

1 International Criminal Court
2 Pre-Trial Chamber I
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Péter Kovács, Judge Marc Perrin de Brichambaut and Judge Reine
7 Adélaïde Sophie Alapini-Gansou
8 Confirmation of Charges Hearing - Courtroom 1
9 Wednesday, 10 July 2019
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:51] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KOVÁCS: [9:32:23](Interpretation) Good morning, everybody.
15 Court officer, please call the case.
16 THE COURT OFFICER: [9:32:30] (Interpretation) Good morning, Mr President,
17 your Honours.
18 The situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan
19 Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18.
20 And we are in open session.
21 PRESIDING JUDGE KOVÁCS: [9:32:50](Interpretation) Thank you very much,
22 court officer.
23 Ladies and gentlemen, our schedule for today calls for oral submissions by
24 the Prosecutor.
25 But before we proceed, I would like to ask if there have been any changes in the

1 teams.

2 Mr Dutertre.

3 MR DUTERTRE: [9:33:12](Interpretation) Good morning, Mr President, good
4 morning, your Honours.

5 The Prosecutor's team is made up today of Nelly Corbin, who will be addressing you
6 briefly; Sanja Bokulic, case manager; Dianne Luping, Sarah Coquillaud, Marie-Jeanne
7 Sardachti, Yayoi Yamaguchi, Sandra Schoeters and Hesham Mourad, and yours truly.
8 Thank you.

9 PRESIDING JUDGE KOVÁCS: [9:33:41](Interpretation) Thank you very much,
10 Mr Dutertre.

11 Madam Taylor.

12 MS TAYLOR: [9:33:44] Good morning, Mr President, your Honours, and all my
13 colleagues in the courtroom.

14 The composition for the Defence of Mr Al Hassan remains the same, except for the
15 addition of Ms Marie-Noëlle Delisle behind me.

16 Thank you very much.

17 PRESIDING JUDGE KOVÁCS: [9:34:03](Interpretation) Thank you very much.
18 Mr Doumbia.

19 MR DOUMBIA: [9:34:07](Interpretation) Yes, thank you, Mr President,
20 your Honours.

21 The Legal Representative team remains unchanged.

22 Thank you.

23 PRESIDING JUDGE KOVÁCS: [9:34:14](Interpretation) Thank you very much.

24 Now before I give the floor to the Prosecutor I would like to hop back to two points.

25 Yesterday, Defence requested that your oral presentations be disclosed to them and

1 you indicated that you would be providing such information on the call data records
2 in writing, but the Chamber would like to have all the submissions made to
3 the Chamber, to the legal representatives and to the Defence at the end of each day.
4 That will make it possible for the Defence to refer to that material and respond as the
5 need may be, as well as use the transcripts to make any responses to your oral
6 submissions.

7 Secondly, Mr Prosecutor, yesterday you brought to the Chamber's attention that
8 yesterday morning the Chamber had deliberated on the time allowed to the OTP for
9 its submissions, and as you requested yesterday, the Chamber has decided to add an
10 additional amount of time to you, which would be equal to the amount of time spent
11 by the Chamber in its deliberations.

12 So, for today, you are able to make your submissions until 13.15, as against 13 hours.

13 You also indicated that the legal representatives did not intend to use all their time,
14 and I would now like to turn to the legal representatives to confirm whether this is
15 the case.

16 Mr Doumbia.

17 MR DOUMBIA: [9:35:58](Interpretation) Yes, Mr President, we can confirm that.

18 PRESIDING JUDGE KOVÁCS: [9:36:01](Interpretation) Thank you very much.

19 Noted.

20 Mr Prosecutor, you therefore can also use an additional 15 minutes from the time that
21 was initially assigned to the Legal Representative of Victims. This, to our mind,
22 would cover the amount of time that was used by the court in addition to that, and
23 therefore there will be no further addition to this two-by-15 additional time.

24 But before I give you the floor I would like to ask the court officer to share some
25 technical information with the Court.

1 Court officer, you have the floor.

2 THE COURT OFFICER: [9:36:46] (Interpretation) Thank you, Mr President.

3 We want to address the issue of presentations submitted by the OTP yesterday in the
4 hearing. And, for the record, *the Registry would like to inform the Chamber and
5 the parties and participants of the ICC references.

6 An HNE reference would be as follows, ICC-01/12-01/18-HNE-1, and this would be
7 entered into the record after the confirmation of charges hearings.

8 In the meantime, the courtesy copy of the document will be forwarded to the parties,
9 chambers, and participants confidentially for purposes of a heads up.

10 Thank you.

11 PRESIDING JUDGE KOVÁCS: [9:37:49](Interpretation) Thank you very much,
12 court officer.

13 And now I turn to the Prosecutor, Mr Dutertre.

14 MR DUTERTRE: [9:37:55](Interpretation) Thank you, Mr President. I would like to
15 help -- have some help from the registry. I can't use my computer screen properly.
16 But this will not delay our proceedings.

17 In any event, my colleague, Ms Corbin, will now address the issue of gender-based
18 violence.

19 PRESIDING JUDGE KOVÁCS: [9:38:17](Interpretation) Madam Corbin, you have
20 the floor.

21 MS CORBIN: [9:38:21] (Interpretation) Thank you.

22 Mr President, your Honours, I would like to point out that my submissions can be
23 made in open session and I am going to explain to you why Counts 8 and 12 on
24 crimes against humanity, namely, other inhumane acts in the context of forced
25 marriages, crimes against humanity, war crimes, sexual enslavement and rape, why

1 all these charges have to be confirmed.

2 I will, in so doing, answer questions 5, 7 and 9 which you addressed to us in writing.

3 Regarding question number 5 on common plan and the crimes, this will be the very

4 crux of my presentation. Rape, sexual enslavement, forced marriages, were, I would

5 explain, although they were not part of the common plan, but they could have been

6 foreseeable consequences flowing from the implementation of the common plan

7 based on the ideology of the organisation, the composition of the organisation and the

8 causative context of the time in Timbuktu.

9 Al Hassan was a member of the organisation and one of the leaders in Timbuktu and

10 could not have not been aware of the fact that by implementing their power and

11 having total control over Timbuktu, as well as the concurrent implementation of their

12 ideology, which banished all public sexual relations out of marriage, would lead to

13 such consequences where, in other terms, such persons would abuse their position to

14 satisfy their sexual needs.

15 Therefore, between the organisation and the women and the young woman in those

16 areas, there are several instances of these, and about nine of them are included in the

17 DCC.

18 These women and young girls became the wives of jihadist combatants through

19 intimidation by force, through violence in a city that was under the control of armed

20 groups. This has been the testimony of all the victims who have been interviewed

21 by the Prosecution, and I refer you to paragraph 799 of the DCC.

22 For example, victim P-533 said the following:

23 "They said they had come to marry me and that if I refused they would kill me and

24 they would kill my parents. All four of them were carrying weapons. I couldn't do

25 anything, and there was no more law in Timbuktu and I was forcibly married."

1 These women experienced hell for days, weeks and sometimes for months. They
2 were held in a situation of sexual enslavement because they had become wives
3 forcibly. They were repeatedly raped, and in some cases on a daily basis,
4 throughout the period of the so-called marriage.

5 Some of them were beaten up if they refused to agree to the sexual violence, as was
6 testified to by victims P-602, P-610. P-520 tells of how she was whipped as a way of
7 punishment when she refused to accept the rape.

8 Victim P-538 also says that she was handcuffed during the rapes. Victim P-553
9 explains that she was beaten up on a daily basis and was sometimes threatened with
10 death. She miscarried, but that was as a result of the rape and continuous beating,
11 even though she was pregnant.

12 These acts of rape and violence all happened within the context of the so-called
13 marriages. I refer you to section 8.5.3.2, paragraphs 802 and 805 of the DCC in
14 relation to these rapes and acts of violence.

15 These women and young girls had simply become sexual objects.

16 P-520 says that her husband played with her like a toy and treated her like a lifeless
17 being. He would say to her:

18 "Get up, get into the room. Come, I need you."

19 And he told her that he had brought her in to meet his needs and that, as long as he
20 hadn't done so, she wouldn't go back.

21 Some of the victims were still children.

22 P-610, in relation to her rape, says the following:

23 "I did not understand what they were doing to me. I was young. I was 15 years old
24 only. I had never felt that type of pain that I felt when the man forced himself on
25 me."

1 Paragraph 54 of the statement. That man felt that he was her husband.

2 P-570 narrates the case of a small girl, P-1460, and I quote as follows, "Whose breasts
3 had barely begun to develop." Everybody had shouted when they had taken her
4 away and, by the time she was brought back, she had been destroyed and she was
5 simply a cadaver. Paragraph 48.

6 The different counts against Al Hassan do reflect as completely as possible the
7 manner in which these women suffered. They were raped. It reflects the fact they
8 were held in captivity, they were deprived of their freedom of movement, and
9 indicate that they was forced to enter into conjugal unions, which then exposed them
10 to social stigmatisation and by such association with the jihadists.

11 There is evidence in section 8.5.2, 8.5.3, 8.5.4 of the DCC to point to the cumulative
12 nature of these three crimes, which, may I say, can exist independently and are based
13 on different legal elements. Actually, each of the legal elements as substantiated by
14 evidence point to the fact that all these crimes are of a nature to attract a conviction.

15 At the confirmation of charges level, the practice is for the OTP to prosecute a suspect
16 based on a cumulation of charges. And I refer you to paragraph 136-139 of the
17 confirmation of charges decision in the Ongwen case, and also to page 19 of the
18 Court's manual on court practices and which authorises a cumulation of charges or
19 counts.

20 The document provides that the Pre-Trial Chamber is in the best position to
21 determine the position on the concurrence of charges, and this position was
22 reasserted the day before yesterday in the Ntaganda judgment, and I refer you to
23 paragraph 1205 of the judgment.

24 Your Honours, you also forwarded question number 9 to us, bearing on
25 stigmatisation arising from the forced marriages. The women and young girls, and

1 the children born of these rapes, were also affected negatively as they were
2 considered to be jihadists' wives or, ultimately, jihadists' children.

3 What is more tragic in the case of these forced marriages is that some of the victims
4 were accused by their communities of having voluntarily entered those unions and
5 people would consider them to be their enemies.

6 For example, victim P-520 declared or said the following:

7 "Since I went through the hands of those people, my reputation has changed. I had
8 some value before, but people think that what happened to me was because I wanted
9 it to happen."

10 And I am referring here to paragraph 78 of her statement. Victim 538 states that
11 during the so-called marriage, a man had asked her why she had gotten married to
12 them, and she had to explain that she had been forced into that marriage.

13 Paragraph 50 of her statement.

14 In spite of the fact that these forced marriages were well known in Timbuktu, victims,
15 however, continued to be accused of having acted out of some interest, some kind of
16 interest, including financial interest.

17 Victim 160 stated as follows, and I quote:

18 "What makes this whole thing even more terrible is that even today the two sisters
19 who I referred to have been stigmatised as having gone into those marriages because
20 of some interest."

21 Now let me be very clear, your Honours, when I use the terms "marriage" and
22 "husband", these are all devoid of their normal meanings.

23 Now, we can say that the traditional practices of a ceremony and various attributes
24 that occur traditionally in the case of marriage, for example, accompanying the bride
25 to the home of the spouse, all these practices are absent in these cases of forced

1 marriages. And I'm dealing here with the second aspect of your question,
2 particularly when it comes to recognising that these were indeed forced marriages.
3 So using those expressions of marriage was a roundabout way of the perpetrators at
4 that time to achieve their purposes, and these are the very terms that are still being
5 used by all the victims today in relation to their crimes.

6 That, indeed, is what happened in Timbuktu between April 2012 and 2013. Our
7 position, therefore, is that even today we need to be able to identify these as being
8 forced marriages and see the link between them and the stigmatisation of victims.

9 What then is the position of the OTP in relation to these gender-based crimes that
10 were committed in Timbuktu during the operation?

11 First, when it comes to the implementation of the common plan, it could have been
12 expected that in the normal course of events these marriages and several others
13 between members of the organisations took place between women and young girls.
14 Between April 2012 and January 2013 and in application of the common plan, the
15 rules applying in Timbuktu at the time were those of force imposed by the
16 organisation based on its ideology.

17 Yet, the cardinal rules for the organisation were such that relations between husband
18 and wife had to take place within the context of marriage, otherwise there would be
19 corporal chastisement.

20 As of June 2012, the organisation in an organised manner tortured, in the presence of
21 the population of Timbuktu, a man and a woman for the reason of having had sexual
22 relations out of wedlock. Al Hassan was present at that torture, that scene of torture
23 and flogging by a hundred whips and he was present in his capacity as the
24 commissioner of the Islamic police. My colleague has already addressed this issue.
25 And throughout, Al Hassan also participated for the same reasons at such floggings.

1 I refer you to paragraph 927 of section 8.2.1 of the DCC.

2 Al Hassan knew that within the context of the common plan members of the
3 organisation could not have had sexual relations otherwise.

4 Now, the evidence points to the fact that these groups were made up exclusively of
5 men and that they perceived women to be sexual objects, objects that would satisfy
6 what they referred to as their sexual needs and also to satisfy their need for
7 procreation in order to consolidate their control over the territory of Timbuktu.

8 In that context, it was therefore foreseeable that in the normal course of events in the
9 occupation of Timbuktu and the implementation of the ideology, members of that
10 organisation would pervert the institution of marriage with a view to satisfying their
11 personal interests.

12 P-150, a member of the organisation, stated as follows:

13 "Everybody, all the soldiers who came to Timbuktu needed to be married, regardless
14 of whether they had been previously married or not. A combatant needs to be
15 married in order to not commit sin. Because the need for sex is similar to the need
16 for water or food. And it is important to do this following the rules of the religion."

17 He goes on to say, in line with the ideology, and I quote:

18 "An encouragement is always given to men to find a possibility to satisfy their sexual
19 needs."

20 Therefore, according to him, the principle was clear: Combatants had come from
21 far-off regions and, if they wanted to, they could be married, they could get married
22 and, as I quote, they could get married at any time if they wished to.

23 P-150 also explained that short-term marriages, which he referred to as marriage for
24 pleasure, were also authorised by the organisation and that such marriages did
25 actually take place in Timbuktu.

1 Al Hassan also recognised that such short-term marriages had actually existed, and I
2 refer you to paragraph 773 of the DCC, and to the statement of Witness P-150 from
3 the following documents, MLI-OTP-0041-0790 and MLI-OTP-0062-3078.

4 Other so-called insider witnesses, namely, P-081, P-582, corroborated the fact that it
5 was normal practice for members of the groups to be given or to receive women, and
6 I refer you to paragraph 835 to 850 of the DCC.

7 Victims themselves suffered the consequences of these.

8 P-553 said:

9 "They all loved women, they were all crazy about them. They loved women to the
10 extent that they were sick of it. They married all the women as they wished."

11 And I refer you here to paragraph 51 of his statement.

12 Another victim, P-0538, talked about cascading marriages during the time of the
13 occupation. She said:

14 "When it comes to forced marriages, everybody knew that such was the practice in
15 Timbuktu."

16 Reference, paragraph 22 and 23 of his statement.

17 According to P-150, marriages occurred on a weekly basis. Al Hassan himself
18 acknowledged that he knew that many of the combatants had gotten married. The
19 organisation had even set up a fund and even mediators to facilitate and encourage
20 such so-called marriages.

21 Al Hassan was aware of the existence of this fund and these mediators and he helped
22 to draft documents for combatants to obtain assistance from this fund, and even
23 participated in marriage negotiations. And I refer you to the DCC for this purpose.
24 People got married, their chiefs got married to women and young girls in the local
25 neighbourhoods.

1 Now, even during prayers, the grand imam, according to P-0608, systematically
2 advised girls not to go out in order to spare them from an Islamist who may fall in
3 love with them.

4 Now, he goes on to say at paragraph 97 of P-608's statement that the imam knew what
5 was happening.

6 The United Nations report of 7 January 2013 also refers to knowledge of the existence
7 of such marriages, such forced marriages during the occupation. And I refer you to
8 paragraph 787 of the relevant document.

9 These marriages between combatants and the inhabitants of Timbuktu and its regions
10 could not have been consensual in nature. In the entire region, there was -- the town
11 was under their control and therefore these marriages could not have been done in
12 a consensual manner and, therefore, it could have been expected that in the normal
13 course of events during the occupation of Timbuktu, these marriages would be
14 forcibly entered into.

15 There were no other authorities in the organisation, an organisation which was
16 affiliated to al-Qaeda, it was dangerous and powerful, extremely violent, went on to
17 impose its power and ideology, was dealing through terror with a significantly
18 vulnerable population.

19 A witness in Timbuktu narrated how the imams advised the people to avoid contact
20 with the groups, and I quote, "because they were armed and they were capable of
21 killing."

22 Statement from Witness P-0114, paragraph 129.

23 So it was in this context that there was torture of women and the request for forced
24 marriages were also endorsed.

25 Another witness testified that a man was held at the police station and subjected to

1 flogging if he did not consent to the marriage of his daughter to a member of the
2 organisation. Reference paragraph 772 of the DCC.

3 Victim P-538 in paragraph 43 said that they had been in prison because they had
4 refused to get married. And a member of their family had also been imprisoned and
5 beaten up because they had not consented to the union.

6 Now, in Timbuktu, fear was all over the place. One of the members of the
7 organisation even stated that a woman was free to either consent or not to these
8 marriages, but then went on to conclude that some of these marriages occurred as a
9 result of pressure and fear. Reference paragraph 761 of the DCC.

10 Al Hassan also knew that such pressure was inevitable and he admitted that the
11 population was afraid of it. Reference paragraph 845, DCC.

12 There's also an audio recording of November 2012 in which one of the leaders of the
13 organisation, Qouteiba calls on the combatant, and I quote, "to constrain parents who
14 stopped their daughters from getting married."
15 Reference, paragraph 772 of the DCC.

16 Those men had carte blanche in the city. They could enter the victims' homes at any
17 time and armed.

18 P-0538 and P-0553 tell the story of how they were abducted by armed Islamists at
19 night at their home and were married forcibly.

20 P-602 indicated that she was followed by a patrol from the market because she was
21 not wearing a veil and, the next morning, members of the patrol came to her home
22 and took her away.

23 According to P-608, women were constantly being watched and she said going out
24 was exposing oneself to their inquisition.

25 That is paragraph 73.

1 Lastly, Al Hassan and his co-perpetrators were aware that in the normal course of
2 their occupation and the implementation of their ideology, the members of the
3 organisation would be violent against their so-called wives and would treat them like
4 objects and slaves.

5 Witness P-608 stated:

6 "There were acts of violence and humiliation against women. And by acts of
7 violence I mean arrests and floggings, as well as forcible marriages, which were in
8 fact rapes."

9 Witness P-605, an insider witness, stated that marriages took place in Timbuktu
10 between members of the organisation and women and local young girls which were
11 forced marriages and even rapes. I refer you to the statement.

12 For those who share the ideology of the organisation, there could not be sexual
13 relations without marriage. Forcible marriages were an excuse for the commission
14 of the sexual crimes.

15 Victim P-602 said that he knew very well what had to happen between a man and
16 a woman. He said that he could come to her house and whatever happened between
17 them would happen.

18 The men were none other than armed men, criminals, who were hiding behind the
19 title of husband. The victims of forcible marriages interviewed by the Prosecutor
20 described the violence of their husbands during the rapes.

21 P-553 and P-603 described how their so-called husband kept weapons in the house
22 during forced sexual relationships. These men were encouraged to satisfy their
23 sexual needs insofar as they were doing so in conformity with their ideology, that is,
24 within marriage.

25 In armed conflicts, women are usually considered as compensation. Rape is

1 a foreseeable consequence of war and men had the power to use women for sexual
2 purposes.

3 An Ansar Dine combatant told Witness P-0081 that Iyad Ag Ghaly, the leader of the
4 group, the armed group, gave him a wife because he had joined the groups and this
5 was the usual practice. He stated, and I quote, "when you join the combatants, you
6 receive a wife."

7 I refer you to paragraph 835 of the DCC.

8 Within the context of the occupation of Timbuktu, which lasted for more than nine
9 months, these rapes transformed themselves into a situation of sexual slavery.

10 In Timbuktu, the armed groups had become the only masters, and there was
11 a supplementary aspect; the ideology of the organisation. On behalf of that ideology
12 and in accordance with the ideology, and hiding behind the ideology there were
13 sexual crimes perpetrated by the members of the organisation which claimed -- who
14 claimed to have been married. Marriages were only an excuse for the commission of
15 sexual crimes. Husbands were only rapists and victims were reduced to silence. It
16 is their voice that I hope will be heard as from today.

17 I have come to the end of my presentation.

18 PRESIDING JUDGE KOVÁCS: [10:05:48](Interpretation) Thank you very much,
19 Madam Prosecutor.

20 Mr Dutertre.

21 MR DUTERTRE: [10:05:53](Interpretation) Thank you, Mr President.

22 We will change presenters and my colleague Marie-Jeanne Sardachti will now take
23 the floor on religious persecution.

24 PRESIDING JUDGE KOVÁCS: [10:06:17](Interpretation) Yes, understood.

25 You have the floor.

1 MS SARDACHTI: [10:06:58] (Interpretation) I would like to point out that I will
2 present the entire presentation in public session and it will last for about 30 minutes.

3 PRESIDING JUDGE KOVÁCS: [10:07:07](Interpretation) Very well. Please, you can
4 now proceed.

5 MS SARDACHTI: [10:07:17] (Interpretation) Mr President, your Honours, I would
6 like to deal with the count of persecution as charged in the DCC.

7 Al Hassan was one of the leaders of the Islamic police whose role was to impose the
8 dogmas, the religious dogmas of the groups to the population of Timbuktu through
9 force and violence. He subscribed to the ideological and religious vision of the
10 group. He even flogged people for having consumed alcohol and for adultery.

11 Al Hassan and members of Ansar Dine and AQMI persecuted the civilian population
12 of Timbuktu who, according to them, had failed to share their vision. They
13 persecuted them on religious grounds. And amongst the people of Timbuktu,
14 women and young girls were specifically targeted for gender reasons.

15 I would like to talk about a persecution of the population on religious grounds, while
16 my colleague Ms Coquillaud will dwell on the persecution of women and young girls
17 for gender reasons.

18 To begin with, I will describe what the population of Timbuktu was subjected to
19 during the occupation. Then I will move on to the issue of religious grounds, on the
20 basis of which the groups targeted the civilian population of Timbuktu. I will then
21 talk about the groups or communities that were targeted, and then I will mention the
22 acts that constitute persecution and attacks which undermined the fundamental
23 rights of the population, as well as the link between the crimes and the crimes
24 charged.

25 To conclude, I will examine the issue of criminal liability of Mr Al Hassan for this

1 crime and I will refer to the members of Ansar Dine and AQMI as members of the
2 groups.

3 I will begin with the floggings of a man who had refused to pray with members of the
4 group. There was assault and battery in the street for those who did not respect the
5 dress code, and that was the daily reality of the population of Timbuktu during the
6 occupation. The crime of persecution encompasses a multitude of acts and the
7 population of Timbuktu was subjected to a multitude of serious violations of their
8 fundamental rights.

9 Before dealing with the various acts constituting these crimes, I would like to give
10 you an overview of the context of Timbuktu.

11 The majority of the population of Timbuktu is of the Muslim faith. Timbuktu is
12 widely considered as an Islamic centre in Africa. It was the intellectual and spiritual
13 capital between the 15th and 16th century. It is well known for its prestigious
14 university, its madrasas, its manuscripts and its monuments. It is also known for its
15 music and it is known for its festivals such as Maouloud, which is the anniversary of
16 the prophet. There is also the festival of the desert, which is well known in Africa
17 and beyond.

18 Until recently Timbuktu was a major destination for religious tourism. It was at the
19 centre of pilgrimage. And each of these mausoleums reflected the prestigious past of
20 the town as well as its history. It is in that town that, from April 2012 and up to their
21 departure in January 2013, Al Hassan and the members of his groups termed their
22 authority and exercised control and influence upon the civilian population of the
23 region. They imposed their ideological and religious vision.

24 The groups oppressed and punished all those who did not comply with their vision
25 and religion which, according to them, was the one and only true religion.

1 The groups created their institutions to enforce respect for the new order, and that is
2 how they created the Islamic police. Al Hassan was one of its commanders. By
3 punishing and brutalising the population the group inflicted permanent
4 institutionalised violence.

5 Now let me talk about life under occupation. In order to describe this I would like to
6 use the words of the witnesses themselves.

7 P-114 was an inhabitant of Timbuktu, and I will read part of his statement in English,
8 paragraph 128: (Speaks English)

9 "During that period, everything was forbidden except going to the mosque. During
10 the occupation, the practice of the religion in Timbuktu changed with the imposition
11 of strict rules on how people and especially women dress, on how people behave.

12 Women were not allowed in public alone and they had to be covered. They banned
13 the celebration of Maouloud, the birth of the Prophet the Ashura, the Islamic New
14 Year celebrations and marriages were not celebrated with joy."

15 (Interpretation) P-603, another inhabitant of Timbuktu, told us in paragraph 29 of his
16 statement:

17 "The Islamists said that it was their sharia that would be implemented and not Malian
18 sharia, and that those who did not follow it would be flogged. After that, they said
19 that if they saw a man and a woman together, even a brother and a sister from the
20 same mother and father, they would put them in prison. They said that in Timbuktu
21 there would no longer be any dancing or festivals, no tobacco or alcohol. There were
22 days to put people in prison and days to release them. They would round up people
23 without discrimination and take them to pray. On Friday as from 11 o'clock they
24 would round people up and send them to the mosques."

25 There is another inhabitant of Timbuktu who talked about oppression, and this

1 happens in a video from a report.

2 (Viewing of the video excerpt)

3 MS SARDACHTI: [10:15:24] (Interpretation) These new rules, which were brutally
4 implemented, were all the more impactful on the population because they restricted
5 their liberties.

6 P-626, who is a member of the groups, explained in the summary of his statement
7 that:

8 "The population had problems respecting the new rules. Before the arrival of the
9 armed groups the people were free to dress the way they wished, to move about and
10 to associate with anyone of the opposite sex. It was difficult to change habits and
11 practices that they had been having for years."

12 Now, in the face of this situation, how did the population of Timbuktu react?

13 Those who could do so fled the town, such as the singer who was known as the
14 "nightingale of Timbuktu," and there is a video on that.

15 (Viewing of the video excerpt)

16 MS SARDACHTI: [10:17:39] (Interpretation) Those who were compelled to stay
17 were resigned to their fate. And to use the words of P-608, he said, "they waited for
18 everything to end." End of quote.

19 Now I will come back to the second point, the religious grounds.

20 It was on religious grounds that Al Hassan and the members of the groups
21 persecuted the population of Timbuktu, which was considered to not subscribe to
22 their vision and religion.

23 The conquest of the territories was motivated by religious reasons.

24 The name of the groups illustrate this. Ansar Dine actually means "defenders of the
25 faith" and their objective was to establish their vision and religion within the

1 conquered territories.

2 In an interview given by a member of AQMI, the commander of the emir of the
3 Sahara explained that the general objective of the armed groups was "the
4 establishment of religion." End of quote.

5 And in the video there is a member of the common plan, who explains the necessity
6 to institute sharia in Mali.

7 (Viewing of the video excerpt)

8 MS SARDACHTI: [10:19:38] (Interpretation) The new order was perceptible, as
9 shown by this sign board proclaiming the new ideology of the groups, "Timbuktu, the
10 gateway to the implementation of sharia, welcomes you".

11 And there are also the flags, which had religious inscriptions, and one could see them
12 on the vehicles of the groups, on the main buildings and institutions. For example,
13 at the *gouvernorat*, which was the second headquarters of the Islamic police and the
14 Islamic tribunal.

15 Their religious grounds were omnipresent through the messages that the group
16 circulated. And I refer you to the DCC paragraphs 886 to 892.

17 Regarding my third point, relating to the group or identifiable community within the
18 meaning of Article 7(1)(h) of the Statute: It was the civilian population of Timbuktu,
19 which was perceived by Al Hassan and the members of the groups as not subscribing
20 to their religious vision, which was targeted. This way of defining the community
21 within the perception of the perpetrator of the crime makes it possible to define the
22 community.

23 In the vision of the groups, the population were miscreants. This is the term used by
24 Iyad Ag Ghaly in his speeches, they did not practice "the true faith". And these
25 terms were used in a video where you can see members of the groups destroying

1 statuettes.

2 Now I will come to the fourth part, the various acts that targeted the population of
3 Timbuktu.

4 These acts were in various forms, it can be crimes under the Rome Statute. But these
5 were also acts which, by themselves, were not crimes but taken together contributed
6 to the serious violation of fundamental rights of one or several people in relation to
7 international law standards.

8 In this case, the acts of persecution perpetrated on religious grounds are constituted
9 of crimes under Counts 1 to 12 --

10 PRESIDING JUDGE KOVÁCS: [10:22:31](Interpretation) I'm sorry, Madam

11 Prosecutor, you are way too fast, you have to slow down in your presentation.

12 MS SARDACHTI: [10:22:39] (Interpretation) Yes. Thank you.

13 But, apart from those crimes, these acts also included the rules, the prohibitions and
14 punishments, which were violent and inhuman in the majority of cases, and which
15 violated the fundamental rights of the population. They appear in paragraphs 912 to
16 941 of the DCC.

17 It was the totality of these acts that constitute the persecution perpetrated by
18 Al Hassan and his co-perpetrators. And that is how they were assessed, in
19 a cumulative manner and not in a fragmentary manner. I refer you for that purpose
20 to the jurisprudence that we have mentioned in our filings in paragraphs 878 to 881.

21 I will also add the reference to the Ntaganda judgment handed down here:

22 (Speaks English)

23 "... the Chamber will examine the acts 'in their context and with consideration of their
24 cumulative effect'." (Interpretation) I will now move on to some of those acts of
25 persecution which, taken together, seriously violated the fundamental rights of the

1 population.

2 Al Hassan and the groups hunted down those who were wearing amulets and
3 talismans. According to them, these were heretics who practiced magic and
4 witchcraft.

5 I will give you examples:

6 There was man who was arrested because he was wearing a talisman, he was
7 sentenced to 40 lashes of the whip.

8 There is also the case of another man who was surprised, and I quote in French,
9 because he was "practicing witchcraft". And I continue to quote, "his life was
10 spared", end of quote, because he had confessed to practicing magic. He was
11 sentenced to one week's imprisonment, during which he was compelled to memorise
12 a book on the vision of the groups.

13 There was another man who was convicted by the Islamic tribunal for practicing
14 magic and witchcraft. He received a sentence of 40 lashes of the whip.

15 The groups also imposed their manner of praying.

16 P-1207 was arrested and taken to prison because she had not prayed with them. She
17 spent four days in prison. On the last day of her detention she received 10 lashes of
18 the whip, before being released. This is an excerpt of her interview before the
19 Malian judge:

20 "One day, when I was going on an errand, I found a jihadist praying. My return
21 coincided with the end of their prayers. They asked me why I had not prayed with
22 them. I told them that I had already prayed. They took me to the prison where I
23 spent four days. Before releasing me on the fourth day they administered 10 lashes
24 of the whip on me and which has caused health problems that I have on my neck."

25 Al Hassan and the groups imposed a new code of conduct which changed social

1 practices and the dress code, and they also affected education, sexuality, and the
2 ownership of property. They controlled information and used the radio stations as
3 a propaganda tool. The radios only broadcast sermons and religious music. They
4 prohibited any mingling between men and women.

5 There was a judgment of a woman who received 60 lashes for having associated with
6 men and for indecent language.

7 An article which corroborates this incident indicates that she had spoken with men in
8 the street.

9 The population no longer had the liberty to dress the way they wanted. Women
10 were locked up for having -- or, rather, men were locked up for smoking cigarettes.

11 When it comes to education, P-538 testified, and I quote:

12 "They ordered all the schools to be shut down and people had to go to Koranic
13 schools to learn the Koran." End of quote.

14 Al Hassan and the groups also prohibited cultural activities such as music and dance,
15 and this had consequences on marriages, for example, which were no longer
16 celebrated in joy because they were no longer considered as feasts.

17 They destroyed and burned ancient manuscripts dating several centuries. This
18 constituted the documentary and unique heritage of the history and humanity of the
19 population.

20 You can see on this video the manuscripts and documents burnt by the groups.

21 (Viewing of the video excerpt)

22 MS SARDACHTI: [10:28:55](Interpretation) Al Hassan and the groups prohibited
23 certain religious practices and celebrations dear to the population and which had
24 been practised over the centuries, such as Maouloud.

25 P-654 stated in paragraph 108 of his statement as follows:

1 "The Muslim community approached the jihadist in order to celebrate the feast, and
2 the imam contacted Houka Houka the Islamic judge. The judge asked that evidence
3 should be provided that Maouloud was a Muslim feast. There was a meeting and, in
4 the following days, the imam informed the Muslim community that Maouloud would
5 not take place for the first time in centuries."

6 They destroyed statuettes, as you can see on this video.

7 (Viewing of the video excerpt)

8 MS SARDACHTI: [10:30:32] (Interpretation) They erased images of any human
9 representation on walls or on signs.

10 And finally, as a final example of the persecution that occurred, I would like to
11 mention the destruction of the mausoleums.

12 As you know, these attacks were crimes under the Rome Statute, and my colleague
13 Ms Sacchi has already given a presentation on that topic yesterday.

14 But, first of all, I would like to look at this issue from a different angle from that of
15 religious persecution, because this deals with all aspects of the crime.

16 Initially, the members of the groups forbid prayers and religious practices alongside
17 the graves and mausoleums of Muslim saints.

18 P-65 gave a statement, and at paragraph 215 he said, and I quote:

19 "... Friday before the destruction of the mausoleums began, the members of the armed
20 groups went to the cemeteries and told people that they should not venerate the
21 mausoleums. They wanted to change people's mentality in Timbuktu and stop them
22 from their traditional way of doing things or of thinking because they thought it was
23 a form of polytheism."

24 End of quote.

25 The population continued to go to the mausoleums to pray and, thus, the groups

1 ultimately destroyed the mausoleums, as you were able to see in the last presentation.

2 As for the impact of the destruction on the population, one witness, P-114, said at

3 paragraph 135, and I quote in English: (Speaks English)

4 "Everybody was demoralised after the mausoleums were destroyed. Some people

5 left town." (Interpretation) End of quote.

6 He also added, paragraph 136, and I quote: (Speaks English)

7 "They realised that their national heritage was lost." (Interpretation) Another quote,

8 from paragraph 137:

9 (Speaks English) "It was an aggression towards their faith." (Interpretation) End of

10 quote.

11 The evidence shows that the people of Timbuktu were considerably affected by these

12 events.

13 Here we see a photograph, we see a person who is praying beside a number of

14 mausoleums which have been reduced to ruins.

15 And these attacks really sum up various elements of crimes. They were an act of

16 persecution in of themselves, an indication of the group's motivation, their intent to

17 persecute, because they knew that these mausoleums were very important from

18 a social, cultural and religious viewpoint for the people of Timbuktu.

19 As for the reasons for these crimes, they were clearly religious in nature. For

20 example, please look at paragraph 81 of the decision in Al Mahdi, where the Chamber

21 pointed out that the crime had been committed for religious reasons. There was no

22 doubt in the Chamber's mind that the discriminatory religious grounds mentioned to

23 justify the destruction of these buildings was to be taken into account when assessing

24 the gravity of the crime.

25 By way of these attacks, they seriously violated several fundamental rights of the

1 civilian population, including the right to think freely, to follow their conscience, to
2 practice their religion.

3 I would like to close with a remark made by Witness P-431, paragraph 29. He said:

4 "The best way of defeating someone, shooting someone down is to beat him down
5 culturally, that is what is important. The terrorists who took control of northern
6 Mali attacked the very soul of Timbuktu, the city's collective memory and the
7 practices associated with the religious properties and classes."

8 He added, paragraph 32, "with these prohibitions and the destruction of these
9 buildings, nothing was left for the people of Timbuktu." End of quote.

10 Regarding the repression of new rules and prohibitions, the evidence shows that
11 those who did not follow the rules were to be beaten immediately, tortured, whipped,
12 placed in prison.

13 These were inhumane forms of punishment, disproportionate. And I refer you to
14 the presentation made by my colleague Raymond Sandoval.

15 The people were terrorised. They lived in danger and fear and ongoing threats.

16 They remained in their houses.

17 This was an offence against the inherent dignity of the people and the integrity of the
18 civilian population.

19 THE INTERPRETER: [10:36:15] Message from the interpreters: Excessive speed.

20 MS SARDACHTI: [10:36:20] (Interpretation) By these acts, Al Hassan and the
21 members of the groups violated several fundamental rights seriously, in particular,
22 the right to have and to practice one's own religion, one's own thoughts and one's
23 conscience.

24 Al Hassan and the groups violated this right by prohibiting --

25 THE COURT OFFICER: [10:36:52] I'm sorry to interrupt --

1 THE INTERPRETER: [10:36:53] Inaudible.

2 MS SARDACHTI: [10:37:00] (Interpretation) They violated their right to follow their
3 own religion. They violated this right by prohibiting certain religious practices and
4 celebrations and by destroying a number of places of worship. In particular, they
5 also violated the people's right to expression, to association and to gather together by
6 prohibiting gatherings, music and dance. They violated the ban on torture or cruel
7 treatment or punishment, for example, by whipping people, striking people,
8 amputation.

9 They violated the cultural rights of the people; in particular, there was the ban on
10 celebrating traditional festivals and celebrations. They destroyed the mausoleums.
11 They destroyed manuscripts, thus doing immeasurable harm to the cultural heritage
12 of the people. By way of these acts, they also violated the right to respective human
13 dignity.

14 Six, the crime of persecution is an umbrella crime, so to speak, because it requires
15 a nexus with one or other crimes. The need to attach such behaviour to any crime
16 coming under the Statute guarantees the level of seriousness of the crime.

17 Now, given that criminal conduct must be assessed in its entirety, the evidence shows
18 that Al Hassan's persecution of people, his behaviour, and that of his co-perpetrators,
19 these things were done in correlation with at least one of the crimes. Al Hassan and
20 the members of the groups took the population as their target, particularly when it
21 came to crimes such as torture, the crime of torture, as provided for in Article 7(1) and
22 Article 8(2)(c) of the Statute. An example: the man who was tortured after being
23 accused of selling alcohol.

24 The crime of outrage upon human dignity by way of humiliating and degrading
25 treatment as set out in Article 8(2)(c)(ii) of the Rome Statute. For example, the case

1 of P-1207, who was whipped and detained for four days because she refused to pray
2 with members of the groups as well as other war crimes and crimes against humanity
3 that are set out in paragraph 943 of our DCC.

4 Allow me to turn now to the criminal liability of Al Hassan. All the evidence shows
5 that Al Hassan is criminally liable for the crime of persecution.

6 As for the various modes of responsibility, I refer you to our filings and to the
7 presentation that will be given by my colleague Dianne Luping. She will be
8 speaking specifically to the modes of liability.

9 All the same, a few points:

10 Al Hassan was a full-fledged part of the common plan. This can be seen by his
11 actions at the time of the events, but also by his statements given to investigators.

12 The common plan included a number of things, such as, elimination of everything
13 that the members of these groups saw as being different to their ideological and
14 religious vision. So it was against this backdrop of oppression that the crime of
15 persecution was committed.

16 Mr Al Hassan was one of the chiefs of the Islamic police whose role was to implement
17 the new social standards that were brutally -- and any violation was brutally
18 punished by way of force and violence.

19 P-4 told us, and I quote in French:

20 "The members of the Islamic police went into the houses, the women were whipped,
21 property was taken from people, they cut people's trousers." End of quote.

22 P-150, a witness who was also a member of the groups, told us that Al Hassan's men
23 were told to hit people in the market in front of everyone and to confiscate any
24 prohibited --

25 * Al Hassan himself wrote reports for the Islamic police concerning offences against

1 the groups' vision of religion, including the use of amulets or magic or, in some cases,
2 adultery.

3 I shall give you an example. This report from the Islamic police signed by Al Hassan
4 himself, this report had to do with the arrest of a man who was, and I quote,
5 "practicing magic and using amulets."

6 Furthermore, Mr Al Hassan personally committed a number of acts that formed
7 persecution and also constituted crimes in of themselves. For example, he whipped
8 two men because they had drank alcohol.

9 Your Honours, playing his role as commissioner with the support of the Islamic
10 police, the evidence shows that Al Hassan targeted the civilian population of
11 Timbuktu, particularly those who did not believe in their ideological and religious
12 vision. This institutionalised violence was founded on a number of ideas on
13 a certain way of living.

14 For obvious reasons, your Honours, we call upon the bench to confirm the count of
15 persecution on religious grounds.

16 PRESIDING JUDGE KOVÁCS: [10:43:52](Interpretation) Thank you very much,
17 Madam Prosecutor.

18 We still have 15 minutes before our break at 11.

19 Mr Duterte, I believe you can move on to the next presentation on gender-based
20 persecution.

21 Please go ahead.

22 MR DUTERTRE: [10:44:12](Interpretation) Absolutely.

23 My colleague Sarah Coquillaud will now take the floor. And I believe she will only
24 be able to get through half of her presentation. But I'm sure, with your patience,
25 we'll be able to find an appropriate point to halt the presentation.

1 PRESIDING JUDGE KOVÁCS: [10:44:41](Interpretation) Of course.

2 MS COQUILLAUD: [10:44:56] (Interpretation) Good morning, your Honours.

3 My presentation will be mostly in open court. With your leave, I will occasionally,
4 well, twice, actually, need to go into private session, and during the private session
5 everything will have to be deemed as confidential in nature.

6 My presentation will deal with gender-based persecution. I will be speaking to
7 a number of topics.

8 First of all, the targeting of young girls and women for gender-based reasons in
9 a discriminatory fashion.

10 Secondly, the acts of persecution and the underlying actions and serious deprivations
11 of fundamental rights despite international law.

12 Third, the violent and inhumane application of the rules that were imposed. In
13 particular, I will be speaking to the systemic nature of the punishment and the
14 severity of the punishment.

15 And finally, the criminal liability of Al Hassan for the crime of persecution on the
16 basis of gender.

17 My first point has to do with the general persecution of the people and then the
18 specific persecution of women and young girls.

19 The armed groups that Al Hassan belonged to imposed very serious restrictions and
20 monitoring on nearly every aspect of life within Timbuktu. The women and girls of
21 Timbuktu suffered particularly when these groups came to power. Very quickly
22 they became the victims of restrictive measures: Limitations upon their rights and
23 freedoms, they were stigmatised, dress codes were imposed, certain activities were
24 prohibited, activities that, up until that time, had been deemed normal or habitual or
25 quite minor. They were harassed on a daily basis and were regularly subjected to

1 abusive, violent forms of punishment as well as degrading and humiliating measures.
2 The women and girls of Timbuktu were at the mercy of armed men. They were the
3 victims of rape as a form of punishment, particularly at the headquarters of the
4 Islamic police and of the *Hesbah*, but also organised rapes that had been organised by
5 these armed groups under the excuse or cover of being so-called marriages.
6 In actual fact, they were short-term unions for purely sexual reasons, unions that were
7 consummated with the threat of reprisals and with the threat of weapons.
8 The list of prohibitions and the new rules is far too long. I will just give you a few
9 examples:
10 For example, women and young girls had to wear the veil and clothing covering their
11 head and their bodies.
12 You can see here on this photograph, you can see a pamphlet that was distributed
13 throughout the streets of Timbuktu explaining exactly what was deemed to be proper
14 attire for women.
15 Women could no longer wear traditional clothing or jewellery. They were no longer
16 allowed to be alone with men to whom they were not married. They were not even
17 allowed to speak to their own brothers-in-law. They were not allowed to freely
18 leave their homes. They could no longer gather amongst themselves just even to
19 chat. They were not allowed to gather in public to speak about any topic at all.
20 They were not allowed to move about freely at night.
21 In some cases, women were no longer allowed to work.
22 At school, girls could no longer study with boys. And in primary school, the girls
23 had to sit behind the boys, at the back of the class.
24 The girls had to wear a veil as well. Women had to wear gloves at the market to pay
25 for anything bought from a male trader and to even receive the goods from the trader,

1 otherwise they would receive five lashes.

2 Here is a video in which we will hear a statement given from a woman from

3 Timbuktu.

4 (Viewing of the video excerpt)

5 MS COQUILLAUD: [10:50:55] (Interpretation) All these rules and all these

6 prohibitions were new for the people of Timbuktu.

7 Victim P-0553 said, and I quote:

8 "Before the rebels arrived, we did whatever we wanted to. With the arrival of the

9 rebels, things changed, people were no longer allowed to leave. They cracked down

10 on us. We had to be properly clothed; we were not allowed to wear pretty clothing.

11 They gave us a hard time because they said we were too pretty."

12 Al Hassan himself acknowledged in an interview that the people were not familiar

13 with these rules before the armed groups arrived. These measures which limited the

14 women's rights and freedoms, the violence that they were subjected to constituted

15 a true campaign, a campaign of assault.

16 Victim P-553 said this:

17 "The rebels kind of made fun of what the women were doing but they terrorised

18 the" --

19 THE INTERPRETER: Correction: "The rebels made fun of what the men were

20 doing. But they terrorised the women."

21 MS COQUILLAUD: [10:52:26] (Interpretation) One particular case of discrimination

22 was the spiritual leader Abdallah Al Chinguetti within a mosque in Timbuktu during

23 prayer, the spokesperson of Ansar Dine, Sanda Ould Boumama during a number of

24 interviews given to the press, or the preacher Abou Al Baraa, they were very clear

25 what the fate of women was to be, particularly during one sermon.

1 The message was crystal clear during the prayers in the streets.

2 Here's an example.

3 (Viewing of the video excerpt)

4 THE INTERPRETER: (Interpretation of the video excerpt)

5 "It is out of the question to forgive women from here who are not dressed properly.

6 And if you see someone, for example" --

7 THE INTERPRETER: (Interpretation) Correction:

8 "... if you see something on the ground and you pick it up, for example, if you see

9 a ring and you pick it up. If that happens, the person's hand will be cut off."

10 MS COQUILLAUD: [10:53:42] (Interpretation) Women and young girls were

11 targeted. And why? Because of gender-based reasons, as is mentioned in the

12 Rome Statute. Women were hunted down in the streets of Timbuktu, in the schools,
13 in the hospitals, and sometimes even in their very own homes.

14 This ongoing harassment was such that they could not live in peace. Women would
15 start and run away, even if they just heard the noise of a vehicle of the occupying
16 forces. Several women told us that their lives had changed radically because of these
17 new rules.

18 Victim P-547 said this:

19 "They didn't want to see us going about the city. I didn't dare leave the house.

20 I was shut up at home. I could not be seen in public. No matter what I did, no
21 matter how I dressed, they would say that I was not sufficiently covered."

22 This woman was living in an ongoing atmosphere of oppression, danger and fear.

23 Victims of a true campaign of persecution, tired, exasperated, the women and young
24 girls of Timbuktu demonstrated, expressing their anger, and they spoke out against
25 the violence and the abuse by members of the armed groups.

1 On 6 October 2012, approximately 200 women and young girls gathered together and
2 asked for their assailants to leave, including Mohamed Moussa, the head of the
3 *Hesbah*. They asked for a halt to the new rule about wearing the veil and they asked
4 that the prison for women be shut. All of this in vain, the violence and abuse
5 continued.

6 I will now move on to my third point, the sanctions in the case of the new rules not
7 being followed. I will speak specifically to the systematic nature of these forms of
8 punishment and the severity.

9 The checks were quite abusive in nature, quite often some members of the groups
10 would use these patrols as an excuse to touch the women saying that they were
11 checking how thick their clothing was or saying they were trying to determine what
12 the women had on underneath their veil. There were cases of blows struck, injuries,
13 whipping, or even detention.

14 The violations of the dress code, in particular, led to the members of the organisation
15 systematically responding violently whenever they dealt with these women and
16 young girls who were arrested, mistreated, humiliated, shut up in prison or subjected
17 to other forms of abuse.

18 P-538 said, and I quote:

19 "They went throughout the streets demanding women to cover up. They hit people.
20 I saw the rebels beating people up. I saw this happening with my own eyes." End
21 of quote.

22 Every day people were checked, monitored. And this was a form of psychological
23 violence, for the women primarily, but really for the entire population.

24 I will now play some video footage and you can hear what an inhabitant of Timbuktu
25 had to say about this:

1 THE INTERPRETER: (Interpretation of the video excerpt)

2 "We had no longer any dignity. Our dignity had been sold, because they hit your own
3 wife right in front of you, they would hit your sister right in front of you. You could
4 say nothing. They would hit your own mother right in front of you. You could" --

5 MS COQUILLAUD: [10:58:18] (Overlapping speakers)

6 THE INTERPRETER: [10:58:22] Overlapping speakers.

7 MS COQUILLAUD: [10:58:27] (Interpretation) I would suggest that I halt at this
8 particular point.

9 PRESIDING JUDGE KOVÁCS: [10:58:31](Interpretation) Yes, yes, we shall do that.
10 The session has now concluded.

11 We'll have a short break and we'll resume at 11.30.

12 THE COURT USHER: [10:58:48] All rise.

13 (Recess taken at 10.58 a.m.)

14 (Upon resuming in open session at 11.33 a.m.)

15 THE COURT USHER: [11:33:11] All rise.

16 Please be seated.

17 PRESIDING JUDGE KOVÁCS: [11:33:36] (Interpretation) Good afternoon once more,
18 ladies and gentlemen.

19 Madam, you have the floor.

20 MS COQUILLAUD: [11:33:44] (Interpretation) Thank you.

21 I state that we can proceed in open session, including the videos that will be played.
22 Before the break I was talking to you about the situation and the permanent controls
23 and checks and violence to women, and the climate of fear that existed permanently
24 at that time.

25 The leaders, such as Iyad Ag Ghaly and Abou Zeid, on several occasions were

1 informed of these facts by members of the crisis committee.

2 Witness 150 explained that these complaints were numerous and women were struck
3 in the streets and even at their homes. Iyad Ag Ghaly allegedly answered, saying
4 that he was aware of those acts, and went on to say that each regime had its benefits
5 and inconveniences.

6 Mr President, your Honours, just think about it for one moment what the daily fate of
7 the women and young girls in Timbuktu was between April 2012 and January 2013.

8 The persecution suffered by women and young girls resulted in multiple arrests,
9 detentions under inhuman and degrading conditions, floggings, sexual slavery and
10 rape.

11 This was the day-to-day experience of the inhabitants of Timbuktu at the time of the
12 events.

13 As for the arrests, those which particularly targeted women to begin with, Witness
14 P-125 describes the impact of these arrests on the population of Timbuktu and the
15 disarray which resulted therefrom. He explains as follows, and I quote:

16 "All these arrests hurt us. They arrested all unveiled women whom they saw or
17 those whom they considered to be inappropriately dressed when it came to their
18 criteria. They could follow them all the way to their homes. Why stop these old
19 women? Why stop a woman in front of her husband? Those people imposed their
20 version of Sharia on us. We did not agree but we were powerless." End of quote.

21 Now turning to the detentions, women were detained for up to 72 hours in cells of
22 2 square metres, quite often many of them in the same cell, under very hot conditions,
23 without access to health and under deplorable sanitary conditions.

24 Victim P-542 was arrested and detained at BMS and in their statement said the
25 following:

1 "The place was dirty. It smelled of urine all over the place. The room looked like a
2 toilet. There were cockroaches, worms and other types of insects in there." End of
3 quote.

4 This victim's eyes were blindfolded during the day and her wrists were tied up, and
5 she would reply to nature's call there and on the spot "because she had no choice."
6 End of quote.

7 In one of the videos produced, an inhabitant of Timbuktu points to the building
8 hosting the Islamic police, and the entrance to what she referred to as "the women's
9 nightmare". Let's now listen to her.

10 (Viewing of the video excerpt)

11 THE INTERPRETER: [11:38:19] (Interpretation of the video excerpt)

12 "A woman who wasn't wearing a veil would be brought here and kept for 4, 5, to 6
13 days, in a cell. With no access to food, or to the toilet. Often there would be 12 or
14 13 of them in there. And they would spend the entire day crying. And no one
15 would be able to come and assist them."

16 MS COQUILLAUD: [11:38:40] (Interpretation) This is the illustration of the
17 disproportionate sanctions that the people of Timbuktu had to face. A woman could
18 be arrested for simply not wearing a veil, flogged, and detained in an unhealthy
19 environment of 2 square metres, smelling of urine, and under hot conditions of up to
20 30 or 40 degrees, and would even be raped by one or several members of the armed
21 groups.

22 It is difficult to provide a number of rapes that was committed by the members of the
23 armed groups in Timbuktu, mainly because of the women's hesitation to tell these
24 stories for fear of being stigmatised by their families and their husbands.

25 At the time of the events it must also be noted that the police activities were executed

1 by members of the armed groups who are the very ones who were being accused of
2 sexual violence. Members of the armed groups were regularly present at the city
3 hospitals. That is why we can understand how victims are afraid of testifying about
4 the sexual violence and the total lack of power to deal with any such matters and
5 getting assistance from any source, be it medical, police, or judicial.

6 There was no institution, absolutely none, to which these victims could turn.

7 When it comes to sexual enslavement and rape, the women and girls of Timbuktu
8 were also victims of rape within the context of what was referred to marriage, and
9 usually short-term marriages. Which, as you heard before, were simply an excuse or
10 a cover for what was actually abductions and rapes of women.

11 These include issues that involved Mr Al Hassan, who himself was active in finding
12 women for Ansar Dine and AQMI persons for the reasons satisfying what was
13 referred to as their needs.

14 The Islamic tribunal, so to speak, also legalised some of these activities of rape, forced
15 marriages and rape.

16 Several witnesses talk about these cases of forced marriage and rape, including
17 collective or joint or group rapes.

18 In fact, Witness P-004 stated that certain women had been forced into such marriages
19 and they were often forced to have several husbands.

20 Mr President, your Honours, beyond the criminal nature of these acts there was also
21 an incommensurable amount of violation of the fundamental rights of the women and
22 girls of Timbuktu. These very severe restrictions on almost all the aspects of the
23 lives of women and young girls, put together and considered cumulatively,
24 amounted to serious violations of their fundamental rights. The violations of these
25 rights are several and I refer you to paragraph 884 and 885 of the DCC.

1 Let me, however, refer to a very specific and concise example here, and for that
2 purpose I would like to apply to go into private session briefly for one to two
3 minutes.

4 PRESIDING JUDGE KOVÁCS: [11:42:59] (Interpretation) Madam court officer,
5 please can we go into private session.

6 (Private session at 11.43 a.m.)

7 THE COURT OFFICER: [11:43:13] We are in private session, Mr President.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Open session at 11.44 a.m.)

22 THE COURT OFFICER: [11:44:28] We are back in open session, Mr President.

23 PRESIDING JUDGE KOVÁCS: [11:44:37] (Interpretation) Thank you.

24 MS COQUILLAUD: [11:44:39] (Interpretation) Thank you.

25 My fourth and last point is on the criminal responsibility of Mr Al Hassan under

1 Article 25(3)(a), (b), (c) and (d).

2 Between early April 2012 and January 2013, Al Hassan and his co-perpetrators
3 executed a common plan with a view to settling their power and control over the
4 town, the region, and on the civilian population and with a view to imposing their
5 own ideological and religious vision on the population by all means.

6 Implementation of that crime led, in the ordinary course of events, to the commission
7 of abuses and multiple violations of human rights as well as crimes that are charged
8 in this case, including persecution.

9 Al Hassan made an essential contribution to this common plan. He acknowledged
10 that his co-perpetrators and members of the organisation, including himself, imposed
11 their vision by sanctioning or punishing persons who appeared to not adhere to their
12 vision.

13 Al Hassan also admitted that their vision was imposed to people who objected by the
14 use of force, and also went on to say that the people were not aware of the nature of
15 the chastisement that was used for those purposes.

16 Al Hassan knew that persons who did not respect the vision of their organisation
17 were investigated, prosecuted and sanctioned. He knew because he was at the same
18 time in charge of many things: He acted directly as an investigator. He drafted and
19 signed police reports that led up to prosecution. He referred several cases to the
20 Islamic tribunal for which he asked for punishment, and he himself also participated
21 in the flogging of several victims.

22 Al Hassan knew that agents of the police of the Islamic police during their patrols
23 would correct what was referred to as the deviant behaviour of the women.

24 Al Hassan justified the detention of a woman who was arrested simply because she
25 wasn't properly covered.

1 Al Hassan participated in the marriage system which led to non-consensual sexual
2 relations, which amounts to sexual enslavement and other inhuman acts, by helping
3 members of the organisation to get money to pay the dowries and also acting a
4 mediator in the so-called marriages where women were constrained to marry
5 members of the organisation.

6 Al Hassan knew full well that the implementation of the ideology of his group
7 targeted all the women of Timbuktu because they were women and that it was
8 particularly an act of discrimination against them. As well as the implementation of
9 such a multiplicity of prohibitions were implemented by Al Hassan.

10 At the beginning of my presentation I referred to the cases of Abdallah Al Chinguetti,
11 Sanda Ould Boumama and Abou Al Baraa in this connection.

12 At this juncture - and this will be the last time - I would like to ask that we go briefly
13 into private session for about 5 minutes.

14 PRESIDING JUDGE KOVÁCS: [11:48:56] (Interpretation) Can we go into private
15 session, court officer.

16 (Private session at 11.49 a.m.)

17 THE COURT OFFICER: [11:49:11] (Interpretation) We are in private session,
18 Mr President.

19 (Redacted)

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- 24 (Redacted)
- 25 (Open session at 11.52 a.m.)

1 THE COURT OFFICER: [11:52:01] (Interpretation) Mr President, we're in open
2 session.

3 PRESIDING JUDGE KOVÁCS: [11:52:12] (Interpretation) Thank you very much.
4 Please proceed.

5 MS COQUILLAUD: [11:52:14] (Interpretation) Mr President, your Honours, clearly
6 the evidence points to Mr Al Hassan's active participation in the persecution of
7 women and young girls in Timbuktu based on a religious and ideological vision
8 which he embraced. He is responsible for the crimes and all other fundamental
9 underlying violations of rights which together constitute elements amounting to
10 persecution pursuant to the Rome Statute.

11 That puts an end to my presentation and I will now hand the floor to
12 Ms Yayoi Yamaguchi to continue.

13 PRESIDING JUDGE KOVÁCS: [11:53:09] (Interpretation) Thank you.
14 (Pause in proceedings)

15 PRESIDING JUDGE KOVÁCS: [11:54:31] (Interpretation) You have the floor,
16 Madam Prosecutor.

17 MS YAMAGUCHI: [11:54:36] Thank you, Mr President. I intend to remain in
18 public session for most of my presentation, but at one point I will have to request we
19 go briefly into private session. Except for slide 12, which I will show during private
20 session, I request that all the slides be broadcast publicly.

21 Mr President, your Honours, my presentation will cover the law, the facts and the
22 Prosecution's sample evidence with regard to contextual elements of crimes against
23 humanity charged under Count 1, 2, 8, 9, 11 and 13 of our Document Containing the
24 Charges or the DCC. I will also seek to address some of the issues raised by the
25 Defence in their written submissions filed last Thursday. I expect my submissions to

1 last approximately 35 minutes.

2 The Prosecution submits at the outset that the evidence it has collected establishes
3 substantial grounds to believe that the crimes against humanity charged in the DCC
4 occurred in the context of widespread and systematic attack directed against the
5 civilian population in Timbuktu and its region by Ansar Dine and AQIM. The
6 evidence as a whole also establishes that at all times material to the charges
7 Mr Al Hassan knew and intended his conduct to be part of this attack.

8 As shorthand I will be referring to Ansar Dine and AQIM as "the groups", the
9 institutions created by the groups, such as the Islamic police, as "the organs", and
10 members of the organs and the groups operating in Timbuktu and its region as "the
11 organisation" during this presentation.

12 I will structure my submissions as follows:

13 I will address the four key contextual elements of crimes against humanity which are
14 attacks directed against any civilian population; the widespread or systematic nature
15 of the attack; the nexus between the acts and the attack; and finally Al Hassan's
16 knowledge or intent regarding this nexus.

17 For each element I will offer a few comments on relevant statutory provisions or case
18 law and then I will refer to the facts and the Prosecution's sample evidence with
19 respect to each element.

20 I will start with the attack directed against a civilian population which is discussed in
21 section 6.1 of the DCC. According to paragraph 3 of the introduction to Article 7 of
22 the Statute in the Elements of Crimes, attack directed against a civilian population is
23 understood to mean, and I quote, "a course of conduct involving the multiple
24 commission of acts referred to in Article 7, paragraph 1, of the Statute against any
25 civilian population, pursuant to or in furtherance of a State or organisational policy to

1 commit such attack."

2 According to the case law, the term "multiple commission of acts" has been
3 interpreted to mean "more than a few", "several", or "many" acts. In this case the
4 Prosecution has identified a total of about 300 incidents of violence (Overlapping
5 speakers)

6 THE INTERPRETER: [11:58:21] Request from the Arabic booth, Mr President, could
7 the Prosecutor kindly slow down. Request from the Arabic booth.

8 MS YAMAGUCHI: [11:58:31] (Overlapping speakers) civilian population of
9 Timbuktu and its region during the period relevant to the charges. This includes the
10 incidents discussed during previous presentations by my colleagues.

11 In fact the incidents specifically included in our charges in this case represent only a
12 portion of the crimes committed.

13 PRESIDING JUDGE KOVÁCS: [11:58:54] (Interpretation) Madam Prosecutor, I'm
14 sorry to interrupt you, but please kindly slow down. Thank you.

15 MS YAMAGUCHI: [11:59:04] Thank you, your Honour.

16 In fact the incidents specifically included in the charges in this case represent only a
17 portion of the crimes committed during the period of control of Timbuktu and its
18 region by the groups. These incidents are meant to represent a sample of the
19 victimisation suffered by the local population.

20 As explained in paragraph 161 of the DCC we have collected evidence on the
21 following incidents:

22 About 140 cases of arrest and detention, including women detained in inhuman
23 conditions; about 70 cases of floggings and other types of physical violence; about 40
24 cases of forced marriages and/or sexual slavery; about 20 cases of rape, attempted
25 rape and other forms of sexual violence in detention; attacks against about 20

1 religious buildings and two historic monuments; and finally, instances of passing of
2 sentences without due process.

3 Incidents falling under the categories 1 to 5 are listed in our annexes A to E to the
4 DCC. And the evidence on these incidents includes witness statements, reports of
5 the Islamic police, judgments of the Islamic tribunal, Malian judicial documents,
6 videos and photos taken at the time of the events. And some incidents are
7 corroborated by multiple sources, including Mr Al Hassan himself.

8 The incidents we have identified amount to one or more of the following acts referred
9 to in Article 7(1) of the Statute: Persecution, torture, rape, sexual slavery, other
10 inhuman acts, including forced marriage, imprisonment or other severe deprivation
11 of physical liberty.

12 Your Honours, I would like to make one important clarification with regard to this
13 element.

14 Acts referred to in Article 7(1) of the Statute as crimes against humanity do not
15 explicitly include attacks against protected buildings or passing of sentences without
16 due process. These acts are only specifically included as war crimes under Article 8
17 of our Statute. However, it is our submission that these acts formed part of the crime
18 against humanity of religious persecution under Article 7(1)(h) of the Statute.

19 And as clarified in the Trial Chamber judgment in the Ntaganda case issued this
20 Monday, when assessing which acts will result in the severe deprivation of
21 fundamental rights constituting persecution, the acts must be examined in their
22 context and with consideration of their cumulative effect. And I refer you to
23 paragraph 992 of the trial judgment.

24 This morning my colleague Marie-Jeanne Sardachti has already described how the
25 destruction of mausoleums and historic monuments was committed in the context of

1 the groups' persecutory campaign against the population which they perceived to be
2 not adhering to their own religious vision.

3 With regard to passing of sentences, as discussed yesterday, the Islamic tribunal
4 installed in Timbuktu was not a regularly constituted court affording essential judicial
5 guarantees. Rather --

6 THE COURT OFFICER: [12:03:11] Could you please slow down a bit. Thank you
7 very much.

8 MS YAMAGUCHI: [12:03:16] Sorry.

9 Rather, it was a tool of control and oppression by the groups. Passing of sentences
10 by this irregularly constituted court was part and parcel of the organisation's strategy
11 to impose on the population their ideological and religious vision, which added to
12 severe deprivations of fundamental rights and freedoms of inhabitants.

13 Accordingly, both attacks against protected buildings and passing of sentences
14 without due process formed part of the crime against humanity of religious
15 persecution, and as such, we invite you to consider them as part of the acts
16 underlying the attack directed against the civilian population in Timbuktu and its
17 region.

18 In any event, each taken at its lowest, the evidence collected by the Prosecution
19 demonstrates a sufficient number of incidents to satisfy the requirement for multiple
20 commission of acts as interpreted in the case law of this Court.

21 Turning now to the requirement that the attack be directed against any civilian
22 population, according to the consistent case law, the civilian population must be the
23 primary object of the attack.

24 The evidence in this case establishes that it was the civilian population which was the
25 primary object of the attack. Shortly before the arrival of the groups in Timbuktu,

1 Malian armed forces had already abandoned the city. The large majority of victims
2 of violence and persecution were civilians who stayed behind, in particular, women
3 and children.

4 In this regard, your Honours, we do acknowledge that there is evidence on a limited
5 number of acts of violence committed against members of the groups themselves.

6 For example, in August 2012 a member of the Islamic police accused of adultery or
7 extramarital relationship was subjected to the punishment of 100 lashes pursuant to a
8 judgment of the Islamic tribunal.

9 In this regard, I refer you to paragraph 371 of the DCC.

10 However, our evidence also shows that the groups sometimes gave a preferential
11 treatment to one of their own and efforts were made to exempt them from the
12 application of harsh punishments.

13 This is an excerpt of the transcript of Mr Al Hassan's interview with the Prosecution.

14 According to Mr Al Hassan, when his uncle, who was a member of Ansar Dine, was
15 arrested for selling the weapons belonging to the group, he contacted a cousin who
16 knows Iyad Ag Ghaly, the top leader of Ansar Dine. Mr Al Hassan asked his cousin
17 to seek pardon from Iyad Ag Ghaly on behalf of his uncle. After a meeting between
18 his cousin and Iyad Ag Ghaly, his uncle was indeed pardoned and was not subject to
19 punishment.

20 Your Honours, before referring to another relevant piece of evidence, I would like to
21 request that we go into private session for approximately 2 minutes.

22 PRESIDING JUDGE KOVÁCS: [12:07:10] (Interpretation) Court officer, let us go into
23 private session, please.

24 (Private session at 12.07 p.m.)

25 THE COURT OFFICER: [12:07:25] (Interpretation) We are in private session,

1 Mr President.

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21 (Redacted)

22 (Open session at 12.09 p.m.)

23 THE COURT OFFICER: [12:09:19] (Interpretation) We are back to open session,

24 Mr President.

25 PRESIDING JUDGE KOVÁCS: [12:09:25] (Interpretation) Please proceed, Madam

1 Prosecutor.

2 MS YAMAGUCHI: [12:09:30] (Overlapping speakers) organisational policy, starting
3 with the concept of organisation. According to the case law, for an entity to
4 constitute an organisation for the purpose of Article 7 of the Statute it must, and I
5 quote, "have a set of structures or mechanisms, whatever those may be, that are
6 sufficiently efficient to ensure the coordination necessary to carry out an attack
7 directed against a civilian population." End of quote.

8 Members of the organs and the groups operating in Timbuktu and its region
9 constituted an organisation within the meaning of Article 7 of the Statute. They had
10 an internal hierarchy, rules and resources which enabled them to conduct sustained
11 military operations and also to govern an important part of the territory in Mali,
12 including Timbuktu and its region for a period of almost 10 months.

13 The evidence also shows that was an important level of coordination among members
14 of the organisation. You may recall the presentation on the call data records which
15 showed frequent communications among them. In addition, as explained during
16 previous presentations, some operations such as destruction of mausoleums and
17 public floggings were conducted in a particularly organised manner with the
18 involvement of various organs created by the groups.

19 I will now turn to the policy component. According to the case law, the existence of
20 policy may be inferred from a number of factors, including, for example, a recurrent
21 pattern of violence; the involvement of the State or organisational forces in the
22 commission of crimes and statements, instructions or documentation condoning or
23 encouraging the commission of crimes.

24 In this case, the organisation had a policy to attack the civilian population in
25 Timbuktu and its region. And this can be inferred from several factors.

1 Firstly, the crimes were committed pursuant to a common *modus operandi* throughout
2 the period relevant to the charges. Members of the organisations, in particular the
3 Islamic police and the *Hesbah*, would conduct patrols day and night and track down
4 those who violated the new rules. Some were flogged on the spot, others were taken
5 to the headquarters of the police or the *Hesbah* and faced punishment there, yet others
6 were arrested, detained, interrogated and referred to the Islamic tribunal for trial that
7 did not meet basic standards of due process.

8 Where the sentence given by the tribunal included public floggings, the victim would
9 be brought to a public venue where the population was gathered for the occasion,
10 with the Islamic police, the *Hesbah*, and the security battalion in charge of controlling
11 the crowd. Typically the judgment of the Islamic tribunal was then read out by a
12 member of the *Hesbah* and the punishment was carried out in front of key members of
13 various organs, including in many cases Mr Al Hassan.

14 In this regard, your Honours, the Prosecution refers you to paragraph 190 of the DCC.

15 Secondly, as I have just described, the organs created by the groups were involved in
16 the commission of many of the crimes. In particular, the Islamic police, the *Hesbah*
17 and the Islamic tribunal worked closely together in pursuance of the policy of
18 the organisation to attack the civilian population.

19 Thirdly, from the beginning of their control of Timbuktu key leaders, including
20 Iyad Ag Ghaly, made statements promoting or encouraging this attack against a
21 civilian population.

22 This is a speech made by Iyad Ag Ghaly published on 4 April 2012, so just a few days
23 after the arrival of the groups in Timbuktu. The original in Arabic is on the right and
24 its English translation is on the left of your screen.

25 Iyad Ag Ghaly stated that their goals included, and I quote, "establish the rule of

1 religion", end of quote, and in order to achieve their goals they are waiting to use, and
2 I quote, "all possible and legitimate means", end of quote.

3 Another speech made by Iyad Ag Ghaly in November 2012 makes clear what he
4 meant by possible and legitimate means.

5 This is a translated transcript of the audio recording of his speech made in
6 November 2012. He stated, and I quote in French:

7 (Interpretation) "We established that there were people here and there smoking
8 cigarettes. We administered punishment, chopped off the hand of a thief."

9 (Speaks English) Other key members of the organisation also publicly condoned and
10 encouraged an attack against the civilian population. For example, at the end of

11 April or the beginning of May 2012 the organisation attacked the monument Al
12 Farouk, which is a symbol of patron saint and protector of the city of Timbuktu.

13 In this video published on 6 May 2012 Sanda Ould Boumama, the spokesperson of
14 Ansar Dine, explained why they attacked this monument.

15 (Viewing of the video excerpt)

16 MS YAMAGUCHI: [12:16:48] The Prosecution submits that all these factors taken
17 together support an inference that the organisation had a policy to commit an attack
18 against the civilian population in Timbuktu and its region.

19 Now let me be clear: Contrary to what the Defence suggests in paragraphs 77 to 85
20 of their written submissions, the Prosecution is not arguing that the implementation

21 of a particular system of law or religion in itself amounts to an attack against the
22 civilian population. But when an armed group takes control of a territory and

23 imposes on an entire population new harsh rules by way of violence and force that

24 can indeed amount to an attack against the civilian population. And in this case that

25 is exactly what happened in Timbuktu and its region. And that is why the crimes

1 charged against Mr Al Hassan amount to crimes against humanity under our Statute,
2 and his case merits a trial before this Court.

3 I will now turn to the second key contextual element which is the widespread or
4 systematic nature of the attack discussed in 6.2 of the DCC.

5 The Statute provides that the attack against the civilian population must be either
6 widespread or systematic. In this case however our evidence demonstrates that the
7 attack against the civilian population was both widespread and systematic.

8 According to the case law, widespread connotes the large-scale nature of the attack
9 and the large number of targeted persons. As discussed earlier in relation to

10 multiple commission of acts, the Prosecution has collected evidence on about 300
11 incidents of violence and persecution committed against civilians in Timbuktu and its
12 region. But beyond these incidents, the crime of persecution affected the civilian
13 population as a whole who lived in an atmosphere of fear, oppression and
14 humiliation.

15 The impact on women was particularly extensive as described by my colleague in the
16 previous presentation. The repression on women affected so many that it even led
17 to a demonstration by women in October 2012.

18 This is an excerpt from the statement of P-654. He stated in paragraph 63 of his
19 statement, and I quote in French:

20 (Interpretation) "Women started breaking or pushing back because there was too
21 many abuses. The team of Mohamed Moussa was troubling all the women, children,
22 girls and young girls. No one was spared. The march that they organised in
23 Bellafarandi moved on to the morality brigade at the BMS."

24 (Overlapping speakers) (Speaks English) is corroborated by a newspaper article dated
25 8 October 2012. According to this article, about 200 women decided to demonstrate

1 against the *brigade des mœurs* or the *Hesbah*.

2 In addition to the large number of victims concerned, the attack had a large
3 geographical scope. And the evidence shows, for example, that the authority and
4 activities of the organs went beyond the city of Timbuktu.

5 For example, this is a report of the Islamic police entitled "magic or amulets case".

6 Your Honours can see the original in Arabic on the right and its English translation on
7 the left. According to this report a man accused of sorcery was arrested in the town
8 of Lere, which is located over 200 kilometres from the city of Timbuktu.

9 Another report of the Islamic police entitled "adultery" case shows the same. Again,
10 you see the original in Arabic on the right of the screen and its translation in English
11 on the left. According to the report, the residence of one of the accused persons and
12 the location of the crime is Goundam, which is town about 85 kilometres from the city
13 of Timbuktu.

14 In October 2012 the organisation also destroyed mausoleums Cheick Nouh and
15 Cheick Ousmane Alkabir in Kabara, about 8 kilometres from the city of Timbuktu.

16 In this audio recording of the reporting on a French international radio dated
17 18 October 2012 an inhabitant talks about what happened that morning. And you
18 see the transcript on the screen.

19 (Playing of the audio excerpt)

20 MS YAMAGUCHI: [12:23:06] Now, to give you an idea of the distances, here's a
21 map of the Timbuktu region. On the right-hand near the upper corner you see a
22 white circle with a black dot which indicates the city of Timbuktu. Just beneath we
23 have Kabara and then Goundam and all the way down toward the left we have Lere.
24 The widespread nature of the attack is also demonstrated by the fact that it lasted for
25 a period of almost 10 months. For example, the Prosecution is in possession of 36

1 judgments of the Islamic tribunal covering the period from June 2012 to January 2013,
2 imposing corporal punishments such as floggings and punishing conduct which is
3 normally a legitimate exercise of fundamental rights and freedom, as adultery or
4 magic.

5 For a list of these judgments I refer you to paragraph 435 of the DCC.

6 Acts of violence and persecution are also reported by witnesses and other sources
7 throughout the period relevant to the charges. And, your Honours, in this regard I
8 refer you to the list of incidents in annexes A to E to the DCC.

9 With respect to the systematic nature of the attack, according to the case law, the term
10 "systematic" reflects, and I quote, "organised nature of the acts of violence and the
11 improbability of their random occurrence". End of quote.

12 The Prosecution submits that the facts in evidence discussed in relation to the policy
13 component equally demonstrates the organised nature of the acts of violence and
14 persecution.

15 But this can also be inferred from the existence of written instructions. As discussed
16 by my colleagues during yesterday's presentation, there were at least two documents
17 issued by Governor Abou Zeid, which provided guidance on how to deal with
18 different types of violations of their rules, as well as what sanctions should be applied,
19 including the use of physical violence.

20 Your Honours, these facts and evidence clearly demonstrate that the attack directed
21 against the civilian population in Timbuktu and its region was not only widespread
22 but also systematic.

23 I will now discuss the third key element, the nexus between the acts and the attack
24 against the civilian population, discussed in section 6.3 of the DCC.

25 The case law has consistently indicated that in order to establish the nexus we must

1 look at the characteristics, aims, nature and/or consequences of the acts.

2 The crimes charged under Counts 1, 2, 8, 9, 11 and 13 were clearly connected to the
3 attack against the civilian population. Firstly, they occurred during the period of
4 control of Timbuktu and its region by the groups. They were committed by
5 members of the organisation against members of the civilian population; second, they
6 pursued the same aim of assuming control and power and imposing ideological and
7 religions vision by the groups on the population by any means; third, they were of
8 violent and repressive nature; and finally, they had the same consequences of
9 depriving of the population of numerous fundamental rights and freedoms.

10 I will turn to the fourth and final key element, namely knowledge or intent in relation
11 to this nexus, discussed in section 6.3 of the DCC.

12 The evidence demonstrates that Mr Al Hassan knew and intended his conduct to be
13 part of the widespread and systematic attack against the civilian population in
14 Timbuktu and its region. And this is supported by the facts and evidence relating to
15 the widespread and systematic nature of the attack which I have discussed earlier.

16 But also throughout the period relevant to the charges there was frequent public
17 reporting on the crimes committed by members of the organisation against members
18 of the civilian population. You may recall many videos and other contemporaneous
19 reporting on floggings and other crimes which we have shown you in the course of
20 our series of presentations.

21 In fact, from the beginning of their control of Timbuktu and its region, the
22 organisation itself actively disseminated information regarding the violent imposition
23 of their new, harsh rules on the population. For example, one of the organs created
24 by the groups was a media office which was in charge, among others, of controlling
25 the media, disseminating messages of the groups, and also filming and

1 photographing the execution of public punishments. It is precisely because they
2 wanted to use the media as a tool of propaganda and control. And that is also why
3 we have been able to show you as our evidence interviews given by key members of
4 the organisation publicly justifying their actions.

5 Your Honours, Mr Al Hassan was a member of the organisation and *de facto*
6 commissaire of the Islamic police, which was instrumental in this attack against the
7 civilian population. And he openly admitted his role in this context.

8 This is an excerpt of the statement of P-634, a journalist who was based in Mali at the
9 time relevant to the charges and who interviewed Mr Al Hassan multiple times. In
10 paragraph 65 of her statement she stated, and I quote:

11 "The first time I reached Al Hassan around September-October 2012, we spoke about
12 the general situation, punishments imposed for different crimes, or the arrest of
13 people and detention of women that upset people the most. He said he was
14 enforcing the rules that the jihadists put in place." End of quote.

15 In light of these facts it is clear that Mr Al Hassan knew and intended his conducted
16 to be part of the attack against the civilian population.

17 In conclusion, your Honours, the Prosecution submits that the evidence establishes
18 substantial grounds to believe that all contextual elements of crimes against humanity
19 are satisfied.

20 Unless you have any questions, this concludes my presentation. Thank you.

21 Just one small correction. With regard to the last slide, the witness pseudonym was
22 P-623. Apologies.

23 PRESIDING JUDGE KOVÁCS: [12:31:28] (Interpretation) Thank you very much.

24 Mr Duterte, who will be the next speaker from your team to present?

25 MR DUTERTRE: [12:31:41] (Interpretation) Yes, your Honour, Sandra Schoeters will

1 now make a brief presentation about the nexus.

2 PRESIDING JUDGE KOVÁCS: [12:32:03] (Interpretation) Very well.

3 I see that you're now ready. Please proceed.

4 MS SCHOETERS: [12:32:37] Your Honours, my presentation today will be public
5 and all of the slides that will be shown can be publicly broadcast.

6 I will first briefly mention the war crimes Mr Al Hassan has been charged with. I
7 will then show, one, that there was non-international armed conflict. And in this
8 context, I will address the degree of intensity of the armed violence and the degree of
9 organisation of those taking part in the conflict. I will then continue and show, two,
10 that Mr Al Hassan's criminal conduct took place in the context of and was associated
11 with this armed conflict, the nexus requirement. And three, that Mr Al Hassan was
12 aware of the factual circumstances establishing the existence of an armed conflict,
13 before coming to our conclusion.

14 Mr Al Hassan has been charged with war crimes of torture, cruel treatment, outrages
15 upon personal dignity, sentencing or execution without due process, attacking
16 protected objects, sexual slavery, and rape.

17 These war crimes can be found in Counts 3 to 7 and Counts 10 to 11 of the Document
18 Containing the Charges.

19 The crimes Mr Al Hassan has been charged with fall under Article 8(2)(c) and 8(2)(e)
20 because the conduct took place in the context of and was associated with an armed
21 conflict not of an international character. And Mr Al Hassan was aware of the
22 relevant factual circumstances.

23 The Appeals Chamber in Ntaganda has confirmed that none of these crimes requires
24 that the victim must have been affiliated to the adverse party to the conflict. And I
25 refer to ICC-01/04-02/06-1962, paragraphs 60 and 64 to 65.

1 Turning now to the existence of a non-international armed conflict.

2 A non-international armed conflict exists whenever there is protracted armed conflict
3 between governmental authorities and organised armed groups or between such
4 groups in a territory of a state. The two essential and cumulative elements
5 constituting a non-international armed conflict are established when, (a), a protracted
6 armed conflict takes place, which means that there is a certain degree of intensity of
7 armed violence and when, (b), those taking part in the conflict have a certain degree
8 of organisation.

9 These requirements are clearly met in this case. The evidence supporting this
10 conclusion, which is set out in our DCC at paragraphs 37 to 91, is sufficiently reliable
11 and credible for this purpose.

12 Let me now first turn to the degree of intensity. As of 17 January 2012 the armed
13 conflict in Mali had reached a degree of intensity that went beyond a situation of
14 internal disturbances and tensions or isolated and sporadic acts of violence. In less
15 than three months the northern part of country had come under the control of the
16 involved armed groups and they controlled it for almost 10 months.

17 The conflict broke out in January 2012 and continued during the temporal scope
18 covered by the charges, opposing, on the one hand, the Malian armed forces and
19 several organised armed groups, as well as, on the other hand, certain of these armed
20 groups amongst themselves.

21 The main armed groups involved are: *Al-Qaïda au Maghreb islamique*, AQMI,
22 qualified as armed group in the Al Mahdi case; Ansar Dine, qualified as armed group
23 in the Al Mahdi case as well; *Mouvement pour l'unicité et le jihad en Afrique de l'Ouest*,
24 MUJAO; and the *Mouvement national pour la libération de l'Azawad*, the MNLA.

25 This non-international armed conflict can be divided into two stages. The first stage

1 corresponds to the armed groups taking control of northern Mali. This period runs
2 over about three months. The first attack took place on 17 January 2012 with the
3 MNLA leading the operation against a military camp of Ménaka, in the north-east in
4 the region of Gao. As of then, the confrontations multiplied. They became frequent
5 and affected an ever growing zone. The operation on the military camp of Ménaka
6 was followed by attacks on the military Aguelhok in the region of Kidal. The
7 military camp of Aguelhok was taken on 24 January 2012 after a siege of one week,
8 culminating into the summary execution of dozens of soldiers who had their throats
9 cut or got a bullet in the head whilst their hands were tied behind their backs.

10 For details on the attack on Aguelhok, I refer your Honours to the statement of P-81 at
11 MLI-OTP-0012-1152, especially paragraphs 39 to 75.

12 Another Malian military base to fall was the base of Amachach in Tessalit. These
13 events and these losses affected the morale of the Malian troops and created a climate
14 of insecurity. The three big cities in the north came under control of the armed
15 groups at the end of March, beginning of April 2012: Kidal on 30 March 2012, Gao
16 on 31 March 2012, and Timbuktu on 1 April 2012.

17 The northern part of the country, almost two thirds of Malian territory, came under
18 control of the armed groups. For the first stage of the conflict I refer your Honours
19 to paragraphs 78 to 81 of the Document Containing the Charges and the evidence in
20 the corresponding footnotes.

21 The map on your screen right now shows the different attacks. The circles indicate
22 the attack on Ménaka and the takeover of Kidal, Gao and Timbuktu.

23 The second stage goes from April 2012 to January 2013, with the armed groups taking
24 control of the north and its towns and imposing their will and with different military
25 operations and or conflicts among the armed groups in order to obtain/keep exclusive

1 control over these territories. This stage ended around mid-January 2013 with the
2 French military intervention in the framework of *Opération Serval*.

3 While the Defence may suggest that direct confrontations between the parties to the
4 conflict were not geographically close to Timbuktu, this is not a relevant
5 consideration. A temporary strategic retreat to a more defensible position, especially
6 after some initial defeats, does not undermine the view that an armed conflict exists.
7 Rather, it tends to underline the perceived gravity of the military crisis which has
8 arisen.

9 In this context, while the Malian armed forces may have withdrawn even faster than
10 Ansar Dine and AQIM could advance, including from Timbuktu, this doesn't mean
11 that the groups' forcible takeover and control of territory was not an act integrally
12 associated with the conflict. It is undeniable that the government of Mali did not
13 voluntarily cede control of Timbuktu and other territory.

14 I will now address the degree of organisation of those taking part in the conflict. The
15 armed groups showed a sufficient level of organisation as of mid-January 2012 when
16 the first attacks were launched.

17 Ansar Dine, AQIM, MUJAO and the MNLA are structured armed groups. They
18 were able to plan and carry out coordinated military operations over a longer period
19 of time. Ansar Dine and AQIM had the military capacity to take Timbuktu and
20 thereafter exercise control and power over the city, its region and its civilian
21 population. They installed a form of government in Timbuktu from April 2012 to
22 January 2013, including by putting in place different institutions and by using
23 security battalions.

24 I refer to the Ntaganda trial judgment which was rendered on 8 July 2019.

25 Paragraph 717 of this judgment reads:

1 "The Chamber further recalls that exercise of control over a part of the territory is not
2 required for a group to meet the minimum level of organisation, but in the absence of
3 active hostilities, it has may a determinative factor in assessing whether the intensity
4 threshold in fulfilled."

5 At this point I would also like to mention the judgment in the Al Mahdi case covering
6 the same conflict in which Trial Chamber VIII was, and I quote, "satisfied that these
7 acts took place in the context of and were associated with a non-international armed
8 conflict between Malian Government forces and groups including Ansar Dine and
9 AQIM."

10 By these acts in the part of the Al Mahdi judgment I've just quoted, the Chamber
11 referred to the attack against the mausoleums and mosques. And just to be clear,
12 your Honours, we do not invite the use of the findings in Al Mahdi as an adjudicated
13 fact, but they do illustrate the Trial Chamber's confidence that the existence of the
14 conflict was established beyond reasonable doubt.

15 Turning now to the question of the nexus to the armed conflict, I refer your Honours
16 to paragraphs 95 to 100 of the Document Containing the Charges. It is settled law
17 that the conduct charged as a war crime must take place in the context and be
18 associated with an armed conflict of either international or non-international
19 character. While this requirement is important for delineating war crimes from
20 ordinary crimes, it is an essentially fact-sensitive determination.

21 The Appeals Chamber in Ntaganda adopted the case law of the ICTY in recognising
22 that numerous factors might be relevant to the Court's assessment of the nexus,
23 including "the fact that the perpetrator is a combatant; the fact that the victim is a
24 noncombatant; the fact that the victim is a member of the opposing the party; the fact
25 that the act may be said to serve the ultimate goal of a military campaign; and the fact

1 that the crime is committed as part of or in the context of the perpetrators' official
2 duties." And I refer to ICC-01/04-02/06-1962.

3 None of these factors is a *sine qua non*, but rather, they reflect potential aspects of a
4 determination on the particular facts of the case. There is clearly no requirement that
5 the alleged crimes were committed with a view to furthering the conflict, as the
6 Defence seems to suggest in its written submissions. Of course evidence that the
7 crime did in fact serve the objectives of an armed group supports the existence of a
8 nexus.

9 Other factors which may be relevant include the time and place of the perpetrators'
10 conduct. In that respect, to establish the nexus it is not necessary that the crime took
11 place, and I quote, "contemporaneously with or proximate to intense fighting", end of
12 quote. And here I refer to the Bemba judgment at paragraph 144.

13 In the same spirit, the Stakić Appeals Chamber at the ICTY noted that at least all acts
14 occurring in the, and I quote, "entire territory of the warring parties", end of quote,
15 might potentially have the requisite nexus. Stakić appeals judgment, paragraph 342.
16 The crimes charged in this case took place within the temporal and geographical
17 scope of the armed conflict. And I refer your Honours to paragraphs 93 and 94 of
18 the Document Containing the Charges.

19 With regard to the temporal scope of the armed conflict, the period in which the
20 charged crimes took place runs from the beginning of the month of April 2012 to
21 January 2013. As mentioned earlier on, the armed conflict broke out on
22 17 January 2012 and is actually still going on, despite of a peace agreement having
23 been signed in May 2015.

24 The crimes charged within the geographical scope of the armed conflict. The crimes
25 charged took place in Timbuktu while an armed conflict existed on the territory of

1 Mali during the period of the facts under consideration. At the beginning of
2 April 2012, the Malian army retreated from Timbuktu and the armed groups took
3 control of the town while performing activities a military nature and while different
4 attacks took place in the country.

5 There were attacks between Ansar Dine, AQIM and MUJAO on the one hand, and the
6 MNLA on the other hand. Such as the fighting in Kidal on 7-8 June 2012, in
7 Timbuktu on 13 June 2012, in Gao on 26-27 June 2012, and in Ansongo on
8 11 July 2012.

9 Military operations continued at the beginning of September 2012 when MUJAO
10 combatants took over the city of Douentza and the city of Ménaka.

11 From 8 to 14 January 2013 Ansar Dine, AQIM and MUJAO led an offensive towards
12 the south in the direction of the capital Bamako, with the battle of Konna on
13 10 January 2013.

14 I refer your Honours more specifically to paragraphs 84 to 89 of the Document
15 Containing the Charges and the evidence in the corresponding footnotes.

16 Putting aside the temporal and geographical scope, what is important is that the
17 conflict in some way prompted, enabled or facilitated the occurrence of the crime.

18 For example, in Katanga the Trial Chamber said that the armed conflict, and I quote,
19 "need not be considered to be the root of the conduct of the perpetrator", end of quote,
20 but may play a, quote, "major part of in perpetrator's decision, in his her ability to
21 commit the crime or the manner in which the crime was ultimately committed".

22 And I refer to paragraph 1176 of the Katanga judgment.

23 There can be no doubt that the nexus requirement is satisfied on the facts of this case.
24 Ansar Dine/AQIM were only in a position to act in the ways charged by virtue of the
25 non-international armed conflict, which meant that at that time the government of

1 Mali could no longer exercise its authority in Timbuktu. It is clear from the
2 circumstances prevailing elsewhere in Mali and both preceding and subsequent to the
3 material times that Ansar Dine/AQIM and the government of Mali were parties to a
4 non-international armed conflict. Ansar Dine/AQIM and other groups were
5 sufficiently organised and sufficiently powerful that they could displace the authority
6 of the government of Mali at the material times.

7 Furthermore, Mr Al Hassan himself was a member of Ansar Dine and the crimes that
8 we allege occurred in the context of his duties as a member of the group. They were
9 in that sense official acts and not his own private enterprise. They also reflected the
10 very purpose of Ansar Dine/AQIM and its key objective in the conflict, which was to
11 displace the government's control and authority over Malian territory and population
12 in order to change the religious, legal, and social norms by which the population lived.
13 Mr Al Hassan was instrumental in imposing that change.

14 I will now briefly address the second contextual element of war crimes, namely that
15 the perpetrator was aware of the factual circumstances of the armed conflict. I refer
16 you to paragraphs 101 to 106 of the Document Containing the Charges. The
17 perpetrators of the crimes under Article 8 in this case, Mr Al Hassan being one of
18 them, were aware of the factual circumstances that established the existence of the
19 armed conflict.

20 Given the extent of the conflict and its impact at the regional and international level,
21 and his own role, Mr Al Hassan could not have failed to have been aware of the
22 factual circumstances that established the existence of the armed conflict.

23 Mr Al Hassan knew that there was an armed conflict; he was part of Ansar Dine, a
24 group that was party to the armed conflict. And he applied the religious vision of
25 *the armed groups that was put forward during their armed conquest of northern

1 Mali, *in Timbuktu.

2 After he fled Timbuktu in January 2013 and his time abroad Mr Al Hassan
3 participated again in the activities of the armed groups in Mali from 2015 to
4 April 2017. Mr Al Hassan admitted that he had been implicated in the attacks
5 against the personnel, installations and units of MINUSMA. I refer to the
6 transcribed statements of Mr Al Hassan at MLI-OTP-0051-1067 at pages 1070 to 1082,
7 lines 91 to 478 and MLI-OTP-0060-1791 at pages 1803 to 1808, lines 384 to 573.

8 The members of the armed groups, including Mr Al Hassan himself, applied the
9 policy in name of the same objectives that had justified the armed conflict.

10 Following all of the above, your Honours, the Prosecution reaches the conclusion that
11 the contextual elements of war crimes has been established.

12 This concludes my presentation. Thank you.

13 PRESIDING JUDGE KOVÁCS: [12:54:23] (Interpretation) Thank you very much,
14 Madam Prosecutor.

15 I will now give the floor to Mr Dutertre, who will tell us who will be the next person.

16 MR DUTERTRE: [12:54:36] (Interpretation) Thank you, your Honour.

17 Dianne Luping will make the final presentation about modes of liability. This will
18 be a presentation that will straddle this session and the next one. Thank you very
19 much.

20 MS LUPING: [12:54:52] With your indulgence, Mr President, I just need a couple of
21 minutes.

22 PRESIDING JUDGE KOVÁCS: [12:55:03] (Interpretation) Yes, of course.

23 MS LUPING: [12:55:19] Good afternoon, Mr President, your Honours. My name is
24 Dianne Luping and I'll be addressing the topic of Mr Al Hassan's individual criminal
25 responsibility under Article 25.

1 Just for the information of the court officer, all of my slides that I'll be presenting may
2 be broadcast publicly, except there are a few slides that I will indicate to you in
3 advance that cannot be broadcast publicly but need to remain confidential, although
4 my oral presentation will remain in public session throughout. And I will also be
5 referring to the Prosecution's reference list of case law where relevant.

6 Your Honours, Al Hassan was a man of action, not only words. He was a willing
7 perpetrator and co-perpetrator who believed in the ideological and religious vision of
8 the organisation. He signed up to the organisation's goals and what it did. Fully
9 embracing his important role and functions within the Islamic police, Al Hassan was
10 a key implementer and enforcer who helped the organisation to implement its
11 common plan and its common purpose. He was active in everything that he did,
12 whether it was organising the police tasks at the headquarters; carrying out
13 investigations, with interrogations, street patrols; working with a broad range of cases
14 that impacted on nearly every aspect of the locals' lives; he referred cases to their
15 irregularly constituted tribunal; he punished those who broke their rules; and he
16 encouraged others to commit crimes.

17 Your Honours, I will deal with the four alternative modes of liability under Article 25
18 on which basis Al Hassan has been charged, namely: Article 25(3)(a), as a direct
19 perpetrator, direct and indirect co-perpetrator; under (b) for soliciting and inducing;
20 under (c) for aiding and abetting or otherwise assisting in the crimes; and under (d)
21 for in any other way contributing to crimes of the group acting with a common
22 purpose. And in response to the Chamber's question 22, the Prosecution is not
23 relying on the mode of liability of indirect perpetration.

24 Indeed, your Honours, Al Hassan directly perpetrated crimes himself as an
25 individual. He carried out acts of persecution and crimes such as torture and

1 ill-treatment. First, he flogged two men for drinking alcohol. And you've already
2 seen the footage, your Honours, the video footage that my colleague
3 Raymond Sandoval showed you of the suspect himself personally flogging two men.
4 And I refer to MLI-OTP-0018-0693-R01.
5 He flogged a man accused of adultery. I refer to section 7.1 of the DCC.
6 He directly committed other acts of persecution on grounds of both religion and
7 gender. He carried out punishments of civilians during patrols for so-called
8 breaches of their rules. You've seen the video, your Honours, where he admitted
9 that the ordinary work of the police included punishing people who broke their rules
10 about what people should wear and how they should behave. He admitted himself
11 that he went on patrols. I refer to paragraph 210 of the DCC. And just by way of
12 one example, he arrested Witness P-580 for selling cigarettes. And I refer to footnote
13 807 of the DCC.
14 Al Hassan is also criminally responsible for acts perpetrated by his co-perpetrators
15 and other members of the same organisation, including members not only of the
16 Islamic police but also of the *Hesbah*, the security battalions, the Islamic tribunal, and
17 other members of the organisation on the basis of both direct and indirect
18 co-perpetration.
19 And, your Honours, simply a reminder of the elements that the Prosecution is
20 required to prove. First, looking at the objective elements of both direct and indirect
21 co-perpetration, which are the same: a common plan or agreement between two or
22 more persons, as well as the suspect's essential contributions to that plan.
23 And although I'll be turning to this subsequently, it's simply a reminder at this stage,
24 the additional objective elements of indirect co-perpetration: Use of another person
25 for an organised hierarchical apparatus of power composed of fungible individuals;

1 and the joint control of the co-perpetrators exercised over the persons or the
2 organised hierarchy apparatus of power.

3 But turning to the first element, your Honours, and that's the common plan. Just a
4 reminder of what the Prosecution asserts that plan to be:

5 From early April 2012 until January 2013 Al Hassan and his co-perpetrators executed
6 a common plan aiming to assert their power and control over the town of Timbuktu,
7 its region and its civilian population, and to impose their own ideological and
8 religious vision on that population by all means, including by conduct which they
9 intended or knew in the ordinary course of events would result in the violations of
10 fundamental rights as well as the crimes charged in this case.

11 Now, your Honours, in response to the Chamber's question 20.3, the Prosecution
12 qualifies Al Hassan as a co-perpetrator making essential contributions from the very
13 start of the common plan in early April 2012. Just by way of examples of some of the
14 evidence, your Honours, as Witness P-150 confirmed, there were effectively two
15 stages of the work of the Islamic police that covered the whole period of the common
16 plan. There was a first stage when policing was being done in the streets and a
17 second stage with a more formal structure. But as 150 confirmed, and I quote, "In
18 each stage Hassan was there." End of quote. I refer to MLI-OTP-0062-3197, pages
19 3205 to 3206.

20 P-0150 went further, he confirmed that Al Hassan was already doing duties and tasks
21 such as sending police on patrols, and I quote, "at an early stage when the groups
22 arrived in Timbuktu." End of quote. And I refer to MLI-OTP-0067-1571 at page
23 1579.

24 Similarly, P-0099 stated, and I quote in French that: (Interpretation) "And the second
25 the Islamic police was always the Tuareg. It never changed there." (Overlapping

1 speakers) (Speaks English) paragraph 287 of the DCC.

2 There is documentary evidence confirming that Al Hassan was carrying out his

3 functions as *de facto* commissaire in that second formal stage already in about

4 7 May 2012. I refer to both the Islamic tribunal judgment and the relevant Islamic

5 police report that are referred to at the DCC, paragraph 23, in particular, footnote 67.

6 I also refer to an article, your Honours, dated 28 April 2012 referring to the second

7 stage when the Islamic police was formally set up and the fact that there was already

8 a sign for the Islamic police at their headquarters on 27 April 2012. I refer to

9 MLI-OTP-0033-2995. And we know from Ms Coquillaud's presentation that this sign

10 bore the suspect's phone number. Just by way of example, I refer to

11 MLI-OTP-0012-1914.

12 Now, even the suspect has claimed that he was already working with the

13 organisation for about two to three months before his work evolved and he started

14 writing investigation reports. I refer to footnote 673 of the DCC.

15 Turning to the various aspects of the common plan that need to be proven, your

16 Honours, the Prosecution recalls that the plan or agreement itself does not have to be

17 directed to a criminal activity. It's enough that it includes, and I quote "a critical

18 element of criminality" so that its implementation will in the ordinary course of

19 events lead to the commission of one or more crimes under the Statute. I refer to C1

20 of the Prosecution's reference list of cases.

21 And what was that critical element of criminality of the common plan? In this

22 instance, the criminal element of the plan was the, and I quote, "any means, including

23 by conduct" by which the organisation imposed their ideological and religious vision,

24 as well as the criminal consequences, as crimes clearly resulted in the ordinary course

25 of events of implementing the plan. In particular, it was the violent and destructive

1 imposition of the organisation's own ideological and religious beliefs that were
2 different to that of the local population that constitutes the criminal element of this
3 plan.

4 Now, let's be clear, your Honours, contrary to what the Defence has argued in their
5 submissions, the Prosecution is not stating that the criminal element of the common
6 plan was about implementing Sharia law. I refer to paragraphs 144 to 145 of the
7 Defence submissions. Nor is this case about prosecuting Mr Al Hassan about his
8 religious beliefs. I refer to paragraph 215. In fact, it is wholly irrelevant what the
9 belief system of the perpetrators was that they were seeking to impose. It's equally
10 irrelevant whether this belief system is practiced in any country in the world.

11 The criminal element arises because the organisation imposed those different
12 religious and ideological beliefs on this group of civilians who didn't share them and
13 they used criminal methods to enforce those different beliefs, resulting in crimes.

14 Now what of the evidence of this common plan? The evidence of the plan is
15 indicated by five key factors as set out in section 7.2.1.1 of the DCC.

16 And I will only at this stage, your Honours, deal with probably the first two as I'm
17 conscious of the time.

18 First, statements of the leaders themselves: They made statements indicating the
19 broad and strict application of their rules that was expected. They also openly
20 recognised that their vision of religion was not shared by most inhabitants of
21 Timbuktu.

22 Just for some examples, your Honours. There were statements from leaders that
23 they planned to create a society in accordance with their religion in all aspects of the
24 people's lives and more specifically to strictly apply that vision of religion in
25 Timbuktu and to sanction those who violated their rules. I refer to paragraphs 219 to

1 221 of the DCC.

2 Iyad Ag Ghaly, as you know, the leader of Ansar Dine, declared that one of Ansar
3 Dine's goals was to create an Islamic society in accordance with their vision of jihadist
4 Salafist ideology. He said that they intended to create an Islamic state founded on
5 Sharia in all aspects of life. I refer to paragraph 221 of the DCC.

6 He went further. He, together with Abou Zeid, said it was necessary to strictly
7 apply the religion. That's at paragraph 220 of the DCC.

8 Iyad Ag Ghaly also said that it was their rules that applied in Timbuktu and that
9 behaviour that violated those rules would be sanctioned and people who infringed
10 those rules would have problems with him and with his group. I refer to paragraph
11 219 of the DCC.

12 Similarly, the group's spokesperson, Sanda Ould Boumama, said that they were
13 seeking to establish the religion. They rejected any ideas or solutions that
14 contradicted their own religion or any constitution or system, except for Sharia, their
15 interpretation of Sharia. I refer to paragraph 23 of the DCC.

16 And Witness P-150 confirmed their objective was to install Sharia in Timbuktu. And
17 that is at paragraph 239 of the DCC.

18 There were also the statements of the leaders, including of *Hesbah* and the Islamic
19 police recognising that these laws and this system was not previously known or
20 shared by most of the inhabitants of Timbuktu. I refer to section 7.2.1.6 of the DCC.

21 Just by way of example, Al Hassan himself admitted that the groups imposed their
22 vision of religion on the inhabitants when he stated, I quote: (Interpretation) "The
23 inhabitants were not familiar with those punishments." (Overlapping speakers)
24 (Speaks English) specifically to paragraphs 237, 238 and 240 of the DCC.

25 But similarly, a senior AQMI leader outside Mali in a message that he sent on 20 July

1 2012 to the leaders in Mali of both Ansar Dine and AQMI cautioned those leaders,
2 saying to them, brothers, you're being too hasty in applying these laws, and he noted,
3 and I will quote that it was "an environment that is ignorant of religion and a people
4 which has not applied Sharia in centuries." End of quote. He went further, he
5 stated, "It is worth noting that at this stage, just because a small class of people have
6 accepted our understanding of applying Sharia does not mean that all sections of the
7 people have accepted it." End of quote.

8 PRESIDING JUDGE KOVÁCS: [13:15:27] (No interpretation)

9 MS LUPING: [13:15:33] Yes, Mr President. Thank you. And just for the sake of
10 the record, I will refer to the ERN, with your indulgence.

11 PRESIDING JUDGE KOVÁCS: [13:15:41] (Interpretation) Yes, Madam Prosecutor.

12 MS LUPING: [13:15:44] I'm referring to MLI-OTP-0024-2320, the translation at
13 0027-0964 at page 0974.

14 Thank you, Mr President, your Honours. I will be continuing after the break.

15 PRESIDING JUDGE KOVÁCS: [13:16:08] (Interpretation) Thank you very much, we
16 will now take a break and resume at 14.30.

17 THE COURT USHER: [13:16:29] All rise.

18 (Recess taken at 1.16 p.m.)

19 (Upon resuming in open session at 2.33 p.m.)

20 THE COURT USHER: [14:33:37] All rise.

21 Please be seated.

22 PRESIDING JUDGE KOVÁCS: [14:34:00] (Interpretation) Good afternoon, ladies
23 and gentlemen.

24 And before I give the floor to the Prosecutor to continue with her oral submissions, let
25 me now address the issue of time allocation to parties and participants.

1 Following specific calculations by the court usher, the Prosecutor still has 40 minutes
2 within which to finish his presentation.

3 Then we will hear the presentations of the Legal Representatives of Victims, and this
4 will run till around 16.10. If need be, they will be given an extra 15 minutes
5 tomorrow morning to conclude their presentations.

6 This means then that the Defence will start its oral submissions tomorrow at 9.45.

7 The Chamber notes that it will grant to the Defence an exact time of nine hours, same
8 as for the Prosecutor and, where need be, the necessary accommodations and
9 arrangements will be made in the scheduling.

10 I now give the floor to the Prosecutor to continue her submissions.

11 MS LUPING: [14:35:20] Thank you very much, Mr President.

12 And I will now continue to look at the indicators regarding the existence of the
13 common plan.

14 The second indicator, your Honours, are the key institutions that were put in place by
15 the organisation in Timbuktu to carry out the plan and to assure the organisation's
16 power and control, and to impose their own ideological and religious vision in
17 Timbuktu, and apply their rules and prohibitions. That included the Islamic police,
18 it also included the *Hesbah*, the tribunal, the security battalions and the other entities
19 within the organisation.

20 Now, your Honours have already seen the video in which Mr Al Hassan can be seen
21 as he describes what he considers to be the ordinary work of the Islamic police. And
22 he stated, and I quote, that this entailed "correcting objectionable acts - any type of
23 reprehensible act which has been forbidden we correct - such as drinking alcohol,
24 smoking and a woman adorning herself, and other such acts ..." End of quote.

25 And that's paragraph 230 of the DCC.

1 But they didn't stop with just simply putting in place these institutions, they took
2 other measures to ensure their controls and to impose this ideology. They created
3 control posts, they exercised controls over schools, hospitals, distribution of electricity
4 and even in distribution of humanitarian aid.

5 I refer to paragraph 266 of the DCC.

6 A third indicator of the existence of the plan are the various orders and religious
7 opinions that were passed on by the leaders to their members to reinforce the plan.

8 And that included Abou Zeid's instructions to the police, the *Hesbah* and the security
9 battalions. I refer to paragraph 231 of the DCC.

10 In addition to the military training, they combined it with religious training which
11 was provided to members of the organisation, and this supported their plan to
12 impose their vision of religion and ideology on the civilian population.

13 I refer to paragraph 227 of the DCC.

14 Fifth, there is the systematic and diverse exactions and crimes that took place, often
15 conducted publicly; public floggings, public amputation, the very public destruction
16 of the mausoleums, and all done in a coercive environment, which itself
17 demonstrated the existence of this plan. I refer to sections 7215 and section 8 of the
18 DCC.

19 Now turning, your Honours, to the next element, the second element, which are the
20 essential contributions.

21 The Prosecution recalls that it isn't necessary to prove the essential contributions of
22 the other co-perpetrators. It's the suspect's essential contributions at issue.

23 However, in the context of direct co-perpetration, the Prosecution does refer the
24 Chamber to the evidence of the essential contributions of Mr Al Hassan's other
25 co-perpetrators, set out at section 7.2.2 of the DCC. And in response to the

1 Chamber's question 20.1, the other co-perpetrators who were members of the plan are
2 as listed at paragraph 241 of the DCC.

3 But the Prosecution asks that in the context of direct co-perpetration, that the
4 Chamber also consider Mr Al Hassan's responsibility under that mode of liability for
5 the particular criminal acts of his co-perpetrators, including Adama, I refer to
6 paragraph 250 of the DCC; Mohamed Moussa, refer to 249 of the DCC; Abou Baccar
7 al Chinguetti, otherwise known as Firaoun; and Demba Demba, that's at paragraph
8 258 of the DCC; and Yazid, I refer to paragraph 259 of the DCC.

9 Now, who were these members of the common plan, your Honours? They are
10 defined in the DCC as being members of Ansar Dine or AQMI, as well as members of
11 the institutions that they created, which included the Islamic police. I refer to
12 paragraphs 4 and 212 of the DCC.

13 So, for the purposes of this case, it suffices to prove that Al Hassan was a member of
14 the Islamic police, which Mr Al Hassan admits. And, contrary to what the Defence
15 states at paragraphs 154 and 157 of their submissions, although there is evidence that
16 Al Hassan was a member of Ansar Dine, it's not actually necessary for the purposes of
17 this case to prove his membership or allegiance to Ansar Dine to prove that he was
18 a member of the common plan.

19 And contrary to what the Defence has asserted, and as the Appeals Chamber of this
20 Court has confirmed, it's not necessary to prove that the suspect made an intentional
21 contribution to each of the specific crimes or specific incidents committed on the basis
22 of the common plan. I refer to C4 of the Prosecution's reference list of cases.

23 Instead, it's necessary to prove that he made an intentional essential contribution to
24 the common plan, and that as a co-perpetrator he's then liable for all of the crimes
25 occurring within that framework of the common plan. I refer your Honours to C5 of

1 the Prosecution's reference list.

2 It's also not necessary to prove that Al Hassan was the most senior person within this
3 organisation, or that he was the emir of the police, or that he was the key
4 decision-maker. I refer to the Defence's arguments at paragraph 164 to 167 of their
5 submissions.

6 In fact, it's not necessary to prove that he had any such elevated or decision-making
7 role to show that he had, nevertheless, the power to frustrate the implementation of
8 the common plan or crimes committed pursuant to execution of that plan. I refer in
9 particular to the Ongwen case and I refer to C6 of our reference list. And that's the
10 Ongwen case at paragraph 38.

11 Moreover, just to clarify, contrary to what the Defence has argued, the test of the
12 ability to frustrate the plan and make essential contributions does not require the
13 Prosecution to prove that Al Hassan had the power or the *de facto* authority to stop the
14 charged crimes from occurring. As the Appeals Chamber has recently confirmed in
15 the Bemba Article 70 appeals judgment, it suffices to prove that without these
16 contributions that the crimes, and I quote, "would have been committed in
17 a significantly different way" end of quote. And I refer to C7 of our reference list.

18 Now, in response to the Chamber's specific question, and that's at 20.2, Al Hassan
19 could frustrate the commission of crimes in that without his essential contributions,
20 the crimes would have been committed in a significantly different way. The
21 Prosecution also refers, for example, to the Lubanga trial judgment at paragraph 989.
22 I refer to decision 2842 where the Chamber referred to the test of the power to
23 frustrate the commission of the crime by not performing the tasks.

24 So, your Honours, what this means is that the relevant evidence of this power to
25 frustrate is that of all of Al Hassan's essential contributions that he was able to make

1 in his role within the Islamic police, this evidence demonstrates the manner in which
2 the crimes would have been committed in a significantly different way if he hasn't
3 carried out the powers that he enjoyed in exercising his various functions.

4 Basically, his primary role was ensuring that the police functioned effectively. And
5 the police were omnipresent, everywhere, from monitoring and punishing the
6 population to the destruction of the mausoleums. I refer to paragraphs 118 to 134 of
7 the DCC.

8 Al Hassan was a key and important leader within the Islamic police. Now, as the
9 Prosecution stated in the DCC, it's actually irrelevant what title the civilians or other
10 members of the group gave to him. I refer to paragraphs 24 and 261 of the DCC.

11 The Defence has tried to downplay his role and his significance. However, the fact
12 remains that Mr Al Hassan carried out crucial activities as the *de facto* commissaire of
13 the police, including powers that he could exercise in the name of the emir of the
14 police in implementing the common plan, which impacted on nearly every aspect of
15 the lives of the local civilians.

16 Put simply, for this organisation, Al Hassan was the right man in the right place at the
17 right time, and his key role, his key role was as an implementer and an enforcer of
18 their rules.

19 The Prosecution does not need to prove, however, that he was omnipresent and
20 contributed to every aspect of the plan. However, without these essential
21 contributions that he made as this important implementer and enforcer, the crimes
22 would not have been carried out as effectively or as extensively in the same way.

23 Just one example: As the Defence concedes at paragraph 193 of their submissions
24 regarding Mr Al Hassan's evidence concerning his role in drafting of the Islamic
25 police reports and the explanations as to why he signed them, and I quote, "he was

1 one of the few people in the police who could do so." End of quote.

2 So what were these key contributions made by Mr Al Hassan?

3 Well, the Prosecution has detailed six key contributions.

4 First, he acted as an important interface between the organisation and the population,

5 he was viewed as a key interlocutor, he was the usual first line of contact with the

6 local population for the Islamic police because of his education, his respected abilities

7 as a good manager, as a linguist, and because he knew the people, he knew the region.

8 And I refer to paragraphs 266 to 274 of the DCC.

9 Now, these abilities cannot be underestimated or overlooked. These abilities

10 contrasted sharply to those of the emir in succession - Adama and then Khaled - who

11 didn't have the same abilities and they were not from the same region. I refer to

12 paragraph 267 of the DCC.

13 He was also an important interface, public face with the media. For instance, it was

14 Mr Al Hassan who tried to justify the group's rules about women and destruction of

15 the mausoleums.

16 As an example, I refer to the evidence of Witness P-623 at MLI-OPT-0068-4352-R01 at

17 pages 4362 to 4363.

18 His second essential key contribution, your Honours, was in ensuring the good

19 functioning of the Islamic police, which, as we have explained, was a key organ in

20 implementing the common plan. Whilst Khaled as emir, or Adama as emir had key

21 decision-making power, as Witness P-0582 explained, it was Mr Al Hassan who

22 ensured that everything that was done by the police actually happened. And I quote

23 Witness P-582 in French, who stated: (Interpretation)

24 "... everything that happened or that was done at the police, the one who was in

25 charge was the commissioner ..." (Speaks English) (Overlapping speakers) paragraph

1 280 of the DCC.

2 He helped organise the taskings, the daily work, the functioning, the co-ordination of
3 the police. I refer to paragraph 276 to 281 of the DCC. This work included helping
4 divide up the tasks amongst the police sent on patrol during which they were
5 correcting breaches of their so-called rules: Women not wearing the right dress code,
6 people wearing prohibited jewellery, people not behaving according to their rules.

7 He also passed on instructions and he could give as well as pass on orders and
8 instructions. And that's at paragraph 278 of the DCC. These instructions included
9 on how to deal with the people who were breaking their rules, whether that be
10 listening to music, what they were wearing, how they were behaving.

11 He also had a power to discipline. He could punish police subordinates. He could
12 also investigate complaints against the police, including the emir of the police himself.

13 I refer to paragraph 284 of the DCC.

14 He had powers to deal with the administrative organisation of the police. He
15 organised their dossiers, he made their investigative reports, he referred reports to the
16 Islamic tribunals, he also registered the new recruits.

17 His third key contribution was in the role that he played in the enforcement of the
18 rules, be it through mediations or so-called investigations and prosecutions. I refer
19 to paragraphs 285 to 313. And in particular - and I note the Chamber's question
20 36 - these powers of so-called investigation/prosecution meant that he could do the
21 following:

22 First, he received the complaints. He was the person who received the complaints
23 and the people coming to his office.

24 As P-0099 declared, and I quote: (Interpretation)

25 "And the second of the Islamic police was still the Tuareg, he is the one who received

1 the plans ..." (Speaks English)

2 And I refer to paragraph 287 of the DCC.

3 Now, this ability to receive complaints was actually an indication of his authority and

4 it's not inconsistent with a plan to impose their own rules on the people, as the

5 Defence has sought to argue. As P-0150 confirmed, they were not disciplining

6 people, or their own people, when they punished civilians when enforcing their rules.

7 I refer to paragraph 388. The complaints that they were actioning related to, if you

8 like, bad behaviour or crimes that fell outside crimes committed when enforcing those

9 rules; crimes such as theft, disputes such as debts, or in one instance, a murder. I

10 refer to 293 of the DCC.

11 Now, these powers that Mr Al Hassan exercised were broad.

12 His area of investigations were not limited to Timbuktu city. They were also

13 exercised outside Timbuktu in other cities, such as Lere and Goundam. I refer to

14 paragraph 295 of the DCC.

15 He could investigate a broad range of violations of the organisation's rules that

16 touched upon almost every aspect of people's lives, from so-called adultery, men and

17 women being found with one another when they were unmarried, wearing of

18 amulets, drinking alcohol, smoking. I refer to paragraphs 290 and 304 to 308 of the

19 DCC.

20 He could investigate allegations against people, as I said, at any level, the emir of the

21 police, Adama. He could take statements from other emirs such as Talha of the

22 security battalions. That's at paragraph 293 of the DCC.

23 Indeed, in spite of this broad power that he had to investigate complaints even

24 against his own superiors, he also contributed to implementing the common plan by

25 his very failure to act on complaints where they related to enforcing their rules. And

1 I refer to the cases at C9 of our reference list.

2 He also had the power of summoning suspects.

3 Now, this document can be shown publicly. You've already seen it, your Honours,

4 but just a reminder. This is a summons dated 3 September 2012, signed by

5 Mr Al Hassan, and I refer to paragraph 289 of the DCC.

6 He interrogated suspects accused of committing the crimes. That's at 291 of the

7 DCC.

8 He and other police used methods of torture and ill-treatment to extract confessions.

9 That's at 296 to 298 of the DCC.

10 He wrote and he signed investigative reports, including as a so-called investigator. I

11 refer to paragraph 292 of the DCC. And again, just to remind your Honours of what

12 you saw in Mr Muneesamy's presentation, his signature as an investigator. I refer to

13 paragraphs 292 and 299 to 303 of the DCC.

14 He also sent his reports to the Islamic tribunal for judgment, and a number of which

15 led to punishments. I refer to Mr Mourad's presentation, as well as to paragraphs

16 299 to 303 and 307 of the DCC.

17 His powers also extended to making recommendations to the Islamic tribunal on the

18 punishments they should hand out. I refer to paragraph 308 of the DCC.

19 Now, in response to the Chamber's question 31 regarding Mr Al Hassan's powers to

20 mediate and deal with litigation and disputes, he could mediate, he could settle

21 disputes and litigation on a broad range of aspects, including disputes between

22 spouses, divorces, applying religious rules concerning property matters. I refer to

23 313 of the DCC. And there is evidence that he settled litigation alone. For instance,

24 in cases of women forced to remain with unwanted spouses. I refer to paragraph

25 348 of the DCC.

1 He also settled disputes alone, for instance in debt cases.

2 Now, you've seen this image before, again, your Honours. As you will recall, this is
3 an image of Mr Al Hassan alone in his office settling a dispute between two men over
4 debt. This is video screenshot dated 11 June 2012.

5 Fourth, his fourth essential contribution, your Honours, relates to his power to punish
6 either himself directly or through others, including from within not only the Islamic
7 police, but also other members such as from *Hesbah*. And I refer to paragraphs 314 to
8 323 of the DCC.

9 Witness 150 confirmed that it was Al Hassan in charge when his men ensured that
10 inhabitants were flogged publicly in the marketplace and that their goods were
11 confiscated. That's at paragraph 319 of the DCC.

12 As you know, he personally flogged two men for drinking, another man for adultery.
13 That's paragraph 320 of the DCC.

14 And when a young child came to his police station not wearing a veil, it was
15 Al Hassan who called Moussa to deal with her punishment. And that's at 321 of the
16 DCC.

17 It was also Al Hassan who ordered the arrest of a woman for not covering herself
18 correctly. Also at paragraph 321 of the DCC.

19 The fifth contribution is in the negative example he gave in his *de facto* role as
20 commissaire and times acting as emir by encouraging others to commit crimes and by
21 contributing to a permissive and coercive environment in which implementing the
22 organisation's plan led to crimes. This is seen in all the work of the police in
23 enforcing the rules, in carrying out the very public sanctions, by being present during
24 the sanctions, in his verbal encouragements, for example, regarding amulets and the
25 destruction of the mausoleums, and his support in the whole system of the marriages.

1 I refer to paragraph 324 of the DCC. The sixth example of his contributions are in
2 the controls he exercised over various administrative aspects to ensure
3 implementation of the plan, such as signing documents with stamps of both the
4 Islamic police and the Islamic security battalions. I refer to paragraph 235.

5 And I would just ask the court officer that for this next slide, whilst I can continue
6 have my words broadcast publicly, if this could please be not shown publicly.

7 Now this is just one example, your Honours, of where Mr Al Hassan was able to sign
8 a document on behalf of not only the police, but also the Islamic security battalion.

9 And I would refer your Honours in particular to the condition imposed at point 3 of
10 this permit, which is yet another example of the contributions that he was able to
11 make.

12 Court officer, I can now return to public for all of the subsequent slides that I will be
13 showing. I will pull up the next one and that can be shown publicly.

14 Now, your Honours, I have dealt with the first two objective elements for both direct
15 and indirect co-perpetration.

16 I now turn to the last two objective elements, which are very specific to indirect
17 co-perpetration: The use of another person or an organised hierarchical organisation
18 and joint control over the person or organisation.

19 Now, as stated, it's not necessary to prove that Al Hassan was the most senior leader
20 of the organisation for him to assume responsibility. And again, contrary to what
21 the Defence has argued, it's not necessary to prove that he was involved in
22 implementing every aspect of the common plan, whether in creating any of the other
23 institutions or organs. Furthermore, it's not necessary to prove that any of the
24 co-perpetrators individually were in a position to control the organisation.

25 Mr President, I'm having an indication from a member of the Defence team asking me

1 to, I believe is it to slow down?

2 PRESIDING JUDGE KOVÁCS: [15:04:39] (Interpretation) Court officer.

3 THE COURT OFFICER: [15:04:44] (Interpretation) I am waiting for the
4 observations of the Defence.

5 MS TAYLOR: [15:04:48] I apologise, Mr President. I apologise to the Prosecution.
6 I think the problem was that the interpretation is not going through to Mr Al Hassan.
7 I think that's what my colleague was trying to indicate to the booth. That is all.

8 THE INTERPRETER: [15:04:57] Message from the interpreters: We have checked
9 the Arabic translation. It's fine.

10 PRESIDING JUDGE KOVÁCS: [15:05:12] (Interpretation) Please proceed, Madam
11 Luping.

12 MS LUPING: [15:05:17] Thank you, Mr President.

13 Your Honours, the key is that it is enough to show that Mr Al Hassan and his
14 co-perpetrators shared joint control over the organisation. And I refer to C10 of our
15 reference list.

16 In his role as *de facto* commissaire, and when acting in the name of the emir, he did
17 exercise joint controls over the organisation with his co-perpetrators. This joint
18 control is demonstrated in the way it is organised and hierarchical, although I would
19 recall that he also did sign official documents on behalf of the police, for instance, in
20 June and November 2012 in the name of the emir. And this can be shown publicly
21 still.

22 This is the example of two well permits that he signed as the emir, signed in June and
23 November of 2012.

24 Now, as regards the organised nature of the organisation and demonstrating this joint
25 control, the organisation including the police, the *Hesbah*, the Islamic tribunal and the

1 security battalions, they were all organised, as seen for instance by the following
2 factors, and I refer to paragraphs 364 to 365 of the DCC.

3 They had the resources, be it weapons, vehicles, food, money. And the controls are
4 seen in the way that the co-perpetrators could provide these resources, including
5 finances and weapons, to their elements.

6 Second, they had enough numbers of replaceable elements. There were at least 250
7 in Timbuktu alone - and I refer to footnote 188 of the DCC - including 40 police
8 officers. And that's at paragraph 122 of the DCC.

9 Third, they had their training camps where their members received the military and
10 religious training so were sensitised to the group's vision of religion and ideology,
11 and where members were encouraged to apply this vision of religion and punish
12 people who didn't respect it. That's at footnote 859 of the DCC.

13 Then there's the coordinated and planned activities which also demonstrate these
14 joint controls through meetings, instructions and a generally functioning
15 communication chain. This included satellite phones, mobiles and messengers.

16 You heard from Ms Coquillaud about the records of frequent contacts between
17 Mr Al Hassan and his co-perpetrators, this was only but one means of
18 communication.

19 They also exercised joint control through the hierarchical nature of the structure.

20 And I refer to paragraphs 366 to 372 of the DCC.

21 They had a senior leadership, which was composed of the Ansar Dine senior leader
22 Iyad Ag Ghaly; a presidency comprised of Abou Zeid, al Hammam and al Chinquetti,
23 who assisted in the daily leadership, but this could not be done without the critical
24 support from the principle organs of control, especially the police, the tribunal, the
25 *Hesbah*, the security battalions, the religious committee and the media bureau.

1 And each of these organs also had a hierarchical structure. And I refer in particular
2 to paragraphs 367 to 374.

3 Just turning to the example of the Islamic police, you had for instance a leadership,
4 Abou Zeid, able to give oral and written instructions to the emir, Khalid or Adama,
5 and other members of the police, in turn being passed to Al Hassan who himself also
6 passed on instructions or who could give instructions and orders.

7 Then you had Al Hassan who was actually organising the work on the ground.

8 Now, he not only passed on instructions regarding patrols and guard duties, he could
9 also instruct people, for example, to carry out the other work of the police, including
10 bringing persons to him.

11 The police were also organised in their headquarters, first at the BMS, then at the
12 *gouvernorat*. Their resources, money, logistics, vehicles, weapons, and training, both
13 military and religious, also provided to them. I refer to paragraph 374 of the DCC.

14 They also exercised joint controls over the organisation through order and discipline.

15 Members of the organisation, including police, who committed errors or violations
16 that were, by the way, not enforcing the organisation's rules, they were punished.

17 For example, they were flogged, they were detained, and in one case of murder that
18 person was executed. The police could be physically disciplined for failing to follow
19 orders. I refer to footnotes 919 and 920.

20 Now, what about Al Hassan's joint controls?

21 He exercised joint controls through the very role and functions he exercised. He was
22 seen as the *de facto* commissaire and sometimes as the chief of police. I now quote in
23 French, as one former police member explained: (Interpretation)

24 "As to the police, the person in charge there is the commissaire. For anything
25 happening at the police station, the person responsible is the commissaire." (Speaks

1 English) (Overlapping speakers) Al Hassan also told another witness, and I quote:

2 (No interpretation) (Speaks English)

3 End of quote. And that's at paragraph 390 of the DCC.

4 THE INTERPRETER: [15:12:22] "All that is needed is for you to tell you what I tell
5 you to do."

6 MS LUPING: [15:12:26] (Overlapping speakers) and I quote:

7 (Interpretation) "My role is the role of the police." (Overlapping speakers) (Speaks
8 English)

9 Now this work, as everything as you have heard already, your Honours, organising
10 the daily work, transmitting instructions, giving instructions, orders and taskings.

11 His role in the sanctions, be it sanctioning himself, participating, coordinating or
12 having that done in his presentation, and in the punishments of subordinates. And I
13 refer to paragraphs 385 to 386 of the DCC. For example, he participated in
14 punishing a police man who fired his weapon, and arresting a member of Ansar Dine
15 for theft. I refer to paragraphs 385 to 386 of the DCC.

16 Now, the Defence has referred to the evidence of 150 to claim that there was no
17 discipline and that police could do whatever they wanted. However, your Honours,
18 this does not provide the full context of this witness's testimony. The same witness
19 confirmed that Al Hassan could punish subordinates but that Al Hassan and his
20 co-perpetrators did not punish their subordinates for what they did to the locals who
21 violated the organisation's rules because that conduct was seen as appropriate. I
22 refer to paragraphs 386 and 388 of the DCC.

23 Now, in response to the Chamber's question 24, the different institutions put in place
24 by the organisation, especially the police, *Hesbah*, tribunal and battalions, worked
25 closely to implement the plan or the common purpose. That's at 392 to 398 of the

1 DCC, and I refer to Mr Mourad's presentation.

2 The police and *Hesbah* conducted joint patrols and they shared tasks. The police
3 were first charged with tasks later shared by the *Hesbah* to control behaviour of the
4 people, including in their dress and their behaviour. That's at paragraph 393 of the
5 DCC.

6 The police worked closely with the judges from the tribunal. Al Hassan sent reports
7 and cases to the tribunal. He detained people. He also, and members of the police,
8 obtained authorisation to torture. That's at 395 of the DCC.

9 The police also worked closely with the security battalions. For example, Abu Talha
10 could ask for police officers to assist in security patrols. I refer to the evidence of the
11 suspect, 0051-0513, page 0521, line 251 to page 523, line 336.

12 PRESIDING JUDGE KOVÁCS: [15:15:23] (Interpretation) I am sorry to interrupt you,
13 but you should be careful with the time allocated to you, because it is a quarter past 3.
14 Are you about to conclude, so that we can follow our schedule?

15 MS LUPING: [15:15:52] I understand, Mr President. I probably have another 10
16 minutes or so, if that's a possibility?

17 (Pre-Trial Chamber confers)

18 PRESIDING JUDGE KOVÁCS: [15:16:26] (Interpretation) After a short consultation,
19 given that this is a very important segment of this case, you are granted a further ten
20 minutes to conclude your presentation. And we will amend the schedule
21 accordingly for all the participants and enable the victims' representatives to
22 intervene.

23 MS LUPING: [15:17:01] (Overlapping speakers) So turning now to Mr Al Hassan's
24 intent and knowledge.

25 Under Article 30 it's necessary to prove that he meant to cause the charged crimes or

1 was aware that the crimes would occur as a result of implementing the plan in the
2 ordinary course of events. And in terms of his knowledge, this meant that he was
3 aware that a circumstance existed or a consequence would occur in the ordinary
4 course of events. However, as the Appeals Chamber decided in Lubanga, this does
5 not mean that the crimes were absolutely certain. And I refer to C11 of the reference
6 list of cases. And contrary to what the Defence has argued, it is not necessary to
7 prove that he had actual knowledge to commit the charged crimes, or that he knew or
8 intended the details of each individual crime.

9 Under Article 25(3)(a) it's necessary to prove that he was aware that the plan involved
10 an element of criminality which, at least in the ordinary course of events, would
11 amount to the charged crimes, and that the facts enabled him with his co-perpetrators
12 to jointly exercise functional control over the crime and, in terms of indirect
13 co-perpetration, he was aware of the fundamental features of the organisation.
14 And all of this, your Honours, is demonstrated by eight key factors.

15 First, his own admissions: The video that you have already seen where he
16 recognised that the groups were correcting, in his own words, the behaviour of
17 inhabitants that they considered were breaking their rules, in terms of what they wore
18 and how they behaved. In that same video he acknowledged that they had
19 punished a thief by cutting his hand, executed a murderer, and flogged others, and he
20 proudly stated that theft and other cases had stopped as a result. I refer to
21 paragraph 322 of the DCC.

22 You've also heard how the suspect knew that these punishments were not previously
23 known to the inhabitants and were being imposed on them.

24 You've already heard that he stated: (Interpretation)

25 "... these punishments, the inhabitants did not know them. That was the first time

1 they saw it. They were not able to do anything. Everyone was scared. They were
2 afraid of the word 'jihadist' and 'terrorist'. They were afraid of punishment."

3 (Overlapping speakers) (Speaks English) Whilst the Defence states that Al Hassan
4 also admitted that these punishments were also the first time for him, this does not
5 mean that the punishments were not known or foreseeable to him. It doesn't explain
6 why he took part in them, proudly stated how effective they were in bringing down
7 cases of theft and murder or why he stayed a leader after being aware of them.

8 Second, his intent and knowledge is demonstrated by his act of participation in all of
9 the work of the police, together with the *Hesbah*, in the terrain in Timbuktu city and
10 the region. And I refer to paragraphs 340 to 345.

11 It's seen in his active role in the mediations, investigations, prosecutions and work of
12 the Islamic tribunal. I refer to paragraph 346.

13 It's seen in his role in the system of marriages that led to sexual slavery and forced
14 marriages; in the way he personally dealt with females - I refer to 347 to 350 of the
15 DCC - including, the cases that he mediated where women were pressured to go back
16 to unwanted husbands; a child was sent to be punished by Moussa for not wearing
17 the veil, imprisoned and flogged. And that's at 350 of the DCC.

18 It's seen in the role he played as a key liaison with inhabitants, the person receiving
19 complaints, as well as being aware of complaints brought by the *comité de crises* in
20 meetings with that group. And that's at 351 to 354 of the DCC.

21 It's also seen in his close collaboration and contacts with his co-perpetrators. I refer
22 to 355 to 356 of the DCC.

23 And finally, the very public nature of the sanctions and the crimes, none of it was
24 hidden from public view, most of it was publicly reported, including by the
25 organisation itself, and including in the video interview with the suspect. That's at

1 paragraph 357 of the DCC.

2 It's also seen in his continued allegiance with the armed groups even after they were
3 driven out of Timbuktu in January 2013, up to his arrest in April 2017. I refer to
4 paragraph 358 of the DCC.

5 Now briefly, your Honours, I've just briefly mentioned the other modes of liability
6 and 25(3)(b), he, Al Hassan induced and solicited others in the organisation to
7 perpetrate crimes by the various roles and functions he performed within the police.
8 In particular, he induced and solicited members of the organisation to impose the
9 group's vision of religion and ideology and to punish those who broke their rules
10 through his actions, through his words. And his influence is also seen by the respect
11 that he had from his own superiors. And I refer to paragraphs 399 to 404 of the
12 DCC.

13 Turning to his responsibility in aiding and abetting. He was at least aware that the
14 crimes would be committed in the ordinary course of events.

15 Now, the Prosecution recalls that under this particular mode of liability, it's not
16 necessary to prove that he had actual knowledge that his conduct would aid and abet.
17 He didn't need to know all the details of the crimes that he was assisting in. It's
18 sufficient to establish that he was aware that the perpetrators would, in the ordinary
19 course of events, commit the type of offences being charged. I refer to C12, C13 and
20 C14 of our reference list.

21 He aided and abetted those who carried out the crimes, again in his role and
22 functions - and I refer to paragraphs 405 to 414 of the DCC - including in everything,
23 as I have stated, that he did in support of the work of the organisation. And that
24 includes the very public statements about the work of the police, including regarding
25 their rules and speaking in favour of the repressive methods to enforce those rules.

1 I should also say that he encouraged the crimes actively, including, for example, in
2 comments he made to Al Mahdi to check on activities at the mausoleums and in
3 consenting to their destruction.

4 In terms of the fourth and final mode of liability: He contributed in any other way to
5 the crimes committed by a group acting with a common purpose.

6 And in response to the Chamber's question 43, whilst it's necessary to show that he
7 made a contribution to the crimes or criminal incident, that contribution does not
8 need to be direct but can be indirect.

9 For example, the contribution can be made by way of encouragement. (Overlapping
10 speakers)

11 THE INTERPRETER: [15:24:44] Message from the interpreters: Could the speaker
12 be requested to slow down.

13 MS LUPING: [15:24:49] (Overlapping speakers) the accused must not intend or
14 know of each precise criminal incident or specific crimes that resulted from
15 implementation of the common purpose. I refer to C17 of the reference list.

16 It's sufficient that he knows that implementing the common purpose would, in the
17 ordinary course of events, result in the type of crimes charged. I refer to C18 of our
18 reference list. Now, in terms of the actual contributions, this again is based on the
19 same facts as I have already indicated, and the same contributions that he made to the
20 common purpose by way of his role and functions as commissaire.

21 Now, I would ask if the court officer could ensure that the next four slides are not
22 shown to the public, not broadcast, and I'm only going to explain, your Honours, that
23 these are four charts summarising all legal responsibility under Articles 25(3)(a), (b),
24 (c) and (d).

25 It indicates - and, hopefully as an easy tool or guide for the Chamber - the examples of

1 the victims that we listed under the various Counts 1 to 13, and to make it clear that
2 all the counts charged were on the basis of (a), (b), (c) and (d), except for Counts 7 to
3 12.

4 And I'm just going to briefly show you those.

5 As I said, I don't propose to go through those charts. It's just to let you know,
6 your Honours, that they are available and that we are happy to provide them to the
7 Chamber as well as the parties and participants.

8 But finally and briefly, and this is the issue of alternate charging for the modes of
9 liability. The Prosecution submits there are two key reasons why it's imperative that
10 there should be alternative charging for the modes of liability as well as cumulative
11 charging for the other counts.

12 First, it's a question of the different mandates of the Pre-Trial Chamber and the Trial
13 Chamber, as Pre-Trial Chambers of the ICC have consistently confirmed charges
14 based on cumulative or alternative charging, provided there is sufficient evidence to
15 meet the threshold at this stage of the proceedings. I refer to C19 of our reference list.
16 Where the Pre-Trial Chamber in Ongwen confirmed that "questions of concurrence of
17 offences are better left to the determination of the Trial Chamber", and also stated at
18 paragraph 30 that:

19 "Article 61(7) of the Statute mandates the Chamber to decline to confirm charges only
20 when the evidence does not provide substantial grounds to believe that the person
21 committed the crime charged and not when one possible legal characterisation of the
22 relevant facts is to be preferred over another, equally viable. When the Prosecutor
23 meets the applicable burden of proof, the Chamber shall confirm the charges as
24 presented." End of quote.

25 And secondly, your Honour, because of the importance of ensuring that the most

1 advanced notice is provided to the suspect of the different possible forms of his
2 potential criminal liability. Now whilst in Lubanga and in Katanga, the Appeals
3 Chamber confirmed that a Trial Chamber may on the same facts and circumstances
4 modify legal characterisation under regulation 55, the Pre-Trial Chamber in Ongwen
5 observed in its own decision at 31 that it was misplaced to argue that cumulative
6 charging should be avoided because it could simply be recharacterised under
7 regulation 55.

8 PRESIDING JUDGE KOVÁCS: [15:28:33] (Interpretation) Madam Prosecutor, it is
9 my intention to give the floor to Mr Doumbia at 15.30. So you have two minutes.

10 MS LUPING: [15:28:48] So in conclusion, regardless of whether it's possible or not to
11 rely on regulation 55, the Prosecution submits that it is preferable in the interests of
12 a fair trial to provide full notice of potential charges from the outset. And this is
13 a common approach for complex criminal cases under international criminal law and
14 is also a common practice in common as well as civil law jurisdictions.

15 So Mr President, your Honours, the Prosecution asks that you confirm the charges on
16 the basis of all the alternative modes of liability as requested.

17 And I will now briefly pass the floor to my colleague, Mr Dutertre.

18 PRESIDING JUDGE KOVÁCS: [15:29:33] (Interpretation) Mr Dutertre.

19 MR DUTERTRE: [15:29:35](Interpretation) Yes, Mr President.

20 Can we go briefly into closed session?

21 PRESIDING JUDGE KOVÁCS: [15:29:46] (Interpretation) Court officer, let us go into
22 private session.

23 (Private session at 3.29 p.m.)

24 THE COURT OFFICER: [15:29:52] (Interpretation) We are in private session.

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21 (Open session at 3.35 p.m.)

22 THE COURT OFFICER: [15:35:24] (Interpretation) We are back in open session,
23 your Honour.

24 PRESIDING JUDGE KOVÁCS: [15:35:32] (Interpretation) Thank you very much.

25 We will now give the floor to Mr Doumbia, one of the Legal Representatives of

1 Victims.

2 Please go ahead, sir.

3 MR DOUMBIA: [15:35:40] (Interpretation) Thank you very much, Mr President.

4 My name is Seydou Doumbia and I'm a member of the Malian Bar, and I am one of
5 the legal representatives representing victims in this case.

6 And just for the Registry, I should mention that my remarks are not confidential in
7 nature and thus we can remain in open session.

8 I would also like to mention to the interpreters, if they could please show some
9 indulgence because I do have a rather unfortunate tendency not to always follow my
10 speaking notes and I do tend to rewrite them as I go along, but I will do my best to
11 stick to my text so as not to overly complicate matters for you.

12 Mr President, your Honours, ladies and gentlemen, to begin, I would like to convey
13 the apologies of Mr Fidel Nsita. Unfortunately, he could not be with us today owing
14 to health concerns, but he has reassured us that he will be back amongst us very soon.
15 Now that being the case, Mr President, I would like to thank the Bench and this
16 august institution for this opportunity, this great honour to speak, because the victims
17 have waited a very long time for their voice to be heard.

18 Mr President, by allowing victims to take part in these proceedings, this means many
19 things to the victims. And I should also thank - well, how should I put this - not to
20 be a victim of the spoken word, and what do I mean by that exactly?

21 I make reference to an African saying that goes something like this: The spoken
22 word is of relevance in two cases. First of all, we have the man who was allowed to
23 speak but said nothing, and then we have the man who speaks without leave.
24 And you see, today, the victims do have an opportunity to speak before the Court,
25 speaking through me, and they thank you for this opportunity.

1 Mr President, after these thanks, I would like to pay tribute, pay tribute to the Office
2 of the Prosecutor for their work, in which the voices of the victims are certainly heard.
3 We find that this work that has been done in the field was conducted very carefully.
4 And I think there is good reason to be proud of the work that has been done, and
5 indeed reassured, even comforted, because today we have the certainty that the
6 Prosecution has seen the sorrow, has heard the sorrow and has felt the sorrow that
7 the victims have felt for so long, the pain and suffering that each and every inhabitant
8 of Timbuktu has experienced, both those who remain alive and those who have
9 passed away.

10 Mr President, allow me a number of observations.

11 We will be filing written submissions and indeed, in keeping with our submissions
12 here, we will make three primary points.

13 First of all, we will address the occupation of Timbuktu from April 2012 to
14 January 2013.

15 We will speak to the consequences of the occupation and how the occupation led to
16 a number of practices, practices that led to the commission of crimes, ongoing crimes,
17 occurring almost in an automatic fashion.

18 Then we will speak to the extremely serious harm suffered by the victims who have
19 been given leave to take part in these proceedings.

20 And finally, we will mention the ongoing harm that endures owing to the
21 commission of these crimes.

22 As for my general approach, I will merely set the stage, and I assure I will be brief. I
23 shall set the stage and I will try to allow more time for my learned colleague,
24 Mr Mayombo, to delve into the details.

25 But before that, before I set the stage, Mr President, I would like to make one thing

1 clear before turning to you and asking for your wisdom. And this point I want to
2 make is that our observations will deal with a number of issues that you have put to
3 us, to parties and participants, and then we intend to answer these questions in the
4 written submissions to come.

5 So when I say that we will be turning to you and asking you to share your wisdom,
6 that is merely to say that -- this is all to say that Maître Mayombo will be providing
7 observations in writing, they shall be filed.

8 And a number of references are to be found in these upcoming filings, a number of
9 victim statements have been provided *in extenso*, and we are well aware that the
10 parties do not have these statements and, to my mind, to the best of my knowledge,
11 they have not received these forms, namely, the victim participation forms.

12 Thus we felt, judging by statements made by the Defence who have said right from
13 the very beginning that they have not received anything at all from the victims, we
14 intend actually to file these submissions and, along with these submissions, there will
15 be passages from victim's statements so that things are crystal clear. Because on this
16 side of courtroom, we are very much aware of this prerequisite of a fair trial, namely,
17 the equality of arms, we want to be very straightforward in approach as we wait for
18 the leaves to dry, so to speak.

19 And so your Honours, Mr President, with your leave, we will do this and we will feel
20 at ease saying that the victims can take part in this balancing act, so to speak, this
21 balancing of positions within the proceedings.

22 We are here on behalf of the victims, and allow us to begin by providing you with
23 a number of figures.

24 In your ruling of 1 July 2019 you authorised the participation of 882 victims at this
25 particular stage of the proceedings.

1 Of the 882 victims, 593 are women and 288 are men. In percentage terms, this is
2 basically 67.23 per cent women and 32.65 per cent men.

3 Of the 882 victims, 80 were underage at the time of the events, that is, as of 17
4 January 2013. And of these 80 minors, 59 were girls, were little girls, and 21 were
5 boys.

6 Mr President, your Honours, these figures lead me to take a number of observations.

7 First of all, not all these 882 victims are from the city of Timbuktu. Some victims live
8 in the surrounding areas in the general region of Timbuktu.

9 Secondly, these 882 victims who are taking part in these proceedings represent only
10 a tiny fraction of all the people who were hit so hard by this tragedy.

11 This low representation can be explained by a number of factors.

12 First of all, the danger that still prevails in Timbuktu and in the surrounding areas.

13 And then we have to consider the sociocultural factors that come into play.

14 In a way, the law of silence prevails when we are talking about certain horrors.

15 Certain victims even today hesitate and do not want people to know that they have
16 been victimised.

17 Secondly, we have this visceral fear, this visceral fear that suppresses all of the energy
18 from the victims, because they have gone through a tragedy once and they do not
19 want another one.

20 Then I must mention the somewhat tardy appointment of Legal Representatives of
21 Victims, and if they had been part of the process earlier on they would have been able
22 to reach more victims, victims scattered throughout the country and even outside the
23 country, and we would have more people represented at these proceedings.

24 I would now like to turn to my third observation.

25 I would like to say that the women paid the heaviest price, the heaviest price of the

1 occupation of Timbuktu. The violence against women reached proportions that go
2 beyond belief. The figures speak for themselves. Above all, I must mention,
3 Mr President, and I cannot conceal this from you, Mr President, your Honours, when
4 I saw the footage yesterday, the footage shown by the Prosecution, even now as I
5 speak, I am still in shock. And can you imagine what the victims must feel, the ones
6 who actually were whipped, who felt the lash on their very backs.

7 Mr President, I would like to say something, and this may be personal but I think it's
8 important to make this point, and I think, I think everyone will agree that this truth is
9 self-evident. Women are noble creatures and this nobility, the noble nature of
10 women is such that women are not to be whipped and any man who whips a woman
11 deserves the harshest punishment possible.

12 Another shock was the footage we saw of Dédéou and his hand being cut off.

13 I must say, I must add, the cruelty described by the Prosecution, in addition to this
14 cruelty there were other things that perhaps were not brought out sufficiently; the
15 injustice that occurred during the occupation of Timbuktu. Because you see, the goal
16 of the jihadist was to demonstrate that as of that day and henceforth nothing would
17 be like the past, that everything was to change. So you see, that was their policy and
18 that is what led them to cut a man's hand off. Because you see, I know this man. I
19 have heard his story. But the truth has not entirely come out. This court, this court
20 that ordered the sentence was but a sham and they didn't even need to understand.
21 The goal was to traumatise the people.

22 What happened? The jihadists tried to loot a shop, a trader's shop. They loaded up
23 a pickup truck and, along the way, a bag of rice and a mattress fell off the truck and
24 Dédéou merely picked them up. And that is not the most important part of the
25 account. The tragedy of Dédéou is that, in this convoy, there were some boys that he

1 knew, they knew one another very well because you see, Dédéou had told them that
2 he would never be part of a group of miscreants and they denounced him. And so
3 you see, they came and they found him so that they can bring him to the square and
4 cut off his hand. So this is what we have seen.

5 This brings us to another part of the story, the story of this occupation, namely, the
6 enlistment of young people. Out of fear or for other reasons, they were enrolled in
7 these groups, and for the most part they enrolled in these groups out of fear,
8 Mr President. Dédéou's story shows us just how serious the crimes were, because
9 you see, by shanghaiing young men -- and this is something that is so serious to
10 a country because I must tell you the very foundation of the current crisis in Mali can
11 be explained by this factor.

12 Young people forced into a spiral of violence have gone elsewhere. And in 2012,
13 these people returned to Mali which led to social upheaval and we are still seeing the
14 consequences of this upheaval. All this to say, here we see just how serious the
15 occupation truly was.

16 Mr President, I would like to conclude with a few words about this policy to bring
17 about terror, and this leads me to another saying in my culture and it goes something
18 like this: If you want people to fear you, if you want people who are alive to fear
19 you, you have to begin by hitting the corpses.

20 So you see, when I talk about hitting the corpses or striking blows, what does this
21 mean? Well, I'm talking about an attack upon the very soul of Timbuktu, this will,
22 this intent to destroy everything that is part of Timbuktu, the very nature of
23 Timbuktu, the symbols of Timbuktu, of course, by attacking the very heart and soul of
24 the city, there can be no greater tragedy for the inhabitants of Timbuktu. There is
25 nothing worse for them than attacking their saints.

1 I will not give you a lecture, I will not give you a history lesson, but you see,
2 Mr President, I can say that merely by attacking the saints of Timbuktu, the jihadists
3 were quite sure that this would definitely strike at the very heart of Timbuktu and
4 strike right to the very roots of the city. That is why we saw the destruction as soon
5 as the crisis broke out. The aim was to uproot the people and to do away with the
6 practices of the past. By striking as they did, they knew quite well that this would
7 deter not only the people of Timbuktu but people throughout Mali, and perhaps even
8 people throughout the entire world because Timbuktu does not solely belong to Mali
9 or the people of Mali. This blow against the very heart of Timbuktu bears witness to
10 the seriousness of the crimes that have been brought before this Court.
11 Mr President, as the jihadists were uprooting everything that made Timbuktu what it
12 was in those days, in addition to that, there was extreme violence against women
13 because for the men of Timbuktu, you see, women are a very strong symbol.
14 Women represent purity, dignity and prosperity, and I'm not speaking about material
15 wealth. By attacking the women of Timbuktu as they did, the jihadists knew full
16 well that from that point onwards, the men of Timbuktu were - how should I put
17 this - buried, and nothing would ever be the same again.
18 So you see, and allow me to explain to you an ancient tradition. In Timbuktu, when
19 a man and a woman marry and the woman is intact, that is to say, a virgin, the gift
20 that is offered is of gold, and this is a form of tribute because this is a symbol of the
21 dignity of the family that the woman is -- of the family that the woman is leaving, but
22 also the happiness of the family that the woman is joining.
23 And so, you can see that there are no words, there are no words to express this.
24 There are no words that suffice to tell you just how serious the crimes were, such
25 attacks upon women in this manner.

1 Mr President, I will now just give you, quite briefly, two very important codes which,
2 once again, speak to the very gravity of the suffering and damage that was caused,
3 and also to the ongoing and perpetual nature of the violence that was carried out.
4 The first code, your Honours, Mr President, is public punishment. Public
5 punishment is a matter of multidimensional shame in their culture, in that culture,
6 and it is the same for many other African cultures. This is not often pointed out, but
7 it is for this very reason that, today, Timbuktu is an empty city. It is not just about
8 fear and chastisement, but it's a matter of culture. In the culture of Mali, this is
9 another form of banishment. When you are banished or when you are beaten up in
10 public as a man or a woman, you are necessarily banished from your land.
11 The jihadists were aware of this, and it is also for that reason that they conducted
12 themselves in that way. This is also a reflection of the cruelty and the depth of the
13 tragedy in question. You see, your Honours, public flogging leaves a wound that
14 does not scarify in our tradition.
15 The second code that I want to bring to your attention, Mr President, is again in
16 relation to this violence and what sexual violence represents in our cultural practices.
17 You see, violence, regardless of its format - and my learned colleague will address this
18 a little more subsequently - regardless of the format of violence, violence remains
19 a humiliation of the woman. When one is humiliated in this manner, the effects
20 never go away. The woman will die with those scars. And that is why this type of
21 violence -- you see, all I can use is a euphemism because all else that has been said
22 does not reflect the depth of this type of violence.
23 Mr President, these victims now hope that your Court will give them or bring back to
24 them hope for life.
25 And that having been said, Mr President, your Honours, with your leave, let me now

1 give the floor to my learned colleague, who will make a number of illustrations to
2 substantiate what I have just outlined in broad strokes.

3 Thank you very much.

4 PRESIDING JUDGE KOVÁCS: [16:08:43] (Interpretation) Thank you very much.

5 I would like to point out that the interpretation services have agreed to go a little
6 further, till 16.15, but if Maître Kassongo would need a lot more time, maybe he can
7 present tomorrow.

8 MR KASSONGO: [16:09:12] (Interpretation) I am more than happy to start my
9 presentation tomorrow, your Honour.

10 PRESIDING JUDGE KOVÁCS: [16:09:17] (Interpretation) Thank you very much.

11 MR KASSONGO: [16:09:18] Thank you very much, Mr President.

12 PRESIDING JUDGE KOVÁCS: [16:09:21] (Interpretation) We have now come to the
13 end of the presentation of the first part of the statements of the oral submissions of the
14 Legal Representatives.

15 I want to thank all the interpreters and other colleagues for their efforts in dealing
16 with the pressures of today's work. And tomorrow, we will resume our
17 deliberations as we hear from the Legal Representative of the Victims.

18 Thank you. At 9.30 tomorrow morning, 9.30.

19 THE COURT USHER: [16:10:00] All rise.

20 (The hearing ends in open session at 16.10 p.m.)