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TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Kimberly Prost

SITUATION IN THE REPUBLIC OF MALI

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

Public redacted version of

Decision on the Self-contained set of charges

With two confidential annexes

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

The Office of the Prosecutor

Karim A. A. Khan
James Stewart

Counsel for the Defence

Melinda Taylor

Legal Representatives of the Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber X of the International Criminal Court, in the case of *The Prosecutor Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Articles 61, 64, 67 and 74 of the Rome Statute (the ‘Statute’) as well as Rules 128 and 140 of the Rules of Procedure and Evidence (the ‘Rules’) issues the following ‘Decision on the Self-contained set of charges’.

I. Procedural history

1. On 30 September 2019, Pre-Trial Chamber I (hereinafter: ‘PTC I’ or the ‘Pre-Trial Chamber’) confirmed charges against Mr Al Hassan of crimes against humanity and war crimes, allegedly committed in Timbuktu, Mali (the ‘Confirmation Decision’).¹ On 23 April 2020, PTC I subsequently granted the Prosecution request to amend the charges (the ‘Amending Decision’)² (together, the ‘Charging Documents’).
2. On 6 May 2020, the Chamber issued its ‘Decision on the conduct of proceedings’.³ In Annex A to its decision, the Chamber set out the directions on the conduct of proceedings (the ‘Directions on the conduct of proceedings’).⁴ The Chamber also issued a self-contained set of charges (Annex B containing the English version and Annex C containing the French version, both to be referred as the ‘Self-contained set of charges’).⁵
3. On 28 May 2020, the Chamber issued a decision on the Defence request⁶ for leave to appeal the Decision on the conduct of proceedings, in which it invited

¹ Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-461-Conf (a corrected version of the decision was filed on 8 November 2019, ICC-01/12-01/18-461-Conf-Corr; a public redacted version of the decision was filed on 13 November 2019, ICC-01/12-01/18-461-Corr-Red).

² Décision portant modification des charges confirmées le 30 septembre 2019 à l’encontre d’Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, 23 April 2020, ICC-01/12-01/18-767-Conf (a corrected version of the decision was filed on 1 May 2020, ICC-01/12-01/18-767-Conf-Corr; a public redacted version of the decision was filed on 11 May 2020, ICC-01/12-01/18-767-Corr-Red). A complete list of the confirmed charges was annexed to the Decision, ICC-01/12-01/18-767-Conf-Anx.

³ Decision on the conduct of proceedings, ICC-01/12-01/18-789, with Annex A and confidential Annexes B and C.

⁴ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA.

⁵ ICC-01/12-01/18-789-Conf-AnxB and ICC-01/12-01/18-789-Conf-AnxC.

⁶ Defence request for leave to appeal Trial Chamber X’s “Decision on the conduct of proceedings” (ICC-01/12-01/18-789), 12 May 2020, ICC-01/12-01/18-804-Conf. A public redacted version was filed on 13 May 2020.

the parties and participants to make submissions on the corrections contained in the Self-contained set of charges, as well as to identify any other issue of concern with respect to the formulation of the charges within that document, notably any concerns that this document does not reflect fully the findings of PTC I.⁷

4. On 11 June 2020, the Chamber received observations from the Legal Representatives of Victims (the ‘LRVs’ and the ‘LRVs Submissions’, respectively).⁸
5. On 12 June 2020, the Chamber received observations from the Office of the Prosecutor (the ‘Prosecution’ and the ‘Prosecution Submissions’, respectively)⁹ and the Defence (the ‘Defence Submissions’).¹⁰
6. On 19 June 2020, the Prosecution filed a request in relation to the Defence Submissions, seeking the dismissal of the Defence arguments that it submits are unrelated to the formulation of the Self-contained set of charges (the ‘Prosecution’s Request for Dismissal’).¹¹ Alternatively, the Prosecution requests the Chamber to grant it additional time to respond to the Defence Submissions, pursuant to Regulation 35 of the Regulations of the Court.
7. On 25 June 2020, the Defence submitted a request for leave to reply to the Prosecution’s Request for Dismissal.¹²
8. On the same date, the LRVs filed their response to the Defence Submissions (the ‘LRVs Response’).¹³

⁷ Decision on Defence request for leave to appeal the ‘Decision on the conduct of proceedings’, ICC-01/12-01/18-831, paras 19-20.

⁸ Observations en application de la Décision du 28 mai 2020 (ICC-01/12-01/18-831), ICC-01/12-01/18-872-Conf.

⁹ Observations de l’Accusation sur les chefs d’accusation autonomes (“self-contained set of charges”) conformément aux paragraphes 19 et 20 de la décision ICC-01/12-01/18-831 de la Chambre, ICC-01/12-01/18-881.

¹⁰ Defence observations on the form of the charges, ICC-01/12-01/18-882-Conf, with confidential Annex A, ICC-01/12-01/18-882-Conf-AnxA.

¹¹ Prosecution request to dismiss Defence submissions in ICC-01/12-01/18-882-Conf, ICC-01/12-01/18-889-Conf.

¹² Defence request for leave to reply to “Prosecution request to dismiss Defence submissions in ICC-01/12-01/18-882-Conf” (ICC-01/12-01/18-889-Conf), ICC-01/12-01/18-902-Conf.

¹³ Réponse aux observations de la Défense ICC-01/12-01/18-882-Conf, ICC-01/12-01/18-903-Conf.

9. On the same date, the Prosecution filed its response to the Defence Submissions, in which it requests the Chamber to consider incorporating some limited amendments to the Self-contained set of charges and to dismiss the Defence submissions regarding the purported lack of specificity and notice of the charges (the ‘Prosecution Response’).¹⁴
10. On 29 June 2020, pursuant to instructions from the Chamber,¹⁵ the Defence filed its response to the Prosecution’s Request for Dismissal, in which it requests the Chamber to dismiss the Prosecution request and to reject the Prosecution’s alternative request for an extension of time (the ‘Defence Response to the Prosecution’s Request for Dismissal’).¹⁶

II. Submissions and analysis

A. Preliminary considerations

11. In light of the arguments advanced, the Chamber reiterates the principles underpinning the preparation of the Self-contained set of charges and its purpose. The Self-contained set of charges is not the charging instrument in this case. In conformity with the Statute, it is the Confirmation Decision and the Amending Decision which define the charges.
12. As set out in its Directions on the conduct of proceedings,¹⁷ the Chamber fully recognised that it was bound by these Charging Documents in particular as to the facts and circumstances which describe the incidents within each count. The drafting of the Self-contained set of charges was carried out in conformity with this principle. The Chamber simply drew out the facts and circumstances relevant to each incident from the body of the Charging Documents and inserted the same into the counts set out by PTC I in its concluding section, thereby creating a self-contained version of the charges.¹⁸

¹⁴ Prosecution Response to “Defence Observations on the form of the charges” (ICC-01/12-01/18-882-Conf), ICC-01/12-01/18-904-Conf.

¹⁵ Email from the Chamber to the Defence, 26 June 2020, at 11:53.

¹⁶ Defence response to “Prosecution request to dismiss Defence submissions in ICC-01/12-01/18-882-Conf” - (ICC-01/12-01/18-889-Conf), ICC-01/12-01/18-908-Conf.

¹⁷ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 5.

¹⁸ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, paras 9, 12.

13. As to the reasons for the Self-contained set of charges, the Chamber notes that, in its submissions with respect to the conduct of proceedings,¹⁹ the Defence took the position that it would be helpful for the Defence and Mr Al Hassan to have a clear understanding as to what constitutes the charges in order to take a decision on waiver of the reading of charges. As part of its Directions on the conduct of proceedings, the Chamber, considering the methodology utilised by PTC I, recognised these submissions and emphasised the importance of having ‘a common understanding on the part of the parties, participants and the Chamber as to the facts and circumstances of the charges’.²⁰
14. As such, the Self-contained set of charges is a useful reference document designed to assist the parties and to facilitate the process for the reading of the charges by the Chamber pursuant to Article 64(8) of the Statute. It follows that the purpose of the Self-contained set of charges is not to describe exhaustively, or to repeat, every detail contained in the Charging Documents.²¹ It must be read in conjunction with these authoritative documents which remain the essential documents specifying and notifying the charges to the accused as required by Article 67(1)(a) of the Statute.²² In addition, the Self-contained set of charges does not detail exhaustively the elements of the crimes – it incorporates facts and circumstances to identify more explicitly the incidents which are the subject of the charges in the case.
15. Contrary to the Defence Submissions,²³ the Chamber has never described the charging instruments as vague, unclear or defective, nor can any such inference be drawn from its decision to prepare the Self-contained set of charges. To the contrary, the Chamber recognised in its Directions on the conduct of proceedings that the cross-referenced paragraphs in each instance contain the

¹⁹ Defence observations on the conduct of proceedings, ICC-01/12-01/18-618-Conf, para. 5 (with confidential Annexes A, B and C; a public redacted version was filed on 3 March 2020, ICC-01/12-01/18-618-Red).

²⁰ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 8 and corresponding footnote 9.

²¹ See Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 12.

²² See Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, para. 124.

²³ Defence Submissions, ICC-01/12-01/18-882-Conf, paras 4-6.

full reasoning of the Pre-Trial Chamber, including on factual aspects.²⁴ As reiterated above, the Self-contained set of charges addressed a structural issue and not a substantive one. Thus, the Defence submission that the Self-contained set of charges should be used to correct alleged deficiencies in the Charging Documents is without merit.

16. In light of these considerations, the Chamber will now assess the specific arguments on the content of the Self-contained set of charges.²⁵

B. Submissions in relation to the corrections to a name and a date in the Self-contained set of charges

17. Parties and participants provided submissions on the corrections to a name and a date contained within the Charging Documents that were made *proprio motu* by the Chamber in the Self-contained set of charges.²⁶ These corrections were made on the basis of the Prosecution request for corrections and amendments concerning the Confirmation Decision that was filed before PTC I.²⁷
18. The Prosecution and the LRVs argue that these corrections are part of the Chamber's role, as emphasised by PTC I.²⁸ The Prosecution explains that it made clerical errors with respect to those issues,²⁹ that the evidence demonstrates the need to make these corrections, and that the Chamber had the authority to do so 'to provide the accused with early notice as to what the evidence before the Chamber clearly indicates'.³⁰ The Defence submits that the

²⁴ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 6.

²⁵ While the English version of the Self-contained set of charges is discussed below, as contained in ICC-01/12-01/18-789-Conf-AnxB, the Chamber notes that the comments apply equally to the French version of the document (ICC-01/12-01/18-789-Conf-AnxC).

²⁶ See Self-contained set of charges, ICC-01/12-01/18-789-Conf-AnxB/AnxC, paras 7(b), 8(b), 9(b), 10(b), 11(b) and 12(x), and footnotes 1 and 2 in paras 7(b) and 12(x).

²⁷ Self-contained set of charges, ICC-01/12-01/18-789-Conf-AnxB/AnxC, paras 7(b) and 12(x) and corresponding footnotes 1 and 2, *referring to* Prosecution Request for corrections and amendments concerning the Confirmation Decision, 30 January 2020, ICC-01/12-01/18-568-Conf (notified on 31 January 2020, with Annexes A to D; a public redacted version was filed on 17 February 2020, ICC-01/12-01/18-568-Red).

²⁸ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 5 *referring to* PTC I, Decision on the Applicable Procedure following the Prosecutor's Filing of Her Request for Corrections and Amendments of the Decision to Confirm the Charges, 21 February 2020, ICC-01/12-01/18-608-Conf-tENG, paras 46-47 (a public redacted version was filed on the same date, ICC-01/12-01/18-608-Red; the English translation was notified on 15 April 2020); LRVs Submissions, ICC-01/12-01/18-872-Conf, paras 6-8.

²⁹ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 20.

³⁰ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 5.

corrections are *ultra vires*, not permitted by the Court's legal regime and constitute an 'impermissible blurring of the distinction' between facts and circumstances of the case on one side and evidence on the other.³¹ The Defence adds that the date of an individual's arrest or the name of an alleged victim should not be considered as background details.³²

19. The Chamber initially considered these changes to be of a technical nature. However, having reflected upon the Defence Submissions,³³ the Chamber finds it appropriate to revert back to the original name and date, as set out in the Confirmation Decision.
20. It therefore decides to amend the Self-contained set of charges accordingly and replace the name '[REDACTED]' with the name '[REDACTED]' in paragraph 12(x), as well as the date 'on or around [REDACTED] 2012' with 'on or around [REDACTED] 2012' in paragraphs 7(b), 8(b), 9(b), 10(b) and 11(b) of the Self-contained set of charges. Consistent with what was noted by PTC I,³⁴ the Chamber considers that these issues may be raised again and will be adjudicated during the course of the trial, in light of the evidence submitted before it.

C. Submissions in relation to transversal aspects of the Self-contained set of charges

1. Prosecution submissions

21. The Prosecution proposes to amend the description of the acts committed against P-0609, P-0520, P-0602, P-0610, P-0538, P-0553, [REDACTED], P-1162, P-1460, and P-0957 included in the Self-contained set of charges in order to simplify the language.³⁵ The Prosecution submits that the crime against humanity of other inhumane acts in the form of forced marriage does not require

³¹ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 15.

³² Defence Submissions, ICC-01/12-01/18-882-Conf, paras 17-18.

³³ Defence Submissions, ICC-01/12-01/18-882-Conf, paras 15-22.

³⁴ Decision on the Applicable Procedure following the Prosecutor's Filing of Her Request for Corrections and Amendments of the Decision to Confirm the Charges, 21 February 2020, ICC-01/12-01/18-608-Conf-tENG, paras 46-47 (a public redacted version was filed on the same date, ICC-01/12-01/18-608-Red; the English translation was notified on 15 April 2020).

³⁵ Prosecution Submissions, ICC-01/12-01/18-881-Conf, paras 18, 20-28, 30.

that lack of consent be demonstrated,³⁶ and generally argues that the expression ‘assigned a husband against her will’ or ‘assigned husbands against her will’, as well as other details which were used to factually describe a number of incidents, should be removed and replaced by the expression ‘forced to marry’ [TRANSLATION].³⁷

22. As already noted, the Self-contained set of charges aims at describing factually, in a summarised form, the incidents that were confirmed by PTC I. Concerning these particular incidents, the Chamber took into account the facts and circumstances identified and described in the Charging Documents.³⁸ In doing so, it deliberately did not use the legal terminology of the Elements of Crimes, but simply provided a basic factual description of the charged incidents as identified by PTC I.
23. In this regard, in light of the descriptions provided by PTC I, the Chamber considers that the expression ‘assigned a husband against her will’ or ‘assigned husbands against her will’ is factually correct and, given the purpose of the Self-contained set of charges, the Chamber sees no value in replacing this expression with the words ‘forced to marry’. The Chamber therefore rejects the Prosecution’s request to amend the description of the acts committed against P-0609, P-0520, P-0602, P-0610, P-0538, P-0553, [REDACTED], P-1162, P-1460, and P-0957.

³⁶ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 18.

³⁷ Prosecution Submissions, ICC-01/12-01/18-881-Conf, paras 18, 20-28, 30, in relation to P-0609 (paras 8(p), 10(p), 11(s), 14(i), 15(i), 16(i), 17(l), 18(l) of the Self-contained set of charges), P-0520 (paras 14(a), 15(a), 16(a), 17(a), 18(a) of the Self-contained set of charges), P-0602 (paras 14(b), 15(b), 16(b), 17(b), 18(b) of the Self-contained set of charges), P-0610 (paras 14(c), 15(c), 16(c), 17(c), 18(c) of the Self-contained set of charges), P-0538 (paras 14(d), 15(d), 16(d), 17(d), 18(d) of the Self-contained set of charges), P-0553 (paras 14(e), 15(e), 16(e), 17(e), 18(e) of the Self-contained set of charges), [REDACTED] (paras 14(f), 15(f), 16(f), 17(f), 18(f) of the Self-contained set of charges), P-1162 (paras 14(g), 15(g), 16(g), 17(g), 18(g) of the Self-contained set of charges), P-1460 (paras 14(h), 15(h), 16(h), 17(h), 18(h) of the Self-contained set of charges), and P-0957 (paras 14(j), 15(j), 16(j), 17(m), 18(m) of the Self-contained set of charges)

³⁸ See *inter alia* para. 82 of the Amending Decision for P-0609; para. 586 of the Confirmation Decision for P-0520 ; para. 596 of the Confirmation Decision for P-0602; para. 600 of the Confirmation Decision for P-0610; para. 608 of the Confirmation Decision for P-0538; para. 617 of the Confirmation Decision for P-0553; paras 623-624 of the Confirmation Decision for [REDACTED]; para. 633 of the Confirmation Decision for P-1162; para. 636 of the Confirmation Decision for P-1460; para. 86 of the Amending Decision for P-0957.

2. Defence submissions

24. The Defence submits that the Self-contained set of charges does not contain any indication as to whether Mr Al Hassan's alleged conduct falls under Article 25(3)(d)(i) or (ii) of the Statute, but only states that 'Mr Al Hassan is criminally responsible pursuant to Article 25(3)(d)'.³⁹ The Prosecution argues that based on the facts and circumstances described in the Confirmation Decision, this Chamber may apply both article 25(3)(d)(i) and (ii) of the Statute.⁴⁰
25. The Chamber recalls that, in the operative parts of the Charging Documents, PTC I did not specify whether Mr Al Hassan was criminally responsible pursuant to Article 25(3)(d)(i) or (ii), but simply referred to Article 25(3)(d) of the Statute.⁴¹ As noted above, the Self-contained set of charges reflects the findings of PTC I and does not go beyond them. Consequently, the Chamber finds it unnecessary to make any determination on this question at this stage, particularly in the context of the Self-contained set of charges.⁴²
26. The Defence further submits that any re-statement of the charges must specify precisely the nature and extent of criminal conduct.⁴³ It argues that, with respect to charges 1 to 5, by merely specifying that the alleged victim experienced '[a]cts of violence and other forms of ill-treatment', the Self-contained set of charges fails to provide sufficient clarity as to the scope of conduct leading to the charges, as does the absence of any explanation as to the applicability of Article 25(3)(d) of the Statute.⁴⁴
27. The Chamber recalls that the Self-contained set of charges is not intended to provide exhaustive details as to every charged incident, which is already

³⁹ Annex A to the Defence Submissions, ICC-01/12-01/18-882-Conf-AnxA, *referring to* paras 7-16, 18-19 of the Self-contained set of charges.

⁴⁰ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 36.

⁴¹ See Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, pp. 451-466; Annex to the Amending Decision, ICC-01/12-01/18-767-Conf-Anx.

⁴² The Chamber notes that, in a separate application, the Prosecution requested the Chamber to give explicit notice that Mr Al Hassan may be responsible, alternatively, under article 25(3)(d)(i) or (ii) of the Statute on all counts. See Prosecution Response, ICC-01/12-01/18-904-Conf, para. 36 *referring to* Prosecution's application for notice to be given pursuant to regulation 55(2) of the Regulations of the Court, 22 June 2020, ICC-01/12-01/18-894-Conf, para. 58 (notified on 23 June 2020).

⁴³ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 30.

⁴⁴ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 30. To the extent that the Defence argument on this point also relates to contributions under Article 25(3)(d) of the Statute, it is addressed in section D-4 below.

mentioned in the Charging Documents. Moreover, in the counts referenced by the Defence (1 to 5), the phrase ‘acts of violence and other forms of ill-treatment’ is in each instance followed by a particularised account of that violence/ill treatment with reference to specified victims. As a result, while the opening phrase is broad, it is accompanied by sufficient detail to identify the nature of the charged conduct for the purpose of the Self-contained set of charges. For additional details, the Defence can refer to the content of the Charging Documents. Therefore, the Chamber rejects this request.

D. Submissions in relation to specific incidents or paragraphs

28. The parties and participants make a series of observations in relation to specific incidents or paragraphs of the Self-contained set of charges, which will be addressed by the Chamber following the order of the relevant paragraphs.

1. Paragraph 2 of the Self-contained set of charges

29. The Prosecution refers to the last part of paragraph 2 of the Self-contained set of charges, which reads as follows: ‘[t]he perpetrators of the crimes, including Mr Al Hassan, who were members of Ansar Dine/AQIM, were aware that their conduct was, or intended their conduct to be, part of the armed conflict.’ The Prosecution proposes to amend the last part of this paragraph and replace it by the following expression: [they] ‘were aware of the factual circumstances that established the existence of the armed conflict’ [TRANSLATION].⁴⁵ The Prosecution argues that this correction reflects the contextual legal elements of war crimes, as set out in the Elements of Crimes.⁴⁶

30. In view of the Charging Documents,⁴⁷ the Chamber considers that this request should be granted as it reproduces the exact wording of PTC I. Accordingly, the Chamber agrees to amend paragraph 2 *in fine* of the Self-contained set of charges as follows: ‘The perpetrators of the crimes, including Mr Al Hassan,

⁴⁵ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 7.

⁴⁶ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 7.

⁴⁷ Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, pp. 451-452, as well as *inter alia* paras 346, 414 and 485; Annex to the Amending Decision, ICC-01/12-01/18-767-Conf-Anx, pp. 2-3; Amending Decision, ICC-01/12-01/18-767-Conf-Corr, para. 99.

who were members of Ansar Dine/AQIM, were aware of the factual circumstances that established the existence of the armed conflict’.

2. *Paragraph 3 of the Self-contained set of charges*

31. First, the Prosecution proposes to amend the timeframe indicated in paragraph 3 of the Self-contained set of charges from ‘between the beginning of May 2012 and the end of January 2013’ to ‘between April 2012 and January 2013’ [TRANSLATION].⁴⁸ It submits that, although the operative parts of the Confirmation Decision indicate that the criminal responsibility of the accused is engaged for crimes committed between 7 May 2012 and 28 January 2013, it can also be extended to crimes committed since April 2012.⁴⁹ Indeed, it considers that the Confirmation Decision should be read and interpreted in light of other relevant considerations.⁵⁰
32. The Chamber notes that, throughout the Charging Documents and their operative parts, PTC I clearly identifies 7 May 2012 as the starting date for examining the criminal responsibility of the accused.⁵¹ The Chamber further observes that paragraphs 175-176 and 202 of the Amending Decision, in which PTC I explicitly excluded from consideration an act committed in [REDACTED] 2012, before Mr Al Hassan allegedly started working for the Islamic Police, constitute a recent and explicit illustration of the way PTC I views this issue.
33. The Chamber finds that the Self-contained set of charges should not extend the timeframe for the criminal responsibility of the accused that PTC I clearly identified in the Charging Documents and, accordingly, rejects this request. As to the evidence of crimes committed by the armed groups before 7 May 2012, the Chamber will assess in its final judgment whether and how those may be taken into account in its legal findings.

⁴⁸ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 8.

⁴⁹ Prosecution Submissions, ICC-01/12-01/18-881-Conf, paras 9, 11.

⁵⁰ Prosecution Submissions, ICC-01/12-01/18-881-Conf, paras 9-10.

⁵¹ See *e.g.* Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 723, 961, 965 and p. 466; Amending Decision, ICC-01/12-01/18-767-Conf-Anx, para. 175; Annex to the Amending Decision, ICC-01/12-01/18-767-Conf-Anx, p. 21.

34. Second, the Prosecution suggests adding the following sentence to paragraph 3 of the Self-contained set of charges: ‘Mr Al Hassan intended to engage in the alleged conduct and cause the crimes’ [TRANSLATION].⁵²

35. The Chamber notes that the language proposed by the Prosecution does not add any factually relevant element and is purely legal in nature. Considering the purpose of the Self-contained set of charges as explained above, the Chamber rejects this request.

3. Paragraph 4 of the Self-contained set of charges

36. The Defence submits that the Confirmation Decision contains the following facts: that ‘(1) the apparatus of power which Ansar Dine/AQMI sought to install was founded on religious ideology which the large majority of the population of Timbuktu did not share; and (2) the apparatus would succeed in non-respect for the Malian constitution, and (3) identifies some of the alleged members of the common plan’.⁵³

37. In the view of the Defence, these elements were left out of the Self-contained set of charges, although the Confirmation Decision explicitly links the plan under Article 25(3)(a) of the Statute to the common purpose,⁵⁴ and the Self-contained set of charges replaced them instead by selected passages from elsewhere in the Confirmation Decision.⁵⁵ The Defence claims that this suggests that these omitted facts do not have to be proven beyond reasonable doubt by the Prosecution to secure a conviction.⁵⁶ The Defence also claims that the Self-contained set of charges does not link the specific crimes referred to in the Confirmation Decision as resulting from the plan or purpose.⁵⁷ According to the Defence, by using this formulation of the plan, the Chamber has added elements

⁵² Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 12.

⁵³ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 24.

⁵⁴ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 24 *referring to* Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, para. 958 and footnote 2363 *citing to* paras 816 to 835 of the Confirmation Decision.

⁵⁵ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 24 *referring to* Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 689, 957.

⁵⁶ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 24.

⁵⁷ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 26 *referring to* Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, para. 818.

to the plan and taken other aspects away and, as a result, has expanded the scope of facts and circumstances beyond those confirmed by PTC I.⁵⁸

38. The Prosecution argues that contrary to the Defence allegations, the Self-contained set of charges did not reformulate the ‘common purpose’ within the meaning of Article 25(3)(d) of the Statute nor did it expand the relevant facts and circumstances described in the Confirmation Decision.⁵⁹ The Prosecution further submits that the Defence’s reference to paragraphs of the Confirmation Decision regarding the existence of a ‘common plan’ for the purpose of co-perpetration under Article 25(3)(a) of the Statute is misguided since Article 25(3)(d) of the Statute has different requirements.⁶⁰
39. The Chamber is aware that in paragraph 958 of the Confirmation Decision, which is in the section of the Decision related to the common purpose under Article 25(3)(d) of the Statute, PTC I referred to the body of its findings in relation to the existence of a policy within the meaning of Article 7(2)(a) of the Statute and the existence of a common plan for the purposes of Article 25(3)(a) of the Statute. However, PTC I clearly did so in the context of providing a mere illustration of the existence of the common purpose, not a further definition of it.⁶¹
40. In contrast, paragraph 957 of the Confirmation Decision contains the explicit factual finding of PTC I on the common purpose of the groups. Paragraph 4 of the Self-contained set of charges reproduces this factual definition of the common purpose as formulated by PTC I, with the exception of the mention of ‘the new rules and prohibitions’. On this point, this Chamber accepts the submissions of the Prosecution,⁶² and decides to remove that reference in order to align the description of the common purpose even more closely to the finding of PTC I. The new paragraph 4 reads as follows: ‘The members of the armed

⁵⁸ Defence Submissions, ICC-01/12-01/18-882-Conf, paras 23-26.

⁵⁹ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 27.

⁶⁰ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 30.

⁶¹ Paragraph 958 of the Confirmation Decision states: ‘Pour illustrer l’existence d’un objectif tendant à imposer à la population civile de Tombouctou et de sa région, par la menace et la force, de nouvelles règles et interdits, la Chambre renvoie à l’ensemble de ses conclusions relatives à l’existence d’une politique au sens de l’article 7-2-a du Statut et à celles relatives à l’existence d’un plan commun au sens de l’article 25-3-a du Statut, dont elle a établi l’existence ci-dessus.’

⁶² Prosecution Response, ICC-01/12-01/18-904-Conf, para. 29.

groups Ansar Dine/AQIM, constituting an organisation, had as their goal to impose in Timbuktu and the region which bears the same name a new power structure based on their religious ideology and to compel the civilian population of Timbuktu to comply with it by force or threat of force. From April 2012 to January 2013, they established detention and training centres and put in place various institutions and bodies: the Security Battalion, the Islamic Police, the *Hesbah*, the Islamic Court, the Sharia Committee and the Media Commission. Each of these bodies was led by an individual designated to be its “emir” and was composed of men belonging to the armed groups, Ansar Dine and AQIM. They also distributed the respective functions and powers between them’.

41. In these circumstances, the request of the Defence is rejected given that the Self-contained set of charges now reflects exactly the finding of PTC I on the common purpose. Evidently, this is without prejudice to the Chamber’s determination, in the context of the judgment pursuant to Article 74 of the Statute, as to which facts must be proven beyond reasonable doubt by the Prosecution to secure a conviction.

4. Paragraph 5 of the Self-contained set of charges

42. The Prosecution suggests modifying paragraph 5 of the Self-contained set of charges from ‘Mr Al Hassan exercised functions and powers on a daily basis in the Islamic Police and within the organisation, and contributed to the activities of the organisation in Timbuktu from 7 May 2012 at the latest until 28 January 2013’ to ‘Mr Al Hassan joined the Islamic Police shortly after Ansar Dine/AQIM came to Timbuktu, and he worked for it on a daily basis at least from 7 May 2012 until Ansar Dine/AQIM left the city on 28 January 2013’ [TRANSLATION].⁶³ The Prosecution argues that this amendment reflects paragraph 723 of the Confirmation Decision.⁶⁴
43. The Chamber emphasises that paragraph 5 of the Self-contained set of charges aims at consolidating basic factual elements on the timeframe in which Mr Al Hassan allegedly contributed to the events which took place in Timbuktu, as

⁶³ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 13.

⁶⁴ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 13.

referred to in the Confirmation Decision.⁶⁵ In its Submissions, the Prosecution does not explain why the proposed formulation would be more accurate than the one chosen by the Chamber. The Chamber sees no error in reflecting in the Self-contained set of charges the substance of the section of the Confirmation Decision to which paragraph 5 refers. The request is rejected.

44. The Chamber further notes the Defence argument that, where Mr Al Hassan is charged pursuant to Article 25(3)(d) of the Statute, the Self-contained set of charges does not identify the specific conduct or contribution which is criminalised.⁶⁶ In this regard, the Chamber notes the Prosecution submission that more factual detail as to Mr Al Hassan's contribution could be included in paragraph 5 the Self-contained set of charges.⁶⁷

45. The Chamber considered the phrase 'exercised functions and powers on a daily basis in the Islamic Police and within the organisation' as a sufficient description of the alleged contribution of Mr Al Hassan for the purpose of the Self-contained set of charges. The Chamber remains of this view and reiterates that the necessary detail as to the alleged contributions of Mr Al Hassan emerges very clearly from the Confirmation Decision, considering the mode of liability relied upon by PTC I.⁶⁸

5. *Paragraph 6 of the Self-contained set of charges*

46. The Defence considers that the Confirmation Decision does not specify sufficient facts and circumstances to understand the *mens rea* requirements necessary to prepare for trial.⁶⁹ The Prosecution submits that the Confirmation Decision is clear and sufficiently specific as to the facts and circumstances underpinning the *mens rea* requirements of the crimes charged under counts 1, 3, 6 and 13.⁷⁰ The Prosecution however notes that the Self-contained set of charges currently refers to the *mens rea* in relation to the contextual elements

⁶⁵ See Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, Section VIII(A)(1), paras 710-723.

⁶⁶ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 35.

⁶⁷ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 38.

⁶⁸ See Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 724-786, 961-1000.

⁶⁹ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 59.

⁷⁰ Prosecution Response, ICC-01/12-01/18-904-Conf, paras 39-41.

only.⁷¹ It suggests that paragraph 6 of the Self-contained set of charges incorporate reference to the facts and circumstances related to the *mens rea* of direct perpetrators and Mr Al Hassan as appropriate.⁷²

47. The Confirmation Decision details the factual basis upon which PTC I reached its reasoned conclusions on the requisite *mens rea* to the relevant standard. Because of the nature of the reasoning related to *mens rea*, the Chamber observes that any inclusion of information on this aspect in the Self-contained set of charges, in a summarised form, would essentially involve a replication of the legal requirements of the *mens rea*. As already explained, this is not the purpose of the Self-contained set of charges. As pointed out by the Prosecution, the Chamber has only included a reference to the *mens rea* in the context of the contextual elements for crimes against humanity and war crimes in paragraphs 1 and 2 of the Self-contained set of charges. This was done in order to fully replicate the language of PTC I in the operative parts of the Confirmation Decision and Amending Decision. While, as indicated, PTC I detailed in full its reasoning and findings with respect to *mens rea* in the Charging Documents, it did not include references to it in the operative parts of either decision.

6. *Paragraph 7(d) and corresponding paragraphs 8(d), 9(d), 10(d), 11(d) of the Self-contained set of charges*

48. The Prosecution suggests modifying the timeframe in relation to the acts committed against P-0580 from ‘in or around [REDACTED] 2012’ to ‘during the period between around [REDACTED] 2012 and [REDACTED]’ [TRANSLATION].⁷³ The Prosecution argues that the proposed timeframe better reflects the facts described in paragraphs 291 and 293 of the Confirmation Decision.⁷⁴

49. The Chamber notes that paragraph 286 of the Confirmation Decision indicates that P-0580 was initially arrested around [REDACTED] 2012 by Mr Al Hassan and other individuals. The paragraphs of the Confirmation Decision following

⁷¹ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 42.

⁷² Prosecution Response, ICC-01/12-01/18-904-Conf, para. 42.

⁷³ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 14.

⁷⁴ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 14.

state that P-0580 was later arrested a second and a third time, and detained over prolonged periods of time. The Confirmation Decision does not indicate when those subsequent events took place.

50. The Chamber agrees with the Prosecution that the expression ‘in an around [REDACTED] 2012’ should be solely related to the alleged first arrest of P-0580 and not to the subsequent ones. Nevertheless, absent any specification in the Confirmation Decision on the date of these subsequent arrests, the Chamber does not find it appropriate to include an explicit reference to January 2013 for this incident, as proposed by the Prosecution.

51. In light of these considerations, the Chamber decides to amend paragraphs 7(d), 8(d), 9(d), 10(d) and 11(d) of the Self-contained set of charges as follows: ‘Acts of violence and other forms of ill-treatment committed against P-0580, who was arrested in or around [REDACTED] 2012 in Timbuktu, and several times afterwards, and who was detained and whipped a number of times, including on the order of a judge; Mr Al Hassan is also criminally responsible for these acts pursuant to Article 25(3)(c) of the Statute, having on some occasions himself arrested, interrogated and arranged the whipping of P-0580’. This request is therefore partly granted.

7. Paragraph 7(e) and corresponding paragraphs 8(e), 9(e), 10(e) and 11(e) of the Self-contained set of charges

52. In relation to this incident, the Defence makes two different submissions. First, referring to paragraph 282 of the Confirmation Decision, the Defence claims that key details such as where P-0574 was arrested, and how many lashes were given have been omitted in the Self-contained set of charges.⁷⁵ Second, the Defence submits that there is no specification as to the date of the acts committed against P-0574 and that it is not specified whether they occurred in [REDACTED] 2012.⁷⁶ The Prosecution argues that the exact location of P-

⁷⁵ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 29.

⁷⁶ Annex A to the Defence Submissions, ICC-01/12-01/18-882-Conf-AnxA.

0574's arrest or the number of lashes are not necessary for the purpose of the Self-contained set of charges considering the specifics of this case.⁷⁷

53. The Chamber refers to its preliminary considerations above and is of the view that paragraph 7(e) of the Self-contained set of charges includes the facts and circumstances necessary to describe the relevant incident. The other details about the charged incident are already included in the Confirmation Decision and are known to the Defence. As to the date of the acts allegedly committed against P-0574, the Chamber strictly referred to the wording of the Confirmation Decision used at paragraph 282. The Self-contained set of charges does not amend but merely reproduces the timeframe given by PTC I. The Defence's requests are therefore rejected.

8. Paragraph 7(g) and corresponding paragraphs 8(g), 9(g), 10(g) and 11(g) of the Self-contained set of charges

54. The Prosecution suggests modifying the timeframe in relation to the acts committed against [REDACTED] from 'in or around [REDACTED]' to 'during the period between around [REDACTED] 2012 and January 2013' [TRANSLATION].⁷⁸ The Prosecution argues that the flogging of [REDACTED] took place around the third arrest of P-0580, which seems to have taken place after [REDACTED] 2012.⁷⁹

55. The Chamber notes that there is no indication in the Confirmation Decision as to precisely when [REDACTED] was sentenced to whipping.⁸⁰ As the acts allegedly committed against [REDACTED] are linked to P-0580, the same timeframe (in or around [REDACTED] 2012) was included in the Self-contained set of charges to delineate when these events took place. However, as explained by the Prosecution, the Confirmation Decision seems to connect these

⁷⁷ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 31.

⁷⁸ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 15.

⁷⁹ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 15 *referring to* Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 286-294.

⁸⁰ See Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 286-294.

events with the third arrest of P-0580, which took place at a later stage than the first one.

56. In relation to the date of the second and the third arrest of P-0580, the Chamber observes that PTC I did not include a specific timeframe for these arrests although the related events are described as having taken place over a period of several days or weeks subsequent to the first arrest.⁸¹ The Chamber considers therefore that the timeframe proposed by the Prosecution is consistent with the charges as confirmed, although there were no explicit findings on this issue. Accordingly, the requested amendment is justified and the Chamber grants this request.
57. The Chamber decides to amend paragraphs 7(g), 8(g), 9(g), 10(g) and 11(g) of the Self-contained set of charges as follows: ‘Acts of violence and other forms of ill-treatment committed against [REDACTED], who was arrested in Timbuktu and sentenced by the *Hesbah* to whipping, which sentence was carried out publicly between in or around [REDACTED] 2012 and January 2013’.
58. Furthermore, and although this aspect was not raised by the parties and participants, the same consideration is relevant for [REDACTED], who was allegedly detained on two separate occasions.⁸² Her first detention seems to have taken place around the same time as [REDACTED], in or around [REDACTED] 2012.⁸³ The second detention of [REDACTED] seems to be connected to [REDACTED] which occurred later without, as already explained, any specification of date.⁸⁴
59. For consistency purposes, the Chamber decides to amend paragraphs 7(f), 8(f), 9(f), 10(f) and 11(f) of the Self-contained set of charges in relation to the timeframe regarding [REDACTED] as follows: ‘Acts of violence and other forms of ill-treatment committed against [REDACTED], who was arrested in

⁸¹ See Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 286-294.

⁸² See Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 287, 292.

⁸³ See Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 286-290.

⁸⁴ See Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 291-292.

Timbuktu, detained and sentenced by the *Hesbah* to whipping, which sentence was carried out between in or around [REDACTED] 2012 and January 2013’.

9. *Paragraph 7(i) and corresponding paragraphs 8(i), 9(i), 10(i) and 11(i) of the Self-contained set of charges*

60. The Defence requests that more details on the nature of the alleged participation by the Islamic Police concerning Dédéou Maiga be added.⁸⁵ The Chamber considers that given the purpose of the Self-contained set of charges, and noting that these details are already developed in the Confirmation Decision, the requested additions in the Self-contained set of charges are superfluous. The Chamber therefore rejects this request.

10. *Paragraph 8(m) and corresponding paragraphs 10(m), 11(p), 17(i) and 18(i) of the Self-contained set of charges*

61. The Prosecution suggests deleting the words ‘sentenced by the *Hesbah*’ in paragraph 8(m) of the Self-contained set of charges, arguing that the Charging Documents do not specify that P-1134 was sentenced by this organ.⁸⁶

62. The Chamber notes that although paragraph 42 of the Amending Decision does not contain any information as to who exactly sentenced P-1134, footnote 249 of the same decision does. P-1134 is mentioned in the list of persons who were allegedly sentenced by the *Hesbah*. It is on the basis of this footnote that the Chamber decided to add this element in the Self-contained set of charges. This request is therefore rejected.

11. *Paragraph 8(n) and corresponding paragraphs 10 (n), 11(q), 17(j) and 18(j) of the Self-contained set of charges*

63. The Prosecution requests that the timeframe in relation to the acts committed against P-0636 be amended from ‘between [REDACTED] 2012 and [REDACTED] 2012’ to ‘between [REDACTED] 2012 and [REDACTED]’

⁸⁵ Annex A to the Defence Submissions, ICC-01/12-01/18-882-Conf-AnxA.

⁸⁶ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 16.

[TRANSLATION], in order to align with the exact terms used in paragraph 47 of the Amending Decision.⁸⁷

64. In the Self-contained set of charges, the Chamber refers to the month of [REDACTED] since [REDACTED] between [REDACTED] and [REDACTED] 2012. Nevertheless, the Chamber acknowledges that the use of the words of the witness, as reproduced by PTC I,⁸⁸ more accurately reflects the finding in the Amending Decision.
65. The Chamber therefore grants this request and decides to amend paragraphs 8(n), 10(n), 11(q), 17(j) and 18(j) of the Self-contained set of charges as follows: ‘Acts of coercion, violence and other forms of ill-treatment, including acts of a sexual nature, committed against P-0636, who was arrested in Timbuktu between [REDACTED] 2012 and [REDACTED], sentenced by the Islamic Police, detained, placed at the disposal of men and forced to have sexual intercourse with them.’

12. Paragraph 12(pp) of the Self-contained set of charges

66. The Prosecution proposes to delete the terms ‘sentenced by the *Hesbah*’ in relation to P-1710 and P-1711, as this expression does not reflect the Amending Decision.⁸⁹
67. The Chamber notes that paragraph 59 of the Amending Decision states that Mohamed Moussa is the one who arrested P-1710 and P-1711. Moreover, PTC I concluded that the author of the sentences pronounced against P-1710 and P-1711 was Mohamed Moussa acting as a member of the *Hesbah*.⁹⁰ Indeed, like P-1134, P-1710 and P-1711 are mentioned in the list of persons who were allegedly sentenced by the *Hesbah*, as reflected in footnote 249 of the Amending Decision. It is on the basis of this footnote that the Chamber decided to add this element in the Self-contained set of charges. This request is therefore rejected.

⁸⁷ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 17.

⁸⁸ The witness refers to [REDACTED]. See Amending Decision, ICC-01/12-01/18-767-Conf-Corr, para. 47.

⁸⁹ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 19.

⁹⁰ Amending Decision, ICC-01/12-01/18-767-Conf-Corr, para. 132 and corresponding footnote 249.

13. Paragraph 14(g) and corresponding paragraphs 15(g), 16(g), 17(g) and 18(g) of the Self-contained set of charges

68. The Prosecution requests to change the timeframe in relation to the acts allegedly committed against P-1162 from ‘in or around [REDACTED] 2012’ to ‘between [REDACTED] 2012’ [TRANSLATION].⁹¹ It submits that this amendment reflects the Confirmation Decision.⁹²
69. The Chamber considers that the Prosecution’s proposal would add some clarity, especially in light of paragraphs 633 and 634 of the Confirmation Decision. These paragraphs state that, while she was at the *Gouvernorat*, i.e. from a period of time between [REDACTED] 2012, P-0520 recognised P-1162 and provided information regarding the acts allegedly committed against her.
70. The Chamber therefore grants this request and decides to amend paragraphs 14(g), 15(g), 16(g), 17(g) and 18(g) of the Self-contained set of charges as follows: ‘Acts of coercion and violence, including acts of a sexual nature, committed against P-1162, who, between [REDACTED] 2012 in Timbuktu, was detained, assigned husbands against her will and placed at the disposal of men while detained’.
71. The Chamber notes however that, in relation to the same paragraphs of the Self-contained set of charges, the Prosecution, referring to paragraph 86 of the Amending Decision, also suggests modifying the timeframe concerning the acts allegedly committed against P-1162 from ‘in or around [REDACTED] 2012’ to ‘around [REDACTED] after the arrival of the armed groups’ [TRANSLATION].⁹³
72. The Chamber notes that paragraph 86 of the Amending Decision actually concerns P-0957, who is mentioned in paragraphs 14(j), 15(j), 16(j), 17(m) and 18(m) of the Self-contained set of charges. It therefore seems that the

⁹¹ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 26.

⁹² Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 26 *referring to* Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, para. 633.

⁹³ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 29.

Prosecution's intention was to refer to P-0957 and these paragraphs of the Self-contained set of charges.

73. Concerning P-0957, paragraph 86 of the Amending Decision mentions that a man proposed to P-0957 around [REDACTED] after the arrival of the 'islamists', in 2012-2013 (and in any case between 1 April 2012 and 28 January 2013, as specified in footnote 191 of the Amending Decision). Based on this information, the Self-contained set of charges states that the acts committed against P-0957 occurred 'in or around [REDACTED] 2012', which is [REDACTED] after the arrival of the armed groups in April 2012. The Chamber sees no reason to amend this part of the Self-contained set of charges and therefore decides to reject this request.

14. Chapeau of paragraph 19 of the Self-contained set of charges

74. The Prosecution suggests adding references to the categories of acts that correspond to severe deprivations of fundamental rights in contravention of international law, as mentioned in paragraphs 675, 683 and 684 of the Confirmation Decision.⁹⁴ In the same vein, the LRVs insist on the necessity to interpret the Self-contained set of charges in regards to count 13 in light of the Charging Documents.⁹⁵
75. The Defence submits that the wording used in the *chapeau* of paragraph 19 referring to 'other acts' is too vague and open-ended.⁹⁶ On this issue, the Prosecution recalls that the reference to 'other acts' in paragraph 19 of the Self-contained set of charges relates to other categories of acts of persecution which do not fall under counts 1 to 12.⁹⁷ The Prosecution considers that these acts are sufficiently described in paragraphs 675, 683 and 684 of the Confirmation Decision.⁹⁸

⁹⁴ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 31.

⁹⁵ LRVs Submissions, ICC-01/12-01/18-872-Conf, paras 12-17 referring *inter alia* to Annex to the Amending Decision, ICC-01/12-01/18-767-Conf-Anx, p. 21; Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, paras 673-707; Amending Decision, ICC-01/12-01/18-767-Conf-Corr, para. 163.

⁹⁶ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 31; Annex A to the Defence Submissions, ICC-01/12-01/18-882-Conf-AnxA.

⁹⁷ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 32.

⁹⁸ Prosecution Response, ICC-01/12-01/18-904-Conf, para. 32.

76. Taking into account the purpose of the Self-contained set of charges and considering that all necessary details are already included in the Confirmation Decision, the Chamber will not reproduce in the Self-contained set of charges what is stated in the relevant paragraphs referred to by the parties and the participants. However, the Chamber agrees that more specificity to the terms ‘other acts’ initially chosen by the Chamber to cover the relevant paragraphs could be provided in the *chapeau* of paragraph 19. The Prosecution and the Defence requests are partly granted.

77. In light of the submissions and the language used by PTC I,⁹⁹ the Chamber decides to include in the *chapeau* a phrase that encompasses all the specified acts as follows: ‘Mr Al Hassan is criminally responsible pursuant to Article 25(3)(d) of the Statute for the crime against humanity of persecution on religious and/or gender grounds under Article 7(1)(h) of the Statute, in respect of the acts falling under counts 1-12 as well as other acts that constitute severe deprivations of fundamental rights, contrary to international law, notably the following: [...]’

15. Paragraph 19(d) of the Self-contained set of charges

78. The Prosecution requests deleting the expression ‘without consent’ and replacing it with the expression ‘without her having the capacity to give free consent’ [TRANSLATION] with respect to the incident describing the alleged acts of sexual nature committed against P-0542.¹⁰⁰

79. In light of paragraph 680 of the Confirmation Decision,¹⁰¹ the Chamber considers that the language proposed by the Prosecution is factually more precise in the circumstances described. This request is therefore granted. As a consequence, the Chamber decides to modify paragraph 19(d) of the Self-

⁹⁹ Confirmation Decision, ICC-01/12-01/18-461-Conf-Corr, para. 674 *read in conjunction with* paras 675-684.

¹⁰⁰ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 32.

¹⁰¹ This paragraph states: ‘Au cours de sa détention à la BMS, après le départ du MNLA de Tombouctou, P-0542 a eu un rapport sexuel avec un « islamiste » durant son sommeil. En effet, P-0542 raconte que durant sa première nuit en prison, un homme lui a donné de l’eau, suite à quoi elle s’est endormie. Le lendemain, P-0542 s’est réveillée sans ses vêtements et avec du sang sur les cuisses. La deuxième nuit, l’homme est revenu lui expliquer qu’il avait mis une plante dans son eau, qu’il l’avait déshabillée et qu’il avait couché avec elle. P-0542 est tombée enceinte à la suite de ce rapport sexuel.’

contained set of charges as follows: ‘Acts of a sexual nature committed against P-0542 without her knowledge and without her having the capacity to give free consent during her detention in Timbuktu between [REDACTED] 2012 and January 2013’.

16. Paragraph 19(e) of the Self-contained set of charges

80. The Prosecution requests modifying the timeframe in relation to the acts allegedly committed against P-0641 from ‘arrested, detained and interrogated in Timbuktu in or around [REDACTED] 2012’ to ‘arrested and detained between [REDACTED] 2012 and January 2013’ [TRANSLATION].¹⁰² The Prosecution submits that limiting the timeframe of this incident to [REDACTED] 2012 would be contrary to the factual analysis from PTC I in so far as the date of the second arrest of P-0641 is not specified in the Amending Decision.¹⁰³ The Chamber notes that the word ‘interrogated’ does not appear in the Prosecution’s proposal but understands that this omission is not linked to the substance of the Prosecution’s argument.
81. The Chamber notes that PTC I found that the acts allegedly committed against P-0641 constituted severe deprivations of fundamental rights in contravention of international law.¹⁰⁴ However, PTC I did not find that Mr Al Hassan was liable for P-0641’s first arrest, which was found to have happened in [REDACTED] 2012,¹⁰⁵ a period of time which was before Mr Al Hassan allegedly started working for the Islamic Police.¹⁰⁶ As a result, PTC I did not confirm the facts relating to P-0641’s first arrest as an underlying act under the count of persecution.¹⁰⁷
82. The Chamber also notes that there is no indication of dates concerning the other acts committed against P-0641, except that PTC I concluded that they happened at a time when Mr Al Hassan was allegedly working for the Islamic Police,

¹⁰² Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 33.

¹⁰³ Prosecution Submissions, ICC-01/12-01/18-881-Conf, para. 33.

¹⁰⁴ Amending Decision, ICC-01/12-01/18-767-Conf-Corr, paras 163, 169.

¹⁰⁵ Amending Decision, ICC-01/12-01/18-767-Conf-Corr, para. 78.

¹⁰⁶ Amending Decision, ICC-01/12-01/18-767-Conf-Corr, para. 176.

¹⁰⁷ Amending Decision, ICC-01/12-01/18-767-Conf-Corr, paras 176 and 202.

between 7 May 2012 and 28 January 2013.¹⁰⁸ In light of these observations, the Chamber considers that the text of paragraph 19(e) of the Self-contained set of charges should be modified to reflect more accurately the acts allegedly committed against P-0641 and confirmed by PTC I,¹⁰⁹ as well as their timeframe.

83. However, the Chamber considers that the Prosecution's suggestion to include the month of [REDACTED] 2012 in the timeframe of the incident is not appropriate in light of the text of the Amending Decision. The request is therefore granted in part only. The Chamber decides to amend the relevant paragraph as follows: 'Acts of harassment and threats committed against P-0641, who was arrested in Timbuktu between May 2012 and January 2013'.

E. Defence Submissions premised on alleged deficiencies in the Confirmation Decision

84. In its Request for Dismissal, the Prosecution alleges that the Defence Submissions go beyond the scope of observations on the Self-contained set of charges and raise several alleged defects and issues with notice in the Confirmation Decision.¹¹⁰ The Prosecution submits that these matters should have been raised in the Defence observations under Rule 134(1) of the Rules.¹¹¹ It adds that these issues were already raised by the Defence in the context of the confirmation of charges proceedings.¹¹² The Prosecution therefore requests the Chamber to summarily dismiss the Defence arguments that are unrelated to the formulation of the Self-contained set of charges.¹¹³ In their Response, the LRVs agree with the Prosecution's Request for Dismissal.¹¹⁴

85. The Defence submits that its Submissions fall within the scope of the Chamber's instructions to identify 'any other issue of concern with respect to the

¹⁰⁸ Amending Decision, ICC-01/12-01/18-767-Conf-Corr, paras 77, 79, 92, 175-177.

¹⁰⁹ Amending Decision, ICC-01/12-01/18-767-Conf-Corr, paras 77, 79.

¹¹⁰ Prosecution's Request for Dismissal, ICC-01/12-01/18-889-Conf, paras 1, 11.

¹¹¹ Prosecution's Request for Dismissal, ICC-01/12-01/18-889-Conf, paras 2, 12.

¹¹² Prosecution's Request for Dismissal, ICC-01/12-01/18-889-Conf, para. 13.

¹¹³ Prosecution's Request for Dismissal, ICC-01/12-01/18-889-Conf, paras 3, 12, 15.

¹¹⁴ LRVs Response, ICC-01/12-01/18-903-Conf, paras 7, 10.

formulation of the charges’ within the Self-contained set of charges.¹¹⁵ The Defence considers that in addition to promoting a common understanding as to the precise scope of the charges, the stated purpose of the Self-contained set of charges was to ensure sufficiency of notice as concerns the cause and content of the charges.¹¹⁶ For the Defence, ‘[i]f the Self-contained set of charges lacks detail on certain points, then it [is] necessary to consider whether this lacuna is filled by the Confirmation Decision, either read in isolation or in conjunction with the Document Containing the Charges’.¹¹⁷

86. The Defence also alleges that the Chamber is competent to adjudicate issues concerning notice, in light of the Chamber’s own interpretation of the applicable law.¹¹⁸ The Defence submits that issues of notice cannot be determined exclusively by reference to the definitions of the charged crimes, or modes of liability, employed by PTC I.¹¹⁹ It alleges that ‘when the Trial Chamber issues its judgment under Article 74 of the Statute, the Trial Chamber must determine whether the confirmed charges afforded the Defence with sufficient notice, and allowed the Defence to prepare, in an effective manner, in relation to crimes and modes of liability, as defined by the Trial Chamber’.¹²⁰
87. The Defence finally alleges that it would be disproportionately prejudicial and contrary to Rule 134(2) of the Rules to summarily dismiss the Defence Submissions.¹²¹
88. The Chamber agrees with the Prosecution that the Defence Submissions go beyond the scope of observations on the Self-contained set of charges requested by the Chamber. While loosely framed as arguments with respect to the sufficiency of the Self-contained set of charges, the Defence raises several

¹¹⁵ Defence Response to the Prosecution’s Request for Dismissal, ICC-01/12-01/18-908-Conf, paras 1-4.

¹¹⁶ Defence Response to the Prosecution’s Request for Dismissal, ICC-01/12-01/18-908-Conf, para. 3.

¹¹⁷ Defence Response to the Prosecution’s Request for Dismissal, ICC-01/12-01/18-908-Conf, para. 3.

¹¹⁸ Defence Response to the Prosecution’s Request for Dismissal, ICC-01/12-01/18-908-Conf, paras 5-7.

¹¹⁹ Defence Response to the Prosecution’s Request for Dismissal, ICC-01/12-01/18-908-Conf, para. 5.

¹²⁰ Defence Response to the Prosecution’s Request for Dismissal, ICC-01/12-01/18-908-Conf, para. 5.

¹²¹ Defence Response to the Prosecution’s Request for Dismissal, ICC-01/12-01/18-908-Conf, paras 8-10.

arguments on alleged defects and issues with notice in the Confirmation Decision.¹²²

89. These submissions are peppered with references to the points made by the Defence in submissions before PTC I in relation to the Confirmation Decision, evidencing that the same arguments are being repeated before this Chamber.¹²³ It is also obvious that some of the requests made by the Defence before the Chamber in relation to the Self-contained set of charges would, if granted, constitute an amendment of the Confirmation Decision. As stated at the outset, and as submitted by the Defence itself,¹²⁴ the Chamber does not have the power to amend or expand the facts and circumstances as confirmed by PTC I as these findings from the Confirmation Decision and the Amending Decision are binding on the Chamber.
90. In its Response to the Prosecution's Request for Dismissal,¹²⁵ the Defence also appears to misconstrue again the purpose of the Self-contained document. It was not intended to provide notice of the charges or to address alleged deficiencies in the Charging Documents in terms of notice or clarity. As stated previously, the statutory requirements for notice are met by the detailed information already provided to the Defence notably through the Charging Documents.¹²⁶
91. The Defence arguments on interpretation of the applicable law are similarly misplaced. The Chamber observes that many of the arguments raised by the Defence to show the defects in the Confirmation Decision are substantively linked to legal reasoning or interpretation.¹²⁷ The Chamber did not reject or endorse any legal aspects of the Pre-Trial Chamber's reasoning in the process of drafting the Self-contained set of charges nor will it do so now. Rather legal issues will be determined ultimately through its judgment at the end of the trial

¹²² Defence Submissions, ICC-01/12-01/18-882-Conf, paras 11-14, 33-69.

¹²³ See, e.g., Defence Submissions, ICC-01/12-01/18-882-Conf, paras 33, 59, 61.

¹²⁴ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 16.

¹²⁵ Defence Response to the Prosecution's Request for Dismissal, ICC-01/12-01/18-908-Conf, paras 3-4.

¹²⁶ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, paras 124-128.

¹²⁷ For instance, concerning the legal components of the common plan under 25(3)(a) of the Statute, its criminal nature, the link between the alleged contributions by Mr Al Hassan and each criminal fact constituting a crime. See, e.g., Defence Submissions, ICC-01/12-01/18-882-Conf, paras 11-14, 46-52.

process as is contemplated under the Statute. For all these reasons, the Defence arguments relating to deficiencies in the Confirmation Decision¹²⁸ are rejected.

92. The Chamber further notes the Defence submissions as to the ‘options’ available to the Chamber at this stage with respect to the charges.¹²⁹ As stated above, partially motivated by the request of the Defence, the Chamber has drawn out of the Charging Documents the facts and circumstances as needed to more explicitly identify the incidents within the charges, in the context of a self-contained document. The Chamber has offered the parties an opportunity to make observations on the resulting Self-contained set of charges and has responded, in detail, to those observations. The request of the Defence has been responded to and there is now a common understanding of the charges for the purposes of trial.

93. What the Defence seeks at this stage primarily is to re-litigate the sufficiency of the Confirmation Decision before the Chamber, which is legally impermissible. Issues with respect to that decision fall solely within the purview of PTC I, which has taken its decision after full arguments by the parties. Requests for leave to appeal the Confirmation Decision and the Amending Decision were denied by PTC I, matters also solely within its mandate.¹³⁰ For the purposes of the trial proceedings, any issues related to the charges have been exhaustively addressed and no further action by the Chamber is merited or required.

¹²⁸ See above at para. 88 and corresponding footnote 122.

¹²⁹ Defence Submissions, ICC-01/12-01/18-882-Conf, para. 7.

¹³⁰ Décision relative à la requête de la défense aux fins d’autorisation d’interjeter appel de la Décision relative à la confirmation des charges et transmissions du dossier à la présidence en vertu de la règle 129 du Règlement de procédure et de preuve, 18 November 2019, ICC-01/12-01/18-498-Secret-Exp (secret *ex parte*, available only to the Prosecution and the Victims and Witnesses Unit; a confidential *ex parte* redacted version, available only to the Prosecution, the Defence and the Victims and Witnesses Unit, and a public redacted version were filed simultaneously, ICC-01/12-01/18-498-Conf-Exp-Red and ICC-01/12-01/18-498-Red2 respectively); Décision relative à la requête de la défense pour autorisation d’interjeter appel de la Décision portant modification des charges confirmées le 30 septembre 2019 à l’encontre d’Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, 22 June 2020, ICC-01/12-01/18-893 (notified on 23 June 2020; dissenting opinion of Juge Alapini-Gansou filed simultaneously, ICC-01/12-01/18-893-Anx).

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES to amend the Self-contained set of charges as set out in paragraphs 20, 30, 40, 51, 57, 59, 65, 70, 77, 79 and 83 above; and

ISSUES a revised Self-contained set of charges, contained in Annexes A and B to the present decision, to be read pursuant to Article 64(8) of the Statute.

Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Kimberly Prost

Dated this Thursday, 2 July 2020

At The Hague, The Netherlands