

Trial Judgment

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and
7 Judge Kimberly Prost
8 Trial Judgment - Courtroom 1
9 Wednesday, 26 June 2024
10 (The hearing starts in open session at 12.02 p.m.)
11 THE COURT USHER: [12:02:03] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [12:02:43](Interpretation) Court is called to order.
15 Good afternoon to everybody.
16 Madam Court Officer, please call the case.
17 THE COURT OFFICER: [12:03:04] Good afternoon, Mr President, your Honours.
18 This is the situation in the Republic of Mali, in the case of The Prosecutor versus
19 Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference
20 ICC-01/12-01/18.
21 And for the record, we are in open session.
22 PRESIDING JUDGE MINDUA: [12:03:28](Interpretation) Thank you, Madam
23 Court Officer.
24 I would now like to ask the parties and participants to introduce themselves, not
25 forgetting the members of their teams who are taking part from remote locations.

1 Mr Prosecutor.

2 MR NIANG: [12:03:50](Interpretation) Thank you very much, Mr President,
3 your Honours.

4 Today the Office of the Prosecutor is represented by myself, Mandiaye Niang,
5 Deputy Prosecutor. To my right, Gilles Dutertre, senior trial lawyer; Madam
6 Yayoi Yamaguchi, trial lawyer; Mr Mousa Allafi, associate trial lawyer. Behind me,
7 we have trial lawyers Dianne Luping and Mr Lucio Garcia, then there is
8 Sandra Schoeters and Madam Marie-Jeanne Sardachti. And in the third row we
9 have Madam Paola Sacchi and Mr Karim Tounsi, assistant data processing -- data
10 processor.

11 I would also like to point out, Mr President, I would like to greet you that you are
12 here with us, fully fit, and I congratulate you for that.

13 And I also point out that the Registrar has decided to grace this occasion with his
14 presence and we welcome that.

15 I would also like to say good afternoon to all those who are present today,
16 the representatives of the Defence and victims and every other person here and in
17 the public gallery. Thank you.

18 PRESIDING JUDGE MINDUA: [12:05:51](Interpretation) Thank you, Mr Prosecutor,
19 for your personal presence and for your team.

20 And now I turn towards the Defence. Madam Taylor.

21 MS TAYLOR: [12:06:05] Good morning, Mr President. Good morning,
22 your Honours. Good morning to everyone in and around the courtroom.

23 The Defence for Mr Al Hassan is represented today by, to my left, we have
24 Felicity Gerry, KC. We have Alka Pradhan, who is participating via video link. We
25 have Méliissa Beaulieu Lussier, Havneet Sethi, Yuqing Liu, Diletta Marchesi. We

1 have Kelsey Ryan, Leila Abid, Maouloud Al-Ansary, Quinn Farr and Claudia Barrera.

2 And my name is Melinda Taylor.

3 And Mr Al Hassan is present today. Thank you very much.

4 PRESIDING JUDGE MINDUA: [12:06:59](Interpretation) Thank you very much,

5 Madam Taylor.

6 And now the representatives of victims. Counsel.

7 MR LUVENGIKA: [12:07:09](Interpretation) Yes, good afternoon, Mr President,

8 your Honours.

9 The victims are represented in this hearing by *Maître* Seydou Doumbia from Bamako;

10 *Maître* Mayombo Kassongo, who is here to my right; Madam Biyéké Dipanga Prisque;

11 and Mr Andrés Morales, who is behind me. That is the composition of the team.

12 I would like to pay tribute to those who are absent, for example, Julie Goffin and

13 Madam Kapinga, who normally would have been in Bamako also. Thank you.

14 I also would like to salute my learned friends of the Defence, as well as the entire

15 Office of the Prosecutor, and the Registrar, who has graced this occasion. I also greet

16 the members of the public who have taken the time to come and listen to

17 the judgment of today. Thank you.

18 PRESIDING JUDGE MINDUA: [12:08:37](Interpretation) Thank you very much,

19 counsel. I thank you and I greet your colleagues who are in remote locations,

20 particularly Mr Doumbia.

21 The Chamber is happy to have the Registrar with us today. You have the floor,

22 Mr Registrar.

23 MR ZAVALA GILER: [12:09:00] Your Honours, Mr President, thank you very much

24 for the opportunity to be here. Osvaldo Zavala, Registrar of the ICC.

25 PRESIDING JUDGE MINDUA: [12:09:29](Interpretation) Thank you very much,

1 Mr Registrar.

2 I note that Mr Al Hassan is obviously present, as *Maître* Taylor has already
3 mentioned.

4 Good afternoon, Mr Al Hassan.

5 After about one year we meet once again in this courtroom and it is with pleasure that
6 I wish everyone welcome.

7 Pursuant to Article 74 of the Statute, the Chamber carried out its deliberations and
8 will file its decision relative to the criminal responsibility of Mr Al Hassan with
9 regard to the charges against him made by the Prosecutor. This judgment, which is
10 based solely on the Chamber's assessment of the evidence adduced and examined in
11 the course of the trial, considers whether the Prosecutor has proved the guilt of
12 the accused beyond all reasonable doubt or not.

13 Whereas only the written decision is authoritative, I will now proceed to read out
14 a summary of that decision.

15 Let me begin by emphasising that this case deals with crimes against humanity and
16 war crimes perpetrated in the city of Timbuktu, located in northern Mali, between
17 2 April 2012 and 29 January 2013, as well as the possible responsibility of the accused,
18 Mr Al Hassan, for those crimes.

19 During the aforementioned period, several organised armed groups were active in
20 that particular region of Mali.

21 First of all, there was Al-Qaeda in the Islamic Maghreb, or AQIM. This group was
22 a promoter of jihad and believed that this objective could not be achieved without
23 fighting against the people that they characterised as "infidels". AQIM fighters were
24 originally from Algeria, Mauritania and Nigeria, amongst other countries, and they
25 were therefore considered as "foreigners" by the population of northern Mali.

1 And then, there was Ansar Dine. It is a name derived from an Arabic phrase which
2 translates into "defenders of the faith". This group was mainly composed of Malian
3 Tuaregs. The Ansar Dine group called for the independence of northern Mali and
4 intended to establish an Islamic State covering that entire territory, where its
5 interpretation of Sharia law would be applicable in lieu of the Malian constitution and
6 the laws of the country. In practice, however, Ansar Dine was merely furthering
7 the objectives of AQIM, Al-Qaeda in the Islamic Maghreb.

8 Besides Ansar Dine and AQIM, there was another armed group known as
9 the National Movement for the Liberation of Azawad, in abbreviation MNLA.

10 The MNLA was a secular and nationalist Tuareg movement. All of these groups
11 were active in the north of Mali well before 2012, while the region had been
12 the theatre of violence for decades. Despite their difference, the MNLA, AQIM and
13 Ansar Dine negotiated amongst themselves to finally agree to form an alliance that
14 would seize control of northern Mali in April 2012.

15 On 2 April 2012, Ansar Dine and AQIM entered the city of Timbuktu and took over
16 control of the city after forcing out the MNLA. During the time of their exclusive
17 control of Timbuktu, they imposed a series of rules and prohibitions on
18 the population.

19 The matter to be determined in these proceedings concerns the role played by
20 Al Hassan during the events under consideration. Although Al Hassan had worked
21 for a group which claimed to be enforcing Islamic Sharia law, this trial had nothing to
22 do with either Sharia law or the Muslim religion in general. The trial centred on
23 the actions and conduct of one man, Al Hassan, who was acting within a very specific
24 context. He operated as a member of an organised armed group which committed
25 crimes that fall within the jurisdiction of the Court and which he justified as actions

1 meant to ensure the enforcement of Sharia law, while simultaneously pursuing
2 territorial ambitions.

3 In fact, far from reflecting "centuries of Islamic law and scholarship" as claimed by
4 these groups, the rules that were imposed and the punishments inflicted on
5 the inhabitants of Timbuktu were examples of the practice developed by Ansar Dine
6 and AQIM in Timbuktu in 2012 and 2013, which was based on their unique
7 understanding and interpretation of the sources of Sharia law.

8 As one witness, P-0065 explained in transcript T-046, and I quote:

9 "They came with arguments from the Koran and no imam could say no to something
10 justified with the Koran. But everyone has their own interpretation of a Koranic
11 verse. And there, they were applying a decision to something that did not come
12 from a religious debate or dialogue." End of quote.

13 Once again, I quote: The objective was to "instruct" or "enlighten" the so-called
14 "ignorant" people of Timbuktu on what they considered to be the "genuine faith".

15 In this way, Ansar Dine and AQIM regulated or prohibited a certain number of
16 practices. The rules and prohibitions enacted by Ansar Dine and AQIM covered
17 many aspects of the lives of the local population and, in particular, the manner in
18 which the inhabitants of Timbuktu could practice their religion and communicate
19 with God, the possibility and manner of celebrating religious, traditional, social and
20 cultural events, what they could consume, and the way in which they should dress, as
21 well as how and with whom they could initiate and nurture relationships.

22 Women in particular were subjected to various restrictions relative to their
23 appearance and their freedom of movement in public places. In particular, they
24 were compelled to cover their bodies and heads with a veil, otherwise they risked
25 being punished. Such was their fear of Ansar Dine and AQIM that women

1 drastically curtailed their outings and their participation in social activities, with some
2 of them simply deciding to no longer leave their homes at all. The women explained
3 that they were not going out much, in order to avoid "problems", as they feared being
4 arrested and punished, adding that, no matter what they did and no matter how they
5 covered themselves, they were always found not to have covered their bodies fully.

6 And this had repercussions on their ability to earn a living.

7 To ensure the proper enforcement of all those rules, Ansar Dine and AQIM set up
8 a rigorous repression structure targeting those who did not comply with the rules and
9 who were considered as, in quotes, "recalcitrants". They created dedicated and
10 bespoke institutions to that end, in particular the *Hesbah*, the Islamic police and
11 the Islamic court.

12 Each of these institutions was administered by emirs who all reported to the emir of
13 Timbuktu, Abou Zeid. The Islamic police, made up of 20 to 40 members was
14 the most visible of these institutions. The emirs had given general instructions to
15 the Islamic police and other relevant institutions to force the population to comply
16 with their interpretation of Sharia law, while avoiding, to the extent possible, any
17 clashes with that population.

18 In the course of this trial, the Chamber heard from a large number of witnesses and
19 victims who gave accounts of the events that took place between April 2012 and
20 January 2013. They described the punishments inflicted on the population and
21 the suffering that they endured when Timbuktu was under the control of Ansar Dine
22 and AQIM. Such control had serious repercussions on the local population, both
23 psychologically and economically. In particular, the inhabitants had no other choice
24 but to adapt their lives and lifestyles to conform to the interpretation of Islamic Sharia
25 law that Ansar Dine and AQIM had imposed on them by the force of arms.

1 Witness P-0608, in transcript T-154, testified as follows, and I quote:

2 "The people felt really occupied. How should I put this? Everyone, we were in
3 a position of resistance, but passive resistance. It was as if everyone had said to one
4 another: those people have not come to do us any good; they say that they have come
5 to bring Sharia law or to turn us into Muslims, but, you know, we were already
6 Muslims and had been for a long time, even Timbuktu is a Muslim city. And so,
7 there was agreement and nobody wanted anything to do with them." End of quote.

8 Between May 2012 and January 2013, Al Hassan worked for the Islamic police of
9 Ansar Dine/AQIM. He had been recruited by senior officials of AQIM. Al Hassan
10 had been working with the Islamic police since the beginning of May 2012. During
11 the period covered by the charges, Al Hassan quickly rose through the ranks and his
12 role became increasingly important. He was an active member of the police. After
13 having started out as an interpreter, he very quickly started drafting reports and
14 performing administrative duties, as well as organising the work of the police.

15 Al Hassan remained a member of the Islamic police until Ansar Dine and AQIM left
16 Timbuktu.

17 Even though he was under the orders of the emirs of the police, Al Hassan had
18 a leading role in police operations. When Ansar Dine and AQIM were in control of
19 Timbuktu, the position occupied by Al Hassan was perceived differently by different
20 people, because he was variously referred to as "commissioner", "de facto
21 commissioner", "deputy commissioner", and/or the second-in-command of the Islamic
22 police. In any case, from the moment that he started working under Adama, the first
23 emir of the police, and for as long as he participated in the work of the Islamic police,
24 Al Hassan was considered by the local population and by the other members of
25 the police as a key player in the police force.

1 Al Hassan had the power to issue orders, and when he did so, the police officers
2 followed his instructions. He often interacted with the local population on behalf of
3 the police, ensuring liaison with the people, speaking with victims and by acting as
4 mediator in case of disputes and by issuing authorisations. Al Hassan approved
5 media activities on behalf of the police, for example, by authorising reports to be
6 made. He also issued authorisations to residents and to journalists.

7 Al Hassan received documents and carried out investigative activities at the premises
8 of the Islamic police. He issued summonses to members of the local population to
9 report to the police. He was also involved in the arrest of people accused of crimes
10 by the armed groups, including the arrest of Dédéou Maiga, whose hand was
11 subsequently amputated.

12 Al Hassan took part in investigations and interrogations and questioned individuals
13 and other witnesses at the police premises. He admitted that during interrogations,
14 in cases involving public property, if a person did not tell the truth after evidence had
15 been presented to him or her, it would then be necessary to resort to "threats". If
16 the person still did not confess after having been threatened, then torture could be
17 used. And if after being tortured the person still did not confess, then that person
18 would be released. In particular, Al Hassan made use of threats during one
19 interrogation session. He equally questioned people in his office. Most of the time,
20 the emir of the police was present by his side during such interrogations, but he
21 sometimes carried them out on his own.

22 Al Hassan had the authority to sign police reports and he wrote and signed many of
23 them. In a good number of cases, the police reports were forwarded to the Islamic
24 court. These reports, drafted and signed by Al Hassan, dealt with various criminal
25 and civil law matters.

1 Al Hassan led convicted persons to the places where the punishments were to be
2 administered. He was also present on several occasions when public punishments
3 were enforced, especially in the cases of people convicted by the Islamic court.

4 Al Hassan carried a weapon during the performance of some of his duties, in
5 particular when he took part in the enforcement of punishments. Moreover,
6 Al Hassan was among the police chiefs present during punishments inflicted on
7 the spot at the police station without any judgment having been delivered by
8 the Islamic court.

9 Al Hassan was one of the people in charge of communication on behalf of Ansar Dine
10 and AQIM; he would take the floor to promote the mission and objectives of
11 Ansar Dine and AQIM and clearly expressed his support and enthusiastic
12 participation in their activities in Timbuktu city.

13 For the majority of the crimes considered, Al Hassan was prosecuted under
14 Article 25(3)(d) of the Rome Statute, for having contributed to the crimes perpetrated
15 by other members of Ansar Dine and AQIM. For some events, he was prosecuted
16 under Article 25(3)(a) of the Rome Statute, for having directly committed the crimes
17 himself, or on the basis of Article 25(3)(c) of the Rome Statute, for having aided and
18 abetted the commission of crimes committed by others.

19 I shall now proceed to read the main conclusions drawn by the Chamber, essentially
20 by majority decision. For my part, I will attach a dissenting opinion which relates,
21 *inter alia*, to the existence of grounds for the exoneration of Al Hassan from criminal
22 responsibility.

23 Al Hassan has been found guilty, by majority decision, of war crimes and crimes
24 against humanity, including torture, other inhumane acts, cruel treatment, and
25 outrages upon personal dignity, for the public flogging of 13 members of

1 the population on the grounds that they had violated the rules established by
2 Ansar Dine and AQIM, as well as for an amputation. A good number of those
3 public punishments were videotaped or photographed, and the video footage and
4 images were shown during the trial.

5 Two men convicted by Ansar Dine/AQIM of drinking alcohol were led on foot,
6 handcuffed to each other, to a public square by members of the Islamic police.

7 Alongside other Ansar Dine/AQIM members, Al Hassan flogged the two men, who
8 each received about 80 strokes of the cane in front of a crowd that also included
9 children. Al Hassan supervised the execution of that punishment jointly with
10 a colleague from the Islamic police and he provided the key to unlock the handcuffs
11 chaining the two men to each other so that the punishment could be inflicted.

12 Al Hassan himself inflicted at least 34 and 37 lashes, respectively, on the two victims.

13 The suffering of these two men was visible as they endured their punishment in
14 public.

15 P-0565 and P-0557, a couple with a young baby, were arrested by the Islamic police.

16 They were detained for two or three days at the headquarters of the Islamic police in
17 deplorable conditions. In particular, P-0565, who was under the age of 15 at the time,

18 was held in a small room with neither ventilation, nor food, and she had to relieve
19 herself on the floor. She and her companion, P-0557, were convicted by the Islamic

20 court and then taken away on the same day to receive 100 brutal strokes of the cane
21 each on their backs, administered by different members of Ansar Dine/AQIM

22 together. P-0557 was whipped with a rope that is usually used to beat animals.

23 A witness who had been in the crowd told the Court that it was unbearable to watch.

24 The two victims suffered significant bodily injuries. After being beaten, P-0557 had

25 marks all over his shoulders, back and thighs, and the scars are still visible to this day.

1 P-0565 suffered an inflammation and some bruising.

2 The two victims also testified about the fear and the humiliation that they felt. After
3 their ordeal, members of Ansar Dine and AQIM forced them to marry each other on
4 the same day that they were brutally flogged. For a long time, the two victims
5 suffered from social stigma following their flogging. They were also the subject of
6 public rumours about the circumstances of their marriage after these events.

7 The Islamic police played an important role in the enforcement of the punishment,
8 with Al Hassan aiding and abetting the process. He was present during those acts,
9 wearing the Islamic police vest, and he helped to ensure security during the flogging
10 and to guarantee the efficient and effective enforcement of the punishment.

11 Six other persons were convicted by the Islamic court for engaging in sexual relations
12 outside of marriage and then flogged in public by members of Ansar Dine and AQIM
13 in front of many people, including children, in particular. The six victims received
14 100 lashes each. Two of the victims were also detained prior to their appearance
15 before the Islamic court. Al Hassan provided help and assistance on this occasion by
16 being present during the incident and helping to ensure security during the flogging,
17 as well as to guarantee the efficient and effective enforcement of the punishment.

18 The six victims are:

19 Khudi Bint Ibrahim; Abdallah Bin Mukha; Bint Bint Ibrahim; Ikhmad Bin Muhammad;
20 Al-Husayn Bin Umar; and Halimah Bint Muhammad.

21 Members of Ansar Dine/AQIM was violently -- or, rather, violently arrested
22 Sallaka Bent Al-Khair at the residence of her partner, late at night, and accused her of
23 having sex outside of marriage. She was detained at the *Hesbah* headquarters for
24 several days. She was locked up, without food, in an extremely small cell, with bars,
25 which had a pungent smell and in which she had difficulty breathing. She had to

1 relieve herself on the floor. She was later convicted by the Islamic court and held in
2 detention further. She was then violently flogged by members of Ansar Dine and
3 AQIM, who administered at least 50 lashes on her in front of a crowd. She screamed,
4 and then she collapsed to the ground during the flogging and her chest was
5 uncovered to the public eye at that event. One witness told the Court that
6 the flogging was disgusting to everyone and that "it had broken his heart".
7 Sallaka Bent Al-Khair is still suffering from the injuries inflicted on her.
8 Madou Traoré was also convicted by the Islamic court for having sexual relations
9 outside of marriage. He was flogged at the same time as Sallaka Bent Al-Khair.
10 Before the flogging, he had been forced to take off the pullover he was wearing,
11 which could have cushioned the blows. He received at least 39 lashes and was
12 visibly in pain from the whippings, and he continued to bleed after the flogging.
13 An elderly man named Foma, who was thin and of a short stature, was arrested at the
14 market by a member of Ansar Dine and AQIM on the grounds that he was smoking
15 a cigarette. The Ansar Dine/AQIM member tried to take him away by force, but
16 when Foma refused, he inflicted 10 lashes on him on the spot, in front of other
17 persons. Thereafter, Foma was sobbing in the middle of the market as he felt unwell
18 and anxious.
19 Finally, Dédéou Maiga, Dédéou Maiga was arrested by Al Hassan and other Islamic
20 police officers, who suspected him of theft, and he was detained for several weeks.
21 His family tried in vain to negotiate his release. He was convicted by the Islamic
22 court and thereafter members of Ansar Dine/AQIM took him to a major public square
23 and tied him to a chair in front of a large crowd. They tied his ankles with chains
24 and covered his head. They then proceeded to cut off his right hand with a saw or
25 a machete. Ansar Dine/AQIM had previously made a public announcement of

1 the punishment and invited the population to gather at the square to witness it.

2 A witness who was present in the crowd and saw the amputation said afterwards that
3 people dispersed very quickly and that the sky had darkened because they had
4 witnessed a "cruel act".

5 Another witness who was also present in the crowd said the following, after
6 the amputation, and I quote: "The morale was broken [...] there was little movement
7 in the city [...] and it was like a graveyard silence, [so] everyone remained at home."
8 End of quote.

9 Another resident described the amputation as, and I quote, a "cold shower on
10 the entire city." End of quote.

11 Dédéou Maiga was ostracised after the amputation and has suffered psychologically
12 from this event. He died shortly thereafter. For those crimes committed against
13 Dédéou Maiga, Sallaka Bent Al-Khair, Madou Traoré and Foma, Al Hassan's
14 contribution stems from the role he played in his capacity as a high-ranking member
15 of the Islamic police and from the fact that he also played a key role in
16 the Ansar Dine/AQIM system that was set up to commit those crimes.

17 With regard to those facts, the Chamber found that Al Hassan either directly
18 committed a number of war crimes and crimes against humanity, including
19 the crimes of torture, other inhumane acts, cruel treatment, outrages upon personal
20 dignity, mutilation and persecution, or that he aided and abetted or contributed to
21 the commission of such crimes.

22 The Chamber found that Ansar Dine and AQIM had committed war crimes and
23 crimes against humanity, including other inhumane acts, cruel treatment, rape and
24 outrages upon personal dignity against four women living in the city of Timbuktu
25 within the context of their arrest and detention by Ansar Dine and AQIM.

1 Azahara Abdou was arrested by members of Ansar Dine/AQIM on the grounds that
2 she was not wearing a veil. Two armed men chased her all the way into her house,
3 grabbed her by the hand, and while she was resisting, they beat her in front of her
4 family members. Members of Ansar Dine/AQIM then detained the victim at the
5 *Hesbah* headquarters for about three days, during which time members of the *Hesbah*
6 raped her and threatened her with death.

7 P-0636 was arrested on the streets by members of Ansar Dine/AQIM on the grounds
8 that she was not wearing a veil. She was detained at the *Hesbah* headquarters, in
9 the room where the ATM was located. That room smelled of urine and there was
10 only a mat on the floor. By the way, she did not receive anything to eat. On
11 the first night of her detention, three armed men from the *Hesbah* raped P-0636 in turn,
12 and at gunpoint.

13 Regarding P-0570, the emir of the *Hesbah*, Mohammed Moussa, and three other armed
14 members of the *Hesbah* arrested the victim on the ground that she was not properly
15 covered. They threw her into their car and drove off as members of her family
16 chased after them. Mohammed Moussa and other men drove to and detained
17 P-0570 at the *Hesbah* headquarters in a dark room in which there was a mattress on
18 the floor. Shortly thereafter, they took turns raping her. On that occasion, she was
19 struck and threatened and they threatened to kill her. P-0570 suffered so much so
20 that she lost consciousness. She only woke up at the hospital in Timbuktu, where
21 she ended up spending a month and a half.

22 Regarding Fadimata Mint Lilli, members of Ansar Dine/AQIM flogged her once on
23 her back, after telling her that she was not adequately covered. They then took her
24 and detained her for a day at the *Hesbah* headquarters in a small, windowless room,
25 where three other women were held. She had nothing to eat, nor to drink.

1 The female inmates or female persons held in detention relieved themselves on a mat.
2 During her detention, Fadimata Mint Lilli was raped by a member of *Hesbah*, who
3 also told her that she would be killed.

4 For various reasons outlined in detail in the judgment, another majority of
5 the Chamber, with Judge Prost dissenting, considered that Al Hassan should be
6 found not guilty for the various crimes committed by members of the *Hesbah* against
7 these four women.

8 Judge Akane was of the view that neither the required contribution of the accused to
9 these crimes, nor the psychological element concerning the rapes while in detention
10 have been established. She is of the view, in any event, that these crimes did not
11 form part of the common purpose.

12 For my part, I am of the view that these acts of violence and rape are obviously
13 serious crimes, but as is the case with other crimes, a ground for exemption from
14 criminal responsibility should apply.

15 Regarding the four cases of forced marriages, which constitute crimes against
16 humanity or other inhumane acts, as well as underlying acts of rape and sexual
17 slavery, which constitute war crimes and crimes against humanity, the Chamber took
18 the view that the following facts have been established.

19 Regarding P-0520, members of Ansar Dine/AQIM approached his house asking to
20 marry her -- rather, approached her house demanding to marry her. Despite
21 the repeated refusals of P-0520, they continued to insist, to the point where one of
22 them pointed his gun at her, saying that she was obliged to accept, otherwise they
23 would take her away forcibly. P-0520 felt compelled to do what the men had
24 demanded, fearing what might happen to her family if she refused. The group then
25 celebrated the religious marriage in the absence of P-0520 and her parents.

1 P-0520 was then taken to a house, where the man she was married off to tried to get
2 her into the room, claiming that she was his wife. She refused to enter, saying that
3 she had been brought there by force. The man pushed her into the room and raped
4 her. He raped her several times over a period of 24 days. P-0520 was kept in two
5 houses in succession, one of which had a door with bars that could not be opened.
6 During that period, the man discovered one day that P-0520 was in possession of
7 birth control pills; he accused her of killing his children, whipped her and then sent
8 her to jail for one night. He then later brought her home to his house and continued
9 to rape her.

10 One day, P-0520 managed to escape, taking advantage of the fact that a gate had been
11 left open. She never saw the man she was married to again.

12 P-1162, P-1162 was in the same prison as P -- or the same house as P-0520, along with
13 the other women who had also had, quote-unquote, "husbands". She was a young
14 girl, about 15 years old. The Chamber found, by majority, with Judge Akane
15 dissenting, that P-1162 was also forcibly taken into marriage by an Ansar Dine man
16 and that she was subjected to sexual violence at his hands.

17 In another case of forced marriage, members of Ansar Dine/AQIM went to P-0610's
18 house repeatedly asking to marry her. At that time, P-0610 was between 13 and
19 15 years old, so she hid at a neighbour's house while the men were at hers. Later on,
20 her mother told her that it was not possible to refuse, otherwise they would be killed
21 or harmed by the Islamists. P-0610 did not want to get married, but she was afraid
22 and believed that she had no choice because, and I quote, "they were the ones who
23 ran everything in Timbuktu." End of quote.

24 Ansar Dine/AQIM members then arranged a wedding or marriage between P-0610
25 and one of the Ansar Dine/AQIM men. A sum of money was paid, but there was no

1 celebration or ceremony at the mosque. P-0610 was taken to a house, where the man
2 she was married to eventually joined her. He tried to touch her, but she refused and
3 so he slapped her. Then he raped her, and then left the room and did not come back.
4 The next day, P-0610 was only able to walk, quote-unquote, "little by little", and
5 a friend helped her back to her mother's house. P-0610 never saw her alleged
6 husband ever again. Neighbours and friends found out about what had happened
7 to her and, quote-unquote, began to whisper about her.
8 P-0610 suffered enormously from what had happened to her from what this man had
9 subjected her to, and still suffers from it to this day.

10 As for P-0538, her family, after refusing the first time, ended up accepting her
11 marriage after receiving threats from the men of Ansar Dine/AQIM. Those men
12 threw an amount of money at P-0538's father, claiming that it was the dowry. P-0538
13 was therefore married to a member of Ansar Dine/AQIM, yet she never herself
14 consented to the marriage. Members of Ansar Dine/AQIM forced her into a vehicle
15 and drove her to her, quote-unquote, "husband's house", and flogging her whenever
16 she resisted. P-0538's, quote-unquote, "husband", threatened her, abused and raped
17 her several times and P-0538 ran away several times as well as.

18 Following a complaint by her, quote-unquote, "husband" to the Islamic police,
19 a complaint against P-0538 and her family accusing them of interfering in their
20 marriage, divorce proceedings were initiated before the Islamic court. Divorce was
21 finally granted six to eight months after the dowry was thrown at P-0538's father.
22 For various reasons as detailed and outlined in the judgment, a majority of the
23 Chamber, Judge Prost dissenting, considers that Al Hassan should be found guilty --
24 should be found, rather, not guilty for the various crimes committed in the context of
25 these forced marriages.

1 In fact, Judge Akane considers or is of the view that it has not been established that
2 Al Hassan made the requisite contribution to these crimes or that the contextual
3 elements of the crimes against humanity were satisfied. She also finds that, in any
4 event, these crimes are not part of the common purpose.

5 For my part, I consider and I'm of the view that a ground for exemption for criminal
6 liability should apply.

7 Al Hassan is also found guilty by the majority, I dissenting, of war crimes of
8 conviction without due process. In addition to the convictions handed down by
9 the Islamic court against the victims already mentioned, the Chamber finds that
10 a significant number of other persons were also convicted by the Islamic court, which
11 was neither independent nor impartial. Furthermore, members of
12 Ansar Dine/AQIM also imposed sentences on persons who had not been previously
13 tried by the Islamic court, including particularly with regard to crimes committed
14 against an old man whose name was Foma, already mentioned above.

15 The Chamber finds that, as a result of his participation in the work of the Islamic
16 court in his capacity as a member of the Islamic police, particularly in relation to
17 drafting and signing police reports, participating in the transfer of the accused
18 persons to the court and involvement in the judgment and sentences handed down by
19 the tribunal -- or, rather, implementing such judgments and sentences, in so doing,
20 Al Hassan made a contribution to the system established by Ansar Dine/AQIM and,
21 therefore, to the commission of the crimes against the above-mentioned persons
22 under Article 25(3)(d) of the Rome Statute.

23 His behaviour and active participation on the work of the police, through this
24 Al Hassan demonstrated that he intended to adopt the behaviour and conduct that
25 contributed to the commission of the crimes of imposing sentences without prior

1 judgment by a court, as well as to the convictions handed down by the Islamic court
2 without due process. Al Hassan knew and also supported -- he knew about and also
3 supported the criminal activities of Ansar Dine and AQIM. Furthermore, he was
4 aware of the importance of his work in relation to the activities of the Islamic court, as
5 well as the influence that senior Ansar Dine and AQIM officials had over the Islamic
6 court and its members.

7 Finally, the Chamber is of the view that there is insufficient evidence to establish that
8 Al Hassan took any special or particular measures or action or played a significant
9 role in the demolition of the mausoleums and, therefore, accordingly finds him not
10 guilty of the war crime of attacks against protected objects referred to in
11 Article 8(2)(e)(iv) of the Rome Statute.

12 For the reasons set out in detail in the judgment, the majority finds that there is no
13 ground for exonerating Al Hassan from criminal responsibility in relation to
14 the crimes mentioned.

15 For my part, I append a dissenting opinion on the question of the existence of duress
16 and an error of law on the basis of Articles 31(1)(d) and 32(2) of the Statute.

17 I shall now proceed to conclude by reading the verdict of the Chamber in this case.

18 May I now ask Mr Al Hassan to please rise.

19 Mr Al Hassan, please rise.

20 Mr Al Hassan, based on the analysis of the evidence adduced and considered at trial,
21 as set out in the judgment of the Chamber, the Chamber finds Mr Al Hassan guilty of
22 crimes against humanity and war crimes. As detailed out in the judgment of
23 the Chamber, Mr Al Hassan is guilty as follows:

24 On the basis of Articles 25(3)(a), (c) and 25(3)(d) of the Statute:

25 i) crimes against humanity and war crimes of torture; and

1 ii) war crimes, outrages upon personal dignity;

2 On the basis of Article 25(3)(d) of the Statute:

3 i) war crimes, cruel treatment;

4 ii) other inhumane acts against humanity;

5 iii) war crimes consisting of pronouncement of convictions without a prior judgment

6 or trial, handed down by a regularly constituted court, functioning with judicial

7 guarantees that are generally recognised as indispensable;

8 iv) the crime against humanity of persecution on religious grounds; and

9 v) the war crime of mutilation.

10 Al Hassan is acquitted of the following charges:

11 i) war crime of attack on protected objects;

12 ii) other inhumane acts in the form of forced marriages;

13 iii) crimes against humanity and war crimes of sexual slavery; and

14 iv) crimes against humanity and war crimes of rape.

15 I have now come to the end of the oral summary of the main findings of the house --

16 of the Chamber, rather.

17 Mr Al Hassan, please be seated.

18 As I already told you, only the written decision of the Chamber based on Article 74(5)

19 of the Rome Statute is authoritative. It contains a full and reasoned statement of

20 the Chamber's findings, as well as the respective views of the judges as expressed, if

21 any. A public and confidential version of this judgment will be notified shortly.

22 An order from this Chamber setting out the timetable for the procedure of sentencing

23 that should apply to Mr Al Hassan will be issued shortly and made public

24 accordingly.

25 As usual, I would like to very sincerely thank all those who have participated in

- 1 today's hearing. I am thinking about the parties and the participants, I am thinking
- 2 of our brave interpreters and, of course, our security officers.
- 3 Of course, I also acknowledge the presence of the public, of those present in
- 4 the public gallery, as well as those listening to us online.
- 5 This concludes our hearing and the hearing is adjourned.
- 6 THE COURT USHER: [13:40:38] All rise.
- 7 (The hearing ends in open session at 1.40 p.m.)