

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
5 Ag Mahmoud - ICC-01/12-01/18
6 Presiding Judge Kimberly Prost, Judge Tomoko Akane and Judge Keebong Paek
7 Sentencing Judgment - Courtroom 1
8 Wednesday, 20 November 2024
9 (The hearing starts in open session at 2.00 p.m.)
10 THE COURT USHER: [14:00:51] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE PROST: [14:01:15] Good afternoon, everyone.
14 Court officer, could you call the case, please.
15 THE COURT OFFICER: [14:01:24] Good afternoon, Madam President. Good
16 afternoon, your Honours.
17 This is the situation in the Republic of Mali, in the case of The Prosecutor versus
18 Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference
19 ICC-01/12-01/18.
20 And for the record, we are in open session.
21 PRESIDING JUDGE PROST: [14:01:49] Thank you very much.
22 May I have the appearances, please, Mr Deputy Prosecutor.
23 MR NIANG: [14:01:56](Interpretation) *Madam President, your Honours, the OTP is
24 represented today by myself, Mame Mandiaye Niang, Deputy Prosecutor. To my
25 right is senior trial lawyer, Mr Gilles Dutertre; Ms Paola Sacchi, assistant legal officer;

1 and Sandra Schoeters, also associate legal officer.

2 Second row, I have with me today Mousa Allafi, associate trial lawyer; Dianne Luping,
3 senior trial lawyer; Yayoi Yamaguchi, associate trial lawyer; and Richard
4 Nsanzabaganwa, our cooperation adviser.

5 And in the third row with me today, Marie-Jeanne Sardachti, trial lawyer;

6 Mr Lucio Garcia, trial lawyer; Mr Karim Tounsi, our case manager. And finally,

7 Mr James Mawira.

8 So there you have it. This is the team representing the OTP today.

9 I also take this opportunity to greet the Defence team and the representatives of
10 victims. Thank you.

11 PRESIDING JUDGE PROST: [14:03:40](Interpretation) Thank you very much.

12 (Speaks English) The appearances for the Defence, please, Ms Taylor.

13 MS TAYLOR: [14:03:47] Good afternoon, Madam President. Good afternoon,
14 your Honours. And good afternoon to all my colleagues in the courtroom and
15 around the courtroom.

16 The Defence for Mr Al Hassan is represented today by Felicity Gerry, Alka Pradhan,
17 Mélissa Beaulieu Lussier, Havneet Sethi, we have Myriam Whaibe,
18 Maouloud Al-Ansary, Claudia Barrera Piñeiro, Gabrielle Regimbal, and
19 Ibrahim Ag Mohamed. And myself, Melinda Taylor.

20 Thank you very much.

21 PRESIDING JUDGE PROST: [14:04:21] Thank you very much, Ms Taylor.

22 The Legal Representative of Victims, please.

23 MR LUVENGIKA: [14:04:29](Interpretation) Good afternoon, Madam President,
24 your Honours.

25 The team representing the victims here today at this hearing, I'll begin with

1 the people in the field *who are listening in from Bamako, Mr Seydou Doumbia,
2 Mr Boubacar Maïga and Ms Jeanine Kapinga. And from Brussels, Julie Goffin.
3 And here in the courtroom, to my right, Ms Prisque Biyéké Dipanga and Mr Andrés
4 Morales. And, finally, as for myself, I am Mr Luvengika. I thank you.

5 PRESIDING JUDGE PROST: [14:05:28](Interpretation) Thank you very much.

6 (Speaks English) In today's hearing, Trial Chamber X of the International Criminal
7 Court delivers its Sentencing Judgment in the case of The Prosecutor versus
8 Al Hassan.

9 By a decision of the Presidency, the Chamber sits in a new composition compared to
10 the one that delivered the trial judgment in this case earlier this year on 26 June, with
11 Judge Keebong Paek replacing Judge Mindua.

12 The present summary conveys the findings in the Sentencing Judgment that are most
13 relevant to the public. The Chamber's detailed reasoning is set out in the written
14 Sentencing Judgment, which is the only authoritative document. That judgment will
15 be published and made available to the public shortly after this hearing today.

16 (Interpretation) I will now continue in French:

17 The sentencing phase is an important milestone in this trial which began in the year
18 2020 and through which Mr Al Hassan was convicted for several war crimes and
19 crimes against humanity, committed in Timbuktu between May 2012 and
20 January 2013. He was acquitted of other crimes. The present sentencing stage
21 represents a significant opportunity to recognise the harm suffered by victims of
22 the convicted crimes. This harm, particularly for the crime of persecution, which
23 targeted the entire population of the city of Timbuktu in 2012/2013, was far reaching
24 and long lasting. This stage of proceedings underscores the importance of
25 accountability, acknowledgment of this harm caused to the victims and

1 the international community's commitment to condemning the serious crimes
2 committed in this case.

3 (Speaks English) I will now continue in English.

4 Turning to the determination of the sentence, the Prosecution in this case
5 recommended a joint sentence of no less than 22 years imprisonment. The Legal
6 Representatives of Victims conveyed statements from their clients that Mr Al Hassan
7 should stay in prison for "a long time" or be given a life sentence. The Defence
8 recommended a sentence of "time served".

9 In its Sentencing Judgment the Chamber addresses sentencing in two steps as
10 required by the ICC's legal framework. First, the Chamber pronounces an
11 individual sentence for each of the eight crimes for which Mr Al Hassan was
12 convicted. Second, the Chamber specifies a joint sentence.

13 In determining the individual sentences, the Chamber assesses the gravity of
14 the crimes, including the degree of Mr Al Hassan's participation and intent, as well
15 the presence of any aggravating or mitigating circumstances, and Mr Al Hassan's
16 individual or personal circumstances. In discussing the crimes, the Chamber has
17 grouped crimes together which are underpinned by the same or similar conduct.

18 In making some overall comments on the degree of Mr Al Hassan's participation and
19 intent as regards the various crimes, the Chamber emphasises that Mr Al Hassan's
20 liability for the majority of his conviction is based on his contribution to crimes
21 committed by other members of the group Ansar Dine and al-Qaeda in the Islamic
22 Maghreb, or AQIM. His responsibility in this context arises primarily due to his role
23 within the Islamic police which was set up by these groups in Timbuktu in 2012/2013,
24 and the role of the Islamic police in the repressive system created by Ansar
25 Dine/AQIM. The nature of each of these roles was considerable. At the same time,

1 Mr Al Hassan was not a central figure in the Ansar Dine/AQIM leadership apparatus
2 and he was not among the persons within Ansar Dine/AQIM who designed
3 the groups' criminal common purpose.

4 The Chamber rejects the Defence's overall characterisation of Mr Al Hassan's role and
5 participation in and contribution to the various crimes as "minimal", but also declines
6 to find that the crimes in this case are aggravated, as suggested by the Prosecution
7 and Legal Representatives of Victims, by Mr Al Hassan's "zealous" use of his role, or
8 by an abuse of authority.

9 In its crime-specific analysis, the Chamber finds the crime of persecution in this case
10 to be of serious gravity. This crime was committed on a significant scale in which
11 the entire population of the city of Timbuktu was targeted and was the subject of
12 the deprivation of fundamental rights. The crime was also committed over
13 a substantial time period spanning May 2012 to January 2013. Restrictions imposed
14 by Ansar Dine/AQIM impacted all aspects of the life of the people of Timbuktu,
15 forbidding or placing strict restrictions on religious, traditional, social and cultural
16 practices and daily activities.

17 The acts had a significant reach, regulating the conduct of individuals in the public
18 space and in the privacy of their homes, and were violently imposed through
19 surveillance and punishment including acts of violence, force, intimidation,
20 confiscation and destruction. This regime and these acts had a traumatic effect on
21 the population of Timbuktu, which lived in an atmosphere of fear, violence,
22 oppression and humiliation, and remains present in the minds of victims in
23 a deep-seated trauma. Some victims targeted were particularly vulnerable, being
24 children and the elderly. And the restrictions imposed also had a specific and
25 disproportionate impact on female members of the Timbuktu population. It affected

1 their ability to work and earn money and they lived in constant fear of arrest and
2 punishment which as expressed during the trial "could happen whatever they did to
3 respect the rules and prohibitions." For some, the atmosphere of fear was such that
4 they no longer left their homes. While the Chamber is aware of the disappointment
5 expressed by many victims in the acquittal of Mr Al Hassan, by majority, of some
6 crimes in the trial judgment, in particular sexual violence crimes, and persecution on
7 gender grounds, the Chamber has explicitly highlighted this specific impact of the
8 convicted crimes of persecution on female victims in the Sentencing Judgment.

9 The Chamber also finds the crimes of torture, other inhumane acts, cruel treatment,
10 outrages upon personal dignity, and mutilation, to be of serious gravity. These
11 crimes concerned punishments, namely floggings and the amputation of a victim's
12 hand, for breaches of Ansar Dine/AQIM's rules and prohibitions. In assessing
13 the gravity of these crimes the Chamber emphasises their public nature, being
14 punishments mostly proclaimed in advance and carried out in front of large crowds
15 of people, including children. The carrying out of the punishments in this
16 humiliating manner in the forum of a public spectacle not only heightened
17 the distress and suffering experienced by those who were punished, but also exposed
18 members of the Timbuktu population, including those children, to scenes of abject
19 violence. Again, some of the punishment victims were particularly vulnerable,
20 being children or elderly. The impact on the victims was significant and often had
21 long-term consequences. These crimes were also committed on a discriminatory
22 basis on religious ground, to deter the population of Timbuktu, whom
23 Ansar Dine/AQIM considered as "ignorant" and not "real Muslims" from violating
24 the groups' rules and prohibitions.

25 In relation to the degree of Mr Al Hassan's participation and intent, apart from

1 instances where his liability of these crimes was based on his contribution to the
2 relevant crimes, Mr Al Hassan also directly perpetrated the crimes of torture and
3 outrages upon personal dignity against two individuals whom he personally flogged.
4 Further, he aided, abetted or otherwise assisted the commission of the same crimes
5 against eight individuals through his presence and participation at their flogging,
6 where he ensured the security of the events and the efficient and effective
7 implementation of the sanctions in his capacity as a key member of the Islamic police.
8 Finally, the Chamber finds the crime of sentencing without due process in this case,
9 while still grave, to be of less serious gravity, in the specific circumstances before us,
10 than other crimes under consideration. Mr Al Hassan's case represents the first
11 conviction at the International Criminal Court for this crime, which concerned, in this
12 instance, sentences handed down in the form of physical punishments without a
13 previous judgment by a court, and judicial sentences passed by the Islamic court
14 established by Ansar Dine/AQIM in Timbuktu during the relevant period. This
15 court did not afford the essential guarantee of independence and impartiality due to
16 its control by Ansar Dine/AQIM's leadership and the promotion in the court of their
17 interests.

18 This crime was committed in a systematic manner over a substantial period of time
19 between May 2012 and January 2013 against 49 individuals. The victims also again
20 included children and the elderly, and some of the sentences executed were violent
21 and resulted in significant harm. Certain features of the proceedings before
22 the Islamic court were also unfair for accused persons. Mr Al Hassan had
23 a comparatively high degree of participation and intent in this crime, in light of
24 the fact that his liability is based on his contribution to Ansar Dine/AQIM's system of
25 repression and in particular his involvement in the work of the Islamic court as

1 a member of the Islamic police. In respect of 15 of the victims, Mr Al Hassan had
2 a higher degree of involvement in their cases, noting he wrote the police reports
3 concerning them.

4 Finally, there were some positive aspects to the Islamic court, notably the institution
5 was created partly to fill a justice and security vacuum in the region after
6 the departure of the Malian authorities and to provide a forum for locals to resolve
7 their disputes. However, collateral or positive aspects of the work of the Islamic
8 court in general cannot, as alleged by the Defence, in any way lessen the gravity of
9 the crime of sentencing without due process for which Mr Al Hassan has been
10 convicted.

11 The Prosecution and Legal Representatives of Victims has argued that several
12 aggravating factors were applicable to the convicted crimes, including multiplicity
13 and defencelessness of victims, particular cruelty in the conduct of the crimes, and
14 discriminatory motive. The Chamber declines to characterise these factors as
15 aggravating, instead taking some of them into account in assessing the gravity of
16 the relevant crimes, like number and particular vulnerability of victims and the way
17 the crimes were carried out.

18 Finally, in determining the individual sentences, the Chamber also considers
19 the personal circumstances of Mr Al Hassan and mitigating circumstances put
20 forward by the Defence. The Defence argued that many such circumstances
21 warranted a reduction in the sentence, including expression of remorse and
22 Mr Al Hassan's personal circumstances at the time of the events.

23 Of these, the Chamber finds that only two circumstances can be taken into account in
24 mitigation. The first is good actions undertaken by Mr Al Hassan to assist
25 the civilian population in 2012-2013. However, these actions were minor in nature

1 and can only be accorded very limited weight in the determination of Mr Al Hassan's
2 sentence, particularly considering the nature of the crimes for which he has been
3 convicted. The second is Mr Al Hassan's cooperation with the Prosecution at the
4 investigation stage of this case, which materialised in lengthy statements introduced
5 into evidence and relied on in the trial judgment. On this subject, the Chamber finds
6 unpersuasive the Prosecution's submission that Mr Al Hassan's cooperation was
7 negated by his later, unsuccessful, objection to the introduction of his statements into
8 evidence.

9 However, importantly, the existence of these mitigating circumstances should not be
10 understood as lessening, in any way, the gravity of the crimes that were committed,
11 including the impact they had on the victims.

12 Mr Al Hassan, at this stage I would ask you to please stand. Thank you.

13 Weighing and balancing all the relevant factors, the Chamber pronounces
14 the following individual sentences:

15 For other inhumane acts as a crime against humanity and cruel treatment as a war
16 crime, which concern the flogging of one individual, two years each; for the war
17 crime of mutilation, which concerned the amputation of the hand of one individual,
18 five years; for the war crime of sentencing without due process, six years; for the war
19 crime of outrages upon personal dignity, eight years; for torture as a crime against
20 humanity and as a war crime, nine years each; and for persecution as a crime against
21 humanity, 10 years of imprisonment. This also constitutes the highest individual
22 sentence. This sentence related to persecution is pronounced by majority, with
23 Judge Akane considering that eight years was appropriate for the reasons expressed
24 in the judgment.

25 According to the Court's legal framework, the Chamber shall now pronounce a joint

1 sentence. This joint sentence cannot be lower than the highest individual sentence,
2 which is 10 years in this case, and cannot be higher than 30 years imprisonment
3 unless there are exceptional circumstances. In this particular case, taking into
4 account the substantial overlap between various crimes, the Chamber sentences you,
5 Mr Al Hassan, to a joint sentence of 10 years imprisonment.

6 The Chamber considers that this joint sentence is proportionate to the gravity of
7 the crimes and the individual circumstances and culpability of Mr Al Hassan.

8 It adequately reflects the strong condemnation by the international community of
9 the crimes committed by him and acknowledges the significant harm and suffering
10 caused to the victims. It is also adequate with a view to deterring others from
11 committing similar crimes in the future and discouraging Mr Al Hassan's own
12 potential recidivism.

13 Mr Al Hassan, you may be seated.

14 Finally, the Chamber notes that time spent in detention by Mr Al Hassan in
15 accordance with an order of this Court, namely since 28 March 2018, will be deducted
16 from the sentence imposed on him today. The Chamber, in its discretion, has
17 rejected a Defence request to deduct additional time spent by Mr Al Hassan in
18 detention in Mali since 21 April 2017.

19 Today's Sentencing Judgment may be appealed by Mr Al Hassan and the Prosecution
20 within 30 days. Reparations to victims will be addressed in due course.

21 At this juncture the Chamber would like to thank all of the parties and participants, as
22 well as all the staff from the Registry for their tireless efforts during this trial.

23 The Chamber also wishes to convey its special thanks to the members of the public
24 and the victims watching here today in the public gallery and online, from Mali and
25 around the world. Thank you.

- 1 This concludes today's hearing.
- 2 THE COURT USHER: [14:25:54] All rise.
- 3 (The hearing ends in open session at 2.25 p.m.)