

1 International Criminal Court
2 Pre-Trial Chamber I
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 Péter Kovács, Judge Marc Perrin de Brichambaut and Judge Reine
7 Adélaïde Sophie Alapini-Gansou
8 Confirmation of Charges Hearing - Courtroom 1
9 Wednesday, 17 July 2019
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:32] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KOVÁCS: [9:34:00](Interpretation) Good morning. I would
15 like to welcome everyone today here in the courtroom, as well as those who are in the
16 public gallery.
17 Courtroom officer, could you kindly call the case.
18 THE COURT OFFICER: [9:34:24] Good morning, Mr President, your Honours.
19 The situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan
20 Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
21 And for the record, we are in open session.
22 PRESIDING JUDGE KOVÁCS: [9:34:44](Interpretation) Thank you.
23 On behalf of my fellow Judges, I would like to welcome all parties and participants
24 and I welcome Mr Al Hassan as well.
25 First of all, I would like to ask if there have been any changes to the respective teams.

1 Mr Dutertre.

2 MR DUTERTRE: [9:35:08](Interpretation) Good morning, Mr President,
3 your Honours. Today my team is made up of Dianne Luping, Hesham Mourad,
4 Raymond Sandoval, Marie-Jeanne Sardachti, Sanja Bokulic, Florie Huck, and
5 Sarah Coquillaud and your humble servant. Thank you.

6 PRESIDING JUDGE KOVÁCS: [9:35:35](Interpretation) Thank you.
7 Defence, Ms Taylor.

8 MS TAYLOR: [9:35:37] Good morning, Mr President, your Honours. Good
9 morning, everyone in the courtroom.

10 Today the Defence for Mr Al Hassan is represented by Madam Marie-Hélène Proulx,
11 Ms Sarah Marinier Doucet, Mr Mohamed Youssef, Ms Dolly Chahla, Ms Lily Wang
12 and Ms Marie-Noëlle Delisle. Thank you very much.

13 PRESIDING JUDGE KOVÁCS: [9:36:03](Interpretation) Thank you.
14 Legal Representative of Victims. Any changes?

15 MR DOUMBIA: [9:36:09](Interpretation) No changes. Thank you.

16 PRESIDING JUDGE KOVÁCS: [9:36:11](Interpretation) Thank you.

17 Judging by our schedule we will now move to final remarks by the OTP, the Defence,
18 and LRV.

19 I would like to remind you that according to the order setting out the schedule for the
20 hearings, each party has 30 minutes for making their final arguments. I'd like to now
21 call upon the Prosecutor to address the Court for his final remarks.

22 Please go ahead, sir.

23 MR DUTERTRE: [9:36:53](Interpretation) Mr President, your Honours, the
24 commissioner of the Islamic police, Mr Al Hassan, played a key role in the
25 implementation of the common plan. By making this statement, the Prosecution is

1 not trying to lay it on thick. I have said this right since the very beginning of the
2 confirmation of charges. Al Hassan is not Abou Zeid, nor is he Iyad Ag Ghaly. But
3 they needed him. They needed Al Hassan to implement the common plan.
4 The fact that the Defence is trying to downplay the role played by Al Hassan, no, that
5 won't do. Mr Al Hassan was the central figure within the Islamic police, one of the
6 main bodies that was imposing power and applying an ideological and religious
7 vision of Ansar Dine and AQMI in Timbuktu.

8 I have only 30 minutes. I will have to speak quickly even though I have 10 points to
9 cover, because the Defence has made a number of erroneous and *sometimes
10 misleading remarks.

11 First of all, Al Hassan is a member of Ansar Dine. You won't necessarily find
12 a membership card with his name, but the *body of evidence shows that he was a member of
13 this armed group. *Al Hassan said so himself by the way. I quote from his interview,
14 transcript MLI-OTP-0051-0513, lines 414 to 425. When I use the word "interviewer" in this
15 citation, I shall be referring to the OTP investigator asking the questions.

16 MR DUTERTRE: [9:38:44](Interpretation) I will be referring to both the interpreter
17 and to the interviewer. I will begin the quote.

18 "Interviewer: You yourself joined the police, but were you a member of a group?

19 Interpreter: Before the police?

20 Interviewer: No, not before the police. When you were with them in Timbuktu.

21 Interpreter: The fact that I joined the police, it was with Ansar Dine." End of quote.

22 Transcript 0051-1067, Al Hassan described a meeting with Tuareg leaders in
23 Timbuktu, lines 217 to 218, during the occupation of Timbuktu. He said, and I
24 quote:

25 "It was a few days, not even a month after ... um ... after ... after, well, I joined the

1 ranks." End of quote.

2 Second point, Mr President, your Honours, Al Hassan is not a civilian. There are

3 multiple items that prove this point. But I have two examples for you.

4 First of all, video 0065 --

5 *THE INTERPRETER: Reference numbers read out at very high speed. The videos

6 are 0018 and 0658 ... I am sorry, 0018-0658 and 0018-0649

7 MR DUTERTRE: [9:40:27](Interpretation) These videos have to do with a person

8 who was executed in Timbuktu around October 2012. In transcript 0060-1298 at lines

9 573 to 581, Al Hassan acknowledged that he was present at the location as, and I

10 quote, "the police".

11 PRESIDING JUDGE KOVÁCS: [9:40:53](Interpretation) Please slow down, pace

12 yourself Mr Dutertre.

13 MR DUTERTRE: [9:40:57](Interpretation) It's always a difficult balancing act

14 between time and content. In transcript 0060-1327 at lines 9 to 51, Al Hassan made

15 some comments on the first video 0018-0658. He can be seen on the footage. He

16 confirms that he was wearing a vest of the Islamic police, a yellow turban and

17 a *sahraoui* coloured shirt.

18 On the second video, 0018-0649, timestamp 10.15, we see Al Hassan once again. He

19 was still wearing the same clothing and he also had a weapon slung around his

20 shoulder -- over his shoulder.

21 Second example, Al Hassan continued military activities with Ansar Dine and AQMI

22 after the occupation of Timbuktu. In his interview he stated, transcript 0060-1791,

23 lines 562 to * 573, and I quote:

24 "I helped people who kill the United Nations, who kill the French, who kill the Malian

25 army." End of quote.

1 Transcript 0051-1067, line 368, Al Hassan stated, and once again I quote: "I was ...
2 uh ... the person responsible for a military base." End of quote.

3 Third point, your Honours, Al Hassan was the *de facto* commissioner of the Islamic
4 police, not an administrator. He was the one who received complaints from people
5 who came to see him, they would see him in his office, he conducted investigations,
6 questioned * the people concerned, drafted investigation reports and he was the only
7 one to sign such reports. He sent these reports to the tribunal and the investigation
8 reports were the main source for the various rulings handed down by the Islamic
9 tribunal and the punishments meted out. You also saw Al Hassan himself lashing
10 people in the public square, *on 8 July 2012, or taking part in public punishment of
11 people* ; as he also did on 29 November 2012 along with other policemen or other organs.
12 On this case of 29 November 2012, Al Hassan drafted a police report, the tribunal based
13 itself on this report to find the person guilty and Al Hassan himself flogged at least
14 one man.

15 * Furthermore, in October 2012, Al Hassan brought this person who had been
16 condemned to death out of the car in which the person had been to take him to the
17 place where he was going to be executed. Transcript 0060-1327, lines 60 and 61.

18 These sort of duties are not the duties of an administrator or a pencil-pusher, but,
19 rather, they were the duties of a police commissioner carrying out the duties that had
20 been allocated to him.

21 I will leave it at that, because there are many examples. To tell you the truth,
22 Al Hassan was indeed the zealous commissioner and a member of Ansar Dine. It's
23 not important whether he was an official member of the armed groups or whether or
24 not he pledged allegiance to these groups. *Let us be clear. What is important here is
25 what he actually did, his actions. What matters is his essential contribution to the

1 common plan, regardless of his title or capacity. And he indeed did make an
2 essential contribution.

3 Fourth point, your Honours: The degree to which the Islamic police contributed to
4 the repression of the general population, which was one of your questions. It was a
5 high degree of participation in the repression of the population.

6 First of all, the police is obviously an important body within society. The dates and
7 the places prove this. The police was one of the first bodies established in April 2012.

8 First of all, the Islamic police set up operations in the BMS, one of the few storey
9 buildings in Timbuktu. Then the police moved to the Gouvernorat, which was, by
10 definition, the most important government building. This tells us a lot. On the
11 contrary, Abou Talha, head of the security battalions, remained at BMS.

12 Secondly, you shall recall that the Islamic police were engaged in a broad range of
13 activities. Al Hassan himself gave an illustration of this in video 0018-0379 he said,
14 and I quote, and it's in English, (Speaks English):

15 "We do have a lot of work, [...] it involves patrols within the town, and correcting
16 objectionable acts: Any type of reprehensible which has been forbidden [...] we
17 correct such acts as drinking alcohol, smoking and a woman adorning herself, and
18 other such acts [...] It involves running the town affairs [...] and ensuring the whole
19 town's security, day and night." (Interpretation) End of quote.

20 In actual fact, the police were everywhere in Timbuktu. They dealt with everything
21 that was going on in the city. *They issued authorisations for various activities,
22 sometimes including conditions, they summoned people, they received complaints;
23 they dealt with various cases that were problematic, cases of adultery, practicing
24 magic, * dealing in cigarettes, selling alcohol.

25 Third point, the police who were in charge of the prison, and I refer to

1 MLI-OTP-0051-1124, line 801, the police worked with other bodies, in particular the
2 *Hesbah* and the Islamic * Tribunal. These other authorities could not carry out their
3 missions without the assistance and support provided by the Islamic police. * In
4 particular, it was the Islamic police that referred matters to the tribunal for trial.
5 Fourth point, *and this is revealing, the instructions of Abou Zeid, and I will quote
6 these instructions * of 15 August 2012, were addressed to everybody, it emerges from
7 reading them that the police were the primary target: (Speaks English) "Compulsory
8 instructions to the police, Hisba corps and all soldiers." (Interpretation) End of quote.
9 I refer you to 0001-7193.

10 My fifth point, we know that the police had more men amongst their ranks than the
11 *Hesbah*. I refer to the DCC. In numerical terms they had human resources, more
12 human resources to take action against the people. Similarly, they had more
13 physical resources. Remember the pickup truck patrolling with the two armed
14 police officers. They were patrolling in cars or on motorcycles. Al Hassan said this
15 * in November 2012, and I quote: "There is no problem. We have access to
16 weapons. The people are all armed." Reference 0018-0379.

17 My sixth point, and this is quite revealing, the police officers were quite often visible
18 on the video footage shot at the time in Timbuktu, they could be seen in the street or
19 at the Islamic tribunal * for example.

20 My seventh point, they were part of all actions to repress the people. We know that
21 it was the Islamic police, and * I said this earlier, who provided cases to the tribunal,
22 that is to say, future victims of punishment and public humiliation. The police was
23 also part of all the punishments given and all the repression, the whipping of 20
24 June 2012, the amputation and * subsequent flogging, during the destruction. The
25 police are also once again seen burning cigarettes.

1 My eighth point, and this will be my last point, although the list is not exhaustive,
2 the police also had a role to play in maintaining control and power over groups
3 outside of Timbuktu. In the interview dated November 2012 Al Hassan spoke of
4 missionary expeditions from Timbuktu into the northern territories of Mali.
5 0018-0379. In fact, the police officers would travel hundreds of kilometres on these
6 missions, as far as Léré, * near the border with Mauritania.
7 This is all I have to say about my fourth point.
8 I would now like to move on to my fifth point and I shall now switch to English.
9 (Speaks English) Fifth point: The common plan and *mens rea*.
10 I now turn to the arguments raised by Defence about the common plan and the
11 relevant test of *mens rea*. I refer to different submissions at transcript 6, English,
12 page 32 to page 33.
13 The Defence is confusing the nexus requirement concerning the armed conflict and
14 commission of rape and sexual slavery with the scope of the common plan.
15 Defence further mischaracterises the Prosecution's arguments concerning the
16 definition of the common plan and test of intent and knowledge under Article 30.
17 First, the nexus requirement for an armed conflict and the issue of the scope of the
18 common plan are two entirely different legal questions and should not be conflated.
19 Evidence that crimes had a nexus to the armed conflict does not necessarily depend
20 on proof that they were committed according to a common plan.
21 Second, by saying that the commission of crimes of rape and sexual slavery were
22 foreseeable, this simply means that Mr Al Hassan was aware that such crime would
23 occur in the ordinary course of events, which is the relevant test using the plain
24 language of Article 30(2)(b), as well as under Article 30(3). Contrary to the Defence
25 claims, at no point did we say that the Chamber should adopt the standard of joint

1 criminal enterprise number 3, which is awareness of substantial likelihood that the act
2 would occur.

3 Third, the Defence analogy to a peacekeeping mission is totally unfounded, as in this
4 case we say that the suspect both knew and intended the charged crimes, as he was at
5 least aware that they would occur in the ordinary course of events in the execution of
6 the common plan.

7 Fourth, I wish to clarify the Prosecution's case as to the scope of the common plan.

8 The plan was, *inter alia*, to impose their own ideological and religious vision by any
9 means. The charged crimes, including rape and sexual slavery, were consequences
10 that Al Hassan was at least aware would occur in the ordinary course of events as a
11 result of implementing this common plan. In this way, we must prove that the
12 crimes occurred within the framework of the common plan because the
13 co-perpetrators were aware that the crimes would occur as a result of implementing
14 that plan. But we do not have to prove - and our case is not - that the crimes were
15 necessarily seen as part of the plan itself.

16 I now turn to my sixth point, the contribution for Article 25(3)(a).

17 I next respond to three issues raised by the Defence concerning contributions to be
18 proven under Article 25(3)(a).

19 First issue, I refer to the Defence attempts to distinguish the Appeals Chamber
20 judgment in the Bemba Article 70 case. In the Defence submissions at transcript T-6,
21 page 36 to page 37, the Defence tried to argue that the Bemba Article 70 appeals
22 judgment regarding the common plan theory does not apply in this case because
23 Bemba was the architect of the common plan, whilst Al Hassan was not.
24 But the Defence misinterprets the decision and the law on contribution for
25 Article 25(3)(a).

1 At transcript T-6, page 37, the Defence also tries to limit the application of the
2 Appeals Chamber test as to whether, but for the suspect's essential contributions, the
3 crime would not have occurred or, alternatively, it would have occurred in
4 a significantly different way.

5 The Defence argues that this alternative test that the crime would have occurred in
6 a significantly different way only relates to Article 70 offences and not Article 5 cases.
7 The Defence, your Honours, is attempting to turn evidentiary considerations into
8 propositions of law, which is incorrect.

9 The legal principle stressed by the Appeals Chamber was that, for the purpose of
10 Article 25(3)(a), a person may make an essential contribution as a co-perpetrator
11 within the framework of a common plan if their contribution was such that, without it,
12 the crimes could not have been committed or they would have been committed in
13 a significantly different way. I refer to D1 of the reference list we dispatched this
14 morning.

15 This reasoning applies to Article 25(3)(a) in general. It is not specific to Article 70
16 rather than Article 5 crimes. There is only one Article 25 provision, and it must be
17 interpreted the same way regardless of the crime.

18 Whilst the Appeals Chamber agreed with the Trial Chamber's finding that Mr Bemba
19 made his contribution by means including being the architect of the common plan, it
20 was not making any legal finding that this is the only valid form of an essential
21 contribution.

22 ICC jurisprudence clearly indicates the contrary. Indeed, the Appeals Chamber in
23 the same Bemba case confirmed that essential contributions to implementation of the
24 common plan can be made in many different ways and need not even be criminal in
25 and of themselves. I refer to D2 of the reference list.

1 This demonstrates that a person may make an essential contribution, for the purpose
2 of Article 25(3)(a), without necessarily directly perpetrating one or more crimes
3 themselves. Moreover, the ICC jurisprudence also makes it clear that the essential
4 contributions to a plan can be made at any stage, including at execution stage of
5 the crime, the planning and perpetration stage, as well as the stage when the common
6 plan was conceived. I refer to D3.

7 Second issue regarding the common plan:

8 The Defence has argued that the charged crimes in this case would have happened in
9 substantially the same manner, irrespective of whether Mr Al Hassan was in
10 Timbuktu or not. Transcript T-6, page 37 to page 38.

11 That is incorrect, your Honours. The question is not what would have been the
12 impact on the crimes if Mr Al Hassan, as an individual, was present or not in
13 Timbuktu. The question is whether the crimes would, for instance, have
14 happened in significantly the same way if Mr Al Hassan did not make his essential
15 contribution to the plan that he made in the role and functions he exercised within the
16 Islamic police.

17 And we say that, if you removed his personal conduct as *de facto* commissaire of the
18 Islamic police, the crimes indeed would have occurred in a significantly different
19 manner. For instance, there would not have been the same coordination for the
20 police, or its work with the other organs including the tribunal, to whom cases were
21 referred by him, and the *Hesbah*, who received support from the police during patrols.
22 In addition, tellingly, Al Hassan was maintained at his key position throughout the
23 occupation. He was indispensable at the police, receiving complaints, investigating
24 and drafting reports, using his power, influence and language skills in dealing with
25 the population.

1 Third issue regarding the common plan, the Prosecution refers to the Defence
2 arguments at T-6, page 26, that, if one of his essential contributions were as a key
3 enforcer or implementer of the organisation's rules, this means we must prove that
4 Al Hassan had a role in implementing the charged crimes.

5 At transcript T-6, page 36 to page 37, the Defence similarly argues that we must prove
6 that Al Hassan executed or contributed to the realisation of the charged crimes.

7 This again, your Honours, misstates both the Prosecution's case and the law as
8 regards essential contributions under Article 25(3)(a).

9 There is no requirement to prove that Al Hassan as a co-perpetrator implemented the
10 crimes, executed or contributed to their realisations.

11 The Appeals Chamber has confirmed that it is not necessary to prove that
12 a co-perpetrator made an intentional contribution to each of the specific crimes or
13 offences on the basis of the common plan. I refer to D4.

14 The requirement is to prove an essential contribution to implementing the common
15 plan, which means that the suspect is then liable for the crimes that occur within the
16 framework of that common plan. I refer to D5.

17 In fact, other than the mode of liability of direct perpetration of crime under 25(3)(a),
18 none of the mode of liabilities as charged require proof that Al Hassan made any
19 direct contribution to the crimes. Whilst Article 25(3)(d) does require evidence that
20 he otherwise contributed to the crimes, this can be indirect and not direct
21 contributions. For example, by encouraging crimes tacitly or explicitly.

22 PRESIDING JUDGE KOVÁCS: [10:03:11](Interpretation) Mr Duterte, you have five
23 last minutes.

24 MR DUTERTRE: [10:03:14](Interpretation) Thank you, your Honour.

25 (Speaks English) Seventh point: Principle of legality.

1 Defence argues that illustrative references to the content of certain law, including the
2 laws of occupation when interpreting 8(2)(c)(iv), offends Article 22.

3 However, as the Appeals Chamber has demonstrated on multiple occasions,
4 interpreting the law of the Statute does not contravene the principle of legality.

5 Moreover, even though the laws of occupation relate to the different context of an
6 international armed conflict, it is appropriate to refer to these laws to understand the
7 full meaning of Article 8(2)(c)(iv) bearing in mind the references to common article 3
8 of the Geneva Convention. That's reference A12 in the reference list.

9 We will address that in more details in our written submissions.

10 Eighth point, your Honours: Notice of scope of the charges.

11 Contrary to the Defence arguments, the Prosecution has not tried to expand the scope
12 of the charges, in particular the material facts and circumstances underlying the
13 charges.

14 Every example during the confirmation hearing amounts to either evidence or even
15 legal arguments in support of the charges, but none of the examples provided by
16 the Defence are material facts or circumstances underlying the charges.

17 Defence mentioned the phone numbers. It's just evidence. Defence mentioned the
18 legal submission under Article 8(2)(c)(iv). By definition, legal submissions are not
19 material facts.

20 (Interpretation) Ninth point, Mr President, and I will revert to French.

21 Mr President, your Honours, I will come back to the issue of the phone data, and
22 I believe they are highly incriminating.

23 Let us begin with the attribution of number 223 7 926 23 92. That is the number on
24 the signpost of the Islamic police. The number 223 is the country code for Mali and
25 the digit 7 appears to be the code of the operator. Then you have the phone number

1 itself, 926 23 92. This number appears on the sign board of the Islamic police at the
2 BMS. The Defence states that the Prosecutor attributes that number without any
3 reason to Mr Al Hassan. Let us be clear, this is simply misleading.

4 Let me come back to the transcription of the interview of Mr Al Hassan

5 MLI-OTP-0060-1403 from line 260 onwards, and I quote:

6 "Interviewer: You do remember that you spoke to us about the telephone numbers
7 of the police.

8 Interpreter: Yes.

9 Interviewer: And you in fact said that the numbers were posted under the

10 inscription of the police on the sign board. Interpreter: That is correct.

11 Interviewer: You gave the figures 926; is that correct? Interpreter: That is

12 correct." End of quote

13 And now I move to line 282.

14 PRESIDING JUDGE KOVÁCS: [10:07:24](Interpretation) How much time do you
15 have left?

16 MR DUTERTRE: [10:07:29](Interpretation) I am concluding.

17 "Interviewer: Very well.

18 Interpreter: Number 926, this is my number. I bought that number well before the
19 arrival of the Islamists in Timbuktu."

20 And for all the other numbers, amongst all the other numbers we have this number
21 for Mr Al Hassan, who had it before the arrival of the jihadists.

22 And as he himself said, this number became the number of the police, on line 419.

23 This is his number which he used with other people, and for each number we had
24 sources that were disclosed as incriminating evidence.

25 In the final analysis, Mr President, your Honours, the Prosecution submits that all the

1 facts, and you have to base yourself on the facts, all the facts are nothing but the facts.
2 These facts show that there are substantial grounds to believe that Mr Al Hassan
3 perpetrated the crimes charged against him. That is why I am asking you to confirm
4 the charges.

5 Thank you.

6 PRESIDING JUDGE KOVÁCS: [10:08:59](Interpretation) Thank you, Mr Prosecutor.

7 We will now move on to the presentation of the Legal Representative of Victims.

8 Mr Doumbia, please, you have the floor.

9 MR DOUMBIA: [10:09:09](Interpretation) Mr President, it is Maître Mayombo who
10 will begin. Thank you.

11 PRESIDING JUDGE KOVÁCS: [10:09:19](Interpretation) Very well.

12 MR KASSONGO: [10:09:21](Interpretation) Thank you, Mr President,
13 your Honours. I am Maître Kassongo, the Legal Representative of the victims of
14 Timbuktu.

15 I will be very brief and concise in order to allow my colleague Maître Doumbia to
16 conclude. My entire presentation is public and I would like to talk about three
17 points in my closing observations so as to shed light on the confirmation of charges
18 proceedings.

19 These three small points derive from the response to the observations made by
20 the Defence.

21 To begin with I would like to let it be known to the Chamber that the arguments
22 submitted by the Defence in relation to the person of Mr Al Hassan and to Sharia as
23 being applicable in Mali at one point cannot be admissible.

24 Secondly, I would like to underscore the diversion to a religious debate which itself is
25 not admissible.

1 Mr President, the Prosecutor did not base its charges on Sharia and the religion. The
2 intervention of Marie-Hélène Proulx elaborated in her arguments their observations.
3 To begin with, the Defence talks about the conduct and personality of Mr Al Hassan
4 as a good family man and father. And this was made on 11 July, and this is lines 10
5 to 25, page 13.

6 Mr President, your Honours, on the issue of a good family head, the victims refuse to
7 believe the presentation of the Defence describing Mr Al Hassan as a good family
8 head because this is a single example amongst the 800 victims and, from their point of
9 view, Mr Al Hassan is not a good family man. There were victims barely 10 years
10 old pursued in the streets for not wearing a veil. They arrived in the commissariat at
11 the bidding of Mr Al Hassan, they were gang raped in an atrocious manner, and these
12 children remained in the police station while Mr Al Hassan was there supervising. It
13 cannot be said that he is a good family man. He would have been so if the father of
14 this girl who witnessed the events had not died after that.

15 Mr President, you have the conduct of a good family head if the author of the act was
16 able to demonstrate that he was vigilant and concerned by the criminal acts taking
17 place in his presence. That was not the case with Mr Al Hassan.

18 International jurisprudence tells us that the person who can discern the difference
19 between crimes committed by a group and he himself tried to prevent those crimes
20 can be considered as a good family head. That is not the case with Mr Al Hassan.

21 The war in 2012 was the origin of the crimes perpetrated on the victims that we
22 represent. It is the most important cause of the acts of torture committed in the
23 presence of Mr Al Hassan.

24 The other point that struck us was the argument to the effect that Mr Al Hassan is
25 a Tuareg.

1 Mr President, the victims do not believe for a minute on the stigma of the Tuaregs.
2 No. Mr Al Hassan did not commit the crimes through justifying the stigma on the
3 Tuaregs, and we have shown that and will show that in our written submissions.
4 This is an issue that is linked more to dogma and literature.
5 Just to summarise, in the earliest literature you had veiled people and this is an issue
6 that has been well elaborated upon and documented. I will move on and allow my
7 learned colleague to come back to that, but Tuareg comes from the word *Tawâriq* and
8 *Targui* in the colonial literature. It is a literary distortion which has no meaning.
9 My colleague will come back to this issue and we will demonstrate it to you in
10 writing.
11 Your Honours, when the victims hear from the Defence the reference made to Sharia
12 as the applicable law, there is a need to respond. I will seize this opportunity at this
13 point of the proceedings. Without dwelling at length on the principles, I would say,
14 Mr President, that in their submissions of the 11th there was a demonstration on the
15 fact that the Prosecution did not focus on the rights -- on that law and the legality of
16 the law.
17 All the mass of victims that we represent, Mr President, believe that that argument
18 cannot prosper. They cannot be used to justify the crimes charged against
19 Mr Al Hassan. Article 15 of the Statute gives the right to the Prosecutor to select the
20 charges and present them. Through our voice the victims would like to reject
21 the Defence argument founded on the application of Sharia in Mali before the
22 occupation in 2012. And the victims respectfully request the Chamber to declare
23 those arguments null and void.
24 Mr President, your Honours, the core of this case of confirmation of charges is to
25 describe the elements of the charges. The victims would like to participate in

1 a serious manner, so it is not appropriate to open a religious argument and talk about
2 religious-based arguments which will go against the interests of the victims.

3 The town of Timbuktu is mainly inhabited by Muslims. From what we have learned
4 in the doctrine from various authors we are going to include in our written
5 submissions, there is a body of legal rules which include limits, and the contemporary
6 debate has focused on that, particularly in the West, with regard to Sharia. These are
7 principles and customs that play a complementary role in addition to the Koran.

8 The contents are not detailed. There are prohibitions, but the punishments are not
9 specified. You have schools of thought to say that this is not consistent or unified
10 law.

11 Mr President, there are various schools of thought. Mali is a secular state and even
12 though it has Muslims, Mali does not apply Islamic law as such. All the Muslims are
13 under the jurisdiction of a system which applies tolerant Islam. Mali remains
14 a secular state.

15 Mr President, your Honours, Timbuktu was founded in the 11th century by the
16 Tuaregs, who entrusted their heavy burdens to women and that is how Tin Bukt
17 became Timbuktu.

18 We are far from the issues raised by the Defence.

19 Timbuktu was reputed for the presence of highly respected intellectuals. There was
20 no problem of stigma of the Tuaregs. People talk about the Koran and Islamisation
21 through the Sultan of Morocco, and then you had the battle of the intellectuals. I will
22 conclude, Mr President, based on those hypotheses, the victims would like to
23 respectfully request the Chamber to dismiss all the arguments of the Defence which
24 are based on ethnicity, and the Chamber should confirm all the charges made by
25 the Prosecution.

1 PRESIDING JUDGE KOVÁCS: [10:22:41](Interpretation) Thank you very much,
2 Maître Kassongo.

3 Mr Doumbia, now you have the floor.

4 MR DOUMBIA: [10:22:57](Interpretation) Thank you very much, your Honours.

5 I would like to discuss four points primarily, and specifically I'll be speaking to our
6 hesitations about this case, our assessment of the evidence against Mr Al Hassan, our
7 perception of Mr Al Hassan's personality, and our judgment of the arguments
8 presented by the Defence, and then, finally, a few concluding remarks.

9 Now on the first point, your Honours, once again I reiterate that we are very satisfied
10 to be here. We are happy to have time to address the Court and we are very
11 comforted by this, because this truly shows that the victims have a role here and that
12 the Legal Representatives of Victims play a role here at this Court.

13 Mr President, we intend to fulfil our role entirely in accordance with your directives.

14 In particular, in relation to the questions that you have submitted to us, we plan to
15 make written filings in response to these questions with greater detail.

16 Mr President, your Honours, if I could turn to the evidence that has been brought
17 before this Bench by the Prosecution, the Legal Representative of Victims are of the
18 view that this evidence is sufficient. The Prosecution, in our view, has provided
19 more than enough evidence that would allow you to confirm the charges.

20 The evidence is clear and it falls very much within -- it is aligned, so to speak, with
21 our objectives. And the evidence is in accordance with the horrors that the victims
22 whom we represent have experienced.

23 Mr President, your Honours, the Prosecution's request must be seen favourably and
24 the charges must be confirmed. Both in terms of content and substance,
25 the Prosecution's arguments are there and we have to acknowledge a number of

1 things we cannot deny. And there is no person blinder than the person who does
2 not want to see and there is no one more deaf than the person who wishes not to hear.
3 We must have objectivity here at this Court.

4 Now, Mr President, your Honours, the Legal Representative of Victims wish to state
5 before this Court that the arguments presented by the Defence just don't hold water.

6 And we see this in a number of statements. For example, the statement made
7 page 37, transcript of 11 July 2019, lines 22 and 23, the Defence said: "You can't infer
8 criminality from noncriminal conduct."

9 Well, this conclusion is the final point in a rather truncated line of reasoning. It is the
10 final point of a legal fiction, a certain view that just does not bear up when one looks
11 to the evidence. This argument makes no change to the evidence that has been
12 brought before the Court.

13 When it comes to the Tuareg issue, the Defence has attempted to - how should I put
14 this? - evade the issue. The Defence has tried to throw up a smokescreen, telling you
15 that the Tuareg people lived in difficult circumstances and this explains, to a large
16 extent, why the uprising occurred.

17 Your Honours, what I am telling you, and this is the truth, is that Mali, ever since the
18 independence up until right now, Mali has never given more than, well, even
19 a fraction of the budget to the budget, in comparison to the proportion of the budget
20 allocated to developing the north and assisting the Tuareg. This has been shown.

21 Mr President, this point leads me to another issue, namely the personality of
22 Mr Al Hassan.

23 Mr President, your Honours, the victims whom we represent here before this Court
24 will never tell you that Al Hassan is a good man, a man who did good for his
25 community, a man who was loved by his community. No, they shall never say such

1 a thing. They will tell you, in contrast, that this man is no angel. And this is true.
2 He is no angel. Al Hassan is far from this good family man depicted by the Defence.
3 This image that the Defence wants to sell to you, this is absolutely false.
4 Your Honours, the victims of Timbuktu who suffered greatly under Al Hassan, who
5 suffered in their flesh, who shed blood, who shed tears, these victims will tell you that
6 they saw Al Hassan, they saw him do his work, they saw how cynical a man he was.
7 Al Hassan was not loved within his community, in contrast to what the Defence said,
8 page 16, lines 22 to 28 of the transcript of 11 July 2019, or at page 16, lines 9 to 11 of
9 that same transcript.
10 The victims will tell you that Al Hassan was constant, unwavering in his behaviour.
11 And what do I mean by that? And Al Hassan himself recognised this point.
12 Threats and torture were amongst the methods used during the investigations that he
13 led. And he said torture was just a matter of hitting the person, as if striking
14 a person was not significant. And this is clearly seen in the transcript of 11 July 2019,
15 page 19, lines 9 to 12.
16 Another thing that never changed, that was constant, was that Mr Al Hassan never
17 denied that he was the head of the police, of the Islamic police in Timbuktu during
18 the occupation. It was also a constant -- well, it was, how should I say this?
19 Al Hassan has never denied that he himself conducted floggings. We have seen the
20 footage. This was an initiative of the decision, but he also was the person who
21 carried out the actual act.
22 So we see a certain constancy, a certain steadfastness. Al Hassan knows this. He
23 played a key role. He was a full-fledged part of the jihadist system in Timbuktu.
24 This is clear for all to see.
25 I shall now move on to the Defence's arguments.

1 The Defence has based its arguments on elements that are not fair, not equitable, not
2 objective, not true.

3 On this side of the courtroom I can say that we are shocked and indignant when we
4 hear the Defence say that the evidence can be summed up as a handful of incidents.

5 Mr President, the events, what actually happened, what happened to our victims
6 were not just incidents and we cannot allow these events to be dismissed as mere
7 incidents. They were crimes, they were serious violations of the standards of
8 international law that are to be found in the Rome Statute. And this is why we are
9 all here today. One cannot merely dismiss what happened as incidents.

10 Mr President, one can present a defence but remain within certain boundaries. This
11 is what we are asking for.

12 Mr President, your Honours, the Legal Representative of Victims think that the video
13 footage and the maps and the photographs and the witness statements, and all the
14 allegations are directly linked, have a clear link not only to these proceedings but also
15 to the behaviour of Mr Al Hassan and everything we have been discussing here in
16 this courtroom.

17 Mr President, here, if we look beyond the fact that Mr Al Hassan acknowledged that
18 he personally carried out the actions for which he has been charged, if we look
19 beyond that, we see as well that the people who were victims in Timbuktu will tell
20 you that Al Hassan played a determining role. If he had not been there, the crimes
21 would not have been committed in Timbuktu. The victims will tell you that not only
22 did they see Al Hassan order and take part in the torture ordered.

23 Mr President, your Honours, these are facts and facts are stubborn creatures.

24 Al Hassan could not have done this unless he had not -- without being in a position of
25 authority. And this proves the important role that he played within the community

1 and how he was an important part of the commission of the crimes.

2 We concede that the Defence has to play the devil's advocate, they are entitled to.

3 But the Court should not be deceived and we are confident the Court will not be
4 deceived. We are confident you shall not be misled.

5 I think it's essential to recall, and the Legal Representatives of Victims intend to speak
6 on behalf of the victims to echo what they have said, to be their voices. And I am
7 making reference to the principle of equality and that the arguments of the Defence
8 based solely upon legalities cannot succeed.

9 This trial is not a trial of Islamic law. It is not Islamic law that is on trial here.

10 Sharia is not on trial here as a legal system. No. This is the trial of a man, a man
11 who committed serious crimes and must be held accountable for them. Thus,
12 the Defence should not attempt to deceive, to -- because, you see, the Sharia, the
13 Sharia is a word that means a group of standards taken together, standards or norms
14 that regulate society within the Islamic world.

15 My colleague Mr Mayombo said very well that Mali is not an Islamic country. Even
16 if one might understand that in Timbuktu life is governed by standards that come
17 from the Islamic tradition that does not mean, that cannot mean that Sharia was being
18 applied in Timbuktu. That is just not so.

19 In Timbuktu and elsewhere in Mali, there is one system of law that prevails, and that
20 is a system of law that comes from the Roman-Germanic tradition. It is a remnant of
21 the colonial past of Mali and it is the only legal system in force in Mali.

22 What does this mean? Well, this means that the habits, the customs and so on and so
23 forth in Timbuktu which stem from the Islamic tradition were not contrary to public
24 order in Mali. That cannot be used to justify the statement that Sharia --

25 PRESIDING JUDGE KOVÁCS: [10:40:22](Interpretation) You have three minutes.

1 MR DOUMBIA: [10:40:23](Interpretation) Thank you. I assure you I will conclude
2 within the time allocated to me.

3 Just to make one point, one point relating to language. In Mali, in most languages,
4 the word, *loi*, law, is translated by Sharia, and that is a very important point of
5 language. When a Bambara person says law or the legal system, he will use the
6 word Sharia. When he means that your comportment is wrong, he will say, "The
7 way you are behaving, that is not Sharia."

8 And when someone says, when a witness says in Timbuktu that Sharia was enforced,
9 that person merely means that in Timbuktu there already was a system of law. And
10 that mustn't be confused with what the jihadists applied in Timbuktu, which was not
11 an application of Sharia.

12 That point must be made first and foremost. The jihad fighters acted only with
13 a view to install terror within the Sahel in general terms. This was part of
14 a geopolitical game. They wanted to seize power and do as they wished in the city
15 of Timbuktu.

16 I shall now conclude, your Honours. And once again, allow me to reiterate that the
17 victims remain hopeful that you shall confirm all the charges and dismiss all the
18 nonsense from the Defence, and these victims remain hopeful that justice shall
19 prevail.

20 PRESIDING JUDGE KOVÁCS: [10:42:35](Interpretation) Thank you, Counsel.

21 We shall now conclude with final remarks from the Defence.

22 Ms Taylor, in the 30 minutes you have, you will have to allow some time for your
23 client, if he wishes to address the Court directly.

24 Thanks to the generosity of the interpreters, we can continue until 15 minutes after 11.

25 Please proceed, Ms Taylor.

1 MS TAYLOR: [10:43:20] Thank you very much, Mr President, your Honours.

2 After reading the Prosecution's voluminous charges, after hearing from them over the
3 course of several days, we are still left with the fundamental question: Why are we
4 here today, in court, with Mr Al Hassan in the dock?

5 In July 2012, the Malian government listed the principal actors in the different
6 movements in the north of Mali. There were 14 different names that they wanted the
7 Court to investigate. Mr Al Hassan was not one of them. That's
8 MLI-OTP-0001-0026.

9 And in 2018, after investigating the events in Mali for several years, the Prosecution
10 submitted their own application for an urgent arrest warrant for Mr Al Hassan. And
11 at paragraph 59 they listed the principal actors, the principal chiefs of the alleged
12 oppression in Timbuktu, and they listed four names. Mr Al Hassan was not one of
13 them.

14 And in 2019, after investigating the case further, the Prosecution filed their
15 voluminous charges and at section 7.2.2.2 they listed all of the persons who played
16 the key roles and performed the essential tasks in Timbuktu.

17 At paragraph 224 they described the presidency responsible for controlling daily life
18 in Timbuktu, the persons who assisted and controlled the key organs used to
19 implement the common plan. They named three persons. Mr Al Hassan was not
20 one of them.

21 The Prosecution then listed the essential contributions to the common plan.

22 So who was responsible for giving orders to the Islamic police? Who issued the
23 written instructions to be followed by the Islamic police concerning their interactions
24 with the public? Who had the power to intervene in judicial procedures? Was it
25 Mr Al Hassan, the person here today? No.

1 According to paragraph 245 of the Prosecution's own charges it was Abou Zeid.

2 And in this case, which concerns the implementation of religious beliefs and practices,

3 who was responsible for determining which aspects and practices of Islamic law

4 should be followed in Timbuktu? Was it Mr Al Hassan, the person detained by the

5 ICC for over 15 months? No.

6 According to paragraph 247, it was Abdallah Al Chinguetti.

7 And after hearing days of arguments concerning the fact that women in Timbuktu

8 were forced to wear the veil and conform to certain practices, was it Mr Al Hassan

9 who decided on these moral rules, who enforced them? Not according to

10 paragraph 248 of the charges. It was instead Al Mahdi who organised and

11 controlled the punishment of civilians in Timbuktu, including the imposition of the

12 clothing code.

13 And Islamic court judgments, these decisions which the Prosecution has alleged

14 violated the Rome Statute, did Mr Al Hassan write them? Did he issue them? Was

15 he the one who issued or authorised the Hudud punishments or interrogation

16 techniques? Not according to the Prosecution's charges. Paragraph 254 attributes

17 that essential role to Houka Houka, the president of the Islamic tribunal, a person

18 who was a judge, not an individual who had no legal, police or religious training.

19 And when we come to the work of the Islamic police itself, who were the emirs?

20 Who were in control? Who issued the orders and were responsible for making

21 essential contributions to the common plan? According to the Prosecution, it was

22 Adama and Khaled Abou Souleymane, and that's at paragraph 250 of

23 the Prosecution's charges.

24 Mr President, your Honours, Mr Al Hassan is an accidental suspect, suspected of

25 crimes that have no nexus to him or his daily conduct in Timbuktu.

1 Common plan theory can only stretch so far, and in this case this common plan of
2 religious beliefs has been stretched beyond belief.

3 The Prosecution case lacks context, it lacks a viable common plan, it lacks criminal
4 conducts and it lacks credible evidence. And it should not, therefore, be confirmed.

5 The context:

6 We have heard the Chamber underline many times that the burden of proof falls
7 squarely on the Prosecution. The Prosecution. Not the Defence. The Prosecution
8 must prove all material elements of their case.

9 But they can't do that by simply ignoring inconvenient truths by presenting snippets
10 and snapshots of the most extreme forms of conduct committed by the most extreme
11 elements of Ansar Dine. Their charges have to be framed within the daily life and
12 reality in Timbuktu at that time and Mr Al Hassan's daily life and reality in Timbuktu
13 at that time.

14 But as my co-counsel Ms Proulx explained last Thursday, there are at least two key
15 aspects that have been airbrushed out of the picture and these are the situations of the
16 Tuaregs in the north of Mali, and the existence and role of Sharia law in Timbuktu.
17 Last Thursday, Ms Proulx played the missing elements from the video which
18 the Prosecution had used for their opening speech. And we heard that Timbuktu
19 and its surrounding villages were the land that the government of Mali forgot,
20 isolated from the state. And under this negligent and non-existent state stewardship,
21 the Tuaregs in north Mali had the world's lowest quality of life.

22 This context, this missing context is crucial: Tuaregs such as Mr Al Hassan didn't
23 work with Ansar Dine because they were religious zealots, they worked with the
24 Ansar Dine administration because it was all there was that was working. The state
25 had left the building. Before Ansar Dine, there was no security, no order, no law, no

1 fundamental services, and no real choices.

2 The Prosecution has relied on Mr Al Hassan's statement as their sole evidence
3 concerning the circumstances in which he commenced working for Ansar Dine. But
4 let's look at what the statement says. He didn't agree to interpret for the police
5 because he wanted to do jihad, he was convinced to interpret and he agreed because
6 he hoped that he would be able to work at the hospital and get more experience.

7 That's MLI-OTP-0051-1257 at 1286.

8 And this, Mr President, your Honours, this is Mr Al Hassan, a pharmacist from
9 Timbuktu, not a foreign jihadist or terrorist. He didn't agree to work with
10 Ansar Dine so he could oppress his fellow citizens or persecute them.

11 The Prosecution's own evidence says that he did so because, firstly, Ansar Dine
12 pursued him and asked him to and; secondly, he thought he would be able to use his
13 skills to make life better for the people at that point who had the lowest quality of life
14 on earth.

15 So where is the *mens rea*? Where is the proof that Mr Al Hassan agreed to be part of
16 a common plan to commit crimes against the people of Timbuktu, his own people?

17 The second element which is missing in action concerns the nature and content of
18 Sharia law and its relevance to the common plan.

19 Last Wednesday the Prosecution made the declaration at page 71 of the transcripts
20 that "contrary to what the Defence has argued in their submissions, the Prosecution is
21 not stating that the criminal element of the common plan was about implementing
22 Sharia law ... nor is this a case about prosecuting Mr Al Hassan for his religious
23 beliefs."

24 When we read the charges in this case, it's clear the Prosecution might as well have
25 claimed that this is not about a common plan to install Sharia law; it's about a plan

1 which was common to install religious practices based on Sharia. Because no matter
2 which way you frame it, the Prosecution's common plan as set out in their charges
3 requires the Pre-Trial Chamber to accept the implementation of Sharia law amounted
4 to crimes against humanity and war crimes.

5 And as a result, if the Chamber accepts this formulation, it would mean that any state
6 that practices Sharia law would expose the members of its administration to severe
7 criminal penalties if they were to ratify the Rome Statute, and that's hardly a clarion
8 call to universal ratification.

9 And as my co-counsel Ms Proulx explained last week, in terms of context, Ansar Dine
10 did not bring Sharia law to Timbuktu. Sharia law existed there before Ansar Dine
11 and exists there today. And that was based on the Prosecution's own evidence and
12 their translations.

13 So if it's the Prosecution's case that certain aspects of Sharia law were new and
14 inherently criminal, then the charges should specify very clearly which aspects were
15 new and which aspects were inherently criminal and who had control over those
16 specific criminal aspects.

17 But for a case which is so centred on Sharia law, the Prosecution's allegations and
18 arguments are surprisingly silent as concerns the structure of Sharia law. And why
19 are they so silent? Because, Mr President, your Honours, Mr Al Hassan, a person
20 with no legal, religious or police training, had no power and capacity to interpret
21 Sharia law. He had no power to influence the type of Sharia law punishments
22 implemented in Timbuktu. These punishments, these Hudud punishments are
23 prescribed by the Koran. Issues of interpretation are decided by the Qadis in
24 consultation with the judicial council. These matters fall well outside the authority,
25 well outside the sphere of influence of someone like Mr Al Hassan who could be

1 punished and physically disciplined by the emir if he failed to follow orders. And I
2 refer here to paragraph 372 of the Prosecution's charges.

3 If responsibility were to lie anywhere, Mr President, your Honours, it would rest with
4 the individuals who decided to apply these particular aspects of Sharia law in
5 Timbuktu. And according to the Prosecution's own charges, that's not
6 Mr Al Hassan.

7 That moves me to my second point: The missing criminal conduct.

8 The most important question before the Pre-Trial Chamber right now is not whether
9 crimes were committed in Timbuktu, but whether the Prosecution has presented
10 sufficient evidence to establish that Mr Al Hassan, the person sitting in this courtroom
11 today, is criminally responsible for these particular crimes.

12 And on the basis of the evidence that was disclosed and discussed in court last week,
13 we submit that the answer is a resounding no and that, as a result, Mr Al Hassan
14 should be released immediately.

15 This conclusion can be readily established by addressing the Prosecution's core claims
16 concerning Mr Al Hassan's individual responsibility. Because without individual
17 responsibility, there can be no case.

18 During last week's hearing, the Prosecution expended a considerable amount of time
19 arguing what they didn't have to prove, rather than what they had actually proved.

20 And at page 76 of transcript 5 they claimed that they didn't have to prove that
21 Mr Al Hassan was a member of Ansar Dine or that he made intentional contributions
22 to the crimes and incidents in this case. So apparently you can be part of a common
23 criminal plan without being a member of it. And you can be responsible for crimes
24 to which you have made no criminal contribution.

25 And after lowering the bar for legal responsibility to below sea level, it would also

1 seem that they want to prove facts without evidence. And we can see this in the
2 evidential poverty of their description of Mr Al Hassan's role in these charged crimes.
3 The Prosecution's case is that Mr Al Hassan was a man of action, a key interpreter and
4 enforcer who helped the organisation to implement its common plan and its common
5 purpose. That's transcript 5, page 67.

6 But if that were the case and the common plan involved a sufficient element of
7 criminality and not just Sharia law in general, then the Prosecution should have been
8 able to demonstrate that Mr Al Hassan's actions contributed in either an essential or
9 substantial manner to the realisation of the material elements of the charged crimes.

10 So let's look at what Mr Al Hassan was supposed to have done as part of his common
11 plan to enforce Sharia through criminal means.

12 The Prosecution has claimed that Mr Al Hassan apparently interfaced with civilians
13 and mediated disputes between civilians at the request of civilians in Timbuktu.

14 This hardly constitutes Mr Al Hassan enforcing religious beliefs through criminal
15 means, and it certainly doesn't constitute a war crime or a crime against humanity.

16 They have alleged that he received complaints submitted from civilians of Timbuktu,
17 including complaints of serious crimes. Again, not something that demonstrates

18 that Mr Al Hassan was enforcing religious beliefs through criminal means. If

19 anything, it suggests that, firstly, the civilian population accepted and approved of
20 the Islamic police and the role played in Timbuktu. The Prosecution's own

21 witnesses also indicated that Mr Al Hassan only received complaints for the purposes
22 of organising them and then transmitting them to his superiors, Adama and Khaled.

23 And I refer to the statement of P-582, MLI-OTP-0070-0749 at page 0790.

24 So he was someone who was good at file management, hardly a sound basis for
25 locking him up in Scheveningen.

1 We then heard claims that Mr Al Hassan signed reports, again, hardly an essential
2 or criminal act. And under the system of Sharia law in Timbuktu it was an act that
3 had no bearing on the decisions and findings of the Islamic tribunal.

4 Mr Al Hassan also allegedly went on patrols and passed on instructions concerning
5 who was going on patrols, again, something that would be expected from the police.
6 Police patrol, it's what they do in administrations throughout the world, without
7 being locked up and separated from their family.

8 If we go beyond these actions, these regular administrative actions, the Prosecution
9 case then enters the twilight zone of what Mr Al Hassan could have done or might
10 have done in an alternative reality based on completely different evidence which is
11 not in the case file.

12 For example, page 68 of transcript 5, the Prosecution claimed that Mr Al Hassan
13 committed acts of persecution on the basis of race and gender, and in support of this
14 very general claim, they then claim that he carried out punishments on civilians
15 during patrols for breaching rules. The problem is that there is no evidence in the
16 case of Mr Al Hassan punishing civilians during patrols. The Prosecution relies on
17 Mr Al Hassan's statement that he went on patrols, but again his evidence doesn't say
18 what the Prosecution wants it to say. Instead, he told the Prosecution that it was the
19 emir who decided on issues concerning the *petit tazirs* and only after a procedure was
20 followed. That's MLI-OTP-0051-1184 at page 1210.

21 The other witnesses who provided testimony in such matters, P-582, P-150 and P-580,
22 were also unable to give any examples of Mr Al Hassan being involved in enforcing
23 or inflicting such punishments. And I refer to paragraph 200 of our brief.

24 Mr President, your Honours, you can't get from patrols to punishments, you can't get
25 from A to Z on the basis of wishful thinking alone rather than evidence.

1 And that brings me to the final point: The credibility of the evidence in this case.

2 And here the Prosecution have placed their eggs in two very fragile baskets. One of

3 them is (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 And it included calling potential witnesses to convince them to testify for

15 the Prosecution. I refer to MLI-0062-2996 at pages 3007 and 3011 to 3014.

16 This witness was even so keen to help Prosecution's investigations, he felt so close to

17 them that he even mentioned during one interview that he wanted to work as part

18 of -- as an official part of the Court one day, to which the Prosecution responded,

19 "Maybe one day." That's MLI-OTP-0067-1571 at pages 1609 to 1610.

20 PRESIDING JUDGE KOVÁCS: [11:08:52] You have still five minutes.

21 MS TAYLOR: [11:08:55] Thank you very much, Mr President.

22 This person is not an objective and reliable witness and his statements do not provide

23 an objective and reliable foundation to confirm this case for trial.

24 And that brings me to the next key witness. That's Mr Al Hassan himself, a person

25 they interviewed 19 times while he was tortured on an ongoing basis, held outside the

1 framework of the law in incommunicado detention. Now the Prosecution has
2 claimed since they didn't torture Mr Al Hassan, it doesn't matter. They have also
3 tried to claim that he was in a position to give informed consent in these
4 circumstances, that this was not a coercive environment.
5 The admissibility of these statements will be an issue litigated before or at trial, but
6 one would have thought that at the very least the fact that these are written
7 statements from a person who has not consented to testify orally at trial, one would
8 think that they would warrant a degree of circumspection. But no, the Prosecution
9 has relied upon Mr Al Hassan's statements in 507 footnotes in their charges, and for
10 224 of these he is the only source relied upon.
11 And today, the Prosecution repeatedly quoted from the poisonous fruits of this
12 torture and coercive environment and relied upon highly irrelevant and prejudicial
13 sections to do so.
14 Mr President, your Honours, the evidence in this case, it's not fit for trial at the ICC.
15 If we ignore all the smoke and mirrors, if we examine carefully, clearly and
16 objectively Mr Al Hassan's actual conduct and what is established by credible
17 evidence, not wishful thinking and not the fantasies of particular witnesses, if we
18 apply the lens of truth to Mr Al Hassan's conduct, a person from Timbuktu living and
19 surviving in Timbuktu along with everyone else, then this conduct doesn't amount to
20 war crimes or crimes against humanity, and it doesn't justify a trial before the
21 International Criminal Court, a body set up to try the most serious crimes of concern
22 to the international community as a whole.
23 So, Mr President, your Honours, instead of trawling for small fry, we ask you to
24 release this sardine, the smallest alleged member of Ansar Dine, back into the sea.
25 Thank you very much.

1 PRESIDING JUDGE KOVÁCS: [11:12:30](Interpretation) Thank you, Ms Taylor.
2 The Defence almost exhausted its time, but I will still ask if Mr Al Hassan wants to
3 add something to what Ms Taylor said.
4 Do you want to take the floor, Mr Al Hassan?
5 MR AL HASSAN: [11:12:51] (Interpretation) No, thank you, your Honour.
6 PRESIDING JUDGE KOVÁCS: [11:13:00](Interpretation) Thank you very much.
7 Thank you. This brings us to the end of this confirmation of charges hearing.
8 The Chamber would like to thank the parties and participants, and specifically the
9 interpreters, the court reporters, security officers and Registry representatives.
10 The parties and participants will have the possibility to file written observations on
11 the issues discussed, 30 pages maximum. These submissions should not contain
12 procedural issues.
13 Based on the schedule and the order, the Prosecutor and the Legal Representatives
14 have until 4 p.m. on 24 July 2019 to file their written submission. The Defence has
15 a deadline of 31 July at 4 p.m. at the latest.
16 The decision on the confirmation of charges for Mr Al Hassan will be handed down
17 latest 30 September 2019, according to the provisions in force.
18 Court is adjourned.
19 THE COURT USHER: [11:14:47] All rise.
20 (The hearing ends in open session at 11.14 a.m.)