, absent such judicial determination, the persons entitled to appeal under article 82(4) of the Statute would be deprived of the ability to effectively exercise that right.⁹⁰

69. In the present case, however, the Chamber neither addressed the parties' submissions on this issue⁹¹ nor made any finding as to whether direct victims of the crime under Count 6 suffered material harm, as it merely referred to the Judgment. This failure to determine one of the essential elements of the reparations order is, in itself, sufficient to warrant appellate intervention.

70. The Chamber further erred by relying exclusively on factual findings contained in the Judgment while disregarding other available evidence in the record of the case demonstrating that direct victims of the crimes under Count 1-6 and 14 suffered material harm that was both foreseeable and directly linked to the crimes. In particular, it failed to properly consider evidence from victims indicating that they were ostracised and excluded from participating in society following their arrest, detention, punishment, or public stigmatisation,⁹² with consequences that continue to affect their livelihoods and productive capacities years later.

71. With respect to Count 6, the Chamber correctly recognised that material harm encompasses losses relating to "*opportunity to work, reduced standard of living and socio-economic opportunities*".⁹³ Having adopted that understanding of material harm, its failure to find that victims of the crime under Count 6 suffered such material harm is inexplicable. The Chamber neither reconciled this conclusion with its own definition of material harm nor with the evidence on the record demonstrating that the victims experienced precisely those forms of economic and socio-economic loss.

⁹⁰ See the *Lubanga* 2015 Appeals Judgment on Reparations, *supra* note 56, para. 34.

⁹¹ See the OPCV Submissions, *supra* note 10, paras. 32-34.

⁹² See the Impugned Decision, *supra* note 2, *inter alia*, paras. 159-160.

⁹³ *Ibid.*, para. 71.

72. In particular, the material adduced by the TFV, which the Chamber deemed credible and reliable,⁹⁴ points in the opposite direction. According to that material, 45% of women and 60% of men were compelled to cease their economic activities following the crime; between 9% and 12 % had to interrupt their vocational training.⁹⁵ More than half of the respondents (53%) indicated that the events have had grave to dramatic impacts on their lives. Less than half indicated that it either had no more impact or less impact today.⁹⁶ Of these people the majority indicated that the impact is economical.⁹⁷

73. The Chamber likewise erred in its treatment of victims of the crimes under Counts 1-5 and 14. Although it recognised material harm with respect to certain victims, it adopted an unduly restrictive interpretation of “persistent” material harm, limiting it essentially to medical expenses directly arising from the flogging,⁹⁸ or the payment of fines.⁹⁹ By contrast, it concluded that the economic consequences suffered by victims whose businesses collapsed due to the social stigma and ostracism resulting from their arrest and public punishment did not constitute persistent material harm.¹⁰⁰

74. The Chamber failed to explain on which basis it assessed the persistence of the harm. This deficiency is particularly significant because, in reaching its conclusions, it relied on evidence provided years earlier during trial proceedings, without considering whether more recent evidence existed regarding the victims’ continuing economic circumstances. This conclusion is contradicted by other available evidence in the record of the case demonstrating that victims who lost their source of income have never fully recovered economically. Moreover, its reasoning leads to an untenable result. Under the Chamber’s approach, the one-time payment of a fine

⁹⁴ *Ibid.*, para. 34.

⁹⁵ See the Voices that count study, *supra* note 59, page 15.

⁹⁶ *Ibid.*, p. 28.

⁹⁷ *Ibid.*, pp. 33 and 38.

⁹⁸ See the Impugned Decision, *supra* note 2, paras. 147-150 concerning P-0557 (payment of medical expenses); paras. 154-161, 162-165.

⁹⁹ *Ibid.*, paras. 162-165.

¹⁰⁰ *Ibid.*, paras. 154-157, 158-161.

constitutes *persistent* material harm,¹⁰¹ while the loss of a business – representing a stable and ongoing source of income - does not.¹⁰² Such conclusion is incompatible with the very definition of material harm that the Chamber expressly endorsed, namely that it encompasses the “*opportunity to work, reduced standard of living and socio-economic opportunities*”.¹⁰³

75. The conclusion is also incompatible with the principles of non-discrimination and equality amongst victims that underpins the Court’s reparations framework.¹⁰⁴ Indeed, victims identified during the implementation phase will have the opportunity to provide evidence regarding the material harm they suffered, including expenses incurred as a result of the crimes and the continuing economic consequences thereof. By contrast, victims who testified at trial, provided accounts of the harm they suffered solely for the purpose of establishing criminal responsibility of the accused. They had no reason to anticipate the future contours of the reparations process and were afforded no meaningful opportunity to develop evidence relating specifically to their material losses. To deny recognition of material harm on that basis places those victims at an unjustified disadvantage.

76. The errors identified under the present Ground materially affect the Impugned Decision. As a result of those errors, the Chamber declined to award reparations for the material harm suffered by the victims of the crimes under Counts 1–6 and 14. Specifically, “[f]or victims of the crimes other than persecution, the Chamber recognises that [they] may have experienced specific harm, that is, physical and psychological harm” warranting “a more individualised component”.¹⁰⁵ It consequently ordered that “an individualised component should be added to the [...] rehabilitation programmes to address the physical and psychological harm”.¹⁰⁶ By failing to properly recognise the material harm

¹⁰¹ *Ibid.*, paras. 164-165.

¹⁰² *Ibid.*, paras. 160-161.

¹⁰³ *Ibid.*

¹⁰⁴ See the *Ntaganda* Reparations Order, *supra* note 78, paras. 41-44.

¹⁰⁵ See the Impugned Decision, *supra* note 2, para. 187.

¹⁰⁶ *Ibid.*, para. 202.

suffered by these victims, the Chamber likewise failed to provide reparations capable of remedying the material and socio-economic consequences of the crimes, notwithstanding the evidence demonstrating the existence of such harm.

*Sub-Ground 2-2: The Chamber committed a combination of errors of fact and procedure by failing to recognise material harm suffered by indirect victims of the crimes under Counts 1-6 and 14.*¹⁰⁷

77. Contrary to the Chamber's findings,¹⁰⁸ the evidence available in the record of the case unequivocally demonstrates that family members of direct victims of the crimes under Counts 1-6 and 14 suffered material harm in multiple forms as a consequence of those crimes.

78. Whether family members of direct victims suffered harm is an issue only arising at reparations stage of the proceedings. While evidence concerning the harm suffered by direct victims may emerge during the trial – for instance, through the testimony of crime-base witnesses, for reasons of efficiency of the proceedings and limitation to legal representative's questioning, no line of questioning ever explore systematically the impact of the crimes on family members of crime-base witnesses and discussions as to said harm generally happen accidentally.¹⁰⁹ It is therefore misplaced to assess the existence of harm to family members primarily by reference to whether such harm was expressly discussed in the Judgment or in the Sentencing Decision. Those proceedings were neither intended nor structured to determine the extent of harm suffered by indirect victims.

79. In previous cases, prior to reaching a ruling on reparations, and specifically on the harms, chambers either relied on expert reports¹¹⁰ or representative sample of

¹⁰⁷ *Ibid.*, para. 171.

¹⁰⁸ *Ibid.*

¹⁰⁹ In fact, the Chamber pointed out to the incidental nature of these discussions itself (see the Impugned Decision, para. 170: the issue of the impact on family members arose only in a few instances and in one of them the direct victim already passed away, which makes it inevitably that only indirect victims can testify thereto).

¹¹⁰ For instance in the *Al Mahdi* case.

applications from direct and indirect victims.¹¹¹ Such evidence has routinely served as the basis for determining whether family members and other indirect victims suffered material, psychological, or other forms of harm resulting from the crimes underlying the conviction.

80. In the present case, the Chamber exercised its discretion to organise the reparations proceedings differently, without commissioning experts evidence or relying on a representative sample of applications. While that procedural choice was within the Chamber's discretion, it necessarily impacted on the quality and quantity of evidence available, which could largely be expected to derive from the material submitted by the parties, the Registry and the TFV. The information stemming from this body of material not only show that members of the family of direct victims of the crimes under Counts 1-6 and 14 suffered material harm but also stands entirely uncontradicted by any evidence on the record.

81. Counsel informed the Chamber that consultations with their clients showed that family members of direct victims suffered, and in many instances continue to suffer, from the consequences of the crimes.¹¹² This is further supported by the TFV's submissions. Of the 655 stories collected, 341 referred to the fact that the victim had to interrupt their economic activities following the relevant events.¹¹³ Such material strongly supports the inference that the economic effects of the crimes extended beyond the direct victims themselves and had significant repercussions for their families and dependants.

82. The Chamber's conclusion is further undermined by its failure to consider the socio-economic realities prevailing in Timbuktu. Households are commonly organised around a single principal income earner, upon whom the economic well-being of the entire family depends. In such circumstances, the loss of income, employment or

¹¹¹ For instance in the *Lubanga*, *Ntaganda* and *Ongwen* cases.

¹¹² See the OPCV Submissions, *supra* note 10, para. 35.

¹¹³ See the Voices that count study, *supra* note 59, *inter alia*, p. 46.

livelihood suffered by one family member inevitably has direct economic consequences for the other members of the household. By failing to take this reality into account, the Chamber adopted an unduly formalistic and artificial approach to the assessment of material harm suffered by indirect victims.

83. The Chamber's failure to recognise this material harm constitutes an error that materially affects the Impugned Decision. By excluding these foreseeable and direct economic consequences from its assessment, the Chamber denied affected indirect victims recognition of the harm they suffered and deprived them of access to reparations capable of adequately addressing the harm they suffered as a result of the crimes. In doing so, it failed to give full effect to the Court's reparative mandate and to the principle that reparations should, to the greatest extent possible, remedy the consequences of the crimes for all victims who have suffered harm as a result thereof.

Ground 3: The Chamber committed an error of fact and procedure by failing to rule on the appropriate type and modality of reparations for victims having suffered material harm as a result of the crimes under Counts 1-6 and 14.

84. The Chamber found that the "*physical, moral, material and community harm*" caused by the crime of persecution was most appropriately addressed through collective community-based reparation,¹¹⁴ whereas the "*physical and psychological harm*" resulting from the other crimes was best addressed through an individualised component.¹¹⁵

85. In doing so, however, the Chamber erred by failing to determine the appropriate type and modality of reparations for victims who suffered material harm as a result of the crimes under Counts 1-6 and 14.

¹¹⁴ See the Impugned Decision, *supra* note 2, paras. 184-186.

¹¹⁵ *Ibid.*, para. 187 (emphasis added).

86. Although imperfectly,¹¹⁶ the Chamber did find that certain victims of the crimes under Counts 1-6 and 14 suffered material harm, and, in some cases, that said harm continues to persist to the present day. Nevertheless, it declined to award any form of reparations specifically aimed at addressing those losses. The Chamber offered no explanation for this omission. This conclusion is particularly striking as it awarded reparations for the physical and psychological harm suffered by the same victims. Having recognised the existence of material harm, the Chamber was required to explain why that category of harm, unlike the others, did not warrant reparations. Its failure to do so constitutes an error.

87. As established by the Appeals Chamber in the *Lubanga* case, and consistently reaffirmed thereafter, the determination of the appropriate types and modalities of reparations is “*vital to [the] proper implementation*”¹¹⁷ of the reparations order. While a trial chamber enjoys a broad margin of discretion in selecting the reparative measures it considers more appropriate, that discretion is not unfettered. Rather, it must be exercised “*by reference to the harms that were caused and which the reparations seek to remedy*”.¹¹⁸

88. The identification and assessment of harm serve precisely this purpose. Establishing the categories of harm suffered by victims is not an abstract exercise; it is the foundation upon which a chamber determines the forms of reparations required to address those harms. The entire purpose of the establishment of the harm is precisely to conclude on the appropriate modality of reparations. In the present case, having recognised that certain victims of the crimes under Counts 1-6 and 14 suffered material harm, the Chamber nevertheless failed to provide any form of reparations to remedy that harm.

¹¹⁶ See *supra*, para. 64.

¹¹⁷ See the *Lubanga* 2015 Appeals Judgment on Reparations, *supra* note 56, para. 34.

¹¹⁸ *Ibid.*, para. 200.

89. The error identified under the present Ground materially affects the Impugned Decision. By failing to provide any reparative measure addressing the material harm suffered by victims of the crimes under Counts 1–6 and 14, the Chamber deprived those victims of an important component of the redress to which they are entitled. As a result, the reparations awarded do not fully address the harm recognised by the Chamber itself and therefore fall short of fulfilling the restorative purpose of article 75 of the Statute. Had the Chamber properly considered the material harm suffered by these victims, it would necessarily have been required to determine and award an appropriate reparative measure aiming at remedying the economic and socio-economic consequences of the crimes.

Ground 4: The Chamber committed a combination of errors of fact and procedure by failing to recognise that direct victims of the crime under Count 6 suffered physical harm.

90. As with the material harm, the Chamber erred by failing to determine whether direct victims of the crime under Count 6 suffered physical harm. Rather than assessing the nature and extent of the harm resulting from the unlawful deprivation of liberty, it merely reiterated the reasons for the victims' detention, as set out in the Judgment, without reaching a conclusion as to the specific physical harms they endured as a consequence of that crime.¹¹⁹

91. First, the Chamber failed to rule on the victims' express request that it recognises the physical harm they suffered.¹²⁰ For the same reasons set out under Ground 2 above, this omission is inconsistent with the Court's established jurisprudence, which requires a trial chamber to identify and define the harm suffered by both direct and indirect victims as a result of the crimes for which the accused was convicted.¹²¹ It is also difficult to reconcile with the Chamber's own finding that a detailed recounting of the harms suffered constitutes, in and of itself, a satisfaction

¹¹⁹ See the Impugned Decision, *supra* note 2, paras. 128-138, in particular paras. 136-137.

¹²⁰ See the OPCV Submissions, *supra* note 10, paras. 20-22.

¹²¹ See the *Lubanga* 2015 Appeals Judgment on Reparations, *supra* note 56, para. 1. See also, paras. 64-69.

measure.¹²² By failing to determine whether the victims of the crime under Count 6 suffered physical harm, the Chamber deprived those victims of that important form of acknowledgment.

92. Second, the Chamber correctly found that physical harm “*is not restricted to the infliction of a physical or bodily injury*”, and that “*hurt, pain, suffering otherwise not caused by a bodily injury can also amount to physical*”.¹²³ Having adopted this definition, its failure to find that victims of the crime under Count 6 suffered physical harm is inexplicable. The Chamber neither reconciled that conclusion with its own definition of physical harm nor with the evidence on the record demonstrating that the victims experienced precisely the type of suffering that it recognised falling within that category.

93. The Chamber’s own findings demonstrate that victims of the crime under Count 6 were subjected to detention in degrading conditions as part of the system of repression implemented by Ansar Dine/AQIM and enforced through the Islamic Police. The Chamber found, *inter alia*, that detainees were deprived of basic safeguards, and exposed to an environment characterised by fear, coercion and uncertainty.¹²⁴ At a minimum, the Chamber was required to assess whether the suffering resulting from those detention conditions constituted physical harm within the meaning of its own definition. Its failure to undertake that analysis constitutes an error.

94. The errors identified under the present Ground materially affect the Impugned Decision. By failing to recognise the physical harm suffered by direct victims of the crime under Count 6, the Chamber deprived those victims, first, of the judicial acknowledgment of that harm, which it itself recognised as an important measure of satisfaction;¹²⁵ and, second, of the possibility of receiving reparations specifically

¹²² See the Impugned Decision, *supra* note 2, paras. 74 and 220.

¹²³ *Ibid.*, para. 71.

¹²⁴ See the Judgment, *supra* note 3, *inter alia*, paras. 777, footnote 2556; paras. 841, 864, 904, 1385, 1398, and 1648.

¹²⁵ See the Impugned Decision, *supra* note 2, para. 74.

designed to remedy the physical consequences of their detention. The omission therefore affected both the recognition of the victims' suffering and the scope of the reparations awarded. Accordingly, appellate intervention is warranted.

Ground 5: The Chamber committed a combination of errors of law or fact or procedure by failing to properly address and consider that, in the circumstances of the present case, victims suffered transgenerational harm.

95. The Chamber committed a combination of errors of law or fact or procedure by failing to properly address and consider that, in the circumstances of the present case, victims suffered transgenerational harm as a result of the crimes for which Mr Al Hassan was convicted.¹²⁶ The existence of transgenerational harm was expressly raised by the parties and participants and supported by evidence on the record. Pursuant to article 75(1) of the Statute, the Chamber was therefore required, to assess whether this category of harm had been established on a balance of probabilities. Instead, it concluded that it was "*unnecessary to include transgenerational harm*",¹²⁷ without conducting the requisite evidentiary assessment or making any finding as to whether such harm had been proven. In so doing, the Chamber failed to discharge its mandate under article 75 to determine the scope of harm suffered by victims. This constitutes an error of law. It also amounts to a procedural error, as the Chamber failed to decide an issue squarely before it; and an error of fact, as it declined to evaluate the evidence specifically adduced in support of this category of harm.

96. The Chamber was not required to identify the precise mechanism through which transgenerational harm is transmitted. At the reparations stage, however, it was under an obligation to establish, to the fullest extent possible, the scope and nature of the victimisation resulting from the crimes committed by the convicted person.¹²⁸ The Chamber's approach is inconsistent with the Court's jurisprudence on reparations. In the *Ongwen* case, the trial chamber expressly recognised transgenerational harm as a

¹²⁶ See the Impugned Decision, *supra* note 2, paras. 175-179.

¹²⁷ *Ibid.*, para. 179.

¹²⁸ See the *Lubanga* 2015 Appeals Judgment on Reparations, *supra* note 56, para. 1.

potentially reparable harm and undertook an assessment of the relevant evidence before determining the extent to which such harm had been established. Similarly, the reparations order in the *Ntaganda* case reflected the principle that all categories of harm properly raised before a chamber must be judicially assessed on the basis of the evidence and the applicable standard of proof. By contrast, despite extensive submissions and evidentiary material concerning transgenerational harm, the Chamber declined to undertake any substantive analysis or make any findings on the issue. This unexplained departure from the Court's established practice constitutes an error warranting appellate intervention.

a) The Chamber erred by disregarding its own findings and by failing to engage with the evidence demonstrating transgenerational harm.

97. In particular, the Chamber erred in concluding that *"there is insufficient information in the Trial Judgment, the Sentencing Decision, and the case record to determine, on a balance of probabilities, that all or most of the next-generation members of the case may be presumed to have suffered transgenerational harm"*.¹²⁹ That conclusion is flawed both in its premises and in its reasoning.

98. First, the Chamber failed to engage with, and give proper effect to its own findings in the Judgment and in the Sentencing Decision concerning the long-term and multidimensional consequences of crimes for which Mr Al Hassan was convicted. Regardless of whether or not the Judgment expressly employed the term *"transgenerational harm"*, the Chamber repeatedly found that the crimes committed by Ansar Dine/AQIM caused profound and enduring consequences to the population of Timbuktu and to the community as a whole.¹³⁰ It found, *inter alia*, that victims continue

¹²⁹ See the Impugned Decision, *supra* note 2, para. 177.

¹³⁰ See the Judgment, *supra* note 3, para. 1314: *"The Chamber also takes account of the enduring social stigma and embarrassment associated with the floggings, considering that both victims became the object of public speculation about the circumstances surrounding their marriage following the events"*. See also, the Sentencing Decision, *supra* note 4, para. 47: *"In respect of the harm caused, the Chamber observed that the impact on the victims was significant, and "often had long-term consequences. Many of the victims of flogging suffered physical injuries and lasting scarring, in addition to enduring social stigma and ostracisation due to their public humiliations. Following the amputation of his hand, Dédéou Maiga was socially rejected, suffered*

to suffer lasting psychological trauma, social stigma, ostracization, disruption of family and community life, loss of educational and socio-economic opportunities, and the enduring effects of the system of repression established during the period of the events.¹³¹ The Sentencing Decision likewise recognised that the impact of the crimes was significant and “often had long-term consequences”.¹³² In determining the sentence, pursuant to article 78 of the Statute, the Chamber expressly relied on the gravity of the crimes and their impact on victims.¹³³ These findings describe precisely the very type of persistent and community-wide consequences that are capable of giving rise to transgenerational harm. Yet, when determining reparations, the Chamber failed to consider whether those established consequences extended beyond the direct victims to subsequent generations or to explain why they did not. In doing so, it disconnected its reparations analysis from its own factual findings and failed to assess the full scope of the harm flowing from the crimes.

99. This omission is particularly significant in relation to the crime of persecution, for which the highest individual sentence was imposed. The Chamber found that persecution targeted the civilian population of Timbuktu on religious and cultural grounds, and that the system of repression imposed by Ansar Dine/AQIM profoundly altered the social fabric of the community.¹³⁴ By its nature, persecution is directed not merely at individual victims but at the identity, values, customs, and way of life of a broader group. Harm of that character is inherently capable of producing effects that endure beyond the immediate victims and continue to affect later generations. These findings were, therefore, directly relevant to the assessment of whether the crimes caused transgenerational harm. Even if the Chamber ultimately considered that the evidentiary threshold for establishing such harm had not been met, it remained under

mentally and was unable to work, and the amputation affected his family. As noted above, the public floggings and the amputation also impacted members of the population of Timbuktu, including by exposing them to violent scenes.”

¹³¹ *Ibid.*

¹³² See the Sentencing Decision, *supra* note 4, para. 47.

¹³³ *Ibid.*, para. 131.

¹³⁴ See the Impugned Decision, *supra* note 2, para. 127.

an obligation, as part of its judicial function, to engage with its own findings concerning the enduring, community-wide consequences of the crimes and to explain why those findings did not support the recognition of that category of harm. Its failure to do so constitutes an error, as it neglected to determine the full scope and extent of the harm caused by the crimes, contrary to article 75(1) of the Statute.

100. Second, the Chamber erred by failing to engage meaningfully with the parties' and participants' submissions and the evidence on the record. The LRV,¹³⁵ the OPCV,¹³⁶ the Prosecution¹³⁷ and the TFV¹³⁸ all submitted that the crimes for which Mr Al Hassan was convicted caused transgenerational harm. Those submissions were grounded not only on the Chamber's own findings in the Judgment and in the Sentencing Decision, but also on the TFV's field assessments, victims' accounts of the enduring effects of trauma and social exclusion,¹³⁹ the long-term disruption of education, and material demonstrating the continuing consequences of the crime of persecution for the community of Timbuktu. The TFV, in particular, documented the specific impact of the crimes on women and girls, noting that many were compelled to abandon employment opportunities and withdraw from public life, while others were flogged or detained for alleged breaches of dress codes or behavioural rules.¹⁴⁰ It further reported that a group of women "*suffered from miscarriages or gave birth to children with disabilities, likely linked to the trauma endured during the occupation*".¹⁴¹ Taken together, this evidence constitutes, at a minimum, material capable of supporting a finding of

¹³⁵ See [T-219](#), p. 8, lines 15-20.

¹³⁶ *Ibid.*, p. 28, lines 2-9.

¹³⁷ *Ibid.*, p. 38, lines 3-9: the Prosecution referring to the OPCV submissions at p. 28, lines 2-9 on transgenerational effects of the crimes, noting that: "[t]he marks left by whipping do not disappear on a father or a mother. Children and grandchildren can see these marks and they cannot pretend that they haven't seen them".

¹³⁸ See, *inter alia*, the "TFV Submissions on Reparations, *supra* note 7, para. 22: "To give an example, in schools, children regularly faint when noise levels rise suddenly, which is a sign of persistent hypervigilance and unresolved trauma embedded in daily life".

¹³⁹ The LRVs were able to observe in the field, and particularly through interviews with affected individuals who were "*clearly suffering from post-traumatic stress disorder*" due to the crimes committed by Mr Al Hassan while Timbuktu was occupied by Ansar Dine and AQIM. See [T-219](#), p. 8, lines 15-20.

¹⁴⁰ See the TFV's Observations, *supra* note 7, para. 26.

¹⁴¹ *Ibid.*, which references the Voices that count study, *supra* note 59, slide 16 in footnote 31.

transgenerational impact and therefore required careful judicial assessment, as they are “*strong indicators*” of said harm.¹⁴² Significantly, even the Defence did not oppose, in principle, the recognition of transgenerational harm.¹⁴³ Nevertheless, the Chamber dismissed the issue without analysing that evidence, engage with the parties’ and participants’ submissions or explain why it considered that the balance of probabilities threshold had not been met. Such reasoning falls short of the Chamber’s obligation to provide a reasoned decision capable of appellate review under article 74(5) of the Statute, read together with article 75.

b) The Chamber erred by conflating the existence of harm with its mitigation.

101. The Chamber further erred by conflating the existence of transgenerational harm with the possibility that future reparative measures might mitigate its continuing effects. It reasoned that “*to the extent that the Reparations Order addresses the harm of the current population in a timely manner, it thereby mitigates the harm of the next generations*” and, on that basis, found it unnecessary to recognise transgenerational harm.¹⁴⁴ This reasoning is internally contradictory. As a matter of common sense, harm can only be mitigated if it exists. By accepting that reparations may mitigate harm suffered by future generations, the Chamber necessarily accepted the possibility that subsequent generations are experiencing, or may experience, harm resulting from the crimes. Having accepted that premise, the Chamber was required to determine whether such harm had been established based on the evidence and in accordance with the applicable standard. Instead, it treated the prospect of future mitigation as a reason for avoiding that determination altogether. By doing so, the Chamber failed to discharge the judicial function entrusted to it under article 75(1) of the Statute, replacing a

¹⁴² See the TFV’s Observations, *supra* note 7, para. 26.

¹⁴³ See the Defence Response on Reparations, *supra* note 8, para. 3: the Defence did not oppose 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.*”

¹⁴⁴ See the Impugned Decision, *supra* note 2, para. 179.

reasoned evidentiary assessment with speculation about the potential impact of future reparations.

102. The Chamber thereby conflated two distinct inquiries required under article 75 of the Statute: the determination of the nature and extent of the harm suffered, and the determination of the appropriate forms of reparations to address that harm. Whether reparations may alleviate or reduce the continuing effects of transgenerational harm is conceptually and legally separate from the question of whether such harm has been established in the first place. The evidence before the Chamber demonstrated that the crimes had already generated long-term effects extending beyond the direct victims, including persistent trauma, the disruption of family and community structures, the interruption of education, continuing stigma and social exclusion, and broader deterioration of the social fabric of Timbuktu. Those consequences had already materialised by the time the Impugned Decision was issued. The possibility that future reparative measures might alleviate some of their continuing effects can not relieve the Chamber of its obligation to determine whether the harm itself existed and to recognise it, where established, as part of the reparations' framework.

103. The Chamber further erred by assuming, without any evidentiary foundation, that the Impugned Decision would address the harm of the current population in "a timely manner".¹⁴⁵ That assumption was speculative and unsupported by the record. The Impugned Decision was issued more than thirteen years after the commission of the crimes, by which time the long-term consequences of the events had already materialised. Moreover, as the Court's own experience demonstrates, the implementation of reparations frequently extends over a number of years following the issuance of a reparations order. In those circumstances, the Chamber had no basis for assuming that the implementation of reparations would occur sufficiently

¹⁴⁵ *Ibid.* (emphasis added).

promptly to prevent, interrupt, or substantially reduce the transmission of harm to subsequent generations. The possibility that reparative measures may, at some future stage, alleviate aspects of the continuing effects of the crimes cannot justify declining to determine whether transgenerational harm has already occurred.

104. More fundamentally, the Chamber's reasoning overlooks that, according to the evidence before it, transgenerational harm had already begun to materialise well before the Impugned Decision was issued. The crimes for which Mr Al Hassan was convicted disrupted family structures and relationships, educational opportunities, livelihoods, community life and social cohesion for more than a decade prior to the reparations proceedings. Those consequences inevitably affected children and younger generations growing up in their aftermath. As such, the issue before the Chamber was not confined to the possibility of future harm, but concerned harm that had already emerged and continued to unfold over time. Whether future reparative measures might alleviate some of those continuing effects was a separate question. It could neither retrospectively negate harm that has already occurred nor discharge the Chamber from its obligation under article 75 of the Statute to identify, assess and recognise the full extent of the harm resulting from the crimes.

c) The Chamber erred by inconsistently applying its own legal framework governing the recognition of harm and failing to provide a reasoned decision.

105. The Chamber's approach is also inconsistent with its own reasoning elsewhere in the Impugned Decision. It expressly recognised that the public acknowledgement and recounting of the harm suffered by victims constitutes, in and of itself, a measure of satisfaction.¹⁴⁶ Yet, by declining to determine whether victims suffered transgenerational harm, it denied them judicial recognition of an entire category of harm solely on the basis that future reparative measures might mitigate its continuing

¹⁴⁶ *Ibid.*, paras. 74 and 220.

effects.¹⁴⁷ In doing so, the Chamber failed to accord victims the very form of acknowledgment that it elsewhere recognised as an important reparative measure. If recognition of harm contributes to satisfaction and repair, the Chamber was required to determine, on the basis of the evidence and the applicable standard of proof, whether transgenerational harm had been established. Its refusal to do so, while simultaneously recognising the importance of judicial acknowledgment, constitutes an unexplained and inconsistent application of its own reasoning.

106. This inconsistency is compounded by the failure to provide a reasoned decision capable of appellate review. Although the Chamber stated that it had carefully considered all submissions and evidence and would provide the reasoning underlying its conclusions where necessary,¹⁴⁸ it did not explain why it rejected the parties' submissions on transgenerational harm, why the evidence was considered insufficient to satisfy the balance of probabilities standard, or why it departed from the approach adopted in previous reparations proceedings, including in the *Ntaganda* and in the *Ongwen* cases. Nor did it explain how the possibility that future reparative measures might mitigate continuing harm could justify declining to determine whether that harm had already occurred. Those are fundamentally different legal propositions, each requiring separate analysis. As a result, neither the parties nor the Appeals Chamber are able to ascertain the legal and factual basis upon which the Chamber rejected this category of harm. The conclusions on the matter are not discernible. This constitutes a failure to provide a reasoned decision under article 74(5), read together with article 75 of the Statute, which in turn constitutes an error warranting appellate intervention.

107. The errors identified under the present Ground materially affect the Impugned Decision. First, by declining to determine whether victims suffered transgenerational harm, the Chamber failed to establish the full scope and extent of the harm resulting

¹⁴⁷ *Ibid.*, paras. 175-179.

¹⁴⁸ *Ibid.*, para. 35.

from the crimes, contrary to article 75(1) of the Statute. As a result, the reparations' framework adopted in the Impugned Decision does not accurately reflect the totality of the harm suffered by victims and affected communities.

108. Second, the failure to acknowledge and assess transgenerational harm deprived victims of judicial recognition, notwithstanding the Chamber's own finding that acknowledgement of harm constitutes, in and of itself, a measure of satisfaction. Third, because the Chamber concluded that it was unnecessary to include transgenerational harm, it necessarily failed to consider whether specific reparative measures were required to address its distinct and continuing consequences. The recognition of transgenerational harm is not merely declaratory; it may have direct implications for the design, scope, beneficiaries, and implementation of reparations. The failure to determine whether such harm had been established therefore materially affected its assessment of the appropriate reparative response.

109. Finally, unless corrected on appeal, the Impugned Decision risks establishing an erroneous approach to article 75 of the Statute whereby a trial chamber may decline to determine entire categories of harm on the basis that future reparations might mitigate their effects. Such an approach is inconsistent with the structure and purpose of article 75, which requires the judicial determination of harm as a necessary precursor to the identification of appropriate reparative measures. It is likewise inconsistent with the Court's jurisprudence on reparations, which requires chambers to assess all categories of harm properly raised before them on the basis of the evidence and the applicable standard of proof.

V. CONCLUSION

110. The errors identified under the five Grounds of Appeal, whether considered individually or cumulatively, materially affect the Impugned Decision. They concern the Chamber's determination of the scope of victimisation arising from the crimes for

which Mr Al Hassan was convicted—a matter that lies at the very core of the reparations process. The proper identification and recognition of harm suffered by victims is fundamental to ensuring that the consequences of the crimes are fully acknowledged and appropriately repaired. By misapplying the applicable legal framework, failing to assess relevant categories of harm, and declining to engage with material submissions and evidence, the Chamber materially distorted its assessment of the scope and extent of victimisation in the present case. In these circumstances, the errors are of such significance that warrant the intervention of the Appeals Chamber.

111. First, the Chamber erred by misinterpreting the applicable standard of proof thereby depriving numerous victims – other than the ones specifically referred to in the Judgment – of the acknowledgment of their multidimensional harm caused by the crimes under Counts 1-6 and 14. Second, the Chamber erred by failing to properly assess and recognise several categories of harm that were squarely before it, including material harm suffered by both direct and indirect victims of the crimes under Counts 1-6 and 14; physical harm suffered by direct victims of the crime under Count 6; and transgenerational harm. These errors are incompatible with the overarching objective of the Court’s reparations system which is to recognise and address the scope of victimisation to the fullest extent possible. Third, by failing to meaningfully engage with the parties’ and participants’ submissions on those categories of harm, the Chamber committed a manifest error in the exercise of its judicial discretion. The failure to address matters that were extensively argued, supported by evidence, and directly relevant to the determination of reparations rendered the Chamber’s exercise of discretion unfair and unreasonable to such an extent that it amounts to an abuse of discretion. The Chamber’s refusal to adjudicate issues squarely before it undermines both the integrity of the reparations system and the confidence of victims in the Court’s ability to provide meaningful redress.

112. The implications of these errors extend beyond the scope of the present case. Unless corrected, the Impugned Decision risks establishing a precedent that would

significantly narrow the scope of reparations available before the Court. In future cases not involving persecution or similarly broad determinations concerning community-wide victimisation, victims - who are not expressly identified in a trial judgment - may be denied recognition of harm and, consequently, excluded from reparative measures. Such an approach would be inconsistent with the Court's victim-centred reparations framework and would undermine the principle that reparations must be based on the actual harm caused by the crimes, rather than on the fortuity of whether particular victims were individually identified in the judgment.

113. These considerations further underscore the need for appellate intervention in the present case. The errors identified are not merely technical or incidental; they affect the legal framework applied by the Chamber, the categories of harm recognised, the evidentiary assessment undertaken, and ultimately the scope of reparations available to victims. The Appeals Chamber's intervention is therefore necessary not only to correct the errors affecting the Impugned Decision but also to provide guidance on matters of principle that are likely to arise in future reparations proceedings.

114. More broadly, the present appeal arises at a particularly significant moment for the Court and for international criminal justice. In the face of increasing scrutiny of international institutions and continuing challenges to the enforcement and legitimacy of international law, the Court's reparations function remains one of the clearest manifestations of its commitment to victims. The reparations process offers an opportunity not only to provide redress, but also to acknowledge victims' experiences and affirm their dignity. In that context, it is especially important that the Court's decisions demonstrate careful engagement with victims' claims, rigorous judicial reasoning, and faithful adherence to the victim-centred principles enshrined in article 75 of the Statute.

115. Finally, the importance of judicial recognition in reparations proceedings is heightened by the practical realities of the Court's reparations system. Since the

establishment of the Court, the implementation of reparations and the effectiveness of the system have depended to a significant extent on the resources available to the TFV and reparations proceedings have often extended over many years. In these circumstances, the judicial determination and acknowledgment of harm assume particular importance. Even where the implementation of reparative measures may be delayed or constrained by practical limitations, victims remain entitled to a full and accurate judicial account of the harm they have suffered. It is therefore essential that chambers, in the exercise of their reparations mandate, thoroughly identify, assess, and recognise all proven forms of harm resulting from the crimes. Doing so ensures that victims receive, at a minimum, the benefit of a comprehensive measure of satisfaction through formal judicial acknowledgment of their suffering. By failing to fulfil that function in the present case, the Chamber materially undermined the objectives of the Court's reparations regime and committed errors requiring correction on appeal.

VI. RELIEF SOUGHT

116. Pursuant to article 82(4) of the Statute and rule 153(1) of the Rules, Counsel respectfully request the Appeals Chamber to:

- In respect of *Ground 1*, **REVERSE** the Chamber's findings as challenged and **FIND** that any victim – other than the 49 individuals specifically referred to in the Trial Judgment – who, on a balance of probabilities, can prove having suffered harm caused by any of the crimes under Counts 1-6 and 14, should be deemed eligible for reparations with respect to said crimes; or, in the alternative, **REMAND** the matter to the Chamber for a new determination;
- In respect of *Grounds 2, 3 and 4*, **REVERSE** the Chamber's findings as challenged and **REMAND** the matters to the Chamber for a new determination;
- In respect of *Ground 5*, **REVERSE** the Chamber's finding as challenged and **FIND** that transgenerational harm was caused in the circumstances of the case; or, in the alternative, **REMAND** the matter to the Chamber for a new determination.



Dmytro Suprun



Paolina Massidda

Dated this 28th day of July 2026
At The Hague (The Netherlands)