

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
5 Ag Mahmoud - ICC-01/12-01/18
6 Presiding Judge Péter Kovács, Judge Marc Perrin de Brichambaut and
7 Judge Reine Adélaïde Sophie Alapini-Gansou
8 Confirmation of Charges Hearing - Courtroom 1
9 Monday, 8 July 2019
10 (The hearing starts in open session at 1.59 p.m.)
11 THE COURT USHER: [13:59:50] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KOVÁCS: [14:00:28](Interpretation) Good afternoon.
15 I would like to welcome everyone present today in the courtroom and in the public
16 gallery.
17 Court officer, please call the case.
18 THE COURT OFFICER: [14:00:43] (Interpretation) Thank you, Mr President,
19 your Honours.
20 The situation in Mali, The Prosecutor versus Al Hassan Ag Abdoul Aziz Ag
21 Mohamed Ag Mahmoud, ICC-01/12-01/18.
22 And we are in open session.
23 PRESIDING JUDGE KOVÁCS: [14:01:06](Interpretation) Thank you.
24 On behalf of my colleagues, Madam Judge Reine Adélaïde Sophie Alapini-Gansou
25 and Judge Marc Perrin de Brichambaut, I would like to welcome all the parties and

1 participants, as well as the suspect, Mr Al Hassan.

2 I would like to call on the parties and participants to introduce themselves.

3 I will begin with the Prosecutor, Madam Bensouda, please.

4 MS BENSOUDA: [14:01:36] Mr President, Honorable Judges, the Office of the

5 Prosecutor is represented today by Gilles Dutertre, senior trial lawyer;

6 Jagganaden Muneesamy, trial lawyer; Hesham Mourad, trial lawyer; Dianne Luping,

7 trial lawyer; Raymond Sandoval, trial lawyer; Marie Claudine Umurungi, assistant

8 legal officer; Sarah Coquillaud, assistant legal officer; Sanja Bokulic, case manager;

9 and myself, Fatou Bensouda, Prosecutor.

10 PRESIDING JUDGE KOVÁCS: [14:02:17](Interpretation) Thank you very much,

11 Madam Prosecutor.

12 I will now address the Defence.

13 Ms Taylor, please introduce your team.

14 MS TAYLOR: [14:02:32] Good afternoon, Mr President, your Honours, and good

15 afternoon to all my colleagues in the courtroom.

16 My name is Melinda Taylor, I'm appearing this afternoon on behalf of Mr Al Hassan,

17 together with my colleagues Madam Marie-Hélène Proulx, Madam Sarah

18 Marinier-Doucet, Mr Mohamed Youssef, Ms Dolly Chahla, Ms Marie-Noëlle Delisle,

19 and Ms Lily Wang.

20 Thank you very much.

21 PRESIDING JUDGE KOVÁCS: [14:03:00](Interpretation) Thank you.

22 The Legal Representatives of Victims, can you introduce yourselves, please.

23 MR DOUMBIA: [14:03:09](Interpretation) Mr President, your Honours, good

24 afternoon. The Legal Representation team this afternoon is made up of

25 Maître Mayombo Kassongo; myself, Maître Seydou Doumbia; and we have with us

1 Ms Claire Laplace as well as Ms Prisque Biyeke Dipanga.

2 Mr President, we were supposed to be with Maître Fidel Nsita Luvengika, but who
3 unfortunately cannot be present because of health problems, and he sends his
4 regards.

5 PRESIDING JUDGE KOVÁCS: [14:04:13](Interpretation) Thank you.

6 Now I will present my colleagues, the Judges of Pre-Trial Chamber I.

7 To my right is Judge Perrin de Brichambaut and to my left is

8 Judge Reine Adélaïde Sophie Alapini-Gansou. And lastly, I am Péter Kovács,
9 Presiding Judge of this Chamber.

10 I would like to make some clarifications. I would begin by telling you about the
11 nature of this hearing, as well as the role that the Pre-Trial Chamber has to play.

12 We are at the pretrial stage of the case and this Chamber has no objective -- it does not
13 have as objective to decide on the guilt or innocence of Mr Al Hassan. Our duty is
14 merely to determine whether there is sufficient evidence to establish substantial
15 grounds to believe that Mr Al Hassan committed the crimes charged against him as
16 set out in Article 61(7) of the Rome Statute.

17 The Chamber would like to reiterate the principles that should guide the hearing:

18 Firstly, the presumption of innocence in accordance with Article 66 of the
19 Rome Statute.

20 Secondly, the burden of proof lies on the Prosecutor. Accordingly, the Prosecutor
21 should provide evidence to prove the charges presented against Mr Al Hassan in
22 accordance with the evidentiary standard stipulated in Article 61(7) of the Statute.

23 Thirdly, the Defence shall enjoy all the rights guaranteed by Article 61(6) and 67
24 of the Statute.

25 Lastly, even though the general rule is that the hearing shall be public, it is possible,

1 in order to protect confidential information, particularly with regard to witnesses,
2 that we are compelled to go into private or closed sessions.

3 According to the scheduling order, the Prosecutor shall have six sessions of one hour
4 30 minutes each to make her oral submissions, the Legal Representatives for Victims
5 will have one and a half hours, and the Defence will have six sessions.

6 The time allocated includes the times for questions which were distributed before the
7 hearing. The parties and participants shall then have 30 minutes each to present
8 their closing statements.

9 As indicated in the amended order scheduling the confirmation of charges hearing,
10 these statements shall be made or shall take place on 17 July 2019.

11 I would like to add that if one or the other of the parties or participants does not fully
12 utilise the time allocated to them, another presentation may be moved forward, even
13 if it had not been scheduled for the ongoing session in question. This means that the
14 parties and participants must be ready at all times and willing to be flexible.

15 I would also like to recall certain aspects which are technical for the good conduct of
16 the hearing. When parties and participants refer to items of evidence, they have to
17 indicate the level of confidentiality of such items of evidence and specify whether it is
18 necessary to go into private or closed session.

19 The Chamber would like to recall to the parties and participants that during public
20 hearings, they should not use the names of the victims or witnesses, but only use
21 pseudonyms.

22 Lastly, I would like to remind the parties and participants to refrain from speaking
23 too fast. More specifically, I urge the parties and participants to observe
24 a five-second pause after each sentence, because we have simultaneous interpretation,
25 including into Arabic.

1 In keeping with Rule 122(1) of the Rules of Procedure and Evidence, I have the duty
2 to request that the charges be read.

3 Now I address Mr Al Hassan. Would you want the charges to be read out to you, or
4 do you have a very clear understanding of the charges also already?

5 MR AL HASSAN: [14:08:57] (Interpretation) I know the charges, sir.

6 PRESIDING JUDGE KOVÁCS: [14:09:07](Interpretation) Thank you very much.

7 That said, Mr Al Hassan, I sincerely hope that you have understood the nature of the
8 charges against you by the Prosecutor.

9 MR AL HASSAN: [14:09:33] (Interpretation) Yes, I have understood them.

10 PRESIDING JUDGE KOVÁCS: [14:09:44](Interpretation) Thank you very much.

11 The Chamber will state that pursuant to Rule 122(3) of the Rules of Procedure and
12 Evidence the parties have the possibility to, I quote:

13 "... raise objections or make observations concerning an issue related to the proper
14 conduct of the proceedings prior to the confirmation hearing."

15 The Chamber would also like to remind the parties that pursuant to Rule 122(4) of the
16 Rules of Procedure and Evidence, the objections and the observations raised in
17 application of Rule 122(3) of the Rules of Procedure and Evidence may not be
18 presented later in the confirmation or trial proceedings again.

19 Now I would like to address myself to the parties and they should tell us whether
20 they have the intention of raising objections or making observations pursuant to Rule
21 122(3) of the Rules of Procedure and Evidence.

22 Madam Prosecutor, you have the floor.

23 MS BENSODA: [14:11:11] None, Mr President.

24 PRESIDING JUDGE KOVÁCS: [14:11:13](Interpretation) Thank you very much,
25 Madam Prosecutor.

1 Now I would like to ask the Defence whether they intend to raise any objections or
2 present observations pursuant to Rule 122(3) of the Rules of Procedure and Evidence.

3 Madam Taylor, you have the floor.

4 MS TAYLOR: [14:11:42] Thank you, Mr President.

5 Yes, we do have the intention of raising three issues, and I will be guided by
6 the Chamber as to whether we should raise them now or a later point today.

7 PRESIDING JUDGE KOVÁCS: [14:11:56](Interpretation) Ms Taylor, now. So you
8 have the floor.

9 MS TAYLOR: [14:12:34] Thank you, Mr President, your Honours.

10 I will be addressing three issues, and my colleague, Maître Proulx, will be addressing
11 one small issue at the end of my submissions.

12 Mr President, your Honours, as stated by Robert H Jackson, the world yields no
13 respect to courts that are merely organised to convict. And I would suggest that it is
14 equally true that the world yields no respect to legal proceedings which are organised
15 for a predetermined purpose. For example, to confirm the charges against
16 a particular defendant.

17 For this reason, the objective of the confirmation process, which is to filter out
18 evidentially and legally unsound cases, must be given full effect. As explained by
19 Judge Kaul in his dissenting opinion in the Ruto confirmation decision, the
20 confirmation of charges can have enormous negative consequences for the charged
21 person, including unnecessary public stigmatisation. For the Court itself, it can lead
22 to huge expenses and amount to a violation of the necessity to ensure, as much as
23 possible, judicial economy in the interests of justice.

24 The Defence nonetheless has three reasons to fear that the filtering purpose of the
25 confirmation proceedings will not be applied effectively in this case. And those

1 three reasons are:

2 Firstly, the lack of effective judicial supervision as concerns the Prosecution's
3 investigations and disclosure in this case.

4 Secondly, the organisation of its confirmation process itself, particularly in light of the
5 43 questions sent to the parties on Friday evening.

6 And thirdly, the composition of the Pre-Trial Chamber, and particularly as concerns
7 the ongoing involvement of Judge Alapini-Gansou.

8 As concerns our first ground, to harken back to Judge Kaul in the same Ruto decision,
9 he discussed the importance of impartial and expeditious investigations during the
10 pre-confirmation phase. Specifically, Judge Kaul argued that in order to comply
11 with the spirit and objective of both Article 54(1) of the Statute and the rights of the
12 defendant set out in Article 67, it's necessary for the Prosecution's investigations to
13 cover all factors that might be relevant to the judges' ultimate determination in this
14 case, and that necessarily encompasses both incriminating and exonerating
15 circumstances. And in circumstances where that has not occurred, where there has
16 been a piecemeal or guilt-focused investigation, then according to Judge Kaul,
17 confirming the charges would be risky, if not irresponsible.

18 If, after the confirmation of charges, it turns out that it will be impossible to gather
19 further evidence to detain the decisive threshold of beyond reasonable doubt, then
20 the case in question may become very difficult or may eventually collapse at trial,
21 with many serious consequences, including for the entire Court, and the victims who
22 have placed great hopes in this institution.

23 Judge Kaul's words of caution proved to be extremely prescient as concerns the
24 Kenya cases, which eventually collapsed at trial, and regrettably the Defence would
25 submit that they are equally applicable to the current case. And that is that

1 the Prosecutor has conducted its investigations into the events in Timbuktu with its
2 eyes wide shut. And, as a result, even if they manage to nudge the case over the line
3 at this particular phase of the case, there is a significant risk that it will collapse at trial
4 due to the unreliable nature of the evidence relied upon.

5 Now during the substantive part of these hearings, my co-counsel Ms Proulx will
6 explain to the Bench what you will not hear during these hearings and that is the
7 absent context concerning crimes committed by the Malian authorities against the
8 Tuaregs and a desperate situation for the Tuaregs in the north, but that both preceded
9 and accompanied the events set out in the charges.

10 But for the purposes of today's hearing I intend to focus specifically on
11 the Prosecutor's failure to investigate and disclose exculpatory information under
12 Article 67(2) of the Statute.

13 This article is framed broadly to cover information that exculpates the accused or
14 mitigates guilt, but also any evidence that undermines the credibility of prosecution
15 evidence. And that latter category is extremely broad and can cover incentives given
16 to witnesses, criminal convictions, links and contacts between witnesses or any
17 information that might affect the reliability of evidence.

18 The Prosecution commenced its investigations in 2013, and clearly started to target
19 Mr Al Hassan in 2017. But over this entire time period they claimed to identify only
20 20 items of exculpatory evidence. That means that out of the 20,104 items disclosed
21 in total, the Prosecution considers only 20 items demonstrate Mr Al Hassan's
22 innocence, mitigate his guilt, or undermine the credibility and reliability of
23 prosecution evidence.

24 There is therefore an appearance that in order to avoid judicial oversight concerning
25 the consequences of nondisclosure, the bulk rule seems to have been replaced by the

1 zero rule, and nothing is considered to be exculpatory.

2 But for the very least for this particular category as concerns information that

3 undermines or affects the credibility of the Prosecution's case, we know that there was

4 exculpatory evidence under the Prosecution's very eyes they chose to look away from.

5 And this is amply demonstrated by the record of interviews with Mr Al Hassan.

6 And it should be obvious from the public version of the Prosecution's Document

7 Containing the Charges, DCC, that the Prosecution's case relies heavily on alleged

8 concessions and information provided by Mr Al Hassan himself.

9 It starts, for example, at paragraphs 116, 209, 237 and onwards. And in fact,

10 the Prosecution relies on his statement in 507 footnotes in the DCC.

11 And for 224 of these footnotes, his statements are the only evidence relied upon to

12 support the allegation in question. So any information concerning the admissibility,

13 the reliability of these statements would clearly fall under Article 67(2) of the Statute.

14 And we know that such evidence exists and that it was ignored by the Prosecution

15 because Mr Al Hassan himself brought it to the Prosecution's attention during his

16 very first interview.

17 Specifically, at the time that he was interviewed he was detained in a location

18 notorious for human rights abuses. Indeed, it was so notorious that in a transcript of

19 later interviews we can read the persons present describing it as being like

20 Guantanamo Bay, to which the Prosecutor investigator replies that: In Europe it is

21 the same. They demand the Africans to detain the terrorists, and often, yes, it's

22 exactly like that. That's MLI-OTP-0069-1795 at 1797.

23 But in any case, the Prosecution didn't need to Google human rights abuses to know

24 that there was a problem, because on the very first day of his interviews,

25 Mr Al Hassan told his interviewers that he had been tortured, that he had been

1 threatened with death if he did not adhere to a particular story.

2 Now given that the ICC Prosecutor has an explicit mandate to investigate acts of
3 torture and arbitrary detention, one would have expected the Prosecution to explore
4 these allegations in a thorough manner with a view to identifying crimes under her
5 mandate.

6 But instead, the Prosecutor's investigators merely changed the topic and continued to
7 interrogate Mr Al Hassan about the events in 2012. Even though it should have been
8 blatantly clear to any trained investigator that the evidence obtained in such an
9 environment has no evidential value.

10 It would also seem that they decided this location was fertile grounds for potential
11 witnesses, who were clearly desperate and vulnerable, and they therefore interviewed
12 other individuals detained in the same location.

13 In sum, even though Article 54(1) obliges the Prosecutor to conduct her investigations
14 in a manner that is fully consistent with the rights of suspects, it would appear that in
15 this case they turned a blind eye to allegations of torture simply because the victim
16 was a suspect.

17 And the situation did not change after Mr Al Hassan was arrested and brought to the
18 ICC. At the very first opportunity, his initial appearance, Mr Al Hassan instructed
19 his lawyer to inform the Chamber that he had been mistreated during his arrest and
20 detention in Mali.

21 But this complaint fell on deaf ears. Rather than independently investigating the
22 circumstances of Mr Al Hassan's detention and treatment, the Prosecution merely
23 offered to interview Mr Al Hassan again, hardly a remedy for someone who has
24 already been interviewed by them 19 times.

25 The Prosecution then also used his statements to justify the imposition of extremely

1 oppressive detention conditions, which we are not allowed to discuss in public.

2 The Prosecution has also impeded the Defence's efforts to investigate these matters in
3 an independent manner. They have denied requests for disclosure as concerns
4 information that is clearly relevant to the admissibility of his statement or, at best,
5 handed out information in a piecemeal and tardy fashion.

6 And this lack of disclosure has been exacerbated by a lack of vigorous judicial
7 oversight.

8 Rule 121(2) obliges the Pre-Trial Chamber to issue decisions on disclosure with a view
9 to ensuring that the Prosecution complies with its obligations. (b) further requires
10 the Chamber to convene status conferences with a view to overseeing the disclosure
11 process.

12 The Chamber nonetheless declined to issue any such rulings or to convene any
13 status conferences, and as a result there are still requests for disclosure that are
14 pending before the Chamber, even though the confirmation proceedings are starting
15 today.

16 The Chamber also disregarded a Defence request to convene a status conference to
17 discuss the impact of delays in the proceedings in light of Mr Al Hassan's conditions
18 of detention, and that request was filed on 14 March 2019.

19 And this lack of judicial rulings is problematic for two reasons:

20 Firstly, it creates a sense of impunity for the Prosecution. They are now aware that
21 they will face no consequences if they do not comply with their disclosure obligations
22 and this is reflected by their failure to respond to and comply with our disclosure
23 requests.

24 It's also reflected in the repeated manner in which the Prosecution has disregarded
25 judicial rulings and deadlines concerning the filing of the charges in this case, and I

1 refer to the exchanges set out in annex 3 of our table of authorities.

2 And secondly, the lack of rulings has delayed defence investigations and preparation.

3 Our applications concerned information that was necessary to conduct further

4 investigations and enquiries. The absence of a ruling means that we are still at

5 a very preliminary stage concerning our investigations and preparations.

6 This results in a very imbalanced process. On the one hand, the Prosecution has had

7 a significant amount of time and opportunities to advance its case. But on the other,

8 the Defence has barely left the starting block.

9 And if the charges are confirmed, this will continue to have significant implications as

10 concerns the defendant's right to speedy trial proceedings, since fundamental defence

11 preparation has now been shifted to the trial phase.

12 And this brings me to my second point regarding the organisation of the confirmation

13 process itself. It took the Pre-Trial Chamber six working days to determine that the

14 threshold for issuing an arrest warrant was met in this case.

15 But the confirmation process has now lasted for over 15 months, and that is an

16 extraordinary long time to maintain an uncharged person in detention.

17 The Prosecution was also authorised to file a 500-page document containing the

18 charges, which is an extraordinary long and complicated document to frame the

19 parameters of responsibility in this case.

20 The Single Judge justified the decision to grant the latter request on the basis that the

21 production of one document would produce greater clarity and provide a clear and

22 exhaustive frame of reference for the specific evidential citations and allegations that

23 will be relevant to the charges and to this hearing.

24 And in setting out the calendar for the hearing, the Single Judge further emphasised

25 that the oral submissions during the hearing should not constitute a new source of

1 information or argument, but should be a succinct summary of the existing
2 submissions set out in that 500-page document.

3 This clarity, this clear framework has now been jettisoned by virtue of the Chamber's
4 decision to request the Prosecution to respond to a list of 43 separate questions
5 communicated last Friday evening.

6 The questions do not concern just legal or procedural issues, rather, in many cases it
7 would appear that the Chamber is inviting the Prosecutor to expand the scope of its
8 charges and to raise new evidential arguments at the hearing, evidential arguments
9 that will not have been disclosed in advance of the hearing.

10 And the very first questions are emblematic of this approach. For example, the
11 current version of the DCC, very clearly states that the civilian administration in
12 Timbuktu chose to leave before the arrival of Ansar Dine. That's paragraph 107.

13 The Defence relied on this assertion of fact in preparing for this hearing. But in
14 question 1, the Pre-Trial Chamber has now invited the Prosecution to change its case,
15 to plead instead that the civilian administration were forced to escape, or that they
16 were fired or otherwise driven out.

17 And on issues of sexual violence, the Pre-Trial Chamber has invited the Prosecution
18 to supplement its material facts with additional allegations from the legal
19 representative of victims. And this has the effect of transforming the confirmation
20 hearing into a mini trial, but without any of the protections of a trial or, indeed, any of
21 the protections that should apply to the confirmation hearing itself.

22 And in this regard, Article 61 and Rule 121 of the Rules set out two key safeguards
23 which the Defence submits have not been respected in this case:

24 Firstly, Rule 121 requires the Prosecution to file its charging document at least 30 days
25 before the hearing. If the Prosecution wishes to amend the hearing, it can do so no

1 later than 15 days before the hearing.

2 Rule 121(8) then prohibits the Pre-Trial Chamber from taking into account any

3 charges or evidence presented after those deadlines.

4 As a result of these new questions and issues, the Defence is entering this hearing

5 without any clear idea as to what charges might be put in place or the nature, cause

6 and content of these charges.

7 A further concern arises from the fact that the Chamber's enquiries appear in several

8 cases to have arisen from the observations of the legal representatives for the victims,

9 which were filed last Thursday.

10 Now the Chamber's reliance on these observations is highly problematic, for several

11 reasons, the two key problems being the following:

12 The first key issue concerns the nature of these observations, and that is that they cite

13 the highly prejudicial factual articles that were never disclosed and tendered in this

14 case.

15 The decision on victim participation gives the victims in this case no right to tender

16 evidence, nor should they be given this right at this phase of the proceedings. And

17 at this point in time, the Defence has received absolutely no information concerning

18 the persons granted victim status. We haven't even received a redacted version of

19 their application form. They are, to all intents and purposes, faceless prosecutors

20 untrammelled by the duties and obligations of the Prosecution.

21 And this lack of prosecutorial obligations and duties is demonstrated by the fact that

22 their filing publicly refers to Mr Al Hassan as an accused person at paragraph 50,

23 implying that the charges have already been confirmed.

24 Their allegations, therefore, constitute a highly unreliable and prejudicial foundation

25 for inviting the Prosecution to expand the scope of its charges in this case.

1 The Pre-Trial Chamber's reliance on such allegations also contravenes the
2 Appeals Chamber's ruling that victim participation should take place within the
3 existing scope of the charges as framed by the Prosecution. And that's decision, in
4 the Lubanga case, 1432 at paragraphs 62 to 65.

5 Now, the second grounds for concern regarding the Pre-Trial Chamber's reliance on
6 the victims' observations arises from Judge Alapini-Gansou's prior involvement in the
7 Malian fact-finding commission.

8 Specifically, the Defence has grounds to believe that Judge Alapini-Gansou may have
9 interacted with participating victims and victim intermediaries in this case, and
10 further advised and assisted them in the connection with the formulation of
11 a domestic criminal complaint concerning sexual violence that was filed against
12 Mr Al Hassan.

13 Now the right to an independent and impartial tribunal is a linchpin for justice. To
14 be listened to, to know that the Bench will dispassionately consider and weigh up the
15 arguments presented to them and then issue a decision based solely on the matters
16 put before them, this right is of the utmost importance to an individual who faces the
17 weight of public opinion and the public forces of the Prosecution.

18 For these reasons, Article 41(2) places a strong obligation on judges to raise any issues
19 that might impact on their ability to judge a particular case in an impartial manner.

20 And this duty is of fundamental importance to the fairness of proceedings because
21 the parties will not always be well placed to identify potential conflicts. The Defence
22 is particularly handicapped as we do not have access to the names of victims and
23 witnesses and intermediaries, and we cannot part the curtain of investigative secrecy
24 to know exactly how the investigations in this case unfolded and who was involved.

25 In line with this obligation, Judges routinely bring to the attention of the Presidency

1 any issues that could potentially impact on the appearance of a fair and impartial
2 trial.

3 For example, in the Bashir case, Judge Monageng *proprio motu* raised her previous
4 involvement in the African Commission of Human Rights in the adoption of
5 a resolution concerning the situation in Sudan, and she raised the extent to which it
6 could create an appearance of partiality as concerns her role as a pretrial judge in the
7 Bashir case.

8 The Presidency rejected her request to recuse herself on the grounds that, firstly, the
9 fact-finding mission did not make findings concerning allegations of genocide. And,
10 secondly, Judge Monageng had not been personally involved in the fact-finding
11 mission. She merely approved a resolution concerning the need for investigations.
12 Now, the Al Hassan Defence has quite clearly indicated that it considers these issues
13 to be of fundamental importance to Mr Al Hassan's fair trial rights. We would have
14 expected any judge in a similar situation to Judge Monageng to raise these issues to
15 protect the integrity of the proceedings.

16 But that didn't happen. And, as a result, the Defence has been compelled to dedicate
17 its limited time and resources looking into issues that should have been raised
18 *proprio motu* in an upfront and transparent manner and after conducting a very
19 cursory search of these issues, we have identified matters of extreme concern, and the
20 basis for our concern is the following:

21 In 2013, Judge Alapini-Gansou was appointed by the African Commission on Human
22 and Peoples' Rights to conduct a fact-finding mission in Mali in relation to the events
23 in 2012. And the document setting out that mandate is number one in our table of
24 authorities.

25 The first mission was conducted in June 2013. Judge Alapini-Gansou personally

1 directed the commission and the drafting of the report and met with various persons
2 who might be witnesses or participating victims in this case.

3 At a press conference on 7 June 2013, which took place at the same time as the mission,
4 the delegation informed the Malian public that the goal of the mission was to prove
5 the guilt of the perpetrators of human rights violations, and then bring them in front
6 of national courts or, where appropriate, subnational and international courts.

7 And that's set out in the Amnesty International report, which is number 2 of our table
8 of authorities.

9 The mission report, which is number 3 on our list, was issued during the 53rd Session
10 of the African Commission on Human and Peoples' Rights and that report made
11 specific findings concerning alleged crimes committed by Ansar Dine pursuant to the
12 implementation of Sharia law in Timbuktu.

13 For example, paragraph 53 makes the following finding:

14 Still, with regard to the implementation of Sharia, the delegation learned that terrible
15 acts such as stoning, flogging and amputation were carried out during the period of
16 occupation. According to information gathered, these acts were carried out by
17 armed Islamic groups, in particular Ansar Dine, MUJAO and AQMI, following
18 a system of summary justice which they established.

19 And this language mirrors the Prosecution's allegations in this case.

20 At paragraph 90, the report states that:

21 Considering the length of the period during which the human rights violations were
22 committed, and the number of victims, there is no doubt that there were serious and
23 massive human rights violations.

24 "No doubt". That doesn't leave much room for debate at this hearing concerning if
25 and whether such violations took place.

1 At paragraph 91, the report states that:

2 Rape carried out against women and girls during the crisis are crimes against
3 humanity and should be judged by the International Criminal Court in the absence of
4 action by the Malian government.

5 The question as to whether rape was carried out in a systematic or widespread
6 manner pursuant to an organisational policy, that's a live issue in this case and during
7 this hearing.

8 On 1 to 3 July, the next month, Judge Alapini-Gansou was invited by FIDH, a Malian
9 human rights association, to lead a workshop on documenting human rights
10 violations and to facilitate information sharing between decision makers and human
11 rights activists.

12 And in her report to the African commission during the 54th session, that's document
13 number 4 on our list of authorities, Judge Alapini-Gansou stated that the link between
14 this training component and the ongoing work of documenting human rights
15 violations in Mali by various actors cannot be over-emphasised.

16 At paragraph 19 of the same report, Judge Gansou expresses her view that:

17 The commission's experience in the documenting of human rights, through its
18 fact-finding mission in particular, must necessarily be shared. Furthermore, as head
19 of the human rights component of the African Union mission in Mali and the Sahel,
20 which engages in monitoring and human rights documentation activities in Mali, it
21 was logical for us to share the experience acquired on the ground.

22 I therefore highlighted the importance of documenting violations in the effort to
23 combat impunity. I also indicated that the objective of this documentation should
24 not be limited to the denunciation of acts, but should be extended to planning
25 effective future activities to deal with cases of violations.

1 At a conference held in October 2013, Judge Alapini-Gansou informed the press that
2 the findings concerning violations of human rights and humanitarian law committed
3 in the north of Mali were overwhelming and that this included instances of illegal
4 detention and violations of fair trial proceedings, which again appear to be linked to
5 the allegations in this case.

6 That's document number 5 in our table of authorities.

7 And we would suggest that there is a very fine line between overwhelming and
8 substantial grounds to believe, which is the threshold to be applied at this hearing.

9 From November 2013 to April 2014, Judge Alapini-Gansou then acted as head of the
10 human rights component of the African Union mission to Mali, that is, MISAHHEL,
11 and it would appear that, in this capacity, Judge Alapini-Gansou continued to
12 document evidence concerning crimes allegedly committed in Timbuktu and to liaise
13 with local activists and authorities involved in domestic investigations, and this
14 included meeting directly with victims.

15 Judge Alapini-Gansou also explained in her report to the African Commission that
16 her mandate included providing direct assistance to Malian authorities in relation to
17 transitional justice and reconciliation issues.

18 That's document number 4, paragraphs 7 to 10.

19 At a March 2014 press conference, MISAHHEL further explained that

20 Judge Alapini-Gansou's role included meeting detainees who had been arrested in
21 connection with alleged crimes committed in the north and interviewing them as
22 concerns those crimes. That's document 6.

23 The 2014 MISAHHEL annual report also stated that MISAHHEL human rights observers
24 actively followed any domestic cases and investigations initiated in connection with
25 alleged crimes committed in 2012. That's document 7.

1 In June 2014, Judge Alapini-Gansou further participated in a press conference and
2 a series of workshops in Bamako with human rights lawyers, including FIDH and
3 AMDH. The purpose of this workshop was to discuss collaboration between
4 Judge Alapini-Gansou's African Union offices and the NGOs in question. And this
5 is document 8 at page 6.

6 Now these NGOs were ultimately responsible for initiating a domestic criminal
7 complaint against Mr Al Hassan for allegations of sexual violence.

8 According to a contemporaneous news article, that's document number 9, the 24
9 June 2014 press conference was hosted by FIDH and AMDH and the purpose of that
10 was to discuss the status and evidential difficulties associated with their complaints
11 concerning allegations of sexual violence. In particular, the problem that victims
12 would not come forward.

13 On 30 July 2014, the MISAHEL human rights section hosted a conference on
14 information sharing with local NGOs and lawyers. That's document number 10,
15 page 4.

16 During this conversation with FIDH and NGOs, MISAHEL presented its April 2014
17 fact-finding report drafted by Judge Gansou which concerned the documentation of
18 human rights abuses in Mali, including findings concerning crimes allegedly
19 committed by Ansar Dine in Timbuktu. MISAHEL further advised the participants
20 concerning the instigation of litigation concerning these violations.

21 In November 2014, Judge Alapini-Gansou also participated in a cooperation
22 conference hosted by FIDH in Paris and the purpose was to discuss strategies for
23 bringing perpetrators to account. And that's document 11 and document 8 in our
24 table of authorities.

25 In March 2015 FIDH and AMDH filed a complaint against Mr Al Hassan in relation to

1 these allegations of sexual violence. These complaints had been relied upon by
2 the Prosecution in this case. It was relied upon at paragraph 290 of its application
3 for the arrest warrant.

4 Now on the grounds of this procedural history, the Defence for Mr Al Hassan
5 respectfully submits that there are reasonable grounds to conclude that, firstly,
6 Judge Alapini-Gansou was previously involved in the proceedings against
7 Mr Al Hassan in an investigative and advisory capacity. And secondly, and in the
8 alternative, this prior involvement has impacted on the appearance of impartiality in
9 this case.

10 As concerns the first ground, according to Article 41(2)(a), this ground is in itself
11 sufficient to contest the continuing involvement of Judge Alapini-Gansou in this case.

12 The article is framed broadly and specifies that a judge shall be disqualified from
13 a case in accordance with this paragraph, if, *inter alia*, that judge has previously been
14 involved in any capacity in that case before the Court or in a related criminal case at
15 the national level involving the person being investigated or prosecuted.

16 This prohibition would therefore capture Judge Alapini-Gansou's prior involvement
17 in collecting evidence concerning alleged crimes committed by members of
18 Ansar Dine during the time period of the charges in this case and her role in meeting
19 individuals who were likely to be participating victims and witnesses in this case.

20 It would also capture her role in providing information, advice, and assistance to the
21 NGOs that filed the criminal complaint against Mr Al Hassan in connection with the
22 allegations overlapping with this case.

23 And finally, it would capture her role in advising national judicial authorities
24 responsible for conducting domestic proceedings against Mr Al Hassan.

25 The role played by Judge Alapini-Gansou is clearly distinguishable from the

1 circumstances raised by Judge Monageng, insofar as Judge Alapini-Gansou played
2 a direct and personal role in conducting the fact-finding missions and drafting the
3 factual findings concerning alleged crimes committed by Ansar Dine.

4 Judge Alapini-Gansou also expressed a particular opinion concerning whether crimes
5 in this case had been established, including as concerns acts of sexual violence as
6 crimes against humanity.

7 Judge Alapini-Gansou also described her role as being directed towards establishing
8 the criminal responsibility of individual perpetrators and assisting efforts to bring the
9 perpetrators to justice.

10 Apart from the broad prohibition set out in Article 41(2)(a) itself, we also submit that
11 the factual circumstances at play fall foul of the judicial guidelines of impartiality
12 established by the European Court. And I refer in particular to the case of Piersack
13 in Belgium where the court found that the judge's former involvement in the
14 prosecution services gave rise to an appearance of partiality. And in that case the
15 role played by the judge within the prosecution division had been to revise
16 submissions, provide legal advice and discuss the approach adopted in the case in
17 question. And that's paragraph 31 of the European Court's judgment.

18 And that role is clearly analogous to the role played by Judge Alapini-Gansou.

19 The second ground concerns the impact on the appearance of partiality of the
20 proceedings stemming from this prior involvement in the case, and the appearance of
21 impartiality is fundamentally undermined by, firstly, Judge Alapini-Gansou's prior
22 statements concerning live issues in this case. And, secondly, the link between the
23 matters investigated by Judge Alapini-Gansou and the questions formulated by the
24 Bench for the parties to address during the confirmation hearing.

25 And in terms of statements, there was an appearance that Judge Alapini-Gansou has

1 reached firm, legal and factual convictions concerning issues in this case. And that
2 includes the nexus elements for crimes against humanity, which is contested by
3 the Defence. It includes the link between sexual violence and the implementation of
4 Sharia law, which is contested by the Defence. It includes the link between Sharia
5 law, forced marriage and rape.

6 And here I refer to the particular language employed by Judge Alapini-Gansou, that
7 the evidence against Ansar Dine is overwhelming, that crimes against humanity and
8 rape definitely occurred, that these statements leave no room for an appearance of
9 doubt. A reasonable observer apprised of these statements would automatically
10 conclude that the confirmation of charges in this case is a foregone conclusion.

11 The Defence are merely whispering to the wind.

12 And the particularly emotive reaction that Judge Alapini-Gansou had as concerns her
13 interactions with victims of these alleged crimes also gives rise to an appearance that
14 Judge Alapini-Gansou is likely to base her decision on the impressions formulated
15 during these interactions.

16 For example, in her 2013 report, Judge Alapini-Gansou wrote that the most striking
17 case is that of a ninth year student in Timbuktu whose veil fell off while she was
18 doing laundry. The delegation was informed that the girl was taken to the road
19 injunction where people are disgraced to be flogged.

20 If the encounter in question was striking, then it means that the allegation struck
21 a chord with the delegation, that they created an impression that stayed with the
22 delegation, including potentially to the current day.

23 And here it is the unidentified nature of the victims and witnesses in this case,
24 combined with the very broad scope of victim participation which aggravates the
25 prejudice to the Defence. And that is that, because of the particular system for

1 victim participation adopted by the Chamber, the Defence has no way of identifying
2 the specific extent to which Judge Alapini-Gansou interacted with victims and
3 witnesses in this case and the degree of resultant taint.

4 We do, however, know that P-570 and P-547, both Prosecution witnesses, participated
5 in the FIDH complaint. We also know that Maître Seydou Doumbia, who is
6 appointed to represent victims in this case, was one of the lawyers who submitted the
7 complaint to domestic courts.

8 And in his public observations concerning the charges last Thursday,

9 Maître Doumbia raised exactly the same concerns expressed by

10 Judge Alapini-Gansou in 2014, concerning the difficulty of obtaining testimony

11 concerning allegations of sexual violence. And he has invited the Chamber to

12 consider that such evidence exists, even if it has not been referred to in application

13 forms. That is, he has invited the Chamber to base its decision on information and

14 evidence that is not in the court record.

15 And we also know that after receiving these observations, the Pre-Trial Chamber then

16 decide to request the Prosecution to address several points concerning P-570 and P-47,

17 the victims of the FIDH complaint. And these questions appear to have the objective

18 of inviting the Prosecution to expand the charges to conform with suggestions of

19 Maître Doumbia.

20 And the questions formulated by the Pre-Trial Chamber, in particular questions 2 to

21 10, mirror many of the sentiments expressed by Judge Alapini-Gansou in her former

22 role as concerns the experience of female victims of sexual violence and forced

23 marriage in Timbuktu.

24 The fact that these questions have now been issued by the Chamber as a whole, also

25 creates an appearance that the Bench as a whole lacks impartiality as concerns the

1 charges in this case.

2 In terms of the remedy requested by the Defence, Article 41(1) specifies that a judge
3 may request the Presidency to excuse themselves from exercising functions in
4 a particular case. This was the path followed by Judge Monageng.

5 The Appeals Chamber has also ruled that whenever the Statute vests the judges with
6 a particular power, the parties have an implicit right to move the judges to exercise
7 that power. And that's the Appeals Chamber decision on an extraordinary review in
8 the DRC situation, paragraph 20.

9 It follows therefore that the Defence must have an implicit right to move this
10 Chamber to consider requesting the Presidency to excuse the Bench from exercising
11 its functions in this case.

12 Alternatively, we would request that the confirmation proceedings be temporarily
13 suspended so that we can put the issue before the plenary.

14 Now the Defence has amply demonstrated through the filing of its 100-page brief
15 with eight detailed annexes that it is ready for this hearing. This is not a delaying
16 tactic. Rather, it's axiomatic, and it should be obvious that such fundamental issues
17 of impartiality must be ruled upon before the substantive component of the hearing
18 can proceed.

19 A criminal process is not like a glass of milk, you can't have a trial that's half fair or
20 half not. If the Defence is correct, and the 43 questions formulated by the Bench
21 have in any way been influenced and impacted by Judge Alapini-Gansou's prior
22 involvement in the factual foundation of this case, then the confirmation process as
23 a whole would be tainted if it would be allowed to proceed.

24 The replacement of the Bench at this juncture would also not in itself create a delay,
25 particularly bearing in mind the limited function and purpose of the confirmation

1 hearing.

2 Article 61(7) of the Statute specifies that the Chamber should reach its decision as to
3 whether to confirm the charges on the matters discussed during the hearing. There
4 is therefore no need for the Bench to be appointed prior to the confirmation hearing
5 itself.

6 And in terms of precedent, in the Bemba case, the initial confirmation hearing was
7 conducted before Judge Diarra, Judge Kaul and Judge Trendafilova. Judge Diarra's
8 mandate expired at the end of 2008. The Presidency therefore appointed
9 Judge Tarfusser to replace her and he was part of the Bench that issued the ultimate
10 decision, even though he had not been present during the initial point.

11 We respectfully submit that given the number of judges at the ICC, it should be
12 possible to compose a Bench where there is no appearance of issues. Such a step
13 would ensure the integrity of the proceedings and the appearance of justice, which is
14 of equal importance to everyone in this courtroom.

15 And finally, in case there is any suggestion that the Defence could and should have
16 raised such issues earlier, my co-counsel, Madam Proulx, will address the Bench on
17 a discrete issue which explains why there was no effective defence preparation in this
18 case for almost the entire duration of the pre-confirmation proceedings.

19 Thank you very much.

20 PRESIDING JUDGE KOVÁCS: [15:10:32](Interpretation) Thank you very much,
21 Ms Taylor.

22 Madam Proulx, you have the floor.

23 MS PROULX: [15:11:01] (Interpretation) Thank you, your Honours.

24 Following the submissions of lead counsel in relation to the preliminary phase and all
25 matters pertaining to this phase, I would like to touch on a procedural issue that was

1 raised by the Prosecutor's office in July 2018 regarding the relations between
2 Mr Al Hassan and his former lead counsel.

3 The 18 filings on this issue are confidential, so we will not enter into the details of
4 those filings, but simply address the important consequences of that situation on
5 Defence's preparation.

6 You see, it is because of the Prosecutor's determination to raise a question that has no
7 bearing on previous submissions with the apparent aim of intervening in the specific
8 counsel/client relations that has had a bearing on the rights of the Defence.

9 Defence has a fundamental right to time and to facilities which can help in preparing
10 its case. Defence should have been able to prepare in a serene atmosphere without
11 interference from the OTP but, what happened is the contrary, it had to mobilise its
12 own resources to ward off six filings from the Prosecutor's office which had no
13 bearing on the proceedings. The six filings are number 77, 87, 99, 110, 118, and 142.
14 The Defence had to submit some seven filings in response, being filing 78, 99, 87, 109,
15 112, 137, and 153.

16 This conflict spanned a period of more than six months in this preliminary phase.

17 The Chamber issued decision number 80 -- 96, 106 and 116, as well as decision 231 in
18 relation to this dispute, which settled the matter at the end of that year. And
19 throughout that period the Defence did not know what the status of the lead counsel
20 would be, and this significantly affected the way in which Defence prepared for this
21 case.

22 This unfruitful conflict could have been avoided, your Honours. It would appear to
23 us that it was obvious that the first motion of filing of the OTP in July 2018 was
24 baseless. It is also obvious that it amounted to an unacceptable interference in the
25 client/counsel privy relations. That filing should have simply been rejected because

1 it was frivolous.

2 Furthermore, if the Court had exercised appropriate judicial control, that six-month
3 conflict would have been mitigated in terms of scope and time. The lack of
4 a decision for over six months forced Defence to continue to use its own resources to
5 ward off repeated attempts by the Prosecutor to somehow interfere in the status of the
6 lead counsel.

7 Conclusively, the filing of the last motion of the OTP was found to be baseless.

8 Therefore, time and resources had been spent and wasted to address this issue,
9 because they were not used in the preparation of the case as such.

10 When Prosecutor started to disclose thousands of pages of evidence, that was the time
11 for the Defence to concentrate on the substance of the matter, rather than on that
12 conflict. And this is quite unfortunate from our standpoint, and in addition to other
13 points raised by my colleague, this amounted to a violation of the fundamental rights
14 of the accused to have enough time and resources in preparing his defence.

15 At this very crucial stage of confirmation of charges, the Defence is therefore seriously
16 concerned about the impartiality that touches on this trial and its rights that are
17 covered under Article 67 of the Statute. Thank you. That will be all.

18 PRESIDING JUDGE KOVÁCS: [15:16:35](Interpretation) Madam Prosecutor, would
19 you like to respond?

20 MS BENSOUDA: [15:16:40] Mr President, your Honours, the Defence has made
21 extensive submissions this afternoon, which the Prosecution is not ready. It is
22 last-minute submissions, which we are definitely not, we are not ready to respond to
23 now. We do believe that these submissions could have been made in a filing, but
24 unfortunately it hasn't.

25 However, we would still, Mr President, like to make comments on the -- make

1 submissions on the procedural aspect and I would like to call on the senior trial
2 lawyer to make those submissions.

3 Thank you, Mr President.

4 PRESIDING JUDGE KOVÁCS: [15:17:26](Interpretation) Thank you,
5 Madam Prosecutor.

6 Mr Dutertre, you have the floor.

7 MR DUTERTRE: [15:17:31](Interpretation) Thank you, Mr President. Good
8 afternoon, Mr President, good afternoon, your Honours.

9 A lot has been raised and I must confess that all what has been placed before the
10 Bench today by the Defence, I must confess does not raise anything significant that
11 was -- that the Defence was not aware of a long time ago. That is why these all
12 appear to be last-minute submissions or motions that objectively do delay the
13 proceedings and thereby the confirmation of charges hearing.
14 Quite clearly, there are tons and tons of information and problems that have been
15 raised in those submissions, each being complex in nature and requiring some
16 examination following the extended submissions that have been made in that regard.
17 Therefore, there is need for all that to be filed in writing so that we can provide
18 meaningful and timely responses in writing.

19 However, we can make a few general observations and remarks on a number of
20 points, and may I say that these remarks will not be exhaustive.

21 And I will take the points as they come, that is to address as many of these remarks as
22 I can.

23 When the Defence makes submissions about Judge Alapini-Gansou, I think they are
24 simply looking for recusal or disqualification, and obviously your Chamber is not the
25 forum to tackle such a request.

1 I am sorry, I believe that in those circumstances, therefore, on that important point,
2 we may have to adjourn the proceedings and forward the transcript of these
3 proceedings to the plenary of judges with a request for the matter to be dealt with
4 urgently.

5 At that time we will be in a position to make our own written submissions as well.

6 Turning now to some of the points raised by the Defence, which need to be clarified.

7 And allow me to say that we will also make more specific submissions in writing,
8 particularly when dealing with assertions that were made in rather general terms.

9 When it comes to our duty to investigate inculpatory and exculpatory material, we
10 did so with our eyes wide open, without excluding anything and disclosing all
11 necessary evidence which would be useful to the Defence.

12 We heard several witnesses of all walks of life, all types of victims, insiders and what
13 have you, and that enabled us to have a view, a global view of the situation.

14 So we used an open-ended approach with each of our witnesses. We also raised
15 follow-up questions in order to be able to cover all the basis.

16 Now, Witness 612 was heard, interviewed, and, after obtaining the information that
17 he provided for us, and mindful of our duty to investigate exculpatory material -- and,
18 by the way, must I say that Defence contacted this witness without respecting the
19 protocol of such contacts as laid down by the Chamber, so it would be incorrect to say
20 that we did not do our job properly and that we therefore failed somehow. That was
21 not the case.

22 It is true that there are a few items of exculpatory material, exclusively exculpatory
23 material, but we had requested of Defence some specific guidelines or some
24 indications, but we did not get any response.

25 Pursuant to Rule 77, we disclosed a number of documents, including exculpatory

1 material. We also disclosed witness interviews, which also include all types of
2 information mostly incriminatory but also Rule 77 information that could be
3 exculpatory. And it is up to the Defence, based on its strategy, to determine which
4 evidence falls under what category. What I am saying, therefore, is that we
5 respected our Article 54 obligations and our disclosure obligations.

6 Turning now to interviews with the suspect, Mr Al Hassan. I must say clearly and
7 loudly that Mr Al Hassan was arrested by the Operation Serval forces and handed
8 over to the -- or, transferred to the Malian forces, and we were not involved in that
9 arrest and surrender. We only found out about that in the newspapers, like
10 everyone else.

11 When it comes to allegations about what he claims to have suffered during his
12 detention by the Malian authorities, let me also say that we were not involved and we
13 have no specific stance on that matter as to how he was treated. Let me further say
14 that this does not have any impact on the substance of his interviews. His rights
15 were scrupulously respected, the right to a lawyer, the right not to self-incriminate.
16 All of these were read out to him and repeated to him over and over again. And we
17 noted that Mr Al Hassan was so conversant with the rules that at some point he
18 would say, "I would rather be silent on this point or on that point because I am aware
19 of the rules."

20 So, as a matter of fact, most of the things that he told the OTP simply corroborated
21 material that was placed before him, documents that he had signed and footage or
22 material speaking or dealing with him. So it was mainly, mainly a matter of
23 corroboration.

24 Now, reference was also made by the Defence to disclosure issues. Now, when
25 the Prosecution makes a number of requests under Article 78, it is because of the

1 desire to protect witnesses, and it is for the Chamber to make a determination.

2 Therefore, we did what we had to do when it comes to protecting witnesses.

3 The Defence further alleges that we failed to disclose useful evidence. It is true that

4 Defence submitted a very general request which could be referred to as a fishing

5 expedition, a dragnet that would capture anything whatsoever, and I think that it is

6 for the Defence to refer any matter to the Bench as it deemed fit. We responded by

7 email and it was up to the Defence to raise any matters with the Chamber regarding

8 our responses to very broadly phrased requests.

9 What we have done is deal with what appeared to be relevant to our mind when it

10 comes to those requests from the Defence. And I believe that the Chamber knows

11 what I am talking about when I make reference to the recent Rule 77 disclosures,

12 particularly at paragraphs 26 and 27 of the filing.

13 Now, the Defence has also referred to that list of 43 questions, and I don't know

14 whether it is for the Prosecutor to pry into the hearts of the Bench, but I think that the

15 requests from defence are rather speculative and --

16 PRESIDING JUDGE KOVÁCS: [15:28:50](Interpretation) Sorry, Mr Duterte, I must

17 interrupt you. We have now come to the end of this first session of the confirmation

18 of charges hearing. We will break now and will resume at 4 p.m. and then you can

19 continue.

20 MR DUTERTRE: [15:29:06](Interpretation) Mr President, I have only a few more

21 minutes. I need to say one or two things and that will be it. Can I continue?

22 PRESIDING JUDGE KOVÁCS: [15:29:13](Interpretation) Yes, please proceed.

23 MR DUTERTRE: [15:29:16](Interpretation) Thank you, your Honour.

24 I think that the parameters are clear. We are not going to submit any new evidence

25 based on the questions that have been raised. There is a list of evidentiary material.

1 The charges before this Chamber are clear when it comes to victims and dates and
2 what have you. So I think there is no opportunity here for the Prosecutor to expand
3 anything whatsoever, and I think that this point must be made very clear and very
4 clearly.

5 We will answer whatever questions come from the Bench, but there is no intent to
6 increase the number of charges, nor the volume of evidence.

7 Now, when it comes to the prejudice raised in Madam Proulx's question, it would
8 appear to me that it is not a very clearly stated prejudice as such. There is a new
9 Defence team in place, it has been in place for a while, there has never been any
10 request for extension of time for the purposes of preparation, and, once again, we are
11 faced with a last-minute request from Defence and, therefore, I must say that I do not
12 see the prejudice that this causes to the Defence team.

13 Mr President, that will be all. Your Honours, those will be all the brief remarks I
14 wanted to make at this juncture, in very general terms, and I therefore hope that what
15 might have to be done is to adjourn and deal with this issue of disqualification of
16 submitting it to the plenary and then the other issues will be addressed when Defence
17 makes its written submissions and we make our own written responses to all these
18 issues once they are clearly submitted. Thank you.

19 PRESIDING JUDGE KOVÁCS: [15:31:26](Interpretation) Thank you very much,
20 Mr Dutertre.

21 We have now come to the end of the first part of this session and it is necessary for us
22 to now break so that judges may confer.

23 We adjourn and resume at 4 p.m. Thank you.

24 THE COURT USHER: [15:31:54] All rise.

25 (Recess taken at 3.31 p.m.)

1 (Upon resuming in open session at 4.04 p.m.)

2 THE COURT USHER: [16:04:27] All rise.

3 Please be seated.

4 PRESIDING JUDGE KOVÁCS: [16:05:06] (Interpretation) *This is the decision of
5 the Trial Chamber with regard to the request by the Defence to stay the proceedings.
6 The request is denied. The Defence may, if it deems it necessary, seize the competent
7 organ with a request for disqualification.

8 With regard to the other points raised by the Defence, the Chamber calls upon you, if
9 you so wish, to file your written observations on the subject by Monday 22 July 2019
10 at the latest.

11 The Prosecution must respond by 29 July 2019.

12 Under Regulation 122(6) of the Regulation of Proceedings and Evidence, the Chamber
13 shall rule on this question in the decision regarding the confirmation of charges.

14 I will now turn to the Prosecution and ask you to begin your presentations on the
15 substance of the case and to respond to the questions put to you on the list.

16 Madam Prosecutor, please proceed.

17 MS BENSOUA: [16:06:55] (Interpretation) Your Honours, Mr President -- I beg
18 your pardon.

19 (Counsel confers)

20 MS BENSOUA: [16:07:14] Mr President, if you please excuse me, the senior trial
21 lawyer would like to address, before I start.

22 PRESIDING JUDGE KOVÁCS: [16:07:22] (Interpretation) No problem.

23 Mr Dutertre, please go ahead.

24 MR DUTERTRE: [16:07:31] (Interpretation) Good afternoon once again. Just
25 a clarification, if you don't mind. Is the Chamber referring the issue to the plenary?

1 I'm looking at the transcript, and this is what we are asking for, but I don't have the
2 live version of the French version on my screen. And we would like the Chamber to
3 refer the issue to the plenary while the proceedings continue.

4 PRESIDING JUDGE KOVÁCS: [16:08:07](Interpretation) Regarding the decision, the
5 Defence may draw the appropriate conclusions and do what is necessary in
6 accordance with the procedure set out in the Rome Statute and the Rules of Procedure
7 and Evidence. Thank you.

8 MS BENSOUDA: [16:08:27] Thank you, Mr President. We are sorry about that.

9 (Interpretation) Mr President, your Honours, Timbuktu is a city that has lived for
10 many years, throughout many years of history. For nearly one year, from April 2012
11 to January 2013, Timbuktu endured a violent occupation by two armed groups,
12 Ansar Dine and *al-Qaida au Maghreb Islamique*.

13 Timbuktu, the pearl of the desert, the city of 333 saints, was subjected to their orders.
14 Timbuktu suffered oppression.

15 As soon as the members of Ansar Dine and AQIM took control of the city, they set up
16 a number of bodies to control the people and repress them. In particular, they
17 established an Islamic police force, and Al Hassan, the suspect here in this court, was
18 the *de facto* commissioner of this police, a zealous man, a man you couldn't get
19 around.

20 The members of this group took firm control over Timbuktu, the region and the
21 civilian population, who were powerless. They subjected the men and women of
22 Timbuktu to their power invoking, and above all, imposing their own religious vision
23 by way of great brutality and violence and abuse that constitute crimes against
24 humanity and war crimes under the Rome Statute.

25 This is the matter at hand, the very heart of this case, the use of violence, the

1 commission of crimes to impose an ideological and religious vision upon the men and
2 women of Timbuktu who were humiliated, assaulted, put down and subjected to true
3 persecution, a persecution that seemed to have no end, persecution to which
4 Al Hassan made an essential contribution.

5 Mr President, your Honours, allow me to quote something said by an inhabitant of
6 Timbuktu. These words express the truth and the sorrow and the disarray of the
7 people living in Timbuktu. He said:

8 "This city has become a ghost town, a dead city, in that everyone was holed up in
9 their homes, they were afraid of repression, they were afraid of being humiliated,
10 they were afraid of being subjected to brutal treatment, they were afraid of being
11 violently assaulted ..."

12 The word "fear," Mr President, is a word that is repeated many times in this sentence
13 and this word really sums up the ordeal that the people of Timbuktu endured.

14 Allow me, Mr President, your Honours, to continue in English. (Speaks English) So
15 with your permission, your Honour, I shall now continue in English.

16 The resort to violence and total control to achieve the vision that I just described was
17 merciless. As the armed group arrived, civilians managed to flee to Timbuktu, to
18 Bamako or other southern cities, as well as to neighbouring countries such as
19 Mauritania, Burkina Faso, and Niger. They had to leave everything behind. They
20 had to leave their lives behind. Years later, some still have not been able to return to
21 their homes, their lives, to their land and the roots of their identity.

22 But others remained, for one reason or another. Some stayed behind because they
23 simply did not have the means to flee, others because they had elderly parents to take
24 care of, and still others because they could not resign themselves to abandoning their
25 beloved city of Timbuktu, especially during one of the worst moments in its history.

1 Those who remained were subjected to a constant climate of fear and repression.

2 In fact, all aspects of life were restricted and disobedience could lead to severe
3 punishment.

4 At the time a Timbuktu local stated, "In Timbuktu [...] everything has [become ...],
5 elicit and forbidden." Another pointed out that the members of the groups

6 "controlled everything ..." unquote. And in fact, all aspects of life had indeed fallen
7 under Ansar Dine's and AQMI's self-proclaimed rules and prohibitions.

8 Private lives, public life, leisure activities, cultural and religious practices, the manner
9 of praying -- absolutely everything, including the way people could dress, was
10 affected.

11 Not only were these rules new, but they were also quite alien to the residents of this
12 age-old city. Moreover, they also amounted to a denial of many customs, traditions
13 and social practices which had characterised the lives of the locals in Timbuktu,
14 sometimes for generations. They constituted serious violations of their fundamental
15 rights.

16 Mr President, I shall give only a brief overview of this plethora of rules, which reflects
17 the breadth and scope of the measures imposed:

18 Banning religious practices at the tombs and mausoleums of Muslim saints;
19 prohibiting celebrations such as the festival of Malououd; banning amulets and
20 talisman; prohibiting statuettes, masks and pictorial representations; complete control
21 over the media and radio; banning public gatherings; closing public schools; banning
22 music and dancing; segregating the sexes; banning women from wearing jewellery
23 and make-up, and even their traditional clothing; and imposing a new dress code on
24 men and, in particular, women.

25 The list is long, Mr President, and I could go on.

1 The armed groups Ansar Dine and AQMI claimed that they were now the power.

2 They asserted that there was no going back for Mali. And the reality is that these

3 two terrorist groups which came from outside of Timbuktu had no legitimacy of any

4 kind to impose such rules and prohibitions on the territory of a sovereign Malian

5 State.

6 But beyond that, and I would like to emphasise this point, it is the sheer violence with

7 which these rules were implemented and sanctions which justifies the referral of this

8 case to your Chamber. The sheer variety of these rules was matched only by the

9 cruelty with which the institutions set up by Ansar Dine and AQMI ruthlessly

10 punished the residents of Timbuktu who had the misfortune of not abiding by them.

11 Indeed in the event of a breach of these new imposed rules, the members of

12 Ansar Dine and AQMI commonly resorted to corporal punishment. For example,

13 this would be applied on the spot by the so-called Islamic police, generally in the form

14 of lashes by a whip. And you will see some examples of this later on.

15 Alternatively, punishment was applied following decisions by the Islamic tribunal, an

16 irregularly constituted tribunal, which, for instance, authorised the Islamic police to

17 employ torture to obtain confessions, a fact, approach and practice that Al Hassan

18 would be very familiar with.

19 This was a tribunal through which Ansar Dine and AQMI tried to give a semblance of

20 legitimacy to their actions.

21 These abuses were most often inflicted in public. The goal of Ansar Dine and AQMI

22 was not only to make the offenders suffer physically and to humiliate them, their goal

23 was also to make an example of them, spread fear amongst the population and subject

24 them even further to their tyrannical rule.

25 Mr President, your Honours, Ansar Dine and AQMI are still active in Mali and the

1 Timbuktu region. They pose a grave danger to the safety of witnesses. I shall
2 therefore not go into further detail here. You will have the details in the confidential
3 version of the Document Containing the Charges.

4 The people of Timbuktu themselves no full well what I am alluding to, because they
5 have experienced these crimes and have suffered physically and mental anguish as a
6 result of these crimes.

7 With your indulgence I would just like to briefly mention the case of Dédéou Maiga,
8 who unfortunately has passed away in 2017. What happened to Dédéou Maiga
9 represents one instance of the despicable violence inflicted on the residents.

10 Mr Maiga was arrested by Al Hassan, he then endured a brutal amputation. He was
11 tied to a chair in front of a gathered crowd. His hand was chopped off with
12 a machete. A member of the armed group held up the bloody hand as a signal to
13 others. And what was his crime? He allegedly has been caught engaging in petty
14 theft. The group's goal was clearly to demonstrate their power and their willingness
15 to impose their rule and rules at any cost. Their goal was also to terrorise the people
16 of Timbuktu by the very cruelty of this crime.

17 Al Hassan himself was aware of the fear felt by the population. During his interview
18 with investigators from my office, Al Hassan pointed out that "[The residents] were
19 not familiar with this punishment. It was the first time that they ..." referring to the
20 residents, "that they'd seen that ... They were scared out of their minds" he said.

21 "They couldn't do anything. Everyone was afraid and feared the words 'jihadist' and
22 'terrorists'. They were scared of this punishment." This is what Al Hassan said.

23 The multiple acts perpetrated against the inhabitants of Timbuktu and its region
24 constituted a real attack against the civilian population.

25 Sentences handed down by an irregularly constituted tribunal, sentences without

1 prior judicial proceedings, torture, cruel treatment, other inhumane acts, outrages
2 upon personal dignity, attacks against historic monuments and buildings dedicated to
3 religion, sexual slavery, acts of rape and so on. These are all grave acts and crimes
4 under the Rome Statute, which, when taken in their totality, fit the characterisation of
5 the crime of persecution.

6 There was religious persecution in Timbuktu. All the rules and prohibitions
7 imposed on the residents stemmed from the ideological and religious vision of Ansar
8 Dine and AQIM. There was also gender-based persecution. Indeed, it was the
9 women and girls of Timbuktu and the region who suffered the most. One witness
10 reported that women had become the primary targets. Women and girls were
11 pursued into their very homes. They were abused, they were punished, they were
12 beaten, imprisoned and subjected to corporal punishment for a variety of reasons, like
13 failure to wear clothing prescribed by the groups, giving water to a man, not having
14 gloves at the market to pay and receive money, and so on.

15 And I would like to just go back previously to prison conditions. Women
16 imprisoned were kept in inhumane conditions in the cell at the *Banque Malienne de*
17 *Solidarité*, or BMS, which residents dubbed as the woman's nightmare cell. It was the
18 little room housing the ATM. They were locked up there and treated shamefully.
19 Some women remained incarcerated there for up to 72 hours. Up to 12 women
20 could be there at any one time, and all this took place in oppressive heat. They had
21 to relieve themselves where they stood and the conditions, Mr President, were horrid.
22 My team will also describe the extreme degree of violence experienced by the women
23 who were subjected to floggings.

24 Al Hassan knows what I am talking about. He himself was personally involved in
25 organising the infliction of physical abuse in public on women accused of adultery.

1 Some of the details are unbearable. Imagine, for instance, collapsing under the sheer
2 brute force and violence of repeated blows on skin and flesh.

3 But there was an additional level to the horror. And I am referring to all the sexual
4 violence the women and girls, sometimes very young, were subjected to.

5 As one insider witness reported, there was an elaborate system of marriage in place,
6 mainly intended to enable the members of the groups to satisfy their sexual needs
7 without committing "adultery".

8 It was, in actual fact, an elaborated system of convenient marriages. Many women
9 and girls were therefore forced into marriage, confined against their will and
10 repeatedly sexually assaulted and raped by one or more members of these armed
11 groups.

12 As one of the victims reported, "I couldn't breathe. I was suffocating. All that was
13 left of me was a corpse."

14 It should be noted that these women and girls and their families had no choice.

15 Some leaders of Ansar Dine and AQIM, including Al Hassan, participated in the
16 marriage negotiations, *de facto* exerting pressure on families and women via their
17 presence.

18 More generally, women and girls lived in an entirely coercive environment. We
19 should remember that the city was in a state of occupation. The population was
20 helpless. The members of Ansar Dine and AQIM were continually strutting about
21 with their weapons, never letting them out of their sight. In videos, that are even
22 publicly available, you can see the Islamic police weapons, you can see weapons next
23 to the judges in the tribunal, you can see weapons everywhere, all the time. And
24 that includes heavy weapons mounted on pickup trucks driving around the city.

25 One victim even related that her attackers even kept their weapons with them when

1 they were raping her.

2 The targeting and persecution of women was such that it became emblematic of the
3 physical and moral violence inflicted on all residents of Timbuktu.

4 Clearly, your Honours, the victimisation of residents, women and men, was
5 significant. Despite security constraints and access problems on the ground, my
6 team has been able to identify several hundred violent and criminal acts which the
7 women and men of Timbuktu were subjected to. This will be amply demonstrated
8 in the upcoming presentations.

9 Mr President, your Honours, the case before you against Al Hassan is extremely
10 serious, and allow me at this stage to tell you that this case is not about -- what this
11 case is not about: It is neither a case against a religion or against Islam, nor, indeed,
12 any system of thought or of law.

13 It is, quite simply, a criminal case. The case before you concerns a man, Al Hassan,
14 who we allege is individually criminally responsible for Rome Statute crimes
15 committed against the population of the city and region of Timbuktu.

16 It is for this Court to say and reach a decision that individuals such as Al Hassan
17 cannot, as members of an armed group, whatever they may be, cannot occupy a city
18 and a region and impose by way of prohibited violence on an entire population
19 diktats on the basis of an ideological and religious vision or the precepts they claim to
20 apply.

21 The fact of the matter is that Al Hassan, who was a member of the Ansar Dine and the
22 *de facto* chief of the Islamic police, played an essential and undeniable role in the
23 system of persecution established by the armed groups throughout the period of
24 occupation of Timbuktu.

25 Make no mistake, Al Hassan was not a mere member of Ansar Dine. Because of his

1 role and actions, he was a key figure within the armed groups and the system put in
2 place to control the city.

3 Al Hassan, the commissaire, was integral to the operation of the so-called Islamic
4 police throughout the events. Bearing in mind that the Islamic police, in turn, lay at
5 the heart of the system of oppression and repression set up by Ansar Dine and AQIM
6 in Timbuktu. The Islamic police was omnipresent to impose the newly proclaimed
7 rules and to brutalise people. We will aim to support this assertion in subsequent
8 presentations.

9 More specifically, but without being exhaustive, Al Hassan appointed agents and
10 participated in patrols responsible for monitoring the population and enforcing the
11 proclaimed rules.

12 Al Hassan arrested, interrogated and participated in the torture of suspects and other
13 people -- and other accused people to extract confessions from them. Al Hassan
14 referred some cases to the irregularly constituted tribunal and made sure that the
15 suspects appeared before that forum.

16 Al Hassan directly or indirectly participated in the organisation and imposition of
17 violent punishments often administered in public, in particular, in Youboutao,
18 otherwise known as the little market, and Sankoré Square.

19 Al Hassan personally carried out floggings or participated in their organisation,
20 including on women.

21 All in all, he provided an essential contribution to the group's common plan to
22 impose, in particular, their ideological and religious vision by any means.

23 Mr President, your Honours, the Prosecution has accumulated a wealth of evidence:
24 Police reports signed by Al Hassan; tribunal judgments delivered in response to
25 investigations carried out by Al Hassan; statements made by victims and witnesses;

1 video footage showing crimes being committed, including crimes by Al Hassan and
2 his Islamic police officers and other members of the armed groups; reports prepared
3 by, amongst others, experts, graphologists and facial recognitions by experts.
4 This accumulation of evidence alone is more than adequate to demonstrate the
5 substantial implication of Al Hassan in the crimes charged. Al Hassan is notorious.
6 As a matter of fact, during his interviews with representatives of my office, Al Hassan,
7 who was duly assisted by a lawyer, voluntarily made several admissions. He
8 described and admitted his participation in various activities and acts underlying the
9 alleged crimes. And I would like to point out that, in doing so, he essentially
10 corroborated or confirmed some of the evidence presented to him by the Prosecution.
11 Mr President, your Honours, the oppression imposed on the inhabitants of Timbuktu
12 during the period of occupation by the Ansar Dine and AQIM groups marks a dark
13 period in the history of Mali and for the proud people of Timbuktu. The crimes
14 were extremely serious. The residents of Timbuktu, men and women alike, were
15 relentlessly tyrannised, humiliated and quite simply oppressed, on a daily basis, over
16 a period of 10 months. This was done on religious grounds and on gender-based
17 grounds, by a violent armed group imposing by sheer force their proclaimed rules
18 and prohibitions.
19 Mr President, during the trial of Al Mahdi, I stated that the prosecution of Al Mahdi
20 was the first, but would not be the last, to come out of the situation in Mali.
21 The prosecution of Al Hassan will not be the last, either.
22 But it already provides a good, broad overview of the suffering and victimisation
23 experienced by the civilian population of Timbuktu, and beyond, in the rest of Mali.
24 And the Document Containing the Charges sets out the evidence firmly establishing
25 the existence of substantial grounds to believe that Al Hassan is responsible for all the

1 crimes listed therein. And the presentations that follow -- that will follow by my
2 team will clarify the various aspects involved.

3 On the strength of the material before you, I request the Honourable Judges of this
4 Chamber to confirm the charges against the suspect, which should pave the way for
5 the trial and make it possible, eventually, for the residents of Timbuktu to have justice
6 done and see that it is being done and that, through these criminal proceedings, the
7 truth will be established in a court of law.

8 In closing, your Honours, allow me to state that there is no rationalising mass
9 violence. There is no imperative that would license the commission of crimes of this
10 gravity against our fellow women and men.

11 I thank you, Mr President.

12 And I will now hand over the continuation of our submission to my learned colleague,
13 the senior trial lawyer in this case, Mr Gilles Dutertre.

14 Thank you, Mr President.

15 PRESIDING JUDGE KOVÁCS: [16:34:10] Thank you very much, Madam
16 Prosecutor.

17 (Interpretation) Mr Dutertre, please.

18 MR DUTERTRE: [16:34:19](Interpretation) Thank you, Mr President. I would like
19 to ask for a brief moment.

20 Mr President, your Honours, who better than an inhabitant of Timbuktu can talk
21 about his town and the occupation they were subjected to by Ansar Dine and
22 al-Qaeda in the Maghreb.

23 An inhabitant of Timbuktu declared in a video published on YouTube on
24 30 June 2012, and I quote:

25 "Timbuktu is about to lose its soul. Timbuktu is under the threat of outrages

1 vandalisation. Timbuktu has on her throat the sharp knife of a cold assassin." End
2 of quotation.

3 This person was talking at the time of the destruction of the mausoleums, but his
4 utterances, whether they relate to the genius of Sanghor or the genius of Borges, are
5 a correct metaphor for what happened to Timbuktu and its population. Timbuktu
6 and its inhabitants lived with their throats under a black knife, a black and cold knife
7 of intolerance and oppression. A heavy blade which did not hesitate to cut. And
8 the Prosecutor has talked about it, the fate of *Dadou Maiga, who was amputated
9 in the hand.

10 Ladies and gentlemen, let me take you back a few weeks before the takeover of
11 Timbuktu by Ansar Dine and AQMI. This was in 2011. The world watched the fall
12 of Colonel Gaddafi, and several armed groups emerged in the subregion and
13 reinforced their military arsenals. This included AQMI, which is a known terrorist
14 group, and it was also Ansar Dine, a Malian armed group which was created in 2011
15 to defend their faith.

16 It is within this context, on 17 January 2012, that the MNLA launched an attack
17 against the military camp at Ménaka, situated in the north of Mali. This was the
18 beginning of an armed non-international conflict on the soil of Mali.

19 The confrontations multiplied from then on, particularly in Aguelhok and Tessalit.
20 And within three months, the northern part of the country, two-thirds of the country
21 came under the complete control of armed groups, particularly Ansar Dine, AQMI
22 and MUJAO.

23 Kidal fell on 30 March 2012; Ansar Dine began its reign there. *Gao was taken on 31 March 2012 by the MNLA, who
24 were then dislodged by the MUJAO. Timbuktu fell on 1 April 2012 into the hands of Ansar Dine and AQMI.

25 Everyone remembers the images of pickups with black flags and they were driving through the desert and parading as

1 victors in the streets of Timbuktu. This was an easy victory because the Malian army,
2 traumatised and terrorised after the Aguelhok massacre, abandoned the town.

3 Ansar Dine and AQMI stayed there up until January 2013, when they were chased
4 out by, amongst others, the Serval Operation.

5 Ansar Dine and AQMI did not hide their intentions and objectives. As soon as the
6 town fell, Iyad Ag Ghaly immediately announced himself as the new master of the
7 town. He stated that his organisation represented power and law and he called on
8 all the segments of the society to help them in the entrenchment of the religion. Iyad
9 Ag Ghaly specified that conduct that violated the rules would be punished, and those
10 concerned would have problems with him and his group.

11 The concomitant utterances of Sanda Ould Boumama, an old companion of AQMI
12 and the spokesperson of Ansar Dine, are unambiguous. He said:

13 "I know that we will cut off hands. We are also going to cut off heads if the Sharia
14 commands us to do so. We don't have any complex there."

15 The members of Ansar Dine and AQMI were clearly driven by a common objective.
16 They had a plan to entrench their power and control over the town, the region and
17 the civilian population, and to impose their ideological and religious vision over the
18 civilian population by all means, including conduct and measures, in the normal
19 course of events, which resulted in the violation of fundamental rights and the
20 commission of acts of violence constituting crimes.

21 To that end, Ansar Dine and AQMI immediately set up in Timbuktu organs for
22 decision-making, control and repression.

23 At the top, there is the emirate, or the presidency. It was composed of three persons,
24 Abou Zeid, Yahia Abou Al Hamman, and Abdallah Al Chinguetti. *Al Chinguetti means the
25 Mauritanian. Abou Zeid is Algerian. He was a historic member of AQMI and chief of the

1 battalion, the Tarek Ibn Ziyad battalion. Iyad Ag Ghaly introduced him as the new
2 governor of Timbuktu. Yahia Abou Al Hamman is Algerian. He was the commander
3 of the Al-Fourqane battalion of AQMI and future emir of the AQMI in Sahel.
4 Abdallah Al Chinguetti was Mauritanian, a spiritual leader, and he was a member of
5 the Al-Fourqane AQMI battalion. He became the emir of the battalion.
6 Abou Zeid, Yahia Abou Al Hammam and Abdallah Al Chinguetti were three
7 of -- have all died, but in 2012 they were the members of the presidency made up of
8 *foreigners. They managed the day-to-day affairs of the town, even though Iyad Al
9 Ghaly, who was most often based in Kidal, retained effective control over what was
10 going on, in particular by visiting the location on a regular basis.
11 Under that presidency there were various organs: The Islamic court, the *Hesbah* or
12 morality brigade, the security battalions, the media commission, the religious
13 committee, the training centre, and the Islamic police, first of all installed at the
14 Malian Bank of Solidarity and then at the governor's office *--- the symbolic headquarters.
15 We are going to give you details of all these institutions which we refer to as organs and which, with
16 the armed groups, Ansar Dine and AQMI in Timbuktu, formed what we refer to as the organisation.
17 These were new institutions responsible for using force to institute their power and
18 their religious ideology. Ansar Dine and AQMI were mainly composed of foreigners
19 and people not from Timbuktu, and they included a few members originating from
20 the area in order to be better accepted by the population.
21 So you had Houka Houka, who was the president of the Islamic -- the *de facto*
22 president of the Islamic tribunal. Then you had Al Mahdi and Mohamed Moussa
23 who were at the head of the *Hesbah*. You also had Abou Talha directing the security
24 battalions. The spokesperson, Sanda Ould Boumama from Timbuktu, and also
25 Al Hassan, who became the *de facto* commissioner.

1 These people were the members of the common plan. Iyad Ag Ghaly, Abou Zeid,
2 Yahia Abou Al Hammam, Abdallah Al Chinguetti, Sanda Ould Boumama,
3 Houka Houka, Al Mahdi, Mohamed Moussa, Abou Talha, and you can also add
4 Adama and Khaled Abou Souleymane, the first and second emirs of the Islamic police.
5 And then there was Baccar Al Chingetty, also known as Firaoun.
6 Then now, you also have Al Hassan, *he himself a member of the common plan.
7 I noted that the Defence pleaded the contrary in its submissions, but, your Honours,
8 facts are stubborn.
9 We know Al Hassan is not a civilian. *By joining the police, he joined Ansar Dine, and he
10 himself has said so. And you cannot become the commissioner of the police set up by
11 AQMI and Ansar Dine if you do not share the views of those groups. AQMI and
12 Ansar Dine are just not any movements or charitable associations. These are terrorist
13 groups. These are groups with a political and religious agenda, that is clear. You cannot
14 become a member of Ansar Dine or al-Qaeda on an interim basis. These are the groups that
15 pledge allegiance to their chiefs and such groups cannot give you a position of responsibility
16 if you do not share their views. So in this case, the case of Al Hassan is similar to that of
17 Al Mahdi, who was a member of the groups before the takeover of Timbuktu.
18 And when you look at the number of telephone calls between Al Hassan and the
19 other members of the common plan, when you listen to what Al Hassan declared at
20 the time of the actions of the police and how he boasted about the floggings and
21 amputation, and we can see how he justified to Witness P-623, the imprisonment of
22 a woman who did not wear a veil, then you have no doubt of the fact that Al Hassan
23 fully subscribed to the common plan. And as early as May 2012, there was a report
24 that was signed by him. So from the very outset, he was a member of the common
25 plan.

1 Not only did Al Hassan join the common plan, he was one of the core members of that
2 organization *who saw to it that this common plan was implemented day after day in the
3 field. In fact, he was not the governor of Timbuktu like Abou Zeid. He was also not the
4 emir, or the AQMI emir for the Sahel like Yahia Abou Al Hammam. But in the town and
5 outside of the town, he was part of those people who had authority and who on a daily
6 basis implemented the common plan over the 10 months of the occupation of the town.

7 Al Hassan was the commissioner of the Islamic police. Everyone knew that. And
8 furthermore, to whom belongs the phone number on the building of the Malian
9 Solidarity Bank and with the inscription "Islamic police"? This was simply the
10 number of Al Hassan. My colleague Sarah Coquillaud will show it to you.

11 *Now, I did read something in which the Defence describes Al Hassan as one plankton in the ecosystem of Timbuktu
12 at the time. I would not have allowed myself this comparison, but since it has been made, I really do not know many
13 planktons who have their telephone numbers on the wall of the Islamic Police. The facts speak for themselves.

14 *The Islamic police played a central role in the implementation of the common plan. They were
15 the ones who patrolled, far more than the Hesbah, who had fewer men. It was the police who
16 covered the town, on foot, on motorcycles or on four-by-four vehicles. You will see the videos
17 in the next presentation. They patrolled Timbuktu and the entire region right up to Kabara,
18 Léré and Goundam, they were armed with Kalashnikovs and sticks to beat the civilians. They
19 were everywhere, in the streets, in the markets, in the schools, and even in private residences.
20 They were doing this both during the day and at night. And if they caught you violating the
21 new rules, then you would be flogged on the spot. This person who was beaten in Timbuktu
22 was beaten until he fell down. And his crime? He had dared to smoke. The policemen also
23 ensured the implementation of physical punishment decided by the tribunal.

24 Mr President, your Honours, let me stop here to talk about the court that Al Hassan
25 provided cases for. I will follow up on what the Prosecutor said. The Defence

1 alleged that this case is against Islam and especially Islamic courts. Not at all,
2 not at all.

3 The court set up by Ansar Dine and AQMI in Timbuktu was called Islamic tribunal.
4 But that is not the problem. It could have been called another name. The problem
5 is the manner in which the tribunal functioned concretely.

6 Whatever its name, the tribunal, the court did not have any guarantees or impartiality.
7 It did not respect the procedural guarantees, even the most basic ones, and this does
8 not have anything to do with Islamic courts. This is a false debate. This is a court
9 that was simply irregularly constituted, no more, no less.

10 Now let us talk about physical violence. These were organised in public and
11 the Prosecutor also talked about it.

12 PRESIDING JUDGE KOVÁCS: [16:51:12](Interpretation) Mr Dutertre, I have been
13 advised to ask you to slow down a little bit.

14 MR DUTERTRE: [16:51:20](Interpretation) Yes, I will try to. I think I was probably
15 too enthusiastic.

16 Now I will talk about that myself, because it was characteristic of the *modus operandi*
17 and of the objectives of the organisation in Timbuktu.

18 I will take the example of the first flogging, which took place on 20 June 2012 on the
19 central square in Sankoré. There was a couple that was flogged for adultery. The
20 entire population was clamped down upon by the groups. Ansar Dine and AQMI
21 intended to show their power, to show *their first example of public punishment, to make
22 an impression on people and to intimidate them. And, in broader terms, to terrorise them.
23 We can see on the videos that the inhabitants are not happy about that. There is the
24 grand imam of the mosque of Djinguereber who is there, he was forced there. And
25 the Djinguereber mosque had a major role to play in the history of the expansion of

1 Islam in Africa. We can see that the imam has no choice and we can guess that he
2 disapproves.

3 So the violence is double. It is physical and moral for the poor victims who are
4 subjected to it. It is moral for the grand imam and for all the inhabitants that
5 Ansar Dine and AQMI punished in contradiction with their values and mode of life.
6 So these people were collectively humiliated against these overarmed people against
7 whom they could not do anything.

8 On 20 June 2012, the message was clear: Any violation of the rules will bring about a rude response.

9 So there was fear amongst the population. *The inhabitants started living with these images and the
10 constant fear of being physically beaten themselves. They knew that they were targeted, and
11 persecuted, and this is one reason why this case is very serious. The entire population became victims.
12 It is difficult, thousands of kilometres from Timbuktu, to fully understand what that
13 means. But imagine for a moment that you see Ansar Dine and AQMI's members
14 patrolling with their Kalashnikovs in *your own cities. Imagine them stopping the
15 women and young girls, beating up the inhabitants, or marrying women forcibly and
16 raping them. So this will give you an idea of what happened in Timbuktu and its
17 inhabitants.

18 Now let me digress a little bit. The young girls and women of the region paid the
19 highest price for the common plan. You have the sexual violence that they were
20 subjected to, but you also have taboos, the risk of rejection and stigmatisation that
21 comes along with it. So the victims did not talk about what happened to them, and
22 those who talked about it were ashamed and you had to tell them, these women and
23 young girls, that they should not be ashamed, they should no longer be ashamed, it
24 was not their place to be ashamed.

25 Mr President, your Honours, let me come back to Al Hassan. He made a major

1 contribution to the common plan. The Prosecutor talked about it and my colleagues
2 will come back to that. I would simply like to say here that Al Hassan has to be held
3 responsible for the crimes that he was directly involved in, but also specifically
4 because of the effects of the common plan, so he has to be responsible for the other
5 crimes committed by the other members of the common plan, which is what would
6 have happened in the normal course of events.

7 So he is responsible for the destructions perpetrated by al Mahdi, given that Al Hassan
8 was present at the location. He is also responsible for the crimes committed by
9 Mohamed Moussa. When he was interviewed by the OTP Al Hassan tried to distance
10 himself from Mohamed Moussa, this shows that Al Hassan was perfectly in control of
11 what he was saying during that interview with the OTP in the presence of his lawyer.

12 But the reality is that he collaborated with Mohamed Moussa, it was Al Hassan who had
13 Mohamed Moussa called when a child came to the BMS. It was Al Hassan who told
14 Mohamed Moussa where the whip was to strike P-580.

15 So, in general, the organs functioned in a synergetic manner. The instructions of
16 Abou Zeid of 15 August 2012 were addressed to everyone: *police officers, members
17 of the Hesbah, and, in more general terms, all the soldiers.

18 Mr President, your Honours, the OTP has filed a DCC of 457 pages and 2,641 footnotes. This
19 led to five remarks: First of all, this document is very precise. It has dates *of incidents,
20 locations, victims, and *perpetrators. *At times, victims were not able to tell us exactly when
21 something happened to them, and so, obviously, we have indicated a broader period of time.
22 Secondly, as the Prosecutor said, we have a great number of items of evidence. We have videos, signed
23 documents, expert reports, statements from witnesses and victims, statements from insiders, and from
24 P-583, P-537 and P-150. *Regarding the specific case of P-0151, I would like to stress that he is in a unique
25 position to provide invaluable testimony to the Chamber and to shed light on the way that things were

1 operating at the time. The Defence's allegations about his lack of impartiality and his intentions are
2 completely speculative. It is true that he cannot be cross-examined at this stage, but this should not lead
3 to taking his testimony with a pinch of salt. The reality, *which is what counts, whether or not there is
4 corroborating evidence, is the reliability and relevance of what he said.

5 Third, our intention is not to repeat here that which has already been filed in writing.
6 We want to bring value added by enabling the public to understand what the purpose
7 of this trial is and what Al Hassan's role is.

8 At the same time we note that the Defence challenges almost everything, and it is
9 entirely in their right to do so, including, for example, the existence of an armed
10 conflict which, in itself, justified the UN sending of a peace mission to Mali.

11 Al Hassan is fully aware of that and we will be addressing these issues subsequently.
12 In the days ahead we intend to make a number of presentations to the Court.

13 One on the structures and the role of Al Hassan. Another on the telephone data of
14 Al Hassan and members of the common plan. A presentation on the Islamic tribunal or
15 court. A presentation on torture and other acts of inhuman and cruel treatment. And
16 another presentation on rapes, sexual slavery, inhuman acts. Another presentation on
17 attacks against historic monuments and buildings set aside for religious purposes.

18 There will be a presentation on religion and gender-based persecution. A presentation
19 on the existence of armed conflicts, and then, finally, a presentation on attacks on civilian
20 population and a presentation on the modes of responsibility.

21 Your Honours, fourth, some of these presentations will be virtual, or factual, some are
22 legal, for example, the presentation on the tribunal or court, and there will be
23 a presentation on the attack against historical buildings. We believe that these
24 presentations will be useful in edifying the Court to come to an understanding of all
25 the issues, and particularly that relating to the illegally constituted court. Some of

1 these presentations will last for 20 minutes, others 50 minutes, but we will respect the
2 time allocated and the intent is to, as far as possible, provide answers to the questions
3 raised by the Court. We will provide written answers to those questions in the days
4 ahead.

5 Finally, and this is our fifth point, we will, for the most part, be proceeding in open
6 session, but from time to time may have to go into closed session, but only to a very
7 limited scope when we have to deal with matters pertaining to witness confidentiality
8 and security.

9 Mr President, your Honours, it is by a happenstance of dates that on 8 July 2012,
10 seven years ago to the day, Al Hassan committed acts of violence against two men on
11 the streets. These two men, and the people of Timbuktu who have been persecuted,
12 are thirsty for justice. *They are waiting for the warm, satisfying and soothing milk
13 of the justice. Because the evidence would point to the fact that there is substantive
14 reason to believe that Al Hassan committed these crimes, and we hope that our
15 evidence will point to that and that, in so doing, victims will be able to soothe their
16 thirst.

17 Thank you.

18 PRESIDING JUDGE KOVÁCS: [17:02:56](Interpretation) Thank you very much,
19 Mr Dutertre.

20 I am looking at your team, and at the time as well. We still have about 30 minutes
21 and I think you could now pass the floor to one of your colleagues.

22 MR DUTERTRE: [17:03:20](Interpretation) That is correct, Mr President.

23 We have to use this computer and make the presentations from this position, so we
24 ask for one minute to make the necessary arrangements.

25 PRESIDING JUDGE KOVÁCS: [17:03:34](Interpretation) Granted. Thank you.

1 THE COURT OFFICER: [17:05:35] The presentation from the OTP Bench
2 (Interpretation) The OTP presentation can be viewed on your screens. If you use
3 your evidence button you will be able to follow the presentation on your screens.
4 Thank you.

5 PRESIDING JUDGE KOVÁCS: [17:07:12](Interpretation) There appears to be a small
6 technical problem and I believe it will soon be sorted.

7 THE COURT OFFICER: [17:07:58] (Interpretation) If OTP is ready, I would like to
8 ask for the level of confidentiality to be stated before you proceed. Thank you.
9 Before you proceed, OTP, please can you indicate the level of confidentiality of your
10 presentation. I reiterate the request. Thank you.

11 MS UMURUNGI: [17:08:38] (Interpretation) Mr President, your Honours,
12 Mr Duterte has just explained to you --

13 PRESIDING JUDGE KOVÁCS: [17:08:55] The court officer has asked you to start by
14 providing the level of confidentiality of your presentation.

15 MS UMURUNGI: [17:09:04] (Interpretation) It is public, your Honour.

16 In April 2012, AQMI and its ally Ansar Dine entered Timbuktu. They declared
17 themselves as the new masters of the town and, together, they pursued a common
18 objective, namely, to control the city and apply, by force, their ideology.

19 These two armed groups set up new structures. The structures were entirely
20 designed to impose their ideology to the population of Timbuktu -- or, on the
21 population of Timbuktu.

22 Your Honours, my presentation will focus exclusively on the structures, structures
23 which were involved in the commission of a multiplicity of crimes in Timbuktu.

24 Before I address the structures, allow me to show you an excerpt of a video and some
25 images from it. These will enable you to see *the armed groups were present in

1 Timbuktu.

2 (Viewing of the video excerpt)

3 MS UMURUNGI: [17:11:31] (Interpretation) Let me now address the presidency of
4 these organisations.

5 You can see on the screen the photographs of the leaders of the organisation. The
6 head of the organisation was Iyad Ag Ghaly. He was the founding leader of
7 Ansar Dine.

8 When the armed groups arrived in Timbuktu he declared himself the new master of
9 the city. He set up a new administration and conferred management of the city to
10 a new governor whom he appointed himself and that governor was Abdel Hamid
11 Abou Zeid. Abou Zeid was part of the presidency. The presidency was made up of
12 himself, Yahia Abou Al Hammam and Abdallah Al Chinguetti. They are the ones
13 who were the leaders of Timbuktu during the occupation. They were supported by
14 the chiefs of the organs. And I refer you to section 7.2.2 of the DCC against
15 Mr Al Hassan and it outlines the members of the common plan.

16 Your Honours, there was also a number of other structures: Security battalions, the
17 morality squad, also known as the Islamic tribunal, there was the Islamic police, the
18 media commission, the religious committee, also known as the Sharia committee, and
19 there were four training centres where military and religious training was provided to
20 the combatants. People had to undergo that training before signing up in the other
21 organs. The various leaders of the organs themselves were given military and
22 religious training in those centres.

23 Your Honours, given the time I have been assigned, I will simply focus on the key
24 organs of repression during the occupation -- the key organs during the occupation.
25 Let us start with the media commission. It was in charge of propaganda. It was

1 headed up by Sanda Ould Boumama, who was the spokesperson of Ansar Dine.
2 Other members of the media commission were Radwan and Youssouf, among others.
3 The role of the media commission was to supervise propaganda activities and to
4 control local radio stations such as Radio Bouctou.
5 This media commission was in charge of the dissemination of the ideology of the
6 armed groups. It used several resources, such as local radios, newspapers and
7 posters, billboards, as well as preaching on the streets.
8 Then there was the security battalion, which was headed up by Abou Talha. There
9 were a number of security battalions which were referred to as the "Talha group".
10 And members of the security battalion came from other organs such as the *Hesbah* and
11 the police, or even the army.
12 The role of the security battalions was to provide security at the entrances into the city,
13 and also to carry out patrols in the streets, as well as provide other security functions
14 within Timbuktu.
15 Previously, at the beginning of the occupation, the police had responsibility over
16 security. Subsequently, the directorate of security was restructured and the security
17 battalions took over responsibility for security matters.
18 Your Honours, we also had the moral brigades, also known as the *Hesbah*. It was
19 created in 2012, in the month of April, and was located at *Télécentre*, subsequently
20 relocating to BMS, otherwise known as the *Banque Malienne de Solidarité*. And that
21 happened when the Islamic police left those premises.
22 *Hesbah* was initially under the leadership of al Mahdi from May to August 2012. At
23 that time *Hesbah* had moved to BMS. Al Mahdi was replaced by Mohamed Moussa.
24 After Moussa, Abou Al Walid became the chief of the *Hesbah*. Walid was in that
25 position one and a half months or two months before the armed groups left Timbuktu

1 in January 2013.

2 It was possible to identify members of the *Hesbah* through their attire, which had
3 "*Hesbah*" on them. And they also had a number of vehicles available to them.

4 The role of *Hesbah* was to carry out patrols, control the civilian population, ensure that
5 the ideological rules of the occupants were upheld, and conduct preachings.

6 *Hesbah* could punish any behaviour that was deemed to be contrary to good morals
7 and to the ideology of the religious armed groups.

8 Such was the case when it came to relations between men and women. For example,
9 a woman was not supposed to be found on the streets with a man other than her
10 husband or a member of her family. Women and young girls had to respect a very
11 specific dress code.

12 *Hesbah* worked closely with the Islamic court, and also with the Islamic police, and
13 took part in arrests, investigations, and punishments of any offenders.

14 Your Honours, AQMI and Ansar Dine armed groups also created an Islamic court, as
15 Mr Duterte has already mentioned. The Islamic court was created in April 2012 and
16 was located at the hotel known as *La maison*.

17 The head of the Islamic court was Judge Houka Houka. This court had other
18 members and some of its members were also part of the executive of the city. These
19 were members of AQMI, for example, Aboubacar Ibn Abdoullah, also known as
20 Radwan, Abdallah Al Chinguetti, and Koutaiba Al Noaman.

21 The other members were natives of Timbuktu, such as al Mahdi, Mohamed Moussa,
22 and Daouda.

23 The Islamic court co-ordinated its activities with the other organs such as the Islamic
24 police.

25 This Islamic court was not a regularly constituted court.

1 My colleague, Mr Mourad, will address the issue of the irregularity of the Islamic
2 court.

3 Finally, your Honours, let me address the structure of the Islamic police.

4 It was created in April 2012 and it had about 40 men in the police force. Its first
5 leader was Adama, also known as Oumar Ould Mohammed Gulam Al Ghalawi.

6 Adama was replaced by Khaled Abou Souleymane.

7 Al Hassan was the commissioner of the Islamic police. According to Witness 582,
8 the director and police commissioner were considered as senior officials and,

9 according to that witness, *Adama, Khaled and Al Hassan

10 were senior officials. Other persons, such as Abou Zahr, who was a member of the

11 Islamic police, was, according to the witness, a junior official. Abou Zahr, on his

12 part, was in charge of the Bambaras within the police and he was Al Hassan's

13 subordinate.

14 Members of the Islamic police had the duty of providing security for the city,

15 conducting patrols, and working in collaboration with *Hesbah*, receiving complaints,

16 and working with the prison department, as well as with the court.

17 As I already mentioned in reference to the security battalions, the police -- the Islamic

18 police had set up posts at the entrance to the city. They provided control, and

19 certain products were forbidden, such as cigarettes and alcohol. Members of the

20 Islamic police force organised or managed traffic in the city and also conducted

21 patrols in the city during the day and at night.

22 The Islamic police also worked in collaboration with the other organs and, according

23 to Al Hassan himself, the Islamic police worked very closely with *Hesbah* and with the

24 Islamic court, and this is what he said in that regard, and I quote:

25 "My contacts ... communication with *Hesbah* ... their responsibility was to preach the

1 Sharia to the people and the teaching on what is acceptable, and what is forbidden
2 and blameworthy. Any offences against the Sharia should be reported to the police.
3 That was the work we did with them."

4 End of quote.

5 Al Hassan also said:

6 "Our work with the court involves drafting, writing reports on accused persons and
7 forwarding them to the court." End of quote.

8 As you would see on the screen, the members of the Islamic police could be identified
9 by their blue jackets. As you can see, on the back is written "Islamic police" in Arabic
10 and in French.

11 They were armed, they had Kalashnikovs. They were given military training before
12 they joined the police force.

13 Furthermore, they had vehicles and motorbikes which they used for their patrols.

14 They could also conduct patrols on foot.

15 Your Honours, let me now show you the premises of the Islamic police, where they
16 were located.

17 First of all, they were located at the BMS, the *Banque Malienne de Solidarité*. They
18 remained at that position until August or September 2012. Within that building,
19 some of the rooms were used as prison cells for detaining people, and that was after
20 September 2012 -- it was after September 2012 that the police moved to the
21 *gouvernorat*.

22 Mr President, your Honours, allow me to highlight the point that all these organs
23 worked together in a bid to apply the ideology of the armed groups.

24 And I refer you specifically to section 4.3 of the DCC, which deals with the control
25 organs created by AQMI and Ansar Dine.

1 This concludes my presentation and I would give the floor to my colleague,

2 Mr Muneesamy.

3 Thank you.

4 PRESIDING JUDGE KOVÁCS: [17:27:51](Interpretation) Thank you very much.

5 Before you do that, let me point out that we have only three minutes to go.

6 Should we continue now or adjourn to tomorrow?

7 MR DUTERTRE: [17:28:04](Interpretation) I agree with you, Mr President, that

8 instead of having a presentation that would be unnecessarily disrupted we can

9 proceed tomorrow morning. Thank you very much.

10 PRESIDING JUDGE KOVÁCS: [17:28:18](Interpretation) Thank you, Mr Dutertre.

11 We have now come to the end of this first day of the confirmation of charges hearing

12 and we adjourn to resume tomorrow morning at 9.30.

13 THE COURT USHER: [17:28:31] All rise.

14 (The hearing ends in open session at 5.28 p.m.)

15 CORRECTION REPORT

16 The following corrections, marked with an asterisk and not included in the

17 audio-visual recording of the hearing, are brought into the transcript.

18 *Page 34 lines 4-5

19 "PRESIDING JUDGE KOVÁCS: [16:05:06] (No interpretation)

20 (Interpretation) as necessary by Monday, 22 July 2019."

21 Is corrected by page 34 lines 4 to 10

22 PRESIDING JUDGE KOVÁCS: [16:05:06] (Interpretation) This is the decision of the

23 Trial Chamber with regard to the request by the Defence to stay the proceedings. The

24 request is denied. The Defence may, if it deems it necessary, seize the competent

25 organ with a request for disqualification.

1 With regard to the other points raised by the Defence, the Chamber calls upon you, if
2 you so wish, to file your written observations on the subject by Monday 22 July 2019
3 at the latest.

4 CORRECTIONS REPORT 2

5 The corrections (related to interpretation) marked with an asterisk (*) in the transcript
6 are implemented as follows:

7 Page 46 line 8:

8 "one of the victims"

9 is corrected to page 46 line 8:

10 "Dadou Maiga,"

11 Page 46 lines 23-24:

12 "Gao fell on 31 March 2013. Timbuktu fell on 1 April 2012."

13 is corrected to page 46 lines 23-24:

14 "Gao was taken on 31 March 2012 by the MNLA, who were then dislodged by the

15 MUJAO. Timbuktu fell on 1 April 2012 into the hands of Ansar Dine and AQMI."

16 Page 48 line 8:

17 "foreigners and governing this town"

18 is corrected to page 48 lines 8-10:

19 "foreigners. They managed the day-to-day affairs of the town, even though Iyad Al

20 Ghaly, who was most often based in Kidal, retained effective control over that was

21 going on, in particular by visiting the location on a regular basis."

22 Page 49 line 9:

23 "He joined Ansar Dine."

24 is corrected to page 49 lines 9-10:

25 "By joining the police, he joined Ansar Dine, and he himself has said so."

1 Page 50 lines 11-13:

2 “So Al Hassan played a pivotal role in the common plan and I really do not know
3 many subordinates who have their telephone numbers inscribed in the wall -- on
4 the wall.”

5 is corrected to page 50 lines 11-13:

6 “Now, I did read something in which the Defence describes Al Hassan as one
7 plankton in the ecosystem of Timbuktu at the time. I would not have allowed myself
8 this comparison, but since it has been made, I really do not know many planktons
9 who have their telephone numbers on the wall of the Islamic Police. The facts speak
10 for themselves.”

11 Page 50 lines 14-15:

12 “The Islamic police played a special role in the occupation. They were the ones who
13 controlled the town on foot, on motorcycles or on four-by-four vehicles.”

14 is corrected to page 50 lines 14-16:

15 “The Islamic police played a central role in the implementation of the common plan.
16 They were the ones who patrolled, far more than the Hesbah, who had fewer men.
17 It was the police who covered the town, on foot, on motorcycles or on four-by-four
18 vehicles.”

19 Page 51 lines 21-22:

20 “their example of public punishment, and to strike the minds of people and to
21 intimidate them”

22 is corrected to page 51 lines 21-22:

23 “their first example of public punishment, to make an impression on people and to
24 intimidate them. And, in broader terms, to terrorise them.”

25 Page 52 lines 9-11:

1 “The inhabitants started living with these images and the constant fear of being
2 physically beaten themselves, so the entire population became victims.”

3 is corrected to page 52 lines 9-11:

4 “The inhabitants started living with these images and the constant fear of being
5 physically beaten themselves. They knew that they were targeted, and persecuted,
6 and this is one reason why this case is very serious. The entire population became
7 victims.”

8 Page 52 lines 14-16:

9 “in The Hague, you can imagine them stopping and then taking men and women,
10 beating them, beating the inhabitants, or marrying women forcibly and raping them.”

11 is corrected to page 52 lines 14-16:

12 “in your own cities. Imagine them stopping the women and young girls, beating up
13 the inhabitants, or marrying women forcibly and raping them.”

14 Page 53 line 19:

15 “and”

16 is corrected to page 53 line 19:

17 “of”

18 Page 53 line 20:

19 “authors”

20 is corrected to page 53 line 20:

21 “perpetrators”

22 Page 53 line 24:

23 “P-150 was interviewed and the process was long, but it provides a lot of
24 information.”

25 is corrected to page 53 lines 24 to page 54 line 2:

1 “Regarding the specific case of P-0151, I would like to stress that he is in a unique
2 position to provide invaluable testimony to the Chamber and to shed light on the way
3 that things were operating at the time. The Defence’s allegations about his lack of
4 impartiality and his intentions are completely speculative.”

5 Page 55 lines 12-13:

6 “They are waiting for the cold and satisfying and soothing milk of the truth.”

7 is corrected to page 55 lines 12-13:

8 “They are waiting for the warm, satisfying and soothing milk of justice.”

9 Page 56 line 25:

10 “which groups”

11 is corrected to page 56 line 25:

12 “the armed groups”

13 The following interventions are translated and added:

14 Page 47 lines 24-25: “Al Chinguetti means the Mauritanian.”

15 Page 48 line 14: “--- the symbolic headquarters”

16 Page 49 line 6: “he himself a member of the common plan”

17 Page 50 lines 2-3: “who saw to it that this common plan was implemented day after day
18 in the field”

19 Page 53 lines 16-17: “: police officers, members of the Hesbah, and, in more general
20 terms, all the soldiers”

21 Page 53 lines 20-21: “At times, victims were not able to tell us exactly when something
22 happened to them, and so, obviously, we have indicated a broader period of time.

23 Page 54 lines 3-4: “which is what counts, whether or not there is corroborating
24 evidence,”

25 The following interventions are deleted:

- 1 Page 60 line 9: “that is Adama, Khaled --”