

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/12-01/18**

**Date: 26 June 2024**

**TRIAL CHAMBER X**

**Before:**

**Judge Antoine Kesia-Mbe Mindua, Presiding Judge**

**Judge Tomoko Akane**

**Judge Kimberly Prost**

**SITUATION IN THE REPUBLIC OF MALI**

**IN THE CASE OF**

***THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG  
MAHMOUD***

**Public redacted version of  
With three public annexes**

**Trial Judgment**

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## TABLE OF CONTENTS

<b>I. INTRODUCTION .....</b>	<b>15</b>
A. The accused .....	16
B. The charges .....	17
<b>II. GENERAL EVIDENTIARY CONSIDERATIONS .....</b>	<b>20</b>
A. Evidentiary principles .....	20
1. Presumption of innocence and burden of proof .....	20
2. Evaluation of the evidence .....	21
B. Witness evidence .....	24
1. Assessment of credibility and reliability .....	25
2. Assessments of specific witnesses .....	28
a) <i>Viva voce</i> witnesses .....	28
i. P-0065 .....	28
ii. P-0099 .....	34
iii. P-0150 .....	37
iv. P-0160 .....	67
v. P-0626 .....	70
vi. P-0638 .....	75
vii. P-0641 .....	79
viii. P-0643 .....	81
ix. D-0202 .....	83
x. D-0211 .....	85
xi. D-0213 .....	87
xii. D-0514 .....	88
xiii. D-0605 .....	90
b) Rule 68(3) witnesses .....	93
i. D-0272 .....	93
ii. D-0512 .....	94
c) Rule 68(2)(b) and (c) witnesses .....	96
i. P-0524 .....	96
ii. P-0570 .....	98
iii. P-0582 .....	101
C. Evidence provided by the accused .....	106
1. Defence arguments .....	107

a)	Cognitive impairment .....	107
b)	Improper questioning/false memory.....	109
c)	Voluntariness/probative value .....	113
2.	General assessment of credibility .....	117
D.	Documentary evidence.....	119
1.	Items collected and photographed by Harald Doornbos (P-0007).....	120
2.	Items collected by Eric Baccard (P-0055) and P-0057 .....	123
3.	Authentication of Islamic Police reports and similar documents .....	126
4.	Authentication of Islamic Court judgments and similar documents.....	129
5.	Authentication of <i>Hesbah</i> reports .....	133
E.	Defence's general allegations of contaminated evidence .....	134
1.	Alleged influence by journalists and media propaganda .....	135
a)	France 2 .....	135
b)	RFI.....	135
c)	Other media outlets and dissemination of propaganda.....	136
2.	Alleged improper influence by NGOs .....	137
a)	Wildaf .....	137
b)	Wildaf Projects .....	138
c)	FIDH.....	138
d)	Adverma and AMSS.....	140
3.	Evidential contamination through the judicial proceedings held in Bamako 140	
a)	Group travel.....	141
b)	Married witnesses .....	142
c)	Reparations .....	142
d)	Witness contamination by NGOs .....	143
4.	Prosecution involvement in domestic proceedings.....	144
a)	Memory and recall.....	145
b)	Dissemination of information on Mr Al Hassan and flawed interview procedure .....	146
5.	Conclusion .....	147
<b>III.</b>	<b>FACTUAL FINDINGS .....</b>	<b>148</b>
A.	The main features of the city of Timbuktu prior to 2012.....	148
1.	General overview .....	149
2.	Religious traditions .....	153
3.	Atmosphere in the city .....	156

4. ‘Ordinary’ marriages.....	160
5. Traditional justice system .....	162
B. The conflict in Northern Mali between 2012 and 2013 .....	164
1. Armed groups operating in Northern Mali in 2012-2013.....	167
a) Malian national army.....	168
b) AQIM.....	168
c) MNLA .....	171
d) Ansar Dine.....	172
e) MUJAO .....	176
2. Armed violence in Northern Mali and Timbuktu in 2012 and 2013 .....	177
C. The organisation created by the armed groups in Timbuktu.....	185
1. The leadership.....	185
a) Senior level.....	186
b) The leadership organisation.....	188
2. Communication with the population.....	193
a) Meetings held by Ansar Dine/AQIM leaders .....	193
b) Campaigns for ‘Islamic <i>Sharia</i> ’ and the interactions with the population	196
3. General overview of the marriages between members of Ansar Dine/AQIM and the local population .....	203
a) Arrangement of ‘ <i>jihadi</i> marriages’ .....	205
i. Role of the leadership of Ansar Dine/AQIM.....	205
ii. Role of intermediaries.....	206
iii. Role of the ‘husband’ .....	211
b) Situation of the women whilst in ‘ <i>jihadi</i> marriages’ .....	212
c) Duration and termination of ‘ <i>jihadi</i> marriages’ .....	213
4. The institutions.....	214
a) The <i>Hesbah</i> .....	215
i. Creation of the <i>Hesbah</i> in Timbuktu .....	215
ii. Role and function of the <i>Hesbah</i> .....	216
iii. Funding of the <i>Hesbah</i> .....	225
b) The Islamic Police .....	225
i. Creation of the Islamic Police in Timbuktu.....	227
ii. Leadership of the Islamic Police.....	228
iii. Membership of the Islamic Police .....	232
iv. Headquarters of the Islamic Police and detention facilities used by the Islamic Police.....	233

v.	Functions of the Islamic Police.....	236
vi.	Funding of the Islamic Police .....	247
vii.	Dissolution of the Islamic Police .....	247
c)	Islamic Court .....	247
i.	Creation of the Islamic Court.....	248
ii.	Judges of the Islamic Court.....	253
iii.	Judicial process of the Islamic Court .....	260
d)	Collective work of the institutions.....	271
i.	Collaboration between the institutions.....	272
ii.	Joint efforts in the implementation of the rules and punishments .....	273
D.	Rules and prohibitions according to Ansar Dine/AQIM’s ‘Islamic <i>Sharia</i> ’ ...	280
1.	Different rules and prohibitions .....	280
a)	Rules on relationships between men and women .....	280
b)	Rules on alcohol .....	286
c)	Rules concerning women.....	288
d)	Rules on tobacco.....	295
e)	Rules concerning religious practices .....	298
f)	Rules on music, entertainment and leisure activities.....	304
g)	Rules on schools .....	305
h)	Rules on men’s appearance .....	308
2.	Effects of the rules and prohibitions and the punishments on the population ...	309
a)	Economical and psychological consequences .....	309
b)	The Crisis Committee .....	313
c)	The women’s march .....	320
E.	Charged incidents.....	324
1.	Events involving individual victims .....	324
a)	Case of the two young men flogged around 8 July 2012 (the ‘two men’) .....	324
b)	Case of Ibrahim bin Al-Husayn, case 01/1433-2012 .....	329
c)	Case of P-0565 and P-0557 .....	332
d)	Case of Mohamed Oye Ag Inhinane (P-0580) .....	354
e)	Case of Azahara, the daughter of Mohamed Oye Ag Inhinane (P-0580) and Gaichatane Mohamed (P-0642).....	358
f)	Case of (i) Khudi Bint Ibrahim and ‘Abdallah Bin Mukha, case 48/1433-2012; (ii) Bint Bint Ibrahim and Ikhmad Bin Muhammad, case 49/1433-	

2012; and (iii) Al-Husayn Bin ‘Umar and Halimah Bint Muhammad, case 54/1433-2012 (the ‘three “couples”’).....	359
g) Case of Dédéou Muhammad Maiga (‘Dédéou Maiga’) .....	368
h) Cases of Sallaka Bent Al-Khair (P-0554) and Madou Traoré.....	380
i) Case of the old man named Foma .....	395
j) Case of Azahara Abdou (P-1134).....	396
k) Case of P-0636.....	406
l) Case of Matalla Arbi (P-1708) .....	411
m) Case of P-0609.....	413
n) Case of P-0570.....	413
o) Case of Fadimata Mint Lilli (P-0547) .....	422
p) Case of Salamata Warnamougrez (P-1710) and Hady Aguisa (P-1711) .	430
q) Case of P-1712.....	432
r) Case of P-1721.....	433
s) Case of P-0520.....	434
t) Case of P-0602.....	446
u) Case of P-0610.....	452
v) Case of P-0538.....	461
w) Case of P-1162.....	476
x) Case of P-1460.....	479
y) Case of P-0957.....	479
z) Case of P-1674.....	479
2. Judgments .....	480
a) Judgments issued following an Islamic Police report drafted and/or signed by Mr Al Hassan.....	481
i. Judgment of Al-Khayr Bin-Sidi, case 23/1433-2012 .....	481
ii. Judgment of Moussa Ben Mohamed el-Joumaa or Muhammad Musa Muhammad al-Jam’at, ‘Abdu, ‘Ali al-Jaw and Adulahi, case 43/1433-2012.....	482
iii. Judgment of Abdelkarim Ascofare or ‘Abd-al-Karim Iskufari, case 45/1433-2012 .....	483
iv. Judgment of Nuh bin Muhammad, ‘Isa Bin Jadu, Muhammad Shaka, Ali Bin Barakah and Abdallah Bin Muhammad al-Jum’at, case 04/1433-2012.....	484
v. Judgment of Muhammad Bin Musa, case 25/1433-2012 .....	486
vi. Judgment of Muhammad Walad, Aghli Asudh and Arjili Bin Aman, case 55/1433-2012 .....	488

vii. Judgment of Yahya Bin-Muhammad or his companion, case 67/1434-2013.....	489
viii. Judgment of El-Khamis Bin-el-Sabt.....	491
b) Other judgments issued by the Islamic Court.....	492
i. Judgment of Yusfi ‘Uthman and Bili Arbi, case 09/1433-2012 .....	492
ii. Judgment of Halimah Samak and Braym Mik, case 11/1433-2012 .....	493
iii. Judgment of al-Hasan Bin Irzaq and Halimah Bint Sali, case 13/1433-2012.....	494
iv. Judgment of Muhammad, case 15/1433-2012 .....	495
v. Judgment of Sha’ban Bin Sidi, case 16/1433-2012 .....	496
vi. Judgment of Umar Anjami, case 18/1433-2012 .....	497
vii. Judgment of Infa Muhammad ‘Ali, case 19/1433-2012 .....	499
viii. Judgment of Halle Bin Hanay, case 21/1433-2012 .....	499
ix. Judgment of Mahmud Bin al-Mustafa, case 28/1433-2012.....	500
x. Judgment of Asya Bint ‘Umar, case 29/1433-2012.....	501
xi. Judgment of Muhammad Bin Musa, Muhammad Bin Ban and Qurba Mika, case 33/1433-2012.....	502
xii. Judgment of Boune Ould Hassan, case 44/1433-2012 .....	503
xiii. Judgment of Moukhtar Ould-M’barakou or Moukhtar Ould-Ambarkoua, case 46/1433-2012 .....	504
xiv. Judgment of Ali al-Haji and ‘Ali Shayban, case 60/1433-2012 .....	505
xv. Judgment of ‘Abdullah Kuni, case 61/1433-2012 .....	506
xvi. Judgment of Abou-Bakr Soumboulou .....	506
xvii. Judgment of Dawoud Oulale.....	507
xviii. Judgment of Mohamed Ben el-Gaw and el-Goumaa .....	508
3. The factual findings concerning the demolition of the mausoleums .....	508
a) Planning the demolitions .....	512
b) Demolition of the mausoleums and the door of a mosque .....	515
i. Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit and Sheikh Mohamed Mahmoud Al Arawani mausoleums .....	515
ii. Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti mausoleum .....	517
iii. Sheikh Alpha Moya mausoleum.....	518
iv. Sheikh Mouhamad El Micky, Sheikh Abdoul Kassim Attouaty and Sheikh Sidi Ahmed Ben Amar Arragadi mausoleums .....	519
v. Door of the Sidi Yahia mosque.....	520
vi. Sheikh Bahaber Babadié and Sheikh Ahamed Fulan mausoleums .....	522



c)	The impact of the demolitions .....	523
d)	The roles of the different institutions .....	524
F.	Mr Al Hassan’s role and functions within Ansar Dine/AQIM .....	528
1.	Recruitment into Ansar Dine/AQIM and the Islamic Police .....	530
2.	Position within the Islamic Police.....	533
3.	Functions within the Islamic Police.....	536
a)	Work as interpreter .....	536
b)	Supervision of Islamic Police members .....	536
c)	Interactions with the local population .....	537
d)	Mediation and settlement of disputes and issuance of permits .....	538
e)	Summons, arrests, investigations and interrogations.....	539
f)	Drafting, signing and transmission of Islamic Police reports.....	541
g)	Bringing accused persons to and from the Islamic Court.....	545
h)	Execution of punishments .....	546
i)	Communications on behalf of Ansar Dine/AQIM .....	547
j)	Other support of Ansar Dine/AQIM.....	551
G.	Mr Al Hassan’s personal views.....	552
<b>IV.</b>	<b>APPLICABLE LAW.....</b>	<b>554</b>
A.	Crimes against humanity and war crimes .....	554
1.	Contextual elements.....	554
a)	War crimes.....	554
i.	Armed conflict not of an international character .....	554
ii.	Nexus requirement and perpetrator’s awareness .....	556
b)	Crimes against humanity .....	557
i.	Attack directed against any civilian population.....	557
ii.	Nexus requirement and perpetrator’s awareness .....	561
2.	The crimes.....	562
a)	Torture (Article 7(1)(f) and Article 8(2)(c)(i) of the Statute (Counts 1 and 3)).....	563
b)	Cruel treatment (Article 8(2)(c)(i) of the Statute (Count 4)).....	571
c)	Outrages upon personal dignity (Article 8(2)(c)(ii) of the Statute (Count 5)) .....	572
d)	Passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable (Article 8(2)(c)(iv) of the Statute (Count 6)).....	574

i.	Passing of sentences without previous judgment pronounced by a court...	576
ii.	Passing of sentences pursuant to a judgment pronounced by a court lacking the essential guarantees of independence and impartiality .....	579
iii.	Passing of sentences pursuant to a judgement pronounced by a court which did not afford all other indispensable judicial guarantees.....	581
iv.	Mens rea.....	583
e)	Intentionally directing attacks against building dedicated to religion, education, art, science or charitable purposes, historical monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives (Article 8(2)(e)(iv) (Count 7)) .....	583
f)	Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health, including forced marriage (Article 7(1)(k) of the Statute (Counts 2 and 8)) ..	584
g)	Sexual slavery (Article 7(1)(g) and Article 8(2)(e)(vi) of the Statute (Counts 9 and 10)) .....	587
h)	Rape (Article 7(1)(g) and Article 8(2)(e)(vi) of the Statute (Counts 11 and 12)).....	589
i)	Persecution (Article 7(1)(h) of the Statute (Count 13)).....	590
j)	Mutilation (Article 8(2)(c)(i) of the Statute (Count 14)).....	595
B.	Modes of liability .....	596
1.	Commission ‘as an individual’ (direct perpetration) (Article 25(3)(a) of the Statute) .....	596
2.	Aiding, abetting or otherwise assisting (Article 25(3)(c) of the Statute).....	596
3.	Contributing in any other way (Article 25(3)(d) of the Statute).....	599
<b>V.</b>	<b>LEGAL CHARACTERISATION OF FACTS.....</b>	<b>605</b>
A.	Contextual elements .....	607
1.	War crimes .....	607
a)	The organisation requirement.....	608
b)	The intensity requirement.....	610
c)	The nexus requirement .....	613
2.	Crimes against humanity.....	617
a)	The existence of an attack directed against a civilian population .....	618
i.	The existence of a ‘course of conduct’ .....	618
ii.	Directed against a civilian population.....	619
iii.	Pursuant to or in furtherance of a State or organisational policy.....	619
b)	The systematic nature of the attack .....	622

c)	The existence of a nexus between the crimes and the attack directed against any civilian population .....	623
B.	Specific crimes .....	624
1.	Torture (Article 7(1)(f) and Article 8(2)(c)(i) of the Statute (Counts 1 and 3)) .....	625
a)	‘Lawful sanctions’ .....	626
b)	Severity of pain and suffering .....	628
c)	Custody or control .....	636
d)	Status of the victims .....	638
e)	Mental elements.....	638
f)	Conclusion .....	644
2.	Other inhumane acts (Article 7(1)(k) of the Statute (Count 2)).....	645
a)	Incidents charged under Counts 1 and 2.....	646
b)	Great suffering or serious injury by means of an inhumane act.....	646
c)	Character of the act.....	650
d)	Mental elements.....	651
e)	Conclusion .....	653
3.	Cruel treatment (Article 8(2)(c)(i) of the Statute (Count 4)) .....	654
a)	Incidents charged under Counts 3 and 4.....	655
b)	Severe pain or suffering.....	655
c)	Status of the victims .....	658
d)	Mental elements.....	658
e)	Conclusion .....	660
4.	Outrages upon personal dignity (Article 8(2)(c)(ii) of the Statute (Count 5))... ..	661
a)	Humiliation, degradation or violation of dignity.....	662
b)	Severity of the humiliation, degradation or other violation.....	667
c)	Status of the victims .....	669
d)	Mental elements.....	669
e)	Conclusion .....	671
5.	Mutilation (Article 8(2)(c)(i) of the Statute (Reclassification pursuant to Regulation 55(1) of the Regulations) (Count 14)).....	672
a)	Mutilation without justification .....	672
b)	Status of the victim .....	673
c)	Mental elements.....	673
d)	Conclusion .....	674

6.	Forced marriage as an other inhumane act (Article 7(1)(k) of the Statute (Count 8)).....	674
	a) The nature of the ‘marriages’ under consideration.....	674
	b) Great suffering or serious injury by means of an inhumane act.....	676
	c) Character of the act.....	682
	d) Mental elements.....	682
	e) Conclusion.....	686
7.	Sexual slavery (Article 7(1)(g) and Article 8(2)(e)(vi) of the Statute (Counts 9-10)).....	686
	a) Powers of ownership .....	687
	b) Acts of sexual nature .....	691
	c) Mental elements.....	692
	d) Conclusion.....	693
8.	Rape (Article 7(1)(g) and Article 8(2)(e)(vi) of the Statute (Counts 11-12))....	694
	a) Invasion by force .....	694
	b) Mental elements.....	698
	c) Conclusion.....	699
9.	Sentencing without due process (Article 8(2)(c)(iv) of the Statute (Count 6)) .	700
	a) Passing of sentences without a previous judgment pronounced by a court.....	700
	i. Passing of sentences and status of the victims.....	701
	ii. Absence of a previous judgment pronounced by a court.....	704
	iii. Mental elements .....	705
	b) Passing of sentences pursuant to judgments pronounced by a court which was not regularly constituted.....	706
	i. Passing of sentences and status of the victims.....	706
	ii. The court lacked the essential guarantees of independence and impartiality .....	709
	iii. Mental elements .....	715
	c) Conclusion.....	716
10.	Persecution (Article 7(1)(h) of the Statute (Count 13)).....	719
	a) Severe deprivation of fundamental rights contrary to international law ...	720
	i. The right to freedom of thought, conscience and religion .....	720
	ii. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and the right to bodily integrity .....	728

iii. Other rights infringed.....	729
b) Identifiable group or collectivity .....	730
c) Targeting on religious and/or gender grounds.....	731
d) Connection with any act referred to in Article 7(1) of the Statute or any crime within the jurisdiction of the Court .....	737
e) Conclusion .....	738
C. Responsibility of Mr Al Hassan.....	738
1. Responsibility of Mr Al Hassan as a direct perpetrator pursuant to Article 25(3)(a) of the Statute .....	739
a) The two men .....	739
2. Responsibility of Mr Al Hassan pursuant to Article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting .....	740
a) Torture and outrages upon personal dignity (Counts 1, 3 and 5) .....	743
i. P-0565 and P-0557.....	744
ii. Case of Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad .....	746
iii. The two men (in the alternative).....	749
b) Sentencing without due process (Count 6) .....	750
3. Responsibility of Mr Al Hassan pursuant to Article 25(3)(d) of the Statute for contributing .....	754
a) Whether the persons who committed the crimes belonged to a group acting with a common purpose that involved the commission of a crime .....	758
i. Torture, other inhumane acts, cruel treatment, outrages upon personal dignity, sentencing without due process and mutilation (Counts 1-6 and 14) .....	760
ii. Forced marriage as an other inhumane act and associated sexual slavery and rape (Counts 8-12).....	767
iii. Rapes in detention (Counts 11-12) .....	769
iv. Persecution (Count 13) .....	774
v. Conclusion .....	775
b) Mr Al Hassan’s contribution to the commission of the crimes and the relevant mental elements .....	775
i. Torture, other inhumane acts, cruel treatment, outrages upon personal dignity, mutilation (Counts 1-5, 14) .....	777
ii. Sentencing without due process (Count 6) .....	788
iii. Forced marriage as an other inhumane act and associated sexual slavery and rape (Counts 8-12).....	794

iv. Rapes in detention (Counts 11-12) .....	799
v. Persecution (Count 13) .....	802
D. Grounds for excluding criminal responsibility .....	805
1. Introduction .....	805
2. Duress (Article 31(1)(d) of the Statute) .....	806
a) Applicable law .....	806
b) Analysis .....	809
3. Mistake of facts and mistake of law (Article 32(1) and (2) of the Statute) .....	815
a) Applicable law .....	815
b) Analysis .....	817
4. Superior orders and prescription of law (Article 33 of the Statute) .....	818
a) Applicable law .....	818
b) Analysis .....	821
<b>VI. DISPOSITION .....</b>	<b>822</b>

SEPARATE AND PARTLY DISSENTING OPINION OF JUDGE TOMOKO  
AKANE

SEPARATE AND PARTLY DISSENTING OPINION OF JUDGE KIMBERLY  
PROST

OPINION INDIVIDUELLE ET PARTIELLEMENT DISSIDENTE DU JUGE  
ANTOINE KESIA-MBE MINDUA

**ANNEX 1** – List of acronyms, cited materials and authorities

**ANNEX 2** – Procedural history

**ANNEX 3** - Updated self-contained set of charges and convictions

**TRIAL CHAMBER X** of the International Criminal Court hereby renders its judgment pursuant to Article 74 of the Rome Statute in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*.<sup>1</sup>

## **I. INTRODUCTION**

1. This case relates to crimes against humanity and war crimes which took place in the city of Timbuktu, in Northern Mali, between 2 April 2012 and 29 January 2013. During that period, several armed groups were operating in this part of the Malian territory, including those with the aim to pursue an armed rebellion against the Malian authorities based on a religious ideology. From April 2012, some of the armed groups with this particular motivation, violently took control of the city of Timbuktu. In pursuance of their objective, they adopted and implemented a series of rules and prohibitions that covered several aspects of the daily life of the people of Timbuktu. Institutions were established to enforce the new regime, including the Islamic Police and the *Hesbah*, armed members of these institutions patrolled the city by day and night, intervening with the population to force compliance. These rules and prohibitions were imposed in a harsh manner by the armed groups on the local population including through the infliction of severe punishments on members of the public, such as flogging and an amputation.
2. All these acts by the armed groups created an atmosphere of terror in the city whereby the local population was in many ways paralysed by fear and unable to enjoy basic aspects of their lives. Notably, prior to the control of the city, the residents of Timbuktu had freedoms in terms of social activities and religious practices, all of which ended with the imposition of this strict regime of rules and prohibitions previously unknown to the citizens of Timbuktu. The population suffered greatly during the control of the city by the armed groups and the physical and psychological scars of these acts on the local population still remain

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<sup>1</sup> In the present judgment, and to the extent that this is required by its duty to provide a full and reasoned statement of its findings and conclusions under Article 74(5) of the Statute, the Chamber refers to some information, including identifying information of a number of protected witnesses, the redaction of which remains proportionate and justified. This demands that the present judgment, in the version that is made available to the parties and participants, be classified as 'confidential'. In its public version, which is filed simultaneously, the confidential information is redacted.

today.

3. The city of Timbuktu has been considered as a historical, spiritual and intellectual centre of great significance in Africa and some of the city's mosques and mausoleums have been classified since 1988 as UNESCO World Heritage Sites. The spirit of this unique city is ingrained in the daily life of the local population and the demolition of several of the city's mosques and mausoleums deeply affected the population.
4. Within this broader context, this trial was ultimately about the alleged individual criminal responsibility of one man – Mr Al Hassan – who was operating within the armed groups that controlled the city in the relevant period. The responsibility of the Trial Chamber was to examine the evidence with respect to his acts and conduct and make factual and legal findings which are reflected in this judgement rendered in accordance with Article 74 of the Statute.

#### **A. THE ACCUSED**

5. Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud<sup>2</sup> (hereinafter 'Mr Al Hassan'), born on 19 September 1977 in Mali,<sup>3</sup> is a member of the Kel Ansar Tuareg tribe<sup>4</sup> and a member of the Zorho clan, which lived about 100 kilometres east of Timbuktu.<sup>5</sup> At present, Mr Al Hassan has two wives and five children.<sup>6</sup>
6. Mr Al Hassan speaks Tamasheq, Arabic, has a 'good command' of French, and speaks a bit of Songhai.<sup>7</sup> In 2012, Mr Al Hassan was a local of the Timbuktu region, well-known in the local community and was familiar with local customs and traditions.<sup>8</sup> Mr Al Hassan described himself as '*une personne de Tombouctou*.

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<sup>2</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1264.

<sup>3</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1265.

<sup>4</sup> P-0638: T-058, pp. 12, 14; P-0150: T-091, p. 26; P-0065: T-039, p. 35. *See also*, P-0654: T-128, p. 35; P-0099: T-145, p. 36; P-0150: T-088, p. 11.

<sup>5</sup> P-0150: T-091, pp. 26-27. *See also* annotated map MLI-REG-0001-0048.

<sup>6</sup> *See* ICC-01/12-01/18-680-Conf-Exp-AnxM; [Custodial Visit Decision](#).

<sup>7</sup> First Appearance Hearing ICC-01/12-01/18-T-001, p. 5; Mr Al Hassan's statement MLI-OTP-0051-1257, at 1267. Mr Al Hassan explained that his native language is Tamasheq, but that he speaks and writes in Arabic and French and speaks a bit the Songhai. *See also* P-0150: T-091, p. 27.

<sup>8</sup> D-0605: T-193, pp. 20, 27; D-0006: T-207, p. 37; P-0150: T-094, pp. 40-41.



*Je suis originaire de Tombouctou et donc je connaissais la ville*.<sup>9</sup>

7. Mr Al Hassan was born in Timbuktu, where he spent about 14 years until he left for Libya with his family in 1991.<sup>10</sup> He is educated, and went to school both in Timbuktu and in Libya, where he studied in a school to become a veterinarian.<sup>11</sup> He came back to Timbuktu in 2002, after which he taught in a madrasa for a year and took computer training.<sup>12</sup> After spending approximately a year in Libya in 2005, he returned to Timbuktu again where he followed medical training, graduated as a pharmacist from a Timbuktu hospital between 2007 and 2010 and worked in Zorho as a pharmacist in 2010 and 2011.<sup>13</sup>
8. Mr Al Hassan lived in the Hammabanjou neighbourhood in Timbuktu during the period of the charges.<sup>14</sup>

## **B. THE CHARGES**

9. On 30 September 2019, PTC I confirmed charges against Mr Al Hassan of crimes against humanity and war crimes, allegedly committed between 1 April 2012 and 28 January 2013 in the city of Timbuktu and the region which bears the same name.<sup>15</sup> PTC I granted, in part, the Prosecution's request to amend the charges on 23 April 2020.<sup>16</sup>
10. On 6 May 2020, the Chamber issued the 'self-contained set of charges',<sup>17</sup> to comply with Article 64(8) of the Statute and ensure that the accused is fully aware of the charges against him.<sup>18</sup> On 2 July 2020, following exchanges with the parties and participants, the Chamber amended the 'self-contained set of charges'.<sup>19</sup>

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<sup>9</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1280.

<sup>10</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1265-1267.

<sup>11</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1267; P-0638: T-058, p. 13. *See also* P-1086: T-122, pp. 45-46.

<sup>12</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1268-1270. *See also* D-0211: T-190, pp. 19-20.

<sup>13</sup> P-0150: T-091, pp. 27-28; Mr Al Hassan's statement MLI-OTP-0051-1257, at 1270-1275.

<sup>14</sup> P-0638: T-058, p. 13; D-0544: T-196, p. 41; D-0605: T-195, p. 21. *See* P-0150: T-120, pp. 68-69.

<sup>15</sup> *See* [Confirmation Decision](#).

<sup>16</sup> *See* [Decision Amending the Charges](#).

<sup>17</sup> *See* Self-Contained Set of Charges.

<sup>18</sup> *See* [Directions on the Conduct of Proceedings](#), para. 8.

<sup>19</sup> *See* [Decision on Self-contained Set of Charges](#).

11. On 17 December 2020, 20 September 2021 and 8 November 2021, and in response to the Prosecution's request, the Chamber issued three decisions providing notice pursuant to Regulation 55(2) of the Regulations that the legal characterisation of the facts may be subject to change.<sup>20</sup> Whether the legal characterisation may change, as foreseen in Regulation 55(1) of the Regulations, will be discussed below in relation to each of the incidents subject to the aforementioned notice.
12. The Chamber notes that a number of incidents were withdrawn by the Prosecution, namely those involving P-0542, P-0574, P-0580's mother and P-1728,<sup>21</sup> and that the Prosecution adduced no evidence in relation to the cases of P-0553 and P-0553's sister.<sup>22</sup> The Chamber does not address these incidents further in this judgment.
13. As set out in its previous decisions,<sup>23</sup> the Chamber fully recognises that it is bound by the Confirmation Decision and the Decision Amending the Charges, which are the authoritative documents setting out the facts and circumstances underpinning the charges. Bearing this in mind, and for ease of reference – notably to reflect updates related to the abovementioned notice pursuant to Regulation 55(2) of the Regulations –, the Chamber finds it appropriate to annex an updated self-contained set of charges to the present judgment.<sup>24</sup>
14. The Defence argues that the Chamber cannot enter into cumulative convictions based on charges subject to legal re-characterisation. It avers that where the charges are subject to legal re-characterisation, there would be no room for cumulative convictions as what is at issue is the same set of facts and circumstances, and the Chamber would otherwise be exceeding the scope of the facts and circumstances.<sup>25</sup>

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<sup>20</sup> See [First Regulation 55 Decision](#); [Second Regulation 55 Decision](#); [Third Regulation 55 Decision](#).

<sup>21</sup> See [Prosecution Final Brief](#), para. 212.

<sup>22</sup> See Prosecution Updated List of Remaining Witnesses, para. 4.

<sup>23</sup> [Directions on the Conduct of Proceedings](#), para. 5; [Decision on Self-contained Set of Charges](#), para. 12.

<sup>24</sup> See Annex 3. Regarding the incident related to Dédéou Maiga, the Chamber refers to the additional war crime of mutilation pursuant to Article 8(2)(c)(i) of the Statute as 'Count 14'.

<sup>25</sup> See [Defence Response Brief](#), para. 96.

15. The Chamber observes that nothing in the text of Article 74(2) of the Statute, Regulation 55 or any other relevant provision within the statutory framework suggest that legal re-characterisation of facts is permissible only if the original legal characterisation is not sustained.<sup>26</sup> In the Chamber’s view, the Defence’s submission also rests on an erroneous understanding of the primary purpose of Regulation 55 of the Regulations, *i.e.* closing accountability gaps.<sup>27</sup> In its previous decisions, the Chamber has assessed on a case-by-case basis whether the legal characterisation already given ‘properly captures the essence of the acts committed in terms of accountability and the establishment of the truth’.<sup>28</sup> Indeed, the Chamber is of the view that the fact that the original legal characterisation can be sustained does not *per se* mean that there is no accountability gap to be closed.<sup>29</sup> The Defence’s argument is accordingly rejected as it is premised on an untenable interpretation of the law. The Chamber also dismisses the Defence’s argument that the notice was untimely and prejudicial,<sup>30</sup> for reasons already mentioned in its previous decisions on Regulation 55(2).<sup>31</sup>
16. In its Final Brief, the Defence also raises several arguments related to the charges as defined in the Confirmation Decision. It notably argues that ‘Mr Al Hassan’s right to be informed promptly and in detail of the nature, cause, and content of the charges was not satisfied due to significant defects in the charges’.<sup>32</sup> In relation to the common purpose, Defence argues that the charges are defective as they ‘fail to disclose a “critical element of criminality”’.<sup>33</sup> The Defence also argues, in relation to the crime of persecution, that the targeted group is not

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<sup>26</sup> See [Abd-Al-Rahman Regulation 55 Decision](#), para. 12.

<sup>27</sup> See [Lubanga OA15 OA16 Judgment](#), para. 77.

<sup>28</sup> See for example [First Regulation 55 Decision](#), paras 35, 44.

<sup>29</sup> See [Abd-Al-Rahman Regulation 55 Decision](#), para. 12.

<sup>30</sup> See [Defence Response Brief](#), paras 93-95. The Chamber observes that the Defence submits that the ‘recharacterisations’ caused irremediable prejudice. In light of the manner in which the Defence frames its submissions, submitting *inter alia* that ‘Regulation 55 may be applied at any time during the proceedings’ and that ‘[t]he recharacterisations were [not] timely’, the Chamber infers that, in fact, by ‘recharacterisation’, the Defence is referring not to the potential recharacterisation of the facts in accordance with Regulation 55(1) of the Regulations in the present judgment, but rather to the ‘notice’ of possibility of legal recharacterisation pursuant to Regulation 55(2) of the Statute. On this basis, the Chamber dismisses the Defence’s submissions, as nothing therein justifies re-litigation of the timing of the Regulation 55(2) notices at this juncture.

<sup>31</sup> See [First Regulation 55 Decision](#), paras 84-85; [Second Regulation 55 Decision](#), paras 18, 25, 40; [Third Regulation 55 Decision](#), para. 14. See also [Al Hassan OA3 Judgment](#), paras 60-61, 102, 108-109.

<sup>32</sup> See [Defence Final Brief](#), para. 10.

<sup>33</sup> See [Defence Final Brief](#), paras 11-17.

defined in a clear manner and that the Prosecution's position in this regard has 'mutated'.<sup>34</sup> The Defence raises several additional arguments which, in essence, plead 'defects' on the basis of lack of details.<sup>35</sup>

17. The Chamber notes that these submissions were not raised in the context of the Defence's Rule 134(2) Submissions.<sup>36</sup> In line with Rule 134(2) of the Rules, the Chamber considers that the Defence's challenges against the Confirmation Decision are untimely and therefore dismisses them *in limine*.<sup>37</sup>

## II. GENERAL EVIDENTIARY CONSIDERATIONS

### A. EVIDENTIARY PRINCIPLES

#### 1. Presumption of innocence and burden of proof

18. Article 66(1) of the Statute provides that everyone is presumed innocent until proven guilty before the Court. The onus is on the Prosecution to prove the guilt of the accused.<sup>38</sup> Pursuant to Article 66(3) of the Statute, the Chamber, in order to convict the accused, must be convinced of the guilt of the accused beyond reasonable doubt.
19. Accordingly, the standard of beyond reasonable doubt is to be applied to any fact indispensable for entering a conviction, namely those constituting the elements of the crimes and modes of liability charged.<sup>39</sup> In the present case, for its determination of the guilt or innocence of the accused, the Chamber has carried out a holistic assessment, weighing all the evidence taken together in relation to the facts at issue.
20. In light of the standard described above, reasonable doubts must be grounded in reasons. More specifically, the reasonable doubt standard cannot simply be an

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<sup>34</sup> See [Defence Final Brief](#), paras 572, 603. In any event, the Chamber observes that, contrary to the Defence's allegation, there was no substantial mutation in the Prosecution's submissions and Mr Al Hassan received appropriate and timely notice of the charges and the facts and circumstances related thereto.

<sup>35</sup> See [Defence Final Brief](#), paras 18-36.

<sup>36</sup> See generally [Decision on Defence Rule 134\(2\) Submissions](#).

<sup>37</sup> See [Ongwen OA4 Judgment](#), paras 127, 129-130, 142. See also [Decision on Defence Unfitness Notice](#), paras 19-21.

<sup>38</sup> Article 66(2) of the Statute.

<sup>39</sup> See [Ongwen Trial Judgment](#), para. 227. See also [Bemba et al. Appeal Judgment, paras 96, 868; Lubanga Appeal Judgment, para. 22.](#)

imaginary or speculative doubt. Accepting such a proposition is akin to requiring proof beyond all doubt, whereas the Statute requires proof beyond reasonable doubt.<sup>40</sup> Such doubt must have a rational link to the evidence, lack of evidence or inconsistencies in the evidence.<sup>41</sup> The reasonable alternative hypothesis should be compatible with at least some of the facts or evidence of the case.<sup>42</sup>

21. The Chamber has assessed circumstantial evidence and, in appropriate instances, has drawn inferences on the basis of the same.<sup>43</sup> In making findings based on circumstantial evidence, the Chamber has reached a conclusion beyond reasonable doubt when it was convinced that was the only reasonable inference to be drawn from the relevant facts. Such findings are identified specifically throughout the judgment.<sup>44</sup> When the Chamber has made an essential finding based on an inference, such as with respect to the elements of charged crimes and modes of liability, the Chamber has explained in detail how it reached the factual conclusion in question.<sup>45</sup>
22. In accordance with Rule 63(4) of the Rules, the Chamber has imposed no legal requirement of corroboration.<sup>46</sup> However, the Chamber has in some instances, based on an assessment of particular evidence, considered that, factually, corroboration is required.<sup>47</sup> The Chamber has assessed such evidence with a view to ascertain whether it confirms, even if in a different way, the same fact and has not imposed any requirement that the evidence is identical in all aspects.<sup>48</sup> These assessments have been made on a case-by-case basis, taking into account the circumstances of the facts to be proven and the evidence presented.

## 2. Evaluation of the evidence

23. Pursuant to Article 74(2) of the Statute, the present judgment is based on the

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<sup>40</sup> [Ongwen Trial Judgment](#), para. 229.

<sup>41</sup> [Ongwen Trial Judgment](#), para. 228; [Ngudjolo Appeal Judgment](#), para. 109, quoting [Rutaganda Appeal Judgment](#), para. 488.

<sup>42</sup> [Ongwen Trial Judgment](#), para. 229.

<sup>43</sup> [Ntaganda Trial Judgment](#), para. 69, referring to [Bemba et al. Appeal Judgment](#), para. 1386.

<sup>44</sup> [Ntaganda Trial Judgment](#), para. 70, referring to [Bemba et al. Appeal Judgment](#), paras 868, 1166.

<sup>45</sup> [Ntaganda Trial Judgment](#), para. 70, referring to [Bemba et al. Appeal Judgment](#), para. 870.

<sup>46</sup> See also [Ongwen Appeal Judgment](#), footnote 1249; [Lubanga Appeal Judgment](#), para. 218.

<sup>47</sup> See [Gbagbo and Blé Goudé Appeal Judgment](#), para. 357; [Ntaganda Appeal Judgment](#), para. 672.

<sup>48</sup> See [Gbagbo and Blé Goudé Appeal Judgment](#), para. 357; [Ntaganda Appeal Judgment](#), para. 672, referring to [Nahimana et al. Appeal Judgment](#), para. 428.

Chamber’s evaluation of the evidence and the entire proceedings. As stipulated in the Article, the Chamber has only relied ‘on evidence submitted and discussed before it at the trial’. As determined by the Appeals Chamber, ‘evidence is properly before a trial chamber when it has been “submitted” in accordance with the procedure adopted by the trial chamber and discussed at trial, unless it is ruled as irrelevant or inadmissible’.<sup>49</sup> In the present case, the Chamber has decided not to make *prima facie* individualised rulings on the admissibility of each item of evidence submitted during the course of the proceedings other than on the basis of any procedural bars such as those under Article 69(7) of the Statute or concerning the procedural requirements for introduction of prior recorded testimony under Rule 68 of the Rules.<sup>50</sup> Rather, in the absence of such procedural bars, it has recognised items of evidence as submitted within the meaning of Article 74(2) of the Statute. This procedure for submission of evidence is in accordance with established practice of the Court.

24. The Chamber adopted procedures to ensure that the items recognised as submitted were clearly identified to the parties and participants and to indicate formally that such items of evidence were part of the evidentiary basis for its Article 74 judgment. The fact that an item of evidence had been ‘submitted’ was placed on the record and such status accordingly reflected in the metadata of each such item of evidence.<sup>51</sup> Following this procedure, 13,273 items of evidence were formally submitted in the case record.
25. The Chamber has assessed the relevance, probative value and potential prejudice of the evidence so submitted – and any argument in this regard raised by the parties and participants in the course of the trial – as part of its holistic assessment of all evidence when deciding on the guilt or innocence of the accused in its

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<sup>49</sup> [Ongwen Appeal Judgment](#), para. 500; [Bemba et al. Appeal Judgment](#), paras 105, 576, 579, 599. See also [Ongwen Trial Judgment](#), para. 233.

<sup>50</sup> [Directions on the Conduct of Proceedings](#), paras 32, 34(vi). See also [Ongwen Appeal Judgment](#), para. 500; [Ongwen Trial Judgment](#), para. 237; [Bemba et al. Appeal Judgment](#), para. 583.

<sup>51</sup> [Bemba et al. Appeal Judgment](#), paras 599-600, emphasising that, in addition to the procedure for the submission of evidence at trial, the status of each piece of evidence as ‘submitted’ within the meaning of Article 74(2) must be clear. See [Ongwen Trial Judgment](#), para. 237. See also [Directions on the Conduct of Proceedings](#), para. 34(vi) where the Registry needs to reflect all formally submitted items in the JEM metadata.

judgment.<sup>52</sup> In accordance with Rule 63(2) of the Rules, the Chamber has assessed freely all evidence submitted in order to determine its relevance or admissibility.<sup>53</sup> The Chamber has further considered all the evidentiary criteria for each item of evidence submitted, though it may not necessarily discuss in the judgment every submitted item.<sup>54</sup> Such assessment, including with reference to the disposal of arguments advanced by the parties and participants, is referred to in the judgment as appropriate.

26. The Chamber recalls that ‘to fulfil its obligation to provide a reasoned opinion’ under Article 74(5) of the Statute, ‘it is not required to address all the arguments raised by the parties [and participants], or every item of evidence relevant to a particular factual finding, provided that it indicates with sufficient clarity the basis for its decision’.<sup>55</sup> As confirmed by the Appeals Chamber, trial chambers have a degree of discretion as to what to address explicitly in their reasoning as long as there are sufficient reasons provided for their determinations.<sup>56</sup>
27. That said, the Chamber notes that both parties submitted extensive documentary items in this case and had equal opportunity to provide observations and comments on the same including in relation to relevance and probative value.
28. As noted above, pursuant to Article 74(2) of the Statute, the Chamber is required to base its decision only on evidence submitted and discussed before it at trial. The Chamber recalls that what is required is an opportunity for the parties at trial to make arguments on the evidence concerned, irrespective of whether any such arguments are actually made.<sup>57</sup> The main consideration is that the evidence upon which the Chamber bases its Article 74 judgment has been introduced during trial and the parties and participants had the opportunity to make submissions on each item of evidence as they deemed fit.<sup>58</sup>

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<sup>52</sup> [Directions on the Conduct of Proceedings](#), paras 27, 29. See also [Ongwen Appeal Judgment](#), para. 500; [Ongwen Trial Judgment](#), para. 233; [Bemba et al. Appeal Judgment](#), para. 583.

<sup>53</sup> [Directions on the Conduct of Proceedings](#), para. 27. See also [Bemba et al. Appeal Judgment](#), para. 585.

<sup>54</sup> [Directions on the Conduct of Proceedings](#), para. 34(i).

<sup>55</sup> See [Bemba Appeal Judgment](#), para. 53; [Bemba et al. Appeal Judgment](#), para. 105. See also [Ntaganda Trial Judgment](#), para. 52.

<sup>56</sup> [Bemba Appeal Judgment](#), paras 54-55; [Bemba et al. Appeal Judgment](#), paras 106-107, 597.

<sup>57</sup> See [Bemba et al. Appeal Judgment](#), footnote 1256.

<sup>58</sup> See [Ongwen Trial Judgment](#), para. 249.

29. In this case, the parties and participants presented arguments in the context of the evidence submitted at trial, as well as in their final briefs and closing statements. All these arguments have been considered by the Chamber and are addressed herein to the appropriate extent.
30. At the same time, the Chamber has not restricted its assessment of the evidence to that referenced by the parties and participants. In applying a holistic and free evaluation of the evidence, the Chamber has considered, on a case-by-case basis, whether it could rely on the evidence on the trial record in order to establish a factual allegation, taking into account the requirements of Articles 64(2) and 74(2) of the Statute and in accordance with the obligation to provide a judgment that contains a full and reasoned statement of its findings and conclusions. In that regard, a significant part of the Chamber's line of reasoning is set out in the footnotes of the present judgment, which forms part of, and should be indeed read in conjunction with, the Chamber's analysis as a whole.<sup>59</sup>
31. The Chamber has not considered arguments which appear to have been subsequently abandoned or lines of questioning which hint at possible evidentiary challenges that were never advanced or developed in relation to the evidence presented at trial.
32. In addition, all factual finding sections of the judgment start with an introductory paragraph setting out the evidence the Chamber finds particularly credible and reliable (subject to any discrete matters discussed) and primarily relies on for the purpose of the factual findings made in that section. However, as explained above, this does not mean that other evidence was not also considered for the purpose of the relevant factual findings.

## **B. WITNESS EVIDENCE**

33. During the trial, the Chamber received the evidence of 107 witnesses in total.<sup>60</sup>

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<sup>59</sup> See also [Ntaganda Trial Judgment](#), para. 44.

<sup>60</sup> The total number of witnesses presented before the Chamber (*viva voce* witnesses, either at the seat of the court or via video-link or Rule 68(3) of the Rules and Rule 68(2)(b) and (c) of the Rules) is as follows: the Prosecution presented 69 witnesses, the Defence presented 36 witnesses and the LRVs presented two witnesses upon authorisation by the Chamber. Save for the evidence provided by the accused (*see* section C below), the Chamber has not received any evidence preserved under Article 56 of the Statute.



Of that total number, 76 witnesses<sup>61</sup> testified *viva voce*, either at the seat of the Court or via video-link,<sup>62</sup> and 34 of those *viva voce* witnesses also had their prior recorded testimony introduced under Rule 68(3) of the Rules.<sup>63</sup> The remaining 31 witnesses had their prior recorded testimony introduced under Rules 68(2)(b) or (c) of the Rules and did not appear before the Chamber.

34. With respect to prior recorded testimony introduced under Rule 68(3) of the Rules, as such testimony complements and forms an integral part of the witness's *viva voce* testimony, the Chamber has considered it together with and in the light of the witness's testimony given in court, and *vice versa*.<sup>64</sup>
35. As for the prior recorded testimony introduced pursuant to Rule 68(2)(b) or (c) of the Rules, this testimony has been assessed by the Chamber, together with all the other evidence submitted and discussed at trial. In addition to the other relevant considerations generally applicable to the assessment of testimonial evidence as set out below, in its evaluation of the prior recorded testimony introduced under Rule 68(2) of the Rules, the Chamber took into account that the witnesses concerned did not testify before the Court and the non-tendering party did not have the opportunity to examine them.<sup>65</sup> As with any other type of evidence submitted before the Chamber, arguments made by the parties and participants concerning the relevance and probative value of this testimonial evidence made in the course of the trial have been taken into account for the purpose of the present judgment and are explicitly addressed as appropriate.

### **1. Assessment of credibility and reliability**

36. In accordance with its responsibility,<sup>66</sup> the Chamber has assessed the credibility

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<sup>61</sup> The Prosecution called 30 *viva voce* witnesses, the Defence called 10 and the LRVs called two.

<sup>62</sup> 26 witnesses testified in-court and 50 witnesses testified via video-link.

<sup>63</sup> 22 Rule 68(3) witnesses were called by the Prosecution and 11 by the Defence.

<sup>64</sup> The Chamber has also taken into consideration that some of these prior recorded testimony are translations of the witnesses' spoken words and that as such, they may not reflect precisely the words used by the witness during his or her interview.

<sup>65</sup> There is 'no legal impediment' for a chamber to rely on prior recorded testimony submitted under Rule 68(2) of the Rules 'to establish individual criminal acts in circumstances in which they are not the direct acts of the accused', as long as that this evidence is 'not be prejudicial to or inconsistent with the rights of the accused'. [Ntaganda Appeal Judgment](#), para. 629. See also [Karadžić Appeal Judgment](#), paras 449, 457; [Popović et al. Appeal Judgment](#), para. 96.

<sup>66</sup> See [Ongwen Appeal Judgment](#), para. 810; [Ntaganda Appeal Judgment](#), para. 40; [Gbagbo and Blé Goudé Appeal Judgment](#), para. 69.

and reliability of the testimony of each witness and has evaluated the weight to be given to the testimony in relation to the relevant issues.

37. The Chamber has taken into account a variety of factors in its analysis of testimonial evidence. This includes the richness of the detail and the internal coherence of the narrative provided, as well as consistency with other evidence before the Chamber. When faced with competing versions of events, the Chamber has assessed the totality of the evidence to determine that which it considers most probative. In its discretion, it has evaluated any inconsistencies, to consider ‘whether the evidence taken as a whole is reliable and credible and to accept or reject the “fundamental features” of the evidence’.<sup>67</sup> As set out in the course of the judgment, with particular witnesses, the Chamber has relied on ‘certain aspects of a witness’s evidence, while considering other aspects unreliable’.<sup>68</sup>
38. The Chamber has also assessed the coherence between the testimony given by a witness and any prior account in relation to the same facts, given in other contexts, as emerging from the evidence presented at trial and submitted into evidence. In the case of any apparent discrepancies, the Chamber has carefully considered all of the circumstances of the prior account including, but not limited to, the accuracy, content and nature of the previous statement and the context in which it was made. The Chamber has also had careful regard to any explanation provided by the witness with respect to the discrepancy, and has taken into account whether or not the witness was given the opportunity to comment on any discrepancies.
39. Given the nature of the various incidents covered by the charges in this case, the Chamber has paid particular attention to the basis of knowledge of the witness, especially in instances where there was conflicting evidence on a factual point. This included assessing whether the witness was detailing matters of personal knowledge and, in the case of information received from other sources, consideration was given to the nature of the source along with other factors. With

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<sup>67</sup> See [Ongwen Appeal Judgment](#), para. 524, referring to [Ngudjolo Appeal Judgment](#), para. 168. See also [Ntaganda Appeal Judgment](#), para. 806; [Bemba et al. Appeal Judgment](#), para. 95, referring to [Lubanga Appeal Judgment](#), para. 23, quoting [Kupreškić et al. Appeal Judgment](#), para. 31.

<sup>68</sup> See [Ongwen Appeal Judgment](#), para. 524, referring to [Ngudjolo Appeal Judgment](#), para. 168.

a number of witnesses the Chamber also took into account whether the witness was in position to recount the information provided. The judgment provides details as to the factors considered in this respect as relevant to individual issues.

40. In assessing evidence given by witnesses who testified *viva voce*, another consideration has been the Chamber's impression of the witness overall – in terms of demeanour and manner of responding, as well as willingness to admit limitations and avoidance of speculation. Noting the passage of time in this case, the Chamber has remained mindful that the memory of some witnesses may have faded with regard to certain details, and has made appropriate allowances for contradictions and lack of clarity.<sup>69</sup>
41. Relevant factors also included the age, background, circumstances and vulnerability of individual witnesses, including those who had suffered trauma or were quite young at the time of the events. The Chamber has recognised these witnesses might have difficulty in providing a coherent and detailed account and the Chamber has made appropriate allowances for imprecision and contradictions.<sup>70</sup> The Chamber has also taken into account other individual circumstances, such as the witness's relationships with each other and to the accused, indications of bias and motives for testifying and telling the truth or providing false testimony.<sup>71</sup>
42. In this case, witnesses gave evidence in seven different languages, including five non-working languages of the Court.<sup>72</sup> Simultaneous and, in 24 instances, consecutive, interpretation was used during the trial. According to the established procedure for the correction of transcripts throughout the proceedings,<sup>73</sup> the Chamber has relied on the transcripts in their edited or, when applicable, corrected form. However, the Chamber is mindful that simultaneous and consecutive interpretation cannot always ensure a perfect and precise rendition of what was said in court and the Chamber has borne this reality in mind in its

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<sup>69</sup> See similarly [Ongwen Trial Judgment](#), para. 258; [Bemba et al. Trial Judgment](#), para. 203.

<sup>70</sup> See similarly [Ongwen Trial Judgment](#), para. 258; [Bemba et al. Trial Judgment](#), para. 203; [Ngudjolo Appeal Judgment](#), para. 53.

<sup>71</sup> See similarly [Ongwen Trial Judgment](#), para. 258; [Bemba et al. Trial Judgment](#), para. 202; [Lubanga Trial Judgment](#), para. 106.

<sup>72</sup> Arabic, Bambara, English, French, German, Songhai and Tamasheq.

<sup>73</sup> See [Directions on the Conduct of Proceedings](#), para. 90.

assessments as appropriate.<sup>74</sup>

43. The Chamber emphasises that the factors and considerations outlined above are not in any way exhaustive but rather are examples provided to better explain the overall approach of the Chamber in its assessment of the testimonial evidence presented. Throughout the judgment, the Chamber has evaluated the relevant testimonial evidence, including the credibility and reliability of witnesses, based on the particular and specific circumstances at hand, individually – while, at the same time, taking into account, holistically, the entire system of evidence available to the Chamber.<sup>75</sup>

## **2. Assessments of specific witnesses**

44. The assessment for some specific witnesses is set out below where the Chamber considers the nature and extent of the testimony necessitated a more detailed analysis, including in light of the importance of the witness’s testimony, or the volume of issues relating to credibility and reliability that required discussion. The assessment of the credibility and the reliability of other testimonial evidence is contained in the footnotes of the factual findings in the present judgment when relevant to an issue being assessed by the Chamber.

### **a) *Viva voce* witnesses**

#### **i. P-0065**

45. P-0065,<sup>76</sup> a Tuareg man from the [REDACTED],<sup>77</sup> was born in the region of Timbuktu.<sup>78</sup> The witness is [REDACTED] in Northern Mali in 2011 and 2012.<sup>79</sup> He was based in Timbuktu from approximately one week after Ansar Dine/AQIM took control of the city in April 2012 until the end of the ‘occupation’.<sup>80</sup> P-0065 mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, notably with respect to [REDACTED], and conversations he

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<sup>74</sup> See [Ntaganda Trial Judgment](#), para. 55. When necessary, the Chamber has endeavoured to verify particular points of evidence by comparing the French and English transcripts.

<sup>75</sup> See also [Ongwen Trial Judgment](#), para. 260.

<sup>76</sup> See P-0065: T-037 to T-050.

<sup>77</sup> P-0065: T-037, pp. 8-9.

<sup>78</sup> P-0065: T-037, pp. 8-9.

<sup>79</sup> P-0065: T-037, pp. 9-11; T-038, p. 26.

<sup>80</sup> P-0065: T-037, pp. 9-11, 14, 31-33, 35.

had with Ansar Dine/AQIM leaders and members before, during and after their control of Timbuktu.<sup>81</sup>

46. The Chamber notes that the witness gave lengthy and detailed testimony in which he was clear and precise about his recollection of events, distinguishing between those at which he was and was not present.<sup>82</sup> The Chamber further finds that during his testimony, P-0065 was clear about what he could not remember,<sup>83</sup> and what he did not know,<sup>84</sup> and acknowledged he had a problem recalling dates and names.<sup>85</sup> Further, he clearly distinguished between what he knew directly and what he knew based on other information, and consistently explained the basis of his knowledge on various exhibits.<sup>86</sup> The Chamber finds that P-0065 was also able to explain discrepancies in the content of such exhibits.<sup>87</sup>
47. The Chamber considers that the witness's testimony was fair and balanced, based on his own observations and highlighting all aspects of the functioning of Ansar Dine/AQIM and their control of Timbuktu that were known to him. Although P-0065 explained that the [REDACTED] the functioning of which he knew,<sup>88</sup> the Chamber notes that P-0065 had a direct and close professional relationship with Ansar Dine/AQIM. The Chamber is satisfied that the witness testified to the extent of his knowledge in relation to the events that took place and the armed groups present in Timbuktu in 2012 and 2013, including regarding the identification of members<sup>89</sup> and their roles within the groups, as well as the purpose of these groups and their general functioning.
48. Regarding P-0065's relationship with the armed groups, notably the Tuaregs which joined them in 2012, the Chamber observes that P-0065, a Tuareg himself,

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<sup>81</sup> See e.g. P-0065: T-037, p. 11; T-038, p. 26.

<sup>82</sup> See e.g. P-0065: T-039, pp. 29, 44-45; T-041, pp. 6-7, 9-10, 17-20; T-043, pp. 6, 10-11, 13; T-048, pp. 14, 23, 41, 43.

<sup>83</sup> See e.g. P-0065: T-037, pp. 25-26, 28-29; T-039, pp. 29, 45; T-042, p. 44. See also T-038, p. 21, referring to video MLI-OTP-0020-0003, at 00:38:44:22.

<sup>84</sup> See e.g. P-0065: T-037, p. 21; T-038, p. 48; T-039, pp. 16, 59; T-040, pp. 10, 46.

<sup>85</sup> See e.g. P-0065: T-037, pp. 32-33, 36; T-038, pp. 5, 9; T-044, p. 24.

<sup>86</sup> See e.g. P-0065: T-037, p. 14; T-038, pp. 11-12; T-039, pp. 10-13; T-040, pp. 7-8; T-042, p. 40; T-043, pp. 49-51; T-045, pp. 14, 17-18; T-046, pp. 55-56; T-047, pp. 61-62.

<sup>87</sup> P-0065: T-042, p. 57.

<sup>88</sup> P-0065: T-049, p. 72.

<sup>89</sup> See e.g. P-0065: T-041, pp. 6-8, referring to video MLI-OTP-0018-0350, transcript MLI-OTP-0069-1419; translation MLI-OTP-0069-7579.

testified that [REDACTED].<sup>90</sup> He testified that he was concerned by the situation of the Tuareg community in Northern Mali, and noted that they all suffered abuses from the Malian army.<sup>91</sup>

49. The Chamber further notes that P-0065 recognised having friends, acquaintances and relatives amongst the armed groups operating in Timbuktu at the time, especially in the MNLA and Ansar Dine.<sup>92</sup> However, despite having a direct relationship with the groups, and sometimes being pictured with weapons,<sup>93</sup> the witness reaffirmed several times that he was not a member of the groups in Timbuktu, and therefore could not describe precisely their internal structures or the responsibilities and prerogatives given to each member, but only what he personally observed.<sup>94</sup> P-0065 convincingly explained how he gained the trust of the Ansar Dine/AQIM leadership in Timbuktu,<sup>95</sup> and the way in which he dealt with the groups on a daily basis at the time: in a professional way and with preconditions agreed upon in advance.<sup>96</sup> He admitted that he had to be ‘lenient’, diplomatic and follow the stringent rules of the groups in order to protect himself [REDACTED], despite not being an ‘Islamist’ and not supporting the goals and objectives of AQIM.<sup>97</sup>
50. The Chamber observes that P-0065 described his working methods very clearly. [REDACTED],<sup>98</sup> the [REDACTED],<sup>99</sup> [REDACTED].<sup>100</sup> [REDACTED].<sup>101</sup> In relation to Ansar Dine/AQIM members, P-0065 explained that he would obtain information from verified sources or sometimes from members without them

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<sup>90</sup> P-0065: T-044, p. 53. P-0065 stated that, as a Tuareg, he did not need to study what their or his reality is.

<sup>91</sup> T-045, pp. 65-69, referring to Facebook posts MLI-D28-0004-2926, translation MLI-D28-0004-2928; MLI-D28-0004-2931, translation MLI-D28-0004-2932. See P-0065: T-037, pp. 31-34; MLI-D28-0004-3590, translation MLI-D28-0004-3597. See also P-0065: T-045, pp. 55-58, referring to Facebook post MLI-D28-0004-2919, translation MLI-D28-0004-2922.

<sup>92</sup> P-0065: T-037, pp. 41-44. See notes MLI-REG-0001-0004; MLI-REG-0001-0005.

<sup>93</sup> See P-0065: T-048, pp. 35-38, referring to photograph MLI-D28-0004-2938.

<sup>94</sup> P-0065: T-038, pp. 46-47; T-046, pp. 60, 63; T-049, p. 71; T-050, pp. 38, 40.

<sup>95</sup> P-0065: T-039, p. 13; T-045, p. 40.

<sup>96</sup> P-0065: T-037, p. 26; T-045, p. 41. In this regard, P-0065 explained that [REDACTED] (P-0065: T-045, p. 41).

<sup>97</sup> See P-0065: T-037, pp. 14, 26; T-045, pp. 39-41; T-050, p. 41.

<sup>98</sup> See e.g. P-0065: T-039, p. 50.

<sup>99</sup> See e.g. P-0065: T-039, pp. 51-54.

<sup>100</sup> See e.g. P-0065: T-048, p. 23. See also P-0065: T-039, pp. 50-51; T-045, p. 40.

<sup>101</sup> P-0065: T-050, pp. 25-26, 44.

knowing, for instance, information he overheard while he was with them.<sup>102</sup> The Chamber also finds that P-0065 was straightforward about the way he [REDACTED].<sup>103</sup>

51. In relation to the Defence's suggestions that the witness was partial in [REDACTED], the Chamber notes that P-0065 gave frank and open testimony on these subjects. [REDACTED],<sup>104</sup> [REDACTED].<sup>105</sup> [REDACTED].<sup>106</sup> He clearly explained that western media, particularly French channels, did not want to see the positive aspects of the armed groups' control and were interested in footage showing a negative perspective of life in Timbuktu.<sup>107</sup>
52. P-0065 was additionally straightforward on the fact that [REDACTED].<sup>108</sup> However, the witness noted that if he saw a case [REDACTED].<sup>109</sup> [REDACTED].<sup>110</sup> While remaining cognisant of the foregoing considerations in assessing the witness's evidence and related exhibits, the Chamber does not consider that they undermine the overall credibility and reliability thereof.
53. Recalling the witness's close personal and professional relationships with members of the armed groups, his interactions with, and the role of, [REDACTED] of Ansar Dine/AQIM,<sup>111</sup> the degree of autonomy he apparently still exercised in performing his work, and the fact that States and intelligence services did not influence his work,<sup>112</sup> the Chamber considers the witness was reasonably positioned to capture, and provide a balanced account of events in Timbuktu during the relevant period.<sup>113</sup>

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<sup>102</sup> P-0065: T-037, p. 26.

<sup>103</sup> P-0065: T-037, pp. 11-12; T-041, pp. 32, 61; T-042, pp. 18, 29-30; T-043, pp. 53-54; T-044, p. 4; T-047, pp. 64-68, 70-71.

<sup>104</sup> P-0065: T-037, p. 11; T-038, p. 26.

<sup>105</sup> P-0065: T-038, p. 26.

<sup>106</sup> P-0065: T-047, pp. 26-27, 31; T-050, pp. 6, 9, 40, 44. See [Defence Final Brief](#), para. 146.

<sup>107</sup> P-0065: T-047, pp. 26-27, 31, 41-42, 56. See [Defence Final Brief](#), para. 146.

<sup>108</sup> P-0065: T-040, p. 57; T-050, p. 9.

<sup>109</sup> P-0065: T-050, p. 9.

<sup>110</sup> P-0065: T-040, p. 57; T-047, pp. 25-26; T-047, pp. 25-27.

<sup>111</sup> P-0065: T-037, p. 11, 41-44; T-038, p. 26; T-039, pp. 50-51; T-048, p. 23.

<sup>112</sup> P-0065: T-050, pp. 8-9.

<sup>113</sup> The Chamber notes that the Defence raised several questions about State secret services, whether they played a role in the collection of evidence or had any influence on the trial in this case, and whether P-0065 had felt influenced or threatened by such services, particularly by the Malian authorities, referring

54. The Chamber additionally notes that P-0065's account of [REDACTED] was also broadly corroborated by other witnesses. Notably, P-0150 identified the witness and indicated his profession and for whom he worked.<sup>114</sup> P-0150 stated he was originally from 'the people of Timbuktu' and stayed in Timbuktu during the presence of the armed groups,<sup>115</sup> observing that the witness would come to the Islamic Court [REDACTED].<sup>116</sup> According to P-0150, P-0065 spoke quite often with members of Ansar Dine/AQIM, including mid-level officials and soldiers, knew the details of their whereabouts and the way they managed Timbuktu, [REDACTED].<sup>117</sup> P-0150 explained that the witness knew a lot; everything about the 'jihadists', [REDACTED].<sup>118</sup>
55. The Chamber takes note of the Defence objections in relation to the integrity and reliability of a number of exhibits [REDACTED].<sup>119</sup> In this regard, the Chamber notes that P-0065 clearly explained [REDACTED].<sup>120</sup> [REDACTED].<sup>121</sup> The Chamber is satisfied with the witness's explanation and considers that it applies equally to material [REDACTED] irrespective of whether he was shown or [REDACTED] individually during his testimony.<sup>122</sup> In this context and also considering the content of these exhibits together with comments thereon by third party witness, the Chamber finds unpersuasive the Defence's submissions on their reliability, including its general assertion that [REDACTED] affected the reliability and probative value of these exhibits *per se*. In view of his detailed, coherent and plausible account, the Chamber is satisfied that [REDACTED] and

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also to the DGSE (P-0065: T-050, pp. 5-18). In reply, P-0065 explained that there was no influence from States and intelligence services on his work, which the Chamber considers credible (P-0065: T-050, pp. 8-9).

<sup>114</sup> P-0150: T-093, p. 36; photograph MLI-OTP-0018-2291; T-090, p. 39.

<sup>115</sup> P-0150: T-090, p. 39.

<sup>116</sup> P-0150: T-096, p. 22.

<sup>117</sup> P-0150: T-090, p. 39.

<sup>118</sup> P-0150: T-090, p. 39. The Chamber further notes that P-0125 stated that he saw [REDACTED] on the days the Sidi Ahmed Ibn Amar mausoleum and the Sidi Yahia door were destroyed (P-0125's statement MLI-OTP-0023-0004, at 0031, para. 31, 0036, paras 146-148, *referring to* videos MLI-OTP-0018-0149, MLI-OTP-0018-0148). P-0125 explained that he referred to that person as [REDACTED]. The Chamber refers to its finding that references to MUJAO in P-0125's testimony encompass all the armed groups present in Timbuktu generally during that period (*see* footnote 3454 below).

<sup>119</sup> *See* ICC-01/12-01/18-1631-Conf-AnxV; [Defence Final Brief](#), paras 86, 455-456, 521. *See also* P-0065: T-047, pp. 63-66, 71-84.

<sup>120</sup> P-0065: T-047, p. 82; T-048, pp. 12-13.

<sup>121</sup> P-0065: T-039, p. 47; T-047, p. 82; T-048, pp. 12-13.

<sup>122</sup> In this regard the Chamber rejects the Defence's general submission that exhibits must have been individually shown to and commented on by the witness.



that there is a clear connection between [REDACTED], P-0065's testimony and other material put to him [REDACTED]. The Chamber is further satisfied that the witness transmitted the material to the Prosecution, after making a random selection of available files, without any alteration.<sup>123</sup> Accordingly, and having considered other remaining challenges raised by the Defence in respect of this material, the Chamber finds that none of the issues raised by the Defence is significant or has a meaningful impact on their probative value. The Chamber accordingly relies upon this material, in the present judgment, most often together with the comments and corroborating statements from credible witnesses. With respect to remaining Defence arguments, [REDACTED], the Chamber has given weight and relied upon certain relevant excerpts of these video recordings where witnesses, including P-0065, usefully commented on their creation and/or their content.

56. In relation to P-0065's testimony on sexual violence against women detained by Ansar Dine/AQIM and on forced marriages, the Chamber notes that the witness categorically stated and was fully convinced that no sexual abuse or forced marriage was committed in Timbuktu at the relevant time.<sup>124</sup> The Chamber considers that, unlike other aspects of his testimony, P-0065's statement on these issues is mainly speculative, rather than founded on his actual observations of events. The Chamber notes that P-0065 rarely spoke with locals residing in Timbuktu because they were afraid and thought he was part of Ansar Dine/AQIM.<sup>125</sup> The Chamber also notes P-0065 did not [REDACTED] with alleged female victims in Timbuktu,<sup>126</sup> observing that the basis of the witness's knowledge on this topic regarding alleged events in Timbuktu mainly comes from

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<sup>123</sup> [REDACTED].

<sup>124</sup> P-0065: T-041, pp. 60-61; T-045, pp. 70, 71-75; T-046, pp. 5-6; T-050, pp. 25-28, 51.

<sup>125</sup> P-0065: T-038, p. 26; T-050, p. 41.

<sup>126</sup> P-0065 notably explained that [REDACTED] the victims of forced marriages with the 'jihadists' in 2013 in a different village in Mali and there were a lot of cases, but nobody wanted to talk about it. For instance, he met a woman who had a child and only her mother talked about what had happened (P-0065: T-045, pp. 76-77). P-0065 also mentioned investigations he made in Gao about people fleeing to Timbuktu because they were raped. He stated that 'it turns out that these women were mostly not from Mali, they were women working in bars at night and who used to sell their bodies promiscuously. And when the Islamists came over, this business was forbidden and these bars were closed. When they went to Timbuktu, this information appeared so that they could get compensation and aid' (*see* P-0065: T-050, p. 51).

members of Ansar Dine/AQIM.<sup>127</sup> Hence, the Chamber will give limited weight to P-0065's evidence on sexual violence against women. However, noting the limitations of his basis of knowledge in this regard, the Chamber does not consider this to affect the credibility or reliability of other aspects of his evidence mentioned above.

57. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0065 to be a generally credible and reliable witness and relies on the material produced by the witness, although remains cognisant of the foregoing considerations in assessing his evidence. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

**ii. P-0099**

58. P-0099,<sup>128</sup> [REDACTED], moved to Mali with his family in 2011, and lived in Timbuktu from around June 2012 to January 2013.<sup>129</sup> He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including providing details about the MNLA, Ansar Dine/AQIM and their members<sup>130</sup> and direct interactions he had with Adama, the emir of the Police and Mr Al Hassan.<sup>131</sup>
59. The Chamber considers that the witness provided straightforward answers and appeared to testify to the best of his abilities, clearly indicating when he could not recall, was not present, or was not aware of certain information.<sup>132</sup> He consistently attempted to put his evidence in context and was open about his ideological beliefs,<sup>133</sup> facilitating the Chamber's understanding of the situation and how he positioned himself with respect to the various armed groups present

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<sup>127</sup> Regarding his basis of knowledge, P-0065 explained that he first asked one of the prison guards, who was a local and who he had full confidence in and would not hide anything from him as a Tuareg (P-0065: T-041, pp. 60-61; T-050, pp. 25-26). The prison guard explained how strictly the rules were enforced on those guarding women and that there were no violations whatsoever (P-0065: T-050, p. 26).

<sup>128</sup> See P-0099: T-145 to T-148.

<sup>129</sup> P-0099: T-145, pp. 7-11, 13, 15, 22.

<sup>130</sup> See e.g. P-0099: T-145, pp. 21-26, 57; T-146, pp. 25, 37, 43.

<sup>131</sup> P-0099: T-145, p. 37.

<sup>132</sup> See e.g. P-0099: T-145, pp. 19-20, 35-36; T-146, pp. 4-5, 15; T-147, pp. 4, 9, 38; T-148, pp. 41-46.

<sup>133</sup> P-0099: T-146, pp. 49, 52, 62.

in Timbuktu at the relevant time.

60. The Chamber considers that P-0099 provided a unique perspective on Ansar Dine/AQIM as both an ‘insider’, in the sense that he was very close to the groups for a given period,<sup>134</sup> and also [REDACTED], who was regarded with suspicion<sup>135</sup> by Ansar Dine/AQIM authorities, investigated,<sup>136</sup> and temporarily detained<sup>137</sup> by the groups’ members. The Chamber believed the witness when he stated that he ‘never completely joined AQIM and [he] never espoused their ideology’.<sup>138</sup> This unique status of P-0099 allowed him to present a balanced picture of Ansar Dine/AQIM and its control of Timbuktu.
61. As regards P-0099’s testimony on the leadership of the Islamic Police, the Chamber observes that the witness acknowledged there seemed to be some confusion in his prior statement and conceded that there was a ‘grey period, a grey area’ in his knowledge concerning the identity of the chief of the Islamic Police at a given time.<sup>139</sup> However, the Chamber notes that the witness was definitive that before Adama was removed from the Police, Mr Al Hassan was ‘the deputy, the second in charge’,<sup>140</sup> and that it was Mr Al Hassan with whom he interacted in his dealings with the Police,<sup>141</sup> and the Chamber finds the witness’s evidence reliable in this regard. Relatedly, the Chamber also finds entirely speculative the Defence’s argument that P-0099’s memory of Mr Al Hassan’s role in the Islamic Police was ‘improperly influenced and tainted through Rule 74 Counsel showing P-0099 a photograph of Mr Al Hassan [...] most likely from the charging sheet, which describes Mr Al Hassan as the *de facto* Chief of the Police’,<sup>142</sup> noting that the latter proposition is unsupported by any evidence. In addition, the Chamber dismisses the Defence’s submission that P-0099’s testimony on [REDACTED] should be given no weight in light of video

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<sup>134</sup> See e.g. P-0099: T-146, pp. 23-25; T-148, p. 25, referring to document MLI-OTP-0042-0506, at 0513.

<sup>135</sup> P-0099: T-146, pp. 55-56; T-147, pp. 62-64.

<sup>136</sup> P-0099: T-145, pp. 25-26.

<sup>137</sup> P-0099: T-146, pp. 55-56, referring to document MLI-OTP-0013-3136, at 3137; T-148, pp. 21-22, referring to document MLI-OTP-0013-2791, at 2796.

<sup>138</sup> P-0099: T-147, p. 71 (*contra* [Defence Response Brief](#), para. 65, submitting that P-0099 displayed self-serving tendencies, testifying that he never joined Al Qaeda).

<sup>139</sup> See P-0099: T-147, pp. 25-29, 97-98; [Defence Response Brief](#), para. 64.

<sup>140</sup> P-0099: T-147, pp. 24-25, 28.

<sup>141</sup> P-0099: T-147, pp. 28-29.

<sup>142</sup> [Defence Response Brief](#), para. 64 (emphasis added).

evidence of Khaled in Timbuktu in the relevant period,<sup>143</sup> noting *inter alia* that the latter's absence from Timbuktu for the attack on Diabaly is corroborated by P-0582.<sup>144</sup>

62. The Chamber also finds the Defence's suggestion that the witness had a 'troubled psyche'<sup>145</sup> and that his 'evidence was impacted by psychological problems', to be entirely without foundation.<sup>146</sup> The Chamber further considers the Defence's assertion that P-0099 had an incentive to incriminate Mr Al Hassan, faced the risk of prosecution for [REDACTED] charges, and had a subjective belief that his testimony or cooperation would result in leniency or give rise to material advantages<sup>147</sup> to be speculative.<sup>148</sup> In assessing the witness's evidence, the Chamber has considered the witness's personal circumstances, noting that [REDACTED].<sup>149</sup> The Chamber finds that the witness' personal circumstances did not adversely affect the overall credibility or reliability of his testimony.
63. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0099 to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

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<sup>143</sup> [Defence Response Brief](#), para. 64. See P-0099: T-146, pp. 35-36; T-147, pp. 27-29.

<sup>144</sup> P-0582's statement MLI-OTP-0062-3820-R02, at 3833-3835.

<sup>145</sup> [Defence Response Brief](#), para. 64.

<sup>146</sup> [Defence Response Brief](#), para. 65. See P-0099: T-147, p. 92; T-148, pp. 18-19, referring to video MLI-D28-0005-7120, transcript MLI-D28-0005-7138, at 7139. The Chamber considers that a news video, referring to an unauthenticated document, apparently gathered from the Islamic Court, in which a 'witness' identified as Abu al-Darda Chinguetti purportedly casts aspersions on the witness's psychological state is completely without merit.

<sup>147</sup> [Defence Final Brief](#), para. 33; [Defence Response Brief](#), para. 25.

<sup>148</sup> The Chamber similarly finds no merit in the Defence's apparent inference - based on P-0099's speculation that [REDACTED] - that P-0099 may have been fearful of providing exculpatory information following interrogation by the Malian authorities. See [Defence Response Brief](#), para. 65; P-0099: T-148, pp. 45-46.

<sup>149</sup> P-0099: T-146, p. 60, referring to MLI-OTP-0042-0506.

**iii. P-0150****a. [REDACTED]****(i) [REDACTED]**

64. [REDACTED].<sup>150</sup> [REDACTED].<sup>151</sup> [REDACTED].<sup>152</sup>
65. [REDACTED].<sup>153</sup> [REDACTED].<sup>154</sup>
66. [REDACTED].<sup>155</sup> [REDACTED].<sup>156</sup> [REDACTED].<sup>157</sup> [REDACTED].<sup>158</sup>  
[REDACTED].<sup>159</sup>
67. [REDACTED]. [REDACTED].<sup>160</sup> [REDACTED]. [REDACTED].<sup>161</sup>  
[REDACTED].<sup>162</sup>
68. [REDACTED].<sup>163</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>164</sup>  
[REDACTED]. [REDACTED].<sup>165</sup> [REDACTED].<sup>166</sup>

**(ii) [REDACTED]**

69. [REDACTED].<sup>167</sup> [REDACTED].<sup>168</sup> [REDACTED].<sup>169</sup> [REDACTED].<sup>170</sup>

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<sup>150</sup> [REDACTED].

<sup>151</sup> [REDACTED].

<sup>152</sup> [REDACTED].

<sup>153</sup> [REDACTED].

<sup>154</sup> [REDACTED].

<sup>155</sup> [REDACTED].

<sup>156</sup> [REDACTED].

<sup>157</sup> [REDACTED].

<sup>158</sup> [REDACTED].

<sup>159</sup> [REDACTED].

<sup>160</sup> [REDACTED].

<sup>161</sup> [REDACTED].

<sup>162</sup> [REDACTED].

<sup>163</sup> [REDACTED].

<sup>164</sup> [REDACTED].

<sup>165</sup> [REDACTED].

<sup>166</sup> [REDACTED].

<sup>167</sup> [REDACTED].

<sup>168</sup> [REDACTED].

<sup>169</sup> [REDACTED].

<sup>170</sup> [REDACTED].

70. [REDACTED].<sup>171</sup> [REDACTED].<sup>172</sup> [REDACTED].<sup>173</sup> [REDACTED].  
[REDACTED]. [REDACTED].<sup>174</sup>

71. [REDACTED].<sup>175</sup> [REDACTED].<sup>176</sup> [REDACTED]. [REDACTED].<sup>177</sup>  
[REDACTED].<sup>178</sup>

72. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].  
[REDACTED].<sup>179</sup>

**(iii) [REDACTED]**

73. [REDACTED].<sup>180</sup> [REDACTED].<sup>181</sup> [REDACTED].<sup>182</sup> [REDACTED].  
[REDACTED].<sup>183</sup> [REDACTED].<sup>184</sup>

74. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].<sup>185</sup>

75. [REDACTED].<sup>186</sup> [REDACTED].<sup>187</sup> [REDACTED].<sup>188</sup> [REDACTED].

**b. Chamber's evaluation**

76. P-0150 provided extensive evidence as an 'insider' witness, testifying before the Chamber from 31 May to 19 July 2021.<sup>189</sup> His evidence covered a broad range of subjects and was based on his activities, interactions, his personal observations, what he was told and heard, as well as information that he gathered from other sources during and after the events. He also provided evidence based on his

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<sup>171</sup> [REDACTED].

<sup>172</sup> [REDACTED].

<sup>173</sup> [REDACTED].

<sup>174</sup> [REDACTED].

<sup>175</sup> [REDACTED].

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<sup>178</sup> [REDACTED].

<sup>179</sup> [REDACTED].

<sup>180</sup> [REDACTED].

<sup>181</sup> [REDACTED].

<sup>182</sup> [REDACTED].

<sup>183</sup> [REDACTED].

<sup>184</sup> [REDACTED].

<sup>185</sup> [REDACTED].

<sup>186</sup> [REDACTED].

<sup>187</sup> [REDACTED].

<sup>188</sup> [REDACTED].

<sup>189</sup> P-0150: T-088 to T-108; T-110 to T-120.

personal views and analysis of events, and his interactions with, and impressions of, individuals.

77. The Chamber has carefully assessed the testimony of P-0150 bearing in mind throughout the caution necessary, given he was an insider witness, [REDACTED]. The Chamber has reached its conclusions based on a comprehensive assessment of relevant considerations including, the specific arguments raised by the Defence, the substantive content of P-0150's evidence, as well as his conduct and demeanour during the course of his testimony.

*(i) Chamber's assessment of specific Defence arguments*

78. The Chamber finds it appropriate to present here, prior to its other relevant considerations, its assessment of the arguments raised by the Defence with respect to the credibility and reliability of P-0150's testimony.

*(a) History of providing false information*

79. The Defence attacks the credibility of P-0150 on the basis that he has a propensity of providing false or misleading information or omitting key details.<sup>190</sup>
80. The Defence first points to P-0150 having given false information to [REDACTED].<sup>191</sup> The witness addressed this issue directly in his testimony admitting he withheld evidence and explaining that the material generated through these interviews was unreliable and the reasons for the same.<sup>192</sup> The Chamber does not consider these points to support any general pattern of providing false or misleading information.
81. Reference is also made to various tactics employed by P-0150 during interviews with the Prosecution such as reserving certain information for final sessions on a topic and urging an individual to refuse cooperation unless certain concessions were made.<sup>193</sup> The Chamber notes that P-0150 was not under oath during the course of the interview process nor was he under any legal compulsion to disclose

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<sup>190</sup> [Defence Response Brief](#), para. 58.

<sup>191</sup> [Defence Response Brief](#), para. 58.

<sup>192</sup> P-0150: T-116, pp. 90-91; T-115, pp. 17-18.

<sup>193</sup> [Defence Response Brief](#), paras 58-59.

information to the investigators. Thus the Chamber considers these examples carry little weight in terms of assessing the overall credibility of P-0150. Further, especially taking into account the extensive interview process and the volume of material, the Chamber considers that these excerpts cited by the Defence fail to demonstrate any pattern of dishonesty or untruthfulness on his part.

82. The Defence further argues that P-0150 provided untruthful, self-serving testimony citing examples in support.<sup>194</sup> First the Defence points to comments in his testimony about no one being able to be 100 per cent sincere and him saying things he believed to be true even if he was not 100 per cent sure.<sup>195</sup> The Chamber notes initially that the referenced statements were made when he was responding to a question posed by the Defence relating to what P-0150 had said to investigators in an interview – where there had been reference to him ‘telling them 80 per cent’. It was in the context of explaining the use of percentages in the interview process that he made the comments.
83. Having carefully examined the evidence cited in totality, the Chamber does not consider that these general statements, which P-0150 made in the context of explaining a comment made in the interview process, indicate any tendency to or pattern of dishonest testimony. The Chamber finds the excerpt is taken out of context by the Defence in that the witness was explaining his use of ‘percentage references’ in his comments to the Prosecution. He goes on shortly after the cited passage to make the following comment distinguishing his interviews from his testimony before the Chamber:

I am under oath and I am holding on to those criteria; namely that of sincerity. But I cannot say that I have adopted the same methodology with the OTP, where I have not made the necessary effort as I have here. I’m trying to understand the terms before I answer the questions, and I’m also trying to understand each part of the question before providing you with an answer. That is what I have been doing and what I did, indeed, in the interviews with the Office of the Prosecutor. You cannot compare what I said before the Chamber with what I said to the investigators from the Office of the Prosecutor.<sup>196</sup>

84. In contrast to the Defence arguments, the Chamber considers that these

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<sup>194</sup> [Defence Response Brief](#), paras 60-63.

<sup>195</sup> P-0150: T-115, pp. 65-67.

<sup>196</sup> P-0150: T-115, pp. 65-67.



statements stand in favour of the credibility of the evidence the witness provided to the Chamber.

85. The Chamber has considered the various other examples cited by the Defence as evidencing insincere or untruthful testimony given by P-0150.<sup>197</sup> The Chamber notes that the examples cited are premised on the interpretation of calls between him and various interlocutors, [REDACTED].
86. The Chamber notes initially the lengthy and specific explanation that P-0150 gave about the nature and content of these calls. He noted they were distinct from what he told the Prosecution and from his testimony. He explained that these were personal calls where he might be telling jokes or trying to convince his family he was well. He emphasised that the tone was entirely different from his statements and evidence and that is something which is missing when you have regard only to the transcripts. He reemphasised the importance he attaches to telling the truth and the fact that these calls to family were like singing a song or writing a poem without '[t]he requirements of truthfulness and fairness – relevant considerations in this testimony'.<sup>198</sup>
87. Further, the Chamber finds that the statements said to be insincere or untruthful relate to peripheral points, not relevant to central issues in the case and many of which involve the familiar language including abbreviations often used in conversations with relatives and friends, the interpretation of which is far from clear. In addition, in some instances the Chamber sees no contradiction which would evidence untruthfulness and finds that some passages do not support the assertions made.<sup>199</sup> Given this context, to the extent that there are any contradictions, the Chamber considers that these discrepancies do not evidence a pattern of untruthful testimony and do not affect the overall credibility of P-0150.

(b) [REDACTED]

88. [REDACTED]. [REDACTED].

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<sup>197</sup> [Defence Response Brief](#), paras 61-63.

<sup>198</sup> P-0150: T-120, pp. 12-13.

<sup>199</sup> [REDACTED].

89. [REDACTED].
90. [REDACTED]. [REDACTED].<sup>200</sup> [REDACTED]. [REDACTED].<sup>201</sup>  
[REDACTED]. [REDACTED].
91. [REDACTED]. [REDACTED]. [REDACTED].
92. [REDACTED].<sup>202</sup> [REDACTED].
93. [REDACTED].<sup>203</sup>
94. [REDACTED]. [REDACTED].<sup>204</sup>
95. [REDACTED]. [REDACTED].
96. [REDACTED]. [REDACTED].<sup>205</sup> [REDACTED].<sup>206</sup> [REDACTED].
97. [REDACTED]. [REDACTED].<sup>207</sup>
98. [REDACTED]. [REDACTED]. [REDACTED].<sup>208</sup> [REDACTED].  
[REDACTED].<sup>209</sup> [REDACTED].<sup>210</sup> [REDACTED]. [REDACTED].<sup>211</sup>
99. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].<sup>212</sup>
100. [REDACTED].<sup>213</sup>
101. [REDACTED]<sup>214</sup> [REDACTED]<sup>215</sup> [REDACTED]. [REDACTED].

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<sup>200</sup> [REDACTED].

<sup>201</sup> [REDACTED].

<sup>202</sup> [REDACTED].

<sup>203</sup> [REDACTED].

<sup>204</sup> [REDACTED].

<sup>205</sup> [REDACTED].

<sup>206</sup> [REDACTED].

<sup>207</sup> [REDACTED].

<sup>208</sup> [REDACTED].

<sup>209</sup> [REDACTED].

<sup>210</sup> [REDACTED].

<sup>211</sup> [REDACTED].

<sup>212</sup> [REDACTED].

<sup>213</sup> [REDACTED].

<sup>214</sup> [REDACTED].

<sup>215</sup> [REDACTED].

[REDACTED]. [REDACTED].<sup>216</sup>

102. [REDACTED].

*(c) Dependency relationship*

103. The Chamber has carefully examined the argument advanced by the Defence that the circumstances of the development of the relationship between the Prosecution and P-0150, in particular [REDACTED], led to a dependency relationship affecting the credibility of the evidence ultimately adduced at trial.

104. The Chamber notes that P-0150 gave very clear and candid testimony as to the circumstances of [REDACTED]. [REDACTED].<sup>217</sup> [REDACTED].<sup>218</sup> [REDACTED]<sup>219</sup> [REDACTED]. On more than one occasion P-0150 spoke about the professional and fair manner of Prosecution investigators in their dealings with him.<sup>220</sup>

105. In providing these descriptions P-0150 made no link between the various interview processes; he continually addressed them separately. He also made no claim that he was psychologically impaired during his interviews with the Prosecution nor did he testify to experiencing severe stressors when he met with the Prosecution – a view expressed rather by expert Dr Charles Morgan III (D-0502) who had no direct interaction with P-0150.<sup>221</sup>

106. P-0150 also did not give evidence about a perceived intersection between [REDACTED] which provoked a ‘negative emotional effect’ for him. To the contrary he clearly refuted any such link when questioned by the Defence. He explained that he mentioned to the Prosecution the emotional effect on him arising from [REDACTED].<sup>222</sup> Though Defence made a suggestion that he considered his emotional feelings relevant for the Prosecution interviews, P-0150

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<sup>216</sup> [REDACTED].

<sup>217</sup> P-0150: T-114, p. 22. See [Defence Response Brief](#), paras 28-29.

<sup>218</sup> P-0150: T-116, pp. 90-91. See also T-115, pp. 17-18, 22.

<sup>219</sup> P-0150: T-116, p. 90.

<sup>220</sup> P-0150: T-120, pp. 54-59; T-115, p. 75.

<sup>221</sup> See also the Chamber’s findings on the credibility and reliability of Dr Morgan’s evidence below.

<sup>222</sup> P-0150: T-115, p. 16.

did not testify to that effect.<sup>223</sup>

107. As to a general relationship of dependency, P-0150 acknowledged he developed a bond with the Prosecution interlocutors over the course of the lengthy interview process noting that he would even occasionally be '[j]ocular in my exchange with them because I've gotten acquainted with everyone in this office'.<sup>224</sup> However, contrary to what is alleged by the Defence, he did not link this to the content of his testimony or indicate that he strove to go above and beyond as a result of this bonding process.

108. Rather, he spoke about [REDACTED] in the following terms:

From my side, I know that they would be interested in a matter and I helped in understanding the matter. I helped as a fact witness. As someone who witnessed the events, who's been through the events, analysed the events and was ready to share all that he knew. I'm totally unbiased. I would give a testimony even about the closest person to me....So I have learned ... the need to be unbiased, to be neutral and to never act on personal favouritism; so this is something I gave to the Prosecution.<sup>225</sup>

109. Similarly, P-0150 did not testify that he felt any dependency on the Prosecution investigators or prosecutors he interacted with, for his well-being or otherwise. Significantly, the Chamber also finds that P-0150 objectively manifested no signs of bias towards, or dependency on, the Prosecution, or vulnerability during his in-court testimony. To the contrary, he was consistently assertive with counsel, including from the Prosecution, and even on occasion with the Chamber itself, as further discussed below.

110. Having taken into account the various components of the argument, the Chamber finds there is no evidential foundation to the suggestion of transactional dynamics of dependency as between P-0150 and the Prosecution. It considers the argument to be speculative, unsupported by P-0150 himself and premised on the evidence of an expert who had no interaction with the witness purportedly affected.

111. On a related point, the Defence alleges that P-0150 was motivated to provide evidence favourable to the Prosecution because he continued to leverage the

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<sup>223</sup> P-0150: T-115, p. 17.

<sup>224</sup> P-0150: T-120, p. 54.

<sup>225</sup> P-0150: T-120, p. 53.

provision of information and testimony to obtain advantages. The Chamber finds no evidentiary support for this argument.

112. To the contrary the Defence relies on excerpts which do not sustain the statements made and which misrepresent the content of the testimony.<sup>226</sup> While the witness fully acknowledged the positive relationship developed with Prosecution over the interview process, there is no evidence to suggest this generally motivated the witness to provide untruthful testimony. Further, as discussed below, P-0150's answers overall were balanced in particular with respect to Mr Al Hassan with no suggestion that he was motivated to please the Prosecution or to assist them in convicting the accused.
113. The Chamber is concerned solely with the evidence which the witness provided during the trial proceedings and finds there is nothing in the record to support that it is generally tainted by the previous interview experiences of P-0150 or the relationship that developed with the Prosecution. However, to the extent that specific aspects of his evidence are challenged as having been fabricated or exaggerated for these reasons or any other, the Chamber addresses those issues individually in the course of the judgment.

*(d) Mutation of evidence*

114. The Defence argues that P-0150's evidence mutated over time to support the Prosecution allegations in the case. It is alleged that through the lengthy interview process, and the material shown to him, P-0150 learnt the Prosecution case theories and perspective and was able to determine the purpose of a question and give an answer that would correspond to that purpose. It is further argued that his memory has been supplanted and supplemented by information fed to him during interactions.<sup>227</sup>

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<sup>226</sup> The Defence links three requests formulated by P-0150 ([Defence Response Brief](#), para. 35, referring to P-0150: T-116, pp. 77-78; T-120, pp. 50-51; and T-116, p. 84) to the Prosecution offering in turn to intercede with Court Management Section and VWU to find solutions. The Chamber considers that the Defence provides no evidentiary basis. With respect to the assurance that '[r]eward would come soon', the Chamber notes that this comment comes from a religious discussion between the interviewer and P-0150 unrelated to any request on the part of P-0150 (P-0150: T-120, p. 56).

<sup>227</sup> [Defence Response Brief](#), paras 39-41.

115. P-0150 acknowledged that the lengthy interviews by investigators helped him ‘[t]o remember many things [...] and to analyse them’.<sup>228</sup> In cross-examination, he elaborated, ‘[w]hen you address matters the Prosecution did not address, helped me remember many things that happened at the time. In addition the things that happened, I have witnessed them, yes but I’ve also been able to analyse them. And this is thanks to your questions, the investigator and the Defence’.<sup>229</sup>
116. At the same time P-0150 steadfastly maintained that the answers he provided in his testimony were the truth representing what he could recall from searching his memories.<sup>230</sup>
117. The Defence similarly argues that because P-0150 reviewed evidence in the case, in particular the videos, he testified not to what he remembered but rather to what he had seen in those videos.
118. On cross-examination P-0150 confirmed that he very rarely looked at documents made available to him. In contrast he admitted that he did watch a lot of video recordings.<sup>231</sup> He acknowledged that material shown to him – in particular video footage – helped him to organise his memory and assisted him with dates and times.<sup>232</sup> As to the impact of videos, public material and documents the witness recognised that there were some things which he remembered gradually because of documents and videos that were shown to him.<sup>233</sup> The Chamber considers this to be understandable and normal.
119. However, P-0150 also stressed that the vast majority of material shown to him was not new in that he had seen the documents and videos at the time of the events. He noted for example the video footage from that time and written

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<sup>228</sup> P-0150: T-115, p. 28.

<sup>229</sup> P-0150: T-115, p. 28.

<sup>230</sup> P-0150: T-116, p. 23. *See also* P-0150: T-098, p. 39 (testifying that ‘[I] remember this scene from my memory, not from these images’).

<sup>231</sup> P-0150: T-105, p. 17.

<sup>232</sup> P-0150: T-116, p. 23.

<sup>233</sup> P-0150: T-120, p. 51 (describing his memory process as follows: ‘As I have told you, every time they would show me texts or I would read texts, I would benefit from that in many ways. For example, I would refresh my memory of the events, and I would be able to understand the links between the different matters’).

documents such as the [REDACTED].<sup>234</sup>

120. While P-0150 accepted that the evidence he reviewed impacted on his understanding of the truth and what happened in 2012, he carefully explained the nature of that impact. He noted that information became clearer in his mind and he was able to see the psychological impact and the consequences of his actions.<sup>235</sup>
121. Also, in those instances where he had reviewed video material for the purpose of refreshing his memory he specifically acknowledged this. For example, during cross-examination P-0150 admitted that he had reviewed the videos of the [REDACTED] to see if Mr Al Hassan took part, as he could not remember. He looked at the videos and did not see him and acknowledged that to the Prosecution. Further, he recognised that there might be more instances where he had reviewed other evidence to see what he could find regarding Mr Al Hassan but he did not remember specifics.<sup>236</sup> Nonetheless he asserted that he tried his best to rely on memory and not on videos.
122. Having considered his evidence as a whole and in particular the explanations provided by the witness, the Chamber does not agree that the evidence of P-0150 was subject to general contamination through the questions posed or the material shown to him in the course of the investigation process. The Chamber is fully satisfied that, throughout his testimony, P-0150 was providing answers based on his memory which he himself noted was sometimes good and sometimes not so good.<sup>237</sup> He also took care to acknowledge and specify other sources of his knowledge when relevant.
123. The Chamber has taken into account in assessing this argument the passage of time and the natural impact that may have on testimony. This was a point which P-0150 openly acknowledged. He testified that the passage of time – nine years – had affected his ability to remember specific persons, events or details. But at the same time, he clarified that ‘[t]he more we talk about it, the more I remember

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<sup>234</sup> P-0150: T-116, p. 23.

<sup>235</sup> P-0150: T-105, p. 22.

<sup>236</sup> P-0150: T-105, pp. 21-22.

<sup>237</sup> P-0150: T-119, p. 8.

about other information. So the questions that are put to me stimulate other memories. But when it comes to other issues that were not dealt with, they are hazier'.<sup>238</sup>

124. The Chamber is satisfied that the witness was credible in asserting that he was testifying to what he remembered seeing and hearing and the questions posed or material reviewed served to clarify or reinforce those memories. Moreover, the Chamber finds no evidence to support the assertion that he was consciously or unconsciously designing his evidence to fit the purpose and goal of the Prosecution. As outlined below, the Chamber found him balanced and fair in his responses during all the questioning by the Prosecution and the Defence.
125. This reflects the Chamber's finding in terms of the general argument that his testimony had mutated and was influenced by material shown to him. The Chamber now turns to the specific examples the Defence has given of alleged mutation of his evidence. The Defence presents these examples in support of the argument that P-0150's memories were supplanted and supplemented by information fed to him during interviews. The Defence avers that these evidence a 'textbook case of evidence contamination'.<sup>239</sup> These will be addressed generally here and, as necessary, are addressed specifically with reference to factual findings on the points during the judgment.

(i) Punishment

126. The Defence contends that the evidence of the witness regarding punishments for playing music changed over time. They refer to his prior statement in which he could not recall any punishment for playing music.<sup>240</sup> At trial, P-0150 gave testimony about a barber who was punished for playing music. The Defence claims that when he was challenged on this, he first pointed to memory and then 'pivoted' giving a completely different explanation that there was no systematic punishment, just individual acts.

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<sup>238</sup> P-0150: T-105, p. 23.

<sup>239</sup> [Defence Response Brief](#), para. 41.

<sup>240</sup> [Defence Response Brief](#), para. 42.



127. Having reviewed his testimony,<sup>241</sup> the Chamber does not agree that P-0150 gave one answer and then changed to a completely different answer. Rather he first made a very general comment about memory and went on – immediately – to explain that the incident with the barber did not evidence systematic punishment but rather punishment for stubbornness and disobedience. The Chamber finds the witness well explained any inconsistency and did not pivot between answers.

(ii) [REDACTED]

128. [REDACTED]. [REDACTED].<sup>242</sup>

129. [REDACTED]. [REDACTED].

130. [REDACTED].<sup>243</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>244</sup>

131. [REDACTED]. [REDACTED].<sup>245</sup>

132. [REDACTED].<sup>246</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>247</sup>

133. [REDACTED]. [REDACTED].<sup>248</sup> [REDACTED]. [REDACTED].<sup>249</sup>

134. [REDACTED].

135. [REDACTED].<sup>250</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>251</sup>

(iii) Takeover of the Airport

136. Another example given by the Defence about evidence which came at a late stage of the process was that regarding the takeover of the airport after the MNLA fled and Mr Al Hassan's role in that event.<sup>252</sup> The incident was first mentioned by

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<sup>241</sup> P-0150: T-119, p. 8.

<sup>242</sup> [REDACTED].

<sup>243</sup> [REDACTED].

<sup>244</sup> [REDACTED].

<sup>245</sup> [REDACTED].

<sup>246</sup> [REDACTED].

<sup>247</sup> [REDACTED].

<sup>248</sup> [REDACTED].

<sup>249</sup> [REDACTED].

<sup>250</sup> [REDACTED].

<sup>251</sup> [REDACTED].

<sup>252</sup> [Defence Response Brief](#), para. 44, referring to P-0150: T-122, p. 22, referring to P-0150's statement MLI-OTP-0064-1217-R02, at 1224.

P-0150 in an interview in August 2018.<sup>253</sup> At the start of the relevant segment of the interview, the investigator provides a caution that each witness must tell their own story without '[u]s leading anyone to answer the questions in a certain way'.<sup>254</sup> He goes on to indicate that they were now closely focusing on the Islamic Police and Mr Al Hassan. In that context the investigator poses a general question to P-0150 asking him to comment on the way the population perceived the Islamic Police and the way the Islamic Police interacted with the population.<sup>255</sup> In response, P-0150 provides a summary, touching on several issues including the relationship between the people and the Police, Mr Al Hassan's role as a local and Mr Al Hassan's positions at different times. In commenting on this last point, P-0150 gives an example of Mr Al Hassan's role as a *de facto* 'leader of police activities' by providing the following information:

But even prior to that he was the de facto leader of the police activities. For example when the airport was attacked and MNLA was kicked out from there. Hassan was the one elected to lead the attack on the airport to make sure it is safe and to remove all that mines (sic).<sup>256</sup>

137. A careful reading of these excerpts evidences that P-0150 spontaneously volunteered this piece of information – almost in passing – as one of the leadership activities by Mr Al Hassan. Further, the excerpts do not support the link which the Defence tries to make between his comments in this interview about having reviewed videos of the destruction of the mausoleums and his statement about the events at the airport.<sup>257</sup> These different sets of comments are in separate passages in the interview and there is a logical flow from one to the other, but no direct linkage. Moreover, P-0150 did not at that point state that Mr Al Hassan drove through a gate in front of the airport when the MNLA left Timbuktu as stated by the Defence.<sup>258</sup> He makes only the general statement above to illustrate responsibility. In the Chamber's view the context, timing and manner of delivery of this information shows that this is a memory recounted by P-0150

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<sup>253</sup> P-0150's statement MLI-OTP-0064-1217-R02, at 1224.

<sup>254</sup> P-0150's statement MLI-OTP-0064-1217-R02, at 1220.

<sup>255</sup> P-0150's statement MLI-OTP-0064-1217-R02, at 1221.

<sup>256</sup> P-0150's statement MLI-OTP-0064-1217-R02, at 1224.

<sup>257</sup> *Contra* [Defence Response Brief](#), para. 44.

<sup>258</sup> *Contra* [Defence Response Brief](#), para. 44.

that he considered relevant to the subject he was being questioned on.

138. The Chamber finds that nothing in the content or context of the interview supports that this was information that was invented by the witness to craft evidence in favour of the Prosecution case. It is notable that the vague and general question posed in no way revealed a specific type of information that the Prosecution was seeking to bolster its case. In addition, this comment was one in several pages of the interview which was almost entirely comprised of this ‘summary’ provided by P-0150 without intervention by the interviewer.
139. The Defence also suggests that P-0150 changed his position over time from indicating initially that Mr Al Hassan might have become the director of the Police to an affirmative assertion that he did become director of the Police. The testimony and his prior statements do not evidence any such change of position. Rather his position throughout was as he stated when questioned by the Defence on the possible inconsistency:

Q:... do you recall telling the Prosecution in November 2017 that you thought that Al Hassan might have become the director of the police?

A: I know that Al Hassan became the director of the police for a brief period. But I don’t know when exactly he was appointed because I linked it to a specific incidence (sic), but I couldn’t remember the date of the incident.<sup>259</sup>

140. The Chamber finds that P-0150 consistently indicated that Mr Al Hassan became the chief, with his only doubt being when that happened. On this point the Chamber considers the Defence arguments – that P-0150 was not familiar with Khaled, the emir of the Islamic Police and would not have recognised him and that P-0150’s evidence on the role of Mr Al Hassan was influenced by witness statements – to be speculative and unsupported by the evidence.<sup>260</sup>
141. The Chamber finds no merit to the suggestion that the investigators comments before presenting videos – explaining that the videos focus on Mr Al Hassan as they were proceeding to trial – contaminated P-0150’s ability to identify Mr Al

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<sup>259</sup> P-0150: T-118, p. 34.

<sup>260</sup> [Defence Response Brief](#), paras 46-47.

Hassan and his signature.<sup>261</sup> Similarly the argument that P-0150's perception of the role of Mr Al Hassan was affected by the context in which a video was shown is unsubstantiated as it is based on a comment in a statement read by counsel which was the subject of an objection and was never addressed by the witness.<sup>262</sup>

142. The Chamber has also examined the arguments advanced of suggestions by the Prosecution resulting in the mutation of P-0150's evidence. The Defence appears to argue that the Prosecution prompted P-0150 to speculate on the role of Mr Al Hassan by summarising their perception of Mr Al Hassan's role and asking him to agree to the categorisation as de facto chief.<sup>263</sup> That is not what the evidence reveals. The investigator did not summarise his perception but rather referred to the two days they had just spent reviewing documents with P-0150. Further, he was not seeking agreement to a proposition but rather trying to clarify what Mr Al Hassan's authority was at that time to have investigated and issued reports.<sup>264</sup> The evidence also fails to support that P-0150 moved from categorising Mr Al Hassan as a facilitator who became an assistant to someone who started 'working for security'. Consistent with his previous evidence, P-0150 described that there were various stages to Mr Al Hassan's involvement.<sup>265</sup> Moreover, he did not state that Mr Al Hassan worked for security with reference to the Security Battalion as an entity. Rather he stated that '[t]he first stage was when he contributed to the security aspect... before the establishment of the police'.<sup>266</sup> He went on to clarify that in the earlier stage when the Police was being established, Mr Al Hassan was an active person but he stated: 'I am not referring any specific responsibilities to him at that earlier stage'.<sup>267</sup> As well, in a passage not cited by Defence, P-0150 strongly asserts and describes the basis for his knowledge that Mr Al Hassan was working with Talha first, who was the head of the Security Battalion.<sup>268</sup>

143. Having considered the various components of the Defence arguments on mutated evidence, the Chamber finds the evidence does not support any pattern by which

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<sup>261</sup> [Defence Response Brief](#), para. 48.

<sup>262</sup> See P-0150: T-116, p. 69. *Contra* [Defence Response Brief](#), para. 49.

<sup>263</sup> [Defence Response Brief](#), para. 50.

<sup>264</sup> P-0150: T-116, p. 70.

<sup>265</sup> P-0150: T-116, pp. 32-33, 70-71.

<sup>266</sup> P-0150: T-116, p. 70.

<sup>267</sup> P-0150: T-116, p. 72.

<sup>268</sup> P-0150: T-107, pp. 57-60. On the Security Battalion, *see* paragraph 548 below.

P-0150 invented or shaped his evidence over time to advance the Prosecution case. The Chamber also notes that the Defence argument that P-0150's evidence was tainted by false memory is speculative and unsupported by the evidence.<sup>269</sup>

144. With respect to the allegations that evidence which he provided is implausible or incoherent, these arguments will be addressed by the Chamber in the course of the judgment to the extent they are relevant to issues to be determined by the Chamber.

*(ii) Chamber's overall assessment of credibility and reliability*

145. The analysis below highlights in detail some of the key factors relied upon by the Chamber in assessing the evidence and reaching its conclusion regarding the credibility of P-0150, though it is evidently not exhaustive in terms of the factors taken into account. In addition, in aid of a fuller explanation, the Chamber has referenced examples in support of the points addressed below. This was solely intended to illustrate the basis for the Chamber's analysis and conclusion, and it is also not exhaustive.

*(a) Basis and sources of knowledge*

146. As outlined above, P-0150 is an insider witness: a man who joined the armed groups and took an oath of allegiance to Al-Qaeda [REDACTED]. The Chamber notes that he quickly became fully immersed in their activities, [REDACTED], and interacted intensely with members of the groups, including senior figures such as Abou Zeid. He also had close personal relationships with some of them.<sup>270</sup>
147. P-0150 also held pivotal roles with the Ansar Dine/AQIM structure [REDACTED]. [REDACTED]. In addition, he was assigned specific tasks [REDACTED] through which he also gained detailed knowledge of operations.
148. The Chamber finds that this background and involvement gave him direct knowledge, and understanding of, the policies and operations of Ansar Dine/AQIM generally and specifically during the relevant period in 2012-2013.

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<sup>269</sup> See [Defence Response Brief](#), para. 51.

<sup>270</sup> See e.g. P-0150: T-096, p. 38.

His close relationships, access to and interactions with, the leadership and important personalities within the groups provided him with a unique and detailed perspective. In parallel, P-0150 [REDACTED] had connections with the local population, including with prominent figures such as Houka Houka.<sup>271</sup>

149. The Chamber considers that this combined experience and background gave P-0150 a unique basis of knowledge for the testimony he provided regarding the events relevant to the charges in this case. In addition to this general analysis, the Chamber has also carefully considered his specific basis of knowledge for many discrete areas of his testimony, which analysis is captured as the relevant issues are discussed in the course of the judgment.
150. The Chamber further observes that, during the course of his testimony, P-0150 was consistently attentive to the need to identify the basis of his knowledge, carefully distinguishing between what he saw and heard personally and information that he obtained through other sources. He would volunteer such information or clarify it in response to questions. As far as possible, in the case of other sources, he would specify where the information came from with precision.<sup>272</sup>
151. When it came to information that he obtained through his relationships with members of the group, he was also able to provide detail about the nature of those relationships and how they generated the information he recounted.<sup>273</sup> Similarly, he would describe the basis for his knowledge of individuals very clearly – noting the circumstances of his acquaintance with them.<sup>274</sup>
152. He was similarly careful to describe when his answer was based on reasoning as opposed to direct knowledge. One notable example was in relation to an identification when he was shown a video clip and asked to identify a particular person. He indicated that he could not do so from the facial features – which were not clear in the video – but he proceeded to identify an individual from the totality

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<sup>271</sup> P-0150: T-089, p. 12.

<sup>272</sup> See e.g. P-0150: T-098, pp. 6-7; T-089, p. 20; T-092, p. 61; T-094, pp. 28-29; T-095, pp. 40-41; T-096, pp. 31-32; T-102, p. 55; T-103, pp. 4-5.

<sup>273</sup> P-0150: T-089, p. 12; T-095, p. 19; T-096, p. 38.

<sup>274</sup> See e.g. P-0150: T-089, p. 12; T-096, p. 5 (about Houka Houka); T-093, pp. 45-46 (about Khaled).

of circumstances. He noted that he was dressed like a Tuareg and appeared to be a journalist and there was only one authorised journalist. This identification further served to support the credibility of P-0150 as he could have simply named the individual from the video without explaining how he recognised him.<sup>275</sup>

*(b) Precision and detail*

153. Relevant to the Chamber's assessment was P-0150's thoughtful approach to his evidence and the efforts he made to be precise in his responses.<sup>276</sup> His concern for accuracy was such that on occasion he explained the terminology he was using to the translators.<sup>277</sup>

154. Moreover, the level of detail that P-0150 was able to provide in his responses was an especially striking feature of his extensive testimony which gave credence and weight to his evidence. This was a feature of many different aspects of his evidence from his recounting of meetings and events, to his identifications of individuals or locations and he did so without hesitation. Some specific examples are provided below to highlight this relevant characteristic of his testimony.

155. For example, P-0150 was asked to describe numerous meetings he attended and recount discussions which took place. In doing so, he would provide significant details as to location, participants, discussions or other points. His descriptions brought these encounters to life. By example, he gave an extensive description of the meeting which took place early on at the *Hôtel Bouctou* which was rich with diverse specifics.<sup>278</sup> He also was able to do so in respect of individual encounters, providing a vibrant picture of conversations.<sup>279</sup> In outlining what went on at another meeting, he was able to explain that he was present throughout except for when he went to buy refreshments for everyone.<sup>280</sup> This kind of detail supports the credibility of his accounts.

156. P-0150 similarly testified with specificity when he was describing events or

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<sup>275</sup> P-0150: T-092, p. 58. *See also* T-096, pp. 14-28; T-119, pp. 15-17.

<sup>276</sup> P-0150: T-101, pp. 28-29; T-107, pp. 44-45.

<sup>277</sup> P-0150: T-101, p. 28.

<sup>278</sup> P-0150: T-089, pp. 28-29.

<sup>279</sup> P-0150: T-089, pp. 48-49.

<sup>280</sup> P-0150: T-096, p. 14. *See also* pp. 31-32.

incidents,<sup>281</sup> when discussing decisions or policies, and when describing the organisation or structure.<sup>282</sup>

157. The Chamber further observes that, when it came to noting locations on a map, he took care to ensure he was as precise as possible.<sup>283</sup> He did this not only with respects to villages and towns or landmarks but also in relation to private homes.<sup>284</sup>
158. Finally, P-0150 was asked on multiple occasions to identify individuals in a range of contexts including those with whom he worked, those attending meetings, those mentioned in lists, and those appearing in video clips. To these questions he was precise and comprehensive in his responses.<sup>285</sup> For example, in discussing a list of individuals identified to serve as [REDACTED], he gives descriptions which were rich in relevant detail about each person.<sup>286</sup> He also would provide full names and spellings when possible, noting limitations in what he could recall about their identity.
159. In totality, the Chamber is of the view that the clarity and depth of his answers and the details he provided were strong indicia of his credibility.

*(c) Consistency/inconsistencies*

160. An important consideration for the Chamber in its assessment was the consistency of P-0150's responses especially given the length of his testimony and the volume of prior statements he had given. Inevitably, P-0150 faced repeated questions about his activities, structures of the organisation and various events. These were often posed in different ways or from different angles and in other instances were purely repetitive. Almost without exception, he was consistent in his responses often adding detail or using different phrasing. He would do so without hesitation.
161. His consistent, yet not identical, responses had the mark of a truthful recounting

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<sup>281</sup> P-0150: T-093, pp. 38-40; T-101, pp. 28-29; T-107, p. 50; T-110, p. 28.

<sup>282</sup> P-0150: T-094, pp. 13-14; T-110, p. 26, 61; T-117, pp. 20-21, 36-37.

<sup>283</sup> P-0150: T-089, pp. 14, 24-25; T-092, pp. 14-15; T-094, p. 41; T-099, pp. 28-30.

<sup>284</sup> P-0150: T-089, pp. 12, 15. *See also* map MLI-REG-0001-0035.

<sup>285</sup> P-0150: T-096, pp. 14-28; T-119, pp. 15-17.

<sup>286</sup> P-0150: T-096, pp. 17-28.



of matters from memory. He did all of this with sincerity with no indication that this was due to constructed answers. His ability to do so also clearly illustrated to the Chamber that he was a witness with a good memory, subject only to specified limitations which he acknowledged.

162. Similarly, there were moments where P-0150's answers were not consistent and he would be called upon to explain. The Chamber observes that, in addressing those instances, he was forthright in acknowledging an inconsistency and did not demonstrate any defensiveness. To the extent possible he would provide an explanation or simply admit that he made a mistake.<sup>287</sup> P-0150 clarified that he followed the same approach in his interviews with the Prosecution and before the Chamber in that he was not trying to remember what he said in prior interviews but rather he tried to remember the events. As a result he acknowledged that there could be discrepancies.<sup>288</sup>

163. The Chamber considers these limited inconsistencies to be natural, in particular given the volume of material to be covered and the different styles of questioning. Importantly, the Chamber also notes the manner in which P-0150 addressed the discrepancies, when raised, further illustrated his honesty.

164. As detailed above, the Chamber also rejects the Defence arguments that P-0150's evidence mutated over time to support the Prosecution allegations in the case.

*(d) Specific features of his approach to evidence*

165. The Chamber notes that P-0150 was careful to admit and note his limitations. He openly acknowledged his weaknesses, in particular that he found it difficult to recount names and had problems with dates and timeframes. He explained as well that sometimes a lack of concentration on particular things would make it difficult for him to provide a full description for example of a vehicle or a colour.<sup>289</sup>

166. He was not prepared to speculate on these matters or others where he was uncertain.<sup>290</sup> For example, when an audio tape of Iyad Ag Ghaly was put to him

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<sup>287</sup> See e.g. P-0150: T-102, p. 54; T-107, pp. 48-50; T-108, pp. 58-59; T-119, p. 18.

<sup>288</sup> See P-0150: T-115, p. 71.

<sup>289</sup> P-0150: T-116, pp. 48-49.

<sup>290</sup> See e.g. P-0150: T-089, pp. 27, 34; T-090, p. 56; T-100, p. 7.

he initially stated he was not sure, recognising his voice only after a longer excerpt was played.<sup>291</sup>

167. In addition, the Chamber notes that P-0150 would use his best efforts to try and contextualise his evidence when he could not remember specific dates. In particular, he would try and place events in a timeframe with reference to other events – the timing of which was known – as well as using videos.<sup>292</sup> He did so very effectively by example when explaining his division of Mr Al Hassan’s participation into three stages and the relative timing of each.<sup>293</sup>
168. P-0150’s very transparent approach, as well as his frank admissions, relating to normal constraints associated with memory, added to his credibility as well as the reliability of his testimony.
169. Similarly, P-0150 was quick to acknowledge when he did not know or remember something.<sup>294</sup> This lent further credence to his testimony as it evidenced that he recounted only that which he was sure of and if he went further, he would make any uncertainty clear. Often he made the distinction when referring to a single event. By example, when asked about the timing of the second destruction of the Al Farouk mosque he stated ‘[N]o. I don’t. I don’t remember when this monument was destroyed. I know how it was destroyed and I know that it was destroyed by the police and the security or maybe just by the security. But I don’t even know the specific people who did so’.<sup>295</sup>
170. Another important feature of his testimony, which the Chamber has taken into account, was his repeated efforts to ensure that he fully understood the questions being put. If he was unsure he would ask for the question to be clarified<sup>296</sup> or reformulated.<sup>297</sup> For example, asked by the Defence about the composition of the *Sharia* Committee, he sought clarification and precision: ‘Your question, is it about the entire *Sharia* committee or is it all of those enforcing *Sharia*? Are you

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<sup>291</sup> P-0150: T-101, pp. 29-31.

<sup>292</sup> P-0150: T-094, p. 43; T-116, p. 38.

<sup>293</sup> P-0150: T-116, pp. 37-38.

<sup>294</sup> P-0150: T-101, pp. 20-21; T-107 p. 60; T-108, p. 65.

<sup>295</sup> P-0150: T-103, p. 21. *See also* T-107, pp. 60, 72-73, 78; T-110, p. 41.

<sup>296</sup> P-0150: T-097, pp. 56-57; T-103, p. 10; T-107, pp. 11-12.

<sup>297</sup> *See e.g.* P-0150: T-110, p. 60.

talking specifically about the *Sharia* committee that is part of the *Shura* council or something else?’<sup>298</sup> He was also quick to ask for explanations of the terms being used.<sup>299</sup> On occasion, he sought to clarify his own evidence spontaneously.<sup>300</sup>

(i) Confident and assertive

171. Especially in light of Defence arguments as to the impact of [REDACTED] on him, the Chamber has paid particular regard to his manner of interaction when being questioned. The Chamber notes that throughout a process which took almost two months, P-0150 was a calm, confident and assertive witness. Aside from fatigue on occasion, he showed no signs of vulnerability or being subject to influences in the manner in which he responded to questions from either the Prosecution or the Defence.

172. With the Prosecution he responded directly and did not hesitate to dispute points put to him. For example, when the Prosecution put a document to him and asked if this was an example of documents which detailed how women were to dress, he responded that he did not know documents of this type.<sup>301</sup> Likewise, when he was asked to identify handwriting on a document, he stated he did not recognise it and, having been provided with a better copy, stated: ‘I am now certain that this is not my handwriting’.<sup>302</sup>

173. He took a similar stance with Defence counsel, not hesitating to correct the assertions made when he considered it appropriate. For example, when he was shown a photo of an event and asked to confirm he was not present he said

I did not say that I was not in attendance. Did I say that? [...] difficult to say if I was in attendance or not. [...] that fact that I am not in the photograph does not show whether I was present or not. I do not remember. I cannot deny or confirm the fact.<sup>303</sup>

174. He was able of describing clearly how he viewed his role in the context of the

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<sup>298</sup> P-0150: T-117, p. 19.

<sup>299</sup> P-0150: T-099, p. 36.

<sup>300</sup> P-0150: T-102, p. 54.

<sup>301</sup> P-0150: T-102, pp. 4-5.

<sup>302</sup> P-0150: T-102, p. 35. *See also* T-102, p. 37; T-117, p. 23.

<sup>303</sup> P-0150: T-108, p. 65. *See also* T-097, p. 57; T-107 p. 59-60, 79; T-116, pp. 76-77.

proceedings. He stated, in answer to Defence counsel:

Allow me to point out Counsel that I never concerned myself with comparisons between my remarks and those of another witness. That is the role of the judges of this Chamber. It is the judges of this Chamber who will assess the remarks of everyone and determine who speaks truth.<sup>304</sup>

175. His assertiveness with counsel was expressed throughout and on two occasions he requested the opportunity to address the bench directly.<sup>305</sup>
176. Equally, a dominant feature of his testimony was his confidence and lack of hesitation in his responses. He displayed this during examination by the Prosecution and during cross-examination. When faced with a series of questions where the point was not at all clear, it was evident that he was not trying to second guess where the questions were going because of concerns about an incorrect or inconsistent response. He simply answered the questions posed clearly and without hesitation.
177. For example, he was cross-examined extensively and on more than one occasion about his account of Mr Al Hassan's actions at the airport the day the MNLA left. He was asked a series of questions by the Defence which appeared to be designed to shake his confidence on this point. He was queried on multiple details and responded to all of them in a straightforward manner, factually, with precision. He showed no hesitation or concern even upon being asked to draw annotated maps or review video evidence.<sup>306</sup> In this respect, he had the confidence of someone who was telling the truth.
178. At the same time, while confident and assertive, P-0150 was throughout his testimony cooperative and measured with all parties and participants and he made sincere efforts to answer all questions directly and fully. By example, he would respond to questions but at the same time offer to provide a more detailed explanation when he considered the matter had not been fully addressed.<sup>307</sup>

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<sup>304</sup> P-0150: T-108, p. 27.

<sup>305</sup> P-0150: T-118, p. 82; T-092, pp. 24-25.

<sup>306</sup> P-0150: T-113, pp. 70-72, 77; T-118, pp. 4-5; T-119, pp. 10-13.

<sup>307</sup> See e.g. P-0150: T-107, pp. 19, 22.

## (ii) Acknowledgment of role/wrongdoing/remorse

179. The Chamber also considers it relevant that throughout his testimony, P-0150 was prepared to fully acknowledge his own involvement and responsibility. [REDACTED]. He described the role that he played wholly and openly and testified to the assignments he carried out designed to expand the membership of the group.<sup>308</sup> Significantly, he also expressed remorse for his actions, stating that he felt that he was guilty and he was very remorseful for what he did in the past, which he now considered completely unreasonable. P-0150 added that he sympathised a lot with the population of Timbuktu, of whom they violated the rights.<sup>309</sup>
180. Similarly, his testimony was also replete with comments and explanations which clearly illustrated that he was a person who had come to terms with what he had done. A compelling example was his evidence as to the interpretation of *Sharia* which led him to participate in [REDACTED] and how he came to understand that he had been wrong.<sup>310</sup> P-0150 presented as an insider witness who provided all information in his possession about the functioning of the groups in full without underplaying or concealing his own involvement.

## (iii) Motivations

181. While relying primarily on factors described elsewhere in this section, and recalling that arguments raised by the Defence with respect to P-0150's motivations to testify were not considered convincing, the Chamber has also taken into consideration the explanations provided by the witness as to why he became a witness and his approach to providing evidence under oath.
182. P-0150 explained that he had many reasons to become a witness.<sup>311</sup> He acknowledged that from a practical point, he had accepted to be a witness [REDACTED], to say the whole truth and to be prepared to testify and provide the Chamber with the information that he had given to the Prosecution

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<sup>308</sup> P-0150: T-091, p. 9.

<sup>309</sup> P-0150: T-104, p. 24.

<sup>310</sup> P-0150: T-103, pp. 36-37.

<sup>311</sup> P-0150: T-104, p. 24.

previously.<sup>312</sup> He described that he also accepted to testify for religious and moral reasons.<sup>313</sup>

183. P-0150 explained very clearly the importance of the oath, emphasizing how seriously he took his obligations to tell the truth because of that, comparing and contrasting that with his prior interviews with the Prosecution:

I am here because I am sincere – a greater sincerity because an oath is much greater [...]. I am under oath here and so I am showing more sincerity. And I'm being more careful in comparison with the interview with the Prosecution. That has the concentration and the intelligence, you see. Thus, the criteria of sincerity, which I explained earlier, is something additional, in considering the serious attitude that I am taking in this hearing before this Court.<sup>314</sup>

184. In addition, P-0150, in response to Defence questioning, emphasised the real reason [REDACTED] was his attempt to achieve [REDACTED]. But he noted emphatically that the gains are not the reason for the testimony but rather they came as an outcome of the aftermath of the testimony. He stated his testimony ' [i]s like...is valued as making a prayer' .<sup>315</sup>

185. When questioned by the Defence on the difference between his testimony and the interviews with the Prosecution he noted:

Where it concerns that substance of the truth, it's the same, my heart and my memory. I don't remember everything that I said to the Office of the Prosecutor, and, all the questions that were put to me here in the Chamber, I have tried to search my memory to answer them. But my testimony here is different to what I said to the Office of the Prosecutor. I was prudent. I tried to understand the questions, to be precise in the understanding of the objectives of the questions and this wasn't something I did in my interviews with the Office of the Prosecutors; whereas here I am under oath. And that's the difference between my testimony here compared with what I said to the Office of the Prosecutor.<sup>316</sup>

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<sup>312</sup> P-0150: T-104, p. 24.

<sup>313</sup> P-0150: T-104, pp. 24-26.

<sup>314</sup> P-0150: T-116, p. 5. *See also* T-115, pp. 66-67; T-116, p. 6.

<sup>315</sup> P-0150: T-120, pp. 11-12.

<sup>316</sup> P-0150: T-115, p. 70.

*(iii) Further assessment of evidence relating to Mr Al Hassan*

186. The Chamber finds it appropriate to give careful and separate consideration to the evidence of P-0150 which relates directly to Mr Al Hassan. Some of the major considerations in this analysis are outlined below.

*(a) Basis of knowledge of Mr Al Hassan*

187. P-0150 had a solid basis of knowledge for the testimony he provided regarding Mr Al Hassan personally. Before the events, P-0150 became [REDACTED].<sup>317</sup> [REDACTED].<sup>318</sup> P-0150 noted that he did not have a ‘deep friendship’ with Mr Al Hassan but [REDACTED]. ‘That’s how close we got’.<sup>319</sup>

188. P-0150 was challenged as to his description of this relationship on the basis that [REDACTED].<sup>320</sup> The Chamber finds that P-0150 explained credibly how he remembered some names and not others.<sup>321</sup>

189. With respect to the 2012 period, P-0150 described in detail how he and Mr Al Hassan would meet and interact on various occasions, including in the workplace. They would sometimes meet in the course of cases in which they were both involved. For example, P-0150 recalled meeting Mr Al Hassan when visiting the police station [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].<sup>322</sup>

190. P-0150 explained that Mr Al Hassan had tremendous respect for him and saw P-0150 as [REDACTED].<sup>323</sup> When he and Mr Al Hassan met in Timbuktu in 2012, Mr Al Hassan treated him very respectfully.<sup>324</sup>

191. P-0150 detailed the basis of his knowledge of Mr Al Hassan’s activities in 2013. Notably he spoke about his encounters and interaction with Iyad Ag Ghaly near the end of 2013. It was because of these visits – again recounted in detail as to

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<sup>317</sup> P-0150: T-091, pp. 8-9, 18-19.

<sup>318</sup> P-0150: T-091, pp. 18-19.

<sup>319</sup> P-0150: T-091, pp. 8, 23.

<sup>320</sup> P-0150: T-107, pp. 42-44.

<sup>321</sup> P-0150: T-107, p. 44.

<sup>322</sup> P-0150: T-091, p. 24.

<sup>323</sup> P-0150: T-091, p. 7.

<sup>324</sup> P-0150: T-091, p. 24.

what he discussed and what missions he was assigned – that he was able to attest to the whereabouts of Mr Al Hassan in late 2013 and to his continued involvement with the armed groups. He also personally saw Mr Al Hassan in and around the camps with Iyad Ag Ghaly at that time.<sup>325</sup> Subsequent to the events, during the period of time [REDACTED], he had a further opportunity to speak with him at length and the Chamber accepts this as the main basis on which P-0150 was able to comment on Mr Al Hassan's views and opinions.<sup>326</sup>

192. In addition, P-0150 was able to specify his basis of knowledge in relation to specific points he made about Mr Al Hassan. For example, in answer to a Defence question he clearly explains how he obtained the detailed information he provided on Mr Al Hassan's roles, which he attributes to having spoken with Mr Al Hassan on a number of occasions and coming from the words and deeds of Mr Al Hassan that he witnessed. He similarly outlined the sources he relied upon and the decisions he knew were taken leading to Mr Al Hassan's rise in the hierarchy.<sup>327</sup>

*(b) Balance*

193. P-0150 gave very balanced evidence regarding Mr Al Hassan in his own words mentioning 'the positive and negative aspects' of his behaviour.<sup>328</sup> He was careful in this respect to limit his answer to that which he knew and he did not appear to overstate or exaggerate the status that Mr Al Hassan had or the role that he played.<sup>329</sup>

194. In response to questions posed he would describe the actions, roles and participation of Mr Al Hassan factually and objectively and did not avoid portraying Mr Al Hassan in a positive light.<sup>330</sup> Generally, P-0150 noted that Mr Al Hassan 'behaved in a positive way with people and he had a number of qualities that allowed him to remain in his position in the police [...] He was close to the people and he knew how to [...] behave with the local people and the

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<sup>325</sup> P-0150: T-091, pp. 36-39.

<sup>326</sup> P-0150: T-091, pp. 6-8.

<sup>327</sup> P-0150: T-090, pp. 53-55; T-094, p. 58; T-116, p. 44.

<sup>328</sup> P-0150: T-108, p. 27.

<sup>329</sup> P-0150: T-092, p. 40.

<sup>330</sup> P-0150: T-090, pp. 55; T-091, p. 5. *See also* T-090, p. 73.



jihadists took advantage of this strength of his'.<sup>331</sup> The Chamber also notes in this regard P-0150's description of how Mr Al Hassan was helpful in disengaging fights<sup>332</sup> and how he was able to deal with larger crowds where there was a dispute, managing to disperse people in a peaceful way without causing any loss.<sup>333</sup> The Chamber further observes that, when asked a series of questions by the Defence as to the limits of Mr Al Hassan's role, P-0150 responded openly and fairly as to Mr Al Hassan's limited participation in particular meetings, notably his lack of knowledge of secret meetings and confidential matters.<sup>334</sup>

195. P-0150 described his views of Mr Al Hassan in a positive manner stating:

Al Hassan interests me as much as any other friend or relative. [REDACTED]. He is someone, a dignitary, I thought that the future of the country depends on, in addition to our special kinship. [REDACTED].<sup>335</sup>

*(c) Precision and detail*

196. P-0150 insisted on precision when discussing Mr Al Hassan and did not speculate. For example, after being read a very lengthy passage he was asked whether Mr Al Hassan was just a regular person. He responded:

Saying 'a regular person', well, I don't know what that term means. Does that mean that he wasn't one of the great emirs that - who took decisions, a decision maker? If that is the case, yes, he wasn't one of the emirs. But was he an ordinary person or was he a prominent person within the police? [...] It can't be said that he is a regular person.<sup>336</sup>

197. P-0150 accorded the same level of detail to his answers which related to Mr Al Hassan. His way of answering – the depth, detail and the clear descriptions – had the mark of someone remembering moments. A good example is his recounting of [REDACTED] – he spoke about their conversations, the vast topics covered, how they exchanged some with laughter but serious matters as well.<sup>337</sup>

198. The same qualification applies to his account of the takeover of the airport after

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<sup>331</sup> P-0150: T-108, pp. 27-28.

<sup>332</sup> P-0150: T-092, p. 42.

<sup>333</sup> P-0150: T-092, p. 44.

<sup>334</sup> P-0150: T-118, pp. 33-34.

<sup>335</sup> P-0150: T-120, pp. 46-47.

<sup>336</sup> P-0150: T-108, p. 33.

<sup>337</sup> P-0150: T-091, pp. 6-7.

the MNLA had left; he spoke from memory. This was evidenced by the details he recalled – the place where he was positioned, the negotiations which took place, the details of the car Mr Al Hassan was driving – and his clear explanation of his basis of knowledge.<sup>338</sup>

199. P-0150 was equally careful and precise when questioned by the Defence as to Mr Al Hassan's activities prior to the formation of the Islamic Police. Despite more than one attempt to push him to concede his basis of knowledge was limited, he responded in each instance by distinguishing what he knew and what he did not and he refused to accept propositions which did not accurately and fully reflect what he was saying.<sup>339</sup>
200. Importantly, he provided thorough explanations of the various phases of Mr Al Hassan's role with the Islamic Police<sup>340</sup> and comprehensive particulars as to Mr Al Hassan's common practices in terms of his interactions with the Islamic Court.<sup>341</sup>
201. Overall, the Chamber was of the view that P-0150 gave balanced evidence with respect to Mr Al Hassan with testimony that was factual, neutral and had no antipathy.

### **c. Conclusion of the Chamber**

202. The Chamber had the opportunity to see and hear from P-0150 over an extensive period of time, including [REDACTED]. Throughout, his general demeanour did not change. He was frank, transparent, calm, and respectful. At the same time, he also showed the normal range of human emotions periodically expressing frustration and acknowledging embarrassment.
203. He listened attentively to the questions posed and would seek clarification or repetition if he did not understand something. He would respond to questions directly, freely acknowledging if he did not know something or could not

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<sup>338</sup> P-0150: T-092, pp. 6-7. *See also* T-093, pp. 7-8.

<sup>339</sup> P-0150: T-107, pp. 59-60. *See also* T-107, pp. 55-56; T-093, pp. 51-53.

<sup>340</sup> P-0150: T-116, pp. 39-40, 42-43.

<sup>341</sup> P-0150 : T-117, p. 43.

remember. He also was open about his limitations as a witness in particular his inability to recall dates and timeframes with precision. These characteristics of his demeanour and the overall manner displayed throughout his testimony provided strong indicia of his credibility and, for the Chamber, clearly demonstrated his appreciation of the solemn nature of the proceedings and his serious approach to his testimony.

204. P-0150 was a confident and assertive witness who would respond to questions in a natural and straightforward manner. He was quick to correct if he considered that a summary of his response presented by counsel was not accurate. He would comment when he determined a question was repetitive. He even on occasion asked to address the bench directly to raise a question or issue of concern.
205. The Chamber finds that P-0150, an informed insider, was clear and balanced in providing specific and detailed evidence about a wide array of relevant issues including specifically with respect to Mr Al Hassan's role and state of mind. He testified throughout in an open and forthcoming manner. For all the reasons detailed, the Chamber finds P-0150 to be a credible and reliable witness. At the same time, the Chamber notes that this is a general assessment of his testimony overall. The Chamber has also carefully assessed the credibility, reliability and weight of his evidence on specific issues, including with respect to his direct evidence regarding Mr Al Hassan, throughout the judgment, on a case-by-case basis. The analysis on these individual matters takes account of other evidence, conflicting or corroborative, with particular emphasis on evidence adduced by the Defence.

#### **iv. P-0160**

206. P-0160,<sup>342</sup> a Muslim Peulh man, [REDACTED], with extensive professional experience, notably in the fields of politics, local governance and human rights, worked with various NGOs in Mali, including [REDACTED], before and after the conflict.<sup>343</sup> He mainly testified about his work with NGOs in Mali and information obtained through this work, including in relation to sexual and gender

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<sup>342</sup> See P-0160: T-066 to T-068.

<sup>343</sup> P-0160: T-066, pp. 6-9; T-067, pp. 17-18.

based crimes.

207. The Chamber considers the witness was extremely diligent in providing his testimony, contextualising and explaining his answers, and specifying when certain details were beyond his knowledge.<sup>344</sup> The Chamber notes that P-0160 testified with precision, clearly describing the scope of the work he undertook with local NGOs and the methodology used to collect information from victims,<sup>345</sup> in addition to the limitations thereof, particularly with respect to documenting cases of rape.<sup>346</sup> He further explained the efforts taken [REDACTED] to ensure the information collected was truthful, reliable and pedagogical in nature.<sup>347</sup> The Chamber dismisses the Defence's unsubstantiated assertion that P-0160's explanation of the overall methodology was contradictory.<sup>348</sup>
208. The Chamber notes that while acknowledging that it was difficult to be neutral, P-0160 insisted that [REDACTED] it was his 'duty' to gather information from individuals and to transcribe it without analysis or judgment, independently and impartially.<sup>349</sup> As to the Defence's assertion that P-0160 kept meeting with women until they agreed they had been raped,<sup>350</sup> the Chamber considers the Defence misconstrues P-0160's evidence.<sup>351</sup> The witness testified that due to cultural and social considerations it was difficult for women to acknowledge that they had been raped. As such, in instances where the witness and his colleagues had reliable information that women had been the victims of rape or attempted rape at the *Banque Malienne de Solidarité* (the 'BMS'), they persevered in encouraging these women to acknowledge this, including by visiting them in their homes and attempting to take them out of their cultural milieu so they could talk.<sup>352</sup> Further, while P-0160 noted that this work should have been done by

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<sup>344</sup> See e.g. P-0160: T-066, pp. 29, 43; T-067, pp. 31, 64.

<sup>345</sup> See e.g. P-0160: T-066, pp. 12-14, 22, 32-33, 39-40, 48-53, 56-59; T-067, pp. 19-21; T-068, pp. 19-21.

<sup>346</sup> See e.g. P-0160: T-066, pp. 52, 54-55, 67-68.

<sup>347</sup> See e.g. P-0160: T-066, pp. 10, 38-41.

<sup>348</sup> [Defence Final Brief](#), para. 160.

<sup>349</sup> P-0160: T-068, pp. 5-6.

<sup>350</sup> [Defence Final Brief](#), para. 161.

<sup>351</sup> See LRV's Final Brief, paras 141-143.

<sup>352</sup> P-0160: T-066, pp. 51-52.

specialised and qualified individuals, who were not available,<sup>353</sup> the Defence omits to mention that the witness also emphasised that those who were doing the work had the responsibility to establish facts which could be verified and used in judicial proceedings.<sup>354</sup>

209. Similarly, the Defence's contention that the recorded dates of witness accounts are arbitrary and inaccurate<sup>355</sup> is unsupported by the evidence cited. P-0160 testified that he transcribed the exact statements provided by victims, indicating that the forms used reflect the information provided by victims as to the dates on which events occurred.<sup>356</sup> The witness inferred, however, that it may have been difficult for victims to provide specific dates, noting that this information may need cross checking.<sup>357</sup> The Chamber remains mindful of this in its assessment of the relevant evidence, notably in the context of the timeline of the alleged 'factually impossible' accounts of victims.<sup>358</sup>

210. The Chamber notes the Defence's suggestion that people would often generalise and employ negative stereotypes based on skin colour,<sup>359</sup> and that victims would frequently put Islamic Police in their accounts even if they did not know if the perpetrator was from the MNLA, MUJAO or Ansar Dine.<sup>360</sup> The Chamber remains mindful of such matters in its holistic assessment of the evidence when reaching its findings on the identity of the relevant perpetrators and their group membership, but notes that it does not consider this to impact the credibility or reliability of the evidence provided by P-0160. Further, as regards the witness's documentation of the alleged perpetrators, whether or not the witness referred to the Islamic Police when the Prosecution interviewed him in 2017, the Chamber finds convincing his explanation that the expression 'Islamic Police' was used properly on the forms and in the reports made available to the Prosecution, noting that P-0160 demonstrated he could differentiate between the Islamic Police and

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<sup>353</sup> [Defence Final Brief](#), para. 161.

<sup>354</sup> P-0160: T-066, pp. 40-41.

<sup>355</sup> [Defence Final Brief](#), para. 161.

<sup>356</sup> P-0160: T-067, p. 42.

<sup>357</sup> P-0160: T-067, p. 42.

<sup>358</sup> See [Defence Final Brief](#), para. 160.

<sup>359</sup> [Defence Final Brief](#), para. 162.

<sup>360</sup> [Defence Final Brief](#), paras 160, 162.

the ‘Islamists’.<sup>361</sup>

211. As to the Defence’s allegations in relation to P-0160’s role in documenting the number of rape victims,<sup>362</sup> and the mayor’s endorsement of [REDACTED],<sup>363</sup> the Chamber considers the Defence misconstrues and selectively cites the witness’s evidence.<sup>364</sup> In the Chamber’s view, these matters do not affect the credibility or reliability of P-0160’s evidence or support the Defence’s broader allegations of contamination.
212. Finally, the Chamber notes that P-0160 unequivocally explained his personal motivation behind his professional activities and his clear desire to contribute to the well-being of the victims he met.<sup>365</sup>
213. Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds P-0160 to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness’s testimony and that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis.

#### v. P-0626

214. P-0626,<sup>366</sup> an imam and teacher from [REDACTED],<sup>367</sup> speaks Arabic, Tamasheq and Songhai,<sup>368</sup> and is knowledgeable in prophetic tradition and Islamic jurisprudence.<sup>369</sup> [REDACTED],<sup>370</sup> [REDACTED].<sup>371</sup> [REDACTED].<sup>372</sup> He mainly testified about events related to Ansar Dine/AQIM’s control of Timbuktu, including [REDACTED].
215. The Chamber observes that the witness was composed and responded to questions

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<sup>361</sup> P-0160: T-067, pp. 69-70. *Contra* [Defence Final Brief](#), para. 199.

<sup>362</sup> [Defence Final Brief](#), para. 166.

<sup>363</sup> [Defence Final Brief](#), para. 167.

<sup>364</sup> *See e.g.* P-0160: T-068, pp. 22, 25-27.

<sup>365</sup> P-0160: T-066, p. 10; P-067, pp. 10-11.

<sup>366</sup> *See* P-0626: T-141 to T-144.

<sup>367</sup> P-0626: T-141, pp. 7-8.

<sup>368</sup> P-0626: T-141, p. 7; T-143, p. 63; T-144, p. 64.

<sup>369</sup> P-0626: T-141, pp. 8-9.

<sup>370</sup> P-0626: T-141, pp. 27-30, 37; T-143, p. 24.

<sup>371</sup> P-0626: T-144, p. 64.

<sup>372</sup> *See e.g.* P-0626: T-143, pp. 46, 69, 92; T-144, pp. 8, 47-48.

in a detailed and open way. He often indicated when he could not recall or was not aware of certain details,<sup>373</sup> stating that he did not want to speculate,<sup>374</sup> but repeatedly emphasised when he remembered what he believed to be important details.<sup>375</sup> With respect to the substance of P-0626's testimony, the Chamber assesses the witness's basis of knowledge and the reliability of his evidence on a case-by-case basis. In this regard, as described further below, the Chamber draws a distinction between, relevantly, the reliability and weight to be accorded to P-0626's testimony on (i) the armed groups in general; (ii) the Islamic Court; (iii) Mr Al Hassan's role and functions in relation to the Islamic Court; and (iv) the Islamic Police and related reports.

216. Concerning firstly P-0626's knowledge of the armed groups, the Chamber notes that P-0626 lived in the surroundings of the city of Timbuktu between 2012 and 2013,<sup>376</sup> and only came to the city twice a week.<sup>377</sup> The Chamber observes that he repeatedly stated that he was not aware of certain details, such as the whereabouts of the headquarters of the *Hesbah*, instructions that were issued by Abou Zeid to the *Hesbah* and the Islamic Police,<sup>378</sup> and basic facts regarding events he attended.<sup>379</sup> In relation to his association with Ansar Dine/AQIM, P-0626 acknowledged [REDACTED]<sup>380</sup> but he testified that he was not close to the emirs and was not part of the *Shura* council or the *Sharia* council.<sup>381</sup> Noting the apparent generality of the witness's knowledge on these subjects, the Chamber will not consider his testimony as key evidence thereon.
217. Concerning, secondly, P-0626's knowledge of the Islamic Court, the Chamber notes that P-0626 [REDACTED].<sup>382</sup> [REDACTED].<sup>383</sup> He confirmed that even though [REDACTED] in the context of his work, he himself did not conduct

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<sup>373</sup> See e.g. P-0626: T-141, pp. 12, 15-16, 30-31, 34, 47; T-144, pp. 66-68, referring to instructions MLI-OTP-0002-0017.

<sup>374</sup> P-0626: T-144, pp. 68-69, 70 (testifying about the role of Khalid and Adama).

<sup>375</sup> See e.g. P-0626: T-141, pp. 11, 27, 41, 46; T-142, pp. 18, 39, 55-56; T-143, pp. 17, 73, 92.

<sup>376</sup> P-0626: T-141, p. 8.

<sup>377</sup> P-0626: T-144, p. 67.

<sup>378</sup> P-0626: T-144, pp. 66-68, referring to instructions MLI-OTP-0002-0017.

<sup>379</sup> P-0626: T-141, pp. 30-31, 34, 47.

<sup>380</sup> P-0626: T-141, p. 34.

<sup>381</sup> P-0626: T-141, p. 28; T-144, pp. 64-65.

<sup>382</sup> P-0626: T-141, pp. 37, 46-48, 50; T-144, pp. 53, 56-57.

<sup>383</sup> P-0626: T-141, pp. 37, 39, 41-42; T-143, p. 8; T-144, p. 64.

investigations or interrogations.<sup>384</sup> The Chamber finds that by repeatedly stating that he did not remember some aspects of the functioning of the Islamic Court,<sup>385</sup> [REDACTED],<sup>386</sup> [REDACTED],<sup>387</sup> [REDACTED],<sup>388</sup> [REDACTED],<sup>389</sup> P-0626 tended to [REDACTED]. Notwithstanding the foregoing, the Chamber considers that as [REDACTED], P-0626 had a good basis of knowledge regarding, notably: the Islamic Court's procedures and functioning;<sup>390</sup> the behaviour of members of the Islamic Court;<sup>391</sup> the fact that members of Ansar Dine/AQIM had the final say in the decision making of the Islamic Court;<sup>392</sup> the interaction between the Islamic Police and the Islamic Court;<sup>393</sup> and the production of the Islamic Court's documents, and the authors and signatories thereof.<sup>394</sup> The Chamber is, therefore, unpersuaded by the Defence argument that in light of his lack of knowledge about the Islamic Court, there is no basis to rely on P-0626's evidence to reach findings of fact concerning Mr Al Hassan's alleged participation in any criminal cases before the Islamic Court.<sup>395</sup>

218. Concerning, thirdly, P-0626's knowledge regarding the role of the accused in relation to the Islamic Court, the Chamber notes that P-0626 was able to clearly recognise Mr Al Hassan.<sup>396</sup> He described in context the roles of the Islamic Police and Mr Al Hassan, as well as Mr Al Hassan's personal interactions with the Islamic Court, and outlined the basis for his knowledge on Mr Al Hassan's roles and functions.<sup>397</sup> The Chamber considers that the Defence's assertion that P-0626 'pinned actions and responsibilities on Mr Al Hassan because it was the only name and image in the forefront of his mind'<sup>398</sup> is highly speculative. Recalling

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<sup>384</sup> P-0626: T-144, pp. 64-65. *See also* [Defence Response Brief](#), para. 67.

<sup>385</sup> *See e.g.* P-0626: T-143, p. 11.

<sup>386</sup> P-0626: T-142, p. 18.

<sup>387</sup> P-0626: T-141, pp. 41-42.

<sup>388</sup> P-0626: T-144, p. 64.

<sup>389</sup> P-0626: T-143, p. 11.

<sup>390</sup> *See e.g.* P-0626: T-141, pp. 40-43, 49-50; T-142, pp. 10-11, 36-41, 46-49, 56, 62-63; T-144, pp. 57, 88.

<sup>391</sup> *See e.g.* P-0626: T-141, pp. 66-67; T-142, pp. 6-10, 26-27.

<sup>392</sup> *See e.g.* P-0626: T-142, pp. 9, 39-40; T-144, pp. 62-63.

<sup>393</sup> *See e.g.* P-0626: T-142, pp. 28-29; 37, 51-53.

<sup>394</sup> *See e.g.* P-0626: T-141, pp. 39-40; T-142, pp. 10-11, 19-20, 38-39, 46-49, 59-60, 62-64.

<sup>395</sup> [Defence Response Brief](#), para. 66.

<sup>396</sup> P-0626: T-143, p. 13, *referring to* video MLI-OTP-0018-0379, at 00:00:13 to 00:00:20:22, transcript MLI-OTP-0069-7535, translation MLI-OTP-0069-7539.

<sup>397</sup> *See e.g.* P-0626: T-142, pp. 28-29; 34, 37, 51-53; T-144, pp. 80-83, 85.

<sup>398</sup> [Defence Response Brief](#), para. 68.



Mr Al Hassan's role within the Islamic Police,<sup>399</sup> and that P-0626 testified that Mr Al Hassan was 'in charge of this' – he was the one that was 'in contact', and who was responsible for bringing prisoners to and from the Islamic Court, or to the place where *ta'zir* or *hadd* would take place<sup>400</sup> – the Chamber considers the witness was well placed to identify Mr Al Hassan's interactions with the Islamic Court.<sup>401</sup> In light of this, and further noting that P-0626 also named Khaled and Adama<sup>402</sup> as members of the Islamic Police,<sup>403</sup> the Chamber does not consider that his inability to recall the names of other 'members, soldiers, young people'<sup>404</sup> who periodically came to the Islamic Court undermines the credibility or reliability of his evidence on this subject.<sup>405</sup> The Chamber considers that although P-0626 was not aware of all aspects of Mr Al Hassan's role, his testimony on this topic is balanced and reliable, to the extent that it is based on his personal observations of the interactions between the different institutions and the Islamic Court.

219. Finally, regarding P-0626's testimony concerning police investigations and the Islamic Police reports, the Chamber notes the Defence arguments that P-0626 was not present during police investigations, or when the police reports were drafted, and had no personal knowledge thereon, as well as other arguments related to P-0626's attribution of signatures on reports to Mr Al Hassan.<sup>406</sup> The Chamber also notes that P-0626 clearly stated that he did not know what the Islamic Police used to do at the BMS, and that he did not want to speculate on this topic.<sup>407</sup> The witness further explained that his evidence that certain documents were signed by Mr Al Hassan was based on an assumption he made given that Mr Al Hassan was the one who used to bring people and documents to the Islamic Court.<sup>408</sup> Taking these factors into account, the Chamber considers P-0626's testimony on the inner functioning of the Islamic Police, as well as his testimony on the drafting

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<sup>399</sup> See section III.F below.

<sup>400</sup> P-0626: T-142, pp. 29-30, 32; T-144, pp. 80-81, 83.

<sup>401</sup> *Contra* [Defence Response Brief](#), para. 66.

<sup>402</sup> P-0626: T-144, pp. 70-71.

<sup>403</sup> See e.g. P-0626: T-144, pp. 70-71.

<sup>404</sup> P-0626: T-144, p. 83.

<sup>405</sup> *Contra* [Defence Response Brief](#), para. 68.

<sup>406</sup> [Defence Final Brief](#), paras 307, 312, 396; [Defence Response Brief](#), paras 67-68.

<sup>407</sup> P-0626: T-144, pp. 68-69, 70 (testifying about the role of Khalid and Adama).

<sup>408</sup> P-0626: T-144, pp. 79-80.

of and signatures on the Islamic Police reports, to be of low probative value.

220. In addition to the foregoing specific points of contention raised by the Defence, the Defence generally argues that no weight can be placed on the evidence of P-0626 - who exercised a 'more direct and higher role' in charged events than Mr Al Hassan by virtue of his work<sup>409</sup> - because he was treated as a witness, avoiding ICC charges in exchange for his evidence against Mr Al Hassan, and changing his evidence to benefit the Prosecution after he 'received significant help concerning [REDACTED], which he credited to the Prosecution'.<sup>410</sup> The Chamber considers the Defence assertion that P-0626 exercised a 'more direct and higher role' than Mr Al Hassan<sup>411</sup> is ill-founded and in any case, of no relevance, and its submission that P-0626 avoided ICC charges in exchange for his evidence<sup>412</sup> is purely speculative. The Chamber notes that P-0626 indeed acknowledged that he felt grateful for the assistance the Prosecution provided to him [REDACTED].<sup>413</sup> He replied to numerous questions on this topic with composure and sincerity, providing details and, where necessary, seeking clarifications of questions.<sup>414</sup> Notably, P-0626 ultimately acknowledged that '[m]y first situation was very bad. Then in the second time my situation improved. I could move and I could verify that what I was saying was the truth. So this gave me courage and what I was trying to do is to tell the truth, whether my situation was good or bad'.<sup>415</sup> The Chamber is fully satisfied with his answers in this respect and understands that the intention of the witness was to provide, to the best of his abilities, a truthful account of what he observed and heard in Timbuktu during the period of Ansar Dine/AQIM's control of the city, which is also consistent with the way he testified before the Court. The Chamber further considers that the balanced nature of P-0626's testimony on Mr Al Hassan's role, as discussed above, refutes the Defence suggestion that P-0626 changed his

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<sup>409</sup> [Defence Response Brief](#), para. 66.

<sup>410</sup> [Defence Response Brief](#), paras 25, 66.

<sup>411</sup> [Defence Response Brief](#), para. 66.

<sup>412</sup> [Defence Response Brief](#), paras 25, 66.

<sup>413</sup> P-0626: T-144, p. 34.

<sup>414</sup> See e.g. P-0626: T-143, pp. 48, 53-55, 69-75, 80-85, 87-89, 91-93; T-144, pp. 4-7, 13-21, 27, 30-31, 33-35, 37, 41-42.

<sup>415</sup> P-0626: T-144, p. 42.

evidence to assist the ICC Prosecution to convict Mr Al Hassan.<sup>416</sup>

221. The Defence further argues that P-0626, who it describes as [REDACTED],<sup>417</sup> either provided self-serving evidence to protect himself and his relatives (while blaming Mr Al Hassan), or his cognitive capacity was affected and his memory irretrievably impaired due to the effects of interrogation while detained in coercive conditions and ‘experiencing severe forms of uncontrollable stress’.<sup>418</sup> The Chamber notes that the witness clearly separated his testimony in court from [REDACTED].<sup>419</sup> In assessing the content and manner of P-0626’s testimony, the Chamber finds no indication of a cognitive impairment which would have impacted the testimony he gave before the Court. However, the Chamber recalls its finding that P-0626 appeared to minimise his own role in certain respects, which the Chamber has taken into account in assessing the witness’s evidence.
222. Having regard to the foregoing, the Chamber dismisses the Defence’s general arguments with respect to P-0626, including its submission that no probative weight can be attached to P-0626’s testimony. Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds P-0626 to be a generally credible and reliable witness, subject to the caveats mentioned above. The Chamber notes that this is a general assessment of the witness’s testimony and reiterates that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate.

#### vi. P-0638

223. P-0638,<sup>420</sup> a Muslim man from [REDACTED],<sup>421</sup> worked in Timbuktu as a tourist guide and as an apprentice with cars.<sup>422</sup> He lived in Timbuktu for a period when Ansar Dine/AQIM were present in the city, leaving in 2012 following the execution ‘of a Tuareg’.<sup>423</sup> P-0638 described Mr Al Hassan as his

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<sup>416</sup> *Contra* [Defence Response Brief](#), para. 66.

<sup>417</sup> [Defence Final Brief](#), para. 307.

<sup>418</sup> [Defence Final Brief](#), paras 307, 396; [Defence Response Brief](#), para. 68.

<sup>419</sup> P-0626: T-144, p. 70.

<sup>420</sup> *See* P-0638: T-057 to T-059.

<sup>421</sup> P-0638: T-057, p. 45.

<sup>422</sup> P-0638: T-057, pp. 46-47.

<sup>423</sup> P-0638: T-057, pp. 47-49; T-058, pp. 65, 81-82.

[REDACTED].<sup>424</sup> The witness mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including his own victimisation and other punishments he witnessed.<sup>425</sup>

224. The Chamber observes that the witness distinguished clearly between what he knew and did not know<sup>426</sup> and between what he saw and what he heard.<sup>427</sup> He gave nuanced testimony, describing the unstable situation in Timbuktu before the arrival of the armed groups,<sup>428</sup> the beginning of Ansar Dine/AQIM's control of the city and the impact on the population, testifying that some initial reactions to the groups were positive but that this changed following incidents like the destruction of mausoleums and the execution 'of a Tuareg'.<sup>429</sup> The Chamber notes that the witness openly acknowledged that he drinks and smokes cannabis,<sup>430</sup> but does not consider this, or P-1086's unsubstantiated assertion that the witness was considered by his family and people where they live to be a 'psychologically unstable' and 'irresponsible young person',<sup>431</sup> to impact his credibility. The Chamber considers the witness appeared to be very honest, and notes that he described what happened to him in a very factual way. The witness also emphasised the importance of telling the truth, noting 'the truth is a gift'.<sup>432</sup>
225. In relation to the Defence's argument that P-0638 was never arrested, detained, or flogged in 2012 as it is 'entirely implausible that he would have failed to mention such critical matters when filmed and interviewed by P-0136 in 2012',<sup>433</sup> the Chamber notes there is indeed a discrepancy between the evidence of P-0065 and P-0638 on this point. Specifically, there are contradictions on the one hand

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<sup>424</sup> P-0638: T-058, pp. 12, 14, 18-19, 92-94; T-059, pp. 45, 63-64. *Contra* [Defence Final Brief](#), para. 459. In addition, noting that P-0638 knew Mr Al Hassan and had seen him 'many times' before the arrival of the 'Islamists' in Timbuktu (P-0638: T-058, pp. 13-15), the Chamber dismisses the Defence suggestion that P-0638's testimony involving an identification of Mr Al Hassan was tainted by the fact that the Prosecution showed him a video with Mr Al Hassan's face or by P-0638's connection to journalists or by any alleged absence of procedural safeguards by the Prosecution in obtaining identification evidence (*contra* [Defence Final Brief](#), paras 201-202; ICC-01/12-01/18-1644 and related annexes; *see also* [Prosecution Response Brief](#), para. 56).

<sup>425</sup> *See e.g.* P-0638: T-058, pp. 63-66.

<sup>426</sup> *See e.g.* P-0638: T-057, pp. 49-50, 72; T-058, pp. 14-15, 24-25.

<sup>427</sup> *See e.g.* P-0638: T-057, p. 52; T-058, pp. 9, 14-15, 18, 26, 37, 62-63, 65-66.

<sup>428</sup> P-0638: T-059, pp. 14-15.

<sup>429</sup> *See e.g.* P-0638: T-057, pp. 48, 59-63, 67-68, 76-77; T-058, pp. 4-7, 28, 101-103.

<sup>430</sup> P-0638: T-057, pp. 52-53, 81; T-058, p. 34; T-059, p. 14.

<sup>431</sup> [Defence Final Brief](#), para. 459, *referring to* P-1086, pp. 31-32.

<sup>432</sup> *See e.g.* P-0638: T-059, pp. 29, 37, 46, 59.

<sup>433</sup> [Defence Final Brief](#), para. 458.

between P-0065's evidence that P-0638 said that he had been flogged for smoking when P-0065 and P-0136 spoke with him in 2012,<sup>434</sup> and on the other P-0638's evidence that in 2012 he only told P-0136 what he had seen, not what had happened to him, because he did not feel safe and was scared of having problems.<sup>435</sup> However, noting P-0638's clarifications and explanations on this matter<sup>436</sup> in light of the situation in Timbuktu in 2012, the Chamber is satisfied by the reasons put forward by the witness for not wanting to speak about his victimisation in 2012. Further, in light of the above, and noting that P-0638 was not questioned on his discussions with P-0065 and that P-0065's account was not specifically put to the witness, the Chamber does not consider that the discrepancy between P-0065's and P-0638's evidence affects the credibility of P-0638 on this point. The Chamber is similarly unpersuaded that any discrepancy in the reasons P-0638 provided to P-0065 for his flogging affects P-0638's overall credibility on this matter.

226. In relation to the Defence's argument that D-0243 confirmed that P-0638 was never arrested by Ansar Dine or detained at the BMS,<sup>437</sup> the Chamber notes that D-0243 testified that P-0638 was never arrested by the 'Islamists' in 2012 and that if anything had happened to P-0638 during that time, D-0243 would have been told.<sup>438</sup> The Chamber notes the close relationship between D-0243 and P-0638.<sup>439</sup> However, the Chamber also observes that, in addition to P-0638's reluctance to speak about what happened to him, as explained above, D-0243 and P-0638 lived in different locations in Timbuktu during Ansar Dine/AQIM's control of the city and D-0243 agreed that in 2012 he would not have been in a position to say what P-0638 was doing on a specific day during that year, notably

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<sup>434</sup> P-0065 testified that he later found out that P-0638 was flogged because he had drunk alcohol (P-0065: T-046, pp. 69-71).

<sup>435</sup> P-0638: T-058, pp. 78-80, 83-84, *referring to* video MLI-OTP-0069-4624, at 00:15:48:05 to 00:16:24:23, transcript MLI-OTP-0078-4603, translation MLI-OTP-0078-4686.

<sup>436</sup> The witness said that he told P-0136 about everything that happened to him later, in Bamako, around 2018, when 'everybody' started talking, so 'that was the moment' (P-0638: T-058, pp. 80, 84-85). P-0638 emphasised that prior to that he did not tell anyone, even his family, that he had been flogged, explaining that he was not proud of having been flogged and it would have hurt his pride (P-0638: T-058, pp. 84-85).

<sup>437</sup> [Defence Final Brief](#), para. 459 (incorrectly referring to D-0273 instead of D-0243).

<sup>438</sup> D-0243's statement MLI-D28-0006-9053-R01, at 9058, para. 39.

<sup>439</sup> D-0243's statement MLI-D28-0006-9053-R01, at 9057, para. 36; D-0243: T-210, p. 11, *referring to* photograph MLI-D28-0004-3945. *See also* P-0638: T-059, p. 27, where the witness identifies himself on this photograph.

because P-0638 travelled a lot, and was ‘always moving’.<sup>440</sup> Accordingly, the Chamber does not consider that D-0243’s evidence undermines P-0638’s evidence on this point. As to the Defence’s challenges to P-0638’s credibility based on the testimony of P-0150,<sup>441</sup> the Chamber considers that the Defence either takes P-0150’s testimony out of context and misrepresents the witness’s statements,<sup>442</sup> or that the cited testimony does not support the Defence’s assertion.<sup>443</sup>

227. Assessing the totality of the evidence and despite P-0638’s testimony about the date of the event,<sup>444</sup> the Chamber is not satisfied that the witness was in a position to identify the timeframe of his specific victimisation with precision, notably given the passage of time since the events. The Chamber nonetheless considers P-0638 credible when he testified that he was brought to the *Hôtel La Maison*, appeared before ‘Islamists’ and was sentenced to flogging, and is satisfied that this took place towards the beginning of the groups’ control over Timbuktu in 2012. In this regard, the Chamber particularly notes that the details provided by P-0638 on his appearance at the *Hôtel La Maison* are consistent with other credible and reliable evidence on the Islamic Court hearings, their setting, the description of the building, its location in Timbuktu, the presence of weapons and a computer next to the judges, some of whom were masked, as well as the

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<sup>440</sup> D-0243’s statement MLI-D28-0006-9053-R01, at 9058, para. 38; D-0243: T-210, pp. 26-27.

<sup>441</sup> [Defence Final Brief](#), para. 459. The Defence refers to P-0150’s testimony and alleges that this witness: (i) testified that no punishments were implemented at the beginning (*i.e.* during the first months) of the group’s arrival in 2012 in Timbuktu; and (ii) was unfamiliar with P-0638’s alleged appearance before the Islamic Court or P-0638’s account that he had received the ‘first’ flogging punishment from this Court.

<sup>442</sup> In relation to the Defence’s argument that P-0150 testified that no punishments were implemented at the beginning (*i.e.* during the first months) of the group’s arrival in 2012 in Timbuktu (*referring to* P-0150: T-098, p. 36), the Chamber considers that the Defence takes P-0150’s testimony out of context and misrepresents the witness’s statements.

<sup>443</sup> In relation to the Defence’s argument that P-0150 was unfamiliar with P-0638’s alleged appearance before the Islamic Court or P-0638’s account that he had received the ‘first’ flogging punishment from this Court, the Chamber notes that in the excerpt of P-0150’s testimony to which the Defence refers, P-0150 was expressly cross-examined by the Defence on his knowledge [REDACTED] as to whether P-0638 was ‘the first person condemned by the Islamic tribunal in 2012’ and on whether the Islamic Court ‘issue[d] judgments and sentences at the *Hôtel [La] Maison* in the first couple of days of April’ 2012 (P-0150: T-107, p. 78). P-0150 answered that he did not remember the date on which the Islamic Court began its work and did not remember that specific decision. P-0150 further recalled that he had already said in the course of his testimony that in late April, early May, ‘all the institutions had begun to function indeed’ (P-0150: T-107, p. 78). The Chamber notes that in this part of his testimony, P-0150 merely testified that he did not remember P-0638’s case and that he was not able to remember specifically when the work of the Islamic Court actually began.

<sup>444</sup> See P-0638: T-057, pp. 49-50, 55; T-058, p. 33.

involvement of Radwan.<sup>445</sup>

228. Finally, in relation to the Defence submissions against P-0638's credibility with reference to the Prosecution's interview procedure and the alleged parallels made by P-0638 'between Timbuktu and Rwanda',<sup>446</sup> the Chamber finds that the Defence misrepresents P-0638's testimony as to his motivation to testify in the present proceedings.<sup>447</sup>
229. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0638 to be a generally credible and reliable witness, including in the context of his arrest, detention and flogging by members of Ansar Dine/AQIM. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

#### **vii. P-0641**

230. P-0641,<sup>448</sup> a Muslim Tamasheq man, was born in Timbuktu and was living there when Ansar Dine/AQIM were present in the city.<sup>449</sup> Notably, he [REDACTED],<sup>450</sup> [REDACTED].<sup>451</sup> P-0641 was admitted as a participating victim in the proceedings. He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM and his interactions with victims.
231. The Chamber finds that P-0641 was precise and honest about his basis of knowledge, and specified when he did not recall something.<sup>452</sup> The witness was well placed to observe events, and could easily recognise certain locations and leaders of Ansar Dine/AQIM,<sup>453</sup> and was also privy to contemporaneous victim

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<sup>445</sup> See section III.C.4.c) below.

<sup>446</sup> [Defence Final Brief](#), para. 200.

<sup>447</sup> While the Prosecution investigators talked about Rwanda, the war and the process to peace, P-0638 stated that he was motivated to testify before the Court when he heard the word 'peace', rather than by the 'parallels between Timbuktu and Rwanda' in terms of similar magnitude of both conflicts (*see* P-0638: T-058, pp. 85-86).

<sup>448</sup> *See* P-0641: T-137 to T-140.

<sup>449</sup> P-0641: T-137, p. 6.

<sup>450</sup> P-0641: T-137, p. 6.

<sup>451</sup> P-0641: T-137, p. 8; T-139, pp. 4, 9.

<sup>452</sup> *See e.g.* P-0651: T-140, p. 35.

<sup>453</sup> P-0641: T-139, pp. 25-27.

accounts.<sup>454</sup> While the scope of his knowledge had some limitations, for example, regarding dates,<sup>455</sup> certain groups,<sup>456</sup> and the institutions created by Ansar Dine/AQIM in 2012,<sup>457</sup> the Chamber is satisfied that the witness described the events he remembered truthfully and as precisely as possible.

232. The Chamber notes that P-0641 appeared genuine in his motivation to testify in the pursuit of ‘justice in the country,’<sup>458</sup> and considers that his [REDACTED],<sup>459</sup> does not undermine the credibility or reliability of his evidence.
233. In assessing the weight to be accorded to the witness’s evidence, the Chamber has taken into consideration that certain aspects of his testimony appeared to be based on information he was told by others, and that sometimes the source of his knowledge was very vague.<sup>460</sup> The Chamber assesses the value and reliability of the witness’s testimony on a case-by-case basis, taking into account the source of his knowledge as concerns individual information, as well as other witnesses’ accounts. The Chamber considers the witness’s evidence concerning events he personally witnessed, such as the incidents involving Salamata Warnamougrez (P-1710) and Hady Aguisa (P-1711),<sup>461</sup> to be particularly reliable.
234. Further, the Chamber considers that points raised by the Defence regarding the witness misspeaking and then correcting himself during his witness preparation session,<sup>462</sup> and the witness’ two victim application forms and related discrepancies in dates,<sup>463</sup> did not raise doubts about the witness’s overall

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<sup>454</sup> See e.g. P-0641: T-137, p. 8.

<sup>455</sup> See e.g. P-0641: T-137, pp. 42-43; T-139, p. 44.

<sup>456</sup> See e.g. P-0641: T-139, pp. 37-38.

<sup>457</sup> See e.g. P-0641: T-139, p. 69.

<sup>458</sup> P-0641: T-140, pp. 73-74 (*contra* [Defence Final Brief](#), para. 200).

<sup>459</sup> P-0641: T-140, pp. 74-75. The Chamber further considers that the Defence mischaracterises the witness’s evidence in asserting that he ‘testified to [REDACTED]’ (*see* [Defence Final Brief](#), para. 469). The Chamber also refers to its finding that the Defence’s general submission that [REDACTED] negatively influenced the local population is speculative or unsupported by the evidence (*see* paragraph 372 below).

<sup>460</sup> See e.g. P-0641: T-138, p. 32.

<sup>461</sup> P-0641: T-138, pp. 69-72. As to specific Defence objections in relation to P-0641’s evidence with respect to P-1710 and 17011, *see* section III.E.1.p) below. Similarly, in relation to the Chamber’s assessment of P-0641’s evidence with respect to P-1712, *see* section III.E.1.q) below. *See also* section III.E.1.r) below for the Chamber’s conclusions regarding P-0641’s evidence regarding P-1721.

<sup>462</sup> P-0641: T-140, pp. 49-50. *See* [Defence Final Brief](#), para. 396.

<sup>463</sup> P-0641: T-140, pp. 57-58, 60-65, 67, 80, 82-83.



reliability or credibility.

235. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0641 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

**viii. P-0643**

236. P-0643,<sup>464</sup> a Songhai man raised in Timbuktu, is an experienced university professor, who holds a *doctorat d'État* in public law. [REDACTED], and has been involved in several conciliation missions, mediations and trainings, including in Timbuktu.<sup>465</sup> He has extensive experience in the area of law, with particular expertise in Malian law, comparative law, human rights, women's issues, religion and culture, and peace and reconciliation, among others.<sup>466</sup> He visited Timbuktu towards the end of 2012.<sup>467</sup> He appeared before the Chamber as an expert, and testified in relation to his report which covers Timbuktu's history, population, culture, customs and religious practices.<sup>468</sup>

237. The Chamber considers that the witness presented a balanced analysis, which demonstrates his expertise in law and politics and that his evidence was based on thorough research. P-0643 provided precise answers, identified limitations in the scope of his knowledge and research, notably in the field of Islamic law and sociology, and was open about his sources and methodology.<sup>469</sup> As regards the Defence's suggestion that the witness was not willing to testify unless he was paid, the Chamber notes that the witness testified that this was 'not correct'.<sup>470</sup>

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<sup>464</sup> See P-0643: T-083 to T-084; P-0643's report MLI-OTP-0077-2933-R01 introduced through Rule 68(3) of the Rules.

<sup>465</sup> P-0643: T-083, pp. 6-9; P-0643's curriculum vitae MLI-OTP-0077-3039-R01.

<sup>466</sup> See e.g. P-0643: T-083, pp. 7-10; T-084, p. 65; P-0643's curriculum vitae MLI-OTP-0077-3039-R01; MLI-OTP-0078-1382-R01, at 1384. See also ICC-01-12-01/18-898-Conf, para. 42; ICC-01/12-01/18, para. 22.

<sup>467</sup> P-0643: T-083, p. 82.

<sup>468</sup> See P-0643's report MLI-OTP-0077-2933-R01.

<sup>469</sup> See e.g. P-0643: T-083, pp. 21, 58, 65, 69-70, 79-80; T-084, pp. 55, 64.

<sup>470</sup> P-0643: T-084, p. 30. See also ICC-01/12-01/18-1645-Conf-AnxIV and related annexes.

He elaborated that he expected to be an expert because he is a university professor and he was told he could be an expert, but noted that as for ‘remuneration’, he ‘clearly said in writing that the issue of payment for [him] was secondary’ and that he was to provide expert knowledge and information.<sup>471</sup> Nevertheless, the witness confirmed that he entered into a contract (to be paid an honorarium) with the Prosecution.<sup>472</sup> While the Chamber understands from this evidence that P-0643 wanted to testify as an expert and to be paid for doing so, it does not consider that this affects P-0643’s overall credibility, noting his explanations and the other compelling indicia of credibility in his evidence.

238. With respect to the scope of P-0643’s evidence, the Chamber recalls its conclusion that it would be artificial to divide the witness’s evidence into expert evidence and fact evidence, particularly considering P-0643’s apparent vast experience in various topics, not restricted to the law, about which he testified.<sup>473</sup> Noting the witness’ background, education, basis of knowledge, personal experiences, and the detailed content of his testimony, the Chamber considers that the witness provided a well informed and reliable account of matters beyond the technical scope of his expertise, including with respect to *inter alia* general matters regarding the life, ethnic composition and certain customs in Timbuktu before 2012, and has accorded due weight to his testimony, on a case-by-case basis.
239. As regards the challenges raised by the Defence with respect to P-0643’s report,<sup>474</sup> the Chamber notes at the outset that it considers P-0643’s report, and in-court testimony, to be relevant to matters in issue in the present case.<sup>475</sup> That P-0643 drew upon the content of his *Aide Memoire* in preparing his report, as proposed in the Prosecution’s letter of instructions, does not, in the Chamber’s view, render the report unreliable.<sup>476</sup> Further, contrary to the Defence’s suggestion that ‘the overwhelming majority of the “Report” covers other matters

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<sup>471</sup> P-0643: T-084, p. 31.

<sup>472</sup> P-0643: T-084, p. 31, *referring to* investigation note MLI-OTP-0077-4446.

<sup>473</sup> *See* ICC-01/12-01/18-1409-Conf, para. 23.

<sup>474</sup> *See* ICC-01/12-01/18-1645-Conf-AnxIV.

<sup>475</sup> *Contra* ICC-01/12-01/18-1645-Conf-AnxIV, para. 3.

<sup>476</sup> *Contra* ICC-01/12-01/18-1645-Conf-AnxIV, para. 1. *See also* Aide memoire MLI-OTP-0078-1054; Letter of instructions MLI-OTP-0077-3146, para. 4; P-0643: T-084, pp. 33-35.

and time periods without establishing their connection with the scope set out by the Prosecution',<sup>477</sup> the Chamber considers that the instructions provided by the Prosecution clearly contemplated the provision of information relating to periods preceding the events of 2012 to 2013, as well as the period thereafter.<sup>478</sup> Although the Chamber notes that P-0643's report would have benefited from more clearly detailing his methodologies, and more careful attention to attribution and citations, it does not accept the Defence's suggestion that this renders the report 'unusable for its intended purposes'.<sup>479</sup> Indeed, when questioned about the sources of specific aspects of his report, the witness responded without hesitation, identifying in the body of the report the sources to which he had referred.<sup>480</sup>

240. The Chamber also considers unfounded the Defence suggestion that P-0643 'added no original thought or investigation' to the report,<sup>481</sup> noting *inter alia* P-0643's demonstrable knowledge and expertise in his field, and the 'foultitude' of people with whom he spoke.<sup>482</sup> Moreover, the Chamber considers that the nature of the instructions provided to P-0643, in fact, required, in some instances, reference to other sources. Nevertheless, the Chamber remains cognisant of the scope of the witness's expertise and the limitations of his report, assessing the weight and probative value to be accorded to the witness's evidence on a case-by-case basis. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0643 to be a generally credible and reliable witness and relies on his expert report on a case-by-case basis.

#### **ix. D-0202**

241. D-0202,<sup>483</sup> a man from [REDACTED], lived in Timbuktu when Ansar Dine/AQIM were present in the city.<sup>484</sup> After the arrival of Ansar Dine/AQIM in 2012, the witness worked at the Islamic Court with Houka Houka [REDACTED].<sup>485</sup> The witness knows Mr Al Hassan, who is from the Kel Ansar

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<sup>477</sup> *Contra* ICC-01/12-01/18-1645-Conf-AnxIV, para. 2.

<sup>478</sup> *See e.g.* Letter of Instructions MLI-OTP-0077-3146, para. 2.

<sup>479</sup> *See* ICC-01/12-01/18-1645-Conf-AnxIV, paras 2, 4, 7.

<sup>480</sup> P-0643: T-083, pp. 69-70, 75; T-084, pp. 36-46.

<sup>481</sup> ICC-01/12-01/18-1645-Conf-AnxIV, para. 6.

<sup>482</sup> P-0643: T-084, pp. 25, 28-29.

<sup>483</sup> *See* D-0202: T-202 to T-204.

<sup>484</sup> D-0202: T-202, pp. 10-11, 26.

<sup>485</sup> D-0202: T-202, pp. 26, 84-85, 99.

tribe,<sup>486</sup> but testified that he does not have any direct family relationship to him<sup>487</sup> [REDACTED].<sup>488</sup> He mainly testified about events related to Ansar Dine/AQIM's control of Timbuktu, including his activities working at the Islamic Court.

242. The Chamber observes at the outset that although D-0202 emphasised that he was not a soldier for Ansar Dine/AQIM and did not have anything to do with it beyond working with Houka Houka,<sup>489</sup> he appeared to have completely subscribed to Ansar Dine/AQIM's ideology, speaking positively of the rules Ansar Dine/AQIM imposed in Timbuktu<sup>490</sup> and the assistance they provided to the population,<sup>491</sup> and downplaying the gravity of the acts of the groups and its individual members.<sup>492</sup> In particular, the Chamber notes that D-0202 showed a clear tendency to minimise the roles played by Houka Houka and, as described further below, Mr Al Hassan. The Chamber considers that the foregoing indicates D-0202's apparent bias in favour of Mr Al Hassan and Ansar Dine/AQIM.

243. In relation to D-0202's evidence on the functioning of the Islamic Court, the witness's bias, in conjunction with the fact that [REDACTED],<sup>493</sup> casts doubt on the reliability of D-0202's evidence on the processes of the Islamic Court, particularly where it involved the witness's subjective analysis. For example, the Chamber considers unreliable D-0202's evidence on the extent to which reports and records from the police and the *Hesbah* were taken into consideration by the judges,<sup>494</sup> the existence of coercion<sup>495</sup> and conditions of detention.<sup>496</sup> Nevertheless, where D-0202's testimony pertains to objective facts he personally witnessed, such as cooperation between the *Hesbah*, the Islamic Police and the

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<sup>486</sup> D-0202: T-202, p. 11.

<sup>487</sup> D-0202: T-202, p. 11.

<sup>488</sup> D-0202: T-202, p. 26.

<sup>489</sup> D-0202: T-202, pp. 86.

<sup>490</sup> See e.g. D-0202: T-202, pp. 86-88, 92, 95-96.

<sup>491</sup> See e.g. D-0202: T-203, pp. 44-45.

<sup>492</sup> For example, D-0202 downplayed the fact that there were weapons in the Islamic Court during hearings, which he said 'were not to threaten or intimidate the speakers. They were there just for the security' (D-0202: T-203, p. 9). In addition, D-0202 portrayed the effects of Ansar Dine/AQIM's control of Timbuktu on education as non-existent (D-0202: T-203, pp. 49-51).

<sup>493</sup> D-0202: T-203, p. 18; T-204, pp. 28-30.

<sup>494</sup> See e.g. D-0202: T-203, p. 8.

<sup>495</sup> See e.g. D-0202: T-203, p. 9.

<sup>496</sup> See e.g. D-0202: T-203, pp. 42-44.

Islamic Court,<sup>497</sup> the administrative process for producing the written judgments of the Islamic Court,<sup>498</sup> and the presence of judges from AQIM on the bench and their role,<sup>499</sup> the Chamber generally found it to be more reliable, also noting that it was generally consistent with other evidence.<sup>500</sup>

244. As to the role of Mr Al Hassan, the Chamber notes a significant discrepancy put to the witness between his prior statement, in which he indicated that Mr Al Hassan was the vice president of the Islamic Police,<sup>501</sup> and his in court testimony describing him as a clerk and interpreter who sat in an office and typed reports.<sup>502</sup> The Chamber takes note of D-0202's insistence that he took an oath to tell the truth in the ICC courtroom, and not when he was previously interviewed by the Prosecution.<sup>503</sup> Nevertheless, having regard to the totality of the credible and reliable evidence on the record with respect to Mr Al Hassan's role in Ansar Dine/AQIM during the relevant period,<sup>504</sup> the Chamber considers that D-0202 was not being truthful during his in-court testimony in this regard, which it finds further undermines the witness's credibility.

245. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber has significant concerns in relation to the credibility of D-0202 and the reliability of the vast majority of his evidence. Whilst the Chamber has undertaken a careful analysis of the credibility and reliability of, and weight to be accorded to, specific aspects of the witness's evidence on a case-by-case basis, the Chamber generally considers that little weight should be accorded to D-0202's evidence.

#### **x. D-0211**

246. D-0211,<sup>505</sup> a Muslim Tuareg man from [REDACTED], was born in Timbuktu and lived there on and off before 2012.<sup>506</sup> He returned to Timbuktu in 2012,

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<sup>497</sup> See e.g. D-0202: T-203, pp. 24, 27, 40; T-204, pp. 20-23, 33.

<sup>498</sup> See e.g. D-0202: T-202, p. 99; T-203, p. 18. See also D-0202: T-204, pp. 28-30.

<sup>499</sup> D-0202: T-202, pp. 92-95.

<sup>500</sup> See [Defence Response Brief](#), para. 5.

<sup>501</sup> D-0202: T-204, pp. 7-9.

<sup>502</sup> D-0202: T-203, p. 40; T-204, pp. 7-9, 18-19. See [Prosecution Final Brief](#), paras 116, 124.

<sup>503</sup> D-0202: T-204, pp. 9-10.

<sup>504</sup> See section III.F.2 below.

<sup>505</sup> See D-0211: T-190.

<sup>506</sup> D-0211: T-190, pp. 6-7, 16-18 27-28.

approximately one month after the armed groups took control of the city<sup>507</sup> and left around June or July 2012.<sup>508</sup> D-0211 is educated and has worked in various capacities, including as an Arabic teacher<sup>509</sup> and during this period joined the MNLA, [REDACTED].<sup>510</sup> He is a distant relative of Mr Al Hassan<sup>511</sup> and was [REDACTED] in 2003 and 2004.<sup>512</sup> The witness mainly testified about events related to Ansar Dine/AQIM's control of Timbuktu and his knowledge of and interactions with Mr Al Hassan.

247. The Chamber considers that overall D-0211 appeared to be truthful and did not intentionally lie. His testimony also reflected the perspective and sentiment of Tamasheq groups.<sup>513</sup> In addition, the Chamber notes that the witness confirmed that nobody had offered or promised him anything in exchange for testifying.<sup>514</sup>

248. The Chamber observes that D-0211 was only present in Timbuktu for a short period of time and had limited exposure to aspects of the charged events. The Chamber assesses his evidence bearing in mind the confined nature of his basis of knowledge in this regard. In addition, the Chamber observes that D-0211 was a supporter of the MNLA and the Azawad,<sup>515</sup> and friend [REDACTED] of Mr Al Hassan.<sup>516</sup> D-0211 generally limited his testimony on Mr Al Hassan to favourable aspects.<sup>517</sup> However, the Chamber notes that the witness also provided an insight into Mr Al Hassan's reasons for joining Ansar Dine/AQIM, demonstrating that he did so willingly.<sup>518</sup>

249. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0211 to be a generally credible and reliable

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<sup>507</sup> D-0211: T-190, pp. 34-35.

<sup>508</sup> D-0211: T-190, pp. 34-35, 56-57, 79.

<sup>509</sup> D-0211: T-190, pp. 15-17, 72.

<sup>510</sup> D-0211: T-190, pp. 36, 38-39.

<sup>511</sup> D-0211: T-190, p. 15.

<sup>512</sup> D-0211: T-190, pp. 15, 19-20.

<sup>513</sup> See e.g. D-0211: T-190, pp. 36-38, 45-46.

<sup>514</sup> D-0211: T-190, pp. 68-69.

<sup>515</sup> See e.g. D-0211: T-190, pp. 36-38, 45-46.

<sup>516</sup> The Chamber notes that D-0211 testified that he met Mr Al Hassan many times and that Mr Al Hassan became his friend (D-0211: T-190, pp. 15, 19-21; see also D-0211: T-190, pp. 58-59). D-0211 noted that he had a lot of respect for Mr Al Hassan, and wanted to thank him because Mr Al Hassan looked to him as a friend and helped him with his studies (D-0211: T-190, p. 21).

<sup>517</sup> See e.g. D-0211: T-190, pp. 20-21, 66.

<sup>518</sup> D-0211: T-190, pp. 59-66. See also paragraph 1059 below.

witness, although remains cognisant of the foregoing considerations in assessing his evidence. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

**xi. D-0213**

250. D-0213,<sup>519</sup> a Muslim Tamasheq man who is a member of [REDACTED], was born in Timbuktu and was living there when Ansar Dine/AQIM were present in the city,<sup>520</sup> [REDACTED].<sup>521</sup> He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM,<sup>522</sup> including his interactions with the groups.
251. The Chamber considers that D-0213 was an open and straightforward witness, who generally appeared to provide honest answers in relation to his experiences and observations as a citizen of Timbuktu, in particular with respect to the incidents he personally observed and matters within the scope of his direct personal knowledge. Nevertheless, the Chamber assesses his evidence bearing in mind the limited scope of his knowledge on certain subjects, notably as regards the organisational structure and leadership of the Islamic Police,<sup>523</sup> and accordingly gives D-0213's general evidence on these points limited weight.
252. In addition, the witness testified to his close relationship with Sanda Ould Boumama,<sup>524</sup> appeared to receive favourable treatment from members of Ansar Dine/AQIM and was apparently somewhat oblivious to the extent of Ansar

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<sup>519</sup> See D-0213: T-198.

<sup>520</sup> D-0213: T-197, pp. 4-6, 11; T-198, pp. 4, 11.

<sup>521</sup> D-0213: T-197, p. 6; T-198, pp. 8-10.

<sup>522</sup> While the Chamber notes that the witness testified that he did not know AQIM (D-0213: T-197, p. 24), the Chamber uses the composite term 'Ansar Dine/AQIM' to refer to the groups testified to by the witness, consistent with its findings on the joint operation of the groups.

<sup>523</sup> The Chamber notes that the witness had limited interactions with the Islamic Police, could not distinguish amongst the different armed groups present at the time in Timbuktu, and did not provide detailed evidence thereon (*see e.g.* D-0213: T-197, pp. 17-18, 21; T-198, pp. 27-18).

<sup>524</sup> In this regard the Chamber observes that while [REDACTED] and testifying that he would call him whenever he saw a problem arise (D-0213: T-197, pp. 14-19, 21, 26; T-198, pp. 8, 13, 15-17, 20-21, 28-29), D-0213 claimed at the same time not to know Sanda's role, testifying only that he was one of the leaders of Ansar Dine/AQIM and worked in conjunction with the leaders of the Islamic Police (D-0213: T-197, pp. 18-19; T-198, pp. 21, 24).

Dine/AQIM's actions against the population of Timbuktu. Furthermore, although D-0213 testified that he was not a member of the Islamic Police,<sup>525</sup> insisting he was just [REDACTED], the Chamber also notes that the witness was affiliated with various armed groups both before and after Ansar Dine/AQIM's control of Timbuktu, a subject on which he was not initially forthcoming.<sup>526</sup> The Chamber considers that the foregoing indicates D-0213's apparent bias in favour of Ansar Dine/AQIM.

253. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0213 to be a generally credible and reliable witness in relation to the incidents he personally observed and matters within the scope of his direct personal knowledge although remains cognisant of the foregoing considerations in assessing his evidence, in particular his association with members of Ansar Dine/AQIM, his favourable treatment by them, and associated bias. The Chamber notes that this is a general assessment of D-0213's testimony and that it has also carefully assessed the credibility, reliability and weight to be accorded to the witness's evidence on specific issues on a case-by-case basis, as appropriate.

#### **xii. D-0514**

254. D-0514,<sup>527</sup> a man who speaks Songhai and Tamasheq, was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the city.<sup>528</sup> The witness had [REDACTED] during the period of the charges.<sup>529</sup> The witness mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM.
255. The Chamber observes that on the one hand D-0514 expressed a sense of confidence that he knew everything about what happened in Timbuktu,<sup>530</sup> on the other he defended himself from probing questions by saying he could not possibly

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<sup>525</sup> D-0213: T-198, p. 27.

<sup>526</sup> D-0213: T-198, pp. 31-32, 35, *referring to* Facebook post MLI-OTP-0080-7124. Further, whilst the witness claimed he did not 'know *Sharia*', he subsequently testified that everybody was aware of *Sharia*, and that as a Muslim he 'can't be opposed to *Sharia* law', although he cannot apply it himself (D-0213: T-197, pp. 10-12).

<sup>527</sup> *See* D-0514: T-208 to T-209.

<sup>528</sup> D-0514: T-208, pp. 8-9, 48-49.

<sup>529</sup> D-0514: T-208, pp. 8-9, 48-49.

<sup>530</sup> *See e.g.* D-0514: T-208, pp. 38-39.



know everything.<sup>531</sup> The witness's assertions were largely based on information he heard from others,<sup>532</sup> the basis of his knowledge was often unclear,<sup>533</sup> and the limitations of his knowledge were evident. Nevertheless, the Chamber considers that aspects of the witness's evidence may elucidate some matters, for example, the public perception of Mohammed Moussa,<sup>534</sup> or the flogging of P-0557 and P-0565 which he directly witnessed.<sup>535</sup> The Chamber considers that it may rely on D-0514's evidence in such limited areas when it is consistent with other credible and reliable evidence.

256. The Chamber observes that the witness tended to minimise Ansar Dine/AQIM's conduct, notably in relation to the treatment of civilians and forced marriages in Timbuktu in 2012-2013.<sup>536</sup> In this regard, the Chamber notes that D-0514 testified about his close relationship with Adama and frequent contact with members of Ansar Dine/AQIM during the period in which the groups controlled Timbuktu,<sup>537</sup> which in the context of his testimony indicates an apparent bias in favour of Ansar Dine/AQIM. The Chamber further finds the witness's evidence on the treatment of civilians and forced marriages in Timbuktu in 2012-2013 not credible in light of other credible and reliable evidence on the record. The Chamber therefore does not rely on the witness's evidence on these subjects.

257. As to D-0514's evidence regarding Fadimata Mint Lilli (P-0547), the Chamber observes that the witness testified that he frequently spoke with Fadimata Mint Lilli, with whom he was close.<sup>538</sup> However, D-0514's opinion that Fadimata Mint Lilli lied about being raped<sup>539</sup> was based purely on conjecture, with reference to what he believed she 'would have' discussed with him, and rumours he purportedly heard throughout the city.<sup>540</sup> As a result, the Chamber finds D-

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<sup>531</sup> See e.g. D-0514: T-208, pp. 62-63.

<sup>532</sup> See e.g. D-0514: T-208, pp. 17, 52-53.

<sup>533</sup> See e.g. D-0514: T-208, p. 44.

<sup>534</sup> See e.g. D-0514: T-208, p. 54.

<sup>535</sup> See e.g. D-0514: T-208, pp. 56-57.

<sup>536</sup> See e.g. D-0514: T-208, pp. 12-13, 20, 22-24, 35, 55-56, 58-59, 62-64.

<sup>537</sup> See e.g. D-0514: T-208, pp. 13-14, 51-52; T-209, pp. 11-17.

<sup>538</sup> See D-0514: T-208, pp. 25-27, 31, 35.

<sup>539</sup> D-0514: T-208, pp. 36-38.

<sup>540</sup> See e.g. D-0514: T-208, pp. 31, 35, 38.

0514's evidence on this subject unpersuasive,<sup>541</sup> particularly in light of Fadimata Mint Lilli's evidence that, beyond her husband, she did not tell people close to her of her experience.<sup>542</sup> The Chamber is similarly unpersuaded by D-0514's general supposition that alleged rape victims, including Fadimata Mint Lilli, lied in their communications with NGO representatives in order to gain compensation.<sup>543</sup> The Chamber finds that D-0514's evidence about rape victims in general evinces a bias against women who allege that they have been raped, noting his opinion that '[i]t's not easy to rape someone' and that some women 'simply shouted rape' when they were 'betrayed' or 'caught'.<sup>544</sup> Therefore while the Chamber finds that it can rely on elements of D-0514's testimony regarding his general knowledge of Fadimata Mint Lilli and her husband, as well as members of their community, the Chamber finds D-0514's testimony on the incident concerning Fadimata Mint Lilli not credible or reliable and does not rely on it.

258. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber has significant concerns in relation to the credibility of D-0514 and the reliability of the vast majority of his evidence. Whilst the Chamber has undertaken a careful analysis of the credibility and reliability of, and weight to be accorded to, specific aspects of the witness's evidence on a case-by-case basis, the Chamber generally considers that little weight should be accorded to D-0514's evidence.

### **xiii. D-0605**

259. D-0605,<sup>545</sup> a Muslim Tuareg man [REDACTED], was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the city, returning to

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<sup>541</sup> For the Chamber's more detailed assessment of D-0514's evidence in this regard, *see* section III.E.1.o) below. *See also* [Prosecution Final Brief](#), para. 104.

<sup>542</sup> P-0547: T-152, pp. 16, 29.

<sup>543</sup> *See* D-0514: T-208, pp. 28, 35-36, 42, 45-46. *See also* section E below.

<sup>544</sup> *See* D-0514: T-208, p. 64. The Chamber notes that when asked about the social ramifications of rape for the victim, D-0514 stated '[i]t's not easy to rape someone. Generally these are people who've got some sort of agreement, which is ultimately betrayed, and then the other person shouts out, "I've been raped." But me, I'm against rape. But it's not always easy, and even if you look at Bocar - an example which you mentioned earlier on - Bocar and his wife understood something but ultimately that led to betrayal. Other people - some people shouted conspiracy and other people shouted rape and because they were caught, the woman then simply shouted rape'.

<sup>545</sup> *See* D-0605: T-192 to T-195.

Timbuktu three days before the armed groups entered the city<sup>546</sup> and leaving in 2013.<sup>547</sup> The witness is the [REDACTED].<sup>548</sup> He studied religion, language and social sciences and speaks Arabic and Tuareg fluently, as well as [REDACTED].<sup>549</sup> Some months after his return to Timbuktu, in around June or July 2012, D-0605 joined Ansar Dine/AQIM<sup>550</sup> for a period of approximately four months.<sup>551</sup> During this time, he worked for the Islamic Police [REDACTED].<sup>552</sup> D-0605 mainly testified about events related to Ansar Dine/AQIM's control of Timbuktu, including his activities while working for Ansar Dine/AQIM.

260. The Chamber observes that the witness clearly distinguished between what he knew directly and what he knew based on other information, and consistently explained the basis of his knowledge, referring to what he heard from the local population or from the members of Ansar Dine/AQIM directly. As a member of Ansar Dine/AQIM, [REDACTED],<sup>553</sup> D-0605 provided insights into Ansar Dine/AQIM's goals and strategies, their activities during their control of Timbuktu, and their interactions with the local population. Noting the witness was present in Timbuktu during the entire period of the events relevant to the charges and had a professional relationship with Ansar Dine/AQIM, the Chamber further observes that the witness generally had a sound general basis of knowledge for the evidence he provided. Further, the Chamber considers that D-0605 provided a truthful account of life in Timbuktu in general during the relevant period, as well as the inner functioning of the Tuareg community, based on his personal experiences and his perception as a 'light skinned' Tuareg.<sup>554</sup>

261. Nevertheless, the Chamber also considers that the witness's testimony was

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<sup>546</sup> D-0605: T-192, pp. 11; T-194, pp. 47-49.

<sup>547</sup> D-0605: T-195, p. 77.

<sup>548</sup> D-0605: T-192, p. 8; T-194, pp. 45-48.

<sup>549</sup> D-0605: T-195, p. 88. *See also* D-0605: T-195, pp. 44-45.

<sup>550</sup> While, as noted below, the witness purported to be unaware of key information regarding the cooperation between Ansar Dine and AQIM, the Chamber uses the composite term Ansar Dine/AQIM to refer to the groups testified to by the witness, consistent with its findings on the joint operation of the groups.

<sup>551</sup> D-0605: T-192, pp. 39-40, 44; T-194, pp. 50-51; T-195, pp. 17-18. *See also* D-0605: T-195, p. 87.

<sup>552</sup> D-0605: T-192, pp. 39-42, 85.

<sup>553</sup> D-0605: T-192, pp. 39-42, 85.

<sup>554</sup> D-0605: T-195, pp. 8-9. *See also* D-0605: T-192, pp. 9-11, 12-13, 15; T-195, pp. 86-87.

impacted by his privileged position in the society of Timbuktu.<sup>555</sup> In addition, the Chamber also notes that the witness testified that he worked for the institutions within Ansar Dine/AQIM for a relatively short period,<sup>556</sup> was low in rank, with a limited role,<sup>557</sup> did not attend any meetings with senior officials of the Security Battalion, *Hesbah* or Islamic Police,<sup>558</sup> did not recall [REDACTED] worked in the Islamic Police at that time,<sup>559</sup> was not a member and had no direct involvement in the establishment of the Islamic Court,<sup>560</sup> and was never present at any punishments.<sup>561</sup> The Chamber assesses his evidence bearing in mind the foregoing limitations regarding his basis of knowledge on these matters.

262. Furthermore, the Chamber notes that the witness appeared to have subscribed to Ansar Dine/AQIM's ideology, underlining that he joined Ansar Dine/AQIM due to his identification with Ansar Dine's goals and functions.<sup>562</sup> D-0605 also purported to be unaware of key information regarding the cooperation between Ansar Dine and AQIM.<sup>563</sup> The witness also considered himself to be close to Mr Al Hassan,<sup>564</sup> portraying him in a positive fashion.<sup>565</sup> The Chamber in addition recalls that in line with Rule 75(2) of the Rules, the Chamber takes into account the witness's refusal to answer several questions concerning [REDACTED].<sup>566</sup> The Chamber considers that the foregoing in the context of his testimony indicates an apparent bias in favour of Ansar Dine/AQIM, Mr Al Hassan and his family members, [REDACTED].

263. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber has some concerns in relation to the credibility of D-0605 and the reliability of his evidence although considers that it can be relied on in some instances. The Chamber has undertaken a careful analysis of the credibility

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<sup>555</sup> See D-0605: T-194, pp. 45-47.

<sup>556</sup> D-0605: T-192, pp. 39-42, 85; T-195, pp. 17-18.

<sup>557</sup> D-0605: T-195, pp. 9, 18-19.

<sup>558</sup> D-0605: T-195, pp. 6-9.

<sup>559</sup> D-0605: T-194, pp. 89-90.

<sup>560</sup> D-0605: T-195, pp. 27-28.

<sup>561</sup> D-0605: T-194, pp. 14-15, 75-76.

<sup>562</sup> See e.g. D-0605: T-194, pp. 71-80; T-195, p. 46.

<sup>563</sup> See e.g. D-0605: T-194, pp. 87-88, 90-91; T-195, p. 101.

<sup>564</sup> D-0605: T-193, p. 30; T-194, p. 24.

<sup>565</sup> See e.g. D-0605: T-195, pp. 19-21.

<sup>566</sup> D-0605: T-195, pp. 33-43. See also D-0605: T-194, pp. 33-43, 92-93. [REDACTED].

and reliability of, and weight to be accorded to, specific aspects of the witness's evidence on a case-by-case basis.

**b) Rule 68(3) witnesses**

**i. D-0272**

264. D-0272,<sup>567</sup> a Muslim Tuareg man from [REDACTED],<sup>568</sup> left Timbuktu shortly before the armed groups took control of the city and did not return until 2013, after they left.<sup>569</sup> The witness has tertiary qualifications in information technology and project management engineering and is presently [REDACTED].<sup>570</sup> [REDACTED] Mr Al Hassan, D-0272 is very close to him, considers him a friend and believes he knows him well, having spent some five to six years of his life with him, including [REDACTED].<sup>571</sup> The witness mainly testified about events related to Ansar Dine/AQIM's control of Timbuktu and his knowledge of and interactions with Mr Al Hassan.
265. The Chamber observes that the witness generally did not speculate and testified in relation to his personal experiences, emphasising that he spoke about what he knows.<sup>572</sup> The Chamber further observes that D-0272 responded objectively to questioning<sup>573</sup> notwithstanding his links with Mr Al Hassan. Whilst the witness was careful in answering some incriminating questions in relation to Mr Al Hassan, he appeared open and honest in sharing his motivations to testify and his belief in the Court,<sup>574</sup> which the Chamber considers reflected the overall honesty of his testimony.
266. The Chamber further notes that D-0272 qualified his opinion of Mr Al Hassan, noting that it was based on his own experience and remained valid during the time he [REDACTED], but that he did not know what Mr Al Hassan did at a later

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<sup>567</sup> See D-0272: T-182; D-0272's statement MLI-D28-0006-4181-R01 introduced through Rule 68(3) of the Rules.

<sup>568</sup> D-0272: T-182, pp. 7, 25, 43-45; D-0272's statement MLI-D28-0006-4181-R01, at 4183, para. 14.

<sup>569</sup> T-182, pp. 20-21, 81; D-0272's statement MLI-D28-0006-4181-R01, at 4184, paras 19-20, 27.

<sup>570</sup> D-0272: T-182, pp. 5-6, 28, referring to document MLI-OTP-0080-6445; D-0272's statement MLI-D28-0006-4181-R01, at 4182, paras 6-8.

<sup>571</sup> D-0272: T-182, pp. 7-8, 44-45, 49-50, 77, 79-80; D-0272's statement MLI-D28-0006-4181-R01, at 4183, paras 14-15.

<sup>572</sup> See e.g. D-0272: T-182, pp. 25, 51, 77, 82.

<sup>573</sup> See e.g. D-0272: T-182, p. 26.

<sup>574</sup> D-0272: T-182, pp. 80, 91-92. See also [Defence Response Brief](#), paras 17-18.

stage.<sup>575</sup> Notably the witness testified that he cut off contact with Mr Al Hassan when he saw that Mr Al Hassan's position was prejudicial to the witness's professional work.<sup>576</sup> In assessing D-0272's evidence on Mr Al Hassan's behaviour, the Chamber remains cognisant that while the testimony may be indicative of some of Mr Al Hassan's personality traits, D-0272's evidence in this regard relates to a period long before the charged events.

267. Concerning D-0272's basis of knowledge of the events which occurred in 2012 and 2013, the Chamber notes that the witness stated that he never joined the MNLA or Ansar Dine.<sup>577</sup> Whilst D-0272 testified that he remained in contact with individuals in Timbuktu during 2012 and knows everything that happened in Timbuktu,<sup>578</sup> in assessing the weight to be accorded to the witness's evidence in this regard, the Chamber remains mindful of the witness's absence from Timbuktu during the charged period and that his knowledge of events during this period is indirect.

268. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0272 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

## ii. D-0512

269. D-0512,<sup>579</sup> a Songhai and Wolof woman,<sup>580</sup> lived in Timbuktu during most of the period that Ansar Dine/AQIM were present in the city, during which time she operated a small business from her house.<sup>581</sup> She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including the

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<sup>575</sup> D-0272: T-182, p. 77.

<sup>576</sup> D-0272: T-182, pp. 55-56, 62.

<sup>577</sup> D-0272: T-182, p. 22.

<sup>578</sup> D-0272: T-182, pp. 25, 53, 62; D-0272's statement MLI-D28-0006-4181-R01, at 4184, para. 22.

<sup>579</sup> See D-0512: T-181; D-0512's statement MLI-D28-0006-2611-R04 introduced through Rule 68(3) of the Rules.

<sup>580</sup> D-0512: T-181, p. 9.

<sup>581</sup> D-0512's statement MLI-D28-0006-2611-R04, at 2612-2614, paras 9-10, 15.

victimisation of P-0570, P-0610 and Azahara Abdou (P-1134).

270. The Chamber observes that the witness provided her perspective on events in Timbuktu as she experienced them. The Chamber notes that much of the witness's evidence, particularly with respect to charged incidents, was indirect, based on what she heard, rather than what she witnessed herself. She testified that nobody offered her anything in exchange for signing her statement and that she spoke of her own will, sharing everything of which she was aware.<sup>582</sup>
271. The Chamber notes that the witness showed a tendency to exaggerate and make sweeping, unsubstantiated statements.<sup>583</sup> Some such statements, notably that she did not hear about any floggings or punishments during 2012,<sup>584</sup> and did not hear anyone speaking about people being punished by the 'Islamists' for not respecting their rules,<sup>585</sup> were partly contradicted by her own evidence that some people were flogged,<sup>586</sup> and in any event are simply not credible in light of other credible and reliable evidence that such punishments were commonplace in Timbuktu at the relevant time.<sup>587</sup> The Chamber notes that other blanket statements made by the witness in her prior recorded testimony, notably that there were no rapes or forced marriages in 2012,<sup>588</sup> were qualified during her in-court testimony, wherein she clarified that she herself only knew of four or five cases where women married 'Islamists' and that these were not forced.<sup>589</sup> Similarly, although D-0512 stated that '90%' of people who went to Bamako to file complaints for incidents that occurred in 2012 'lied,'<sup>590</sup> she conceded that she did not know all those who went to Bamako, nor what they said there.<sup>591</sup> The Chamber accordingly assigns very low weight to such evidence.

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<sup>582</sup> D-0512: T-181, pp. 10, 53.

<sup>583</sup> See e.g. D-0512's statement MLI-D28-0006-2611-R04, at 2616, para. 35. See [Prosecution Response Brief](#), paras 77-78.

<sup>584</sup> D-0512: T-181, p. 44.

<sup>585</sup> D-0512: T-181, pp. 44-45.

<sup>586</sup> D-0512's statement MLI-D28-0006-2611-R04, at 2616-2617, para. 36.

<sup>587</sup> Contrary to the Defence's argument that it is plausible that D-0512 did not witness any punishments given that there were none carried out in public in the neighbourhood where she lived at the time ([Defence Response Brief](#) para. 14), the Chamber notes that D-0512 also testified that she did not hear about any punishments, which the Chamber considers not credible for the reasons stated.

<sup>588</sup> D-0512's MLI-D28-0006-2611-R04, at 2616, para. 36.

<sup>589</sup> D-0512: T-181, p. 74.

<sup>590</sup> D-0512's statement MLI-D28-0006-2611-R04, at 2616, para. 35; T-181, p. 73.

<sup>591</sup> D-0512: T-181, pp. 69-70.

272. The Chamber further notes that D-0512 was absent from Timbuktu for a period of time during the charged period. In this regard, taking into account the witness's testimony on the dates of her absence from Timbuktu<sup>592</sup> and the fact that the witness is illiterate and indicated she had difficulty estimating and calculating dates,<sup>593</sup> the Chamber considers that D-0512 was likely absent from Timbuktu from August 2012 for a period of between 20 days and two and a half months. The Chamber takes this into account in assessing the reliability of her evidence on the charged incidents in this case as relevant.
273. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber considers that D-0512's evidence should be treated with some caution. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

**c) Rule 68(2)(b) and (c) witnesses**

**i. P-0524**

274. P-0524,<sup>594</sup> [REDACTED].<sup>595</sup> [REDACTED].<sup>596</sup> She mainly testified about her work for the NGO project and as [REDACTED], including her interactions with alleged victims in this case. At the outset, the Chamber notes that it takes into account the absence of examination by the Defence in its assessment of the probative value and weight to be afforded to P-0524's testimony.
275. The Chamber notes that much of P-0524's testimony is of a background nature, describing activities in which she engaged as part [REDACTED]. These activities

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<sup>592</sup> D-0512 testified that she left Timbuktu around four months after the arrival of the 'Islamists' for a period of some 20 days, returning to Timbuktu a few days before Tabaski, after which she did not leave until the end of events (D-0512's statement MLI-D28-0006-2611-R04, at 2614, para. 15; D-0512: T-181, pp. 11, 45, 47-48). The Chamber further observes the indications that Tabaski was on 24-29 October 2012 and that D-0512 subsequently acknowledged she could have been absent more than 20 days, albeit less than a month (D-0512: T-181, pp. 48, 78, 87, 89).

<sup>593</sup> See D-0512: T-181, pp. 49, 86.

<sup>594</sup> See P-0524's statement MLI-OTP-0071-0246-R12 introduced into evidence through Rule 68(2)(b) of the Rules.

<sup>595</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0249-0251, paras 15, 21-22, 27-28.

<sup>596</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0247-0248, paras 1-3, 11-12.



notably include [REDACTED],<sup>597</sup> [REDACTED]<sup>598</sup> and [REDACTED].<sup>599</sup> The Chamber observes that P-0524's evidence on these subjects is generally limited to activities directly undertaken by the witness herself. P-0524 provided extensive testimony on these subjects, outlining in detail the approach and methodologies she and her colleagues adopted as part of this work. This notably includes matters such as the preparation activities she undertook with victims before their hearings with Malian judges.<sup>600</sup> The Chamber considers P-0524's testimony on these subjects to be detailed and clear. P-0524 further expressly noted where something was her impression or opinion,<sup>601</sup> and openly acknowledged that her motivation for testifying was to help to reveal the truth about what happened and to advance justice for the victims.<sup>602</sup>

276. The other core aspect of P-0524's testimony concerns her personal recollections of the cases of victims she met in connection with her work. This includes victims of charged incidents in this case. On this subject, the Chamber observes that there are certain limitations to P-0524's evidence. P-0524's account of the facts of these victims' cases is based either on her recollections,<sup>603</sup> or her review of information in her possession concerning the cases. In some instances where P-0524's evidence is based on recollection, notably the cases of victims of charged incidents - P-0609<sup>604</sup> and P-0957,<sup>605</sup> P-0524 acknowledged not remembering taking part in the victims' interviews. Similarly, in the case of P-0538, also a victim of a charged incident, P-0524 acknowledged not remembering all the details of the victim's story.<sup>606</sup> Further, the Chamber notes there are some unclaritys in the evidence provided by P-0524 as regards the case of P-0547, which raise doubts about the quality of some of the information P-0524

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<sup>597</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0254-0257, paras 47-61, 63-66, 0267-0268, paras 140-150.

<sup>598</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0252-0254, paras 34-46, 0257, para. 62.

<sup>599</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0258-0259, paras 67-73.

<sup>600</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0253, para. 42, 0257, para. 66, 0258, para. 72.

<sup>601</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0250, para. 24, 0251-0252, paras 30-32.

<sup>602</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0248-0249, para. 14.

<sup>603</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0259, para. 74.

<sup>604</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0261, para. 90 (stating that she did not remember [REDACTED] P-0609's interview in Timbuktu).

<sup>605</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0262, para. 102 ([REDACTED]).

<sup>606</sup> P-0524's statement MLI-OTP-0071-0246-R12, at 0259, paras 74, 76.

provided.<sup>607</sup> In addition, the Chamber observes that some victims of charged incidents who testified in this case were not confronted with P-0524's version of their stories, and accordingly had no opportunity to authenticate, reject or explain any differences between the narrative included in P-0524's testimony and other evidence.<sup>608</sup> Taking these factors into account, the Chamber considers P-0524's testimony on the charged incidents of P-0520, P-0547, P-0538, P-0602, P-0609, P-0636 and P-0957 to be of minimal probative value and does not consider it in establishing any facts of these charged incidents.

277. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0524 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing her evidence. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of P-0524's evidence on specific issues on a case-by-case basis, as appropriate.

#### **ii. P-0570**

278. P-0570,<sup>609</sup> a Muslim Bella Tamasheq woman, was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the city.<sup>610</sup> She cannot read<sup>611</sup> and did not attend school, although her mother taught her some business skills.<sup>612</sup> The witness mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation. At the outset, the Chamber notes that it takes into account the absence of examination by the Defence in its assessment of the probative value and weight to be afforded to P-0570's testimony.

279. The Chamber observes that P-0570's testimony was generally balanced. Although the witness did not hesitate to express her resentment in relation to the

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<sup>607</sup> See footnote 2937 2937below.

<sup>608</sup> See e.g. P-0602: T-084-T-086; P-0524's statement MLI-OTP-0071-0246-R12, at 0265-0266, paras 128-135.

<sup>609</sup> See P-0570's statement MLI-OTP-0049-0047-R05 introduced through Rule 68(2)(b) of the Rules.

<sup>610</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0049, para. 12.

<sup>611</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27.

<sup>612</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0049, para. 12.

‘occupation’ by Ansar Dine/AQIM, she also provided exculpatory information, testifying, for example, that the chiefs of the armed groups were not aware of acts of rape and did not accept them.<sup>613</sup> The Chamber notes that P-0570 demonstrated poor knowledge of the institutions created by Ansar Dine/AQIM and the groups’ members, about whom she seemed to mainly convey rumours.<sup>614</sup> There is notably some confusion in her testimony as to the identity of certain individuals.<sup>615</sup>

280. In respect of the Defence submissions that the Chamber should not place any weight on P-0570’s evidence as it lacks intrinsic coherence and reliability<sup>616</sup> and that some of P-0570’s claims are so ‘outlandish’ that the fact that P-0570 made them casts further doubt on the reliability of her evidence as a whole,<sup>617</sup> the Chamber considers that a significant distinction should be drawn between P-0570’s evidence based on information she received from others and P-0570’s account of events she personally experienced regarding her own victimisation.

281. In respect of the former, the Chamber notes that the witness’s accounts of some events are particularly lacking in detail and imprecise as to the time period in which they occurred, notably her evidence regarding: (i) some ‘Islamists’ burning a car that she was using, ‘after the return of the army’;<sup>618</sup> (ii) the beating of her brother by ‘Islamists’, after the return of the Malian military to Timbuktu;<sup>619</sup> (iii) what happened to her sister’s son;<sup>620</sup> and (iv) what her friends told her about two cases involving old women.<sup>621</sup>

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<sup>613</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0056, para. 38.

<sup>614</sup> See e.g. P-0570’s statement MLI-OTP-0049-0047-R05, at 0066-0069, paras 73, 76, 85.

<sup>615</sup> The Chamber notes, for example, that there is significant confusion in P-0570’s statement about the identity of the individuals she identifies as ‘Adama’ (‘Adama the Songhai’, ‘Adama the Tamasheq’ and ‘Adama the Bambara’), one of whom she says was involved in the arrest of her friend (P-0570’s statement MLI-OTP-0049-0047-R05, at 0059, 0065, paras 47, 68-70). The Chamber does not rely on P-0570’s evidence in these paragraphs of her statement. However, the Chamber considers that this confusion is reasonably attributable to P-0570’s poor knowledge of members of the armed groups, and does not render her evidence as a whole unreliable or not credible, as alleged by the Defence (see ICC-01/12-01/18-1547-Red, paras 29, 32; [Defence Final Brief](#), para. 212).

<sup>616</sup> [Defence Final Brief](#), para. 212.

<sup>617</sup> ICC-01/12-01/18-1547-Conf, para. 26; [Defence Final Brief](#), paras 212-214.

<sup>618</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0062-0063, paras 57-58.

<sup>619</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0062, para. 56.

<sup>620</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0061, paras 52-53. The Chamber notes in particular that while P-0570’s account of this narrative is detailed, the basis of her knowledge for the key allegations inherent to this narrative, such as that the boy was ‘used [...] like a woman’, is not made clear in the statement.

<sup>621</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0062, paras 54-55.

282. As to the events that the witness personally experienced, namely her own victimisation, the Chamber notes that the witness provided a significant level of detail and finds her evidence contextualised and compelling, as discussed in more detail in the Chamber's assessment of her case.<sup>622</sup> In particular, as explained in more detail in the Chamber's assessment of P-0570's evidence of her own victimisation, and contrary to the arguments of the Defence in this regard, the Chamber finds reliable the witness's identification of Mohammed Moussa as the person who arrested her, and the BMS as the location where she was taken thereafter, and does not consider D-0512's contrary testimony to be reliable on the events that happened to P-0570.<sup>623</sup> Based on its holistic assessment of P-0570's evidence of her own victimisation, the Chamber does not consider the unclarity in P-0570's evidence regarding other events, which she heard about, to impact the credibility or reliability of her account of her own victimisation.
283. The Chamber further notes the inconsistencies in the witness's testimony about whether or not she made a previous statement about what happened to her. As submitted by the Defence,<sup>624</sup> while the witness stated that she only told one person about her story, namely the person who accompanied her to the meeting with the ICC Prosecution,<sup>625</sup> other evidence on the record indicates that P-0570 provided an account of her story to other entities as well as to a judge in Bamako.<sup>626</sup> The Chamber notes, however, that when confronted with this inconsistency by Prosecution investigators, the witness provided an account of having given a statement to the Bamako judge,<sup>627</sup> explained why she had failed to mention this matter, and provided further details.<sup>628</sup> The Chamber is satisfied

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<sup>622</sup> See section III.E.1.n) below.

<sup>623</sup> See section III.E.1.n) below. *Contra* [Defence Final Brief](#), paras 212-214; [Defence Response Brief](#), paras 15, 85.

<sup>624</sup> ICC-01/12-01/18-1547-Conf, paras 29, 32.

<sup>625</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0050, para. 17.

<sup>626</sup> The Chamber notes that P-0570 was shown MLI-OTP-0032-0325, a *procès-verbal d'audition de partie civile* before the *Tribunal de Grande Instance* in Bamako (see P-0570's statement MLI-OTP-0049-0047-R05, at 0070, para. 94).

<sup>627</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0070, para. 94. P-0570 explained that they were summoned and they spoke but did not go into detail. She said that she was speaking in Songhai and someone was translating; they understood each other. She said that she respected the person so she did not talk too much. She stated that what she said was not repeated or reread to her (P-0570's statement MLI-OTP-0049-0047-R05, at 0070, para. 94).

<sup>628</sup> Notably, P-0570 explained that it was a long time ago and that it was possible that she signed a document recording a previous statement about the same events which she mentioned (P-0570's

with P-0570's explanation of the inconsistency and does not consider that this issue undermines P-0570's credibility or reliability as a whole.

284. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0570 to be a generally credible and reliable witness as concerns her own victimisation. However, it assesses her evidence on this subject bearing in mind the aforementioned limitations with respect to the identity of Ansar Dine/AQIM's members and institutions.<sup>629</sup> For the reasons stated, the Chamber finds that the rest of P-0570's evidence has very low probative value and cannot be relied upon.

### iii. P-0582

285. P-0582<sup>630</sup> was born in Mali and speaks [REDACTED].<sup>631</sup> During Ansar Dine/AQIM's control of Timbuktu in 2012-2013, P-0582 left his home [REDACTED] and travelled to Timbuktu to join Ansar Dine/AQIM, having heard on the radio that groups who wanted to apply *Sharia* had arrived in the North and were asking people who were in favour of the application of *Sharia* to join them.<sup>632</sup> P-0582 was a member of the Islamic Police in Timbuktu, working as [REDACTED] and was subordinate to, and interacted directly with, Mr Al Hassan.<sup>633</sup> P-0582 testified about, *inter alia*, his experiences in Ansar Dine/AQIM, the work of the Islamic Police and Mr Al Hassan.

286. At the outset, the Chamber notes that it takes into account the absence of cross-

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statement MLI-OTP-0049-0047-R05, at 0070, para. 94). In addition, when told by the Prosecution investigators that the account before the Bamako judge mentions being taken upstairs, P-0570 said that either this document is not her story or it is wrong because she does not remember saying that she went to any floor (P-0570's statement MLI-OTP-0049-0047-R05, at 0070, para. 94). P-0570 further said that she was not even sure that she signed anything (P-0570's statement MLI-OTP-0049-0047-R05, at 0070, para. 94).

<sup>629</sup> The Chamber rejects the Defence's argument that the impossibility of cross-examining P-0570 was exacerbated by the late disclosure of significant information which the Defence did not receive until after the close of its case ([Defence Final Brief](#), para. 214), noting that the information cited has no impact on the core of P-0570's evidence relied on by the Chamber.

<sup>630</sup> See P-0582's prior recorded statements introduced through Rule 68(2)(c) of the Rules. The statements consist of audio-recordings and transcripts of interviews between P-0582 and the Prosecution taken between 18 January 2018 and 12 April 2018 and on 18 October 2018.

<sup>631</sup> P-0582's statements MLI-OTP-0062-3606-R02, at 3608-3611; MLI-OTP-0062-3641-R02, at 3654.

<sup>632</sup> P-0582's statements, MLI-OTP-0062-3641-R02, at 3644-3645; MLI-OTP-0062-3657-R02, at 3671-3674, 3676-3677.

<sup>633</sup> See P-0582's statements MLI-OTP-0062-3641-R02, at 3648, 3654-3655; MLI-OTP-0062-3679-R02, at 3684-3686, 3695-3696.

examination by the Defence in its assessment of the probative value and weight to be afforded to P-0582's testimony.<sup>634</sup>

287. The Chamber considers that, overall, P-0582 answered questions directly and frankly, forthrightly giving information on relevant matters,<sup>635</sup> and specifying the basis of his knowledge.<sup>636</sup> Further, by virtue of his work with the Islamic Police and his contact with Mr Al Hassan, P-0582 was uniquely placed to provide vivid descriptions and precise details.<sup>637</sup> P-0582's testimony was internally consistent and comprehensive, rich with the type of details that showed that P-0582 spoke about his personal experiences and that demonstrated an intimate knowledge of the subjects he discussed.<sup>638</sup> Notably, much of P-0582's testimony was also corroborated by other evidence on the record,<sup>639</sup> a further indication of the overall credibility and reliability of his evidence.

288. The Chamber notes that P-0582 did not play a major role in Ansar Dine/AQIM, and his function centred on providing [REDACTED]. As such, while the witness had access to some information of importance, particularly in relation to the work of the Islamic Police and Mr Al Hassan's role in that institution, he had limited knowledge on the broader operations of the groups, including for example, with respect to the leadership structure of the groups, the operation of the Islamic Court,<sup>640</sup> and the work of the *Hesbah*.<sup>641</sup> The Chamber considers that the witness's expression of his lack of knowledge on certain issues was an indicator of his credibility and the general reliability of his evidence, noting that he was careful not to speculate and indicated when he could not remember or did not

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<sup>634</sup> The Chamber also recalls that Rule 68(2)(c) of the Rules allows for the consideration of testimony even when such testimony touches on matters central to the case and materially in dispute or on the acts and conduct of the accused, including regarding the establishment of criminal liability (*see Decision on the Prior Recorded Testimony of P-0605 and P-0582*, paras 39, 45. *Contra Defence P-0582 Submissions*, paras 16-19).

<sup>635</sup> *See e.g.* P-0582's statement MLI-OTP-0062-3641, at 3644-3650.

<sup>636</sup> *See e.g.* P-0582's statement MLI-OTP-0062-3710-R02, at 3714-3716.

<sup>637</sup> *See e.g.* P-0582's statements MLI-OTP-0062-3710-R02, at 3717-3718; MLI-OTP-0062-3778-R02, at 3802-3810 (P-0582's description of the incident in which Bilal, an Islamic Police officer, shot his weapon in a small market and was subsequently punished).

<sup>638</sup> P-0582's statements MLI-OTP-0062-3820-R02, at 3828-3830; MLI-OTP-0062-3872-R02, at 3888.

<sup>639</sup> *See e.g.* sections III.C.4.b) and III.F below.

<sup>640</sup> *See* P-0582's statement MLI-OTP-0062-3872-R02, at 3877-3878.

<sup>641</sup> *See* P-0582's statements MLI-OTP-0062-3679-R02, at 3704-3705; MLI-OTP-0062-3962-R02, at 3969-3976.

have knowledge of certain information.<sup>642</sup> The Chamber also notes that when the witness realised he had made a mistake previously, he identified and corrected it.<sup>643</sup> The Chamber observes, however, that with respect to certain issues, particularly matters involving the experiences of women in Timbuktu during Ansar Dine/AQIM's control, P-0582's testimony was evasive and unclear.<sup>644</sup>

289. Importantly, P-0582 provided both exculpatory and inculpatory evidence,<sup>645</sup> an indicator of the reliability of his testimony, which further supports the Chamber's view that P-0582 was not biased but rather simply described what he remembered. Noting the balanced nature of P-0582's testimony, the Chamber considers meritless the Defence's suggestions that P-0582 had an interest in downplaying his involvement in the events of 2012 and that he could have been inclined to incriminate the accused.<sup>646</sup> As for the Defence's submission that the exonerating elements provided by P-0582 were obtained voluntarily and should be considered fully in contrast to the incriminating information that should be analysed with caution,<sup>647</sup> the Chamber notes that P-0582 provided exculpatory information within the same context which he provided inculpatory information; thus, the Chamber sees no reason to give the exculpatory evidence he provided greater weight than his inculpatory evidence as a matter of principle.

290. In this context, the Chamber observes that the Prosecution's general approach in the interviews, particularly in the early stages, was to ask a wide range of broad,

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<sup>642</sup> See e.g. P-0582's statements MLI-OTP-0062-3641-R02, at 3652-3653; MLI-OTP-0062-3679-R02, at 3681, 3694, 3701; MLI-OTP-0062-3710-R02, at 3719-3720, 3723-3724; MLI-OTP-0062-3736-R02, at 3751; MLI-OTP-0062-3760-R02, at 3767, 3772; MLI-OTP-0062-3773-R02, at 3774-3775, 3779; MLI-OTP-0062-3872-R02, at 3879, 3888; MLI-OTP-0062-3897-R02, at 3901; MLI-OTP-0062-3921-R02, at 3926; MLI-OTP-0065-0628-R02, at 0631.

<sup>643</sup> P-0582's statement MLI-OTP-0062-3760-R02, at 3762-3763.

<sup>644</sup> See e.g. P-0582's statements MLI-OTP-0062-4089-R02, at 4113-4114; MLI-OTP-0062-4157-R02, at 4161-4162, 4177.

<sup>645</sup> See e.g. P-0582's statements MLI-OTP-0062-3679-R02, at 3695-3696; MLI-OTP-0065-0577-R02, at 0584 (explaining what he knew of Mr Al Hassan's role in informing Police officers of their future role); MLI-OTP-0062-3773-R02, at 3781; MLI-OTP-0062-3872-R02, at 3880-2881; MLI-OTP-0062-4012-R02, at 4035; MLI-OTP-0062-4117-R02, at 4133 (testifying about his manager in the Police); MLI-OTP-0062-3736-R02, at 3749; MLI-OTP-0062-3820-R02, at 3841-3842, 3836-3837 (testifying about the administration of justice in Khaled's absence and about the selection of members for patrols); MLI-OTP-0062-3736-R02, at 3753 (testifying about instructions given to members relating to civilians); MLI-OTP-0062-3820-R02, at 3833 (regarding Mr Al Hassan's lack of knowledge about the military mission to Konna).

<sup>646</sup> [Defence P-0582 Submissions](#), paras 6-8, 26-28.

<sup>647</sup> [Defence P-0582 Submissions](#), paras 31-32.

open-ended questions which drew out information from the witness as to the chronology of events, his role and functions, the role of the Islamic Police and Mr Al Hassan, as well as the hierarchy and structure of other institutions in Ansar Dine/AQIM. As a result, P-0582 was not led to provide evidence for or against any individual, but rather provided his objective descriptions of what he saw, heard, and did at the time, including important information on the workings of the Islamic Police and the role of Mr Al Hassan, which the Chamber considers highly credible.<sup>648</sup>

291. The Chamber notes the Defence's contention that the reliability of P-0582's evidence is affected by the fact that he was exposed to a [REDACTED] prior to and during his ICC interviews,<sup>649</sup> and that his testimony is marked by inappropriate incitement from the Prosecution, creating a relationship of dependence.<sup>650</sup> The Chamber recalls the circumstances of P-0582's interviews with the Prosecution<sup>651</sup> and notes, in particular, that: the Prosecution explained to P-0582 that he had a right to legal assistance and to be questioned in counsel's presence; P-0582 was assisted by counsel throughout his interviews;<sup>652</sup> P-0582 was also assisted, when needed, by an interpreter, who was available throughout his interviews;<sup>653</sup> the Prosecution informed P-0582 that his interview was conducted in particular pursuant to Article 55(2) of the Statute<sup>654</sup> and clearly and thoroughly explained matters of procedure and rights in the context of the interviews and P-0582 confirmed that he understood and agreed to proceed;<sup>655</sup> and the Prosecution also informed P-0582 of his right to silence and privilege against self-incrimination.<sup>656</sup>

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<sup>648</sup> *Contra* [Defence P-0582 Submissions](#), paras 21-25. The Chamber notes that in relation to the Defence's submissions that suggestive and leading questions impact the reliability of certain aspects of P-0582's account, the Chamber addresses such argument in its below findings of facts, where necessary.

<sup>649</sup> [Defence P-0582 Submissions](#), paras 6-8, 26-28.

<sup>650</sup> [Defence P-0582 Submissions](#), paras 9-10, 26-28.

<sup>651</sup> The Chamber notes that it previously made observations about the circumstances of P-0582's testimony in its decision to introduce this testimony into evidence (*see* [Decision on the Prior Recorded Testimony of P-0605 and P-0582](#), paras 18-20).

<sup>652</sup> *See* P-0582's statements MLI-OTP-0062-3606-R02, at 3620-3622; MLI-OTP-0062-3623-R02, at 3624-3625.

<sup>653</sup> *See* P-0582's statement MLI-OTP-0062-3606-R02, at 3611.

<sup>654</sup> *See* P-0582's statement MLI-OTP-0062-3606-R02, at 3617-3619.

<sup>655</sup> *See* P-0582's statements MLI-OTP-0062-3606-R02, at 3610-3622; MLI-OTP-0062-3623-R02, at 3624-3634.

<sup>656</sup> *See* P-0582's statement MLI-OTP-0062-3606-R02, at 3619-3620.



292. The Prosecution clearly explained to P-0582 the procedure for recording the interviews under Rule 112 of the Rules at the start of his interview and P-0582 consented to the recording procedure.<sup>657</sup> The witness was also repeatedly informed of the voluntary nature of his interview with the Prosecution.<sup>658</sup> The Chamber further recalls its previous finding that P-0582's interview was characterised by open, respectful and constructive exchanges, and that the witness was consistently encouraged by the Prosecution to speak openly, ask questions and make clarifications throughout.<sup>659</sup> The Chamber finds that the cumulative impact of the Prosecution's warnings to P-0582, which he indicated that he understood, prompted the witness to exercise caution, recalling, as noted above, that P-0582 was indeed careful to make clear when he did not know something, took care not to speculate and clearly acknowledged the limitations of his knowledge.
293. Additionally, the Chamber notes that although the Prosecution consistently emphasised the separation between the ICC procedure and the Malian national procedures and the Prosecution's lack of control over P-0582's [REDACTED],<sup>660</sup> the Prosecution enquired with P-0582 whether he had anything to raise regarding the [REDACTED] and encouraged him to raise issues.<sup>661</sup> The Prosecution also noted that it would report the issues raised [REDACTED], and try to see that measures would be taken.<sup>662</sup> Considering the above, the Chamber is satisfied that the circumstances of the interview do not undermine the reliability of P-0582's evidence, nor was there any improper incitement on the part of the Prosecution. Indeed, the Chamber considers that the circumstances of the interview demonstrate that P-0582's statements were made voluntarily and that he was fully

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<sup>657</sup> See P-0582's statement MLI-OTP-0062-3623-R02, at 3634-3639.

<sup>658</sup> See P-0582's statements MLI-OTP-0062-3606-R02, at 3617; MLI-OTP-0062-3641-R02, at 3655; MLI-OTP-0062-3736-R02, at 3759; MLI-OTP-0062-4198-R02, at 4218.

<sup>659</sup> [Decision on the Prior Recorded Testimony of P-0605 and P-0582](#), para. 18; see P-0582's statements MLI-OTP-0062-3623-R02, at 3624-3631; MLI-OTP-0062-3657-R02, at 3663; MLI-OTP-0062-4198-R02, at 4211-4216.

<sup>660</sup> See e.g. P-0582's statements MLI-OTP-0062-3606-R02, at 3617; MLI-OTP-0062-3641-R02, at 3655-3656; MLI-OTP-0062-3736-R02, at 3755-3759; MLI-OTP-0062-3623-R02, at 3634-3637; MLI-OTP-0062-3950-R02, at 3958-3960; MLI-OTP-0062-4340, at 4360-4364.

<sup>661</sup> See e.g. P-0582's statements MLI-OTP-0062-3641-R02, at 3655; MLI-OTP-0078-4214, at 4214-4217, 4221, 4223-4229, 4231-4232, 4235; MLI-OTP-0062-3657-R02, at 3660-3662; MLI-OTP-0062-4198-R02, at 4216-4218.

<sup>662</sup> See e.g. P-0582's statement MLI-OTP-0062-3641-R02, at 3655-3656.

aware of his rights.

294. The Chamber observes that as the interviews progressed, there was a deterioration in P-0582's mood arising from a combination of circumstances, including missed meetings with family members,<sup>663</sup> the conditions of detention and weariness of being detained for a lengthy period.<sup>664</sup> The Chamber notes, however, that even during the later stage of his interviews, P-0582 explained credibly that he could only testify to what he knows and remembers.<sup>665</sup> The Chamber considers that this deterioration in P-0582's mood in the later stages of the interviews did not affect the credibility of his later statements as a matter of principle, but notes that he provided less relevant information for these proceedings at this time.
295. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0582 to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate, including taking into account the aforementioned limitations with regard to his testimony.

### **C. EVIDENCE PROVIDED BY THE ACCUSED**

296. The Chamber recalls that in its Decision regarding Mr Al Hassan's Statements, it granted the Prosecution's request that the statements provided by Mr Al Hassan during interviews with the Prosecution, preserved under Article 56 of the Statute, be admitted into evidence pursuant to Article 69 of the Statute.<sup>666</sup> In the same decision, the Chamber rejected the Defence application for exclusion of the statements pursuant to Article 69(7) of the Statute.<sup>667</sup> The Chamber therefore has already determined that the statements are relevant and have probative value on a *prima facie* basis. However, as noted in the decision, the Chamber must at this stage determine the probative value and weight to be attributed to Mr Al Hassan's

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<sup>663</sup> See e.g. P-0582's statements MLI-OTP-0062-4265-R02, at 4265-4267; MLI-OTP-0062-4340-R02, at 4360-4363.

<sup>664</sup> See e.g. P-0582's statement MLI-OTP-0062-4198-R02, at 4211-4212, 4214-4215.

<sup>665</sup> P-0582's statement MLI-OTP-0062-4198-R02, at 4210-4213.

<sup>666</sup> [Decision regarding Mr Al Hassan's Statements](#).

<sup>667</sup> [Decision regarding Mr Al Hassan's Statements](#), para. 48.

statements in evaluating this evidence for its judgment under Article 74.

## 1. Defence arguments

### a) Cognitive impairment

297. The Chamber turns first to the arguments advanced by the Defence on these statements.

298. In its brief the Defence makes reference to ‘substantial factual and expert evidence demonstrating that Mr Al Hassan experienced severe cognitive impairment at the time of his Prosecution interviews’.<sup>668</sup> While no specific argument on cognitive impairment follows this assertion, the Chamber considers it necessary to reiterate its findings on this point which are directly relevant to the assessment of probative value.

299. In its Termination Motion brought before the Chamber, the Defence argued that the Prosecution exploited the vulnerable situation of Mr Al Hassan during the interviews, retraumatising and engaging in coercive questioning and exploiting the dependence of Mr Al Hassan on the Prosecution.<sup>669</sup> This argument was premised, in large part, on an analysis and interpretation of interview transcripts and other materials by three Defence experts.<sup>670</sup> In its Termination Decision, the Chamber examined the evidence of the three experts in detail, finding that it was premised on highly selective excerpts, as well as identifying instances of speculation and mischaracterisation of the record.<sup>671</sup> On the basis of its examination, the Chamber afforded little weight to the experts reports and conclusions.<sup>672</sup>

300. Subsequently, in the Decision on Mr Al Hassan’s Statements, the Chamber held these findings on the expert reports equally applicable and gave no weight to the consultants’ analysis and conclusions regarding the interview process in

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<sup>668</sup> [Defence Final Brief](#), para. 298.

<sup>669</sup> [Termination Motion](#), paras 27(b), 34-42, 86-87, 89.

<sup>670</sup> Dr Porterfield’s report MLI-D28-0002-0535; Dr Cohen’s report MLI-D28-0002-0500; Dr Cohen’s report MLI-D28-0003-0031; Dr Crosby’s report MLI-D28-0003-0315.

<sup>671</sup> [Termination Decision](#), paras 106-108.

<sup>672</sup> [Termination Decision](#), para. 109.

determining the application.<sup>673</sup>

301. These conclusions are once again relied upon in this judgment.
302. While Dr Katherine Porterfield (D-0020) and Dr Juliet Cohen (D-0025) subsequently testified as expert Defence witnesses, the conclusion of the Chamber remains unchanged as to the weight to be accorded to their evidence with respect to the assessment of the probative value of the statements.<sup>674</sup>
303. In so far as the Defence may be referring to ‘substantial evidence’ to comments made by Mr Al Hassan about his subjective state of mind to Defence consultants<sup>675</sup> and the Panel of Experts,<sup>676</sup> the Chamber has previously found that Mr Al Hassan’s subjective state of mind during the taking of the statements cannot be established through consultants and experts, in this manner. It does not afford a proper evidentiary foundation.<sup>677</sup> This finding is also applicable in this judgment.
304. Finally, the Chamber reiterates its previous finding that an examination of the statements as a whole provides no basis to believe that Mr Al Hassan was unable to understand or actively assert himself during the interviews.<sup>678</sup>
305. For these reasons, the Chamber finds this assertion by the Defence as to the

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<sup>673</sup> [Decision regarding Mr Al Hassan’s Statements](#), para. 48.

<sup>674</sup> Dr Juliet Cohen (*see* D-0025: T-178; Dr Cohen’s reports MLI-D28-0002-0500 and MLI-D28-0003-0031 introduced through Rule 68(3) of the Rules), a forensic physician specialising in the assessment of torture, and who worked part time as the head of doctors for the charity Freedom from Torture, appeared before the Chamber as an expert and mainly testified about two expert reports she prepared on her assessment of the accused and various witnesses in the case. Dr Katherine Porterfield (*see* D-0020: T-173 to T-174; Dr Porterfield’s report MLI-D28-0002-0535 introduced through Rule 68(3) of the Rules), a clinical psychologist specialising in trauma, including in the context of war and torture, appeared before the Chamber as an expert and mainly testified about an expert report she prepared on her assessment of the accused. In addition to the concerns previously identified relating to the insufficiency of the materials relied upon, the Chamber found Dr Cohen’s expertise to be of limited value and relevance for the case and also found she seemed unwilling to reconsider or nuance her findings in light of new information put to her. With respect to Dr Porterfield, in addition to the concerns identified arising from the mandate given to her and the selective material provided to her, in particular the limited time period she considered, the Chamber considered her continuing role with the Defence throughout the proceedings raised questions as to her objectivity. In addition, she declined to reassess her findings when provided with new facts.

<sup>675</sup> Dr Porterfield’s report, MLI-D28-0002-0535. *See also* Dr Cohen’s report MLI-D28-0002-0500.

<sup>676</sup> *See e.g.* [Panel Report](#), paras 43-46. The Panel of Experts was appointed by the Chamber in the context of the assessment of Mr Al Hassan’s ongoing fitness to stand trial, *see* [Fitness Decision](#), para. 3.

<sup>677</sup> [Fitness Decision](#), para. 70.

<sup>678</sup> [Decision regarding Mr Al Hassan’s Statements](#), para. 64.

evidence before the Chamber regarding the cognitive impairment of Mr Al Hassan at the time of the interviews to be without foundation in the record. It follows that the Chamber has no basis to conclude that Mr Al Hassan suffered from any cognitive impairment which would render the statements as a whole unreliable and of no probative value. Below, the Chamber addresses questions with respect to the conditions of the interview and those of detention and any potential impact on weight or probative value.

**b) Improper questioning/false memory**

306. The Defence argues that the interviews cannot be relied upon as evidence because the Prosecution failed to lay a proper foundation or elicit evidence in an impartial and non-leading manner. Specifically, the Defence submits that the Prosecution used inappropriate memory prods and implantation which affected the nature of the evidence given.<sup>679</sup>

307. In support of this argument, the Defence refers to the evidence of Dr Charles Morgan III (D-0502) who produced a report and testified as an expert with respect to uncontrollable stress and the creation of false memory.<sup>680</sup> While acknowledging his expertise in the field, the Chamber finds his specific analysis in this case to be of little probative value and relevance, given the limited material and incomplete information relied on to reach the conclusions set out in the report. Specifically, Dr Morgan acknowledged that an ‘in person’ evaluation, the taking of a history<sup>681</sup> and accessing medical records<sup>682</sup> are important and relevant to assessing the impact of trauma on an individual. Yet, the expert confirmed that he had no engagement whatsoever with Mr Al Hassan<sup>683</sup> nor did he take a medical history or examine medical records<sup>684</sup> for the preparation of his report. In addition, the Chamber finds his conclusions that Mr Al Hassan was affected by

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<sup>679</sup> [Defence Final Brief](#), paras 298-299.

<sup>680</sup> Dr Charles Morgan III (*see* D-0502: *see* T-179 to 180; Dr Morgan’s report MLI-D28-0005-9967-R01 introduced through Rule 68(3) of the Rules), a professor of psychiatry, specialising in the effects of uncontrollable stress, appeared before the Chamber as an expert and mainly testified about an expert report he prepared on his assessment of the accused and P-0626 including with respect to uncontrollable stress and the creation of false memory.

<sup>681</sup> D-0502: T-179, pp. 79-81.

<sup>682</sup> D-0502: T-180, p. 6.

<sup>683</sup> D-0502: T-180, p. 4.

<sup>684</sup> D-0502: T-180, p. 6.

exposure to uncontrollable stress associated to his detention and that he experienced cognitive issues and physical ailments as a result<sup>685</sup> are similarly premised on insufficient material. Dr Morgan acknowledged that he based these conclusions solely on his review of the transcripts of ICC interviews<sup>686</sup> and more specifically on the statements made by Mr Al Hassan during those interviews. His report also did not consider potential pre-disposing factors.<sup>687</sup>

308. Dr Morgan also opines in his report that Mr Al Hassan was exposed through the ICC interview process to information, questioning techniques, photographs and video material known to cause errors in eyewitness memory. He concludes in his report<sup>688</sup> that this was a pattern throughout the interview process. His report references two examples as to the specific use of this technique – an alleged ‘progression’ through the interviews on the use of torture by the Islamic Police and the case of a flogging.<sup>689</sup> No other specific examples are provided in his testimony or report to support the assertion that this was a pattern in the interview process.

309. The Chamber considers that neither of these instances cited by Dr Morgan illustrate that techniques were employed which created or had the potential to create false memories. It follows that the Chamber finds that these examples do not show a pattern of such techniques throughout the interview process.<sup>690</sup>

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<sup>685</sup> Dr Morgan’s report MLI-D28-0005-9967-R01, at 9976; D-0502: T-180, p. 4.

<sup>686</sup> D-0502: T-180, pp. 10-11, 16 (stating he reviewed only a few audio recordings, and acknowledging ‘hearing a more complete picture might affect my opinion’).

<sup>687</sup> D-0502: T-179, p. 94.

<sup>688</sup> Dr Morgan’s report MLI-D28-0005-9967-R01, at 9981.

<sup>689</sup> Dr Morgan’s report MLI-D28-0005-9967-R01, at 9981.

<sup>690</sup> With respect to the torture argument, Dr Morgan provided no details as to the basis for the contention that the progression relating to torture used by the Islamic Police illustrated the way in which eyewitness memory evolves when exposed to questions, photo or video material. The transcripts cited by Dr Morgan in support of this statement reveal that the subject of use of torture by the Islamic Police was canvassed with Mr Al Hassan on a few occasions over the course of the 19 day interview. But in each of these instances, the questioning was either from a different perspective or sought to draw out different detail. For example, during the first discussion the questioning centred on the report Mr Al Hassan had written which referenced torture and the extent of his knowledge about that. In another instance it was about the overall interview process with torture as a last step. And on yet another occasion it was about the roles of different organs and individuals such as the emirs or the Islamic Court. While there were instances where videos or documents were shown, including material that had been shown before, this was followed by particular questions designed to draw out different details or to confirm previous statements. Throughout each of the interviews, Mr Al Hassan answered the questions in a straightforward manner not hesitating to indicate if he did not know or could not remember. Having carefully considered all the

310. In these combined circumstances, the Chamber places little weight on the opinion advanced by Dr Charles Morgan III on the interview process which generated the statements.
311. While dependent to a great extent on his expert evidence, the Chamber has given separate consideration to the argument advanced by the Defence that the evidence in the statements is unreliable because the interview process induced false memory. Specifically, the Chamber has examined in detail the example presented by the Defence, - the process used to establish Mr Al Hassan's participation in the flogging of Al-Husayn Bin 'Umar.<sup>691</sup> It is submitted to represent a text book case of false memory which was implanted.
312. The Chamber has carefully reviewed the passages of the statements relevant to this issue in totality. The Chamber notes that in the interview of 6 October 2017, there had been a discussion regarding a video of a flogging shown to Mr Al Hassan, during which he identified himself as one of the persons who had flogged the individual.<sup>692</sup> Shortly after, the interviewer asked Mr Al Hassan if he remembered other cases where he himself had participated in this kind of punishment to which Mr Al Hassan responded '[TRANSLATION] I participated in a case of flogging after this one [...] at the same place'.<sup>693</sup> When questioned further, after having been re-warned of his right not to incriminate himself, he went on to reiterate that he had participated in another flogging in a case involving adultery between a man and his half-sister.<sup>694</sup> This information was provided with minimal questioning and prompting by the investigator.<sup>695</sup> The Defence further avers that immediately after this exchange Mr Al Hassan makes a request for a

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excerpts, the Chamber finds that, while new details were added as the questioning continued, this was a natural result of the different types of questions posed and subjects discussed. The Chamber sees no pattern of 'progression' involving the use of questioning or materials in a manner which created a danger of memory implantation. The flogging example advanced by the Defence as a specific example in its Final Brief is examined in detail below.

<sup>691</sup> [Defence Final Brief](#), para. 299.

<sup>692</sup> Mr Al Hassan's statement MLI-OTP-0051-0967, at 0983-0984, *referring to* video MLI-OTP-0018-0693.

<sup>693</sup> Mr Al Hassan's statement MLI-OTP-0051-0967, at 0986.

<sup>694</sup> Mr Al Hassan's statement MLI-OTP-0051-0967, at 0986-0990.

<sup>695</sup> Mr Al Hassan's statement MLI-OTP-0051-0967, at 0986-0990. The Chamber notes the only substantive intervention was that of Mr Al Hassan's lawyer who sought to clarify the number of lashes imposed and over what time period. Mr Al Hassan then corrected himself indicating it was 300 in total over nine days with 100 lashes to be given every three days.

transfer of prisons, arguing that this demonstrates the information was provided in the hope that it would lead to a change of his detention conditions. The Chamber finds this suggested link to be purely speculative and without support in the record.

313. Having carefully reviewed this passage of the interview as a whole, the Chamber finds nothing in this exchange to support the submission that this was a false memory induced by the form of questioning of the Prosecution. Rather it was an admission volunteered by Mr Al Hassan, and reasserted after a warning against self-incrimination. The Chamber similarly considers that the Defence arguments that subsequent discussion of this particular flogging incident evidence false memory to be without foundation.<sup>696</sup>
314. The Chamber finds that the other examples cited by the Defence equally do not evidence the creation of a false memory.<sup>697</sup>

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<sup>696</sup> The Defence argues that when he was later questioned about this incident, he was again unable to recall detail. In the cited reference (Mr Al Hassan's statement MLI-OTP-0062-1058, at 1060), he is unable to remember one detail – the time between the decision and the sentence. In the subsequent questioning, the investigator is putting questions to Mr Al Hassan, including with reference to videos and photos, to which, on several occasions, Mr Al Hassan responds he does not remember and the investigator moves on (*see e.g.* Mr Al Hassan's statement MLI-OTP-0062-1058, at 1068). The Defence argues that it is only after a series of leading questions and suggestive material that Mr Al Hassan acknowledges that he was amongst the persons who flogged the stepbrother and that he had no independent memory. The Chamber finds this argument to be entirely spurious given that Mr Al Hassan had already, months before, volunteered this information as to his involvement.

<sup>697</sup> [Defence Final Brief](#), para. 303. The Defence cites four instances where it alleges that a similar process was used to induce false memory: the cases of Moussa Ben Mohamed el-Joumaa and others, Muhammad Bin Musa, Muhammad Walad and others, and Abdelkarim Ascofare. In the first case cited (Mr Al Hassan's statements MLI-OTP-0060-1605, at 1617-1619, *referring to* document MLI-OTP-0001-7552), Mr Al Hassan is shown a document and asked if he recognises it. He indicates he does, that it was written by him and he identifies his signature. When asked if he remembers what it was about, he states it was a case of theft, but he does not remember the details, adding he can only rely on what he sees written before him. When asked if the document refreshes his memory, he maintains that he does not remember anything at all. While he then reads the document and is questioned on it, he makes it clear that any details he is providing were premised on what was written in the document not his memory. There is therefore, in the view of the Chamber, no possibility of false memory in the circumstances given he made it clear he was only recounting what was in the document. In the second instance cited (Mr Al Hassan's statement MLI-OTP-0060-1605, at 1606-1607) the interviewer recalls that before the break, they had been discussing a report relating to magic/sorcery and that Mr Al Hassan had spoken about a second case he remembered of a person arrested also for sorcery. Mr Al Hassan confirms that he recalls that discussion. He is then shown document MLI-OTP-0052-0031, which Mr Al Hassan indicates is known to him and which relates to the second case of sorcery he had mentioned, where the person was arrested [REDACTED]. He is then questioned on details such as the name of the person involved and the background of the case, details which he provides without hesitation from memory. It is evident from the exchange in totality that Mr Al Hassan had himself raised the case from memory and was able to recount the details of it from memory. Nothing in the transcript supports that this was a case of implanted



315. In addition to examining these specific examples referred to by the Defence and presented by the expert witness, the Chamber has considered the general averment that the Prosecution used this pattern of questioning throughout the interviews, eliciting evidence on the basis of information shown or read to him rather than true independent recall. The Chamber has examined the transcripts with this in mind but finds that no such general pattern is evident in the record. While there were multiple instances where documents, photos or videos were put to Mr Al Hassan, this was generally for the purpose of obtaining his comments on the same. The Chamber could find no overall pattern where those materials were then used as a basis for leading Mr Al Hassan to a conclusion or statement. To the contrary, Mr Al Hassan did not hesitate to say when he did not know or remember, even if shown documents and asked if these refreshed his memory.<sup>698</sup>

316. In conclusion, the Chamber finds the record of the interviews does not evidence an overall pattern of questioning which would lead to the creation of false memories or lead Mr Al Hassan to conclusions or statements premised on materials presented, rather than his own independent recollection. As a result the Chamber does not accept the Defence argument that the statements as a whole cannot be relied on by the Chamber or be given any weight for this reason. However, as appropriate, in the course of the judgment, the Chamber has considered the form and nature of the questioning used in particular excerpts of the statements in assessing the weight to be given to individual pieces of evidence.

**c) Voluntariness/probative value**

317. As forecast in its Decision regarding statements, the Chamber has re-examined whether the circumstances of the taking of the statements – in particular, the conditions of detention and the state of mind or the health condition of Mr Al

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or false memory. In the third case which is cited (Mr Al Hassan's statement MLI-OTP-0060-1453, at 1468-1471), Mr Al Hassan is shown a document which he confirms that he wrote and is asked questions on it, to which he responds. The Chamber sees nothing in the exchange to suggest that the document – which he wrote – was used to implant false memory. For the details contained in the document, which Mr Al Hassan confirmed, the document speaks for itself. Other details added by Mr Al Hassan clearly came from his memory. The fourth case which is cited (Mr Al Hassan's statement MLI-OTP-0060-1453, at 1471-1473), mirrors the previous case where Mr Al Hassan identifies a document that he wrote, transferring a case to the Islamic Court, commenting on details contained within and outside the document. The Chamber sees again no evidence of an interview process which generates false memory.<sup>698</sup> See *e.g.* Mr Al Hassan's statement MLI-OTP-0060-1605, at 1617-1619.

Hassan – impact on the probative value or weight to be accorded to the statements as a whole. Included in this analysis is an assessment as to whether the statements were voluntary – an important component of probative value.

318. As previously indicated, in the Chamber’s view, a holistic consideration of Mr Al Hassan’s interview record is necessary to properly assess this issue.
319. The Chamber first considers whether the manner in which the interviews were conducted, in particular in light of the detention by national authorities and the coexistence of national proceedings with the ICC interviews, impacts on the voluntariness of the statements or the overall probative value and weight to be accorded to them.
320. The Chamber recalls that in its Decision regarding Mr Al Hassan’s Statements, it was found that the ICC Prosecution made it very clear to Mr Al Hassan that it had no control over his treatment and conditions of detention and this was an important factor to be aware of when deciding whether or not to proceed with the Prosecution interviews.<sup>699</sup> The Chamber also found that the Prosecution took consistent steps to emphasise the distinctive and confidential nature of the ICC procedure in order to ensure that the ICC proceedings were viewed as separate and distinct.<sup>700</sup> The Chamber further notes its findings concerning the differences in subject matter and the spatial separation.<sup>701</sup> The Chamber relies on all of these findings and its review of the transcripts as a whole in reaching its conclusions. The Chamber finds that, in the combined circumstances, these conditions of the interview process itself did not impact on the voluntariness, overall probative value or weight of the statements as there was a clear separation made between the ICC process and those of national authorities or other authorities that engaged with Mr Al Hassan. Further, the Chamber finds that given the repeated statements made, Mr Al Hassan was clearly aware of the limitations of the ICC authorities in relation to his conditions of detention and thus there was no negative impact on the ability of Mr Al Hassan to provide an informed waiver of his rights during

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<sup>699</sup> [Decision regarding Mr Al Hassan’s Statements](#), para. 49.

<sup>700</sup> [Decision regarding Mr Al Hassan’s Statements](#), para. 50.

<sup>701</sup> [Decision regarding Mr Al Hassan’s Statements](#), para. 51.

the interview.

321. The Chamber has also considered, especially with a view to voluntariness, whether Mr Al Hassan's rights were fully respected and he was able to exercise those rights during the interview process. On this issue, the Chamber recalls its previous factual findings. Mr Al Hassan was properly advised of his possible status in the interviews and assisted by counsel throughout this process.<sup>702</sup> He was repeatedly informed of his rights, including multiple reminders with respect to self-incrimination and was asked to confirm his understanding of the same. He also asserted his rights in this regard during the interview process.<sup>703</sup> In light of these factual findings, which are adopted for this judgment, the Chamber concludes that with respect to the interview process overall, his responses were given with full understanding of his rights and he was able to exercise those rights particularly in relation to self-incrimination. It follows the Chamber considers there is no issue as to a lack of voluntariness arising from an infringement of his rights which could affect probative value.

322. Turning to specific conditions of detention and his medical situation, during the course of the interviews, Mr Al Hassan raised on several occasions issues about his conditions of detention, medical state and needs to the Prosecution.<sup>704</sup> Notably, he reported that he was not well or was in need of medication,<sup>705</sup> or recounted an instance of mistreatment.<sup>706</sup> He also made requests to be moved to another facility<sup>707</sup> or to be brought before a national judge.<sup>708</sup> On each occasion that such matters were raised, the Prosecution investigators responded to the issues raised or questions posed. The Chamber considers that they did so in a reasonable, timely and transparent manner.<sup>709</sup>

323. In terms of his medical condition, the Prosecution asked Mr Al Hassan how he

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<sup>702</sup> [Decision regarding Mr Al Hassan's Statements](#), paras 54-55.

<sup>703</sup> [Decision regarding Mr Al Hassan's Statements](#), paras 57, 59, 64.

<sup>704</sup> [Decision regarding Mr Al Hassan's Statements](#), paras 65-66.

<sup>705</sup> Mr Al Hassan's statements MLI-OTP-0051-0798, at 0803; MLI-OTP-0060-1662, at 1664, 1665; MLI-OTP-0060-1729, at 1732; MLI-OTP-0062-0940, at 0946.

<sup>706</sup> Mr Al Hassan's statement MLI-OTP-0060-1374, at 1378-1379.

<sup>707</sup> Mr Al Hassan's statement MLI-OTP-0051-0967, at 0992.

<sup>708</sup> Mr Al Hassan's statement MLI-OTP-0051-0967, at 0992.

<sup>709</sup> [Decision regarding Mr Al Hassan's Statements](#), para. 67.

was feeling, systematically, throughout the 19 days and took measures in response to particular issues that he raised.<sup>710</sup> Importantly, in terms of voluntariness and the impact on the evidence adduced, the investigators were careful to ensure that Mr Al Hassan was prepared to proceed or continue with the interviews when specific concerns were identified. For example, when he expressed that he was not well, they emphasised he was able to end the interview at any time that he wished.<sup>711</sup>

324. Considering these facts in combination, the Chamber is satisfied that, while Mr Al Hassan did raise concerns regarding his conditions of detention and medical situation, these did not affect the overall voluntariness of the statements nor have an impact on the probative value of the evidence adduced.

325. Finally, the Chamber has considered the totality of the statements and the circumstances in which they were taken in assessing the issue of voluntariness and probative value more generally. The Chamber recalls its finding that the interviews were conducted in an open, constructive and respectful manner with Mr Al Hassan being accorded a full opportunity to express himself. In this respect at one point Mr Al Hassan commented that he was giving these statements voluntarily so the truth would be clear about what had happened.<sup>712</sup> Mr Al Hassan was well treated during the course of his interviews, being given water and tea as well as regular breaks for meals and prayers.<sup>713</sup> The Chamber also notes that Mr Al Hassan was provided with interpretation assistance throughout<sup>714</sup> and that there was meticulous attention to detail in terms of recording the particulars of all the interviews, including the participants, persons entering or leaving the room, as well as the dates, times and locations of the recordings. The Chamber has also taken into consideration the overall content of the exchanges which is discussed in more detail below. The Chamber is fully satisfied that these conditions of the interview process were conducive to a full and accurate record and that the audio recordings and transcripts bear sufficient indicia of reliability. In sum, there were

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<sup>710</sup> [Decision regarding Mr Al Hassan's Statements](#), para. 68.

<sup>711</sup> Mr Al Hassan's statement MLI-OTP-0060-1662, at 1665.

<sup>712</sup> Mr Al Hassan's statement MLI-OTP-0051-0790, at 0796.

<sup>713</sup> [Decision regarding Mr Al Hassan's Statements](#), para. 58.

<sup>714</sup> Mr Al Hassan's statement MLI-OTP-0051-1233, at 1239-1240.

no circumstances in the manner of the taking of the statements which negatively impact on the voluntariness of the statements or the probative value and weight to be accorded the evidence as a whole.

326. Having assessed these various considerations, the Chamber finds that the statements were given voluntarily and that there are no circumstances which negatively affect the probative value of the statements overall. However, in its overall analysis of evidence throughout the judgment, the Chamber has assessed the relevance, probative value and weight to be accorded to individual pieces of evidence coming from the statements, as appropriate.

## **2. General assessment of credibility**

327. Based on a careful assessment of the content of the statements as a whole and the circumstances in which they were taken, the Chamber has given consideration to the overall credibility and reliability of the statements. The interview was conducted over 19 days in the period between 13 July 2017 and 8 March 2018.<sup>715</sup> It was an investigative interview covering a wide range of topics – arrival of the armed groups, the functioning of the various organs – *Hesbah*, Islamic Court, prison system, Islamic Police – specific events such as floggings, the women’s protest march, as well as Mr Al Hassan’s role and activities.

328. The interviews were comprised of questions and answers which varied in length and detail from extensive to relatively short to some instances of ‘yes and no’ responses, particularly in the latter stages of the interview process.<sup>716</sup> In addition on several occasions Mr Al Hassan was asked to provide comments on videos, images and documents. As indicated, the exchanges were constructive, polite and respectful.<sup>717</sup>

329. The Chamber observes that the statements are lengthy and comprehensive in content. Mr Al Hassan answered questions clearly and in detail, generally

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<sup>715</sup> The first interview took place on 13 July 2017 (MLI-OTP-0051-1233) and the last interview took place on 8 March 2018 (MLI-OTP-0069-1813). The interview dates being in 2017: July 13, 14, 17, September 6, 8, 11, 13, October 2, 6, December 4, 6, 8. In 2018: January 15, 16, 18, March 5, 6, 7, 8.

<sup>716</sup> See e.g. Mr Al Hassan’s statement MLI-OTP-0051-0513, at 0522; MLI-OTP-0060-1298, at 1312; throughout the interview in statement MLI-OTP-0060-1580.

<sup>717</sup> Mr Al Hassan’s statement MLI-OTP-0062-1122, at 1135.

providing specific, factual information which was responsive to the question posed and descriptive in nature.<sup>718</sup> Throughout, he was precise and careful in the replies he gave,<sup>719</sup> seeking clarification of questions<sup>720</sup> and in many instances correcting and clarifying what he had said.<sup>721</sup> He would provide a basis for knowledge spontaneously or in response to questions.<sup>722</sup> Throughout Mr Al Hassan avoided speculation. If he was unsure of something he would say so<sup>723</sup> noting in one instance that he was afraid of ‘lying’.<sup>724</sup> The transcript is replete with instances where he stated that he did not remember or did not know.<sup>725</sup> The investigators in turn also restated on many occasions that he should only relate what he could remember.<sup>726</sup> Notably on many occasions Mr Al Hassan would provide information quite openly and without hesitation<sup>727</sup> and in some instances spontaneously offering a comment or providing detail in response to a general question.<sup>728</sup>

330. In addition, the Chamber notes that the extensive interviews adduced evidence

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<sup>718</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0051-1213, at 1214; MLI-OTP-0051-0422, at 0452-0453; MLI-OTP-0051-0658, at 0689-0691; MLI-OTP-0051-0912, at 0934; MLI-OTP-0060-1484, at 1490-1492; MLI-OTP-0062-0969, at 0971-0973; MLI-OTP-0062-1095, at 1113-1114; MLI-OTP-0062-1239, at 1240-1242.

<sup>719</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0051-0457, at 0462-0463; MLI-OTP-0051-0537, at 0556 (specific as to location); MLI-OTP-0051-0557, at 0564; MLI-OTP-0051-0692, at 0701; MLI-OTP-0051-0717, at 0724; MLI-OTP-0051-0912, at 0925; MLI-OTP-0062-1095, at 1101-1102.

<sup>720</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0051-0457, at 0471; MLI-OTP-0051-0717, at 0729; MLI-OTP-0051-0912, at 0916; MLI-OTP-0062-1143, at 1156, MLI-OTP-0062-1143, at 1156.

<sup>721</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0051-0557, at 0561; MLI-OTP-0051-0598, at 0606-0607; MLI-OTP-0051-0824, at 0834; MLI-OTP-0051-0912, at 0924-0925; MLI-OTP-0062-1143, at 1159-1160.

<sup>722</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0051-0537, at 0551-0553; MLI-OTP-0051-0912, at 0916.

<sup>723</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0051-0457, at 0464; MLI-OTP-0051-0598, at 0606-0607; MLI-OTP-0062-1095, at 1101,1102; MLI-OTP-0062-1122, at 1132.

<sup>724</sup> Mr Al Hassan’s statement MLI-OTP-0051-0483, at 0486.

<sup>725</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0051-0457, at 0460, 0464; MLI-OTP-0051-0571, at 0580-0592; MLI-OTP-0051-0912, at 0915; MLI-OTP-0060-1539, at 1553; MLI-OTP-0062-1194, at 1197. See also throughout the interview in statements MLI-OTP-0060-1403; MLI-OTP-0060-1511.

<sup>726</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0051-1257, at 1260; MLI-OTP-0051-1032, at 1034; MLI-OTP-0051-1099, at 1105, 1108; MLI-OTP-0051-1124, at 1132, 1154; MLI-OTP-0051-0457, at 0480; MLI-OTP-0051-0483, 0486, 0487; MLI-OTP-0051-0571, at 0579; MLI-OTP-0051-0598, at 0599-0601; MLI-OTP-0051-0767, at 0776; MLI-OTP-0051-0912, at 0925; MLI-OTP-0060-1298, at 1301, 1303; MLI-OTP-0060-1484, at 1500-1501; MLI-OTP-0060-1580, at 1589; MLI-OTP-0062-1122, at 1128; MLI-OTP-0062-1194, at 1196.

<sup>727</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0051-0483, at 0491-0492; MLI-OTP-0051-0513, at 0527; MLI-OTP-0051-0557, at 0562-0563; MLI-OTP-0051-0658, at 0676-0679 and, at 0690-0691 (description of amputation); MLI-OTP-0051-0457, at 0466 (description of patrols).

<sup>728</sup> See e.g. Mr Al Hassan’s statements MLI-OTP-0062-0969, at 0971-0977; MLI-OTP-0051-0483, at 0491-0493; MLI-OTP-0051-0483, at 0508,0509; MLI-OTP-0051-0513, at 0526, 0527; MLI-OTP-0051-0631, at 0634, 0635.

some of which is neutral, some of which could be categorised as inculpatory and still other aspects which may be considered exculpatory. The Chamber considers that this natural variation is indicative of truthful responses provided by Mr Al Hassan based on his memory of what he did, what he saw and what he heard, as well as his personal views about what occurred.

331. Finally, as noted throughout the judgment, while some evidence relied upon comes only from Mr Al Hassan, there are multiple instances where what he has recounted in the statements is consistent with, and corroborated by, other independent evidence in the case. This is of course an additional factor which the Chamber has considered.
332. Taking all these factors into account, the Chamber is satisfied that overall the evidence provided by Mr Al Hassan in the course of the 19 days of interviews is generally reliable and credible. At the same time, the Chamber has examined, throughout the judgment, the content and circumstances of individual pieces of evidence to assess credibility and reliability for that specific evidence.

#### **D. DOCUMENTARY EVIDENCE**

333. Besides witness evidence, the Prosecution presented documentary evidence purportedly emanating from Ansar Dine/AQIM, notably from the Islamic Police, the Islamic Court and the *Hesbah* collected by Harald Doornbos (P-0007), Eric Baccard (P-0055) and P-0057, from the BMS Bank and the *Hôtel La Maison* in 2013.<sup>729</sup> The Chamber will address some preliminary issues on this documentary evidence in the section below.
334. The assessment of other documentary and audio-visual evidence is contained in the footnotes of the factual findings in the present judgment when relevant to an issue being assessed by the Chamber.

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<sup>729</sup> See [Prosecution Final Brief](#), paras 382-390.

## 1. Items collected and photographed by Harald Doornbos (P-0007)

335. Harald Doornbos<sup>730</sup> testified about collecting documents and taking photographs during his mission to Timbuktu in January-February 2013, as well as the transmission of the documents and photographs to the Prosecution. The witness

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<sup>730</sup> Harald Doornbos (*see* P-0007: T-019), a Dutch freelance journalist, was in Timbuktu from 31 January 2013 for a period of ten days (P-0007: T-019, pp. 5-8). The Chamber finds that the witness presented his actions and the surrounding circumstances in a detailed, clear and focused way. He did not overstate his personal role in this context and clearly noted that he acted merely as a journalist, whose role was limited to the collection and transmission of the documents (*see* P-0007: T-019, pp. 42, 69). He repeatedly clarified that he was not a specialist on the conflict in Mali, noting that he visited this country only once, and he openly acknowledged when he did not know or remember certain things, highlighting the time passed since his mission (*see* P-0007: T-019, pp. 5, 10, 19, 23-22, 50-51, 55). The witness remained consistent and cooperative during his cross-examination, and, when presented with images of buildings similar to those he visited, prudently stated he was not able to confirm whether the pictures showed the buildings he actually visited (*see* P-0007: T-019, pp. 64-65, 68, 74-75, *referring* to excerpts of videos MLI-D28-0004-0003, at 00:00:00:00 to 00:00:14:00, MLI-OTP-0012-2071, at 00:00:37:00 to 00:00:45:00, and MLI-OTP-0009-1749, at 00:11:24:00 to 00:12:32:00). He also openly and coherently responded to questions concerning his conduct in his investigative missions in other regions in a manner that did not undermine his investigative methods and work ethics (*see* P-0007: T-019, pp. 74, 78-79), and was open with respect to any potential limitations resulting from his profession and methodology (*see* P-0007: T-019, p. 63). The witness explained his motivation for going to Timbuktu (P-0007: T-019, p. 7) and provided a clear explanation and context with respect to his reference to the Taliban (P-0007: T-019, pp. 52-53). His observations further appeared objective and neutral and the witness himself specified that they did not imply any judgment from his side (*see* P-0007: T-019, p. 62). In this context, the Chamber does not consider that the witness's testimony that journalists wanted to go to Timbuktu because it had been captured, and was controlled, by 'jihadist' groups, or his drawing of parallels with the Taliban, undermines his overall credibility or the reliability of his evidence (*contra* [Defence Final Brief](#), para. 156, *referring to* P-0007: T-019, pp. 10, 52, 62). The witness further testified that he gathered information from local people with whom he spoke once on site (*see* P-0007: T-019, p. 10). The Chamber considers that the Defence's submission about international journalists' reliance on 'fixers' ([Defence Final Brief](#), para. 151) misrepresents the witness's evidence on the matter. The witness clearly explained the meaning of the term 'fixer', the procedure to identify such a person, and the role such a person would play. He also described the manner in which he collected information which was in line with what he described as a 'very standard journalist procedure' (P-0007: T-019, p. 13). Additionally, while the witness stated that journalists were dependent on fixers for local knowledge and the contacts needed to get relevant information when arriving in a new country, fixers were used to enable access to the right persons for journalists to conduct their investigative work (P-0007: T-019, pp. 10-13, 47-48). As regards evidence on the record suggesting that members of the Islamic Court 'left nothing behind' at the *Hôtel La Maison*, but for furniture and some books, and that others searched the premises prior to the witness's arrival there (*see* [Defence Final Brief](#), para. 304, *referring to* P-0150: T-112, p. 19; video MLI-OTP-0009-1749, at 00:11:25:00 to 00:12:31:00, transcript MLI-OTP-0028-0839, at 0847; D-0240: T-191, pp. 24-25. *See also* D-0240's statement MLI-D28-0006-4222-R01, at 4229), the Chamber notes that the evidence of P-0150 and D-0240 to this effect is not based on their personal observations of the *Hôtel La Maison*. In addition, as discussed below, P-0150 authenticated in detail many of the items collected or photographed at the *Hôtel La Maison* by Harald Doornbos and witnesses Eric Baccard and P-0057. The Chamber accordingly considers that P-0150's limited testimony on this point cited by the Defence must be read in conjunction with his detailed authentication of many of the items found at the *Hôtel La Maison* by Harald Doornbos, Eric Baccard and P-0057. Finally, in any event, the Chamber recalls that Harald Doornbos found the documents in an item of furniture – a cabinet – which also contained some books and notebooks (P-0007: T-019, p. 22, *referring to* photograph MLI-OTP-0001-7604). The Chamber accordingly considers that the aforementioned evidence is insufficient to cast doubt on the credible documented account of Harald Doornbos in relation to his collection and photographing of documents at the *Hôtel La Maison*. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Harald Doornbos to be a generally credible and reliable witness.



explained that he took some original documents from a bank which served as the headquarters of the Islamic Police,<sup>731</sup> and that he took photographs of the premises and of the documents he found therein.<sup>732</sup> At the *Hôtel La Maison*,<sup>733</sup> which he described as the seat of the former ‘*Sharia Court*’,<sup>734</sup> the witness notably testified that he and a colleague found things lying on the ground floor and found many documents in a cabinet on the first floor, most of which were in Arabic.<sup>735</sup> The witness took some pictures, both of the documents and the building, and they took some of the documents with them.<sup>736</sup> The Chamber considers that there is no doubt that Harald Doornbos collected the documents at the BMS<sup>737</sup> and at the *Hôtel La Maison* in January-February 2013.

336. As elaborated in the Chamber’s factual findings below, many of the documents collected by Harald Doornbos were also recognised by other witnesses as being documents emanating from the Islamic Police, the Islamic Court or Ansar

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<sup>731</sup> P-0007: T-019, pp. 9-14, 20. The witness explained that after his arrival in Timbuktu, he went together with a colleague to the bank; they were told that the bank was the headquarters of the Islamic Police, they found it locked and asked for a key; someone opened it for them (P-0007: T-019, pp. 9, 11, 60).

<sup>732</sup> P-0007: T-019, pp. 9-15. During his testimony, the witness recognised having taken a photograph showing the inside of the police station and the way the documents were lying there, including one or two documents he took from there to provide some context (P-0007: T-019, p. 14, *referring to* MLI-OTP-0001-7247). In this regard, the Chamber is satisfied with the witness’s explanation that the fact that he had at least some originals with him indicated that he personally visited the place and did not create the pictures in any other manner (*see* P-0007: T-019, p. 60).

<sup>733</sup> The witness explained that he went there a few days after his visit to the bank with a colleague; it was closed, so they asked for the key on the street and they opened the door; the place ‘looked pretty empty’ (P-0007: T-019, pp. 9-10, 20-21).

<sup>734</sup> P-0007: T-019, pp. 9, 20.

<sup>735</sup> P-0007: T-019, p. 9. Harald Doornbos also testified that there were many more documents there than at the bank (P-0007: T-019, pp. 9-10, 21). He testified that with the help of his colleague who spoke and read Arabic, he and his colleague concluded that the documents were papers of the Islamic Court (P-0007: T-019, p. 10).

<sup>736</sup> P-0007: T-019, pp. 10, 20, 24. *See also* P-0007: T-019, p. 72. Harald Doornbos recognised having taken photograph MLI-OTP-0001-7328 which was taken from the first floor and which shows the courtyard of the *Hôtel La Maison* (P-0007: T-019, p. 21). He also recognised photograph MLI-OTP-0001-7604 showing the cabinet from which he took the documents (P-0007: T-019, p. 22).

<sup>737</sup> The Chamber notes that the witness referred to the bank as ‘BNS, BNK bank or something’, and stated that he did not remember the exact name of the bank (P-0007: T-019, p. 11). Noting that he recognised the bank on photograph MLI-OTP-0001-7303 (P-0007: T-019, p. 12), which is the same building identified by other witnesses as the BMS (*see e.g.* P-0055 and P-0057’s report MLI-OTP-0041-0426, at 0437, 0439; P-0603: T-126, p. 14, *referring to* MLI-OTP-0048-0729), the Chamber is satisfied that the place referred to by the witness is the BMS. As elaborated below, many of the documents collected by the witness were also recognised as being documents emanating from the Islamic Police or the Islamic Court or Ansar Dine/AQIM by other witnesses or also the accused himself. The Chamber also notes its findings below that the BMS and the *Hôtel La Maison* were headquarters for the Islamic Police and the Islamic Court for periods of time during the period of the charges (*see* paragraphs 558, 595 below).

Dine/AQIM.<sup>738</sup>

337. Harald Doornbos further testified that he kept the documents and pictures taken in his control until he handed them to the Prosecution.<sup>739</sup> In light of his testimony, the Chamber is satisfied that he transmitted the documents to the Prosecution all together, without any selection or alteration by himself or another person.<sup>740</sup> In this regard, the Chamber notes that Xavier Laroche (P-0102)<sup>741</sup> processed, specified and sealed the material collected by Harald Doornbos,<sup>742</sup> and that

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<sup>738</sup> In addition, the Chamber notes that unsigned and unstamped versions of several Islamic Court judgments corresponding to documents photographed by Harald Doornbos were retrieved from [REDACTED], *see e.g.* documents MLI-OTP-0068-4779, MLI-OTP-0068-4736, MLI-OTP-0068-4712, MLI-OTP-0068-4781, MLI-OTP-0068-4789, MLI-OTP-0068-4705, MLI-OTP-0068-4716; *see also* the Chamber's discussion of P-0150's identification of these documents and their relationship to versions collected by Harald Doornbos (respectively documents MLI-OTP-0001-7413, MLI-OTP-0001-7487, MLI-OTP-0001-7465, MLI-OTP-0001-7413, MLI-OTP-0001-7482, MLI-OTP-0001-7473, MLI-OTP-0001-7461) in the relevant footnotes in section III below. *See also* P-0150: T-091, pp. 50-54, 57-59; T-102, pp. 56-63; MLI-REG-0001-0049; P-0075's report, MLI-OTP-0076-0442-R01, at 0502-0504. Noting this correspondence the Chamber dismisses the Defence submission that files from [REDACTED] cannot be relied upon in this context due to the absence of sufficient digital integrity and reliability ([Defence Final Brief](#), para. 305; ICC-01/12-01/18-1866-Conf-Anx4).

<sup>739</sup> P-0007: T-019, p. 26. Harald Doornbos testified that he kept the documents taken in one of his bags in his hotel room (P-0007: T-019, pp. 24-25). The photographs were also saved on the SD card of his camera, and then he put them on an external hard drive (P-0007: T-019, p. 25). He took the hard copies and pictures with him when he left Mali in February 2013; and when he returned to the Netherlands, he published articles, appeared on Dutch television and was approached by the Court as to whether he was willing to share the documents, to which he agreed (P-0007: T-019, p. 25). He confirmed that he never altered the documents and as far as he knew no one else was able to do so (P-0007: T-019, p. 26). The Chamber notes that after returning from Mali, he provided the documents taken from the bank to Prosecution investigators in sealed bags, and signed for them (P-0007: T-019, p. 15). The bags were submitted into evidence under MLI-OTP-0001-7187 and MLI-OTP-0001-7191. Harald Doornbos recognised his signature on the transmission forms (P-0007: T-019, pp. 27-29, *referring to* MLI-OTP-0001-7189 and MLI-OTP-0001-7191), and confirmed that the evidence bag was sealed in front of him (P-0007: T-019, p. 27, *referring to* MLI-OTP-0001-7191). The SD card was also put in a sealed bag (P-0007: T-019, p. 28). During his testimony, he recognised a picture depicting the seal, his name, the date of 20 February 2013 and his signature (P-0007: T-019, p. 16, *referring to* MLI-OTP-0001-7187).

<sup>740</sup> The witness also convincingly explained that he did not in any way alter the pictures on his SD card and would not even know how to do it (*see* P-0007: T-019, p. 76).

<sup>741</sup> Xavier Laroche (*see* P-0102: T-023; P-0102's reports MLI-OTP-0025-0365, MLI-OTP-0029-0503 and MLI-OTP-0063-0037 introduced through Rule 68(3) of the Rules) worked as a forensic expert for the Forensic Science Section of the Prosecution, and an expert in ballistics, from 2015 until 2019 (P-0102: T-023, p. 7; MLI-OTP-0025-0365, at 0370; MLI-OTP-0056-0432, at 0437). He appeared before the Chamber as an expert and testified about expert reports he prepared relating to crime scene investigations (MLI-OTP-0029-0503; MLI-OTP-0063-0037), ballistics (MLI-OTP-0025-0365; *see also* MLI-OTP-0074-0575), and processing sealed material (MLI-OTP-0056-0432; MLI-OTP-0073-0809; MLI-OTP-0074-1909). The witness's testimony reflects that he investigated all sites, independent of any particular charges and the witness made clear to the Chamber that in preparing his ballistic reports he studied the weapon and not the person (P-0102: T-023, p. 81). The witness's testimony in relation to the preparation of reports on sealed evidence was clear and concise. The Chamber does not consider that the Defence's suggestions about the witness's potential personal interest or conflict of interest in the case weakened his credibility (P-0102: T-023, pp. 35-36). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Xavier Laroche to be a generally credible and reliable witness and relies on his expert reports.

<sup>742</sup> P-0102: T-023, pp. 20-22; P-0102's report MLI-OTP-0056-0432.

Sabina Zanetta (P-0188)<sup>743</sup> also assisted with the processing of this material. Having regard to all of the foregoing, the Chamber finds meritless the Defence's argument that that Harald Doornbos is an unreliable source as regards the documents he collected and photographed.<sup>744</sup>

## 2. Items collected by Eric Baccard (P-0055) and P-0057

338. Beside the documents collected by Harald Doornbos, Eric Baccard<sup>745</sup> and P-0057<sup>746</sup> also testified about collecting material from the BMS and the *Hôtel La*

<sup>743</sup> See P-0188's reports MLI-OTP-0002-0008 and MLI-OTP-0074-1888.

<sup>744</sup> [Defence Final Brief](#), para. 304.

<sup>745</sup> Eric Baccard (*see* P-0055: T-123 to T-124; P-0055's reports MLI-OTP-0039-0607 and MLI-OTP-0056-0026; P-0055 and P-0057's reports MLI-OTP-0029-1138, MLI-OTP-0041-0426 and MLI-OTP-0060-1920 introduced through Rule 68(3) of the Rules), former chief of the Forensic Science Section of the Prosecution, took part in a mission for the Prosecution with P-0057 and others in Timbuktu in June 2013 and visited, examined and documented different sites, notably the BMS and the *Hôtel La Maison*, in addition to mausoleums and monuments. He testified about reports he prepared on these subjects, including reports co-authored with P-0057. The Chamber finds the witness's testimony very precise and observes that he clearly indicated what he remembered, saw, or knew and what he did not (*see e.g.* P-0055: T-123, pp. 47, 49, 59-60). The witness identified during his in-court testimony sealed bags containing documents that were collected at relevant locations during his mission with P-0057 including MLI-OTP-0005-0025 (P-0055: T-123, pp. 13-14, 25-26; T-124, pp. 12-16). The Chamber notes that the reports authored and co-authored by the witness clearly and in detail set out the methodology and steps undertaken, including noting any limitations (*see e.g.* MLI-OTP-0041-0426 and MLI-OTP-0060-1920). The Chamber considers that some lapse of time between the mission and preparation of some reports and the fact that clarifications were subsequently made to the reports is entirely understandable and finds completely speculative the Defence suggestion that the reports were moulded over time to fit the Prosecution's case (*contra* ICC-01/12-01/18-1867-Conf-Anx1). For the same reasons as noted above in its assessment of the credibility of Harald Doornbos, the Chamber considers that the evidence on the record suggesting that members of the Islamic Court 'left nothing behind' at the *Hôtel La Maison*, but for furniture and some books, and that others searched the premises prior to the witness's arrival there, is insufficient to cast doubt on the credible and documented account of Eric Baccard in relation to his collection of documents with P-0057 at the *Hôtel La Maison* (*see* [Defence Final Brief](#), para. 304; *see also* ICC-01/12-01/18-1867-Conf-Anx1). Similarly, having regard to the overall coherence of the witness's testimony and reports, as well as – as set out below – the independent authentication by other witnesses, including P-0150, of many items collected by Eric Baccard (and P-0057), and the connection between items they collected and those collected by Harald Doornbos at the *Hôtel La Maison* earlier in 2013, the Chamber finds meritless the Defence's submissions that (i) there are doubts as to the reliability or legality of the collection of documents by Eric Baccard and P-0057; and (ii) items they collected are not reliable and may have been tampered with ([Defence Final Brief](#), paras 304, 306; *see also* ICC-01/12-01/18-1867-Conf-Anx1). In this context, the Chamber also finds that none of the issues raised by the Defence in respect of the reports (including allegations of inconsistencies in dates and times of collection of evidence bags, reports, and metadata of images; lack of information concerning individuals present during the collection of documents; and issues with methodology, *see* ICC-01/12-01/18-1867-Conf-Anx1) is significant or impacts the credibility or reliability of the witness's reports. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Eric Baccard to be a generally credible and reliable witness and relies on the reports he authored and co-authored with P-0057.

<sup>746</sup> P-0057 (*see* P-0057: T-021 to T-022; P-0055 and P-0057's reports MLI-OTP-0029-1138, MLI-OTP-0041-0426 and MLI-OTP-0060-1920 introduced through Rule 68(3) of the Rules), a French forensic police officer (P-0057: T-021, pp. 45-46), took part in a mission for the Prosecution with Eric Baccard and others in Timbuktu in June 2013 and visited, examined and documented different sites, notably the

*Maison* during their mission for the Prosecution in Timbuktu in June 2013.<sup>747</sup>

Notably, the witnesses testified that they found documents in Arabic in a room on the first floor of the *Hôtel La Maison* in a chest of drawers.<sup>748</sup>

339. As elaborated in the Chamber's factual findings below, many of the documents collected by Eric Baccard and P-0057 were recognised as documents emanating from Ansar Dine/AQIM by other witnesses. In particular, insider witness P-0150 recognised certain material collected by Eric Baccard and P-0057 at the *Hôtel La Maison* as one of the notebooks<sup>749</sup> of the Islamic Court.<sup>750</sup> P-0150 also recognised

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BMS and the *Hôtel La Maison*, in addition to mausoleums and monuments. He testified about reports he prepared on these subjects which he co-authored with Eric Baccard. The Chamber notes that the witness provided clear and precise information in relation to the conduct of the mission and associated investigations, including with respect to the collection of material (e.g. P-0057: T-022, pp. 11-13) and the methodology used to organise the photographs taken (P-0057: T-021, pp. 55-56). While P-0057 clarified that the assessment of possible contamination of the BMS was not part of the mission (P-0057: T-021, pp. 69-71), and openly testified that he could not ascertain at what moment in time certain buildings had been closed (P-0057: T-022, p. 4), as noted above in its assessment of the evidence of Eric Baccard, the Chamber has no doubts about the reliability or legality of Eric Baccard and P-0057's collection of documents (*contra* [Defence Final Brief](#), paras 304, 306). Concerning the accuracy of the photographs taken during the mission, the Chamber notes P-0057's explanation in relation to the temporary malfunction of the camera due to heat, and some failures of the computer due to dust (P-0057: T-021, p. 73), but further observes that P-0057 did not note any distortion or issue with the camera thereafter (P-0057: T-021, pp. 73-74). In addition, as noted above in its assessment of the evidence of Eric Baccard, the reports co-authored by P-0057 clearly and in detail set out the methodology and steps undertaken, including to note any limitations (*see e.g.* MLI-OTP-0041-0426 and MLI-OTP-0060-1920). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0057 to be a generally credible and reliable witness and relies on the reports he co-authored with Eric Baccard.

<sup>747</sup> P-0055 and P-0057's reports MLI-OTP-0041-0426 and MLI-OTP-0060-1920; P-0057: T-021; P-0055: T-123.

<sup>748</sup> Upon instructions from the Prosecution to determine precisely where all the Arabic materials were seized at the *Hôtel La Maison*, Eric Baccard and P-0057 clarified in a supplementary report that the documents and miscellaneous items sealed under evidence bag MLI-OTP-0005-0025 were seized in a chest of drawer (circled on the photograph MLI-OTP-0006-2086) located in a bedroom on the first floor of the *Hôtel La Maison*, between the kitchen and two bathrooms (P-0057: T-021, p. 62, *referring to* P-0055 and P-0057's report MLI-OTP-0060-1920, at 1978). During his testimony, P-0057 recognised a picture showing the drawers from which they took the documents (MLI-OTP-0006-1456), which he testified to taking (P-0057: T-021, p. 60).

<sup>749</sup> The photographs shown to P-0150 are the pages of one of the notebooks that was collected by Eric Baccard and P-0057 from the *Hôtel La Maison* contained in evidence bag MLI-OTP-0005-0025 (*see* P-0055 and P-0057's reports MLI-OTP-0041-0426 and MLI-OTP-0060-1920; P-0055 report MLI-OTP-0056-0026; P-0590 report MLI-OTP-0069-8559).

<sup>750</sup> P-0150: T-104, pp. 20-21, *referring to* photographs MLI-OTP-0055-0209 to MLI-OTP-0055-0268 and their corresponding translations. The Chamber is satisfied of P-0150's authentication of this notebook, noting that the witness explained that most of the notes [REDACTED], and testified that the notebook includes reports and judgments and was usually kept by the judge, [REDACTED] (P-0150: T-104, p. 21). The Chamber accordingly dismisses the Defence objection to these items (*see* ICC-01/12-01/18-1866-Conf and related annexes).

other items collected by Eric Baccard and P-0057 from the *Hôtel La Maison*.<sup>751</sup>

In addition, the Chamber notes the connection between items collected by Eric Baccard and P-0057 during their mission and those collected by Harald Doornbos at the *Hôtel La Maison* earlier in 2013.<sup>752</sup>

340. The Chamber is satisfied that Eric Baccard and P-0057 collected the relevant documents and kept them in their custody until handing them over to the Prosecution, without any selection or alteration. The Chamber further notes that Xavier Laroche and Kaone Panzirah Mabaka (P-0590) processed items of sealed material collected by Eric Baccard and P-0057.<sup>753</sup> Having regard to all of the foregoing, the Chamber finds meritless the Defence's arguments that Eric Baccard and P-0057 are unreliable sources as regards the documents they collected.<sup>754</sup>

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<sup>751</sup> See e.g. P-0150: T-093, pp. 27-29, referring to MLI-OTP-0055-1813; T-097, pp. 51-52, referring to MLI-OTP-0055-1022; T-098, pp. 25-26, referring to MLI-OTP-0055-1068; T-099, p. 56, referring to MLI-OTP-0055-1024; T-102, p. 32, referring to MLI-OTP-0055-1072. The Chamber notes that MLI-OTP-0055-1813, MLI-OTP-0055-1022, MLI-OTP-0055-1068, MLI-OTP-0055-1024 and MLI-OTP-0055-1072 derive from evidence bag MLI-OTP-0005-0025 collected by Eric Baccard and P-0057 from the *Hôtel La Maison* (see also related evidence bag MLI-OTP-0055-0055) (P-0055 report MLI-OTP-0056-0026; P-0590 reports MLI-OTP-0069-8559 and MLI-OTP-0069-8642).

<sup>752</sup> Notably some of the documents collected by Eric Baccard and P-0057 at the *Hôtel La Maison* are the unsigned and unstamped version of Islamic Court judgments photographed by Harald Doornbos at the *Hôtel La Maison* (see e.g. MLI-OTP-0055-1092 (unsigned and unstamped), translation MLI-OTP-0078-1688 collected by Eric Baccard and P-0057 from the *Hôtel La Maison* (see P-0055 report MLI-OTP-0056-0026; P-0590 reports MLI-OTP-0069-8559 and MLI-OTP-0069-8642) and MLI-OTP-0001-7437 (signed and stamped), translation MLI-OTP-0078-0212 which is a photograph of a document taken by Harald Doornbos at the *Hôtel La Maison* (P-0007: T-019, p. 24). See also MLI-OTP-0055-1096 (unsigned and unstamped), translation MLI-OTP-0055-1096 collected by Eric Baccard and P-0057 from the *Hôtel La Maison* (see P-0055 report MLI-OTP-0056-0026; P-0590 reports MLI-OTP-0069-8559 and MLI-OTP-0069-8642) and MLI-OTP-0001-7488 (signed and stamped), translation MLI-OTP-0078-0376 which is a photograph of a document taken by Harald Doornbos at the *Hôtel La Maison* (P-0007: T-019, p. 24).

<sup>753</sup> P-0102: T-023, pp. 22, 24-25; P-0102 report MLI-OTP-0073-0809; P-0590 report MLI-OTP-0069-8559, annex to the report MLI-OTP-0069-8642, its addendum MLI-OTP-0073-1193, and correction notes MLI-OTP-0080-4538 and MLI-OTP-0080-4468. Recalling the technical nature of Kaone Panzirah Mabaka (P-0590)'s reports, that the collection of the relevant documents themselves was testified to by Eric Baccard and P-0057, and the Chamber's findings on the authenticity of the documents analysed by the witness described in this section, the Chamber finds that none of the issues raised by the Defence in respect of Kaone Panzirah Mabaka's reports, *inter alia*, lapse of time in their preparation, the fact that two documents could not be matched to pre-existing ERNs, and alleged lack of qualifications and experience of Kaone Panzirah Mabaka (see ICC-01/12-01/18-2076-Conf), are significant or impact the credibility or reliability of the witness's reports. The Chamber further notes that Kaone Panzirah Mabaka's technical reports were, in any event, rather peripheral to the Chamber's analysis in the judgment.

<sup>754</sup> [Defence Final Brief](#), paras 304, 306. The Chamber notes that the Defence submission is made in respect of Eric Baccard only but the Chamber equally dismisses it in relation to P-0057 who conducted the mission with Eric Baccard.

### 3. Authentication of Islamic Police reports and similar documents

341. The Chamber notes that most of the Islamic Police reports and similar documents collected or photographed by Harald Doornbos, Eric Baccard and P-0057, are handwritten, signed and stamped with the square stamp of the Islamic Police.<sup>755</sup>
342. Experts P-0620 and P-0621<sup>756</sup> respectively analysed the signatures on some of the abovementioned Islamic Police reports and similar documents collected or photographed by Harald Doornbos, Eric Baccard and P-0057, and also analysed the authenticity of these documents.<sup>757</sup> While Defence expert Nikolaos Kalantzis (D-0501)<sup>758</sup> raised what were in his opinion several issues with the methodology

<sup>755</sup> Notably e.g. MLI-OTP-0001-7549; MLI-OTP-0001-7527; MLI-OTP-0055-1072; MLI-OTP-0055-1068; MLI-OTP-0002-0031 (and different versions MLI-OTP-0053-0064 and MLI-OTP-0053-0066); MLI-OTP-0001-7514; MLI-OTP-0001-7513; MLI-OTP-0001-7560; MLI-OTP-0001-7542; MLI-OTP-0001-7538; MLI-OTP-0001-7522; MLI-OTP-0001-7546; MLI-OTP-0001-7543; MLI-OTP-0002-0021; MLI-OTP-0001-7510; MLI-OTP-0001-7539; MLI-OTP-0001-7515; MLI-OTP-0001-7552; MLI-OTP-0001-7555; MLI-OTP-0001-7563; MLI-OTP-0053-0054 (and different version MLI-OTP-0002-0027); MLI-OTP-0001-7554; MLI-OTP-0001-7525; MLI-OTP-0001-7509 (right hand side).

<sup>756</sup> P-0620 (*see* P-0620: T-033; P-0620 and P-0621's report MLI-OTP-0064-0175, MLI-OTP-0064-0332 introduced through Rule 68(3) of the Rules), a handwriting expert, and P-0621 (*see* P-0621: T-025), an expert in document analysis (*see* P-0620: T-033, pp. 6-7; P-0621: T-025, pp. 6-8), appeared before the Chamber as experts and testified about the joint expert report they prepared analysing the authenticity of certain documents and the signatures thereon (P-0621: T-025, pp. 10, 21; P-0620: T-033, pp. 27-28). Throughout their testimony, both witnesses provided precise and concise answers and showed a clear understanding of the scope of their expertise, explicitly mentioning the purpose and limits of their work, explaining the methodologies employed, and identifying when something was beyond their knowledge or recollection (*see e.g.* P-0620: T-033, pp. 10-12, 22-23, 38, 67, 70; P-0621: T-025, pp. 12-14, 16-18, 27-28, 33). Specifically, the Chamber notes that P-0620 was cognisant of the limitations of photocopied or photographed documents (P-0620: T-033, p. 49; MLI-OTP-0064-0175, at 0246, 0275) and considers that the fact that this general principle is not reiterated in the conclusion of the report does not undermine the veracity of the witness's findings (*contra* [Defence Final Brief](#), para. 307). Further, observing P-0620's decisive statement that she works 'for both exculpatory and incriminating evidence' and bases her expertise exclusively on the graphic elements placed at her disposal (P-0620: T-033, pp. 79-80), the Chamber is unpersuaded that the strength of P-0620's conclusions was artificially inflated due to cognitive bias (*see* [Defence Final Brief](#), para. 307). Moreover, the Chamber observes that P-0620 and P-0621 were, in fact, conservative in their conclusions: some items in respect of which the experts were unable to determine authenticity or that the signature may have been drawn by Mr Al Hassan were authenticated as such by P-0150 or by Mr Al Hassan himself (*see e.g.* MLI-OTP-0001-7514; MLI-OTP-0001-7560; MLI-OTP-0001-7552; MLI-OTP-0001-7555; MLI-OTP-0001-7538; MLI-OTP-0001-7522; MLI-OTP-0001-7546; MLI-OTP-0001-7563; MLI-OTP-0001-7539; MLI-OTP-0001-7515; and P-0620 and P-0621's report MLI-OTP-0064-0175, at 0301-0302). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0620 and P-0621 to be generally credible and reliable witnesses and relies on their expert report. For ease of reference, the Chamber refers to P-0620 and P-0621 together in reference to their report, although it is cognisant of their respective areas of expertise.

<sup>757</sup> For the items analysed, *see* P-0620 and P-0621's reports MLI-OTP-0064-0175, at 0239.

<sup>758</sup> Nikolaos Kalantzis (*see* D-0501: T-176; D-0501's report MLI-D28-0005-9928-R01 introduced through Rule 68(3) of the Rules), an expert in forensic handwriting, appeared before the Chamber as an expert and testified about the expert report he prepared addressing the methodologies employed by P-0620 and P-0621 (D-0501's report MLI-D28-0005-9928-R01; D-0501: T-176, pp. 6-7). The Chamber

employed by P-0620 and P-0621,<sup>759</sup> the Chamber does not consider that these specific challenges undermine P-0620 and P-0621's evidence.<sup>760</sup> The Chamber recalls that the methodology used by P-0620 and P-0621 and the limitations of their work are clearly outlined in their report and elaborated on in their in-court testimony.<sup>761</sup> Further, the Chamber notes that their conclusions are consistent with other evidence. For example, for certain documents<sup>762</sup> where P-0620 concluded that a signature may have been drawn by Mr Al Hassan, the Chamber notes that Mr Al Hassan's signature was also identified by P-0150<sup>763</sup> and/or Mr

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found the witness to be very knowledgeable and observes that he testified with precision and was very careful to stay within the limits of his expertise. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0501 to be a generally credible and reliable witness and relies on his expert report. It nevertheless notes the limitations of his work, namely that he critiqued the methodology of P-0620 and P-0621 and did not carry out any counter analysis of signatures or documents himself.

<sup>759</sup> D-0501's report MLI-D28-0005-9928-R01; D-0501: T-175. The central issues raised by Nikolaos Kalantzis are: (i) unclarity in P-0620 and P-0621's report about a peer review of their work and consequently the risk that their analysis is affected by cognitive bias (also noting that the experts were provided information on Mr Al Hassan's identity and the fact that he had been arrested for war crimes and crimes against humanity); (ii) that some of the conclusions of the experts are based on the examination of non-original material; and (iii) that their analysis is missing a clear scale of the levels of certainty of their conclusions, making evaluation by the reader ambiguous. *See* [Defence Final Brief](#), para. 307.

<sup>760</sup> Apart from the independent corroboration of P-0620 and P-0621's analysis noted above, on the issues raised by Nikolaos Kalantzis, the Chamber recalls that P-0621 confirmed that her section of the report was peer reviewed before she submitted it to the Prosecution in accordance with her organisation's quality control systems (P-0620: T-033, p. 40); that the limitations of working with non-original documents was noted in P-0620 and P-0621's report and emphasised by both experts during oral testimony (P-0620 and P-0621's report MLI-OTP-0064-0175, at 0244, 0301-0302; P-0621: T-025, pp. 12-13; P-0620: T-033, pp. 10, 38, 49-50, 53-54), and further that P-0621 specifically addressed the issue of the risk of cognitive bias during her oral testimony (P-0620: T-033, pp. 79-80). The Chamber also finds P-0621's conclusions, read together with her in-court testimony, to be sufficiently clear on the attribution of certain signatures to the accused.

<sup>761</sup> P-0620 and P-0621's report MLI-OTP-0064-0175, MLI-OTP-0064-0332; P-0620: T-033, pp. 10-12, 22-23, 38, 67, 70; P-0621: T-025, pp. 12-14, 16-18, 27-28, 33.

<sup>762</sup> *See e.g.* MLI-OTP-0001-7549; MLI-OTP-0001-7527 (and different version MLI-OTP-0001-7528); MLI-OTP-0055-1072; MLI-OTP-0055-1068; MLI-OTP-0002-0031 (and different versions MLI-OTP-0053-0064 and MLI-OTP-0053-0066); MLI-OTP-0002-0021 (and different version MLI-OTP-0053-0036); and MLI-OTP-0001-7510. *See* relevant footnotes regarding these documents in section III below.

<sup>763</sup> The Chamber relies on P-0150's identification of the signature of Mr Al Hassan on various documents shown to him in court. On the one hand, as noted by the Defence, P-0150 acknowledged that in an early interview with the Prosecution, he did not remember Mr Al Hassan's signature before being shown a document with Adama's and Mr Al Hassan's names written next to two signatures (P-0150: T-111, pp. 6-10; *see* [Defence Final Brief](#), para. 307). However, on the other hand, the Chamber notes that the witness went on to clarify and clearly explained the basis of his recognition of Mr Al Hassan's signature in court. He clarified, in the context of this interview, that although it was a long time ago and he had not been able to distinguish between Mr Al Hassan's, Khaled's or Adama's signatures, when he saw the document which distinguished the signatures between them, he was able to overcome this and distinguish between the different signatures (P-0150: T-111, pp. 9-10). P-0150 also noted that he did not know the signature of Mr Al Hassan before the start of the events, [REDACTED]; when the Prosecution showed him the signature, he quickly remembered that was the way Mr Al Hassan signed [REDACTED]; and he also remembered that he went to Mr Al Hassan's office in the Islamic Police headquarters and saw similar

Al Hassan identified his own signature and handwriting.<sup>764</sup> Similarly, certain items identified as authentic by P-0621 were also likewise authenticated by P-0150 or Mr Al Hassan himself.<sup>765</sup> The Chamber therefore considers the analysis conducted by P-0620 and P-0621 on the authenticity of certain items and the accused's signature sound and sufficiently clear, and relies on it where relevant, including where P-0620 and P-0621's evidence is the only specific evidence that a signature on a particular item may have been drawn by the accused.<sup>766</sup>

343. In addition, as noted above, many of the Islamic Police reports and similar documents collected or photographed by Harald Doornbos, or Eric Baccard and P-0057 were authenticated as being reports emanating from the Islamic Police

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documents there (P-0150: T-093, pp. 10-11; T-111, pp. 9-10; *see also* T-092, p. 64). The Chamber also notes that Mr Al Hassan himself recognised his own signature on a number of documents identified by P-0150 as bearing Mr Al Hassan's signature as noted below. The Chamber is satisfied with the explanations given by P-0150 on his identification of Mr Al Hassan's signature and dismisses the Defence argument that P-0150's evidence in this respect cannot be relied upon or that it is fundamentally tainted by cognitive bias introduced by the Prosecution's investigative practices (*contra* [Defence Final Brief](#), para. 307).

<sup>764</sup> The Chamber relies on Mr Al Hassan's recognition of his handwriting and signature on documents in his statements. The Chamber considers that there is no doubt on the credibility and reliability of his account in this respect, noting that Mr Al Hassan repeatedly and consistently recognised his handwriting and signature on many documents on many different occasions throughout the period of his interviews and often described in detail his recollections of the various cases referred to in the documents, including to clearly note where he *did not* remember some or any details about a given case: *see e.g.* MLI-OTP-0060-1466, at 1450-1452 and MLI-OTP-0060-1453, at 1454, *referring to* MLI-OTP-0001-7549; MLI-OTP-0060-1511, at 1522-1533, *referring to* MLI-OTP-0001-7514; MLI-OTP-0060-1605, at 1606-1607, *referring to* MLI-OTP-0001-7560; MLI-OTP-0060-1605, at 1617, *referring to* MLI-OTP-0001-7552 (*see also* MLI-OTP-0062-0988, at 0990-0991, *referring to* MLI-OTP-0001-7552); MLI-OTP-0060-1453, at 1471-1473, *referring to* MLI-OTP-0001-7555; MLI-OTP-0060-1453, at 1468-1471, *referring to* MLI-OTP-0001-7542; MLI-OTP-0060-1484, at 1507-1508, *referring to* MLI-OTP-0001-7538; MLI-OTP-0060-1511, at 1512-1518, *referring to* MLI-OTP-0001-7528; MLI-OTP-0060-1631, at 1640-1641, *referring to* MLI-OTP-0001-7522; MLI-OTP-0060-1423, at 1435-1437 and MLI-OTP-0060-1580, at 1592, *referring to* MLI-OTP-0001-7546; MLI-OTP-0060-1423, at 1439-1440, *referring to* MLI-OTP-0002-0021; MLI-OTP-0062-1037, at 1045-1049, *referring to* MLI-OTP-0001-7563; MLI-OTP-0060-1453, at 1456-1458, *referring to* MLI-OTP-0002-0021; MLI-OTP-0060-1580, at 1599, *referring to* MLI-OTP-0001-7543; MLI-OTP-0060-1539, at 1540-1543, *referring to* MLI-OTP-0002-0031.

<sup>765</sup> *See e.g.* MLI-OTP-0055-1072; MLI-OTP-0055-1068; MLI-OTP-0002-0031 (and different versions MLI-OTP-0053-0064 and MLI-OTP-0053-0066); MLI-OTP-0002-0021 (and different version MLI-OTP-0053-0036). *See* relevant footnotes regarding these documents in section III below.

<sup>766</sup> *See e.g.* MLI-OTP-0001-7511; MLI-OTP-0001-7541; MLI-OTP-0001-7548; MLI-OTP-0002-0020 (and different version MLI-OTP-0053-0030); MLI-OTP-0002-0034 (and different versions MLI-OTP-0053-0076 and MLI-OTP-0053-0078); MLI-OTP-0002-0037 (and different versions MLI-OTP-0053-0088 and MLI-OTP-0053-0090); MLI-OTP-0002-0038 (and different versions MLI-OTP-0053-0094 and MLI-OTP-0053-0096); MLI-OTP-0002-0040 (and different version MLI-OTP-0053-0102); MLI-OTP-0001-7550; MLI-OTP-0001-7547; MLI-OTP-0002-0023 (and different versions MLI-OTP-0053-0040 and MLI-OTP-0053-0042); MLI-OTP-0002-0029 (and different versions MLI-OTP-0053-0058 and MLI-OTP-0053-0060); MLI-OTP-0002-0032 (and different versions MLI-OTP-0053-0070 and MLI-OTP-0053-0072); MLI-OTP-0055-1070; MLI-OTP-0055-1074; MLI-OTP-0055-1082; MLI-OTP-0055-1173; MLI-OTP-0055-1179 (*see* P-0620 and P-0621's report MLI-OTP-0064-0175, at 0301-0302).



and written and/or signed by the accused by P-0150 or the accused himself.<sup>767</sup>

The Chamber is accordingly satisfied that those documents so authenticated constitute reports and similar documents emanating from the Islamic Police which were written and signed by Mr Al Hassan.<sup>768</sup>

344. As to certain reports and items *not* authenticated by the experts, an insider or Mr Al Hassan, the Chamber nevertheless infers that they are Islamic Police reports or similar items based on their similarity with the aforementioned reports: notably, the items in question were collected at the *Hôtel La Maison* and are very close in form and type to the aforementioned documents, being similarly handwritten, signed and stamped with the square stamp of the Islamic Police.<sup>769</sup>

#### 4. Authentication of Islamic Court judgments and similar documents

345. As to the authenticity of Islamic Court judgments and similar documents collected or photographed by Harald Doornbos, or Eric Baccard and P-0057 from

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<sup>767</sup> See e.g. MLI-OTP-0001-7549; MLI-OTP-0001-7527; MLI-OTP-0055-1072; MLI-OTP-0055-1068; MLI-OTP-0002-0031 (and different versions MLI-OTP-0053-0064 and MLI-OTP-0053-0066); MLI-OTP-0001-7514; MLI-OTP-0001-7513; MLI-OTP-0001-7560; MLI-OTP-0001-7542; MLI-OTP-0001-7538; MLI-OTP-0001-7522; MLI-OTP-0001-7546; MLI-OTP-0001-7543; MLI-OTP-0002-0021; MLI-OTP-0001-7510; MLI-OTP-0001-7539; MLI-OTP-0001-7515; MLI-OTP-0001-7552; MLI-OTP-0001-7555; MLI-OTP-0001-7563; MLI-OTP-0053-0054 (and different version MLI-OTP-0002-0027); MLI-OTP-0001-7509 (right hand side), MLI-OTP-0002-0031. See relevant footnotes regarding these documents in section III below. As noted above, the Chamber relies on the authentication of Mr Al Hassan's handwriting and signature by Mr Al Hassan himself.

<sup>768</sup> For those reports and items where only Mr Al Hassan's *signature* was authenticated by either P-0150 and/or expert P-0620, the Chamber has inferred that Mr Al Hassan also *wrote* the document, based on the documents' similarity with other reports and items recognised by the accused as being in his own handwriting: see notably MLI-OTP-0055-1072; MLI-OTP-0055-1068; MLI-OTP-0001-7511 (right hand side); MLI-OTP-0001-7541; MLI-OTP-0001-7548; MLI-OTP-0002-0020; MLI-OTP-0002-0034; MLI-OTP-0002-0037; MLI-OTP-0002-0038; MLI-OTP-0002-0040; MLI-OTP-0001-7539 (right hand side); MLI-OTP-0001-7547; MLI-OTP-0001-7515; MLI-OTP-0002-0023; MLI-OTP-0002-0029; MLI-OTP-0002-0031; MLI-OTP-0002-0032; MLI-OTP-0055-1070 (left hand side); MLI-OTP-0055-1074; MLI-OTP-0055-1082 (left hand side); MLI-OTP-0055-1173 (left hand side); MLI-OTP-0055-1179 compared with items commented on by Mr Al Hassan e.g. MLI-OTP-0001-7514 (right hand side); MLI-OTP-0001-7549; MLI-OTP-0001-7514 (left hand side); MLI-OTP-0001-7560; MLI-OTP-0001-7552; MLI-OTP-0001-7555; MLI-OTP-0001-7542; MLI-OTP-0001-7538; MLI-OTP-0001-7528 (left hand side); MLI-OTP-0001-7522; MLI-OTP-0001-7546; MLI-OTP-0002-0021; MLI-OTP-0001-7563; MLI-OTP-0002-0021; MLI-OTP-0002-0027; MLI-OTP-0001-7509 (right hand side), MLI-OTP-0002-0031. See relevant footnotes regarding these documents in section III below). *Contra* [Defence Final Brief](#), paras 304-307.

<sup>769</sup> Notably MLI-OTP-0001-7554; MLI-OTP-0001-7525; MLI-OTP-0001-7573 (right hand side); MLI-OTP-0001-7508; MLI-OTP-0001-7519; MLI-OTP-0001-7523 (right hand side); MLI-OTP-0001-7540 (right hand side); MLI-OTP-0001-7551; MLI-OTP-0001-7562 (right hand side); MLI-OTP-0001-7564 (right hand side); MLI-OTP-0001-7569; MLI-OTP-0001-7571 (right hand side); MLI-OTP-0001-7553 (right hand side); P-0007: T-019, p. 24. *Contra* [Defence Final Brief](#), paras 304-307.

the *Hôtel La Maison*,<sup>770</sup> in addition to what is already stated above in this section, the Chamber notes that the majority of these documents are typewritten on a single, individual page, showing the same or similar formal features, as described below.

346. Most of these individual documents indicate that they emanate from the Judicial Council of the Tombouctou Islamic Court, presided over by Sheikh Mohamed Bin-el-Houssein, a.k.a Houka Houka.<sup>771</sup> They typically further include a date, a case number as well as a signature which insider witnesses P-0150 and P-0626 confirmed on many of the documents as belonging to Judge Houka Houka.<sup>772</sup> In addition, they typically include two rectangular<sup>773</sup> or round<sup>774</sup> stamps from the ‘*Justice Islamique*’. The top of the documents further generally includes a reference to ‘Ansar Dine’ and the text ‘In the name of Allah, the Lord of mercy, the Giver of mercy’, and the bottom generally includes the text ‘Allah is the

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<sup>770</sup> Notably e.g. MLI-OTP-0001-7490; MLI-OTP-0001-7431; MLI-OTP-0001-7430; MLI-OTP-0001-7425; MLI-OTP-0001-7474; MLI-OTP-0001-7413; MLI-OTP-0001-7411; MLI-OTP-0001-7487; MLI-OTP-0001-7482; MLI-OTP-0001-7480; MLI-OTP-0001-7478; MLI-OTP-0001-7476; MLI-OTP-0001-7475; MLI-OTP-0001-7473; MLI-OTP-0001-7472; MLI-OTP-0001-7470; MLI-OTP-0001-7468; MLI-OTP-0001-7465; MLI-OTP-0001-7461; MLI-OTP-0001-7460; MLI-OTP-0001-7456; MLI-OTP-0001-7437; MLI-OTP-0001-7434; MLI-OTP-0001-7424; MLI-OTP-0001-7419; MLI-OTP-0001-7489; MLI-OTP-0001-7429; MLI-OTP-0001-7481; MLI-OTP-0001-7471; MLI-OTP-0001-7483; MLI-OTP-0001-7469; MLI-OTP-0001-7428; MLI-OTP-0001-7488; MLI-OTP-0001-7486; MLI-OTP-0001-7459; MLI-OTP-0001-7441; MLI-OTP-0001-7438; MLI-OTP-0001-7432; MLI-OTP-0001-7417; MLI-OTP-0001-7484. See also e.g. MLI-OTP-0001-7492.

<sup>771</sup> The Chamber notes that translations of the different judgments refer to ‘Sheikh Mohamed Bin-el-Houssein, a.k.a Hakuhaka’ and considers it sufficiently clear that the name ‘Hakuhaka’ refers to Houka Houka noting that P-0150 and P-0626 confirmed that a number of these documents were signed by Houka Houka (see relevant footnotes regarding these documents in section III below). The Chamber also notes P-0150’s testimony that ‘bin’ is an Arab concept followed by those who studied for example in Libya or Saudi Arabia, so for example Mohamed Moussa could as well be Mohamed Bin-Moussa (P-0150: T-098, p. 28). The Chamber notes that Houka Houka was also known as Houka Houka El-Husseini, Muhammad Ibn Al-Husayn and Muhamed Alhousseyni (P-0150: T-089, p. 12). For the purposes of this judgment, the Chamber refers to him as Houka Houka.

<sup>772</sup> See relevant footnotes regarding these documents in section III below. The Chamber considers that both witnesses are in a good position to identify the signature of Houka Houka given their respective roles within Ansar Dine/AQIM (see sections B.2.a)iii and B.2.a)v above). In addition, in this regard the Chamber notes that P-0150 testified that he knew Houka Houka’s signature ‘just like [he knew his] own signature’ [REDACTED] (P-0150: T-095, p. 19). *Contra* [Defence Final Brief](#), para. 307.

<sup>773</sup> See e.g. MLI-OTP-0001-7489 (another version of this document, MLI-OTP-0068-4693, is dated and contains the case number, but is written on a blank paper without any stamps or signature); MLI-OTP-0001-7487; MLI-OTP-0002-0055; MLI-OTP-0002-0054; MLI-OTP-0001-7478; MLI-OTP-0001-7476; MLI-OTP-0001-7475; MLI-OTP-0001-7473; MLI-OTP-0001-7472; MLI-OTP-0001-7470; MLI-OTP-0001-7469; MLI-OTP-0002-0082; MLI-OTP-0001-7465; MLI-OTP-0001-7461; MLI-OTP-0001-7460; MLI-OTP-0001-7456; MLI-OTP-0001-7437 (left hand side); MLI-OTP-0001-7437 (right hand side); MLI-OTP-0001-7434.

<sup>774</sup> See e.g. MLI-OTP-0001-7425; MLI-OTP-0001-7412; MLI-OTP-0001-7419; MLI-OTP-0001-7413. On the different stamps, see e.g. P-0150: T-095, pp. 25-26 (identifying the stamp on MLI-OTP-0001-7412 as the new, and last, stamp of the Islamic Court).

Arbiter of success. Praise to be Allah, Lord of the worlds’.

347. Most of the documents can be seen as photographed on top of the right<sup>775</sup> or left<sup>776</sup> hand pile of an open pile of documents,<sup>777</sup> and, on a number of pictures, the documents on the upside down pile appear to include stamps of the same format and approximately the same location as the document in question.<sup>778</sup> For some documents, the open pile of documents is seen as lying on a carpet with a red, green and yellow flower pattern,<sup>779</sup> or a red carpet with yellow leaves,<sup>780</sup> both which were identified by witnesses as carpets of the Islamic Court.<sup>781</sup> Some documents are also photographed lying on a yellow paper folder.<sup>782</sup>
348. In addition, as noted above, the Chamber observes that many of the aforementioned documents were authenticated by insider witnesses P-0150 and P-0626 as being judgments rendered by the Islamic Court.
349. Noting that all the documents discussed above were collected from the *Hôtel La Maison*, are dated, stamped and signed, contain a case number and indicate that they emanate from the Islamic Court, presided over by Houka Houka, and include references to Ansar Dine and Islamic religion, the Chamber is satisfied that the documents are what they purport to be, namely written judgments rendered by the Islamic Court established by Ansar Dine/AQIM in Timbuktu in 2012-2013.<sup>783</sup>
350. In addition to the type-written judgments discussed above, the evidence includes at least nine handwritten judgments or related documents. Specifically: (i) three

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<sup>775</sup> See e.g. MLI-OTP-0001-7489; MLI-OTP-0001-7487; MLI-OTP-0001-7480; MLI-OTP-0001-7478; MLI-OTP-0001-7476; MLI-OTP-0001-7475; MLI-OTP-0001-7473; MLI-OTP-0001-7472; MLI-OTP-0001-7470; MLI-OTP-0001-7469; MLI-OTP-0001-7465; MLI-OTP-0001-7461; MLI-OTP-0001-7460.

<sup>776</sup> See e.g. MLI-OTP-0001-7437 (right hand side); MLI-OTP-0001-7434; MLI-OTP-0001-7419; MLI-OTP-0001-7425; MLI-OTP-0001-7413.

<sup>777</sup> One document (MLI-OTP-0001-7456) can be seen photographed on top of a pile of documents which is lying on a paper displayed horizontally.

<sup>778</sup> See e.g. MLI-OTP-0001-7425; MLI-OTP-0001-7413.

<sup>779</sup> See e.g. MLI-OTP-0001-7469; MLI-OTP-0001-7470; MLI-OTP-0001-7472; MLI-OTP-0001-7473.

<sup>780</sup> See e.g. MLI-OTP-0001-7460, MLI-OTP-0001-7461.

<sup>781</sup> Regarding the carpet with the red, green and yellow flower pattern, P-0150 identified this as the carpet of the Islamic Court of Timbuktu in the background of MLI-OTP-0001-7469 (P-0150: T-099, pp. 8-9). Regarding the red carpet with yellow leaves, P-0150 identified this as the carpet of the Islamic Court of Timbuktu in the background of MLI-OTP-0001-7513 (P-0150: T-095, p. 30). The red carpet with yellow leaves can also be seen in video recording MLI-OTP-0018-0289 which P-0065 also recognises as being ‘at the tribunal’ (P-0065: T-042, pp. 51, 53).

<sup>782</sup> See e.g. MLI-OTP-0001-7437 (left hand side); MLI-OTP-0001-7434; MLI-OTP-0001-7419.

<sup>783</sup> *Contra* [Defence Final Brief](#), paras 304-307.

of these handwritten judgments are written in black-ink text on the same page on the right hand side of a notebook;<sup>784</sup> (ii) a fourth handwritten judgment appears in black-ink text on the right hand side of a notebook;<sup>785</sup> (iii) a fifth handwritten judgment appears in black-ink text on the right hand side of a notebook;<sup>786</sup> (iv) the sixth handwritten judgment appears in black-ink text in a notebook;<sup>787</sup> and (v) the seventh, eighth and ninth handwritten documents also appear in black-ink text in a notebook.<sup>788</sup> In all instances the notebook was photographed lying on the red carpet with yellow leaves by Harald Doornbos at the *Hôtel La Maison*,<sup>789</sup> and appears to be the same notebook in each case. One of the judgments was identified as a handwritten version of an Islamic Court judgment by P-0150,<sup>790</sup> [REDACTED].<sup>791</sup> Another of the handwritten judgments specifically refers to ‘[TRANSLATION] the judge’.<sup>792</sup> In addition, another page of what appears to be the same notebook photographed by Harald Doornbos at the *Hôtel La Maison* includes the name of the judge, Houka Houka, as well as the names of other members of the Islamic Court,<sup>793</sup> and was identified as an Islamic Court document by insiders P-0150 [REDACTED]<sup>794</sup> and P-0626 [REDACTED].<sup>795</sup> Further, three of the documents were recognised by crime base witness P-0538 as relating to her proceedings before the Islamic Court.<sup>796</sup> Noting that the notebook containing the nine handwritten judgments or related documents can be

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<sup>784</sup> MLI-OTP-0001-7373, translation MLI-OTP-0077-2371.

<sup>785</sup> MLI-OTP-0001-7376 (right hand side), translation MLI-OTP-0078-5997. The left hand side also contains a judgment in handwritten black-ink text, MLI-OTP-0001-7376 (left hand side), translation MLI-OTP-0078-5997.

<sup>786</sup> MLI-OTP-0001-7410, translation MLI-OTP-0078-6033.

<sup>787</sup> MLI-OTP-0001-7379, translation MLI-OTP-0078-6002.

<sup>788</sup> MLI-OTP-0001-7390, translation MLI-OTP-0078-6006; MLI-OTP-0001-7395, translation MLI-OTP-0077-2783; MLI-OTP-0001-7396, translation MLI-OTP-0077-2786.

<sup>789</sup> P-0007: T-019, p. 24.

<sup>790</sup> P-0150: T-098, p. 14, *referring to* MLI-OTP-0001-7379, translation MLI-OTP-0078-6002.

<sup>791</sup> P-0150: T-095, p. 60, *referring to* MLI-OTP-0055-0259 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2416, which concerns one of the cases listed in MLI-OTP-0001-7373. While the content differs slightly it similarly reflects the sentence of ‘el-Khamis Bin-el-Sabt’ for stealing three rolls of mosquito nets to a *ta’zir* punishment of ten lashes and dismissal from his job as the warehouse guard. P-0150 identified [REDACTED] MLI-OTP-0055-0259 and testified that Houka Houka spoke in Tamasheq [REDACTED] (P-0150: T-095, p. 60).

<sup>792</sup> MLI-OTP-0001-7410, translation MLI-OTP-0078-6033.

<sup>793</sup> MLI-OTP-0001-7382, translation MLI-OTP-0078-4935; P-0007: T-019, p. 24.

<sup>794</sup> P-0150: T-096, pp. 48-51.

<sup>795</sup> P-0626: T-143, pp. 7-8, 11.

<sup>796</sup> *See* P-0538: T-163, pp. 50-51, *referring to* MLI-OTP-0001-7390, translation MLI-OTP-0078-6006; P-0538: T-163, pp. 64-71, *referring to* MLI-OTP-0001-7395 and MLI-OTP-0001-7396, translations MLI-OTP-0077-2783 and MLI-OTP-0077-2786.

seen as photographed on what appears to be the same red carpet with yellow leaves which appears in photographs under some of the typewritten judgments, and the other evidence mentioned, and in the absence of any other factual alternative based on credible and reliable evidence, the Chamber is satisfied that these handwritten documents also constitute written judgments or related documents emanating from the Islamic Court established by Ansar Dine/AQIM in Timbuktu in 2012-2013.<sup>797</sup>

## 5. Authentication of *Hesbah* reports

351. As to the authenticity of *Hesbah* reports collected by Eric Baccard and P-0057 from the *Hôtel La Maison*,<sup>798</sup> in addition to what is stated above in this section, the Chamber notes that these documents are dated, handwritten and signed, and refer to the office of the *Hesbah*.
352. In addition, as noted above, the Chamber observes that the aforementioned documents were authenticated by insider witness P-0150 as being documents emanating from the *Hesbah* and/or signed by Mohammed Moussa.<sup>799</sup>
353. The Chamber is accordingly satisfied that those documents constitute reports and similar documents emanating from the *Hesbah* established by Ansar Dine/AQIM in Timbuktu in 2012-2013.<sup>800</sup>

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<sup>797</sup> *Contra* [Defence Final Brief](#), paras 304-307.

<sup>798</sup> *See notably e.g.* MLI-OTP-0055-1813; MLI-OTP-0055-1022; MLI-OTP-0055-1024.

<sup>799</sup> *See* relevant footnotes regarding these documents in section III below. The Chamber considers that the witness is in a good position by virtue of his role within Ansar Dine/AQIM to identify documents as emanating from the *Hesbah*.

<sup>800</sup> *Contra* [Defence Final Brief](#), paras 304-307. The Chamber recalls that the Defence objected to many of the Islamic Police reports, Islamic Court judgments, *Hesbah* reports and related items submitted notably through witnesses Harald Doornbos (P-0007), Xavier Laroche (P-0102), P-0150 and Kaone Panzirah Mabaka (P-0590) on various bases. As a result of the Chamber's findings in this section, and for the reasons set out in detail therein, the Chamber dismisses the Defence objections: (i) for Harald Doornbos, notably the objections that the witness did not author and was not in a position to authenticate the documents, that he was unable to testify as to their contents or provenance, and the fact that some items are photographs of documents affects their reliability and authenticity, or that photographs may have been modified (*see* ICC-01/12-01/18-1629-Conf and related annexes); (ii) for Xavier Laroche, notably the objections that the documents cannot be submitted as proof of their contents but rather merely as proof that the photographs were taken (*see* ICC-01/12-01/18-1651-Conf and related annexes); (iii) for P-0150, notably the objections that P-0150 contradicts Eric Baccard's account of finding documents, and the fact that items are scans of documents affects their reliability (*see* ICC-01/12-01/18-1866-Conf and related annexes); and (iv) relevant items processed by Kaone Panzirah Mabaka through that witness (*see* ICC-01/12-01/18-2076-Conf and related annexes).

## **E. DEFENCE'S GENERAL ALLEGATIONS OF CONTAMINATED EVIDENCE**

354. Before turning to the Chamber's factual findings, the Chamber addresses the Defence's general allegations that evidence in this case is contaminated.
355. The Defence submits that the foundation of the Prosecution evidence has been contaminated and thus the Chamber cannot rely upon this evidence.<sup>801</sup> The Defence avers that the contamination occurred through (i) improper influence by journalists and lack of credibility of the media and media propaganda;<sup>802</sup> (ii) improper influence of NGOs;<sup>803</sup> (iii) evidential contamination through the judicial proceedings held in Bamako,<sup>804</sup> including testimony of married witnesses,<sup>805</sup> the possibility to obtain reparations for some witnesses,<sup>806</sup> and witness contamination by NGOs;<sup>807</sup> and (iv) the Prosecution involvement in domestic proceedings.<sup>808</sup>
356. The Chamber will not consider the general argument that the evidence presented as a whole is unreliable due to contamination. As framed, the Defence's submissions in support allege contamination completely in the abstract, without any specific link to particular evidence before the Chamber – either in terms of witness testimony or documents submitted. The Chamber considers such submissions to be irrelevant, theoretical and speculative in nature.<sup>809</sup> To the extent that the Defence's arguments allege an unspecified link to certain types of documents or witnesses,<sup>810</sup> the Chamber has borne such arguments in mind when considering any such documents or the evidence of the witnesses.

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<sup>801</sup> [Defence Final Brief](#), paras 145-203.

<sup>802</sup> [Defence Final Brief](#), paras 145-156, 193.

<sup>803</sup> [Defence Final Brief](#), paras 157-177.

<sup>804</sup> [Defence Final Brief](#), paras 178-181.

<sup>805</sup> [Defence Final Brief](#), para. 182.

<sup>806</sup> [Defence Final Brief](#), para. 183.

<sup>807</sup> [Defence Final Brief](#), paras 184-187.

<sup>808</sup> [Defence Final Brief](#), paras 188-203.

<sup>809</sup> *See e.g.* [Defence Final Brief](#), paras 147-147, 150-152 (on general arguments relating to France 2 and RFI including those which refer to the use of fixers by international journalists generally), 156 (about the mayor of Timbuktu), 158 (the funding arrangements of Freedom House and D-0524's general comments), 171 (FIDH meeting with seven rape victims simultaneously), 189-190 (date of creation of Wildaf and timing of Mr Al Hassan confirmation proceedings).

<sup>810</sup> *See e.g.* [Defence Final Brief](#), paras 147-156 (media articles generated by France 2, RFI and witnesses who relied on RFI for news).

357. In this section the Chamber will address only arguments for which there is some specification as to the purported impact on the evidence before the Chamber, with respect to the categories identified by the Defence. As to arguments of contamination particular to the evidence of individual witnesses or documents, these are addressed, as relevant, in the course of analysing witness and documentary evidence throughout the judgment.

### **1. Alleged influence by journalists and media propaganda<sup>811</sup>**

#### **a) France 2**

358. As indicated, the Chamber will not address the general arguments relating to France 2 shaping a narrative or generally influencing witnesses. To the extent that the arguments implicate specific footage broadcast by France 2, this is addressed in the course of the judgment, in the context of any challenges or objections made to the use of such footage or particular passages from it.

#### **b) RFI**

359. The Defence appears to reference P-0152's and P-0608's testimony as support for a general allegation that caution should be applied when relying on RFI accounts.<sup>812</sup> The Chamber notes that both witnesses made general statements about the challenges relating to the proper presentation of journalistic information especially with respect to reporting in the Sahel region. P-0608, by example, testified that information from RFI needed to be taken 'with a pinch of salt' because some information about the armed groups was incorrect.<sup>813</sup> However, neither witness gave testimony specific to incidents which involved Prosecution witnesses or expressed concerns about reliance on RFI accounts.<sup>814</sup>

360. In relation to the alleged bias of RFI and reliance on information that was not properly vetted, the Defence makes only a vague link to specific witnesses relying heavily on RFI for news with reference to, *inter alia*, the testimony of P-0654 and P-0099.<sup>815</sup> The Chamber accordingly considers the suggestion this impacted on

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<sup>811</sup> [Defence Final Brief](#), para. 146.

<sup>812</sup> [Defence Final Brief](#), para. 152.

<sup>813</sup> P-0608: T-154, p. 80.

<sup>814</sup> *See e.g.* P-0152: T-032, pp. 91-92.

<sup>815</sup> [Defence Final Brief](#), para. 150, footnote 458.

the credibility or reliability of these witnesses to be pure speculation.

**c) Other media outlets and dissemination of propaganda**

361. The Defence alleges that foreign journalists propagated a false conflation between the *Hesbah* and the Islamic Police, as well as the BMS and the Islamic Police, relating this to a similarly flawed understanding of the local population that the BMS was the headquarters of the Islamic Police.<sup>816</sup> This alleged misreporting by journalists and misunderstanding of the local population is solely based on the testimony of Harald Doornbos (P-0007).<sup>817</sup> The witness acknowledged not being aware of the difference between the ‘*Hesbah*, the morality police, and the Islamic Police’<sup>818</sup> and that locals indicated to him a bank as the headquarters of the Islamic Police.<sup>819</sup> However, this evidence does not support general misreporting nor a misunderstanding by the locals. It also fails to demonstrate that any Prosecution witnesses were influenced by Harald Doornbos’s account on the identification of key entities and buildings. In any event, the Chamber heard several witnesses who identified and could differentiate between the relevant entities and buildings in Timbuktu and therefore finds no merit in the Defence’s contention.

362. The Chamber also finds no merit in the Defence’s general allegation that, as the local population learned about Ansar Dine through the media and discussed together incidents, details and identities of individuals, this blurred the ‘distinction between actual memory recount and hearsay and rumours’ about lapidation and floggings.<sup>820</sup> The Defence’s reliance on the evidence cited, namely the testimony of P-0641,<sup>821</sup> P-0557,<sup>822</sup> P-0065,<sup>823</sup> Malian State newspapers,<sup>824</sup> and P-0608’s account of Malian media publishing false account of rape of women

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<sup>816</sup> [Defence Final Brief](#), para. 153.

<sup>817</sup> [Defence Final Brief](#), para. 156.

<sup>818</sup> P-0007: T-019, p. 57.

<sup>819</sup> P-0007: T-019, pp. 10-11.

<sup>820</sup> [Defence Final Brief](#), para. 154.

<sup>821</sup> P-0641: T-040, pp. 31-32.

<sup>822</sup> P-0557: T-057, pp. 32-33.

<sup>823</sup> P-0065: T-049, pp. 22-24.

<sup>824</sup> MLI-D28-0004-3153, at 3153-3154. This is a web article from [observers.france24.com](http://observers.france24.com), titled ‘Photo of Timbuktu adulterer’s whipping a fake’, that alleges that the photo of a Timbuktu adulterer’s whipping was fake as the photo was taken in Somalia in March 2010 showing a man accused of adultery that Islamist rebels condemned to death by stoning.



by ‘jihadists’ at the Islamic Police<sup>825</sup> fails to show that the Prosecution witnesses used this ‘false information’ when testifying about the charged incidents. Moreover, the Defence misrepresents P-0114’s testimony on the use of ‘images of extremists and lashing from other countries’<sup>826</sup> as the witness stated that he did specify to the intended audience of his presentation that the photograph he used was ‘for illustrative purposes only’ and was not necessarily from Timbuktu.<sup>827</sup>

## 2. Alleged improper influence by NGOs

363. The Defence submits that NGOs, in particular, Wildaf, CAFO, Adverma, FIDH and AMSS, a local NGO, negatively influenced the local population by presenting ‘distorted evidence concerning the identity of the perpetrators and the description of alleged harm’.<sup>828</sup> As in relation to the media allegations, the Chamber has not considered general arguments which allege contamination in the abstract due to the overall activities of the NGOs.

### a) Wildaf

364. The Chamber fails to see the relevance of the Defence’s argument about Wildaf arranging assistance for forced marriage victims and financial aid for child education, with respect to children born as a result of forced marriage or rape in 2012.<sup>829</sup> No link is shown between this program and the credibility of any evidence before the Chamber. In this respect, the references cited do not support such a link.<sup>830</sup>

365. Similarly, the Chamber finds no connection between Wildaf reports of ‘encountering false victims’ during their documentation process and witnesses in

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<sup>825</sup> P-0608: T-154, p. 80.

<sup>826</sup> [Defence Final Brief](#), para. 154.

<sup>827</sup> P-0114: T-060, pp. 64-66, 70-71.

<sup>828</sup> [Defence Final Brief](#), para. 157. *See also* paras 158-177.

<sup>829</sup> [Defence Final Brief](#), para. 159.

<sup>830</sup> V-0001 stated that she did not know why she was given financial assistance and that it was just help that was given to her (V-0001: T-169, pp. 37-38). D-0240 only referred to having meetings with Wildaf in 2018 and 2019 and described in general terms its aid program for victims of gender-based violence without discussing financial aid for child education for children that were products of forced marriage or rape (D-0240’s statement MLI-D28-0006-4222, at 4237). P-0160 gave general evidence of alleged instances of aid being provided with respect to children whose age was such that they could not have been born out of forced marriages or rapes in 2012. The witness however provided no testimony to link this to specific witnesses in the case (*see* P-0160: T-067, pp. 75-80).

the present case.<sup>831</sup>

366. The Chamber finds the argument advanced as to Niamoye Alidji's roles regarding the Timbuktu Wildaf project and Deme-So<sup>832</sup> to be speculative and lacking in relevance given no nexus to the credibility of specific witnesses in the case has been established.<sup>833</sup>

#### **b) Wildaf Projects**

367. The Chamber finds no merit in the Defence's arguments regarding Wildaf's projects<sup>834</sup> as the Defence fails to show how these projects unduly influenced the witnesses in the present proceedings. The Chamber similarly dismisses the Defence's arguments relating to victims being required to identify groups and the absence of allegations against the MNLA,<sup>835</sup> as speculative and unsupported by the evidence.

#### **c) FIDH**

368. Putting the assertions in their best light, the Defence appears to argue that the composition of the FIDH delegation which travelled to Timbuktu to collect evidence and the interactions they had before commencing interviews somehow had a negative effect on Prosecution witnesses.<sup>836</sup> The Chamber fails to see any impropriety in the composition of the delegation or the actions undertaken before the interviews, in particular with respect to interactions with P-0130 and P-0114 and the visit to the BMS.<sup>837</sup> Moreover, the Defence has advanced no specifics as to how either impacted on the information provided to FIDH and, more significantly, how it is linked to the evidence provided by witnesses who testified before the Chamber.

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<sup>831</sup> The Chamber notes in particular that P-0160 did not refer to witnesses being concerned about financial assistance or providing influenced responses (*see* P-0160: T-068, pp. 18-19).

<sup>832</sup> [Defence Final Brief](#), para. 164.

<sup>833</sup> With respect to witness P-0538, the Defence misrepresents her testimony and speculates about the information brought to FIDH. While P-0538 stated that Niamoye Alidji took her name for what she thought was 'protectives measures' and went to take other persons' names, she did not testify as to the subsequent use made of that information (P-0538: T-162, pp. 55-57).

<sup>834</sup> [Defence Final Brief](#), paras 165-167.

<sup>835</sup> [Defence Final Brief](#), para. 165.

<sup>836</sup> [Defence Final Brief](#), para. 168.

<sup>837</sup> [Defence Final Brief](#), para. 168.

369. Similarly, as to the role of P-0524 as an interpreter, the Chamber considers that the evidence does not support the Defence's general allegation that P-0524's interactions with crime base witnesses improperly 'prepared' them for testimony,<sup>838</sup> or that group travel arrangements in the context of the Bamako proceedings had a concrete impact on their evidence.<sup>839</sup> The Chamber similarly considers unsubstantiated the Defence's general allegation that P-0524's role [REDACTED] impacted the reliability of the evidence she collected or was in contact with *per se*.<sup>840</sup> The Chamber has rather assessed, on a case-by-case basis, the Defence's allegations that P-0524's interaction with specific crime base witnesses impacted their evidence.<sup>841</sup>

370. The Defence further argues that the 'manner in which several crime-based victims were identified and questioned', where victims were shown videos and photos before being asked open-ended questions, and the 'lack of sufficient procedural safeguards' increased the likelihood for tainted evidence and the 'confusion and conflation' of certain accounts.<sup>842</sup> The Chamber considers the general arguments advanced, to be purely speculative in the absence of specific links to witness evidence in the case. To the extent that particular witnesses are identified, these

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<sup>838</sup> See generally [Defence Final Brief](#), paras 168-173, 224. The Chamber notes that references to P-0524's statement cited by the Defence are not suggestive of improper preparation by P-0524 ([Defence Final Brief](#), para. 184). [REDACTED] (P-0524's statement MLI-OTP-0071-0246-R12, at 0257, para. 66, 0258, para. 72). The Chamber further notes that the evidence cited is not supportive of the Defence's submission that 'Before witnesses testified in Bamako, they were given additional training which included learning the "words that we had to say"' ([Defence Final Brief](#), para. 184, referring to P-0547: T-153, pp. 18-20); P-0547 rather testified that persons helped her *translate and interpret* the 'words that we had to say' (P-0547: T-153, pp. 18-20). P-0636, [REDACTED], expressly rejected the suggestion that anyone helped her to prepare for her meeting with the Bamako judge and stated that '[i]t was a question of telling what happened to us, and we weren't told anything else. [...] all we did, was tell our story. That's what we came for' (P-0636: T-086, p. 45). More generally, P-0602, [REDACTED], clearly stated that she was 'not at all' told, in preparations for the interview, anything about what she was going to say, what the interviewers were interested in hearing, or how she should answer (P-0602: T-086, pp. 12-14, 17-18). P-0520, [REDACTED], testified that, despite not remembering much about the people she met with or the content and details of such meetings, she did not believe the objective of meetings was to tell them what to say and not to say (P-0520: T-150, pp. 4-8, 27-29).

<sup>839</sup> See generally [Defence Final Brief](#), paras 178-181. The Chamber notes that P-0602, who travelled to Bamako with other women, testified that they did not discuss what had happened to them; they merely journeyed together and then 'went and did [their] own thing' (P-0602: T-086, pp. 44-46). P-0636 described the circumstances of her journey to Bamako in similar terms, indicating in relation to the other women she travelled with that they did not tell each other why they were there (P-0636: T-072, pp. 23-24).

<sup>840</sup> [Defence Final Brief](#), para. 188.

<sup>841</sup> See notably [Defence Final Brief](#), paras 172, 207, 217, 224, 230, 237, 243-244, 248.

<sup>842</sup> [Defence Final Brief](#), paras 171-173.

arguments are addressed, as relevant, in assessing the particular witnesses.

371. As for the Defence's reliance on the testimony of Dr Morgan's (D-0502) regarding techniques that can generate false memories, especially in relation to traumatic events',<sup>843</sup> the Chamber notes that the witness addressed this topic in a general manner such that it does not support the Defence's broad allegation of improper influence by NGOs on the evidence in the present case.<sup>844</sup> To the extent that Dr Morgan provided evidence in relation to specific evidence, it is addressed in the course of the judgment.

#### **d) Adverma and AMSS**

372. With respect to Adverma, the Chamber considers the possibility that some witnesses may have been acquainted with P-0130 to be of no relevance in the absence of evidence as to any impact of that relationship on the testimony of the witnesses.<sup>845</sup> As to the remainder of the arguments advanced by the Defence on Adverma and AMSS, the Chamber finds them to be speculative<sup>846</sup> or unsupported by the evidence.<sup>847</sup>

### **3. Evidential contamination through the judicial proceedings held in Bamako**

373. The Defence argues that several factors related to the judicial proceedings in Bamako contributed to Prosecution evidential contamination such as (i) witnesses travelling together;<sup>848</sup> (ii) married witnesses;<sup>849</sup> (iii) motivation to obtain reparations;<sup>850</sup> (iv) presence of NGOs and their involvement in witness

<sup>843</sup> [Defence Final Brief](#), para. 171.

<sup>844</sup> D-0502:T-179, pp. 37-38, 62-63.

<sup>845</sup> Specifically that P-0602 [REDACTED], and that she met P-0130 there. *See* [Defence Final Brief](#), para. 175.

<sup>846</sup> *See* [Defence Final Brief](#), paras 175-176. Notably with respect to the submission that Adverma spoke to witnesses and introduced them to FIDH, P-0602 specified that she did not know what was actually discussed there (P-0602: T-086, pp. 14-15). Similarly, the Defence alleges, based on P-0642's evidence, that P-0641, [REDACTED], appeared to have informed FIDH of the identities of 'victims' to be interviewed without specifics (*see* P-0642: T-157, pp. 6-7).

<sup>847</sup> *See* [Defence Final Brief](#), paras 174-175, 177. Notably the assertions that P-0130 [REDACTED] and that he was aware that P-0603 was a Prosecution witness (*see* MLI-OTP-0080-3494-R01); that P-0641 collected information from prospective victims [REDACTED] (*see* P-0641: T-137, p. 8); and that AMSS interacted with Prosecution witnesses (*see* MLI-D28-0006-4469-R02).

<sup>848</sup> [Defence Final Brief](#), paras 178-181.

<sup>849</sup> [Defence Final Brief](#), para. 182.

<sup>850</sup> [Defence Final Brief](#), paras 178, 183.

contamination;<sup>851</sup> (v) and the Prosecution's involvement in domestic procedure.<sup>852</sup>

374. The Chamber fails to see the relevance of the general allegations regarding judicial proceedings in Bamako in the absence of specific links made between statements provided in this context and testimony before the Chamber. To the extent that such specific arguments have been advanced in relation to particular witnesses, the Chamber has considered such submissions where relevant in the analysis of the pertinent testimony in the course of the judgment. The Chamber considers below the related arguments on specific topics identified by the Defence.

#### a) Group travel

375. Regarding the witnesses travelling together, the Defence submits that 'direct and indirect testimonial contamination results when witnesses who testify on similar events travel together and are exposed [to] evidential accounts in the absence of strict safeguards'.<sup>853</sup> The Defence claims that victims, 'travelled to and from Bamako in groups', and were accompanied by Prosecution intermediaries and interpreters from the Bamako proceedings and victims who had not yet travelled to Bamako 'were aware that others had travelled there to give evidence'.<sup>854</sup>

376. The Chamber notes that in support of this general argument the Defence refers to the general discussion in the *Lubanga* case<sup>855</sup> and specific factual findings from the *Ngudjolo* Trial Judgment.<sup>856</sup> The Defence however fails to identify the evidence in this case which provides a factual basis to consider these precedents with reference to witnesses who appeared before this Chamber. In contrast, as noted by the Prosecution, the cross-examination of prosecution witnesses provided evidence to the contrary.<sup>857</sup>

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<sup>851</sup> [Defence Final Brief](#), paras 178, 184-187.

<sup>852</sup> [Defence Final Brief](#), paras 178, 188-203.

<sup>853</sup> [Defence Final Brief](#), para. 179.

<sup>854</sup> [Defence Final Brief](#), paras 180-181.

<sup>855</sup> [Defence Final Brief](#), para. 179, referring to transcript of hearing in the *Lubanga* case, ICC-01/04-01/06-T-78-ENG, pp. 9-11.

<sup>856</sup> [Defence Final Brief](#), para. 179, referring to [Ngudjolo Trial Judgment](#), para. 155.

<sup>857</sup> See e.g. P-0520: T-150, pp. 26-27; P-0636: T-072, p. 23; P-0610: T-159, p. 9.

377. As to the argument of ‘unconscious evidential influence’,<sup>858</sup> P-0636’s evidence does not support this contention.<sup>859</sup> The witness clearly stated that while she and other victims came to Bamako at the same time, they did not travel together in the bus.<sup>860</sup>

378. Finally, with respect to victims having travelled or interacted with P-0524 and P-0522,<sup>861</sup> or Niamoye Alidji, or having discussed matters between themselves, the Chamber finds those arguments to be entirely speculative with no evidentiary foundation for contamination.<sup>862</sup>

379. Therefore, on this basis the Chamber dismisses the Defence’s allegation that the witnesses referred to by the Defence, interacted with other witnesses during their travel to Bamako, and that this resulted in the contamination of the evidence provided before the Chamber in the present proceedings.

#### **b) Married witnesses**

380. The Defence argues that in relation to married witnesses ‘caution should be given’ to the testimony of [REDACTED], P-0554 and P-0984 and the evidence of P-0642.<sup>863</sup> The Chamber has assessed this evidence in the relevant part of the judgment taking into account all of the relevant considerations including any relationships between witnesses.

#### **c) Reparations**

381. The Defence argues that the possibility of obtaining reparations motivated victims to participate in the Bamako proceedings and some of them to lie.<sup>864</sup> The evidence relied upon does not support such a general assertion.<sup>865</sup> Moreover,

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<sup>858</sup> [Defence Final Brief](#), para. 179.

<sup>859</sup> [Defence Final Brief](#), para. 179, referring to P-0636: T-072, p. 23.

<sup>860</sup> P-0636: T-072, p. 23.

<sup>861</sup> [Defence Final Brief](#), para. 180, referring to investigative note MLI-OTP-0080-4648-R01, at 4650.

<sup>862</sup> The Chamber similarly dismisses the arguments raised with respect to P-0114 and finds the allegations regarding identification issues of the victims ([Defence Final Brief](#), para. 181, referring, *inter alia*, to P-0114: T-060, pp. 65, 75) entirely speculative and irrelevant.

<sup>863</sup> [Defence Final Brief](#), para. 182.

<sup>864</sup> [Defence Final Brief](#), para. 183.

<sup>865</sup> The evidence of D-0315 was that she heard from a woman in a meeting that women went to Bamako without being real victims and that she only heard the name of one of them (D-0315: T-185, pp. 68-69; T-186, p. 5). As to the comment in D-0512’s statement that she thought ‘90% of people lied’ (*see* D-

there is no evidence that witnesses before the Chamber in this case were motivated in this manner and gave untruthful testimony.<sup>866</sup>

#### d) Witness contamination by NGOs

382. The Defence argues that various interactions between the NGO's and witnesses resulted in contamination of the evidence ultimately given in the Bamako proceedings. In support, the Defence asserts that witnesses, such as V-0001,<sup>867</sup>

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0512's statement MLI-D28-0006-2611-R02, at 2617, para. 35), the Chamber notes that the witness conceded in court that she did not know all those who went to Bamako, nor what they said there (D-0512: T-181, pp. 69-70).

<sup>866</sup> Although V-0001 testified about asking the judge in Bamako about compensation or reparations (V-0001: T-169, p. 39), this evidence does not show that she provided an untruthful account of the events she experienced at the relevant time.

<sup>867</sup> V-0001 (*see* V-0001: T-168 to T-169), a woman of [REDACTED], has lived in Timbuktu since she was a child and lived there when Ansar Dine/AQIM were present in the city (V-0001: T-168, pp. 29-30). As at the period of the charges, V-0001 was a divorced mother of several children and, until the 'jihadists' said women had to stay home, worked [REDACTED] in front of her house (V-0001: T-168, pp. 30-32; T-169, p. 7). She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation. The Chamber observes that the core of V-0001's narrative relating to forced marriage, pregnancy and the resulting harm was believable and compelling. Further, the Chamber considers that the witness's motivation to testify – namely that it was an opportunity for her to express the harm and hurt suffered by both her and her child born of forced marriage (V-0001: T-168, pp. 68-69) – was sincere. The Chamber is mindful of issues raised with respect to certain documents, including victim applications, documents relating to domestic court proceedings, and the birth certificate of the witness's child (*see* [Defence Response Brief](#), para. 98; *see e.g.* V-0001: T-168, pp. 29-30, 65; T-169, pp. 33, 36-37, 57-58). However, having considered the witness's testimony and noting that the witness is illiterate, speaks only Tamasheq and a little bit of Songhai, and had limited access to interpretation in the creation of this material (V-0001: T-168, pp. 30-31; T-169, pp. 33-34, 37), the Chamber is of the view that such discrepancies are understandable and do not affect the reliability of the core of the witness's evidence (*see* [LRVs Final Brief](#), para. 136). Nevertheless, the Chamber considers that V-0001's evidence as to the identity of her 'husband' is unclear (*see e.g.* V-0001: T-169, pp. 55-58) and, as such, the Chamber cannot enter a finding in this regard. The Chamber further finds unmeritorious the Defence's arguments with respect to the purported contamination of V-0001's evidence. That V-0001 attended Wildaf meetings, completed the victim application form in the presence of other victims, and conceded she used terminology she heard in meetings (V-0001: T-169, pp. 34-36, 39, 48-49) does not, in the Chamber's view, impact the witness's evidence such as to render it unreliable (*contra* [Defence Final Brief](#), paras 184-185; [Defence Response Brief](#), paras 98-99; *see also* section E above). The Chamber is equally unpersuaded by the Defence's challenges to V-0001's credibility based on the evidence of D-0240 and D-0272 ([Defence Response Brief](#), paras 16, 19, 100). D-0240 confirmed that his testimony regarding V-0001 was limited to his personal observations in the period after 2016, and that he was not in a position to observe anything before this time because he was not there (D-0240: T-191, pp. 66-67). While D-0240 may have provided a truthful recollection of his relevant interactions with V-0001, considering these witnesses' relationship and age difference, the circumstances of their conversations, the nature of the alleged crimes, potential stigma and sensitivities, and the complexities of consent in the prevailing circumstances (D-0240: T-191, pp. 30, 59-60, 63-64, 66-67; D-0240's statement MLI-D28-0006-4222-R01, at 4234-4236; *see also* LRV's Final Brief, paras 198-199), the Chamber finds D-0240's evidence did not meaningfully affect V-0001's credibility. Further, that D-0240 'think[s]' he observed other members of the local population interact and socialise with V-0001 at social events in 2016 (D-0240: T-191, p. 31; D-240's statement MLI-D28-0006-4222-R01, at 4236) is not determinative of the overall treatment of V-0001 and her child, or their lived experiences. Similarly, the Chamber notes that D-0272 did not personally observe the circumstances surrounding V-0001's marriage, since his evidence with respect to V-0001 related to a single interaction with her at [REDACTED]. As

who testified in the Bamako proceedings, had training that provided them with the ‘words’ they would have to say.<sup>868</sup>

383. In support, the Defence points to various interactions between the witnesses and NGOs<sup>869</sup> and the use of legal language by witnesses,<sup>870</sup> similarity in the wording used in written statements,<sup>871</sup> and testimony about incidents where different witnesses used identical language to describe what happened to them.<sup>872</sup>
384. The Chamber notes that while witnesses interacted with members of NGOs, the evidence does not demonstrate this resulted in the alleged improper preparation, training or influencing of witnesses<sup>873</sup> nor does it show that these encounters led to false information being provided in the Bamako proceedings. Most significantly, the Defence has failed to establish that any of these interactions affected the testimony provided by witnesses before the Chamber. On this basis, the Chamber dismisses these arguments as both speculative and irrelevant.

#### 4. Prosecution involvement in domestic proceedings

385. The Defence submits that representatives of the Prosecution were not ‘passive or neutral’ in their meetings with [REDACTED] P-0522 and P-0524.<sup>874</sup> Further, the

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the witness affirmed, he ‘was not a witness of anything’ concerning the marriage of V-0001 (D-0272: T-182, pp. 17-18, 82. LRV’s Final Brief, paras 197, 199). Considering D-0272’s limited basis of knowledge regarding V-0001, as well as the hesitation of women to talk about experiences of forced marriages due to *inter alia* fear of ostracisation, the Chamber finds no merit in the Defence’s argument that the evidence of D-0272 casts doubt on the reliability of V-0001’s evidence. Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds V-0001 to be a generally credible and reliable witness, although it remains cognisant of the foregoing considerations in assessing her evidence. The Chamber notes that this is a general assessment of the witness’s testimony and that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate. The Chamber also dismisses as incorrect the Defence’s submission that as a matter of law V-0001 cannot be relied upon in assessing Mr Al Hassan’s responsibility (*see* [Defence Response Brief](#), para. 97).

<sup>868</sup> [Defence Final Brief](#), paras 184-187.

<sup>869</sup> [Defence Final Brief](#), para. 185, referring to P-0639: T-136, p. 32; V-0001: T-169, pp. 35-36; T-170, p. 18; P-0642: T-157, p. 7. *See also* [Defence Response Brief](#), para. 99; [Defence Final Brief](#), para. 186, referring to V-0001: T-169, p. 43; P-0610: T-158, p. 73; T-159, pp. 14, 21.

<sup>870</sup> [Defence Final Brief](#), para. 184.

<sup>871</sup> [Defence Final Brief](#), paras 184-187.

<sup>872</sup> [Defence Final Brief](#), para. 190; [Defence Response Brief](#), para. 99.

<sup>873</sup> For example, as noted above, the Defence misrepresents P-0547’s testimony in alleging that the witness and others learned the ‘words we had to say’ ([Defence Final Brief](#), para. 184). P-0547 stated that the assistance received ‘helped [her] translate and interpret the words that we had to say’ and explained that the ‘assistance’ she received was like that which counsel provides to his or her client or the interpreter provides in a courtroom (P-0547: T-153, pp. 18-20). Further, P-0642’s testimony does not mention any alleged training programmes (P-0642: T-157, pp. 7, 25).

<sup>874</sup> [Defence Final Brief](#), para. 188.



Defence argued that P-0524' conduct in the context of her role [REDACTED] impacted on the 'reliability of the evidence she collected or was in contact with'.<sup>875</sup> The Chamber finds that nothing in the evidence referred to demonstrates improper conduct on the part of the Prosecution or any impact of P-0524's (or P-0522's) role on the reliability of the evidence in the present case. With respect to P-0524, the Defence makes reference to the fact she offered to assist in explaining concepts to victims and had general contact with them at the time of the interviews.<sup>876</sup> But no specific evidence has been cited to support the allegation that her conduct [REDACTED] impacted on the credibility of evidence generally, let alone with reference to particular witnesses testifying before this Chamber. As a result, the Chamber dismisses these arguments as unfounded.

#### a) Memory and recall

386. The Chamber considers the Defence's arguments with respect to memory contamination - including references to media influence - are speculative given the absence of a specific link to particular witness testimony.<sup>877</sup> The Chamber has throughout the judgment assessed issues of memory and recall, as well as a range of other criteria, in its analysis as to credibility, reliability and probative value of the evidence before it.
387. The Defence argues that witnesses testified almost nine years after the events and that this had an appreciable impact on the accuracy and reliability of their memories concerning the identities, dates, and details.<sup>878</sup> The Defence refers to P-0114's and P-0636's testimony. P-0114 stated that while her memory was not as fresh as it was at the time of the events, she indicated remembering 'well what happened'.<sup>879</sup> When asked if sometimes the witness may 'get some dates and times mixed up', P-0636 acknowledged that and explained that this is unavoidable because these events occurred a long time ago.<sup>880</sup> The Chamber finds that the evidence cited does not support the Defence's contention that the passage

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<sup>875</sup> [Defence Final Brief](#), para. 188.

<sup>876</sup> [Defence Final Brief](#), para. 188, *referring to* investigative note MLI-OTP-0080-4648-R01, at 4651.

<sup>877</sup> [Defence Final Brief](#), paras 193, 195.

<sup>878</sup> [Defence Final Brief](#), para. 192.

<sup>879</sup> P-0114: T-060, p. 33.

<sup>880</sup> P-0636: T-072, p. 5.

of time had an ‘appreciable impact on the accuracy and reliability’ of the witnesses’ evidence in this case as a general proposition. The Chamber has however considered the passage of time and the ability to recall in assessing the evidence of individual witnesses throughout the case.

388. The Chamber finds the Defence’s arguments that ‘original memory’ of the witnesses has been ‘corrupted’ or as to the possibility of ‘memory contamination’ in relation to identification evidence,<sup>881</sup> speculative and unsupported by the evidence cited.<sup>882</sup> The Defence relies on the jurisprudence of the Court, international tribunals and national courts<sup>883</sup> which highlights the difficulties associated with identification evidence. As explained above in its evidentiary principle section, the Chamber has assessed the evidence in an holistic manner and has applied appropriate caution related to identification evidence.

**b) Dissemination of information on Mr Al Hassan and flawed interview procedure**

389. The Defence argues that dissemination of allegations and images concerning Mr Al Hassan affected testimonial evidence provided against him.<sup>884</sup>

390. With respect to the alleged dissemination of information, including photos about Mr Al Hassan, the Defence argues that ‘[s]everal Prosecution witnesses interviewed in close temporal proximity to the events only provided incriminating information concerning Al Hassan or identified him after his arrest’.<sup>885</sup> The Defence relies on P-0114’s and P-0642’s evidence in support of these general submissions. These witnesses only stated that they had some knowledge about the case against Mr Al Hassan before meeting with representatives of the Prosecution.<sup>886</sup> Such evidence fails to support the link between the knowledge the witnesses had and the evidence they gave. To the extent there were specific issues of this nature with respect to the evidence of these two witnesses, this is

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<sup>881</sup> [Defence Final Brief](#), paras 195, 197.

<sup>882</sup> [Defence Final Brief](#), para. 195, referring to USA, Supreme Court, *Oregon v. Lawson*, pp. 689, 695.

<sup>883</sup> [Defence Final Brief](#), paras 195-196, referring, *inter alia*, to [Ntaganda Trial Judgment](#), paras 71-72, 74; [Kupreškić et al. Appeal Judgment](#), para. 34.

<sup>884</sup> [Defence Final Brief](#), paras 198-199.

<sup>885</sup> [Defence Final Brief](#), para. 198.

<sup>886</sup> P-0114: T-060, pp. 72-73; P-0642: T-157, p. 8.

considered in analysing their testimony, as relevant.

391. With respect to the Defence's allegation that P-0638 was 'shown a video and asked to identify the only person in the video with a clear face',<sup>887</sup> apart from referring to its objections in relation to the Prosecution's list of material for submissions for P-0638, the Defence does not show that the witness's evidence has been contaminated. To the extent that the Defence challenges the general reliability of P-0638's evidence, the Chamber has considered related arguments, where relevant, in the judgment.

392. Finally, the Defence argues that after showing P-0626 'a document with the words "Al Hassan" written next to a signature', the Prosecution asked the witness to confirm whether a similar signature on 'subsequent documents was that of Mr Al Hassan'.<sup>888</sup> The Chamber notes that in support of this argument, the Defence relies on the report of Dr Morgan and his analysis of extracts of P-0626's evidence.<sup>889</sup> However, this witness's report only provides a general analysis of short extracts of P-0626's testimony<sup>890</sup> and fails to show that P-0626's evidence has been 'contaminated' in the present case as contended by the Defence.<sup>891</sup> In addition, the Chamber has assessed, where relevant, the Defence's related arguments to the reliability of this witness's evidence in the judgment.

## 5. Conclusion

393. In light of the above, the Chamber rejects the Defence's general allegations of evidentiary contamination in the present case. As indicated above, specific arguments related to individual witnesses are addressed, where relevant, in the judgment.

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<sup>887</sup> [Defence Final Brief](#), para. 202.

<sup>888</sup> [Defence Final Brief](#), para. 202.

<sup>889</sup> [Defence Final Brief](#), para. 202, referring to Dr Morgan's report MLI-D28-0005-9967-R01, at 9980-9981.

<sup>890</sup> Dr Morgan's report MLI-D28-0005-9967-R01, at 9980-9981. See also [Prosecution Response Brief](#), para. 57.

<sup>891</sup> The Chamber recalls that in any event it considers P-0626's evidence regarding Mr Al Hassan's signature to be of low probative value (*see above*).

### III. FACTUAL FINDINGS

#### A. THE MAIN FEATURES OF THE CITY OF TIMBUKTU PRIOR TO 2012

394. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0114,<sup>892</sup> who testified about the history of the city of Timbuktu; Francesco Bandarin (P-0151),<sup>893</sup> an expert on UNESCO

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<sup>892</sup> P-0114 (*see* P-0114: T-060; P-0114's statements MLI-OTP-0023-0344-R02 and MLI-OTP-0058-0030-R02 introduced through Rule 68(3) of the Rules), a [REDACTED] with knowledge of the historical, cultural and religious heritage and traditions of Timbuktu was present there for some of the period that Ansar Dine/AQIM were in the city, staying until [REDACTED] (P-0114: T-060, pp. 7-8; P-0114's statement MLI-OTP-0023-0344-R02, at 0373, 0376, paras 128, 143). He works as [REDACTED], was a member of the Crisis Committee in 2012, and [REDACTED] (P-0114: T-060, pp. 6-7, 9, 44; P-0114's statement MLI-OTP-0023-0344-R02, at 0346-0348, 0355, 0376, paras 12-21, 60, 147). He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. The Chamber observes that the witness was honest and straightforward during his testimony and consistently indicated when he did not remember something, or when information was reported to him without further proof (*see e.g.* P-0114: T-060, p. 57). He also openly acknowledged the fact that he met with members of the Prosecution in 2013, and that he knew about Mr Al Hassan's case at the ICC before giving his second statement to the Prosecution (P-0114: T-060, pp. 50, 71-73; P-0114's statement MLI-OTP-0058-0030-R02, at 0032-0033, paras 13, 16). The witness gave detailed and rich testimony on subjects he knows very well given [REDACTED] including in particular with respect to the operation and meetings of the Crisis Committee, and the history and cultural heritage of Timbuktu. Nevertheless, the witness was not very precise in his answers on certain topics, such as the different groups which arrived in Timbuktu in April 2012 (P-0114: T-060, pp. 17-18), the Islamic Court (P-0114: T-060, pp. 20-21), the alleged assistance provided by the MNLA to the French and Malian armies in 2013 (P-0114: T-060, pp. 53-54, *referring to* MLI-D28-0004-4802), the affiliations of members of the Crisis Committee (P-0114: T-060, pp. 54-55) and the *Comité des mœurs* (P-0114: T-060, pp. 60-62). The Chamber considers the vagueness in certain aspects of the witness's testimony is understandable considering *inter alia* the lapse of time. Nevertheless, the Chamber notes that the witness's [REDACTED], demonstrates a lack of precision and attention to detail (P-0114: T-060, pp. 65-67, 70-71; *see* [Defence Final Brief](#), para. 154). The Chamber further notes that there was some confusion in the witness's accounts regarding his alleged encounter with Mr Al Hassan (P-0114: T-060, pp. 71-74, 76-78, *referring to* MLI-OTP-0028-0126, at 0128; *see* [Defence Final Brief](#), para. 398), which it has taken into account in its assessment of the witness's evidence in this regard. In addition, P-0114's in-court testimony was generally consistent with his prior recorded testimony introduced through Rule 68(3) of the Rules. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0114 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>893</sup> Francesco Bandarin (*see* P-0151: T-034; P-0151's statement MLI-OTP-0029-0843-R03 and prior testimony MLI-OTP-0069-4350 introduced through Rule 68(3) of the Rules) was the Director of the World Heritage Centre of UNESCO from 2000 to 2011 and Assistant Director General responsible for Culture at UNESCO from 2010 to 2014 and 2015 to 2018 (P-0151: T-034, pp. 6-7; MLI-OTP-0029-0843-R03, at 0845). He appeared before the Chamber as an expert and testified about UNESCO World Heritage protections and the importance of Timbuktu from a cultural, historical, commercial and religious perspective (*see e.g.* P-0151: T-034, pp. 7-19; *see also* P-0151's statement MLI-OTP-0029-0843-R03; P-0151's prior testimony MLI-OTP-0069-4350). The Chamber notes that the witness went to Timbuktu once in 2005, 'visiting all the sites and meeting the imams of the mosque', building a connection with the local authorities, and launching an architectural survey of certain monuments in

World Heritage; P-0152,<sup>894</sup> an expert in armed conflict with experience in the conflict in Mali; P-0643,<sup>895</sup> a law professor from Mali; and D-0551<sup>896</sup> who testified extensively about life in Timbuktu before 2012.

## 1. General overview

395. The city of Timbuktu<sup>897</sup> is considered as a historical, spiritual and intellectual centre of great significance in Africa.<sup>898</sup> This significance is attributable to the

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order to have a complete and detailed understanding of the structures (*see* MLI-OTP-0069-4350, at 4387). The witness further monitored the events in Timbuktu closely on a daily basis in 2012 (P-0151: T-034, p. 14). The Chamber considers that the witness had a strong basis of knowledge on the matters within the scope of his expertise and provided consistent testimony explaining not only the importance of the physical heritage but also its connection to the cultural traditions and the perspectives of the local population of Timbuktu. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Francesco Bandarin to be a generally credible and reliable witness.

<sup>894</sup> P-0152 (*see* P-0152: T-032; P-0152's report MLI-OTP-0031-0496 introduced through Rule 68(3) of the Rules) is a [REDACTED] (P-0152: T-032, pp. 6-7). He appeared before the Chamber as an expert and mainly testified about the expert report he prepared relating to the history and development of the conflict in Mali in 2012-2013. The report offers a political analysis of the events of 2012-2013 that focuses on key figures and their respective organisations as well as on the events' historical context. As a political scientist, [REDACTED], P-0152 travelled regularly to Mali for research purposes, beginning in 2007 (P-0152: T-032, pp. 6-9, 12; MLI-OTP-0030-0962-R01). He also visited Timbuktu before 2012 (P-0152: T-032, p. 12; *see also* T-032, pp. 92-93, 97). Notably, the witness was in Mali from [REDACTED] in an attempt to understand what had happened in the conflict in 2012 and in areas of the North that came under the control of various non-state armed actors (P-0152: T-032, pp. 10-11). The Chamber observes that the witness's knowledge of the conflict is based on written sources, as well as interviews with a large sample of different local sources from various ethnic and warring groups, and local government and NGOs (P-0152: T-032, pp. 9, 11-12, 92-93, 97). During his testimony, P-0152 provided detailed, prudent and well balanced answers on many substantial aspects of the case. He clearly acknowledged the boundaries of his knowledge (P-0152: T-032, pp. 26, 42, 70, 85-86, 103) and did not speculate (P-0152: T-032, p. 77). He often agreed with the Defence (P-0152: T-032, pp. 79, 82) and showed no bias throughout his testimony, in particular regarding victimhood (P-0152: T-032, pp. 36-38). P-0152 did not jump to conclusions and always clarified relevant details. His methodology was also clearly described, including his own network (P-0152: T-032, pp. 101-103). In light of his oral testimony as well as the content of his report, the Chamber considers that the witness considered all factual scenarios in an objective way, talking to as many sources as possible and being careful of the interviewees' neutrality or lack thereof (P-0152: T-032, pp. 92, 98). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0152 to be a generally credible and reliable witness and relies on his expert report.

<sup>895</sup> The Chamber refers to its findings on the credibility and reliability of P-0643's evidence (*see* section II.B.2.a)viii above).

<sup>896</sup> The Chamber refers to its findings on the credibility and reliability of D-0551's evidence (*see* footnote 2233 below).

<sup>897</sup> For a general presentation of the city, *see* P-0643's report, MLI-OTP-0077-2933-R01. According to the legend, the city of Timbuktu was originally a place with a well, used as a transit meeting point ('*tin*' meaning 'place'), where an old Tamashek woman named 'Bouctou' was caring for the belongings of Tuaregs travelling through the Sahara and Niger. The name 'Timbuktu' would therefore mean 'the place of Bouctou'. *See* Report MLI-OTP-0007-0002, at 0027; UNESCO Document MLI-OTP-0004-0321-R01, at 0334; P-0114's statement MLI-OTP-0023-0344-R02, at 0348, para. 22.

<sup>898</sup> P-0151: T-034, pp. 21, 41; P-0151's statement MLI-OTP-0029-0843-R03, at 0855, para. 70; Report MLI-OTP-0007-0002, at 0028; UNESCO Document MLI-OTP-0004-0321-R01, at 0321.

wealth the city acquired in the 14<sup>th</sup>-16<sup>th</sup> centuries,<sup>899</sup> with the trade of gold, salt and manuscripts.<sup>900</sup> The main religion in Timbuktu is Islam.<sup>901</sup> During the ‘golden age’ of the city in the 14<sup>th</sup>-16<sup>th</sup> centuries, pupils travelled from abroad to study in the 180 *Quranic* schools, or ‘*madrastas*’, and in the university of Sankoré, which was one of the most prestigious universities of the Muslim world;<sup>902</sup> Timbuktu was used as a centre for the expansion of Islam into Africa.<sup>903</sup> The production of the manuscripts, recording Islamic knowledge,<sup>904</sup> flourished during those centuries, employing scribes, calligraphers, bookbinders and traders.<sup>905</sup>

396. Timbuktu is generally known as the ‘city of the 333 Saints’.<sup>906</sup> The saints are mainly scholars who were recognised by the people of Timbuktu for their behaviour, their deep faith, and for the quality of their teaching, or for actions that were considered miracles.<sup>907</sup> Mausoleums were built in the city to protect the corpses of the saints.<sup>908</sup> Despite being modest in their architecture,<sup>909</sup> they contained graves of Timbuktu’s ‘great men’, who became known as the ‘protectors’ of the city.<sup>910</sup> The population of Timbuktu took pride in the fact that their city ‘had in its foundation these saints’.<sup>911</sup>

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<sup>899</sup> P-0151: T-034, pp. 21, 42. *See also* Report MLI-OTP-0007-0002, at 0027-0028; UNESCO Document MLI-OTP-0004-0321-R01, at 0326, 0333; P-0151’s statement MLI-OTP-0029-0843-R03, at 0855, para. 70.

<sup>900</sup> P-0151’s statement MLI-OTP-0029-0843-R03, at 0855, para. 70. *See also* Report MLI-OTP-0007-0002, at 0028.

<sup>901</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0350, para. 35. *See also* P-0150: T-104, p. 28.

<sup>902</sup> *See* Report MLI-OTP-0007-0002, at 0027-0028; UNESCO Document MLI-OTP-0004-0321-R01, at 0324, 0333, 0342.

<sup>903</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0348, para. 23; UNESCO Document MLI-OTP-0004-0321, at 0321; MLI-OTP-0001-0042, at 0043.

<sup>904</sup> P-0151’s statement MLI-OTP-0029-0843-R03, at 0855, para. 70.

<sup>905</sup> P-0643’s report MLI-OTP-0077-2933-R01, at 2955; Report MLI-OTP-0007-0002, at 0028.

<sup>906</sup> P-0104: T-024, p. 16. *See also* P-0638: T-057, p. 73; P-0104’s report MLI-OTP-0028-0586, at 0596; P-0643’s report, MLI-OTP-0077-2933-R01, at 2955; Report MLI-OTP-0007-0002, at 0028; UNESCO Document MLI-OTP-0004-0321-R01, at 0329; Report MLI-OTP-0001-0042, at 0043.

<sup>907</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0354, paras 55-56; P-0104’s report MLI-OTP-0028-0586, at 0596.

<sup>908</sup> P-0114 explained that the mausoleums were built in reaction to animist beliefs: in the past, people would go to the cemeteries at night and cut part of the dead bodies of the saints for witchcraft practices (P-0114’s statement MLI-OTP-0023-0344, at 0353-0354, paras 51-52).

<sup>909</sup> P-0104: T-024, p. 17; P-0104’s report MLI-OTP-0028-0586, at 0597; P-0151: T-034, p. 53; MLI-OTP-0029-0843, at 0856.

<sup>910</sup> P-0104’s report MLI-OTP-0028-0586, at 0597.

<sup>911</sup> P-0150: T-092, p. 54.

397. National<sup>912</sup> and international protection was granted to some of the city's mosques and mausoleums, some of which have been classified since 1988 as UNESCO World Heritage Sites,<sup>913</sup> following a specific procedure.<sup>914</sup>
398. The main protected heritage buildings were situated in the old town, called *medina*, which was the historic centre of the city.<sup>915</sup> Those monuments include the Djingareyber Mosque or '*Grande Mosquée*', where most of the Friday prayers took place.<sup>916</sup> The Mosque of Sankoré, referred to by many witnesses in the case, was the place where people met for major events.<sup>917</sup> The Mosque of Sidi Yahia<sup>918</sup> and the main administrative buildings, such as the building of the governor of the province (the '*Gouvernorat*'),<sup>919</sup> were also situated in the *medina*.<sup>920</sup> One of the most significant neighbourhoods of the city was the one called Bellafarandi, inhabited by the dark-skinned Tuaregs called the Bella community.<sup>921</sup> The other main neighbourhoods were: Abaradjou, Sankoré, Alpha Moya, Sans Fil, Bariz and Hammabangou.<sup>922</sup>
399. Apart from the mosques, other religious places in Timbuktu were the Catholic

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<sup>912</sup> At the national level, the Old City of Timbuktu was protected in its entirety, including the cemeteries and their mausoleums (P-0151: T-034, p. 9; P-0151's statement MLI-OTP-0029-0843-R03, at 0857-0858, *referring to* Malian decree MLI-OTP-0029-1078; P-0114's statement MLI-OTP-0023-0344-R02, at 0369-0370, paras 104-111).

<sup>913</sup> P-0151: T-034, pp. 8-9; P-0151's statement MLI-OTP-0029-0843-R03, at 0855-0862. On the role of the UNESCO, P-0151 explained the different responsibilities for the management of the sites, including the production of annual reports regarding Timbuktu (P-0151: T-034, pp. 35-39; P-0151's statement MLI-OTP-0029-0843-R03, at 0849).

<sup>914</sup> P-0151: T-034, pp. 39-44, 46-47; P-0151's statement MLI-OTP-0029-0843-R03. Concerning the registration of heritage, *see* P-0114's statement MLI-OTP-0023-0344-R02, at 0368-0371, paras 100-103, 112-118.

<sup>915</sup> P-0150: T-106, p. 4; P-0654: T-132, p. 9.

<sup>916</sup> P-0114's statement MLI-OTP-0023-0344-R02, at 0352, para. 43. *See also* UNESCO document MLI-OTP-0004-0321-R01, at 0342; P-0150: T-106, p. 4.

<sup>917</sup> P-0114's statement MLI-OTP-0023-0344-R02, at 0352, para. 44. *See also* UNESCO document MLI-OTP-0004-0321-R01, at 0344; P-0150: T-106, p. 4.

<sup>918</sup> P-0114's statement MLI-OTP-0023-0344-R02, at 0353, para. 45; UNESCO document MLI-OTP-0004-0321-R01, at 0346.

<sup>919</sup> P-0065: T-038, pp. 49, 53-54; T-039, p. 18, *referring to* annotated photograph MLI-OTP-0040-0406; P-0150: T-091, pp. 25-26; T-092, pp. 55-58, *referring notably to* annotated map MLI-REG-0001-0061; P-0608: T-154, p. 20; P-0582's statements MLI-OTP-0062-3736-R02, at 3744; MLI-OTP-0062-3760-R02, at 3770; D-0605: T-192, p. 87; T-195, p. 5.

<sup>920</sup> P-0654: T-132, p. 9.

<sup>921</sup> P-0065: T-044, p. 16; P-0643's report MLI-OTP-0077-2933-R01, at 2938; P-0150: T-093, p. 4.

<sup>922</sup> *See notably* P-0150: T-106, p. 4; P-0654: T-132, p. 10. The Chamber also notes the map provided by the Prosecution (Annex 4 to [Prosecution Final Brief](#)).

Church, the Evangelical Church and a synagogue.<sup>923</sup>

400. The population of Timbuktu was considered ethnically heterogeneous.<sup>924</sup> The main ethnic groups, referred to by witnesses and experts in this case,<sup>925</sup> were the Songhai, the Tuareg, the Bella, the Arabs and the Bambara.<sup>926</sup> The Songhai spoke Songhoy<sup>927</sup> while the Tuareg, who were mainly stockbreeders and nomads,<sup>928</sup> spoke Tamasheq.<sup>929</sup>
401. The Tuareg society was stratified and divided into sub-groups.<sup>930</sup> One of the sub-groups was the Bella (or ‘Bellata’), who were considered to have been ‘slaves’ or ‘born into slavery’ within the Tuareg community, until the middle of the 20<sup>th</sup> century.<sup>931</sup> The Bellas were considered to be one of the biggest communities of Timbuktu.<sup>932</sup> The Arabs (or ‘*Maures*’) constitute another group, and many of them were traders.<sup>933</sup> Other groups mentioned in this case are the Fulani and the Peul.<sup>934</sup> Before and in 2012, tensions<sup>935</sup> existed between the Tuareg and the Arabs

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<sup>923</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0350-0351, 0353, paras 35, 49; P-0643’s report, MLI-OTP-0077-2933-R01, at 2942. *See also* P-0114’s statement MLI-OTP-0023-0344-R02, at 0349-0351, paras 26, 35; P-0150: T-104, p. 28.

<sup>924</sup> P-0638: T-057, p. 72; P-0114’s statement MLI-OTP-0023-0344-R02, at 0350, paras 33-34. *See also* P-0152’s report MLI-OTP-0031-0496, at 0499.

<sup>925</sup> For the purpose of this judgment, when referring to the ‘ethnic groups’, ‘ethnicities’ and/or ‘races’, the Chamber solely refers to the *subjective* perception of the inhabitants of Timbuktu and the way people designated each other in context.

<sup>926</sup> P-0643’s report MLI-OTP-0077-2933-R01, at 2937; P-0150: T-093, pp. 5, 7; P-0152: T-032, p. 35; P-0638: T-057, p. 73; P-0114’s statement MLI-OTP-0023-0344-R02, at 0350, para. 34; P-0622’s statement MLI-OTP-0065-0558-R02, at 0561, para. 16.

<sup>927</sup> P-0643’s report MLI-OTP-0077-2933-R01, at 2937. The Chamber refers to this language as ‘Songhai’.

<sup>928</sup> P-0643’s report MLI-OTP-0077-2933-R01, at 2937.

<sup>929</sup> P-0643’s report MLI-OTP-0077-2933-R01, at 2937.

<sup>930</sup> P-0152 explained that the Tuareg society was a stratified society between the various family clans, but also with regards to the various occupations of people (*imushar* (warriors), *inslemen* (Muslim scholars), *inhaden* (artists)), from the noble clan Ifoghas (P-0152: T-032, p. 61) to the Bella, ‘which are people who, at one point in time, were taken as slaves’. Although P-0152 was prudent in explaining the relationship between the colour of the skin and the occupation of the communities within the Tuareg society, he stated that more lighter-skinned groups among the Tuareg have historically belonged to the noble class (P-0152: T-032, p. 36). *See also* P-0152’s report MLI-OTP-0031-0496, at 0506-0507. *See further* D-0605: T-195, pp. 52, 104. D-0605 referred also to four different sub-groups among the Tuaregs: the masters, the sheikhs, the professionals, and the slaves.

<sup>931</sup> P-0065: T-044, p. 16; P-0152: T-032, p. 35; P-0643’s report, MLI-OTP-0077-2933-R01, at 2938. *See also* D-0605: T-195, pp. 54, 105-106.

<sup>932</sup> P-0065: T-044, p. 16; P-0114’s statement MLI-OTP-0023-0344-R02, at 0350, para. 34; P-0622’s statement MLI-OTP-0065-0558-R02, at 0561, para. 16; P-0150: T-093, p. 5.

<sup>933</sup> P-0643’s report, MLI-OTP-0077-2933-R01, at 2937; P-0622’s statement MLI-OTP-0065-0558-R02, at 0561, para. 16.

<sup>934</sup> P-0152: T-032, pp. 35-36. *See also* P-0152’s report MLI-OTP-0031-0496, at 0499.

<sup>935</sup> P-0099: T-145, pp. 78-80; P-0150: T-096, p. 43; P-0152’s report MLI-OTP-0031-0496, at 0500.



on the one side, and the ‘Blacks’ (either ‘Bambara’,<sup>936</sup> or ‘Songhai and Bellata’<sup>937</sup>) on the other side.<sup>938</sup> The ‘Blacks’ and ‘Bambara’ were perceived as supporters of the Government,<sup>939</sup> while the Tuareg and the Arabs were traditionally considered in the North as being close to each other.<sup>940</sup>

## 2. Religious traditions

402. Religion had a strong influence on the social and cultural values of the population of Timbuktu.<sup>941</sup> As such, the city was described as a place in which religious belief was very important: the imams interacted with the population<sup>942</sup> and the *qadis* (the traditional judges) had a lot of influence over the population.<sup>943</sup>
403. In addition, the mausoleums of Timbuktu were crucially important for most of the local community and some people visited the mausoleums every day.<sup>944</sup> The inhabitants of Timbuktu came to gather around the mausoleums on Fridays.<sup>945</sup> The practice, called ‘*Tawassul*’<sup>946</sup> consisted of communicating with God through these saints, including offering donations to the saints, which could be made while making individual wishes.<sup>947</sup>

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<sup>936</sup> P-0099: T-145, pp. 78-80.

<sup>937</sup> P-0150: T-096, p. 43; T-093, p. 5.

<sup>938</sup> The Chamber notes that the Bella, Songhai, Fulani, Peul and Bambara were mainly referred to as being more ‘dark skinned’, while the ‘Arabs’ and the Tuareg were mainly referred to as being more ‘white skinned’ (see P-0150: T-093, pp. 4-5; T-103, p. 9; P-0608: T-153, p. 57; P-0099: T-145, p. 78).

<sup>939</sup> P-0150: T-094, p. 52; P-0152’s report MLI-OTP-0031-0496, at 0500.

<sup>940</sup> D-0605: T-192, pp. 25-26.

<sup>941</sup> P-0643’s report, MLI-OTP-0077-2933-R01, at 2942. However, the Chamber notes that P-0152 stated that there has been a tendency on the more popular reporting on the conflict of Mali in general to overstate the role of religion (P-0152: T-032, p. 55) whereas one cannot explain the conflict solely through the lenses of religion and theological differences or commonalities (P-0152: T-032, p. 65).

<sup>942</sup> D-0202: T-202, p. 56.

<sup>943</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0372, para. 122. See also [Defence Final Brief](#), para. 366.

<sup>944</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0354, para. 54. See also P-0654: T-132, pp. 13-14.

<sup>945</sup> P-0114: T-060, p. 23.

<sup>946</sup> P-0104’s report MLI-OTP-0028-0586, at 0596. P-0104 testified that one of the specific features of Timbuktu is that the population may talk to the saints rather than to God and the fact that the saints belong to different ethnic groups, reflecting the linguistic differences prevailing in Timbuktu (P-0104: T-024, pp. 16-17). The inhabitants may therefore speak in their own language to impart their message to God (P-0104: T-024, p. 17). As such, the role of the mausoleums is to receive people and offer a translation for individuals who wish to address, in a specific language, the divine (P-0104: T-024, p. 17).

<sup>947</sup> P-0104’s report MLI-OTP-0028-0586, at 0597. In his report, P-0104 explained that originally, one important aspect of the donations was the regular replastering (‘*crépissage*’) of the walls and roof with local soil, corresponding to a ritual aiming at warding off bad luck and particularly to ensure that good rains will come (P-0104’s report MLI-OTP-0028-0586, at 0597-0598). This maintenance must be carried out every three to five years, depending on the rainfall (P-0104’s report MLI-OTP-0028-0586, at 0598).

404. Given the mausoleums' significance for the community, local people were attached to these buildings.<sup>948</sup> They were locations for prayer to show one's faith, contemplation and wishes.<sup>949</sup> The community of Timbuktu also saw these locations as a type of benediction for the protection of the city against evil<sup>950</sup> and the maintaining and replastering of the monuments and sites was part of the spiritual life and traditions of the city.<sup>951</sup> Despite not being maintained properly at times, or the fact that cleanliness was sometimes '[left] to be desired', for almost five hundred years, the community strove to keep their heritage alive, with consistent maintenance.<sup>952</sup>
405. Mausoleums also had the role of connecting the various communities that populated Timbuktu,<sup>953</sup> and beyond. Indeed, many of the saints of Timbuktu were saints that had groups or followers and their teachings, *i.e.*, the religious doctrine

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P-0151 explained that the maintenance and replastering ('*crépissage*') of the monuments and sites is part of the spiritual life of the population of Timbuktu and of the traditions of the town (P-0151: T-034, p. 21). It is a manual process involving the entire community periodically, on a voluntary basis, whereby people escalate the walls of the monuments and plaster them with mud, which is necessary to maintain the structures against the weather in Timbuktu and is seen a community endeavour and an expression of respect from the community towards the monuments (P-0151: T-034, pp. 12-13, 31-32; MLI-OTP-0029-0843, at 0855-0856; MLI-OTP-0069-4370, at 4388-4389). P-0151 witnessed the replastering exercise of a mosque during his visit of Timbuktu in 2005 and took a photograph (P-0151: T-034, p. 12, *referring to* MLI-OTP-0029-1075).

<sup>948</sup> P-0151: T-034, p. 23.

<sup>949</sup> P-0431: T-062, p. 20. P-0431 (*see* P-0431: T-062 to T-063), [REDACTED], held several positions linked to cultural heritage [REDACTED], from 2007 to May 2013 (P-0431: T-062, pp. 11-14, *referring to* MLI-OTP-0037-0002-R01; T-063, p. 5). P-0431 appeared before the Chamber as an expert and testified about the cultural heritage of Timbuktu and its domestic and international protection. The Chamber considers that the witness is very knowledgeable about cultural heritage and provided a balanced testimony which provided an insight into cultural heritage in Mali, and in particular, Timbuktu, from the perspective of the local population, the government of Mali and UNESCO. In this regard, the Chamber notes that P-0431 went to Timbuktu before the events [REDACTED] (P-0431: T-062, pp. 14-15, *referring to* MLI-OTP-0007-0002). Further, whilst P-0431 was based in [REDACTED] in 2012-2013, he explained how he received information and photographs of the events taking place in Timbuktu, notably of the destroyed mausoleums, [REDACTED] from people who had either remained in Timbuktu or were able to travel from Timbuktu (P-0431: T-062, pp. 27-29). P-0431 added that, on the basis of the information that he received, [REDACTED] and to provide information in terms of actions to undertake to stop or hinder the destruction of the monuments in Timbuktu, as well as to undertake their reconstruction at a later stage, in line with the commitments made by Mali at the domestic and international levels (P-0431: T-062, pp. 29-31). The Chamber further notes that P-0431 provided useful evidence on the interaction between conservation and development and showed that he took into account the views of local people in his work to assess the value of cultural heritage (*see* P-0431: T-062, pp. 13, 59-60; T-063, pp. 8-13). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0431 to be a generally credible and reliable witness.

<sup>950</sup> P-0431: T-062, p. 20.

<sup>951</sup> P-0151: T-034, p. 21.

<sup>952</sup> P-0151: T-034, pp. 37-38. *See also* T-034-FRA, p. 39; P-0431: T-062, pp. 16, 21. P-0431 also stated that this is what he was able to observe (P-0431: T-062, p. 16)

<sup>953</sup> P-0104: T-024, p. 30. *See also* P-0104: T-024-FRA, p. 28.

and the dogma, became established throughout Western Africa, the Sahel region and the Sahara.<sup>954</sup>

406. Prior to 2012, almost all Muslims in the Sahel, including Timbuktu, practiced Sunni Islam, informed by the Maliki school of thought.<sup>955</sup> In addition, most were influenced in their religious practices by Sufism.<sup>956</sup> However there were also alternative forms of Islam, such as the movements of Salafism or *Salafiyya*<sup>957</sup> and the Wahhabism or *Wahhabiyya*,<sup>958</sup> which both shared similar concerns<sup>959</sup> and were present in Timbuktu. Salafism promotes a return to the origin of the belief.<sup>960</sup> Wahhabism, founded on the territory of what today is Saudi Arabia in 1744 by Muhammed Ibn Abd al-Wahhab, aimed at reviving an Islam he felt had been ‘polluted’.<sup>961</sup> Wahhabism was introduced in West Africa in the 1930s and emerged in Timbuktu in the early 1990s.<sup>962</sup> It was brought to Timbuktu by Malian migrants returning from Saudi Arabia.<sup>963</sup>

407. Wahhabists initiated and founded the building of around 50 Wahhabi mosques in Timbuktu (while before 1980, there were only five mosques in Timbuktu).<sup>964</sup> Those Wahhabi mosques are situated in the poorer neighbourhoods at the periphery of the city.<sup>965</sup> Indeed, the Wahhabism won the support of the poorest segments of the population of Timbuktu, and its equalitarian discourse (‘we are all slaves of God’) was particularly appealing to the young people from slave lineage and low social classes of the socially hierarchical Tuareg community.<sup>966</sup>

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<sup>954</sup> P-0114: T-060, p. 30.

<sup>955</sup> P-0643: T-083, pp. 19-20; P-0152’s report MLI-OTP-0031-0496, at 0516.

<sup>956</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0351, 0372, paras 36, 122-123; P-0065: T-037, p. 21; P-0152’s report MLI-OTP-0031-0496, at 0498. *See in particular* P-0152: T-032, p. 53.

<sup>957</sup> P-0152’s report MLI-OTP-0031-0496, at 0517.

<sup>958</sup> P-0152’s report MLI-OTP-0031-0496, at 0517. According to P-0152, the Salafism is itself divided into the ‘scholarly Salafis’ or *Salafiyya ilmiyya* and ‘Fighting Salafis’ or *Salafiyya jihadiyya*. *See also* P-0150: T-096, p. 18.

<sup>959</sup> P-0152’s report MLI-OTP-0031-0496, at 0517.

<sup>960</sup> P-0152’s report MLI-OTP-0031-0496, at 0517.

<sup>961</sup> P-0152’s report MLI-OTP-0031-0496, at 0517.

<sup>962</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0351, para. 36; P-0152’s report MLI-OTP-0031-0496, at 0517.

<sup>963</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0372, para. 123.

<sup>964</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0351, para. 36.

<sup>965</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0351, para. 36.

<sup>966</sup> P-0152’s report MLI-OTP-0031-0496, at 0517-0518; P-0114’s statement MLI-OTP-0023-0344-R02, at 0351, 0372, paras 36, 123.

408. Regarding the practices around the mausoleums, there were also, before 2012, two different Islamic schools of thought: the Sufists followers, who were seeking blessings from certain individuals who they thought could assist living beings, even when those individuals had died; and the Wahhabists, who stood against the Sufi school of thought and considered the practices of seeking blessing from the shrines to be a form of infidelity.<sup>967</sup>
409. Before 2012, there was no law that would forbid people from practicing their religion and people were free to practice any kind of religious traditions and rituals in Timbuktu<sup>968</sup> even though large parts of the Malian population tended to be quite socially conservative.<sup>969</sup> In addition to Wahhabism which was spreading in Timbuktu before 2012, the coexistence of various Muslim doctrines led to conflicts and divisions within the society of Timbuktu: there were issues around the construction of mosques, and, as explained below, conflicts between the inhabitants of the city.<sup>970</sup> Other religions, including Christianity, were practiced in Timbuktu.<sup>971</sup>

### 3. Atmosphere in the city

410. Before 2012, there was a perception that the distribution of public resources and infrastructures was unequal between Northern and Southern Mali, and that Northern Mali, especially the Tuareg regions, was isolated from the rest of the country.<sup>972</sup> In the region of Timbuktu, people were suffering from a lack of public services, in particular as regards the sectors of education, health care and

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<sup>967</sup> P-0152: T-032, p. 28; P-0065: T-037, p. 21. P-0065 explained that he did not know much about the practices followed at the shrines or how blessings are sought from them as he does not belong to Sufi denominations (P-0065: T-037, p. 21).

<sup>968</sup> P-0065: T-037, p. 18.

<sup>969</sup> P-0152: T-032, p. 60.

<sup>970</sup> P-0150: T-105, p. 69. About the construction of mosques, *see also* P-0114's statement MLI-OTP-0023-0344-R02, at 0351, para. 36.

<sup>971</sup> *See* paragraphs 399 above, 694 below.

<sup>972</sup> P-0152's report MLI-OTP-0031-0496, at 0504; D-0272: T-182, p. 23; P-0004: T-166, p. 27; D-0240's statement MLI-D28-0006-4222-R01, at 4225; D-0272's statement MLI-D28-0006-4181-R02, at 4183.

justice.<sup>973</sup> In addition, drug trafficking was causing insecurity.<sup>974</sup>

411. The lack of public services was particularly an issue for the Tuareg community.<sup>975</sup>

In addition, this community also felt that they were discriminated against by the rest of the population and by the Malian army, in particular during and as a result of the Tuareg rebellions.<sup>976</sup> Within the Tuareg community, people repeatedly

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<sup>973</sup> P-1086: T-122, p. 9; D-0605: T-192, pp. 12-13; D-0272: T-182, p. 23; P-0643's report MLI-OTP-0077-2933-R01, at 2939; D-0511's statement MLI-D28-0005-9310, translation MLI-D28-0006-2629-R01, at 2631-2632; D-0534's statement MLI-D28-0006-4188-R01, at 4189; D-0245's statement MLI-D28-0006-4141, at 4142-4143; D-0611's statement MLI-D28-0006-4287-R01, at 4295; D-0240's statement MLI-D28-0006-4222-R01, at 4225; D-0272's statement MLI-D28-0006-4181-R02, at 4183, para. 11. D-0534 (*see* D-0534's statement MLI-D28-0006-4188-R01 and two addendums MLI-D28-0006-4204-R01 and MLI-D28-0006-4206-R01 introduced through Rule 68(2)(b) of the Rules), a Muslim Tamasheq man [REDACTED], was not present in Timbuktu during the charged events and left Mali [REDACTED] (D-0534's statement MLI-D28-0006-4188-R01, at 4191-4192, 4197; MLI-D28-0006-4204-R01, at 4204). He joined the CJA after returning to Mali some years later [REDACTED] (D-0534's statement MLI-D28-0006-4188, at 4194-4195). He mainly testified about the situation in the North of Mali before 2012, the creation and operation of organisations including the CJA and Mr Al Hassan's role in that organisation, his interactions with, and impression of, Mr Al Hassan, and the circumstances of Mr Al Hassan's arrest. The Chamber observes that the witness gave detailed information and generally distinguished between those matters based on his direct knowledge and experiences, such as the situation of Tuareg in Mali and the creation and evolution of the CJA and its activities (*see e.g.* D-0534's statement MLI-D28-0006-4188-R01, at 4189, 4191-4200), and others which were based on rumours or his own speculation, such as the reasons why Tuareg joined 'the Islamists' in 2012 and the circumstances surrounding Mr Al Hassan's arrest in 2017 (*see e.g.* D-0534's statement MLI-D28-0006-4188-R01, at 4190, 4198, 4200). In relation to his testimony on Mr Al Hassan, the Chamber notes that while describing him as [REDACTED], the witness only met Mr Al Hassan for the first time in [REDACTED] and appears to have had only somewhat limited interactions with him, stating that they met three or four times and also spoke on the phone (D-0534's statement MLI-D28-0006-4188-R01, at 4197-4198). The witness also acknowledged that Mr Al Hassan never told him about events in 2012 and this was a subject they avoided speaking of (D-0534's statement MLI-D28-0006-4188-R01, at 4197). In assessing D-0534's evidence on Mr Al Hassan's character, his motivations for joining Ansar Dine/AQIM in 2012 and his associations with other groups (*see e.g.* D-0534's statement MLI-D28-0006-4188-R01, at 4197-4198), the Chamber remains cognisant of these limitations. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0534 to be a generally credible and reliable witness, although remains mindful of the foregoing considerations in assessing his evidence. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>974</sup> P-0065: T-046, p. 11. *See also* MLI-D28-0004-3467; P-0152's report MLI-OTP-0031-0496, at 0515; P-0114's statement MLI-OTP-0023-0344, at 0371, paras 119-120; D-0553's statement MLI-D28-0005-9325-R01, at 9327, para. 13.

<sup>975</sup> D-0534's statement MLI-D28-0006-4188-R01, at 4189; D-0245's statement MLI-D28-0006-4141, at 4142, para. 9; D-0605: T-192, pp. 12, 15; D-0211: T-190, p. 28.

<sup>976</sup> P-0152: T-032, p. 16. According to P-0152, after the democratisation process in the early 1990s, the North of the country continued to be economically marginalised (P-0152: T-032, p. 46). P-1086 referred to the '2012 rebellion' (P-1086: T-121, p. 12). He explained that there was a mission led by the Malian army called Kokadie and the goal of that mission was to exterminate the entire Tuareg community, the white community living around Timbuktu. According to P-1086, the purpose was to wipe, to cleanse, and to exterminate the community (P-1086: T-122, p. 5). P-0065 confirmed that since he entered Mali, he had fear and he was afraid of the Malian government (P-0065: T-050, p. 10). *See also* D-0605: T-192, pp. 9-11, 14-17; D-0211: T-190, p. 31; D-0540: T-183, p. 8; D-0315: T-185, p. 10. P-0150 confirmed that that there was a concern among ethnic groups such as the Tuareg that they would not receive fair

referred to several killings allegedly committed by the Malian army targeting Tuareg people.<sup>977</sup>

412. Regarding the social norms prevailing in Timbuktu, the Prosecution submits that ‘the lives of the Timbuktu population before and after the occupation contrasted sharply with their lives under the occupation’.<sup>978</sup> It also refers to evidence showing that the population enjoyed many liberties in their daily life which they were later deprived of in 2012.<sup>979</sup> The Defence argues that before 2012, the city ‘was a socially conservative city controlled by religious notables opposed to any practices inconsistent with these traditionalist values’,<sup>980</sup> and that the religious practices applied by Ansar Dine were the same that applied previously.<sup>981</sup>
413. The Chamber notes that, before 2012, in some communities, especially in villages or the desert, there were social constraints on drinking alcohol or having extra-marital relations, as well as restrictions as to women’s dress and movements.<sup>982</sup> In addition, more generally some individuals and groups had expressed concerns about the ‘declining morality of people in Timbuktu’, the Western influence, particularly on the youngest generations, and Timbuktu losing its identity.<sup>983</sup> In

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treatment under the State judicial system (P-0150: T-105, p. 65). *See also* [Defence Trial Brief](#), paras 93-94.

<sup>977</sup> D-0605: T-192, pp. 11, 18-19. D-0605 provided information regarding the situation of the Tuareg community in Mali and the discrimination they were facing (D-0605: T-192, pp. 12-13, 15). D-0605 noted that light-skinned persons were targeted because the majority of them were rebels and members of rebellious movements and as such they were targeted by the rest of the population (D-0605: T-192, pp. 9-11). *See also* P-0099: T-145, pp. 78-79; T-145-FRA, p. 73; D-0211: T-190, p. 31; D-0540: T-183, p. 9; D-0540: T-183, pp. 31-32; D-0315: T-185, pp. 7-8.

<sup>978</sup> [Prosecution Final Brief](#), para. 477.

<sup>979</sup> *See* [Prosecution Final Brief](#), paras 478-485, 489 (arguing that the majority of the rules imposed by Ansar Dine/AQIM were new to the population of Timbuktu and that before 2012 people could practice their religion freely, dress as they wished, organise celebrations, dance, listen to music, drink alcohol, smoke and men and women could have relationships outside of marriage).

<sup>980</sup> [Defence Final Brief](#), para. 3. *See also* [Defence Trial Brief](#), para. 20; [Defence Final Brief](#), paras 600, 602.

<sup>981</sup> [Defence Final Brief](#), para. 600, *referring, inter alia, to*, D-0202: T-202, pp. 43, 46-48; P-0150: T-089, pp. 32-33.

<sup>982</sup> D-0202: T-202, pp. 43, 45; D-0315: T-186, p. 17; P-0608: T-155, p. 21; P-0150: T-104, p. 37; D-0605: T-194, pp. 73-74. D-0605 indicated that he was referring to Tuareg communities living in villages and in the desert (D-0605: T-194, p. 73).

<sup>983</sup> P-0114: T-060, p. 60; D-0551: T-200, p. 15 (testifying that young people were engaged in activities that were against the traditional religious values of Timbuktu, such as abusive alcohol consumption, nocturnal meeting between men and women, and wearing clothing that was against Islam); P-0654: T-132, p. 80 (testifying that the youth in Timbuktu ‘went off the rails’); T-133, pp. 9, 14-15 (testifying that new technologies, television and soap operas from the West were influencing young people’s behaviour); P-0150: T-104, p. 37 (testifying that there was a generation of girls in high school who supported a

2009 and 2010, some ‘*comités des mœurs*’ (‘moral committees’) were created in various neighbourhoods to discuss those concerns.<sup>984</sup> On 12 June 2010, an ‘*assemblée générale*’ (general assembly meeting) took place resulting in proposals for reforms which were presented to the Mayor of Timbuktu.<sup>985</sup> However, those proposals were ultimately not implemented, because of the disapproval of the Governor, who recalled that Mali was a secular Republic.<sup>986</sup> Contrary to the Defence’s argument, the Chamber considers that these practices by some communities and the concerns expressed, reflected a view of one segment of the population only.

414. Before 2012, the residents of Timbuktu enjoyed freedoms in terms of social activity and religious practice.<sup>987</sup> Notably, it was possible to play and to listen to

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modernist trend in Timbuktu); T-105, p. 69 (testifying that some people in Timbuktu considered events such as ‘Tamakannit’ and Miss ORTM would diffuse occidental thought patterns or ideas); P-0114: T-060, p. 60 (speaking of the ‘declining morality of people in Timbuktu’); P-0004: T-166, p. 12 (speaking of the ‘degradation of virtues or values’ and of the ‘degradation of morals’); D-0551: T-200, pp. 15-16 (speaking of ‘deprivations of morality’ and ‘degradation of traditional and religious values’ and testifying that the Miss ORTM contest was considered to be ‘against the traditional religious values of the town’), 20 (testifying that ‘one needs to know that Timbuktu is cultural and Islamic, Timbuktu is known for its traditional Islamic status. It’s very religious, where the conduct of society is ruled by – is governed by the rules of Islam’); P-0654: T-133, p. 9. *See also* Research Paper MLI-D28-0004-9442, at 9452; Press article MLI-D28-0004-3108, at 3108; D-0553’s statement MLI-D28-0005-9325-R01, at 9327-9328, paras 13-14, 22; Facebook post MLI-D28-0004-3335, Resolutions of the Moral Committee of 12 June 2010 (commented by P-0004: T-166, p. 12); Facebook post MLI-D28-0005-8217, at 8220.

<sup>984</sup> Meetings of these ‘moral committees’ were attended by heads of neighbourhoods, *notables*, marabouts, women, young people, opinion leaders, religious representatives (such as Islamic Council, the Union of Young Muslims of Mali, imams, *qadis*) and managers of places selling alcohol. D-0551: T-200, pp. 9-10; P-0004: T-166, p. 46; P-0654: T-133, p. 13; Facebook post MLI-D28-0004-3335, Resolutions of the Moral Committee of 12 June 2010. Those concerns were primarily the beauty contest of ‘Miss ORTM’ (‘Office for the Television and Radio of Mali’), the consumption of alcohol and drugs by young people, ‘nocturnal’ meetings between men and women, and the way women, but also men to a lesser extent, were dressed, and the fact that some public celebrations were mixed (meaning attended by both men and women who would mix). D-0551 explained that the beauty contest was considered to be a ‘violation of the traditions of Timbuktu’ for allegedly ‘encouraging deprivations of morality’ by leading ‘young girls to dress in a dishonourable way by wearing clothing that was against Islam’. D-0551: T-200, pp. 14-15. *See also* D-0551: T-200, pp. 15, 21, 23; P-0114: T-060, p. 60. *See also* P-0150: T-105, p. 74; D-0553’s statement MLI-D28-0005-9325-R01, at 9327, para. 13.

<sup>985</sup> P-0004: T-166, pp. 5-6, 9-10, 13; D-0551: T-200, pp. 30-31, 42; D-0553’s statement MLI-D28-0005-9325-R01, at 9327, paras 14-15; Facebook post MLI-D28-0004-3335, Resolutions of the Moral Committee of 12 June 2010; Facebook post MLI-D28-0005-8217, at 8220 (*see* D-0553’s statement MLI-D28-0005-9325-R01, at 9328, para. 22). Among the proposals adopted were the cancellation of the ‘Miss ORTM’ beauty contest; the creation of ‘follow-up’ ‘moral committees’ in each neighbourhood; the respect of a particular way of dressing, in accordance with tradition, especially for women; and a restriction on new bars openings. *See also* P-0654: T-133, p. 9; D-0553’s statement MLI-D28-0005-9325-R01, at 9328, para. 18.

<sup>986</sup> D-0551: T-200, p. 17; T-201, pp. 6-7; P-0004: T-166, p. 5; Facebook post MLI-D28-0005-8217, at 8221-8222.

<sup>987</sup> P-0065: T-037, p. 18; P-6038: T-057, p. 59; P-0622’s statement MLI-OTP-0065-0558-R02, at 0561, para. 18; P-0639’s statement MLI-OTP-0072-0290-R03, at 0297, para. 32.

music,<sup>988</sup> (which was broadcasted on the radio)<sup>989</sup> including during celebrations such as weddings,<sup>990</sup> or at music festivals,<sup>991</sup> to smoke tobacco (which could be bought in the shops),<sup>992</sup> to drink alcohol, including in public spaces, or in restaurants, bars, or nightclubs,<sup>993</sup> to go to discotheques,<sup>994</sup> to organise parties and to dance,<sup>995</sup> and to practice ‘any kind of religious traditions and rituals’.<sup>996</sup> Women were free to dress ‘as they wished’<sup>997</sup> and did not have to wear a veil.<sup>998</sup> They were free in their movements and would come back home ‘whenever they wanted to’.<sup>999</sup> Men and women could go out together at night, have relationships and sexual intercourse, without being married.<sup>1000</sup>

415. Based on the foregoing, the Chamber concludes that before 2012, the social life of the population in Timbuktu was in fact a patchwork of different behaviours which was governed by different social norms depending on the relevant communities.<sup>1001</sup>

#### 4. ‘Ordinary’ marriages

416. Prior to 2012, marriages were arranged between families<sup>1002</sup> and in practice, the consent of the woman getting married was not always sought.<sup>1003</sup> However, legally, no marriage could be carried out without consent, which had to be given

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<sup>988</sup> P-0093: T-211, p. 16.

<sup>989</sup> P-0093: T-211, p. 17; P-0638: T-058, p. 5 (P-0638 mentioned Radio Lafia, Radio Jamana, Radio Al Farouk, Radio Al Fayda, Radio Tahanint, Radio ORTM which had events in Tamasheq, Arabic, Songhai, Bambara, French and English).

<sup>990</sup> P-0638: T-058, p. 5; P-0065: T-037, pp. 22-23.

<sup>991</sup> P-0638: T-058, p. 5; P-0065: T-037, p. 23; T-046, p. 18.

<sup>992</sup> P-0638: T-057, p. 60; P-0065: T-037, p. 28.

<sup>993</sup> P-0638: T-058, p. 6; P-0065: T-037, p. 27; P-0150: T-105, p. 69; P-0654: T-130, p. 42.

<sup>994</sup> P-0638: T-058, p. 5.

<sup>995</sup> P-0638: T-057, pp. 59, 63; P-0654: T-130, p. 42; P-0622’s statement MLI-OTP-0065-0558, at 0561, para. 18.

<sup>996</sup> P-0065: T-037, p. 18.

<sup>997</sup> P-0065: T-037, pp. 13, 18; P-0654: T-130, p. 44. *See also* P-0638: T-057, p. 67.

<sup>998</sup> D-0605: T-194, p. 73; P-0602: T-084, p. 78; P-0643: T-083, p. 34.

<sup>999</sup> P-0654: T-130, p. 8.

<sup>1000</sup> P-0654: T-130, p. 43; P-0638: T-057, p. 62; P-0065: T-037, pp. 16-17.

<sup>1001</sup> On this basis, the Chamber also rejects the Defence’s argument that there was one and only ‘dress code’ worn by local women before 2012 ([Defence Final Brief](#), para. 531).

<sup>1002</sup> P-0152: T-032, p. 79. *See also* paragraph 432 below. *See also* [Defence Final Brief](#), paras 57, 266, 271; [LRVs Final Brief](#), para. 175.

<sup>1003</sup> P-0643: T-083, pp. 76-77, referring to Research Article MLI-D28-0004-8515; P-0152: T-032, pp. 40, 80; D-0315: T-186, pp. 11, 47-48, 50; P-0114: T-060, p. 64; P-0150: T-103, p. 14; T-113, p. 9; Sensibilisation meetings were organised in Timbuktu to raise awareness of the population about forced and early marriages. *See* D-0315: T-186, pp. 10, 64. *See also* [Defence Final Brief](#), para. 273.



by both of the persons getting married, orally and in person before the civil servant in charge of the registration of the marriage.<sup>1004</sup> In some instances, ‘early marriages’ were arranged, namely those where the girl was not yet 18 years old.<sup>1005</sup> In Mali, the legal age to be married for men was 18 years old, and for women, 15 years old until December 2011, when it was changed to 16 years old.<sup>1006</sup> Religious marriages were recognised by the law from December 2011.<sup>1007</sup> Marriages were mostly endogamic, *i.e.* within the same family or ethnic group.<sup>1008</sup> There was a low rate of polygamy in the Tuareg and Arabic communities, while it was common in the Songhai communities.<sup>1009</sup>

417. Although the marriage ceremony used differed between ethnic groups, marriages had some features in common: (i) important negotiations took place between the families involved mainly concerning a dowry that the man would give to the family of the woman;<sup>1010</sup> and (ii) the woman would leave her family and would live in the house of her husband.<sup>1011</sup> In the Tuareg, Arab and Songhai communities, the marriage was carried out by a marabout.<sup>1012</sup> Music was played during the ceremony and a party took place.<sup>1013</sup>

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<sup>1004</sup> Article 283 of Malian Law N°2011-087 adopted on 30 December 2011, MLI-D28-0005-2225, at 2276 (stipulating that ‘*il n’y a point de mariage lorsqu’il n’y a point de consentement. Le consentement n’est point valable s’il a été extorqué par violence [...]. Il doit être donné oralement et en personne devant l’officier de l’état civil par chacun des futurs époux*’).

<sup>1005</sup> P-0643: T-083, pp. 33, 76; D-0315: T-186, p. 13; P-0643’s report MLI-OTP-0077-2933-R01, at 2951; Research article MLI-D28-0004-8515, at 8515 (defining ‘early marriages’ as marriages happening when the girl had not reached the age of 18 years old yet).

<sup>1006</sup> Article 281 of Malian Law N°2011-087 adopted on 30 December 2011, MLI-D28-0005-2225, at 2276; P-0643’s report MLI-OTP-0077-2933-R01, at 2954 (stating that the *Code des Personnes et de la Famille*, December 2011 changed the legal age of marriage for girls from 15 to 16 years old).

<sup>1007</sup> Article 300 of Malian Law N°2011-087 adopted on 30 December 2011, MLI-D28-0005-2225, at 2279 (stipulating that ‘*le mariage est célébré publiquement par le ministère du culte*’); P-0643: T-083, p. 74; P-0643’s report MLI-OTP-0077-2933-R01, at 2954; Press Article MLI-D28-0004-3108, at 3111.

<sup>1008</sup> P-0152: T-032, pp. 39-40; P-0643: T-083, p. 76; P-0643’s report MLI-OTP-0077-2933-R01, at 2952; Research Article MLI-D28-0004-8515, at 8515.

<sup>1009</sup> P-0643’s report MLI-OTP-0077-2933-R01, at 2949-2951.

<sup>1010</sup> P-0152: T-032, pp. 95-96. As stated by P-0152: ‘When I talk about an ordinary arranged marriage, it’s a marriage that is conducted according to local traditions where [...] there is a bride price involved, there are negotiations between families, families on both sides are involved [...] in the whole affair and the marriage is then usually something that is seen of importance and a good thing, both for the man and woman who actually becomes married [...] but is also seen as something that is useful and good for the two families involved. So [...] there are times there can be lengthy debates about these marriages, there are the negotiations over the bride prices, these kind of things, and there is, if not a formal institution, at least informal institutions around these marriages, customary institutions and so on and so forth’.

<sup>1011</sup> P-0643’s report MLI-OTP-0077-2933-R01, at 2949-2951; P-0150: T-105, p. 61.

<sup>1012</sup> P-0643’s report MLI-OTP-0077-2933-R01, at 2949-2951. For a definition of ‘marabout’, *see* footnote 1026 below.

<sup>1013</sup> P-0557: T-054, p. 22; P-0603: T-125, p. 61; P-0602: T-085, p. 18.

418. Once married, a woman was expected to obey her husband.<sup>1014</sup> As per domestic law, the husband was considered to be the ‘head of family’, his wife was required to live with him, and he was the one choosing their place of residence.<sup>1015</sup>

## 5. Traditional justice system

419. Before 2012, there was a general perception within the society of Timbuktu that the State justice system was corrupt,<sup>1016</sup> unfair,<sup>1017</sup> not worthy of trust,<sup>1018</sup> not easily accessible (in particular outside of the city of Timbuktu),<sup>1019</sup> and the

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<sup>1014</sup> P-0150: T-105, pp. 56, 58; T-104, p. 32. *See also* P-0150: T-103, p. 18; P-0643’s report MLI-OTP-0077-2933-R01, at 2953, referring to the duty of the married women who should accept and endure the ‘prick of the thorn’, which the Chambers understands as referring metaphorically to sexual intercourses with a man.

<sup>1015</sup> Article 319 of Malian Law N°2011-087 adopted on 30 December 2011, MLI-D28-0005-2225, at 2284.

<sup>1016</sup> P-0150: T-105, p. 64; D-0245’s statement MLI-D28-0006-4141-R01, at 4143, para. 13; D-0534’s statement MLI-D28-0006-4881-R01, at 4191; D-0240’s statement MLI-D28-0006-4222-R01, at 4225; D-0553’s statement MLI-D28-0005-9325-R01, at 9327, para. 11; D-0272’s statement MLI-D28-0006-4181-R02, at 4183, paras 12-13; P-0643’s Report MLI-OTP-0077-2933-R01, at 2964. *See also* [Defence Final Brief](#), para. 376.

<sup>1017</sup> D-0211: T-190, p. 29; D-0202: T-202, p. 22; D-0534’s statement MLI-D28-0006-4188-R01, at 4191; D-0511’s statement MLI-D28-0005-9310, translation MLI-D28-0006-2629-R01, at 2632, para. 14. Witnesses explained that the person who would win the case would be the richest one, who would pay more money (D-0211: T-190, p. 29), or the person with more political connections (D-0511’s statement MLI-D28-0005-9310, translation MLI-D28-0006-2629-R01, at 2632, para. 14). P-0150 testified that members of Tuareg and Arabic tribes (‘who spoke Arabic’) in particular feared to be discriminated based on their ethnic background (P-0150: T-105, pp. 64-65).

<sup>1018</sup> P-0643: T-084, pp. 8, 16-17; P-0004: T-166, p. 22; P-0643: T-083, p. 53; D-0534’s statement MLI-D28-0006-4188-R01, at 4191; D-0312’s statement MLI-D28-0006-5584-R01, at 5587; D-0246’s statement MLI-D28-0006-9124-R01, at 9126, para. 13.

<sup>1019</sup> P-0643: T-083, p. 48; D-0540: T-183, p. 17; D-0627’s statement MLI-D28-0006-5699-R01, at 5702, para. 13; D-0246’s statement MLI-D28-0006-9124-R01, at 9126, para. 12; D-0611’s statement MLI-D28-0006-4287-R01, at 4295; Article MLI-D28-0004-7124, at 7125. D-0627 (*see* D-0627’s statement MLI-D28-0006-5699-R01 introduced through Rule 68(2)(c) of the Rules), a Muslim man [REDACTED], was born in Mali. The witness [REDACTED] Mr Al Hassan (D-0627’s statement MLI-D28-0006-5699-R01, at 5701-5702, paras 5, 11, 21) and was not present in Timbuktu during the charged events (D-0627’s statement MLI-D28-0006-5699-R01, at 5701-5702, paras 9-10, 15-16). He joined the CJA at the time when Mr Al Hassan was a member of that organisation and worked with Mr Al Hassan in 2017 (D-0627’s statement MLI-D28-0006-5699-R01, at 5703-5704, paras 28-29). [REDACTED] (D-0627’s statement MLI-D28-0006-5699-R01, at 5704, para. 30). The Chamber observes that D-0627’s testimony is detailed and he generally tried to identify where things were based on what he saw or heard himself and to specify if he did not have knowledge on certain matters and other limitations of his testimony (*see e.g.* D-0627’s statement MLI-D28-0006-5699-R01, at 5702-5703, paras 14, 16, 20, 23-24). The majority of the witness’s testimony relates to subjects outside the scope of the charges, namely matters related to the period 2017 and following, although he gave some testimony about other discrete points such as the justice system before 2012, Mr Al Hassan’s work before the arrival of Ansar Dine/AQIM in Timbuktu in 2012 and his views on Mr Al Hassan’s character. In assessing D-0627’s evidence on Mr Al Hassan’s character the Chamber remains mindful that the witness knew Mr Al Hassan before 2012 but seems not to have had contact with him from the period of the charges until 2016 (*see* D-0627’s statement MLI-D28-0006-5699-R01, at 5702-5703, paras 21-24). Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds D-0627 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence, in

proceedings were too long and inefficient.<sup>1020</sup> For those reasons, people, in particular the Tuareg,<sup>1021</sup> turned voluntarily towards the ‘traditional justice’ system to settle disputes and conflicts.<sup>1022</sup> Even though this traditional justice was not official or formal, it was ‘tolerated’ by the Malian State authorities, except for criminal matters.<sup>1023</sup>

420. Traditional justice was performed by traditional leaders such as the heads of families, neighbourhoods, tribes, villages or groups of elders,<sup>1024</sup> or religious personalities,<sup>1025</sup> who were chosen based on their knowledge of Islam.<sup>1026</sup> Some of them only, the most eminent, could become imams in a mosque.<sup>1027</sup> Among the imams, some were chosen to become *qadis*<sup>1028</sup> who were considered as ‘superior judges’,<sup>1029</sup> with a recognised knowledge of the *Quran* and jurisprudence.<sup>1030</sup> Only men, and not women, could become a religious judge.<sup>1031</sup>

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particular the limited relevance of much of his evidence to the period of the charges. The Chamber notes that this is a general assessment of the witness’s testimony and that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate.

<sup>1020</sup> D-0246’s statement MLI-D28-0006-9124-R01, at 9126, para. 13; D-0315: T-185, p. 18; P-0004: T-166, p. 22.

<sup>1021</sup> Even though all ethnicities would have recourse to traditional justice, it seems that such recourse was even more systematic in the Tuareg and Arabic communities. *See* D-0202: T-202, p. 32; D-0246’s statement MLI-D28-0006-9124-R01, at 9126; P-0150: T-105, pp. 64-65; D-0211: T-190, p. 50.

<sup>1022</sup> P-0160: T-067, pp. 33-34; D-0540: T-183, pp. 17-18; P-0643: T-083, pp. 18, 53; P-0065: T-046, p. 43, *referring to* MLI-OTP-0020-0017, at 0119, translation MLI-OTP-0078-9744, at 9748; D-0240’s statement MLI-D28-0006-4222-R01, at 4225. *See* [Defence Final Brief](#), paras 67, 327.

<sup>1023</sup> P-0150: T-097, p. 39; P-0065: T-046, p. 43, *referring to* MLI-OTP-0020-0017, at 0119, translation MLI-OTP-0078-9744, at 9748. *See also* paragraph 422 and footnote 1034 below; [Defence Final Brief](#), para. 3 (arguing that the Malian authorities were aware of the traditional justice mechanisms).

<sup>1024</sup> D-0315: T-185, p. 18; P-0160: T-067, p. 35; D-0611’s statement MLI-D28-0006-4287-R01, at 4296; P-0643’s report MLI-OTP-0077-2933-R01, at 2964; Research report MLI-D28-0004-8743, at 8753.

<sup>1025</sup> D-0006: T-205, p. 10; P-0065: T-037, p. 18; D-0245’s statement MLI-D28-0006-4141-R01, at 4143; D-0246’s statement MLI-D28-0006-9124-R01, at 9126; D-0611’s statement MLI-D28-0006-4287-R01, at 4296; D-0534’s statement MLI-D28-0006-4188-R01, at 4191; Research report MLI-D28-0004-8743, at 8753.

<sup>1026</sup> D-0551: T-200, p. 10; D-0605: T-192, p. 29; P-0643: T-083, p. 64; P-0004: T-166, p. 21; D-0202: T-202, pp. 23, 96-97. The sheikhs, imams or marabouts studied in *Quranic* schools and had a mastery of the *Quran* and Islamic law, and an ability to deliver religious opinions on religious questions, and settle day-to-day conflicts. *See* P-0643: T-083, pp. 19, 64-65; D-0202: T-202, pp. 23, 96; D-0605: T-192, p. 29; D-0551: T-200, p. 10.

<sup>1027</sup> P-0643: T-083, p. 19; D-0202: T-202, p. 96.

<sup>1028</sup> D-0202: T-202, pp. 24, 98; P-0643: T-083, pp. 18, 65; D-0315: T-185, p. 18; P-0160: T-067, pp. 34-35; D-0551: T-201, p. 15; D-0312’s statement MLI-D28-0006-5584-R01, at 5587; D-0246’s statement MLI-D28-0006-9124-R01, at 9126; D-0534’s statement MLI-D28-0006-4188-R01, at 4191.

<sup>1029</sup> P-0643: T-083, p. 65.

<sup>1030</sup> P-0160: T-067, p. 34; D-0202: T-202, pp. 24, 98. People would address the *qadis* if they had the possibility (geographically) and for more complex cases (of inheritance or divorce, for example). *See* D-0551: T-200, pp. 10-11; D-0315: T-185, p. 18; P-0160: T-067, p. 34; P-0643: T-083, p. 18.

<sup>1031</sup> P-0150: T-105, p. 57.

Before 2012, there were *qadis* acting in Timbuktu.<sup>1032</sup>

421. *Qadis* could adjudicate and provide guidance on ‘ordinary cases’, including family cases (marriages, divorces, inheritance) and finance (sales, usuary, debts, loans), or conflicts between communities.<sup>1033</sup>
422. Before 2012, only Malian law was applied for criminal matters.<sup>1034</sup> *Qadis* were not ‘allowed to work in any penal justice matters’.<sup>1035</sup>
423. The judgments from the *qadis* were not binding for the parties and individuals could disregard the judgment and take their case to the Malian State.<sup>1036</sup>

## B. THE CONFLICT IN NORTHERN MALI BETWEEN 2012 AND 2013

424. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0152,<sup>1037</sup> an expert in armed conflict with experience in the conflict in Mali; Boubacar Keita (P-0646),<sup>1038</sup> who testified

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<sup>1032</sup> D-0551: T-201, p. 15. *See also* T-200, p. 11; P-0643: T-083, p. 53; P-0004: T-166, p. 20, referring to MLI-D28-0005-8026; D-0312’s statement MLI-D28-0006-5584-R01, at 5587.

<sup>1033</sup> D-0605: T-192, p. 26; P-0004: T-166, p. 26; P-0150: T-097, p. 38; D-0611’s statement MLI-D28-0006-4287-R01, at 4296-4297; D-0240’s statement MLI-D28-0006-4222-R01, at 4226; D-0246’s statement MLI-D28-0006-9124-R01, at 9126, para. 12; D-0312’s statement MLI-D28-0006-5584-R01, at 5587; D-0627’s statement MLI-D28-0006-5699-R01, at 5702, para. 13; D-0511’s statement MLI-D28-0005-9310, translation MLI-D28-0006-2629-R01, at 2632, para. 15; [Defence Final Brief](#), para. 3 (arguing that *qadis* and sheikhs resolved disputes in matters ranging from marriages, divorce, adultery, theft, and murder).

<sup>1034</sup> D-0551: T-201, pp. 20, 23; P-0150: T-097, p. 39; D-0245’s statement MLI-D28-0006-4141-R01, at 4143, para. 15; P-0643’s report MLI-OTP-0077-2933, at 2963, 2965, referring to a legislation dated 2011 and stating that in criminal matters the Malian state law applies and there is no place for another criminal system, and that from the accession to independence in 1960 to beginning of 2012, *Sharia* was not applied for criminal matters.

<sup>1035</sup> P-0150: T-097, p. 39. The Chamber notes that on the rare occasions *qadis* dealt with penal matters concerning bigger felonies that required *hadd*, they operated ‘in secret’ or in remote areas. *See* P-0150: T-097, pp. 37-39. As explained by P-0150, certain tribes in remote areas of Mali, in particular living from the West of Timbuktu up to the Mauritanian borders, also implemented the *hudud* for extra-marital intercourse and murder. According to P-0150, a few men also volunteered for punishment but it was not easy to prove that a man committed *zina* so it was quite rare for such people to volunteer themselves to the *qadi* for punishment for committing the *hadd* of *zina* (P-0150: T-097, p. 38). *See also* P-0004: T-166, p. 26; P-0643: T-083, pp. 68-69; D-0240: T-191, pp. 48-49; D-0551: T-201, p. 23; D-0245’s statement MLI-D28-0006-4141-R01, at 4143, para. 15; D-0511’s statement MLI-D28-0005-9310, translation MLI-D28-0006-2629-R01, at 2632, para. 15; D-0240’s statement MLI-D28-0006-4222-R01, at 4226.

<sup>1036</sup> P-0150: T-097, p. 37.

<sup>1037</sup> The Chamber refers to its findings on the credibility and reliability of P-0152’s evidence (*see* footnote 894 above).

<sup>1038</sup> Boubacar Keita (*see* P-0646: T-075 to T-078), a retired colonel of the Malian army, was the Director of the *Direction de la Sécurité Militaire* (DMS), the directorate which provides intelligence to the Malian

about the military operations in Mali in 2012; P-0081,<sup>1039</sup> who was a member of the Malian army in 2012; and P-1086,<sup>1040</sup> a former member of the MNLA.

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Minister of Defence, from 2012-2016 (P-0646: T-075, pp. 6-8). He mainly testified about the collection and authenticity of military intelligence provided by the DSM to the Prosecution, and very generally about the context and contents of some of the intelligence documents. The Chamber notes that the witness is highly qualified in the areas of military and intelligence. He was straightforward and professional and testified in a great level of detail about the collection of intelligence and the authenticity of documents provided by the DSM. Regarding his motivation to testify, the Chamber notes that the witness testified that he felt it was his ‘patriotic duty to come and testify in all conscience and will in order to contribute to the emergence of the truth [...] so that such things should never happen again’ (P-0646: T-078, pp. 61-62). The Chamber does not consider the fact that the witness received instructions from the Malian government to testify or that [REDACTED] to affect his credibility in any way (*see* P-0646: T-078, pp. 61-64). The Chamber found the witness’s testimony to be balanced, noting that he was open and forthcoming about the challenges faced and limitations of the relevant intelligence information, particularly once armed groups took control of Timbuktu (*see e.g.* P-0646: T-076, pp. 8-9; T-078, pp. 29, 59). The witness was also very clear as to the basis on which he found the information provided at the time to be credible and reliable to the best of his knowledge (*see e.g.* P-0646: T-075, pp. 18-19; T-076, pp. 8-9; T-077, p. 36; T-078, pp. 26, 29, 34). As regards the documents about which he testified, the Chamber finds the witness’s testimony probative as to their authenticity and the way in which the intelligence contained therein was collected. Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds Boubacar Keita to be a generally credible and reliable witness. As to the probative value and reliability of the documents about which P-0646 testified, the Chamber’s observations are set out below.

<sup>1039</sup> P-0081 (*see* P-0081: T-061; P-0081’s statements MLI-OTP-0012-1152-R02 and MLI-OTP-0067-0299-R02 introduced through Rule 68(3) of the Rules), a soldier in the Malian army, was deployed to Aguelhok in September 2011 (P-0081: T-061, pp. 7, 9). P-0081 provided a detailed personal account of the January 2012 assault on the military base at Aguelhok, his capture ‘by the armed groups’, and his period of captivity at Oumar Ould Hama’s base, including detailed physical descriptions of the people he saw while detained, and information relating to those in charge and their link to Ansar Dine/AQIM (*see e.g.* P-0081’s statement MLI-OTP-0012-1152-R02, at 1160-1176, paras 42-121). The Chamber notes that the witness clearly specified when he did not know, or could not observe or hear, something (*see e.g.* P-0081’s statement MLI-OTP-0012-1152-R02, at 1159, para. 38, 1161, para. 45, 1171, para. 94, 1171, para. 96, 1172, para. 100, 1176, paras 122, 123; P-0081: T-061, pp. 35, 46, 70), and acknowledged that he had difficulty remembering dates (P-0081: T-061, pp. 47-48). The Chamber also notes that during cross-examination, the witness answered all questions frankly and noted the limits of his knowledge, and notably acknowledged that he hoped that writing a report about the events of Aguelhok (MLI-OTP-0012-1184) would facilitate his promotion (P-0081: T-061, pp. 35, 44, 47-48) and that his situation improved after speaking with the Prosecution (P-0081: T-061, pp. 61-64). As regards his motivation to testify, the witness testified that he agreed to meet with the Prosecution to ‘render matters to justice’ (P-0081: T-061, p. 47). In addition, P-0081’s in-court testimony was generally consistent with his prior recorded testimony introduced through Rule 68(3) of the Rules. The witness’s oral testimony and prior statements were also largely consistent with the report he co-wrote with [REDACTED] (MLI-OTP-0012-1184; P-0081: T-061, pp. 11, 34, 45-46), subject to some discrete inconsistencies, which the witness explained and clarified during his testimony (P-0081’s statement MLI-OTP-0012-1152-R02, at 1176-1177, paras 125-131). Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds P-0081 to be a generally credible and reliable witness.

<sup>1040</sup> P-1086 (*see* P-1086: T-121; T-122), a Tuareg man from [REDACTED], was a [REDACTED] before joining the MNLA in February 2012 (P-1086: T-121, pp. 6-7, 10). The witness served as a soldier in the MNLA for approximately five months, thereafter living in a refugee camp from July 2012 to December 2016 (P-1086: T-121, pp. 15, 69-70). The witness mainly testified about events related to Ansar Dine/AQIM’s control of Timbuktu. The Chamber considers that P-1086 provided a careful and sincere account of events, explaining his basis of knowledge and acknowledging when he did not know something or when he received information from other sources (*see e.g.* P-1086: T-121, pp. 26, 30; T-122, pp. 5, 22). The witness conceded that he could not ‘speak with absolute certainty about dates’, but

425. The Chamber also relies on a series of documents which it finds reliable: firstly, a series of documents submitted through P-0646, which are documents emanating from the Malian military intelligence.<sup>1041</sup> Secondly, other documentary evidence which, while not submitted through or discussed by witnesses in court, assist in establishing relevant facts, including the existence and intensity of ongoing hostilities, as well as the armed groups' organisation and functioning.<sup>1042</sup>

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indicated that he did not have any trouble remembering the series in which events occurred (P-1086: T-122, pp. 4-5, 41). The Chamber notes that, as a Tuareg – who had been told of the atrocities committed by the Malian army against the Tuaregs in earlier rebellions and had effectively been 'groomed' to become a rebel – the witness showed a clear bias in favour of the Tuareg cause (*see e.g.* P-1086: T-121, pp. 11-12; T-122, p. 47), which, in the Chamber's view, impacted his testimony in general. The Chamber further observes that the witness, [REDACTED], appeared reluctant to comment negatively on Mr Al Hassan (*see e.g.* P-1086: T-121, pp. 49-50; T-122, pp. 34, 48). He testified that the Al Hassan he knew when he was young was a good person, always ready to help people, and unable to do harm, and noted that (before 2012) he 'was on the right side' (P-1086: T-122, pp. 46, 48). He further stated that he heard some people say that Mr Al Hassan helped a lot of people in Timbuktu in 2012 and sought to make their lives easier and mentioned that to some extent Mr Al Hassan was being used as a scapegoat by the international community (P-1086: T-122, pp. 47-48. *See also* T-122, pp. 55-56). The Chamber, however, believes the witness when he stated that he was motivated to testify to contribute to justice, and to re-establishing justice (P-1086: T-121, p. 71). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-1086 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence including the witness's lack of objectivity on certain subjects. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>1041</sup> Concerning these documents provided by the Malian authorities (entitled '*message porté*', '*bulletin de renseignement*' or '*fiche de renseignement*') and commented upon by P-0646 (P-0646: T-075 and T-077), the Chamber makes the following observations. Albeit these documents originate from one of the parties to the armed conflict, they were issued, at the time, from the military branch of the Malian authorities, with the purpose of reporting and informing the authorities internally, as diligently and accurately as possible, about the contemporaneous events occurring in the North of the country. As put by P-0646, 'the DSM [was] [...] specifically tasked with providing intelligence to the Minister of Defence, to the military commanders in the field, and with providing information about the enemy in order to ensure the security and protection of the troops' (P-0646: T-075, p. 8). The Chamber considers that the context in which these documents were drafted, their nature and purpose militate for their reliability (*contra* ICC-01/12-01/18-1646-Conf-AnxVI). However, their probative value will be assessed on a case-by-case basis in light of their content and the details they provide and depending on their specificity, the Chamber may only rely on them if they are corroborative of other credible and reliable evidence on a given topic. In doing so, the Chamber will bear in mind that those documents were based on the information available at the time, and contained information gathered from anonymous sources, thereby limiting the Defence's ability to challenge their accuracy. The Chamber also dismisses other challenges of the Defence, on specific items, which it finds unsupported. *See also* the Chamber's general findings on the credibility and reliability of P-0646's evidence (*see* footnote 1038 above).

<sup>1042</sup> The Chamber refers to three types of documents: (i) documents from international organisations and non-governmental organisations, including the UN and Amnesty International; (ii) documents or content produced by the armed groups, most notably their press releases; and (iii) other documents from the Malian government or other national authorities. The Chamber acknowledges that the content of documents produced by parties to a conflict may have been influenced by the groups' ultimate objectives and that, without independent evidence to further support their probative value, caution is warranted in their assessment. Having done this careful assessment, the Chamber attributed weight to a number of these documents. Indeed, where appropriate and keeping in mind their source including any potential

426. P-0152 described the unfolding of the conflict in Northern Mali in four distinct phases which are detailed in his report.<sup>1043</sup> However, in the present judgment, the Chamber will only make findings about the key aspects of the unfolding of the conflict which are relevant to the contextual elements of the alleged crimes charged in this case.

### 1. Armed groups operating in Northern Mali in 2012-2013

427. Beside the renewal of old lines of commerce through the drug smuggling and trafficking in the Sahel,<sup>1044</sup> the conflict of 2012-2013 in Northern Mali was a combination of new unrest and discontent among the Tuareg population<sup>1045</sup> and the existence of *jihadi* insurgents that started to achieve a level of local integration in the North of the country.<sup>1046</sup> In addition to the Malian army, several factions operated in Northern Mali between the beginning of 2012 and January 2013:

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bias, the Chamber has relied upon some of these documents, most importantly to establish facts of relevance to the Chamber's assessment of the contextual elements of crimes. These documents are relied upon mainly to establish the course of events, for example the dates and unfolding of certain military operations, as well as the involvement of various entities and their respective claims and objectives. In doing so, the Chamber has considered these documents together with other probative evidence as well as having regard to the established circumstances. Indeed, even where one such document is relied upon alone in support of a fact finding, the Chamber is of the view that – in the present section – specific fact findings are often supported by the general circumstances in the sense that they are consistent with a wide body of evidence relative to ongoing hostilities in Mali immediately before and during the period of the charges.

<sup>1043</sup> According to P-0152, the first phase of the conflict in Northern Mali corresponded to the period from the establishment of the MNA in Timbuktu in November 2010 to the MNLA's first attacks in Northern Mali in mid-January 2012 (P-0152's report MLI-OTP-0031-0496, at 0505). The second phase of the conflict in Northern Mali covered the period between mid-January 2012 and the MNLA's declaration of independence for Northern Mali, called 'Azawad', on 6 April 2012 (P-0152's report MLI-OTP-0031-0496, at 0505). The third phase of the conflict in Northern Mali related to the period between 6 April 2012 and 8 January 2013, during which the 'Islamist coalition in northern Mali both politically and militarily out-maneuvred the MNLA and took control of the major cities in the north', such as Kidal, 'the epicentre of Tuareg rebellion', Gao and Timbuktu (P-0152's report MLI-OTP-0031-0496, at 0505, 0510; P-0152: T-032, p. 24). The final phase of the conflict covered the period from 8 January 2013 to 11 August 2013, when the French military forces, notably assisted by troops from Chad and units from the Malian army, chased AQIM, Ansar Dine and the MUJAO out of the main towns of the North and also started to attempt to gain control of the rest of the North of the country (P-0152: T-032, p. 29; P-0152's report MLI-OTP-0031-0496, at 0506).

<sup>1044</sup> P-0152: T-032, pp. 83-84, 86; P-0152's report MLI-OTP-0031-0496, at 0515.

<sup>1045</sup> Concerning the situation of the Tuaregs in Northern Mali, and the different 'revolutions', the Chamber refers to the testimony of P-0065 and the documentary 'Orphans of the Desert', which describes the conditions of starvation and exile of the Tuaregs (P-0065: T-044, p. 56, referring to video MLI-OTP-0015-0495; transcript MLI-OTP-0033-5189, from 00:31:36:00 to 00:34:28:00). See also, notably on the refugee camps, P-0065: T-044, pp. 53-54, 56, 59; T-050, pp. 59-60, 62). The Chamber notes in particular P-0065's evidence regarding the Ghanda Koy militia: that it was set up by the Malian government during the war in the 1990s against the Tuareg and was responsible for trying to kill all light-skinned people of Tuareg origin and take over their property (P-0065: T-045, p. 56).

<sup>1046</sup> P-0152: T-032, p. 16; P-0152's report MLI-OTP-0031-0496, at 0501.

AQIM, Ansar Dine and the MUJAO (all together ‘the Coalition’) as well as the MNLA.

428. Although the MNLA, AQIM and Ansar Dine agreed on a plan before the battle of Aguelhok in January 2012,<sup>1047</sup> and cooperated with each other in order to gain control of the territory of Northern Mali in April 2012, they split around June 2012<sup>1048</sup> and AQIM, Ansar Dine and the MUJAO fought all together against the MNLA.<sup>1049</sup>

**a) Malian national army**

429. The Malian national army developed on the territory of Mali its own hierarchised chain of command and intelligence services, and, as stated below, was able to deploy military strategies<sup>1050</sup> as well as carry out military operations in different parts of the Malian territory.<sup>1051</sup>

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<sup>1047</sup> See paragraph 445 and footnote 1138 below.

<sup>1048</sup> See paragraphs 453-454 below.

<sup>1049</sup> See paragraph 454 below.

<sup>1050</sup> See e.g. *Directives de mise en condition* MLI-OTP-0012-0327; P-0646: T-075, pp. 8-19.

<sup>1051</sup> See paragraphs 444-448 below. In this regard, the Chamber finds that the evidence cited by the Defence does not support its assertion that the Malian army was ‘very disorganized’ or unable ‘to maintain chain of command or coherent structure *during the charged period*’ (emphasis added) (see [Defence Final Brief](#), para. 101, footnote 318, referring to P-0646: T-076, p. 6). On this point, the Chamber notes that P-0646 stated that the withdrawal of the Malian army from its positions in the North, to ‘locations much further South’ in the Mopti region, [REDACTED], and when the military framework abandoned the territory, [REDACTED]. He also explained that at that time, the army was ‘disorganised’ and the ‘army units found themselves disorganised, in a difficult situation’ (P-0646: T-076, p. 6). However, the Chamber understands P-0646’s testimony on this point to mean that at some point in time in 2012, in the course of the conflict, the Malian army got disorganised, in the sense of being impacted by the strategy of the adversary. The witness did not testify about the degree of organisation of the chain of command or the structure of the Malian army in general. He actually explained that this disorganisation was only temporary, [REDACTED], ‘like all parts of the army’, ‘had to reorganise internally, innovate’, and that it had done so, in order for the mission to continue (P-0646: T-076, p. 7). Therefore the Defence makes an incorrect interpretation and generalisation of the evidence on this point. The Chamber also rejects the Defence’s arguments that the fact that the Malian army suffered desertions ([Defence Final Brief](#), para. 101, footnote 320) or withdrew and did not stay in Timbuktu ([Defence Final Brief](#), para. 101, footnote 321) would show that overall it did not possess the required degree of organisation, or that it completely ‘collapsed’ (Defence Closing Statement, T-214, p. 74). The Chamber also notes that the testimony of P-0081 on the activities of non-state actors does not show that the Malian army was not composed of ‘organised army brigades’ as argued by the Defence ([Defence Final Brief](#), para. 101, fns 322-323). In any case, the Chamber recalls that it will not enter into a legal assessment of the degree of organisation of the Malian army, since the application of international humanitarian law to a potential situation of non-international armed conflict in which governmental forces are engaged, depends on the level of organisation of the party opposing the government, not on the manner in which the government is organised. See paragraph 1257 and footnote 4044 below.



## b) AQIM

430. AQIM came originally from a movement called the GSPC, which was a breakaway faction of the Algerian Armed Islamic Group.<sup>1052</sup> Some members of the GSPC, who did not want to lay down their arms in the context of the 1999 amnesty process in Algeria, migrated to Northern Mali and settled there, including in the region of Timbuktu.<sup>1053</sup> After swearing allegiance to Al-Qaeda in September 2006,<sup>1054</sup> they named themselves ‘AQIM’ in 2007.<sup>1055</sup> AQIM was, at the time of the charges in 2012-2013, headed by Abdelmalek Droukdel, whose goal was to create a *kalifa* or ‘Islamic State’ in the region where their interpretation of *Sharia* would be applied.<sup>1056</sup> This interpretation was rooted in the *Salafiyya* tradition of Islam, but also shared similarities with Wahhabism.<sup>1057</sup> It was promoting a *jihad* which could not be achieved without fighting non-believers.<sup>1058</sup> AQIM gathered up to between 300 and 500 fighters active in the region of Northern Mali during the period of April 2012 and January 2013<sup>1059</sup> coming from, among others, Algeria, Mali, Mauritania and Nigeria.<sup>1060</sup> Members of AQIM were indeed perceived as ‘foreigners’ by the population of

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<sup>1052</sup> P-0152: T-032, p. 27; P-0152’s report MLI-OTP-0031-0496, at 0518-0519.

<sup>1053</sup> P-0152: T-032, p. 27; P-0152’s report MLI-OTP-0031-0496, at 0519.

<sup>1054</sup> US Treasury Press Release MLI-OTP-0067-0268; Amnesty International Report MLI-OTP-0001-2265, at 2273; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0359.

<sup>1055</sup> P-0152’s report MLI-OTP-0031-0496, at 0519.

<sup>1056</sup> See e.g. General instructions MLI-OTP-0024-2320, translation MLI-OTP-0027-0964, at 0969-0973, 0977. See also Audio recording MLI-OTP-0024-2744, transcript MLI-OTP-0027-1073, at 1074, translation MLI-OTP-0024-3130, at 3132; Report MLI-OTP-0009-0005, at 0008. AQIM viewed the ‘Islamic jihadist project in Azawad’, including the control of Timbuktu, as a part of their global project to establish an Islamic State in the region (General instructions MLI-OTP-0024-2320, translation MLI-OTP-0027-0964, at 0969-0973, 0977).

<sup>1057</sup> P-0152: T-032, p. 28; P-0152’s report MLI-OTP-0031-0496, at 0518.

<sup>1058</sup> P-0150 explained the ideology in the following way: ‘*jihad* can take different forms. MNLA sometimes thought that they are performing *jihad*, although they don’t have any jihadist ideology, but sometimes they describe this armed strife against the Malian army as *jihad*. And an example about that is the speech that I used to give before working with the jihadists, as I described the work of MNLA as *jihad*. But it is very important to identify the definition of *jihad* that Al-Qaeda wanted and this *jihad*, according to Al-Qaeda cannot be achieved without fighting those who do not believe in God and they put that under the word of “taghut”. And the term “taghut” here is an exaggerated meaning of tyranny. And the interpreters will understand this’ (P-0150: T-101, pp. 31-32).

<sup>1059</sup> P-0099: T-145, p. 20; *Bulletin de renseignement* MLI-OTP-0012-0327, at 0328; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0359; Report MLI-OTP-0009-0005, at 0009. In this regard, the Chamber finds that the evidence cited by the Defence does not support its assertion that ‘AQIM was composed of disparate brigades uninvolved in the conflict’ (*Contra* [Defence Final Brief](#), para. 96, footnote 301).

<sup>1060</sup> Report MLI-OTP-0001-3758, at 3759; Amnesty International Report MLI-OTP-0001-2265, at 2273; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0359. See also P-0099: T-145, p. 17.

Timbuktu.<sup>1061</sup>

431. AQIM was divided into smaller groups of fighters called *katibats* or ‘battalions’, which were small sections of fighters,<sup>1062</sup> in charge of the control of a territorial region,<sup>1063</sup> and each of them directed by an emir.<sup>1064</sup> In the region of Timbuktu, the active *katibats* were the *Katibat ‘Tariq Ibn Ziyad’*, led by Abou Zeid, and the *Katibat ‘Al Fourqane’*, led by Yahia Abou Al Hamman.<sup>1065</sup> Both the general organisation and each *katibat* had an executive body called ‘*Shura council*’,<sup>1066</sup> and an established system of allegiance.<sup>1067</sup> The fighters were equipped with automatic rifles (AK47s, RPG7s, PKMs and Drouganovs) and, including in Timbuktu, moved in Toyota pick-ups armed with 12.7 and 14.5 millimetre machine guns.<sup>1068</sup> AQIM members operating in Timbuktu wore beige/khaki clothing and used a black flag with a white circle in the middle and the inscription ‘*Lahilah Illalah*’.<sup>1069</sup> The group reportedly practiced commando actions for kidnappings, targeted killings and suicidal actions.<sup>1070</sup>
432. AQIM had been active in the region of Timbuktu since 1998 and had developed strategies for local integration among local communities, including performing some charity work and providing humanitarian aid, marrying members of the local population pertaining to both upper and poor lineages, and establishing alliances with marabouts, who had already started to preach the AQIM

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<sup>1061</sup> P-0150: T-103, pp. 8-9, 17; P-0582’s statement MLI-OTP-0062-4037-R02, at 4052; P-0582’s statement MLI-OTP-0062-4053-R02, at 4054; P-0622’s statement MLI-OTP-0065-0558-R02, at 0561, paras 19-20.

<sup>1062</sup> P-0150: T-089, p. 57. *See also* Report MLI-OTP-0009-0005, at 0008-0009.

<sup>1063</sup> *Bulletin de renseignement* MLI-OTP-0002-0193.

<sup>1064</sup> P-0065: T-039, p. 8; Report MLI-OTP-0009-0005, at 0009. *See also* footnotes immediately below. In this regard, the Chamber finds that the evidence cited by the Defence does not support its assertion that AQIM had no clear command structure (*Contra* [Defence Final Brief](#), para. 96, footnote 302).

<sup>1065</sup> P-0099: T-145, pp. 22-23; P-0150: T-088, pp. 46, 49. *See also* Report MLI-OTP-0009-0005, at 0009.

<sup>1066</sup> P-0150: T-089, pp. 57, 59; T-090, pp. 12-13; T-106, pp. 51-52. *See also* General Instructions MLI-OTP-0024-2320, translation MLI-OTP-0027-0964, at 0970.

<sup>1067</sup> P-0150: T-088, pp. 48-50; T-120, pp. 80-81. P-0150 explained that the consequences of pledging allegiance were different from one person to the other, but it generally meant that the person had to follow the same orders and be obliged by the same commands in hardship and in ease as the group. In return, the group would defend, fight and take revenge for that person (P-0150: T-088, p. 50).

<sup>1068</sup> *See e.g.* Report MLI-OTP-0009-0005, at 0009; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0359; P-0150: T-119, pp. 12-13.

<sup>1069</sup> P-0099: T-145, p. 20; P-0150: T-096, p. 64 referring to video MLI-OTP-0025-0010, at 00:10:20:06.

<sup>1070</sup> Report MLI-OTP-0009-0005, at 0010; US Treasury Press Release MLI-OTP-0067-0268; Amnesty International Report MLI-OTP-0001-2265, at 2273, 2289; P-0152’s report MLI-OTP-0031-0496, at 0519; video MLI-OTP-0001-7037, 00:06:30:00-00:06:39:00, transcript MLI-OTP-0024-2962, translation MLI-OTP-0024-2910, at 2918. *See also* US Treasury Press Release MLI-OTP-0067-0270.

interpretation of Islam.<sup>1071</sup> The Chamber will address below<sup>1072</sup> the way this strategy unfolded in Timbuktu during their control of the city.

### c) MNLA

433. The MNLA<sup>1073</sup> emerged in October 2011 after the return to Mali of heavily armed Malian Tuareg fighters, following the fall of President Gaddafi in Libya.<sup>1074</sup> The MNLA resulted from the merging of several existing Tuareg groups,<sup>1075</sup> such as the MNA and the MTNM.<sup>1076</sup> The MNLA was a secular and nationalist Tuareg movement.<sup>1077</sup> Its leaders claimed the Tuaregs' right to self-determination<sup>1078</sup> and their goal was the independence of the territory called 'Azawad',<sup>1079</sup> situated in Northern and Eastern Mali, which included the cities of Kidal, Gao and Timbuktu.<sup>1080</sup>

434. The MNLA comprised of a few thousands fighters,<sup>1081</sup> equipped with assault

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<sup>1071</sup> P-0152: T-032, pp. 27, 79; P-0152's report MLI-OTP-0031-0496, at 0519-0520. In this report, P-0152 explains that when AQIM people arrived in Timbuktu in 1998, they acted as an Islamic charity, married local people and established alliances with local marabouts and made them preach their brand of Islam, and that AQIM employed a careful and gradual strategy of integration and penetration into local communities based on a combination of military, political, religious, economic and humanitarian means. *See also* P-1086: T-122, p. 10. The Chamber notes that the Defence refers to this portion of P-0152's testimony to show that '[f]oreigners came to Timbuktu and Northern Mali before, during, and after 2012, and entered into temporary marriages with local women'. *See Defence Final Brief*, para. 56, footnote 144, referring to P-0152: T-032, p. 79. However, the Chamber notes that the Defence misunderstands P-0152's statement, as he does not refer in his testimony or in his report to temporary marriages between foreigners and locals, but rather to traditional/long lasting marriages, which were actually part of a long term strategy of integration. *See also* P-0150: T-104, p. 34.

<sup>1072</sup> *See* paragraphs 464-466 below.

<sup>1073</sup> *See Communiqué* MLI-OTP-0012-1150.

<sup>1074</sup> P-1086: T-121, pp. 14-15; P-0065: T-037, p. 38; T-050, p. 22; P-0152: T-032, p. 22; Amnesty International Report MLI-OTP-0001-2265, at 2270, 2273; *Fiche de renseignement* MLI-OTP-0012-0922, at 0925; Note MLI-OTP-0001-0167, at 0168; Press release MLI-OTP-0066-0409, at 0410; Press article MLI-OTP-0033-3467, at 3469.

<sup>1075</sup> P-0152: T-032, p. 20; P-0099: T-147, pp. 4-5; Amnesty International Report MLI-OTP-0001-2265, at 2273. *See also* D-0605: T-192, pp. 35-36.

<sup>1076</sup> *Communiqué* MLI-OTP-0012-1150; *Fiche de renseignement* MLI-OTP-0012-0922, at 0925-0926.

<sup>1077</sup> P-0065: T-037, p. 39; D-0605: T-192, p. 36; Press article MLI-OTP-0033-3467, at 3470; P-0152's report MLI-OTP-0031-0496, at 0513. *See also* paragraph 452 below.

<sup>1078</sup> P-0065: T-050, p. 22; P-0004: T-166, p. 73; Press release MLI-OTP-0066-0409, at 0410; P-0152's report MLI-OTP-0031-0496, at 0513.

<sup>1079</sup> P-0004: T-166, p. 73; P-0150: T-088, p. 33; D-0202: T-202, p. 69; P-0065: T-037, p. 39; P-0152's statement MLI-OTP-0031-0496, at 0505, 0513; *Communiqué* MLI-OTP-0012-1150; Note MLI-OTP-0001-0167, at 0168; Press release MLI-OTP-0066-0409, at 0410; *Fiche de renseignement* MLI-OTP-0012-0922, at 0923. *See also* P-0125's statement MLI-OTP-0023-0004-R03, at 0013, para. 40.

<sup>1080</sup> P-0654: T-127, p. 46; P-0150: T-088, pp. 14-15; P-0202: T-202, p. 69; *Fiche de renseignement* MLI-OTP-0012-0922, at 0923.

<sup>1081</sup> *Directives* MLI-OTP-0012-0327, at 0328; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0358; *Bulletin de renseignement* MLI-OTP-0012-0119, at 0120. *See also* Press article MLI-OTP-0033-3467,

weapons, AK47s, MPKs, LRMs, RPGs and vehicles armed with 12.7 and 14.5 millimetre machine guns.<sup>1082</sup> Its flag was of four colours: black, red, green and yellow.<sup>1083</sup> The armed wing of the MNLA was structured as a regular army and was in part headed by officers who were deserters from the Malian army.<sup>1084</sup> Each zone under control was assigned a ‘battalion’ and some ‘battalions’ were themselves subdivided into smaller units.<sup>1085</sup> It had a hierarchical system of military ranks,<sup>1086</sup> discipline and obedience.<sup>1087</sup> The MNLA provided training to new recruits.<sup>1088</sup> Fighters of the MNLA wore military uniforms.<sup>1089</sup>

435. The MNLA was also active in the media: the organisation published several press releases about its goals and military operations against the Malian army,<sup>1090</sup> and its spokesperson made public statements on television.<sup>1091</sup> The MNLA publicly declared that ‘prisoners of war’ under its control would be treated according to the 1949 Geneva Convention.<sup>1092</sup>

#### **d) Ansar Dine**

436. ‘Ansar Dine’ means ‘the defenders of the faith’ in Arabic. This group was mainly

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at 3470. In this regard, the Chamber finds unpersuasive the argument of the Defence that the MNLA suffered desertions to show that it did not fulfil the required degree of organisation ([Defence Final Brief](#), para. 97).

<sup>1082</sup> P-1086: T-121, pp. 13-14; *Bulletin de renseignement* MLI-OTP-0012-0119, at 0120. *See also* picture depicted in Press article MLI-OTP-0033-3467, at 3468.

<sup>1083</sup> P-0608: T-153, pp. 56-57; P-0602: T-084, p. 75; *Fiche de renseignement* MLI-OTP-0012-0922, at 0924.

<sup>1084</sup> P-1086: T-121, pp. 14-15.

<sup>1085</sup> P-1086: T-121, p. 15.

<sup>1086</sup> Press release MLI-OTP-0066-0399, at 0399. *See also* P-1086: T-121, pp. 9, 36, 41 (*referring to his ‘commander’*).

<sup>1087</sup> P-1086: T-121, p. 36; Press release MLI-OTP-0066-0399. In this regard, the Chamber finds that the evidence cited by the Defence does not support its assertion that the MNLA had no discipline or organization (*see* [Defence Final Brief](#), para. 97, footnote 305).

<sup>1088</sup> P-1086: T-121, p. 12; Press article MLI-OTP-0033-3467, at 3469-3470. *See also* video MLI-OTP-0015-0495, at 00:16:30:00-00:17:40:00 (with P-1086: T-122, pp. 12-13).

<sup>1089</sup> P-0004: T-164, p. 31. *See also* the pictures depicted in Press article MLI-OTP-0033-3467. *See also* P-0150: T-101, pp. 23-24 *referring to* video MLI-OTP-0015-0495, transcript, MLI-OTP-0033-5189, translation MLI-OTP-0033-5288, from 00:07:25:04 to 00:07:38:00. P-0150 testified that the people seen in the footage belong to the MNLA and that the extract depicts how they were dressed in 2012 and early 2013.

<sup>1090</sup> Press releases MLI-OTP-0066-0418; MLI-OTP-0066-0399; MLI-OTP-0066-0424; MLI-OTP-0066-0409.

<sup>1091</sup> Video MLI-OTP-0011-0283 (depicting Mossa Ag Attaher, the spokesperson of the MNLA, appearing on television). *See also* Press article MLI-OTP-0033-3467.

<sup>1092</sup> Press releases MLI-OTP-0066-0409, at 0412; MLI-OTP-0066-0418, at 0418; MLI-OTP-0066-0424, at 0424.

composed of Tuareg from Mali.<sup>1093</sup> Its leader was Iyad Ag Ghaly, a Malian dignitary of the Tuareg Ifoghas clan who created the movement in November/December 2011.<sup>1094</sup> Ansar Dine's goal was to establish an Islamic State on the entire territory of Mali where their interpretation of *Sharia* would be applied, in lieu of the Malian Constitution.<sup>1095</sup>

437. The Defence argues that Ansar Dine did not pursue an extremist religious ideology.<sup>1096</sup> It claims that several tribes joined Ansar Dine because they saw it as a non-extremist alternative to AQIM, were told that joining would help resist the encroachment of AQIM, and that high-ranking Tuareg individuals also joined Ansar Dine to ensure it remained non-extremist.<sup>1097</sup> The Chamber notes that credible and reliable evidence shows that the reality is more nuanced than what is alleged by the Defence: Ansar Dine had in fact two components: (i) the 'religious'; and (ii) the 'national'. The 'religious' component promoted ideas similar to those of Al-Qaeda and included local people, most of whom were Tuareg and Arabs, to help in achieving Ansar Dine/AQIM's takeover of the major

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<sup>1093</sup> P-0152: T-032, p. 25; P-0150: T-089, p. 16; T-146, p. 16; D-0605: T-194, pp. 72-73. There were different reasons why new recruits would join Ansar Dine: the Muslim character of the organisation (D-0605: T-192, p. 45; T-194, p. 72; P-0582's statement MLI-OTP-0062-3657-R02, at 3672, 3674); its perceived absence of discrimination (D-0605: T-192, pp. 44-45; T-195, pp. 69-70); to seek protection and security (P-1086: T-122, p. 60; D-0065: T-050, p. 37); or as a working opportunity (D-0605: T-194, p. 72; D-0065: T-050, p. 37; P-0638: T-058, pp. 21, 23-24).

<sup>1094</sup> P-0150: T-101, p. 31; T-088, pp. 16-17, 53; T-090, pp. 64, 68-70; P-0099: T-147, p. 8; T-145, pp. 21, 57; D-0605: T-192, p. 44; UN report MLI-OTP-0001-1359, at 1369, para. 40; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0358. P-0152 explains in his report that Ag Ghaly founded Ansar Dine after failing to take over the leadership of the Ifoghas clan and the MNLA, partly because 'the leadership of the Ifoghas traditionally belongs to the noble clan of the Ifoghas and not the warrior clan of the tribe that Ag Ghaly originates from' (P-0152's report MLI-OTP-0031-0496, at 0512). On Iyad Ag Ghaly, see paragraph 459 below.

<sup>1095</sup> Audio recording MLI-OTP-0038-0888, transcript MLI-OTP-0056-0851, translation MLI-OTP-0063-1041, at 1044, 1055. P-0150 recognised the voice of Iyad Ag Ghaly and his explanation about the relationship between Al-Qaeda and Ansar Dine (P-0150: T-101, pp. 29-31, 33). In relation to Iyad Ag Ghaly's statement that the second principle of Ansar Dine is based on is to disavow 'the constitution and the law established by the legislator, secularism and democracy', P-0150 explained: 'This is the point that Al-Qaeda focuses on and it wanted those who are members of Al-Qaeda to adhere to' (P-0150: T-101, pp. 31-32). See also P-0044: T-166, p. 73; Article MLI-OTP-0001-3271, at 3272; video MLI-OTP-0001-7037, 00:19:21:00-00:20:10:00, transcript MLI-OTP-0024-2962, translation MLI-OTP-0024-2910, at 2927; UN Report MLI-OTP-0014-5183, at 5187, para. 21. According to an article from Sahara Media, Iyad Ag Ghaly stated in January 2012 that Ansar Dine's main objective was to 'spread *Sharia* throughout the whole country and to replace the Malian Constitution'. See MLI-OTP-0020-0111, translation MLI-OTP-0032-0301. See also P-0065: T-037, pp. 51-53; P-0114's statement MLI-OTP-0023-0344, at 0381. The Chamber notes that one of the goals displayed justifying the application of the *Sharia* was to gain the benediction of God (see video MLI-OTP-0011-0007, transcript MLI-OTP-0040-0425, translation MLI-OTP-0040-0430, 0434).

<sup>1096</sup> [Defence Final Brief](#), paras 41-43.

<sup>1097</sup> [Defence Final Brief](#), para. 43.

cities in Northern Mali.<sup>1098</sup> The ‘national’ component joined after the Coalition took control of the territories and cities of Northern Mali and evicted the MNLA; at that time, Ansar Dine created a section within the group to address the ‘patriotic’ or ‘national project’ (calling for the independence of Northern Mali) in order to allow the local tribes, who did not want to leave their lands to Al-Qaeda, to join the group.<sup>1099</sup> As well some high-level Tuaregs joined Ansar Dine in order to try to push it into a less extreme direction.<sup>1100</sup> At the same time, Al-Qaeda found an opportunity to use these locals ‘as a cover while achieving their objectives’.<sup>1101</sup> The Chamber is satisfied that even if some individuals had different motivations or wanted a less extreme approach, Ansar Dine, as an organisation commanded by Iyad Ag Ghaly, served the objectives of Al-Qaeda.

438. Within Ansar Dine, a system of allegiance to Iyad Ag Ghaly was in place.<sup>1102</sup> The organisation was composed of approximately 1500 fighters active in Northern Mali during the period of April 2012 to January 2013.<sup>1103</sup> They were equipped with automatic guns like AK47s and armed vehicles and heavy weaponry (for example BM-21),<sup>1104</sup> and recognisable by the use of a black flag bearing a white Arabic inscription.<sup>1105</sup>

439. Members of Ansar Dine received a military training in training centres.<sup>1106</sup> In

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<sup>1098</sup> P-0065: T-042, p. 49; T-045, p. 16.

<sup>1099</sup> P-0065: T-050, p. 22; P-0150: T-106, p. 16.

<sup>1100</sup> P-0150: T-106, p. 17.

<sup>1101</sup> P-0065: T-050, p. 22. *See* P-0150: T-106, pp. 16-17.

<sup>1102</sup> P-0150: T-090, pp. 25-26; T-091, p. 37; T-100, p. 24.

<sup>1103</sup> *Bulletin de renseignement* MLI-OTP-0012-0119, at 0121; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0358; *Bulletin de renseignement* MLI-OTP-0012-0327, at 0328.

<sup>1104</sup> P-1086: T-121, p. 26; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0358.

<sup>1105</sup> P-1086: T-121, p. 62; P-0654: T-128, p. 18, *referring to* video MLI-OTP-0001-6925, from 00:00:50:04 to 00:00:51:07. The Chamber notes that the flag of Ansar Dine is described by those two witnesses in the same way AQIM’s flag is described by other witnesses (*see* paragraph 431 above). The Chamber also notes that P-0150, when shown a video in which the same flag appears (P-0150: T-096, p. 64 *referring to* video MLI-OTP-0025-0010, at 00:10:20:06), testified that it was the flag of Al-Qaeda but that ‘all the groups that enter Timbuktu used it’ (P-0150: T-092, p. 6). Based on this evidence, the Chamber finds that Ansar Dine and AQIM used the same flags in Timbuktu during their control of the city.

<sup>1106</sup> P-0626: T-143, p. 23. *See also* footnotes 1107-1115 below.

Timbuktu, Ansar Dine/AQIM<sup>1107</sup> had in 2012 at least three training centres,<sup>1108</sup> training up to 80-100 new recruits at a time.<sup>1109</sup> Most of the new recruits were young Tuaregs from Timbuktu and surrounding villages coming from ‘all the different tribes’.<sup>1110</sup> Others were foreigners coming from other African countries, such as Egypt, Libya, Algeria, Tunisia and Morocco.<sup>1111</sup> One training centre was specially dedicated to the former MNLA members who had later joined Ansar Dine.<sup>1112</sup>

440. New recruits received mandatory religious, ideological and military training (including on the use of light and heavy weaponry),<sup>1113</sup> lasting between 15 to 45

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<sup>1107</sup> See D-0529: T-188, p. 24; P-0150: T-099, pp. 28, 32, 35-36, 38. The Chamber understands that the training centres in Timbuktu were operating both for Ansar Dine and AQIM. D-0529 (see D-0529: T-188 to T-189), a Muslim Tuareg man of the [REDACTED] ethnic group, grew up in the vicinity of Timbuktu and travelled there regularly prior to 2012 (D-0529: T-188, pp. 7-10; T-189, p. 36). D-0529 did not go to school and was a shepherd prior to the arrival of Ansar Dine/AQIM (D-0529: T-188, p. 9; T-189, p. 62). The witness joined Ansar Dine in 2012 (D-0529: T-188, pp. 7, 14-21). The witness mainly testified about events related to Ansar Dine/AQIM’s control of Timbuktu, including his work for the groups. The Chamber observes that D-0529 appeared honest and balanced in his answers and noted that his knowledge about the armed groups was limited to his personal experiences (see e.g. D-0529: T-188, p. 12). The witness did not speculate, specifying when he did not know or remember something (see e.g. D-0529: T-188, p. 16; T-189, pp. 9-10). The witness was open about his motivations in joining Ansar Dine, noting that Islam was of very great importance to him, that he understood that Ansar Dine were carrying out *jihad* ‘to defend the law of the Prophet Muhammad’ and, therefore, he had to join them (D-0529: T-188, pp. 17-23). The Chamber further notes that details the witness provided about the training he received when he joined Ansar Dine/AQIM (D-0529: T-188, p. 24; T-189, pp. 4-9, 45-48) are consistent with other testimony on the record. However, noting that the witness stated that after the arrival of Ansar Dine/AQIM, he ‘no longer had an overview of the daily life of people’ (D-0529: T-189, p. 36), and that he had limited duties as a member of the security battalion, deployed at a security post, and never saw anyone being arrested (D-0529: T-189, pp. 13-15, 49-50), the Chamber considers that – with the exception of the activities and persons with which he was personally involved – the witness’s basis of knowledge on the life in Timbuktu during the control of Ansar Dine/AQIM was limited. Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds D-0529 to be a generally credible and reliable witness although remains cognisant of the foregoing considerations in assessing his evidence. The Chamber notes that this is a general assessment of the witness’s testimony and that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate.

<sup>1108</sup> P-0150: T-099, pp. 28, 33-34. See maps MLI-REG-0001-0083, MLI-REG-0001-0084, MLI-REG-0001-0085, on which P-0150 respectively indicated the approximate locations of the training centres run by Nasser (with ‘A’), Abu Haritha (‘B’) and the third centre for members of the MNLA (‘C’) (P-0150: T-099, pp. 29-31). See also D-0529: T-188, p. 24; T-189, pp. 4, 45; Mr Al Hassan’s statement MLI-OTP-0051-0824, at 0833-0845; P-0010: T-020, pp. 10-11; P-0582’s statement MLI-OTP-0062-3986-R02, at 3999-4000.

<sup>1109</sup> P-0150: T-099, pp. 33-34; Mr Al Hassan’s statement MLI-OTP-0051-0824, at 0833-0845.

<sup>1110</sup> P-0150: T-099, pp. 35-36; P-0099: T-145, p. 78; D-0529: T-188, p. 24; T-189, pp. 5, 46.

<sup>1111</sup> P-0099: T-145, p. 84; T-147, p. 68; Mr Al Hassan’s statement MLI-OTP-0051-0824, at 0833-0845.

<sup>1112</sup> P-0150: T-099, p. 28; *Message porté* MLI-OTP-0012-0949.

<sup>1113</sup> P-0099: T-145, pp. 76-77, 80-82; P-0150: T-099, pp. 32-33; D-0529: T-188, p. 24; T-189, pp. 7-8, 47-48; P-0638: T-058, p. 25-26; P-0582’s statement MLI-OTP-0062-3641-R02, at 3646, MLI-OTP-0062-3679-R02, at 3691-3692, MLI-OTP-0062-3986-R02, at 4001, 4004; Mr Al Hassan’s statements MLI-OTP-0051-1184, at 1201-1202; MLI-OTP-0051-0824, at 0833-0845. See also P-0010: T-020, pp. 10-11.

days,<sup>1114</sup> before being dispatched to different organs, generally by Talha.<sup>1115</sup> A document found at the former *Gendarmerie Nationale* building shows that they were asked to ‘lis[ten]and ob[ey]’ and ‘comply with all orders given’, informed of rules regarding their behaviour, and told that any violation to the rules would result in punishment.<sup>1116</sup> During the trainings, recruits were informed of the aim of Ansar Dine, the edification of religion, and the *Sharia* rules.<sup>1117</sup>

441. Ansar Dine received financial, military and logistical support from AQIM,<sup>1118</sup> and formed a formal alliance with it, commonly known as ‘JNIM’.<sup>1119</sup> Ansar Dine had the capacity to deploy diplomatic delegations.<sup>1120</sup> Sanda Ould Boumama acted as the official spokesperson of Ansar Dine.<sup>1121</sup> In Timbuktu, he was working for the media office.<sup>1122</sup>

#### e) MUJAO

442. The MUJAO<sup>1123</sup> was created at the end of 2011, and was a breakaway faction

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<sup>1114</sup> D-0529: T-189, pp. 6, 46; P-0150: T-099, p. 33; P-0582’s statement MLI-OTP-0062-3641-R02, at 3646.

<sup>1115</sup> P-0150: T-099, pp. 36, 37; D-0529: T-189, pp. 11, 13; P-0582’s statement MLI-OTP-0062-3679-R02, at 3693, 3695. On Talha’s role within Ansar Dine/AQIM, *see* paragraph 548 below.

<sup>1116</sup> Document MLI-OTP-0002-0759, translation MLI-OTP-0078-6164, at 6165. In relation to this document, the Chamber particularly takes note of P-0150’s testimony, who stated that, although he had not seen the document ‘in that way’ before he met the Prosecution, he knew the information contained therein and he recognised the ‘flags of Al-Qaeda’ at the top left and right of the document, and explained that it was written to be used as a pledge by the new recruits, so that everyone was aware of all the conditions when they joined the groups (P-0150: T-099, pp. 37-38). The Chamber further notes that the document is entitled ‘Rules of Recruitment’ and contains a reference to Ansar Dine, and considers that it can be said that it contains the rules of recruitment of Ansar Dine/AQIM in Timbuktu in 2012-2013 for the purpose of training centres. *See also* P-0150: T-099, p. 32.

<sup>1117</sup> D-0529: T-189, pp. 7-8, 48. D-0529 explained that the recruits were notably informed that the punishment for fornication was 100 lashes for a person who had never been married and stoning for a person who had been married.

<sup>1118</sup> P-0150: T-089, p. 75; T-090, p. 57; T-096, p. 71; T-099, p. 51; T-100, p. 24; T-120, p. 83; UN sanctions MLI-OTP-0066-0391, at 0392; Article MLI-OTP-0009-2390, at 2403, 2406.

<sup>1119</sup> P-0152: T-032, p. 23; P-0654: T-127, pp. 57-58; UN sanctions MLI-OTP-0066-0391, at 0392; Audio recording MLI-OTP-0038-0888, transcript MLI-OTP-0056-0851, translation MLI-OTP-0063-1041, at 1053, 1054. In this audio recording, the Chamber notes that Iyad Ag Ghaly stated: ‘this is not a secret and since today, our position is not a secret, until our death and even in the hereafter, we will be associated with Al-Qaida’ (at 1053).

<sup>1120</sup> UN Report MLI-OTP-0001-2113, at 2121, paras 37, 39.

<sup>1121</sup> P-0150: T-090, pp. 11-12; P-0065: T-038, p. 23; T-039, p. 13; P-0004: T-164, p. 84.

<sup>1122</sup> *See* paragraph 476 below.

<sup>1123</sup> Press release MLI-OTP-0066-0397 (*referring to the Movement for Unity and Jihad in West Africa (MUJAO)*).



from AQIM.<sup>1124</sup> It was mainly financed by illegal trafficking and kidnappings.<sup>1125</sup> In April 2012, it had around 150 fighters,<sup>1126</sup> most of them originating from Mauritania, Algeria and the Saharawi Polisario ranks,<sup>1127</sup> and locals from Tilemsi, in the Gao region.<sup>1128</sup> The group was able to offer salaries that were attractive for young recruits.<sup>1129</sup> From June 2012 to January 2013, the MUJAO maintained control of the city of Gao,<sup>1130</sup> where it announced the application of their interpretation of *Sharia* in August 2012<sup>1131</sup> and established an Islamic police.<sup>1132</sup> There was a general perception that the control of Gao by the MUJAO was exercised with more violence than in Timbuktu, because of the number of corporal punishments inflicted there.<sup>1133</sup>

443. The MUJAO formed an alliance with Ansar Dine and AQIM in November 2012 and benefited from their support.<sup>1134</sup> It was reportedly supported by fighters from the group Boko Haram, active in Nigeria.<sup>1135</sup>

## 2. Armed violence in Northern Mali and Timbuktu in 2012 and 2013<sup>1136</sup>

444. On 17 January 2012, the MNLA shelled the camp of the Malian army located in

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<sup>1124</sup> P-0152: T-032, p. 74; Amnesty International Report MLI-OTP-0001-2265, at 2273; P-0152's report MLI-OTP-0031-0496, at 0520; Press release MLI-OTP-0066-0397.

<sup>1125</sup> P-0065: T-039, p. 10; P-0152's report MLI-OTP-0031-0496, at 0522-0523; Press release MLI-OTP-0066-0397; *Bulletin de renseignement* MLI-OTP-0012-0445, at 0447; Amnesty International Report MLI-OTP-0001-2265, at 2273.

<sup>1126</sup> *Bulletin de renseignement* MLI-OTP-0012-0327, at 0328; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0359. This document was referred to by P-0646 (P-0646: T-077, p. 42).

<sup>1127</sup> P-0152's report MLI-OTP-0031-0496, at 0521.

<sup>1128</sup> P-0150: T-089, p. 58.

<sup>1129</sup> P-0152's report MLI-OTP-0031-0496, at 0523 (stating that MUJAO salaries for young recruits ranged from 100-700 USD per month, a sum that most local youths would have struggled to make in a year. Thus 'easy money' became an important reason for joining the rank of MUJAO).

<sup>1130</sup> P-0152: T-032, p. 24; P-0152's report MLI-OTP-0031-0496, at 0521; *Bulletin* MLI-OTP-0012-0356, at 0359; *Message porté* MLI-OTP-0012-0955. The Chamber finds that the evidence cited by the Defence does not support its assertion that the MUJAO had no chain of command. See [Defence Final Brief](#), para. 100, fns 316, 317.

<sup>1131</sup> *Message porté* MLI-OTP-0012-0968.

<sup>1132</sup> UN report MLI-OTP-0001-2113, at 2115, para. 10.

<sup>1133</sup> P-0152's report MLI-OTP-0031-0496, at 0520; P-0152: T-032, pp. 71-72. See also Amnesty International Report MLI-OTP-0001-2393, at 2397, 2398.

<sup>1134</sup> See P-0152: T-032, pp. 23-24, referring to P-0152's report MLI-OTP-0031-0496; P-1086: T-121, p. 38; UN sanctions MLI-OTP-0066-0391, at 0392; UN report MLI-OTP-0001-2113, at 2115, para. 10.

<sup>1135</sup> UN report MLI-OTP-0001-2113, at 2115, para. 10.

<sup>1136</sup> The Chamber notes that the factual findings of this sub-section are based exclusively on witness testimony, expert reports, military intelligence information and reports from international organisations. In this context, the Chamber therefore will not address the Defence's argument that 'events portrayed in the media' relating to the existence of hostilities, 'were "exaggerated a great deal" for propaganda purpose' ([Defence Final Brief](#), para. 106).

Menaka, in the region of Gao, seized military equipment, took three prisoners, killed one Malian soldier and wounded several others.<sup>1137</sup>

445. Ansar Dine, AQIM and the MNLA then agreed on a plan to launch a series of assaults on the Malian State positions in the northern part of the country.<sup>1138</sup>

446. On 17 January 2012, and following a battle that lasted for eight days,<sup>1139</sup> the MNLA, AQIM and Ansar Dine jointly launched an assault on and took over the military camp and the city of Aguelhok.<sup>1140</sup> Several Malian soldiers were killed

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<sup>1137</sup> P-0081's statement MLI-OTP-0012-1152-R02, at 1160, para. 42; Note MLI-OTP-0001-0167, at 0167; Report MLI-OTP-0001-0031, at 0035; *Bulletin de renseignement* MLI-OTP-0012-0098, at 0099; *Message porté* MLI-OTP-0012-0754; Press Release MLI-OTP-0066-0409, at 0411.

<sup>1138</sup> P-0150: T-101, p. 26; *Message porté* MLI-OTP-0012-0628; P-0065: T-045, p. 18. The Chamber notes that the Defence argues that P-0150 cannot be relied upon to establish the existence of hostilities as 'his information was gleaned from internet searches and impacted by inappropriate steers from the Prosecution' ([Defence Final Brief](#), para. 106). The Chamber rejects this argument, which is based on one portion of a transcript related to one question asked by the Prosecution during a prior interview of the witness to which P-0150 gave a clear and plausible explanation (P-0150: T-106, p. 50). As such the Defence generalises and misrepresents the witness' testimony on these issues as a whole. The Chamber considers that P-0150's credibility and reliability on the existence of hostilities is based on the presence of P-0150 in Northern Mali as of March 2012, the role he played and his insider position within Ansar Dine/AQIM, and his proximity with the key leaders from whom he gathered numerous information as to the goals and military strategy of the groups. See section II.B.2.a)iii above.

<sup>1139</sup> P-0081's statement MLI-OTP-0012-1152-R02, at 1160-1164 (stating that the first attack was launched on 17 January 2012 and that it lasted until 24 January 2012); Report MLI-OTP-0001-0031, at 0035-0037; Note MLI-OTP-0001-0167, at 0167; *Message porté* MLI-OTP-0012-0748; *Bulletin de renseignement* MLI-OTP-0002-0201, at 0201.

<sup>1140</sup> P-0081: T-061, pp. 18-19; P-0081's statement MLI-OTP-0012-1152-R02, at 1168-1169, paras 80, 84, 95. In his statement, P-0081 described the assailants as speaking Arabic between themselves (P-0081's statement MLI-OTP-0012-1152-R02, at 1166, para. 66), shouting 'Allah Akbar' (P-0081's statement MLI-OTP-0012-1152-R02, at 1164, para. 60), wearing trousers 'that reached just under the knees' (P-0081's statement MLI-OTP-0012-1152-R02, at 1165, para. 65) and 'wearing beards while the others had their face shaven and a beard only on their shin' (P-0081's statement MLI-OTP-0012-1152-R02, at 1166, para. 65) (MLI-OTP-0012-1152-R02). P-0081 explains his basis of knowledge and the Chamber considers this part of his evidence reliable, notably where he discusses the role of Oumar Ould Hama. Oumar Ould Hama was a member of AQIM and Ansar Dine (see P-0065: T-039, p. 11; D-0605: T-194, p. 90). See also P-0152's report MLI-OTP-0031-0496, at 0512; P-0065: T-039, pp. 4-5; *Message porté* MLI-OTP-0012-0748. Regarding the involvement of Ansar Dine and of Iyad Ag Galy in particular, see UN Report MLI-OTP-0014-5183, at 5187, para. 21; P-0065: T-037, p. 47. P-0065 was told, including by a source the Chamber considers to be well informed, that they had taken control of Aguelhok, (P-0065: T-037, pp. 49-51). The Chamber finds that P-0065 is credible and reliable on this aspect of his testimony. See also P-0150: T-101, pp. 28-29; Report MLI-OTP-0001-0031, at 0036. Regarding whether the MNLA was involved in the battle, the Chamber notes that the Prosecution does not make any clear allegation on the matter (see [Prosecution Final Brief](#), para. 548). The Chamber however notes that two pieces of evidence, which are internal documents emanating from the Malian state authorities, mention the involvement of the MNLA in the attack of the camp of Aguelhok (see Report MLI-OTP-0001-0031 and P-0081's report MLI-OTP-0012-1184). The Chamber also notes the testimony of P-0150 in this respect (P-0150: T-101, pp. 26-27): P-0150 testified that 'this attack on Aguelhok was the first one that was done with a joint plan between Al-Qaeda, Ansar Dine and MNLA. Before that, there were minor attacks carried out by the MNLA alone and also some minor attacks by Al-Qaeda by itself. But this attack on Aguelhok was the first one that was done with a joint plan between Al-Qaeda, Ansar Dine and MNLA'. The Chamber also notes that the MNLA publicly claimed through a press release to have been involved

and others were taken prisoner.<sup>1141</sup>

447. From January to March 2012, they jointly targeted Malian army positions in several locations: on 26 and 27 January 2012 in Leré,<sup>1142</sup> on 27 January 2012 on the military camp of Anderamboucane,<sup>1143</sup> on 31 January 2012 on the military camp of Niafunké,<sup>1144</sup> on 7 and 8 February 2012 on the military camp of Tinzawatene,<sup>1145</sup> and on 24 February 2012 in Goumakoura/Ségou.<sup>1146</sup> On 14 March 2012, the MNLA took control of the city of Goundam.<sup>1147</sup>

448. The MNLA and Ansar Dine<sup>1148</sup> jointly launched an assault on the Malian military camp of Amachach in Tessalit<sup>1149</sup> starting on 18 January 2012.<sup>1150</sup> They surrounded the camp on 2 February 2012<sup>1151</sup> and shelled it throughout the month of February 2012,<sup>1152</sup> until the departure of the Malian army, who abandoned its

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in the attack (Press release MLI-OTP-0066-0409, at 0411). The Chamber concludes that the battle of Aguelhok which lasted from 18 January 2012 to 24 January 2012 was jointly carried out by the MNLA, Ansar Dine and AQIM.

<sup>1141</sup> P-0081's statement MLI-OTP-0012-1152-R02, at 1168, 1166-1167; P-0081's report MLI-OTP-0012-1184 (see P-0081: T-061, p. 11, testifying that the report concerns the events in Aguelhok), at 1186; Internal document MLI-OTP-0012-0127; *Message porté* MLI-OTP-0012-0793. See also Note MLI-OTP-0001-0167, at 0169.

<sup>1142</sup> *Message porté* MLI-OTP-0012-0847; *Message porté* MLI-OTP-0012-0851; Press Release MLI-OTP-0066-0406; Press Release MLI-OTP-0066-0409, at 0412. In Leré, the Malian army was attacked by the Coalition moving in 14 vehicles (see *Message porté* MLI-OTP-0012-0851).

<sup>1143</sup> Press Release MLI-OTP-0066-0406, at 0412; *Message porté* MLI-OTP-0012-0839; *Message porté* MLI-OTP-0012-0850. In Anderamboucane, the Malian army was attacked by assailants transported by 70 Toyota vehicles. They had made three prisoners, one person wounded and one killed (*Message porté* MLI-OTP-0012-0850).

<sup>1144</sup> *Message porté* MLI-OTP-0012-0878; *Message porté* MLI-OTP-0012-0477; *Message porté* MLI-OTP-0012-0482.

<sup>1145</sup> *Message porté* MLI-OTP-0012-0527; *Message porté* MLI-OTP-0012-0526; *Message porté* MLI-OTP-0012-0530; Press Release, MLI-OTP-0066-0415.

<sup>1146</sup> Press Release MLI-OTP-0066-0421; *Message porté* MLI-OTP-0012-0588. During the battle of Ségou, several Malian soldiers as well as members of the MNLA were killed and others wounded.

<sup>1147</sup> Press Release MLI-OTP-0066-0428, at 0428.

<sup>1148</sup> P-0065: T-038, pp. 4-5; P-1086: T-121, p. 27; P-0152's report MLI-OTP-0031-0496, at 0512; Note MLI-OTP-0001-0167.

<sup>1149</sup> P-0150 testified that the name of the camp was Amachach, located in the town of Tessalit (see P-0150: T-101, p. 27).

<sup>1150</sup> *Message porté* MLI-OTP-0012-0748; *Message porté* MLI-OTP-0012-0749; *Message porté* MLI-OTP-0012-0753. Following this attack, the Malian army reported on its side one death and eight wounded (see *Message porté* MLI-OTP-0012-0753). This attack caused the death of one Malian soldier and wounded eight (*Message porté* MLI-OTP-0012-0753). The camp was also shelled on 31 January 2012 (see *Message porté* MLI-OTP-0012-0877).

<sup>1151</sup> *Message porté* MLI-OTP-0012-0488.

<sup>1152</sup> P-0150: T-101, p. 27; *Message porté* MLI-OTP-0012-0552; *Message porté* MLI-OTP-0012-0578; *Message porté* MLI-OTP-0012-0592.

position during a battle lasting between 5 and 11 March 2012.<sup>1153</sup>

449. While taking control of those localities, the Coalition and the MNLA seized military equipment (vehicles, weapons, ammunitions) from the Malian forces, thereby increasing their own military capacities.<sup>1154</sup> On the other side, the Malian army lost military capacities due to numerous defections, and some of the soldiers defecting from the Malian army joined the Coalition and the MNLA.<sup>1155</sup>

450. On 22 March 2012, the Malian government was overthrown by a coup d'état led by Captain Amadou Sanogo at the head of a military junta, the *Comité national pour le redressement de la démocratie et la restauration de l'État*, and the governmental institutions were dissolved.<sup>1156</sup> This event weakened to a great extent the Malian State forces in the North of the country<sup>1157</sup> and three of its major cities in the North fell within a week into the hands of the Coalition and the

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<sup>1153</sup> P-0150: T-101, p. 27; P-0646: T-077, p. 25; P-0081's statement MLI-OTP-0012-1152-R02, at 1171, para. 96; *Message porté* MLI-OTP-0012-0606; *Message porté* MLI-OTP-0012-0605; *Message porté* MLI-OTP-0012-0610; *Message porté* MLI-OTP-0012-0616; Internal Document MLI-OTP-0012-0147 (see P-0646: T-077, p. 51); *Message porté* MLI-OTP-0012-0618; *Message porté* MLI-OTP-0012-0619; *Message porté* MLI-OTP-0012-0622; *Message porté* MLI-OTP-0012-0623. The taking over of the camp of Tessalit involved, on the part of the Coalition, the deployment of hundreds of vehicles and the use of heavy weaponry like shelling (see P-0081's statement MLI-OTP-0012-1152-R02, at 1171, para. 96; *Message porté* MLI-OTP-0012-0552; *Message porté* MLI-OTP-0012-0578; *Message porté* MLI-OTP-0012-0592; *Message porté* MLI-OTP-0012-0858). Several fighters on both sides had been killed during the battle of Tessalit and at least 20 Malian soldiers have been made prisoners (see *Message porté* MLI-OTP-0012-0616; *Message porté* MLI-OTP-0012-0610; *Message porté* MLI-OTP-0012-0753; Internal Document MLI-OTP-0012-0147).

<sup>1154</sup> P-1086: T-121, p. 27; P-0081's statement MLI-OTP-0012-1152-R02, at 1177, paras 130-131; UN Report MLI-OTP-0001-2113, at 2115, para. 10; *Message porté* MLI-OTP-0012-0356, at 0358; Press Release MLI-OTP-0066-0415; *Message porté* MLI-OTP-0012-0850; *Bulletin de renseignement* MLI-OTP-0012-0098, at 0099; Press Release MLI-OTP-0066-0409, at 0412.

<sup>1155</sup> P-0646: T-077, p. 25; Press Release, MLI-OTP-0066-0409, at 0412; Press release MLI-OTP-0066-0399; *Message porté* MLI-OTP-0012-0872.

<sup>1156</sup> UN report MLI-OTP-0001-2113, at 2114, para. 5. See also P-0152's report MLI-OTP-0031-0496, at 0505. The report written by P-0152 states that 'the MNLA in collaboration with the Tuareg-led (Iyad Ag Ghaly) Islamist group Ansar ed-Dine drove the Malian army out of the northern cities. These military defeats by the Malian army led to protests by the families of military personnel in southern Mali in February, followed by the soldiers' mutiny that culminated in the coup of 21<sup>st</sup> March 2012 that removed President Toure from power and installed the National Committee for the Recovering of Democracy and Restoring the State (CNRDRE) chaired by Captain Amadou Haya Sanogo as the new rulers of southern Mali'.

<sup>1157</sup> UN report MLI-OTP-0001-2113, at 2114, para. 6.

MNLA: Kidal on 30 March 2012,<sup>1158</sup> Gao on 31 March 2012<sup>1159</sup> and Timbuktu on 1 April 2012.<sup>1160</sup> At this point in time, the northern part of the country came under the complete control of the Coalition and the MNLA (including the cities of Timbuktu, Gao, Kidal, Douentza, Menaka, Ansongo, Gourma, Dire and Goundam).<sup>1161</sup>

451. The assault on Timbuktu unfolded in the following way. After an ultimatum of the MNLA announcing that they would enter the city,<sup>1162</sup> the Malian army, governmental representatives and civil servants left the city, and some inhabitants did the same.<sup>1163</sup> The situation in Timbuktu was chaotic at the time and people were running helter-skelter.<sup>1164</sup> On Sunday, 1 April 2012, a pro-governmental Arab militia<sup>1165</sup> took advantage of the situation and some lootings occurred,<sup>1166</sup>

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<sup>1158</sup> P-0654: T-127, pp. 45, 47; *Bulletin de renseignement* MLI-OTP-0012-0119, at 0119; Internal Document MLI-OTP-0012-0147. It was the MNLA and Ansar Dine and AQIM together that took the control of Kidal on 30 March 2012. *See* P-0150: T-088, p. 47; T-089, p. 10; P-0654: T-127, p. 47; P-0152's report MLI-OTP-0031-0496, at 0512.

<sup>1159</sup> P-0654: T-127, pp. 45, 47; *Bulletin de renseignement* MLI-OTP-0012-0119, at 0119; Internal Document MLI-OTP-0012-0147; *Message porté* MLI-OTP-0012-0658. It was the MUJAO and the MNLA who took control of Gao (*see* P-0065: T-038, pp. 8-9).

<sup>1160</sup> P-0654: T-127, pp. 45, 47; P-0004; P-0608: T-153, p. 59; D-0551: T-200, p. 48; *Bulletin de renseignement* MLI-OTP-0012-0119, at 0119.

<sup>1161</sup> Internal document MLI-OTP-0012-0327. *See also* UN report MLI-OTP-0001-2113, at 2115, para. 10. According to this report, on 29 November 2012, the MUJAO controlled the towns of Douentza, Gao, Menaka, Ansongo and Gourma, Ansar Dine controlled the town of Kidal, while AQIM controlled Timbuktu and Tessalit, and had established an Islamic Police in Dire, Goundam and Douentza.

<sup>1162</sup> P-1086: T-121, pp. 22-23.

<sup>1163</sup> P-0150: T-089, pp. 19-21; T-094, p. 52; D-0272: T-182, pp. 99-100; P-0065: T-038, p. 10; T-044, p. 9; T-045, p. 14; T-050, p. 34; D-0551: T-200, pp. 51-52; D-0315: T-185, pp. 26-27. *See also* P-0639's statement, MLI-OTP-0072-0290-R03, at 0294, para. 20; D-0272's statement MLI-D28-0006-4181-R01, at 4184, para. 18. P-0654 testified that some civil servants had already left Timbuktu before the arrival of the groups, because they had been informed since 26 or 27 of March 2012 that, given the developments of the situation, those who wished to go towards the south could leave the city (*see* P-0654: T-127, p. 50).

<sup>1164</sup> D-0272: T-182, pp. 99-100.

<sup>1165</sup> Arab militias were already present in Timbuktu before April 2012; they were created by the Malian government and composed of pro-government persons, who received arms to protect the population of Timbuktu, together with the Malian Army (P-0004: T-164, p. 27; P-0065: T-038, p. 9; P-0150: T-089, p. 18; P-0557: T-056, p. 6; P-0654: T-127, pp. 49-50). This created resentment within the population of Timbuktu since only Arabs received arms and that was considered unfair, notably by black members of the population (P-0004: T-164, p. 33; P-0654: T-127, pp. 49-50). After the taking over of Timbuktu, those militias vanished: some members went to the bush, others left completely the city, taking with them all the goods they had stolen, while others joined the MNLA (P-0065: T-038, p. 10; D-0551: T-200, pp. 50-51; P-0150: T-089, pp. 19, 21).

<sup>1166</sup> D-0551: T-200, pp. 50-52; P-0641: T-139, p. 39; P-0004: T-164, p. 29; P-0150: T-089, pp. 19, 21; P-0065: T-045, p. 11. *See also* D-0512's statement MLI-D28-0006-2611-R01, at 2613, para. 12. The Chamber notes that when Ansar Dine/AQIM took control of the city, they took measures to reduce the looting in the city (including by setting up a green number that locals could use to report crimes, make complaints or get assistance) and exerted pressure on the MNLA by intervening in case of conflict

including by members of the population.<sup>1167</sup> On the same day, the MNLA entered the city<sup>1168</sup> and settled in the military camp that had been deserted by the Malian army.<sup>1169</sup> The MNLA was also involved in lootings.<sup>1170</sup> On 2 April 2012, Ansar Dine and AQIM entered the city<sup>1171</sup> and evicted the MNLA which withdrew and set up itself at the airport of Timbuktu.<sup>1172</sup> From this date, the members of the MNLA could no longer enter the city of Timbuktu with their weapons, or if they did, that was under the control of Ansar Dine/AQIM.<sup>1173</sup> The city of Timbuktu was therefore under the sole control of Ansar Dine/AQIM as of this date.

452. On 6 April 2012, the MNLA unilaterally and solemnly declared the independence of the ‘State of the Azawad’.<sup>1174</sup> On 26 May 2012, in Gao, the MNLA and Ansar Dine announced that they had signed a protocol setting up the *Conseil Transitoire de l’État Islamique de l’Azawad*<sup>1175</sup> and that they would join forces towards the

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between the MNLA and the population. *See* P-0004: T-164, pp. 36-37; T-166, p. 62. The Chamber notes that the Defence mentions the presence in Timbuktu of the group ‘Ansar Al Sharia’, which ‘was also composed of former members of the Arab militia’, but does not provide evidence in support of its contention (*see* [Defence Final Brief](#), para. 19, footnote 23 and references cited therein).

<sup>1167</sup> P-0065: T-045, pp. 14-15.

<sup>1168</sup> P-0004: T-164, pp. 29-30; P-0654: T-127, p. 51. P-0654 testified that he was present in Timbuktu on that day (*see* P-0654: T-127, p. 45).

<sup>1169</sup> P-0654: T-127, p. 52.

<sup>1170</sup> P-0004: T-166, p. 61; P-0099: T-145, p. 16; T-147, pp. 4-6; P-0603: T-125, p. 8; P-0608: T-154, p. 93.

<sup>1171</sup> P-0004: T-164, pp. 31-32; P-0638: T-057, pp. 49-50; P-0654: T-127, pp. 51-52; P-0150: T-089, p. 16; P-0114’s statement MLI-OTP-0023-0344-R02, at 0372. *See also* P-0622’s statement MLI-OTP-0065-0558-R02, at 0562. A meeting, called by Mohamed Najim, who was the primary person in charge of the MNLA at the time, was organized by the MNLA at the airport to inform the Mayor, the neighbourhood chiefs, the imams and the radio stations of the objective of the MNLA’s presence in Timbuktu, and what they expected from the Timbuktu population (*see* D-0551: T-200, p. 55).

<sup>1172</sup> P-0099: T-145, pp. 16-17; P-0150: T-089, pp. 22-23; P-0065: T-037, p. 14; P-0004: T-164, pp. 36-37; P-1086: T-121, pp. 24-25; P-0654: T-127, p. 54; T-128, pp. 10-11; P-0638: T-057, pp. 50, 56. *See also* *Message porté* MLI-OTP-0012-0157. P-1086 explained that there was an agreement, albeit fragile, between the MNLA and Ansar Dine, according to which MNLA’s members were allowed to enter the city with their weapons, although they were still based at the airport. However, gradually tensions increased, and at some point, the members of the MNLA could no longer enter Timbuktu with their weapons (*see* P-1086: T-121, p. 29).

<sup>1173</sup> D-0028: T-200, p. 60; P-0654: T-134, pp. 14-15; D-0551: T-200, p. 60.

<sup>1174</sup> MNLA Declaration of independence, MLI-OTP-0012-1144; video MLI-OTP-0011-0283, transcript MLI-OTP-0030-0118. The Chamber notes that the Defence did not object to the submission of this video as proof that the MNLA announced the independence of Azawad on 6 April 2012 (*see* ICC-01/12-01/18-2121-Conf-AnxA, p. 30). *See also* *Directives* MLI-OTP-0012-0327, at 0328.

<sup>1175</sup> Protocol MLI-OTP-0018-1226 (in French) and MLI-OTP-0018-1228 (in Arabic). Under this agreement, signed on 26 May 2012 in Gao, the MNLA and Ansar Dine committed to establish and build an independent Islamic state in the Azawad. They decided to merge, create a unified army and a single flag for the state of Azawad, as well as to create a transitional council to implement the agreement. It was signed by Bilal Ag Acherif for the MNLA and by Alghabass Ag Intalla (on behalf of Iyad Ag Ghaly) for Ansar Dine. P-0065 recognised the agreement between Ansar Dine and the MNLA signed at the time (P-0065: T-043, pp. 48, 50). P-0065 provided evidence on the negotiations of the agreement between

proclamation of an independent state called Azawad.<sup>1176</sup>

453. This agreement failed due to ideological differences on the creation of an Islamic State in Mali and the application of their interpretation of *Sharia*.<sup>1177</sup> Many members of the MNLA joined Ansar Dine at that time.<sup>1178</sup> At the end of June 2012, the MNLA left Timbuktu airport after receiving an ultimatum from Ansar Dine/AQIM to align with them or to leave.<sup>1179</sup>

454. In the months following the taking over of Timbuktu, a series of confrontations between the Coalition and the MNLA continued for the control of the territories situated in Northern Mali. On 7 June 2012, a battle opposed Ansar Dine to the MNLA close to Kidal.<sup>1180</sup> On 13 June 2012, a battle in Timbuktu between Ansar Dine and the MNLA resulted in two deaths and four wounded persons.<sup>1181</sup> On 26 and 27 June 2012, the MUJAO fought against the MNLA and took control of the city of Gao, which resulted in the killing of at least 35 persons, including civilians, with 40 persons injured and 30 prisoners taken from the MNLA.<sup>1182</sup> On 1 September 2012, the MUJAO took control of the town of Douentza (situated in the region of Mopti), and by doing so, the territory under the control of the

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Ansar Dine and the MNLA at the end of May 2012 (P-0065: T-043, pp. 48, 50). *See also* video MLI-OTP-0018-0617, transcript MLI-OTP-0033-5772, translation MLI-OTP-0033-5475; P-0152: T-032, p. 75; P-0152's report MLI-OTP-0031-0496, at 0513; P-0654: T-134, p. 18; UN Report MLI-OTP-0014-5183, at 5185, para. 8.

<sup>1176</sup> Video MLI-OTP-0018-0617, transcript MLI-OTP-0033-5772, translation MLI-OTP-0033-5475. Under this agreement, the MNLA and Ansar Dine committed to establish and build an independent Islamic state in the Azawad. They decided to merge, create a unified army and a single flag for the state of Azawad, as well as to create a transitional council to implement the agreement. It was signed by Bilal Ag Acherif for the MNLA and by Alghabass Ag Intalla (on behalf of Iyad Ag Ghaly) for Ansar Dine (Protocol MLI-OTP-0018-1228, translation MLI-OTP-0018-1226).

<sup>1177</sup> According to an article from Sahara Media from 7 June 2012, Ansar Dine claimed that the MNLA broke away from the agreement signed between them, because of their 'explicit rejection of the project of an Islamic state that governs *Sharia* in all aspects of life' (*see* MLI-D28-0004-2867, translation MLI-D28-0004-2869). P-0065 copied and pasted this article from Sahara Media on Facebook in June 2012 (P-0065: T-045, pp. 28-30). *See also* P-0152's report MLI-OTP-0031-0496, at 0513; *Message porté* MLI-OTP-0012-0951; UN Report MLI-OTP-0014-5183, at 5185, para. 8; P-0150: T-106, p. 64; P-0065: T-037, p. 39; D-0605: T-192, p. 36.

<sup>1178</sup> P-0150: T-106, p. 70; T-089, p. 74; P-0065: T-045, pp. 28, 36-37; P-1086: T-121, pp. 34-35; *Message porté* MLI-OTP-0012-0949; *Message porté* MLI-OTP-0012-0952.

<sup>1179</sup> P-0654: T-134, p. 18; P-1086: T-121, pp. 33-34; P-0065: T-043, p. 49; P-0150: T-089, p. 22; P-0626: T-141, p. 15.

<sup>1180</sup> *Message porté* MLI-OTP-0012-0953. As a result of this fighting, two people were killed and several wounded persons had to be evacuated to Gao's hospital.

<sup>1181</sup> *Message porté* MLI-OTP-0012-0954.

<sup>1182</sup> OCHA Report MLI-OTP-0001-1459, at 1459; *Message porté* MLI-OTP-0012-0955; *Message porté* MLI-OTP-0012-0956; *Message porté* MLI-OTP-0010-0708; P-1086: T-121, p. 38.

Coalition came closer to Bamako.<sup>1183</sup> On 7 September 2012<sup>1184</sup> and on 19 November 2012,<sup>1185</sup> the MUJAO fought against the MNLA and took control of the city of Menaka. On 15 and 16 November 2012, another battle between the MNLA and the MUJAO at Indelimene resulted in the death of many fighters from the MNLA and 30 prisoners taken.<sup>1186</sup> Making progress towards Bamako, AQIM, Ansar Dine and the MUJAO, launched attacks on the cities of Konna<sup>1187</sup> and Diabaly,<sup>1188</sup> respectively on 10 and 14 January 2013,<sup>1189</sup> which they took control of, before being repelled by the French forces which intervened militarily on 11 January 2013, in coordination with the Malian army and the assistance of troops from Chad.<sup>1190</sup> This allowed the deployment of the MISMA on 19 January 2013, created by a resolution of the UN Security Council acting under Chapter 7 of the UN Charter.<sup>1191</sup> This led to the withdrawal of the Coalition from the cities in Northern Mali,<sup>1192</sup> including Timbuktu on 29 January 2013.<sup>1193</sup> People in Timbuktu celebrated in the streets after the departure of Ansar Dine/AQIM, displaying the flag of Mali.<sup>1194</sup>

455. A new presidential election was held in July 2013.<sup>1195</sup> A peace agreement was signed on 15 May 2015 between the Government of Mali and representatives of

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<sup>1183</sup> Amnesty International Report MLI-OTP-0001-2393, at 2396; *Message porté* MLI-OTP-0012-0970; UN Report MLI-OTP-0014-5183.

<sup>1184</sup> *Message porté* MLI-OTP-0012-0971; UN Report MLI-OTP-0014-5183. This fighting resulted in the killing of eight members of the MNLA and several wounded (see *Message porté* MLI-OTP-0012-0971).

<sup>1185</sup> *Message porté* MLI-OTP-0012-0986.

<sup>1186</sup> *Message porté* MLI-OTP-0012-0982; *Message porté* MLI-OTP-0012-0985.

<sup>1187</sup> P-0152: T-032, p. 29; P-0152's report MLI-OTP-0031-0496, at 0506; P-0150: T-090, pp. 60-61, 64; P-0582's statement MLI-OTP-0062-3820-R02, at 3833-3836; Internal document, MLI-OTP-0013-3257, at 3260. See also P-0150: T-090, pp. 61-62, referring to video MLI-OTP-0018-0115, transcript MLI-OTP-0069-1379; translation MLI-OTP-0069-7564. As a result of the attack on Konna, more than 550 persons reportedly left the city (see ICRC Press Release MLI-OTP-0024-2289).

<sup>1188</sup> P-0099: T-146, pp. 35-39; P-0150: T-090, pp. 60-64.

<sup>1189</sup> Internal document, MLI-OTP-0013-3257, at 3258, 3260; ICRC Press Release MLI-OTP-0024-2289.

<sup>1190</sup> UN report MLI-OTP-0062-4367, at 4374, para. 17; P-0152: T-032, p. 29; P-0152's report MLI-OTP-0031-0496; P-0150: T-090, pp. 62-63; P-0582's statement MLI-OTP-0062-3641-R02, at 3648.

<sup>1191</sup> UN Security Council Resolution MLI-OTP-0006-2732, at 2735-2736, para. 9. In July 2013, the UN *Mission internationale de soutien au Mali sous conduite africaine* ('MISMA') was replaced by the UN *Mission Multidimensionnelle intégrée des Nations Unies pour la stabilisation au Mali* ('MINUSMA'). See UN Security Council Resolution MLI-OTP-0006-2740, at 2744, 2746-2748, paras 7, 16.

<sup>1192</sup> P-0150: T-090, p. 62; UN report MLI-OTP-0062-4367, at 4374, para. 17.

<sup>1193</sup> Internal document, MLI-OTP-0013-3257, at 3260; P-0150: T-090, p. 62; T-093, p. 31; P-0004: T-167, p. 24; P-0010: T-020, pp. 7-8; P-0654: T-132, pp. 54-55; P-0065: T-045, p. 42.

<sup>1194</sup> P-0654: T-132, pp. 56-57. P-0007: T-019, p. 36. See also videos MLI-OTP-0012-2071; MLI-OTP-0012-2077. P-0654 testified that these videos depict 'the first day that the army entered the town in 2013' and that on that day 'everyone was joyful that [the Islamists] left [...] it was a celebration everywhere' (P-0654: T-132, pp. 56-57).

<sup>1195</sup> UN report MLI-OTP-0062-4367, at 4374, para. 17.



some armed groups.<sup>1196</sup>

456. Notably as a result of the conflict, hundreds of thousands of persons - originating mainly from the regions of Timbuktu, Gao, Mopti and Kidal - were displaced, internally or outside the country.<sup>1197</sup> In 2012 and 2013, the UN Security Council issued several resolutions related to the conflict in Mali, acting under Chapter 7 of the UN Charter.<sup>1198</sup>

## C. THE ORGANISATION CREATED BY THE ARMED GROUPS IN TIMBUKTU

### 1. The leadership

457. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0150,<sup>1199</sup> a member of Ansar Dine/AQIM who was close to Abou Zeid and other leaders of Ansar Dine/AQIM; P-0065,<sup>1200</sup> who had a direct and close professional relationship with Ansar Dine/AQIM; and P-0582,<sup>1201</sup> a member of Ansar Dine/AQIM who also had knowledge of the leadership by virtue of his position in the groups. For its findings concerning Ansar Dine/AQIM's campaign, the Chamber also relies upon a number of contemporaneous video and audio recordings, discussed further below.<sup>1202</sup>

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<sup>1196</sup> UN report MLI-OTP-0062-4367, at 4375, para. 20.

<sup>1197</sup> UN report MLI-OTP-0013-3500 (stating that on December 2012 it was estimated that 155,187 persons were refugees, and 198,558 were internally displaced, and that they were originating mainly from the regions of Timbuktu, Gao, Mopti and Kidal); Amnesty International Report MLI-OTP-0001-2393, at 2396; ICRC Press Release MLI-OTP-0024-2284, at 2284.

<sup>1198</sup> UN Security Council Resolutions MLI-OTP-0006-2728; MLI-OTP-0006-2732, at 2735-2736; MLI-OTP-0006-2740.

<sup>1199</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (*see* section II.B.2.a)iii above). P-0150 met Abdallah Al Chinguetti for the first time [REDACTED] (P-0150: T-088, pp. 43-45).

<sup>1200</sup> The Chamber refers to its findings on the credibility and reliability of P-0065's evidence (*see* section II.B.2.a)i above).

<sup>1201</sup> The Chamber refers to its findings on the credibility and reliability of P-0582's evidence (*see* section II.B.2.c)iii above).

<sup>1202</sup> The Chamber recalls that it dismissed related Defence's challenges concerning the integrity and reliability of files, including these recordings, extracted from [REDACTED] (*see* footnote 738 above; *contra* [Defence Final Brief](#), para. 305). The Chamber further notes the Defence's submission that voice identifications are unreliable (*see* ICC-01/12-01/18-1866-Conf-Anx4; ICC-01/12-01/18-1866-Conf-Anx5). The Chamber has considered these recordings' content holistically, together with the witnesses' comments thereon as well as the established context, and found them reliable to establish the speeches made by Ansar Dine/AQIM leaders during the relevant period (*see below*).

**a) Senior level**

458. Between April 2012 and January 2013, Timbuktu was governed by an ‘emirate’,<sup>1203</sup> which was in charge of taking decisions for Ansar Dine/AQIM in Timbuktu and which was notably composed of Iyad Ag Ghaly and Abou Zeid, who were the main leaders of Ansar Dine/AQIM, as well as Yahia Abou Al Hammam and Abdallah Al Chinguetti.<sup>1204</sup>
459. Iyad Ag Ghaly created Ansar Dine in November/December 2011, and was its leader between April 2012 and January 2013.<sup>1205</sup> Before that time, he was a leader of the rebellions led by the Tuaregs in the 1990s in Northern Mali,<sup>1206</sup> and a former cultural *attaché* to the Malian embassy in Saudi Arabia.<sup>1207</sup>
460. Abou Zeid was Algerian,<sup>1208</sup> and belonged to the Algerian organisation *Front Islamique du Salut* or ‘Islamic Salvation Front’.<sup>1209</sup> He was the emir of the *Katibat*<sup>1210</sup> Tariq Ibn Ziyad, which was one of the largest *katibats* of AQIM operating in Northern Mali.<sup>1211</sup> After the takeover of Timbuktu by Ansar Dine/AQIM in April 2012, he was designated by Iyad Ag Ghaly to represent him in Timbuktu,<sup>1212</sup> and as such was the main administrator or ‘governor’ in the city.

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<sup>1203</sup> P-0150: T-110, pp. 22-23; [REDACTED].

<sup>1204</sup> P-0065: T-045, p. 19; P-0150: T-092, pp. 20-21; P-0626: T-141, pp. 27-28; [REDACTED]; P-0582’s statement MLI-OTP-0062-4053-R02, at 4055.

<sup>1205</sup> P-0150: T-101, p. 31; T-088, pp. 16-17, 53; T-090, pp. 64, 68-70; P-0099: T-147, p. 8; T-145, pp. 21, 57; D-0605: T-192, p. 44; D-0202: T-202, pp. 86-87; P-0654: T-127, pp. 57-58; P-0582’s statements MLI-OTP-0062-3679-R02, at 3707-3708, MLI-OTP-0062-3788-R02, at 3793, MLI-OTP-0062-4012-R02, at 4019, MLI-OTP-0062-4060-R02, at 4066; UN report MLI-OTP-0001-1359, at 1369, para. 40; *Bulletin de renseignement* MLI-OTP-0012-0356, at 0358. P-0152 explains in his report that Iyad Ag Ghaly founded Ansar Dine after failing to take over the leadership of the Ifoghas clan and the MNLA, partly because ‘the leadership of the Ifoghas traditionally belongs to the noble clan of the Ifoghas and not the warrior clan of the tribe that Ag Ghaly originates from’ (see P-0152’s report MLI-OTP-0031-0496, at 0512).

<sup>1206</sup> P-0152’s report MLI-OTP-0031-0496, at 0509, 0511-0512; D-0202: T-202, pp. 86-88.

<sup>1207</sup> P-0152’s report MLI-OTP-0031-0496, at 0512; P-0099: T-145, p. 21; report MLI-OTP-0009-0005, at 0013; note MLI-OTP-0001-0167, at 0168.

<sup>1208</sup> P-0065: T-038, p. 33; P-0099: T-145, p. 47; P-0582’s statements MLI-OTP-0062-3710-R02, at 3725-3726; MLI-OTP-0062-3820-R02, at 3837; MLI-OTP-0062-4012-R02, at 4024. P-0582 added that everyone in Mali knew that Abou Zeid was a big leader of AQIM (P-0582’s statement MLI-OTP-0062-4012-R02, at 4024).

<sup>1209</sup> P-0654: T-127, p. 48.

<sup>1210</sup> For the Chamber’s findings on AQIM’s *katibats* (or ‘battalions’), see paragraph 431 above.

<sup>1211</sup> P-0065: T-038, p. 33; T-039, p. 5; P-0150: T-088, pp. 46, 49. See also report MLI-OTP-0009-0005, at 0009.

<sup>1212</sup> P-0150: T-089, pp. 45-46. See also P-0150: T-089, pp. 26, 40-41, 46.

461. Yahia Abou Al Hammam was Algerian,<sup>1214</sup> an emir of AQIM,<sup>1215</sup> and the head of the *Katibat* Al Fourqane operating in Timbuktu.<sup>1216</sup> He was also appointed emir of AQIM for the Sahara region in 2012 following the death of Nabil Abou Alqama.<sup>1217</sup>
462. Abdallah Al Chinguetti was Mauritanian and belonged to the *Katibat* Al Fourqane of AQIM.<sup>1218</sup> He became in charge of this *katibat* when Yahia Abou Al Hammam replaced Nabil Abou Alqama at the head of the Sahara branch of AQIM, following the death of the latter.<sup>1219</sup> He was also the official spokesperson of AQIM.<sup>1220</sup> He was referred to as a sheikh (Sheikh Abdallah)<sup>1221</sup> and considered as one of the scholars of the groups, a very knowledgeable person within Ansar

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<sup>1213</sup> P-0150: T-089, pp. 44-47; T-097, pp. 8, 1, 15; P-0099: T-145, pp. 44, 47; P-0626: T-141, p. 16; P-0114's statement MLI-OTP-0023-0344-R02, at 0382, para. 186; P-0582's statements MLI-OTP-0062-3788-R02, at 3797; MLI-OTP-0062-3897-R02, at 3916, 3918-3920. P-0582 explained that Khaled introduced Abou Zeid to everyone as the greatest leader (P-0582's statement MLI-OTP-0062-3788-R02, at 3797) and that Abou Zeid was everyone's supervisor, walked around to supervise and appointed people (P-0582's statement MLI-OTP-0062-3710-R02, at 3725-3726). Regarding his basis of knowledge, P-0582 explained that, when leaders conducted visits, meetings were held to introduce them. During one of those meetings, P-0582 stated that Abou Zeid was introduced as their big leader ('*ils ont dit c'est juste notre responsable [...] C'est notre grand responsable*') (P-0582's statement MLI-OTP-0062-3710-R02, at 3725-3726).

<sup>1214</sup> P-0099: T-145, p. 23; P-0654: T-128, p. 15. P-0654 stated that he saw him the first time in a paper shop and the second time at the hospital at the occasion of the amputation of Dédéou Maiga (P-0654: T-128, p. 16). *See also* P-0582's statements MLI-OTP-0062-3788-R02, at 3793; MLI-OTP-0062-3679-R02, at 3707; MLI-OTP-0062-4012-R02, at 4026-4027.

<sup>1215</sup> P-0099: T-145, p. 23.

<sup>1216</sup> P-0150: T-090, p. 14; P-0099: T-145, p. 23; P-0065: T-038, pp. 33, 42; T-039, p. 8; Mr Al Hassan's statement MLI-OTP-0051-1155, at 1168. *See* paragraph 431 above. *See* MLI-REG-0001-0044 for the spelling of Yahia Abou Al Hammam's name, as written down by P-0150 (P-0150: T-090, pp. 13-14). P-0150 identified Yahia Abou Al Hammam on photograph MLI-OTP-0022-0491 (P-0150: T-090, p. 14).

<sup>1217</sup> P-0065: T-038, p. 42; T-039, pp. 8-9; P-0150: T-090, p. 14. P-0150 testified that, at the beginning of the event, Abou Al Hammam and Abou Zeid were equal in terms of their status and position, and were acting in parallel, notably in the *Shura* councils. However, P-0150 explained that, 'administratively speaking', Abou Al Hammam became more important than Abou Zeid when Abou Al Hammam became the emir of AQIM (*see* P-0150: T-100, pp. 7-8).

<sup>1218</sup> P-0150: T-088, p. 51; D-0605: T-194, p. 89; D-0202: T-202, p. 95; Mr Al Hassan's statement MLI-OTP-0051-0631, at 0632.

<sup>1219</sup> P-0150: T-090, p. 14; P-0065: T-038, p. 42; T-039, pp. 8-9.

<sup>1220</sup> P-0065: T-039, p. 9. P-0582 stated that Abdallah was one of the big leaders of AQIM that were present in Timbuktu (P-0582's statement, MLI-OTP-0062-3788-R02, at 3793). P-0582 knew that Abdallah was a member of AQIM as he had seen videos of him making statements while P-0582 was still in Bamako. P-0582 further often saw him at the police station discussing with the leaders (MLI-OTP-0062-3986-R02, at 3987-3988).

<sup>1221</sup> P-0150: T-090, p. 14. P-0150 explained that the term 'sheikh' is used in Arabic to refer to elderly people as well as sometimes people who have knowledge. Concerning Abdallah Al Chinguetti, P-0150 stated that he used the word 'sheikh' because he was a religious scholar (P-0150: T-089, p. 41).

Dine/AQIM,<sup>1222</sup> and a preacher.<sup>1223</sup>

#### **b) The leadership organisation**

463. Before the taking over of the city, both AQIM and Ansar Dine had already developed strategies of integration in the region among local communities and had already undertaken marriages with members of the population and alliances with marabouts.<sup>1224</sup>
464. Once Ansar Dine/AQIM took over Timbuktu, and after the ‘chaos’ created by the MNLA, the population felt that some sort of order and security were restored, as pillages and theft reduced.<sup>1225</sup> Ansar Dine/AQIM immediately secured the Energy post and hospital facilities.<sup>1226</sup> They also put in place a ‘green number’

<sup>1222</sup> P-0150: T-088, pp. 44-45; P-0626: T-141, p. 34; T-142, p. 9. *See* paragraphs 416-417 above.

<sup>1223</sup> P-0114’s statement MLI-OTP-0023-0344-R02, at 0373-0374, para. 131. *See also* video MLI-OTP-0009-1749, from 00:08:44:03 to 00:09:30:09. P-0065 recognised Abdallah Al Chinguetti on both images at 00:09:01:17 (P-0065: T-038, p. 39).

<sup>1224</sup> *See* paragraph 432 and footnote 1071 above. *See also* P-0150: T-120, pp. 63-64; P-0152: T-032, p. 71. P-0152 added that this type of local integration, while it may be relatively peaceful to one local community, may also very well be relatively violent to another local community (P-0152: T-032, p. 71).

<sup>1225</sup> D-0551: T-200, pp. 60, 62; P-0065: T-050, p. 33; P-0152: T-032, p. 37; P-0099: T-147, pp. 13-14; D-0006: T-205, pp. 43-44; D-0213: T-197, p. 9. D-0006 (*see* D-0006: T-205 to T-207), a Tamasheq man with distant familial links to Mr Al Hassan, was born in Timbuktu and was there for some of the time when Ansar Dine/AQIM were present in the city, being present the beginning of 2012, leaving for some months during 2012 and returning close to Ramadan following which he did some tasks for the MNLA (D-0006: T-205, pp. 6-7, 10-13, 15-21; T-206, pp. 54-55, 59-63). He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. The Chamber observes that D-0006 appeared to testify openly and honestly particularly when he testified about what he directly saw and heard. Nevertheless, the Chamber notes that there were evident inconsistencies in his evidence about his membership in the MNLA and/or Ansar Dine. The witness testified that upon his return to Timbuktu, he was sometimes asked to carry out tasks and run ‘errands’ for the MNLA, but he was never part of the MNLA, and further testified that he did recall telling Defence lawyers that he worked for the MNLA at a checkpoint (D-0006: T-205, pp. 19-21; T-206, pp. 54-55, 59-63). In addition, D-0006 testified that he was not a member of Ansar Dine, but was confronted with a prior statement to [REDACTED] that he joined Ansar Dine because the MNLA had left the area (D-0006: T-207, pp. 25-27). The Chamber acknowledges the witness’s explanation of the circumstances surrounding his prior statement but notes that, at the very least, D-0006 appeared sympathetic towards Ansar Dine, and socialised with its members, including the Islamic Police (*see e.g.* D-0006: T-207, p. 25). The Chamber further observes that D-0006 appeared to testify about Mr Al Hassan in a singularly favourable light (*see e.g.* D-0006: T-205, pp. 34-36). Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds D-0006 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence including the witness’s lack of objectivity on certain subjects. The Chamber notes that this is a general assessment of the witness’s testimony and that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate.

<sup>1226</sup> P-0099: T-147, pp. 13-14; D-0529: T-189, pp. 26, 28, 37; P-0641: T-139, pp. 55-56; D-0093: T-211, p. 33; P-0638: T-059, p. 15; P-0150: T-111, p. 58. D-0093 (*see* D-0093: T-211; D-0093’s statement MLI-D28-0006-4212-R01 introduced through Rule 68(3) of the Rules), a Tamasheq man belonging to the tribes of [REDACTED], was born in Timbuktu (D-0093: T-211, pp. 6, 19). A ‘prominent person in Timbuktu’, D-0093 is [REDACTED] (D-0093: T-211, pp. 19-21). The witness worked [REDACTED]

for people to call in case of emergencies and provided free electricity, water and medical care to the population.<sup>1227</sup> They sometimes distributed food to the population and Ansar Dine/AQIM's vehicles could be used to bring people to the hospital or to their working place, such as the fields or the market.<sup>1228</sup>

465. Regarding the way the power was actually exercised in Timbuktu, AQIM controlled the city and, in practice, took decisions but was operating behind the facade of Ansar Dine; hence Ansar Dine was strategically used as a cover<sup>1229</sup> and

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from 2006 until 4 April 2012, when he returned to Timbuktu – the same day the MNLA entered the city; and thereafter worked at the [REDACTED] in Timbuktu (D-0093: T-211, pp. 20, 23-25). He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. The Chamber observes that the witness's in-court testimony was more balanced than his statement which, in the Chamber's view, was moulded to support the Defence's case. With respect to D-0093's in-court testimony, the Chamber observes that the witness appeared to testify openly and honestly in the context of his personal observations relating to [REDACTED]. However, noting D-0093 was [REDACTED] 'almost all the time' (D-0093: T-211, pp. 25-26), the Chamber considers that the witness's basis of knowledge with respect to events outside the scope of his work to be weak, noting for example his lack of knowledge with respect to Mohammed Moussa and the *Hesbah* (D-0093: T-211, p. 38; *contra* [Defence Response Brief](#), para. 21). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0093 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence. In particular, while considering credible and reliable his testimony to the extent that it relates to his place of work, the Chamber considers his evidence relating to factual issues beyond his place of work, including notably forced marriages and the destruction of mausoleums, to be of limited value and it therefore ascribes it minimal weight. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>1227</sup> D-0605: T-192, p. 37; D-0213: T-197, pp. 8-9; P-0641: T-139, pp. 55-56; D-0093: T-211, pp. 28, 30, 33; D-0213: T-198, pp. 11-12; D-0006: T-205, pp. 27-28; D-0202: T-203, p. 45; D-0315: T-185, p. 30; P-0623: T-030, p. 15, *referring to* article MLI-D28-0004-0754; P-0638: T-059, p. 15; P-0065: T-044, pp. 9, 67, 69, 71; T-050, pp. 34, 55; D-0529: T-189, p. 35; P-0641: T-139, p. 54.

<sup>1228</sup> P-0641: T-139, p. 56; D-0315: T-185, pp. 31-32; P-0150: T-106, p. 32; D-0213: T-197, pp. 8-9; D-0006: T-205, p. 28; P-0638: T-059, p. 16; D-0202: T-203, p. 46.

<sup>1229</sup> P-0065: T-045, p. 27. P-0065 testified that AQIM was 'the force in control in the city' (P-0065: T-037, p. 15) and 'the group that was mainly in control in Timbuktu, exercised the real authority and made decisions' (P-0065: T-037, p. 15; T-038, p. 33; T-039, p. 5), and that '[a]s per instructions that were issued at the start, it was forbidden to speak about Al-Qaeda, you had to speak about Ansar Dine' (P-0065: T-046, p. 62). *See also* P-0152's report MLI-OTP-0031-0496, at 0512; [REDACTED], 0391, 0393; D-0605: T-192, pp. 46-47, 51-52. P-0150 testified that when the Al-Qaeda Tariq Ibn Ziyad and Al Fourqane battalions arrived in Timbuktu, they introduced themselves to the people as the 'Ansar Dine forces' (P-0150: T-089, p. 16). P-0150 testified that the reason they introduced themselves as Ansar Dine was that, previously, Ansar Dine had national and local objectives that were very close to the MNLA objectives and goals. P-0150 also testified that it was known that the Ansar Dine movement consisted of Malian locals, that no foreigners belonged to it, and that their main goal was to achieve independence for their country and to apply their own constitutions, that is Islam and *Quran* (P-0150: T-089, p. 16). P-0150 also testified that Ansar Dine was created by Al-Qaeda to serve its own ideology in Northern Mali, but that they always hid this piece of information, and that it is this omission that made Ansar Dine appear as if they had an independent will and power, so as to give them a better position in the community and allow them to gain support 'in a better way' (P-0150: T-101, p. 37). The Chamber notes that P-0150 agreed that [REDACTED] in 2012 gave him insight into the links between Ansar Dine and Al-Qaeda (P-0150: T-117, p. 6). P-0582 also stated that AQIM was the group managing and in control of Timbuktu, and they were generally the ones making the decisions (P-0582's statement MLI-OTP-0062-3788-R02,

had only a symbolic presence.<sup>1230</sup> AQIM, which was mainly considered by the population as being composed of ‘foreigners’,<sup>1231</sup> had a deliberate strategy to hide the presence of Al-Qaeda and to use Ansar Dine as the cover of the armed groups in Timbuktu, because Ansar Dine was perceived as a local group.<sup>1232</sup> Decisions and actions had to be presented as having been taken by Ansar Dine, and announced by ‘important local people’, well-known in Timbuktu, such as Sanda Ould Boumama, who as noted above acted as the official spokesperson for Ansar Dine,<sup>1233</sup> Ahmad Al Faqi Al Mahdi (‘Al Mahdi’),<sup>1234</sup> who was also known amongst members of Ansar Dine/AQIM as ‘Abou Tourab’, his *nom de guerre*,<sup>1235</sup> Mohammed Moussa, who was a Songhai imam part of the Kel Essouk tribe,<sup>1236</sup> Houka Houka and Mr Al Hassan.<sup>1237</sup> Those persons were also the ones asked to

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at 3796-3797). *See also* P-0065: T-038, p. 19; D-0605: T-194, p. 90; [Defence Final Brief](#), para. 39; [Prosecution Final Brief](#), paras 29-32.

<sup>1230</sup> P-0065: T-045, pp. 24-25.

<sup>1231</sup> P-0150: T-103, pp. 8, 17. *See* paragraph 430 above.

<sup>1232</sup> P-0150: T-101, p. 37; T-089, pp. 29-30; T-117, p. 7. P-0065 also explained that AQIM pushed locals to be interviewed by the media in order to give the world the illusion that this was not Al-Qaeda but a national group with national revolutionary objectives that carried out the acts (P-0065: T-046, p. 61).

<sup>1233</sup> P-0150: T-090, p. 11; D-0605: T-194, pp. 88-89; P-0654: T-128, p. 14; P-0623: T-029, pp. 37, 43, 48; P-0638: T-058, p. 8; P-0065: T-038, p. 23. *See also* video MLI-OTP-0015-0495, at 00:35:23:00 to 00:35:40:00, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288, p. 5293, which is an Al Jazeera documentary on which Sanda Ould Boumama appears and is presented as ‘Sanda Ould Bouamama, Spokesman, Ansar Dine’ (*see also* P-0150: T-106, p. 20).

<sup>1234</sup> P-0065: T-042, pp. 57, 60; Mr Al Hassan’s statement MLI-OTP-0051-1032, at 1038; P-0641: T-138, p. 67.

<sup>1235</sup> P-0150: T-088, pp. 50-51; T-118, p. 48; P-0065: T-042, p. 60.

<sup>1236</sup> D-0202: T-202, p. 94; P-0626: T-141, p. 53. On Mohammed Moussa’s role *see also* paragraphs 530-531 below.

<sup>1237</sup> P-0150: T-090, pp. 52-53, 59; T-096, p. 13; T-093, p. 43. P-0150 testified that there was an ‘official policy’ agreed upon between Ansar Dine and AQIM that all decisions and actions taken by the ‘Islamic group’ would be adopted and announced as the acts of Ansar Dine, because they had a local agenda, and that it was therefore important that any announcement in Timbuktu was made by people who are known in the town. P-0150 explained that, as part of that policy, it was decided that some statements (notably concerning the groups’ intentions and plans to attack the south) be made by ‘important local people’ (people who are known in the country and can make statements publicly), such as Sanda, Mr Al Hassan, Mohammed Moussa, and Al Mahdi. Regarding Houka Houka, *see* paragraphs 609-611 below. For example, P-0150 notably recognised Sanda Ould Boumama at 00:02:24:14 of a video shown to him and testified that in this video, Sanda Ould Boumama was speaking in a formal capacity on behalf of the ‘extremist’ group and was describing their ideology and the decisions of the emirs, Abou Zeid and Abou Al Hammam (*see* P-0150: T-102, pp. 49-50, *referring to* video MLI-OTP-0069-3786, at 00:02:24:14, transcript MLI-OTP-0078-4591, translation MLI-OTP-0078-4669). The Chamber notes the Defence objection to the submission of this video recording, based on an alleged lack of authentication (ICC-01/12-01/18-1866-Conf-Anx4). Having had regard to the content of the video and P-0150’s comments, the Chamber is satisfied of the probative value and relevance of this item with respect to the charges, and accordingly relies on it to establish how such announcements were made. Regarding Mr Al Hassan, *see* paragraphs 1080-1084 below.

speak to the media,<sup>1238</sup> and the ones who would be appointed at the top of the new institutions created by Ansar Dine/AQIM.<sup>1239</sup>

466. One aspect of the strategy of integration was to promise to rule Timbuktu by following the ‘Maliki denomination’: for example, Abou Zeid initially thought about imposing the burqa and the niqab on all women in Timbuktu but refrained because the Maliki denomination did not require the covering of a woman’s face and hands.<sup>1240</sup> *Vis-à-vis* the local community of Timbuktu, Ansar Dine presented its goals as using *Quranic* principles to promote justice and security.<sup>1241</sup> Another aspect of the strategy as promoted by Abou Zeid and Yahia Abou Al Hamman was initially to follow a policy of leniency with the population of Timbuktu; however, they were under the pressure of other members of the group as well as new members who joined, in particular the Tariq Ibn Ziyad battalion, who wanted to see with their own eyes the difference between ‘Muslim rule’ and what they called the ‘tyrant rule’ which in practice designated any non-jihadist government.<sup>1242</sup> As explained by P-0150:

With regards to policies - or to policy, policy is clear. It consists in the enforcement of *Sharia* as per the terms perceived fit by the hard-line group. And the group has policies on how to carry out that enforcement. So there are policies regarding the *Sharia* itself and there are policies on how to enforce it. And they have a clear *modus operandi* with regards to these policies. It is based on avoiding any disagreement and any feud with the locals. The plan consists in reaching out to dignitaries and the scholars from the population to ensure that no disagreement with the people takes place. Of the policies that helped avoiding disagreement with the people is gradualism and leniency. They would not ask everything in one go. They would do it in a piecemeal fashion until they reach a - the tougher stage, or they would announce things in advance. Before enforcing them, they would ask people to do it before applying it on the ground, and they would apply it before they start punishing people on it. So this was the gradual way of applying *Sharia* to avoid disagreement with the people and to be - and to have all the excuses they need, should there be any disagreement with the people. One of their policies is to reach - is to create mediator bodies, for example, the crisis committee, and also relying on dignitaries [...], people who could take into account the interests of the people, as well as the interests of the group. These interlocutors were part of the policy

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<sup>1238</sup> P-0065 also explained that AQIM pushed locals to be interviewed by the media in order to give the world the illusion that this was not Al-Qaeda but a national group with national revolutionary objectives that carried out the acts (P-0065: T-046, p. 61). *See also* P-0150: T-090, p. 52; Press article MLI-OTP-0020-0117, translation MLI-OTP-0078-9744 (*see* P-0065: T-045, pp. 26-27).

<sup>1239</sup> P-0150: T-094, p. 23.

<sup>1240</sup> P-0150: T-113, p. 13. *See also* section D.1.c) below.

<sup>1241</sup> P-0150: T-106, p. 78.

<sup>1242</sup> P-0150: T-094, pp. 28-29.

to avoid any discord between the group and the people. These are the broad strokes of the general policy.<sup>1243</sup>

467. Between April 2012 and January 2013, Iyad Ag Ghaly, while not necessarily involved in all decisions, was supervising the activities of Ansar Dine/AQIM in Timbuktu.<sup>1244</sup> At that time, Iyad Ag Ghaly was based in Kidal, but he visited Timbuktu a few times.<sup>1245</sup> In particular, Iyad Ag Ghaly was present in Timbuktu when Ansar Dine/AQIM took control of the city and at the meeting at *Hôtel Bouctou* at the beginning of April 2012,<sup>1246</sup> at two meetings, including one with the chiefs of tribes;<sup>1247</sup> when the ‘negotiations’ between the MNLA and Ansar Dine took place ‘before signing of the [26 May 2012] agreement’;<sup>1248</sup> and in November 2012, in the preparation for the then forthcoming armed groups’ military operations towards the South of Mali.<sup>1249</sup>
468. Between April 2012 and January 2013, Abou Zeid was in regular communication with Iyad Ag Ghaly, mainly by phone.<sup>1250</sup> Regarding the hierarchy between these two leaders during the control of Timbuktu in 2012-2013, decisions were ultimately taken by Abou Zeid, even though the important ones were also discussed with other members of Ansar Dine/AQIM, such as Abdallah Al

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<sup>1243</sup> P-0150: T-117, pp. 36-37.

<sup>1244</sup> P-0150: T-089, pp. 46-47; T-092, p. 20; Mr Al Hassan’s statement MLI-OTP-0051-0537, at 0542; P-0065: T-045, p. 19. Shown an excerpt from his statement to the Prosecution by the Defence (which states that P-0065 ‘[does] not think that Al-Qaeda would consult Iyad on all decisions’), P-0065 explained that it was difficult to be specific on whether Yahya, Nabil, Abou Zeid and Al Chinguetti would consult with Iyad Ag Ghaly on all decisions (P-0065: T-045, pp. 20-21). P-0065 clarified that Droukdel, the supreme emir or ‘general commander’ of AQIM at the time, gave Iyad Ag Ghaly special prerogatives at the time the control over Northern Mali started to materialise, whereby the Al-Qaeda emirs would listen to him and consult with him on everything (P-0065: T-045, pp. 20-21, 33-35). P-0065 explained that, according to the rumours, these prerogatives were the reason Mokhtar Belmokhtar dissented from Al-Qaeda and joined MUJAO, as he believed he founded Al-Qaeda in Northern Mali and it was not acceptable for him to have a Tuareg (Iyad) giving him orders or instructions (P-0065: T-045, p. 21). *See also* paragraph 468 below.

<sup>1245</sup> P-0150: T-090, p. 7; T-092, p. 20; P-0654: T-128, pp. 6-7; P-0004: T-164, p. 83; P-0582’s statements MLI-OTP-0062-3897-R02, at 3920; MLI-OTP-0062-4012-R02, at 4019-4020. *See also Message porté* MLI-OTP-0012-0987.

<sup>1246</sup> *See* paragraph 470 below.

<sup>1247</sup> [REDACTED].

<sup>1248</sup> P-0065: T-045, p. 21. The Chamber considers, based on the circumstantial evidence, that the witness is referring to the agreement signed between the MNLA and Ansar Dine on 26 May 2012. *See* paragraph 452 below.

<sup>1249</sup> P-0065: T-045, pp. 21, 23; T-043, p. 51 (P-0065 explained that he met Iyad Ag Ghaly in Timbuktu at the end of 2012 and the beginning of 2013); P-0150: T-090, p. 7; T-089, p. 74; P-0582’s statement MLI-OTP-0062-4012-R02, at 4020-4021.

<sup>1250</sup> P-0150: T-092, pp. 19-21. P-0150 testified that [REDACTED].



Chinguetti, Abou Al Hammam, Talha or Koutaïba.<sup>1251</sup> Iyad Ag Ghaly continued to exercise a certain control over the decisions taken regarding the administration of the city, alongside Abou Zeid's leadership, until October 2012 when Abou Zeid officially became his subordinate.<sup>1252</sup>

## 2. Communication with the population

### a) Meetings held by Ansar Dine/AQIM leaders

469. On 2 April 2012, Ansar Dine held a meeting at the *Sankoré* mosque to inform the population about its mission, which was to apply *Sharia*; during this meeting, the population asked Iyad Ag Ghaly to let them circulate as they please and for Ansar Dine to ensure the security of the city.<sup>1253</sup>

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<sup>1251</sup> P-0150: T-092, p. 20; [REDACTED]. The Chamber notes that Koutaïba was also known as Koutaïba Abou Al Noaman and Koutaïba Al Chinguetti (*see* P-0065: T-046, p. 75; P-0150: T-093, p. 34). For the purposes of this judgment, the Chamber refers to him as Koutaïba.

<sup>1252</sup> The Chamber notes that a letter dated 20 July 2012, written by Abdelmalek Droukdel, the emir of Al-Qaeda in Algeria who was in charge of Al-Qaeda's activities in the desert of Mali, was read out loud to members of Ansar Dine/AQIM ([REDACTED]). The Chamber notes that when commenting on the content of the so-called 'Droukdel letter', P-0150 explained that one of the proposals made in the letter was that 'the emir of Ansar Dine [would become] the senior and the emir of Al-Qaeda would become a subordinate' (P-0150: T-104, p. 22). P-0150 explained that this 'policy' was implemented in Timbuktu to some extent even before the letter was written, and was actually part of the 'Ansar Dine project' which was established already before even the arrival of the 'jihadists' in Timbuktu. P-0150 added that there were a lot of problems where there was dispute between different positions and authorities on this topic (P-0150: T-104, p. 23). P-0150 added that such disputes were resolved following this letter and that this proposal was finally implemented 'after October 2012' (P-0150: T-104, p. 23, *referring to* General instructions MLI-OTP-0024-2320, at 2329, translation MLI-OTP-0027-0964, at 0975). In this letter, Abdelmalek Droukdel also warned against too fast an implementation of the *Sharia* by the 'Islamists', which, according to him, should rather follow a slow pace, because a long time had elapsed since Muslims had enforced the *hudud*. The Chamber heard that, in this respect, Abdelmalek Droukdel condemned what had been done in the regions of Kidal, Gao and Timbuktu, in particular the demolition of shrines in Timbuktu, the capital punishment applied for fornication and the cases of amputation in Gao. He promoted cooperation with the locals in the application of the Islamic *Sharia* in Northern Mali, said respect should be paid to local dignitaries, and encouraged having good relations with local important organisations such as the MNLA (*see* General Instructions MLI-OTP-0024-2320, translation MLI-OTP-0027-0964; P-0152: T-032, pp. 26, 81; P-0150: T-089, pp. 63-65; T-104, pp. 21-23; T-117, p. 45). The so-called 'Droukdel letters', written by Abdelmalek Droukdel, were found in Timbuktu after the town was taken over by the French Operation Serval (P-0152: T-032, p. 81). In light of the above evidence, particularly from P-0150, which confirms the existence of these letters as well as their general content, the Chamber is satisfied of the probative value of the letter on the record. The Chamber stresses that it does not require testimonial evidence on the creation of a document in order to attribute it some weight.

<sup>1253</sup> *Message porté* MLI-OTP-0012-0933. The Chamber first refers to its assessment of the reliability of this type of documents (*see* paragraph 425 and footnote 1041 above). With respect to this specific item, the Chamber notes it was signed by the director of the DSM, bears the relevant stamp, and – importantly – is dated 3 April 2012, the day following the meeting. The Chamber further notes the testimony of P-0646 regarding the making as well as the content of this document (*see notably* T-077, pp. 30-31). The Chamber is satisfied that document MLI-OTP-0012-0933 accurately reports events which took place on

470. On 4 or 5 April 2012, Iyad Ag Ghaly organised a meeting at *Hôtel Bouctou*,<sup>1254</sup> which was attended by hundreds of persons, from all different communities, mostly notables, neighbourhood leaders, religious leaders and scholars, teachers, as well as imams (including Daoud Ali Al Abou Juma, the imam of the ‘big mosque’ in Bellafarandi and Imam Essayouti, considered ‘the imam of Timbuktu’),<sup>1255</sup> the mayor and many Ansar Dine members.<sup>1256</sup> During this meeting, Iyad Ag Ghaly introduced himself, the movement of Ansar Dine, and their objectives and asked the notables to cooperate with him in the application of Islamic *Sharia*.<sup>1257</sup> He explained that the first goal of Ansar Dine was ‘the liberation of people [...] from the tyrant authorities’, that the second goal was to ‘empower Muslims so that they [could] rule themselves using the Islamic *Sharia*’, and that the third goal was to ‘provide protection for the Muslim population, especially in Timbuktu, and to guard the city from any attacks’.<sup>1258</sup>
471. The chiefs and the imams told Iyad Ag Ghaly that they were concerned by the lack of security in the city and were asking for the protection of the population.<sup>1259</sup>

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2 April 2012, notably as these are generally consistent with other reliable evidence on the record, for example on the group’s control of the city of Timbuktu and their mission), and therefore finds it appropriate to rely on this item to reach the above finding.

<sup>1254</sup> On the location of the hotel, see Map MLI-REG-0001-0037, where P-0150 marked the location of *Hôtel Azalai* and indicated the direction from *Hôtel Azalai* to *Hôtel Bouctou* with an arrow (P-0150: T-089, pp. 24-25).

<sup>1255</sup> P-0150: T-089, pp. 27-28; D-0312’s statement MLI-D28-0006-5584-R01, at 5588. The Chamber notes that Daoud Ali Al Abou Juma was also known as Daoud Al-Jumaa, Daoud Al Jomaa and Daouda Al Soudani (D-0605: T-192, pp. 57-58; D-0202: T-202, p. 95; [REDACTED]; P-0150: T-094, p. 50, referring to video MLI-OTP-0041-0616, at 00:00:21:24; T-096, p. 19). The Chamber refers to him in this judgment as Daoud Ali Al Abou Juma.

<sup>1256</sup> P-0150: T-089, pp. 17, 23, 27-28; D-0551: T-200, p. 61; T-201, p. 9; D-0312’s statement MLI-D28-0006-5584-R01, at 5588.

<sup>1257</sup> P-0150: T-089, pp. 17, 27-28; D-0312’s statement MLI-D28-0006-5584-R01, at 5588. After the Prosecution played an audio recording, P-0150 recognised the voice of the leader of Ansar Dine, Iyad Ag Ghaly, and P-0150 testified that this was all part of Iyad Ag Ghaly’s explanation as to how the infidels were enemies of the Muslims (see P-0150: T-101, p. 47, referring to audio recording MLI-OTP-0038-0885, transcript MLI-OTP-0056-0837, translation MLI-OTP-0063-1021, from 00:06:24 to 00:06:52). The Chamber notes that the Prosecution relies on this and other audio recordings as relevant speeches made by Iyad Ag Ghaly (see audio recordings MLI-OTP-0038-0885, MLI-OTP-0038-0886, MLI-OTP-0038-0888). The Chamber considers that the precise dates or circumstances of the recordings need not be established. What matters is the Chamber’s finding that those recordings are authentic records of speeches made by a member of Ansar Dine/AQIM during a period time of relevance to the charges. The Chamber also considers P-0150’s voice recognitions sufficiently reliable and notes that P-0150 was additionally put a number of questions on the content of these recordings (see paragraph 483 and footnotes 1296, 1297 below). Having considered that the Defence’s remaining objections to these items are only speculative and that no evidence raises a doubt as to their authenticity, the Chamber relies on the content of these speeches in establishing the facts of the case.

<sup>1258</sup> P-0150: T-089, p. 28.

<sup>1259</sup> D-0551: T-200, p. 61; P-0150: T-089, pp. 32-33.

Iyad Ag Ghaly stated in general terms that his group would restore the order in Timbuktu, protect the Muslim population and ensure justice, which he named ‘the *Sharia*’.<sup>1260</sup> At that stage, there was no mention of the prohibitions that would later be put in place,<sup>1261</sup> and the name of AQIM remained purposefully absent from the speech.<sup>1262</sup> One of the goals of this meeting was to reassure the audience, gain its confidence, ensure that the attendees would be in agreement with the objectives of the armed groups, that the groups would not face objections from any side, and call the imams and the scholars to support and spread the groups’ ideas amongst the population in order to sensitise it.<sup>1263</sup>

472. Abou Zeid was also present and said a few words after Iyad Ag Ghaly finished speaking, without mentioning the fact that he belonged to AQIM.<sup>1264</sup> The attendees at the meeting generally welcomed what was said there, but given the general content of the speech and references to Islamic rules, they were not in a position to really disagree.<sup>1265</sup> The scholars already adhering to the Wahhabi school of thought were more enthusiastic about the speech of Iyad Ag Ghaly, and keen to be involved in the application of the program, in particular Houka Houka.<sup>1266</sup>
473. After the meeting at *Hôtel Bouctou*, [REDACTED].<sup>1267</sup> [REDACTED],<sup>1268</sup> and further meetings on this topic followed, between several members of Ansar Dine/AQIM.<sup>1269</sup> Another meeting took place specifically about the judicial

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<sup>1260</sup> D-0551: T-200, pp. 61-62, 65; P-0150: T-089, pp. 28, 32-33.

<sup>1261</sup> D-0551: T-201, pp. 9, 16.

<sup>1262</sup> P-0150: T-089, pp. 29-30.

<sup>1263</sup> P-0150: T-089, pp. 17, 28-29; D-0551: T-201, pp. 9, 16.

<sup>1264</sup> P-0150: T-089, pp. 28-30.

<sup>1265</sup> P-0150: T-089, pp. 32-33.

<sup>1266</sup> P-0150: T-089, pp. 38-39. P-0150 explained that, while the people who attended the meeting at *Hôtel Bouctou* were all old residents of Timbuktu, scholars and notables, they had ideological differences, with some being supportive of the Wahhabi school of thought and other supporters of the Sufi approach. The scholars who supported the Wahhabi school of thought were very happy with the speech and ready to get involved in the programme of Ansar Dine/AQIM, with some stating that they were ready to start applying *Sharia* law, although some had reservations with being involved in the entire policy that Ansar Dine/AQIM had. In particular Houka Houka was happy with the speech, thanked Iyad Ag Ghaly, and invited some members to his house where they carried on the discussion about Ansar Dine, its programme and Houka Houka’s own participation. P-0150 explained that the fact that Houka Houka was happy with the speech was clear from his words and his face expressions (P-0150: T-089, p. 39).

<sup>1267</sup> [REDACTED]. [REDACTED].

<sup>1268</sup> [REDACTED].

<sup>1269</sup> [REDACTED].

system which was attended by many scholars of Timbuktu.<sup>1270</sup>

474. In parallel to those meetings, Iyad Ag Ghaly also talked individually with certain people such as Mohammed Moussa, Houka Houka, and Daoud Ali Maiga to explain what he meant by the ‘cooperation’ he asked for at the *Hôtel Bouctou*, and to persuade them to cooperate more extensively with the judiciary, the soldiers and the ‘organisers’ who were running the city, so as to facilitate their work.<sup>1271</sup> Other meetings were also organised between the imams and representatives of Ansar Dine/AQIM,<sup>1272</sup> including one meeting organised at the Timbuktu city hall,<sup>1273</sup> which Mr Al Hassan attended.<sup>1274</sup>

#### **b) Campaigns for ‘Islamic *Sharia*’ and the interactions with the population**

475. Upon their arrival in April 2012, and during the time they had control over the city, Ansar Dine/AQIM disseminated to the people of Timbuktu through different channels their ideology and goals, as well as the new rules and prohibitions to be imposed on the population.

476. A media office was based at the building of the ORTM,<sup>1275</sup> and consisted of various members, including Sanda Ould Boumama, Youssef and Radwan.<sup>1276</sup> They supervised all media and propaganda activities, including by issuing authorisation to journalists to film or report on certain events or activities,<sup>1277</sup> censoring material recorded by journalists, and authorising or recommending

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<sup>1270</sup> P-0150: T-089, pp. 49, 55-56. *See* paragraph 592 below. Based on the foregoing, the Chamber notes the central role played by P-0150 in [REDACTED], which buttresses the credibility of his testimony as regards the creation of the Islamic Police and the *Hesbah*.

<sup>1271</sup> P-0065: T-045, p. 24; P-0150: T-089, p. 29; T-090, pp. 4-5. [REDACTED].

<sup>1272</sup> P-0654: T-127, p. 57; P-0114’s statement MLI-OTP-0023-0344-R02, at 0376, para. 145; P-0582’s statement MLI-OTP-0062-4117-R02, at 4130-4131, 4133. According to P-0582, several other meetings with the imams were held (P-0582’s statement MLI-OTP-0062-4117-R02, at 4131-4132).

<sup>1273</sup> One such meeting was organised at the Timbuktu city hall, two or three months after the taking over of the city by Ansar Dine/AQIM, where Adama explained to the attendees what behaviour was expected from the population, for example going to the mosque on Fridays and closing the shops (P-0004: T-165, pp. 62-64).

<sup>1274</sup> P-0004: T-165, p. 62.

<sup>1275</sup> P-0065: T-038, p. 17; P-0654: T-128, pp. 60-61.

<sup>1276</sup> P-0065: T-038, p. 23; T-039, p. 13; P-0150: T-090, p. 11; T-096, pp. 37-38; T-102, pp. 7-8; P-0004: T-164, p. 84. The Chamber notes that Radwan was also known as Aboubacar Ibn Abdullah or Radwan Abou Achbal (*see* P-0150: T-088, p. 40). For the purposes of this judgment, the Chamber refers to him as Radwan.

<sup>1277</sup> P-0065: T-039, pp. 50-51; P-0654: T-128, pp. 22-29; P-0150: T-102, pp. 5-8, *referring to* document MLI-OTP-0053-0008, translation MLI-OTP-0078-1650.

Ansar Dine/AQIM members' interviews with the media.<sup>1278</sup>

477. Members of Ansar Dine/AQIM made public speeches and 'lectures' in the streets of Timbuktu and at the market, in particular members of the *Hesbah*<sup>1279</sup> as well as Abou Zeid and Iyad Ag Ghaly.<sup>1280</sup> They also diffused messages through speakers as they drove around in their vehicles in all neighbourhoods of the city.<sup>1281</sup> Posters were seen in the city and flyers distributed depicting how women and men should dress,<sup>1282</sup> and sign boards indicated in Arabic that Timbuktu was a city built on Islam and would be governed only by the Islamic *Sharia*.<sup>1283</sup>
478. In some mosques, the Friday sermon was done by members of Ansar Dine/AQIM, with the permission of the imams.<sup>1284</sup> The dominant message across sermons was inspired by the Wahhabist doctrine which was to explain that the country was composed of Muslims whose faith had been taken away from them because of the secular law imposed by western countries, and that the population of Timbuktu had to 'go back to the origins', which was to apply the 'Islamic *Sharia*'. Some imams also broadcasted information concerning *Sharia* principles and its

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<sup>1278</sup> P-0065: T-039, pp. 49-52; P-0654: T-128, pp. 45-46.

<sup>1279</sup> See paragraph 523 below.

<sup>1280</sup> P-0582's statement MLI-OTP-0062-4053-R02, at 4055-4056, 4058. According to P-0582, Abou Zeid talked to the population, to spread messages or to preach, sometimes in person, in gatherings held next to the small or the big market (at 4055-4056). P-0582 also explained that, when he was in Timbuktu, Iyad Ag Ghaly was going out every morning in his car to sensitise the population (at 4058). Abou Zeid needed an interpreter to speak to the population, while Iyad spoke French and Tamasheq (at 4055). See also *Message porté* MLI-OTP-0012-0933.

<sup>1281</sup> P-0984: T-068, p. 56; P-0603: T-125, pp. 20-21.

<sup>1282</sup> P-0654: T-128, p. 63; P-0608: T-154, pp. 17-18; P-0582's statement MLI-OTP-0062-4157-R02, at 4166-4167. The Chamber takes note of a document titled '*La voile intégrale à huit conditions*' [*sic*] (MLI-OTP-0001-7235, translation MLI-OTP-0078-1599), which was collected by Harald Doornbos (P-0007) at the BMS in Timbuktu in February 2013 (P-0007: T-019, pp. 14-17; see section II.D.1 above). Other versions of this same document are on the record (see Scan MLI-OTP-0053-0020; Photograph MLI-OTP-0002-0019, translation MLI-OTP-0077-2257). This document appears to be a poster depicting how women should dress and the Prosecution alleges that this document was 'distributed in Timbuktu' ([Prosecution Final Brief](#), para. 184). The Chamber notes that this allegation is supported by P-0654 and P-0582's testimony, referred to above. The Chamber however takes note of P-0150's testimony in relation to document MLI-OTP-0001-7235, notably that he had not seen it previously and was not aware of such documents being created and/or disseminated in Timbuktu in 2012-2013 (see P-0150: T-102, pp. 4-5, 12). In light of the above, and notwithstanding P-0150's lack of knowledge of the creation or distribution of such documents, the Chamber considers it established that posters were seen in the city and contributed to the group's campaigns regarding the rules imposed on women and men.

<sup>1283</sup> P-0065: T-040, pp. 53-54.

<sup>1284</sup> P-0150: T-110, pp. 60-61; P-0626: T-141, p. 52; P-0065: T-044, p. 10. During a Friday prayer in one of the mosques in Timbuktu, P-0065 saw that the faithful were asked to shut the shops on Friday and to come and pray, and Al Chinguetti was the imam (P-0065: T-038, pp. 25, 38; see video MLI-OTP-0009-1749, from 00:08:44:03 to 00:09:30:09). See also P-0004's statement MLI-OTP-0023-0344-R02, at 0373, para. 130; P-0639's statement MLI-OTP-0072-0290-R03, at 0297-0298, para. 34.

implementation in their sermons.<sup>1285</sup> However, the imams did not agree with the fact that Ansar Dine/AQIM's members entered the mosques carrying their weapons, and that Ansar Dine/AQIM's members did not respect the imams' instructions not to do so.<sup>1286</sup>

479. Further, members of Ansar Dine/AQIM, including Iyad Ag Ghaly, Al Mahdi, Radwan, Mohammed Moussa and Abdallah Al Chinguetti, made announcements on radio channels such as Radio Bouctou and Radio Farouk, in different languages, concerning the new rules and prohibitions and attendant punishments.<sup>1287</sup> The director of Radio Bouctou, Kader Khalil, was replaced by a member of Ansar Dine/AQIM, after he left the city.<sup>1288</sup> There were also broadcasts of sermons on Islamic and *Quranic* culture and readings of the *Quran*.<sup>1289</sup>

480. As regard the content of the speeches, the Chamber notes in particular the following excerpts.

481. In a speech recorded in an audio file dated 24 May 2012,<sup>1290</sup> Iyad Ag Ghaly

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<sup>1285</sup> P-0150: T-110, p. 60; P-0065: T-044, pp. 10-11. P-0065 explained that the part of the population that is Sufist rejected that discourse and, while this was the discourse of the Wahhabist minority, this new discourse was stronger than what they were used to. *See also* [Defence Final Brief](#), paras 362-363.

<sup>1286</sup> P-0150: T-113, pp. 12-13; P-0639's statement MLI-OTP-0072-0290-R03, at 0295, para. 25.

<sup>1287</sup> P-0603: T-125, pp. 20-21; P-0150: T-089, p. 53; T-090, pp. 19-20; T-110, pp. 60, 65-66; V-0001: T-168, p. 34; P-0626: T-141, p. 52; P-0608: T-153, p. 74; T-154, p. 15; P-0065: T-040, p. 46; P-0984: T-068, pp. 56-57; P-0114's statement MLI-OTP-0023-0344-R02, at 0373, para. 128; P-0582's statement MLI-OTP-0062-3845-R02, at 3848, 3859-3860, 3863; MLI-OTP-0062-3872-R02, at 3890, MLI-OTP-0062-4157-R02, at 4166, 4168; Mr Al Hassan's statement MLI-OTP-0051-1067, at 1096.

<sup>1288</sup> D-0093: T-211, p. 16.

<sup>1289</sup> P-0065: T-040, p. 46; P-0608: T-154, p. 15; D-0093: T-211, pp. 16-17. *See also* P-0639's statement MLI-OTP-0072-0290-R03, at 0295, para. 24.

<sup>1290</sup> P-0075's report MLI-OTP-0076-0442-R01, pp. 0813-0814, *referring to* audio recording MLI-OTP-0038-0886. P-0075 (*see* P-0075: T-028; P-0075's reports MLI-OTP-0015-0418, MLI-OTP-0018-0002, MLI-OTP-0033-0140, MLI-OTP-0039-0536, MLI-OTP-0058-0441, MLI-OTP-0062-2399, MLI-OTP-0069-5868, MLI-OTP-0062-0625-R01, MLI-OTP-0069-3848-R02, MLI-OTP-0038-0882, MLI-OTP-0050-0445, MLI-OTP-0069-3003-R01, MLI-OTP-0076-0442-R01, MLI-OTP-0050-0729, MLI-OTP-0051-0116 and MLI-OTP-0056-0286 introduced through Rule 68(3) of the Rules), the [REDACTED], is a specialised investigator in digital and information and communication technology forensics (P-0075: T-028, pp. 5-6). He appeared before the Chamber as an expert and testified about expert reports he prepared primarily relating to metadata analysis of video and photograph evidence and other digital evidence. The Chamber considers that P-0075 was evidently an expert in his field, and stayed within the scope of his expertise during his testimony. The witness precisely and concisely detailed his working methodology, clearly explaining complex, technical aspects of his work (*see e.g.* P-0075: T-028, pp. 8-12, 15-16, 44). He also reasonably acknowledged limitations in his work and when he was unable to answer questions (*see e.g.* P-0075: T-028, pp. 25, 61, 84, 39-41). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0075 to be a generally credible and reliable witness and relies on his expert reports.

explained that '[TRANSLATION] our objective is to establish religion in [...] this territory [...] in such a way that it can take root. Religion is being trampled on! *Sharia* is non-existent! In other words, there's no-one in a position to stop even obvious vices'.<sup>1291</sup>

482. In another speech on 4 November 2012,<sup>1292</sup> Iyad Ag Ghaly stated: '[TRANSLATION] We're here in the process of building the religion of Allah, [...] we've set rules here, restrictions there, erm, we forbid smoking, we require clothing to be shortened. We've administered beatings to a male or female fornicator here, amputated the hand of a thief there'.<sup>1293</sup> Iyad Ag Ghaly stated that his group had been created on the basis of four principles: [TRANSLATION] (i) 'the *jihād* [...]'; (ii) 'denouncing the tyrant, the Constitution and the laws established by the legislator [...] secularism and democracy'; (iii) 'arbitration by *Sharia* [...] establishment of religion'; and (iv) 'establishment of religion on ourselves'.<sup>1294</sup>

483. Iyad Ag Ghaly supported the establishment of *hudud* albeit being more prudent than others on the appropriate timing,<sup>1295</sup> and explained in another speech recorded in an audio file dated 25 August 2012,<sup>1296</sup> how the 'infidels' were 'enemies of the Muslims', stating the following:

[TRANSLATION] They want to implement their religion, their own thing. When Almighty Allah asks you to administer a hundred lashes to a man or woman who has fornicated, the disbelievers complain about this practice which is not customary for them, because they actually want this depraved behaviour to become the norm [...] There have been five Security Council meetings in two months, purely about us, about us; the groups leading these meetings even

<sup>1291</sup> Audio recording MLI-OTP-0038-0886, transcript MLI-OTP-0056-0843, translation MLI-OTP-0063-1029, p. 1036; P-0150: T-101, pp. 40-41 (confirming that the speaker is Iyad Ag Ghaly).

<sup>1292</sup> P-0075's report MLI-OTP-0076-0442-R01, p. 0814, *referring to* audio recording MLI-OTP-0038-0888.

<sup>1293</sup> Audio recording, MLI-OTP-0038-0888, transcript MLI-OTP-0056-0851, translation MLI-OTP-0063-1041, p. 1052; P-0150: T-101, pp. 29-31, 33 (identifying the speaker as Iyad Ag Ghaly).

<sup>1294</sup> Audio recording MLI-OTP-0038-0888, transcript MLI-OTP-0056-0851, translation MLI-OTP-0063-1041, p. 1044; P-0150: T-101, pp. 29-31, 33 (identifying the speaker as Iyad Ag Ghaly).

<sup>1295</sup> P-0150: T-101, p. 50. On this topic, P-0150 stated the following: 'Iyad was of the view that the application of *hudud* should be delayed to a later stage until he is sure that Ansar Dine have full control over the country. But I know that the Mujahideen or the leaders of the jihadists in Timbuktu and in Mali in general were pushed and were under pressure from the new joiners, the new members who came from Algeria and other countries who pushed the leaders to apply the *hudud* faster'. *Contra* [Defence Final Brief](#), para. 50.

<sup>1296</sup> P-0075's report MLI-OTP-0069-3003-R01, at 3028, *referring to* audio recording MLI-OTP-0038-0885. *See also* footnote 1257, 1202 above.

claimed that they didn't accept this *Sharia*, [...] because of human rights. There mustn't be amputations of hands for theft and men and women mustn't be flogged if they've fornicated, because it's their freedom: personal freedoms, individual freedoms. That's what their speaker said, in other words, [...] in this matter, the Security Council, yes, but Almighty Allah told us, don't fear them, fear Me, I'm the one who administers the most painful punishment in this world and beyond, and it's also with Me that there is elevation in this world and beyond'.<sup>1297</sup>

[TRANSLATION] As Allah, the Almighty, said: Cut off the hand of the thief. But then the disbelievers said: No! No! That's not the solution, he should go to prison instead, or repay, yes! [...] On the subject of inheritance, Allah, the Almighty, said: "The son's share shall be equivalent to that of two daughters," the male's share is that of two females, and the disbelievers said: That isn't fair, the man must be equal. In response to any decision handed down by Allah to his servants, they said: No, no, it's against human rights, or whatever. And that's what disbelief is: any laws, constitutions that are inconsistent with the *Sharia* of Allah, the Almighty – that's what it is. [...] "Do not take the Jews and Christians as allies; they are allies of each other. And whoever among you is an ally to them is one of them." Oh believers! Don't make the Jews and Christians your friends and don't side with them – don't take their side each time there's a dispute between disbelievers and Muslims [...]. Whoever sides with them, oh believers who believed in Allah, whoever among you sides with them instead of with Muslims is one of them [...] That negates the second statement, "There is no god but Allah." [...] We know that the Constitution of Mali is pure disbelief from start to finish, after all it doesn't contain any directives about the *Sharia* of Allah, the Almighty. [...] The third point [...] for which the people must find a solution, in fact, [...] in our land there is sorcery, there are sorcerers – and incidentally we no longer distinguish between marabouts and sorcerers – and sorcery is disbelief. Whoever believes in sorcery, practises it or something else in the same vein, has also disbelieved. [...] I seek refuge in Allah from the banished Devil. "And they followed what the devils said against Solomon's reign. But it was not Solomon who disbelieved; the devils disbelieved, teaching people magic." What made them disbelievers? Because they're teaching the people magic. [...] These days, people call it the secret art, secret black art, talismans and what have you. All that is pure disbelief. The people must learn their religion. [...] magic is pure disbelief. [...] I'd like Muslims to point these things out to the people, so that they can preserve their religion. That's why we've set up a group'.<sup>1298</sup>

484. In the context of a media interview, Sanda Ould Boumama, the spokesperson of

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<sup>1297</sup> Audio recording MLI-OTP-0038-0885, transcript MLI-OTP-0056-0837, translation MLI-OTP-0063-1021, from 00:06:24 to 00:06:52. P-0150 commented on this speech in the following way: 'Here Iyad Ag Ghaly mentioned these two *hadd*, *hadds*, and that's in the context of explaining to his audience the level of hostility of the infidels against Muslims and that he said in his land there is no oil or gold and no interests for the infidels, but they are interfering in his land because they are against upholding the religion and that's because their vision contradicts the words of God. So when Allah says that fornicators should be flogged, they say that this is part of personal freedom. And when Allah says that a thief should be punished by cutting off their hand, they say that this is a violation to human rights. And when Allah says that we have to prevent fornication, they say that we should allow it on earth. And this is all part of his explanation to how the infidels are enemies of the Muslims' (P-0150: T-101, pp. 47-49).

<sup>1298</sup> Audio recording MLI-OTP-0038-0886, transcript MLI-OTP-0056-0843, translation MLI-OTP-0063-1029, at 1034-1035. See footnotes 1257, 1290 above.



Ansar Dine, explained the importance and the necessity for the enforcement of the *hadd* and the reasons why the groups were ‘keen’ to do so.<sup>1299</sup> He also emphasised that the message sent to the population was that they had to practise the ‘religion’ of the armed groups which would allow them to live in a more dignified way.<sup>1300</sup> In another interview in Timbuktu at the time of the charges, Sanda Ould Boumama, stated the following:

[TRANSLATION] Of course, we don’t pay much attention ... to international opinion ... because we know that they will only accept us if we follow their path ... that’s something we already know ... what’s important for us is to know whether we are properly applying Almighty God’s orders ... that’s our sole criterion. For us, that means ... to not only amputate hands or whatever people think ... they’re entitled to their opinion ... it’s not just about applying the death penalty or ... the removal of hands or flagellation ... it’s also about establishing the religion and tenets of Almighty God ... in other areas [...] so we’ve imposed God’s restrictions ... by forbidding bribes ... by re-establishing all manner of justice for all, by inviting people to [em]brace the religion of Almighty God ... All that involves restrictions, in other words ... there are things that God has demanded ... among other things ... and we intend to apply the religion in its entirety ... it’s the law of God ... even if that results in removing a hand or sentencing someone to death ... it’s our law and we’re never ashamed of amputating ... a hand based on what God has ordered us to do ... God said to amputate the hands of thieves, be they male or female, ... and that ... is an order and it’s natural for us ... to execute it.<sup>1301</sup>

485. In a sermon given in a mosque of Timbuktu, during the week following the take-over of the city, Abdallah Al Chinguetti stated: ‘[TRANSLATION] Dear Brothers, you’ve got to help the people. You’ve got to command Good, fight against deviationist practices. Fear nothing but Allah. From now on, when it’s time for prayer, the shops need to close, and the shopkeepers need to come and

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<sup>1299</sup> Video MLI-OTP-0020-0103, 00:00:00:00-00:00:29:16, transcript MLI-OTP-0056-0787, translation MLI-OTP-0061-1128. P-0150 identified Sanda Ould Boumama, unmasked and in the foreground, speaking with another person (P-0150: T-098, pp. 58-60). P-0654 also recognised Sanda Ould Boumama in the excerpt and provided further details on the circumstances of this media interview (P-0654: T-129, pp. 25-28). The Chamber notes the Defence objection to the submission of this video recording, based on an alleged lack of authentication (ICC-01/12-01/18-1866-Conf-Anx4). Having had regard to the content of the video and the evidence of both P-0150 and P-0654, the Chamber is satisfied of the probative value and relevance of this video recording with respect to the charges, and accordingly relies on its content.

<sup>1300</sup> Video MLI-OTP-0020-0103, at 00:00:00:00 to 00:00:29:16, transcript MLI-OTP-0056-0787, translation MLI-OTP-0061-1128, at 1130.

<sup>1301</sup> Video MLI-OTP-0069-3786, at 00:02:14, transcript MLI-OTP-0078-4591, translation MLI-OTP-0078-4669. As discussed above, P-0150 notably recognised Sanda Ould Boumama (at 00:02:24:14) and testified that Sanda Ould Boumama was speaking in a formal capacity on behalf of the ‘extremist’ group and was describing their ideology and the decisions of the emirs, Abou Zeid and Abou Al Hammam (P-0150: T-102, p. 50). *See also* footnotes 1237, 1202 above.

pray. You must all practise the way of prayer and command your children to practise it'.<sup>1302</sup>

486. In a video depicting the destruction in public of statuettes in Timbuktu in April 2012, a member of Ansar Dine/AQIM tells the population: '[TRANSLATION] We've come here to teach you the true faith. Perhaps you didn't know, but these statuettes are forbidden in Islam. You have to stop worshipping them. Understood?'<sup>1303</sup>

487. In July 2012, in Timbuktu, Abou Al Baraa, one of the leaders of Ansar Dine/AQIM,<sup>1304</sup> explained in front of a camera: '[TRANSLATION] It is established that the magnanimous *Sharia* commands the levelling of graves that exceed the *Sharia*-defined height of a span, out of caution that graves may be glorified and taken as idols that are worshipped instead of God, as is the case with many who are ignorant of the truth of this religion'.<sup>1305</sup>

488. In January 2013, during a public speech organised by the *Hesbah* in Timbuktu, a man tells the public:

[TRANSLATION] Let me ask you this: Why refer to anyone other than Allah to settle your disputes? Don't you want the [*Quran*] to be your adjudicator? [...] You may have been Muslims, but you've forgotten your religion because of the influence of Christians. We're here to enlighten you. [...] There can be no question of pardoning women from here who aren't dressed properly. Only a pimp would allow his wife to reveal her body. As Muslims, you're obliged to apply the tenets of the [*Quran*]. How can you tolerate letting your wives go out like that, undressed, into the street? And if someone finds something on the ground and takes it for themselves, like a ring for example, they will have their hand cut off.<sup>1306</sup>

489. Abou Al Baraa made also the following sermon in front of a public of men gathered in a mosque in Timbuktu in 2012:

[TRANSLATION] Our Almighty Lord ordered them to comply with the religious veil. They must not be overly soft in speech, or make their words

<sup>1302</sup> Video MLI-OTP-0009-1749, at 00:08:57:00 to 00:09:04:01, transcript MLI-OTP-0028-0839, at 0846. See P-0065: T-038, pp. 38-40; P-0150: T-102, pp. 42-43.

<sup>1303</sup> Video MLI-OTP-0001-6931, at 00:01:38:00 to 00:02:06:00, transcript MLI-OTP-0056-0581, at 0583, translation MLI-OTP-0061-1139, p. 1142. See P-0065: T-043, p. 15; P-0150: T-102, pp. 37-39.

<sup>1304</sup> P-0065: T-043, pp. 21-22; P-0150: T-101, p. 55.

<sup>1305</sup> Video MLI-OTP-0015-0495, at 00:37:40:00-00:37:57:00, transcript MLI-OTP-0033-5189, at 5194.

<sup>1306</sup> Video MLI-OTP-0009-1749, at 00:07:06:00-00:08:42:00, transcript MLI-OTP-0028-0839, at 0845. See also P-0065: T-043, pp. 6-9; P-0150: T-101, pp. 54-55.

tender. They must not kick the ground causing their anklets to resound, or display their charms ostentatiously. They must put on their all-body covering robes. [...] What does our Lord tell them? He tells them: “Abide in your homes and flaunt not your charms as they did flaunt them in the prior Age of Ignorance.” Today, may God spare us, the secularists and those consumed with self-indulgence and aberrance are saying about “abide in your homes”, I mean they are commenting on our Lord’s words, may God spare us, they say that it means an imprisonment of women, a restriction of women, an uprooting of women’s liberties, and that women are hence deprived of freedom. Do they know better, or does God?<sup>1307</sup>

### 3. General overview of the marriages between members of Ansar Dine/AQIM and the local population

490. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses, which, subject to discrete aspects discussed below, it finds particularly reliable:<sup>1308</sup> P-0150,<sup>1309</sup> P-0582<sup>1310</sup> and P-0626,<sup>1311</sup> members of Ansar Dine/AQIM with in-depth knowledge of the groups, who acted as intermediaries in marriages between members of Ansar Dine/AQIM and local women; and V-0001,<sup>1312</sup> P-0520,<sup>1313</sup> P-0602,<sup>1314</sup> P-0610<sup>1315</sup> and P-0538,<sup>1316</sup> local women who were placed in such ‘marriages’. The Chamber also relies on Mr Al

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<sup>1307</sup> Video MLI-OTP-0015-0495, at 00:36:12:00 to 00:37:07:00, transcript MLI-OTP-0033-5189, at 5193-5194. *See* P-0150: T-101, pp. 55, 57-58; T-116, pp. 50-51; P-0099: T-145, pp. 66-68; T-146, pp. 14-15; P-0065: T-043, p. 20.

<sup>1308</sup> The Chamber notes that during the course of the present proceedings, witnesses have used different terms, including ‘forced marriages’, to describe marriages that occurred during the relevant time period. The Chamber has carefully assessed on a case-by-case basis whether the witness is making reference to marriages between members of Ansar Dine/AQIM and the local population and whether the relevant evidence is sufficiently probative to make a finding on the general circumstances surrounding such marriages. However, in doing so, the Chamber is not bound to follow the characterisation given by each witness. Indeed, the purpose of the present findings is not to demonstrate that all marriages between members of Ansar Dine/AQIM and the local women were conducted in the same manner but to demonstrate the general circumstances surrounding many of such marriages. The Chamber also notes that the findings in this sub-section do not concern marriages amongst members of the civilian population not involving members of Ansar Dine/AQIM (*see* [Defence Final Brief](#), para. 259).

<sup>1309</sup> The Chamber refers to its findings on the credibility and reliability of P-0150’s evidence (*see* section II.B.2.a)iii above).

<sup>1310</sup> The Chamber refers to its findings on the credibility and reliability of P-0582’s evidence (*see* section II.B.2.c)iii above).

<sup>1311</sup> The Chamber refers to its findings on the credibility and reliability of P-0626’s evidence (*see* section II.B.2.a)v above).

<sup>1312</sup> The Chamber refers to its findings on the credibility and reliability of V-0001’s evidence (*see* footnote 867 above).

<sup>1313</sup> The Chamber refers to its findings on the credibility and reliability of P-0520’s evidence (*see* footnote 3010 below).

<sup>1314</sup> The Chamber refers to its findings on the credibility and reliability of P-0602’s evidence (*see* footnote 3089 below).

<sup>1315</sup> The Chamber refers to its findings on the credibility and reliability of P-0610’s evidence (*see* footnote 3147 below).

<sup>1316</sup> The Chamber refers to its findings on the credibility and reliability of P-0538’s evidence (*see* footnote 3203 below).

Hassan's own statements, which it finds generally credible and reliable.<sup>1317</sup>

491. During Ansar Dine/AQIM's control of Timbuktu between 2012 and 2013, most of the members of Ansar Dine/AQIM,<sup>1318</sup> including Adama<sup>1319</sup> and other members of the Islamic Police,<sup>1320</sup> as well as the emirs,<sup>1321</sup> married women, including those under 15 years of age,<sup>1322</sup> from the local population in Timbuktu and its outskirts. Such marriages were commonly known as '*jihadi* marriages'.<sup>1323</sup>
492. The exact number of women who entered into a '*jihadi* marriage' in Timbuktu is unknown, as there are no exact statistics on these marriages<sup>1324</sup> and women who were subject to such marriages have often been reluctant to speak about their experiences due to the fear of public humiliation and ostracisation.<sup>1325</sup> However,

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<sup>1317</sup> The Chamber refers to its findings on the credibility and reliability of Mr Al Hassan's statements (see section II.C above).

<sup>1318</sup> P-0150: T-103, p. 4. See also P-0603: T-126, p. 5; P-0623: T-029, pp. 53-55; P-0643: T-083, pp. 27-28; P-0152: T-032, p. 40.

<sup>1319</sup> P-0582's statement, MLI-OTP-0062-4233-R02, at 4236; D-0213: T-197, p. 36. See also [Defence Response Brief](#), para. 20. On Adama's position within Ansar Dine/AQIM, see paragraph 552 below.

<sup>1320</sup> P-0582's statement MLI-OTP-0062-4037-R02, at 4046; D-0605: T-194, p. 31.

<sup>1321</sup> P-0150: T-103, p. 4.

<sup>1322</sup> Mr Al Hassan stated that women would be eligible for marriage when they reached puberty which could occur when they are around 12 or 13 years old (Mr Al Hassan's statement MLI-OTP-0051-0967, at 0993-0994). See also P-0608: T-154, pp. 22-25. The Chamber further notes that P-0610 was between 13 and 15 years old when she was 'married' (see paragraph 948 below) and P-1162 was around 15 years old (see paragraph 974 below).

<sup>1323</sup> P-0152: T-032, p. 40. The Chamber understands this term as referring to marriages between members of Ansar Dine/AQIM and women from the local population, irrespective of specific circumstances surrounding each marriage.

<sup>1324</sup> P-0152: T-032, p. 42.

<sup>1325</sup> P-0160: T-066, pp. 51-52; P-0641: T-139, p. 15; D-0240: T-191, pp. 61-62. See e.g. paragraph 954 below. On this matter, the Chamber also notes the LRVs' submissions ([LRVs Final Brief](#), para. 200). D-0240 (see D-0240: T-191; D-0240's statement MLI-D28-0006-4222-R01 introduced through Rule 68(3) of the Rules and corrections MLI-D28-0006-5680), a Muslim Tamasheq man from [REDACTED] (D-0240: T-191, p. 6; D-0240's statement MLI-D28-0006-4222-R01, at 4223, 4225). D-0240 went to Timbuktu around the end of May 2012 and left in or around July or August 2012 (D-0240: T-191, pp. 35-36; D-0240's statement MLI-D28-0006-4222-R01, at 4234). He briefly returned to Timbuktu in [REDACTED] for about 10-15 days, before definitively returning in [REDACTED] (D-0240: T-191, pp. 36-37). D-0240 has worked as a humanitarian for a number of years, undertaking work which consists mainly of collecting information about human rights violations in the Timbuktu region, promoting human rights, social cohesion, and preventing rights violations and conflict, including working with victims of gender-based violence and forced marriage (D-0240: T-191, pp. 13-14). The witness was appointed as a resource person for the Defence for a brief period in or around the beginning of 2022, and interacted with the Defence several times between 2021 and 2022 (D-0240: T-191, pp. 12-13, 69-71, referring to MLI-D28-0006-3002-R01). He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. The Chamber considers that D-0240 appeared generally honest and testified as to what he recalls. However, the Chamber observes that the witness appeared agitated at times during cross-examination, and was hesitant to answer certain questions, most notably those about Houka Houka (see e.g. T-191, pp. 38-41). In this respect the Chamber takes account of the fact that D-0240 knew Houka Houka [REDACTED] (D-0240: T-191, pp. 37-38, 44-45; D-0240's statement MLI-D28-0006-4222-R01,

witnesses have testified that ‘*jihadi* marriages’ were very frequent in Timbuktu and its outskirts between 2012 and 2013.<sup>1326</sup> The general manner in which many of the ‘*jihadi* marriages’ were conducted is described below.

**a) Arrangement of ‘*jihadi* marriages’**

**i. Role of the leadership of Ansar Dine/AQIM**

493. From the early days of its control of Timbuktu, Ansar Dine/AQIM’s members, including both emirs and soldiers, were eager to marry.<sup>1327</sup> The marriages were entered into with local women and were seen by Ansar Dine/AQIM as a means to gain influence amongst the population of Timbuktu and to disseminate their ideology in the entire society and the entire tribe, including women and children.<sup>1328</sup> An important objective of the ‘*jihadi* marriages’ was also to have children.<sup>1329</sup> ‘*Jihadi* marriages’ also served as an incentive to recruit more Ansar Dine/AQIM members.<sup>1330</sup>

494. The emirs of Ansar Dine/AQIM, notably Nabil Abou Alqama, Abou Zeid and Abou Al Hammam, got married themselves to locals in Timbuktu in 2012.<sup>1331</sup> They also encouraged members of Ansar Dine/AQIM to get married and ‘whoever wanted to get married got married’.<sup>1332</sup>

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at 4225-4226). Further, as a former Defence resource person, D-0240 appeared keen to assist the Defence. The Chamber considers that the foregoing indicates some level of bias on the witness’s part. Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds D-0240 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence including the witness’s bias on certain subjects. The Chamber notes that this is a general assessment of the witness’s testimony and that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate.

<sup>1326</sup> P-0150: T-103, p. 4; P-0626: T-143, pp. 19-20; P-0622’s statement MLI-OTP-0065-0558-R02, at 0566, para. 44; D-0006: T-205, p. 41; P-0623: T-030, pp. 7, 55-57; P-0547: T-152, p. 36.

<sup>1327</sup> P-0150: T-103, pp. 4-6. *See also* P-0608: T-154, pp. 21-22.

<sup>1328</sup> P-0150: T-103, pp. 16-17. P-0152 explained that Ansar Dine/AQIM did not necessarily marry into the upper class but into ‘more poorer, dependent lineages’, as this was part of their branding strategy in order to gain influence (P-0152: T-032, pp. 79-80). *See also* footnote 1071 above.

<sup>1329</sup> P-0150: T-103, pp. 5-6.

<sup>1330</sup> P-0152: T-032, p. 41; P-0081’s statement MLI-OTP-0012-1152-R02, at 1175, para. 117.

<sup>1331</sup> P-0150: T-103, p. 4.

<sup>1332</sup> D-0529: T-189, p. 8; P-0150: T-103, p. 12. The Defence submits that sermons and training sessions on the marriage procedures (in line with the Malikite approach) were provided to members of Ansar Dine/AQIM in light of what was followed in the region before and after 2012 ([Defence Final Brief](#), paras 53, 277). The Chamber finds there is not a sufficient evidentiary basis to make such a finding. While D-0529 did confirm that he received sermons during his training when he joined Ansar Dine, he also stated

495. In view of the importance of ‘*jihadi* marriages’, Abou Zeid and Abou Al Hammam created a special fund and provided money to indigent members of Ansar Dine/AQIM to allow them to pay for the ‘dowry’.<sup>1333</sup> Anyone who needed help would directly go to Abou Al Hammam if they were from the Al Fourqane battalion and to Abou Zeid if they were from the Tariq Ibn Ziyad battalion.<sup>1334</sup> To get married, Ansar Dine/AQIM members were first to seek the permission of the emirs of Ansar Dine/AQIM, after which they would receive financial assistance.<sup>1335</sup>
496. The leadership of Ansar Dine/AQIM also provided accommodation for married members of Ansar Dine/AQIM, including those who entered into ‘*jihadi* marriages’, so that members of Ansar Dine/AQIM could live together with their ‘wives’.<sup>1336</sup> Some of the accommodations provided were buildings which had been taken over by Ansar Dine/AQIM when they arrived in Timbuktu.<sup>1337</sup>

## ii. Role of intermediaries

497. Upon their arrival in Timbuktu, Ansar Dine/AQIM asked locals to facilitate marriages for them.<sup>1338</sup> Many of the locals who joined Ansar Dine/AQIM helped with the arrangement of ‘*jihadi* marriages’.<sup>1339</sup> Houka Houka, Al Mahdi, and Mohammed Moussa were examples of well-known locals who ‘rushed to cooperate’ and were prepared to help Ansar Dine/AQIM in anything they needed, including helping them to get married.<sup>1340</sup>

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that he did not remember what was told at all and specifically in relation to marriage that he had ‘forgotten the conditions [on how marriage should be arranged]’ (P-0529: T-189, pp. 8-9). Although the witness affirmed when asked by the Defence, in the context of marriages, if he recalled ‘what the [*Quran*] or the Prophet says about consent’ that ‘[i]t was through the consent of the wife and family of the wife’, the Chamber finds that the relevant evidence does not shed sufficient clarity to distinguish between what was said in the sermons and what the witness believed to be the teachings in the *Quran*. Concerning the other evidence cited by the Defence, the Chamber notes that they are not relevant to the precise point made in relation to trainings and sermons.

<sup>1333</sup> P-0150: T-103, p. 12; P-0099: T-145, p. 49. *See also* P-0582’s statements MLI-OTP-0062-4037-R02, at 4045-4046; MLI-OTP-0062-4233-R02, at 4234-4235.

<sup>1334</sup> P-0150: T-103, pp. 12-13. Some received the dowries through the emir of the Islamic Police (Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0899-0900).

<sup>1335</sup> P-0099: T-148, pp. 62-63.

<sup>1336</sup> P-0150: T-103, p. 15; Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0910-0911.

<sup>1337</sup> P-0150: T-103, p. 15; Mr Al Hassan’s statement, MLI-OTP-0051-0891, at 0910-0911. *See also* the Chamber’s findings in the cases of P-0520 and P-1162 about the victims being taken to the *Gouvernorat*.

<sup>1338</sup> P-0150: T-103, p. 6.

<sup>1339</sup> P-0150: T-113, pp. 15-18; T-103, pp. 4-5.

<sup>1340</sup> P-0150: T-103, pp. 9-10.

498. The intervention of such intermediaries was crucial to ‘convince’ local women to get married to members of Ansar Dine/AQIM.<sup>1341</sup> As stated by P-0150, ‘[w]omen or the society, in general, [...] held the same ideas that were common in the area, which [...] [was] hating the jihadists and fearing them and considering them as foreigners in the area. So that’s why if one of the jihadists went directly and asked for a woman in marriage, they would have been rejected by the women’.<sup>1342</sup>
499. When intermediaries were contacted by a member of Ansar Dine/AQIM in order to arrange a marriage for him, some intermediaries would actively search for a woman or a family who could be interested in a marriage, either by himself or by using his network.<sup>1343</sup> In such cases, communication with the woman and her family took place.<sup>1344</sup>
500. Afterwards, the role of the intermediary was to coordinate a meeting between the prospective ‘husband’ and the family.<sup>1345</sup> The intermediaries were influential and powerful *vis-à-vis* the families, especially when the persons acting as intermediaries were already respected by the local population before the arrival of Ansar Dine/AQIM in Timbuktu, because of their role within the tribes or their

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<sup>1341</sup> P-0150: T-103, pp. 16-17.

<sup>1342</sup> P-0150: T-103, p. 17.

<sup>1343</sup> P-0150: T-113, p. 18.

<sup>1344</sup> P-0150: T-113, p. 18; P-0582’s statement MLI-OTP-0062-4233-R02, at 4239-4241; Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0898-0899; D-0540: T-184, pp. 16, 20. P-0152 underscored that not all ‘jihadi marriages’ were ‘rushed affairs’ and in some instances, a ‘jihadist insurgent would introduce themselves to the father of the girl and he and the father would then discuss a bride price and so on and so forth’ (*see* P-0152: T-032, pp. 95-96). In this context, the Defence submits that miscommunications in the negotiation processes were attributable to dishonest local intermediaries acting independently of Ansar Dine/AQIM ([Defence Final Brief](#), paras 56, 270). In the relevant part of the transcript that the Defence relies on, P-0150 was asked if some misunderstandings arose because of dishonest local mediators, to which he answered in the affirmative and referred to the case of a young man who wanted to act as an intermediary at the beginning of Ansar Dine/AQIM’s control of Timbuktu to make some money and tried to mediate a marriage with a married woman (P-0150: T-113, pp. 62-64). The Chamber observes that P-0150 also testified that this was the one case of ‘dishonest local intermediaries’ that he saw (P-0150: T-113, p. 63) and that he did not know individual cases except for a few and that, for the rest, he did not know much about the manner in which the intermediaries conducted themselves (P-0150: T-113, pp. 29-30). In this regard, the Chamber observes that, whilst the example provided by P-0150 involved a young local man who wanted to make money, in most cases, intermediaries were chosen on the basis of their status and the influence that they had within the local community. In light of P-0150’s testimony put in context, and noting other relevant circumstances established in the present section with respect to these marriages (*see* paragraphs immediately below), the Chamber does not consider that the example provided by P-0150 is such that it raises a doubt on the manner in which most marriages by Ansar Dine/AQIM were contracted. The Chamber accordingly dismisses the Defence’s general argument on this point.

<sup>1345</sup> P-0150: T-113, p. 18.

religious and/or social status.<sup>1346</sup> The intermediaries could search within their own tribe or look for the prospective person in other tribes as well; in any case, all depended on how well-connected and well-acquainted the people were with them.<sup>1347</sup>

501. During their interactions with families, intermediaries would sometimes carry weapons and show that they had money.<sup>1348</sup> In this context, and as further discussed below, their presence put immense pressure on the families and the women themselves.<sup>1349</sup>

502. While there are cases where the woman and/or her family successfully rejected a marriage proposal, including in one instance where Mr Al Hassan accompanied the Ansar Dine/AQIM member who wanted to get married,<sup>1350</sup> in many other cases women and their families had no option but to accept,<sup>1351</sup> as they were ‘pressured’<sup>1352</sup> by the totality of the circumstances including Ansar Dine/AQIM members who were armed,<sup>1353</sup> intermediaries who were influential,<sup>1354</sup> and the fear of consequences for refusing a ‘*jihadi* marriage’.<sup>1355</sup> P-0150, who witnessed

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<sup>1346</sup> P-0150: T-103, pp. 10-11; T-113, pp. 18-19; P-0626: T-144, pp. 59-60. *See also* P-0150: T-103, p. 14; [Defence Final Brief](#), para. 278.

<sup>1347</sup> P-0150: T-113, p. 19.

<sup>1348</sup> P-0150: T-104, p. 36.

<sup>1349</sup> P-0150: T-103, pp. 10-11; T-113, pp. 29-30.

<sup>1350</sup> Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0898-0899; P-0582’s statement MLI-OTP-0062-4233-R02, at 4246-4247.

<sup>1351</sup> P-0622’s statement MLI-OTP-0065-0558-R02, at 0566-0567, paras 44, 48. P-0150 explained that notwithstanding the irregularities of marrying someone with completely different customs, traditions and religious ideology and the fact that the women of Azawad and tribes in the region in reality did not want to get married to members of Ansar Dine/AQIM, he did not see any women refusing to enter into a marriage after the intermediary’s intervention (P-0150: T-103, p. 10). *See also* P-0626: T-143, p. 20.

<sup>1352</sup> P-0150: T-103, p. 18; T-113, pp. 29-30. D-0240 testified that some marriages were consensual, whilst also agreeing that since Ansar Dine/AQIM members visited prospective ‘wives’ with weapons, acceptance of a marriage does not necessarily mean that the woman consented with free will (D-0240: T-191, pp. 62-63).

<sup>1353</sup> In explaining why weapons could be one source of ‘intimidation’, P-0150 explained that the people of Timbuktu would rarely see weapons [prior to Ansar Dine/AQIM’s control of Timbuktu] (P-0150: T-113, p. 65). The Chamber also notes that both P-0520 and P-0602 or their families were threatened with weapons in the context of the negotiations for their ‘marriages’ (*see* paragraphs 914, 937 below).

<sup>1354</sup> *See* paragraph 500 above.

<sup>1355</sup> P-0622’s statement MLI-OTP-0065-0558-R02, at 0567, para. 48. P-0610’s mother told her that it was not possible to refuse the marriage with a member of Ansar Dine/AQIM and that if they refused, the ‘Islamists’ would kill or hurt them (*see* paragraph 948 below). In some instances, as evidenced for example in the case of P-0602, the woman and her family would be harassed until they agreed to a ‘*jihadi* marriage’ (*see* paragraph 937 below). P-0582 testified that he did not know any cases where the woman or her family rejected a proposal and were forced to get married anyway, or the family suffered from consequences afterwards (P-0582’s statement MLI-OTP-0062-4233-R02, at 4247). While the Chamber



a few of these arrangements, explained that they were concluded ‘under intense pressure’, including from the intermediaries using their leverage with the population, and that ‘it sound[ed] almost like an imposition on women which they did not like’.<sup>1356</sup> P-0150 further described the situation as follows:

[p]ressure existed. It lies in the fact that someone is a dignitary. The person’s seniority, in and of itself is an instance of a pressure. If someone of a certain social status comes looking for something, that stands as pressure also. That people have arms, carry arms when they visit others in their homes, including the homes where they were courting women and also carrying these weapons, in all the faces of marriage arrangement, in addition to mentioning that they have great fortune and promising great comfort in the marriage household, those things amount to pressure in my terms.<sup>1357</sup>

503. In some instances, even though Abou Zeid would not condone the use of force or threats to enter into a ‘*jihadi* marriage’,<sup>1358</sup> women were placed in ‘*jihadi* marriages’ even where the family refused.<sup>1359</sup> In view of these circumstances, some families sent women and girls away from Timbuktu, out of fear that they would be ‘married’ to members of Ansar Dine/AQIM.<sup>1360</sup>
504. Once the ‘*jihadi* marriages’ were arranged, the intermediaries could also organise a marriage ‘ceremony’.<sup>1361</sup> Further, intermediaries could act as mediators for problems that arose during ‘*jihadi* marriages’, once concluded.<sup>1362</sup>
505. Mr Al Hassan, as a well-known local, and because of his status and the confidence

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accepts that P-0582 was not aware of such cases, noting that it has received no evidence suggesting that P-0582 was in a position to know the particulars of all ‘*jihadi* marriages’ in Timbuktu, the Chamber does not consider this evidence as contradicting the present findings. For the same reason, the Chamber accords little weight to P-0065’s testimony confirming that he did not hear of cases of women being forced to marry without consent (P-0065: T-045, p. 75).

<sup>1356</sup> P-0150: T-104, pp. 36-37.

<sup>1357</sup> P-0150: T-113, p. 30. P-0150 also stated that ‘[a]s to direct compulsion, that never occurred’. Recalling its findings on the circumstances of some such ‘marriages’ like the cases of P-0520 and P-0602, the Chamber does not accept P-0150’s conclusion that ‘direct compulsion [...] never occurred’ (see footnote immediately below). However, the Chamber does not consider it as affecting the reliability of P-0150 in the context of ‘*jihadi* marriages’, noting that it is understandable that P-0150 was not aware of the specific circumstances of each ‘*jihadi* marriage’.

<sup>1358</sup> P-0150: T-113, pp. 29-30. While the Chamber accepts that Abou Zeid would not have condoned the use of force or threats in order to enter into marriages, as noted above, the Majority, Judge Akane dissenting, does not accept P-0150’s conclusion that direct compulsion never occurred in actual fact.

<sup>1359</sup> V-0001: T-168, pp. 39-42; P-0603: T-126, p. 9; P-0608: T-154, pp. 22-25. See also the Chamber findings in relation to the cases of P-0520, P-0602, P-0610 and P-0538.

<sup>1360</sup> P-0622’s statement MLI-OTP-0065-0558-R02, at 0566, para. 44; P-0623: T-030, pp. 56-57; P-0608: T-154, pp. 22-25.

<sup>1361</sup> P-0626: T-143, pp. 18-19.

<sup>1362</sup> P-0150: T-113, p. 62; P-0626: T-144, pp. 60-61.

the emirs placed in him, acted as an intermediary for ‘*jihadi* marriages’,<sup>1363</sup> at least in the arrangement of Abou Zhar’s marriage.<sup>1364</sup> Mr Al Hassan also wrote

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<sup>1363</sup> P-0150: T-103, pp. 6, 18-19. *See* Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0904-0908. The Chamber has carefully considered the questions posed and the general context in which Mr Al Hassan made these particular statements. At the start, the investigator reminded him of his rights and offered the opportunity to raise any issues generally or with respect to his conditions of detention, to which Mr Al Hassan responded no (Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0892-0893). Substantively, the interview commenced with a discussion of general interactions of the groups with the population, turning at one point to the issue of marriage. The Chamber notes in particular that it was Mr Al Hassan who introduced the topic of marriage in response to general questions about mixing with the population and any personal interactions (Mr Al Hassan’s statement MLI-OTP-0051-0896). After providing a detailed description of how the marriage process worked including the payments and giving some examples, he was asked if he knew people who wanted to get married and approached the emir of the Police. In response he stated ‘[l]e mariage de Abou Dhar, moi j’ai participé’ (Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0897-0904). In these combined circumstances, the Chamber is satisfied that there were spontaneous credible statements from Mr Al Hassan which were adduced through general questions. *See also* P-0623: T-029, pp. 54-56. P-0623 (*see* P-0623: T-029 to T-030), a freelance journalist, was based in Bamako, Mali from [REDACTED] (P-0623: T-029, pp. 19-20, 24; T-030, p. 25). The witness returned to Mali in [REDACTED] and travelled to the North of the country, visiting Timbuktu for about [REDACTED] (P-0623: T-029, pp. 60-61; T-030, pp. 19-20, 60). P-0623 testified in relation to her interactions with, and collection of information from, various local sources, including victims of rape, mothers who had sent their daughters away to avoid forced marriage, others fleeing the conflict (*see e.g.* P-0623: T-029, pp. 27-28, 52-54, 63; T-030, p. 45), local leaders (*see e.g.* P-0623: T-029, p. 27), members of armed groups (*see e.g.* P-0623: T-029, pp. 27, 37-39, 42-49) and Mr Al Hassan (P-0623: T-029, pp. 29-37). The Chamber notes that the witness indicated the basis of articles she wrote (*see e.g.* P-0623: T-030, p. 45) and provided details on her working methodologies, including her use of a ‘fixer’, steps taken to verify information, and caution taken in dealing with sources’ opinions on the conflict, including the need to understand the context (*see e.g.* P-0623: T-029, pp. 27-28, 30, 53, 55-56; T-030, pp. 24, 31-33, 53-54 *referring to* MLI-D28-0004-0799, MLI-D28-0004-0800; *see* [Defence Final Brief](#), para. 150). She also specified when she did not know or could not recall something (*see e.g.* T-029, p. 28; T-030, pp. 27-28, 47). The Chamber considers that P-0623 has a strong basis of knowledge on the matters about which she testified, notably on instances of rape and forced marriage committed in Timbuktu. In assessing the witness’s evidence, the Chamber has taken into account P-0623’s testimony as to the circumstances in which she collected information from individuals, noting that she spoke directly to victims of rape and forced marriage in Gao, whereas concerning Timbuktu, she initially collected information from people fleeing the city, and later from people and victims in Timbuktu itself (P-0623: T-029, pp. 29-30, 53-54, 61; T-030, pp. 45, 56-58, 60; *see* [Defence Final Brief](#), para. 288). In relation to her testimony on Mr Al Hassan, the Chamber notes that the witness provided details and was definitive that the references to ‘Hassan’ being involved in forced marriage referred to events in Timbuktu, not Gao, noting that there were separate ‘commissioners’ for each city, both of whom were named by victims, and emphasising that her belief was based on information she had gathered from ‘people who had either experienced or [...] lived this themselves’ (P-0623: T-029, pp. 54-55; T-030, pp. 45-46; *contra* [Defence Final Brief](#), para. 288). The fact that the witness could not recall whether she discussed the subject of forced marriages with Mr Al Hassan, and that she referred to him as the ‘Commissioner of Police’, does not, in the Chamber’s view, undermine her credibility or the reliability of her evidence on this subject (*contra* [Defence Final Brief](#), para. 288, *referring to* P-0623: T-030, pp. 46-47). Similarly, the Chamber finds that it was understandable that the witness only made a connection between Mr Al Hassan, and the person she had spoken to over the telephone many years earlier, after reading more about his arrest in the media (*see* [Defence Final Brief](#), para. 288, *referring to* P-0623: T-030, pp. 46-47). Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds P-0623 to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness’s testimony and that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate.

<sup>1364</sup> Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0904-0907. In respect of this marriage, Mr Al Hassan stated that he and Adama ultimately agreed with the family that the dowry be set at 200,000 CFA, instead of the 500,000 CFA initially proposed and that the dowry was paid by Adama (Mr Al Hassan’s

to his superiors, including to Abou Zeid, requesting financial support on behalf of Islamic Police officers who wished to marry and, in one instance, wrote a collective request on behalf of Police officers to the emir of the Police for alimony payments.<sup>1365</sup>

### iii. Role of the ‘husband’

506. Where an intermediary was used to enter into a ‘*jihadi* marriage’, the ‘husband’ *i.e.* the Ansar Dine/AQIM member would sometimes accompany the intermediary whilst being armed.<sup>1366</sup> In some instances, several members of Ansar Dine/AQIM would visit the woman at her house before placing her into a ‘marriage’.<sup>1367</sup>

507. A traditional ‘dowry’ by the ‘husband’ was also provided in the ‘*jihadi* marriages’.<sup>1368</sup> Since Ansar Dine/AQIM members were considered as foreigners, the ‘dowry’ that they had to pay was much higher than in the case of a marriage between locals.<sup>1369</sup> However, ‘*jihadi* marriages’ were often ‘rushed affairs’ and did not involve negotiations on the amount of ‘dowries’.<sup>1370</sup>

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statement MLI-OTP-0051-0891, at 0904-0905). D-0605 explained that, according to what he heard from the brother of the ‘wife’, Abou Zhar asked to be married to a Tuareg girl and that they got married with the agreement of the family and lived together (D-0605: T-194, pp. 31-32). On Abou Zhar’s role in Ansar Dine/AQIM, *see* paragraph 453 below.

<sup>1365</sup> Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0901-0907.

<sup>1366</sup> P-0150: T-103, p. 11.

<sup>1367</sup> *See* paragraphs 912-915, 935-937, 948-950, and 957-960 below.

<sup>1368</sup> P-0626: T-143, p. 20; Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0899-0900; D-0202: T-184, p. 16.

<sup>1369</sup> P-0150: T-103, p. 12. The Defence avers, citing the evidence of P-0557, that Ansar Dine tried to lower the amount paid for dowries ([Defence Final Brief](#), para. 277). P-0557 testified that Ansar Dine/AQIM said that dowries should not be more than 15,000 francs, although in the past a higher amount could be negotiated (P-0557: T-054, p. 21). The Chamber considers that in the relevant part, P-0557 is describing dowries that were to be paid in the case of marriages between members of the local population of Timbuktu, rather than ‘*jihadi* marriages’ which, as explained by P-0150, entailed a higher dowry. The remainder of the evidence cited by the Defence ([Defence Final Brief](#), para. 277, footnote 980) also does not support the proposition that *actions taken by Ansar Dine* were ‘acknowledged to likely reduce instances of forced marriages’. In this regard, D-0006 testified that some members of the local population worked ‘on getting people married to people from Ansar Dine in order to get money’ (D-0006: T-205, p. 42). However, when asked how extensive this practice was, D-0006 only provided one example of an imam marrying his daughter to a member of Ansar Dine without being forced (D-0006: T-207, p. 39). Without more, the Chamber finds D-0006’s assertion speculative and accords it minimal weight. To the extent that P-0065 alludes that the primary source of pressure to enter into a ‘*jihadi* marriage’ was the financial incentive (P-0065: T-046, pp. 5-6), the Chamber remains unpersuaded for the same reasons.

<sup>1370</sup> P-0152: T-032, p. 96. The Chamber notes however that some ‘*jihadi* marriages’ did indeed involve negotiations on the price of dowry, including the marriage of Abou Zhar in which Mr Al Hassan was

508. Ansar Dine/AQIM members would carry their weapons at all times, including during events leading up to the ‘*jihadi* marriages’<sup>1371</sup> and, in some instances, whilst having sexual intercourse with their ‘wives’.<sup>1372</sup>

**b) Situation of the women whilst in ‘*jihadi* marriages’**

509. The ‘wives’ were expected to stay at home and, in some cases, could leave the home only if necessary or not at all.<sup>1373</sup> Some women who were placed in ‘*jihadi* marriages’ were able to visit or receive their family.<sup>1374</sup> Ansar Dine/AQIM also sometimes imposed specific conditions, such as that the ‘wives’ could not see certain family members including their cousins, contrary to the practice in Timbuktu before the arrival of Ansar Dine/AQIM in 2012.<sup>1375</sup> Ansar Dine/AQIM believed that it was the duty of women to stay at home to take care of children and household affairs, while the local population expected separate housekeepers to be hired.<sup>1376</sup>

510. As Ansar Dine/AQIM forbade extra-marital sexual intercourse,<sup>1377</sup> ‘*jihadi* marriages’ were also seen as a means for Ansar Dine/AQIM members to have sexual intercourse in a ‘permissible’ manner.<sup>1378</sup> Once placed in a ‘*jihadi*

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involved (Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0904-0905). In the same vein, P-0152 added that ‘not all marriages between women, local women here and jihadi insurgents were of this type. Some of them were also partly and were arranged marriage where a jihadist insurgent would introduce themselves to the father of the girl and he and the father would then discuss a bribe price and so on and so forth. So that would be more a marriage in accordance with local tradition, with the exception that the man’s family, that is the jihadi fighter, most often would not be involved [...]’ (P-0152: T-032, p. 96).

<sup>1371</sup> P-0150: T-103, p. 11; D-0240: T-191, pp. 62-63; P-0603: T-126, pp. 23-24.

<sup>1372</sup> V-0001: T-168, p. 53.

<sup>1373</sup> P-0150: T-113, p. 52; V-0001: T-168, p. 53; P-0520: T-149, p. 25.

<sup>1374</sup> P-0150: T-113, p. 54; V-0001: T-168, p. 53; P-0520: T-149, p. 25.

<sup>1375</sup> P-0150: T-113, pp. 48, 54-55.

<sup>1376</sup> P-0150: T-113, pp. 47-48, 52-53. The Defence submits that women were not required to work whilst in ‘*jihadi* marriages’ ([Defence Final Brief](#), para. 56). In the relevant part of the transcript referred to by the Defence, when asked if it was correct that members of Ansar Dine/AQIM would not force their wives to work, P-0150 answered ‘Yes, that’s correct’ (P-0150: T-113, p. 47). The Chamber observes that, as set out above, P-0150 went on to explain that the ‘jihadists’ opposed having housekeepers and considered household duties as the responsibility of the ‘wife’. Absent further evidence shedding light on what P-0150 understood when affirming that women were not required to ‘work’, the Chamber makes no finding on this specific answer provided by P-0150.

<sup>1377</sup> See paragraph 673 below.

<sup>1378</sup> P-0150: T-103, pp. 5-6. See also V-0001: T-168, pp. 50-51, where the witness states that she was told by her ‘husband’ when engaging in sexual intercourse that ‘[she] had to accomplish what [she had] come for’. The Chamber is cognisant that the circumstances surrounding each ‘*jihadi* marriage’ were different. To the extent that D-0512 makes a sweeping statement that no women were forcibly married or forced to engage in sexual intercourse by Ansar Dine/AQIM, without providing any clear basis (D-0512’s statement MLI-D28-0006-2611-R01, at 2616-2617, para. 36; T-181, pp. 73-74), the Chamber gives no weight to this aspect of D-0512’s evidence (see also paragraph 271 above).

marriage’, women had no right to refuse to have sexual relations with their ‘husband’ who had control over everything.<sup>1379</sup>

511. As part of his functions at the Islamic Police, Mr Al Hassan drafted Islamic Police reports on marital disputes and transmitted them to the Islamic Court.<sup>1380</sup> One such report signed by Mr Al Hassan concerns a complaint brought by P-0538’s ‘husband’ and refers to ‘an issue with his in-laws or his wife’.<sup>1381</sup>

### c) Duration and termination of ‘*jihadi* marriages’

512. ‘*Jihadi* marriages’ were expected to continue only for the duration of Ansar Dine/AQIM’s presence in Timbuktu.<sup>1382</sup> However, the length of ‘*jihadi* marriages’ varied, with some being as short as one night, to others being a few days or weeks or months.<sup>1383</sup> In some instances, the ‘marriage’ lasted only for the duration of a series of sexual intercourses, after which another Ansar Dine/AQIM member would ‘marry’ the woman again for the purposes of sexual intercourse.<sup>1384</sup>

513. Some ‘*jihadi* marriages’ were terminated during Ansar Dine/AQIM’s control of

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<sup>1379</sup> P-0150: T-103, p. 18.

<sup>1380</sup> Mr Al Hassan’s statement MLI-OTP-0062-0969, at 0979-0983, *referring to* Islamic Police reports MLI-OTP-0002-0021 and MLI-OTP-0001-7481, translations MLI-OTP-0077-2259 and MLI-OTP-0078-0258. *See also* P-0099: T-145, pp. 37-39, in which the witness testified that when he wanted to break a promise of marriage, he had to see Mr Al Hassan in order to request a hearing with the Islamic Court. In his statement, Mr Al Hassan explained that the separation of a man and a woman or a husband and a wife is something very serious in Islam and that when dealing with these cases, he tried to help the couples solve their problems (Mr Al Hassan’s statement, MLI-OTP-0062-0969, at 0983). P-0150 testified that Mr Al Hassan ‘exerted a lot of effort’ to help resolve marital disputes, including where the ‘wife’ was considered to be disobedient to her husband (P-0150: T-094, pp. 9-10).

<sup>1381</sup> *See* paragraph 966 below.

<sup>1382</sup> P-0150: T-103, pp. 14-15; T-104, pp. 35-36; T-113, pp. 37-38, 44-45. *See* P-0603: T-126, p. 9. In this context, P-0150 also provided an explanation of temporary marriages or the *mut’ah*, which is a marriage with the end date is decided at the beginning, and stated that it is not accurate to describe ‘*jihadi* marriages’ as a *mut’ah* (P-0150: T-113, pp. 34-37, 44-45).

<sup>1383</sup> *See* paragraphs 945 and 953 below; D-0213: T-197, p. 44; Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0909-0910. The Chamber does not consider the difference in length of Adama’s marriage mentioned as being significant, as the evidence in any event illustrates that some ‘*jihadi* marriages’ only lasted for a short period of time. *See also* P-0603: T-126, pp. 5-9.

<sup>1384</sup> P-0152: T-032, pp. 40-41. P-0622’s statement MLI-OTP-0065-0558-R02, at 0567, para. 48; The Chamber notes that the evidence that ‘marriages’ lasted only for the duration of a series of sexual intercourses is consistent with the case of P-0610, whose ‘husband’ left after forcing her to have sexual intercourse with him on the first night of their ‘marriage’ and was not seen again (*see also* paragraphs 952-953 below). *See also* P-0004: T-165-FRA, pp. 87-89; Press article MLI-OTP-0001-4894, at 4896. With respect to this press article dated 12 December 2012, the Chamber takes note of the Defence’s submission on its lack of reliability, but considers that some weight can be attributed to it and accordingly relies on it as corroborative of the above testimonial evidence.

Timbuktu.<sup>1385</sup> In such instances, the woman was simply returned to her family<sup>1386</sup> or had to resort to the Islamic Court to be divorced.<sup>1387</sup> The ‘husbands’ could also terminate the ‘*jihadi* marriages’ by simply declaring ‘divorce’.<sup>1388</sup>

514. Most of the women who were placed in a ‘*jihadi* marriage’ after the arrival of Ansar Dine/AQIM stayed in Timbuktu when Ansar Dine/AQIM departed Timbuktu.<sup>1389</sup> In such cases, no ‘divorce’ had to be pronounced.<sup>1390</sup>

515. Following Ansar Dine/AQIM’s departure from Timbuktu in 2013, women who had young babies from a ‘*jihadi* marriage’ were left ‘without any kind of coverage’.<sup>1391</sup> Women were also ashamed of going out with their children born out of ‘*jihadi* marriages’ due to fear of ostracisation and stigmatisation.<sup>1392</sup> P-0160 described the situation that these women were put in as follows:

they were ashamed of going out in the company of those children because those children were born out of relationships with members of armed groups who had left, and the mothers were ashamed of the fact that they could be picked out or seen to be different in colour from their mothers. And the mothers also were somewhat stressed by virtue of the fact that they did not have the financial means and it was difficult for them to go and find those financial means elsewhere to fulfil the needs of those children. So it was really stigmatisation that made them feel stressed.<sup>1393</sup>

#### 4. The institutions

516. Between April and May 2012, Ansar Dine/AQIM gradually created the different institutions referred to in this section: the first to be operational were the training centres and the Security Battalion; the *Hesbah* and the Police were then

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<sup>1385</sup> D-0512’s statement MLI-D28-0006-2611-R02, at 2616-2617, para. 36.

<sup>1386</sup> D-0213: T-197, p. 44.

<sup>1387</sup> D-0202: T-203, pp. 58-59. *See also* paragraphs 966-971 below regarding the proceedings in P-0538’s case.

<sup>1388</sup> P-0626: T-143; pp. 21-22; P-0152: T-032, p. 41.

<sup>1389</sup> P-0150: T-103, p. 15; P-0626: T-143, pp. 20-22; P-0152: T-032, pp. 41-42. P-0150 explained that this was because most of the women did not wish to get ‘married to those people’ in the first place and the only women who left together with their ‘husbands’ were either those who had arrived in Timbuktu with Ansar Dine/AQIM or those who were convinced by the ‘jihadist ideology’ (P-0150: T-103, p. 15). *See also* P-0622’s statement MLI-OTP-0065-0558-R02, at 0567, para. 47). P-0150 further explained that when Ansar Dine/AQIM arrived in Timbuktu, most of their members and emirs had left their ‘wives’ in other places without bringing them to Timbuktu (P-0150: T-103, p. 5).

<sup>1390</sup> P-0626: T-143, pp. 20-21; P-0150: T-104, pp. 35-36.

<sup>1391</sup> P-0099: T-145, p. 49. *See also* P-0641: T-139, p. 20.

<sup>1392</sup> P-0160: T-067, p. 15. *See also* V-0001: T-168, p. 61.

<sup>1393</sup> P-0160: T-067, p. 15.

established, and finally the Islamic Court and the Central Prison.<sup>1394</sup> These institutions eventually all worked together to ensure the enforcement of Ansar Dine/AQIM's rules and prohibitions, which was the responsibility of everyone.<sup>1395</sup>

**a) The *Hesbah***

517. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses, which, subject to discrete aspects discussed below, it finds particularly reliable: P-0150,<sup>1396</sup> a member of Ansar Dine/AQIM with in-depth knowledge of the groups, their institutions and members, including the *Hesbah*; P-0065,<sup>1397</sup> who had a direct and close professional relationship with Ansar Dine/AQIM and observed the work of Ansar Dine/AQIM and the *Hesbah*; and P-0626,<sup>1398</sup> a member of Ansar Dine/AQIM who had knowledge on the workings of the *Hesbah*.

**i. Creation of the *Hesbah* in Timbuktu**

518. In late April/early May of 2012,<sup>1399</sup> after gaining control of Timbuktu, Ansar Dine/AQIM established the *Hesbah* in the city of Timbuktu, which was also known as the morality brigade or morality police<sup>1400</sup> or the *Centre de Recommandation du Convenable et d'Interdiction du Blâmable*.<sup>1401</sup>

519. In Timbuktu, the *Hesbah* was initially based at the telecommunications centre

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<sup>1394</sup> P-0150: T-089, pp. 55-56; T-092, p. 37; T-093, pp. 21-23; P-0654: T-128, p. 18; P-0065: T-038, pp. 48-49; T-046, pp. 55-56, *referring to* email MLI-OTP-0018-0928-R01, translation MLI-OTP-0049-0040-R02, at 0041.

<sup>1395</sup> *See* section d) below.

<sup>1396</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (*see* section II.B.2.a)iii above).

<sup>1397</sup> The Chamber refers to its findings on the credibility and reliability of P-0065's evidence (*see* section II.B.2.a)i above).

<sup>1398</sup> The Chamber refers to its findings on the credibility and reliability of P-0626's evidence (*see* section II.B.2.a)v above).

<sup>1399</sup> P-0150: T-089, p. 56.

<sup>1400</sup> P-0004: T-165, p. 53; P-0654: T-128, pp. 51, 55; P-0099: T-146, p. 21.

<sup>1401</sup> P-0608: T-154, pp. 37-39; video MLI-OTP-0012-1724; P-0654: T-128, pp. 18, 62. *See also* P-0150: T-099, pp. 42-43.

(‘*télécentre*’)<sup>1402</sup> and later moved to the BMS<sup>1403</sup> in September 2012, when the Islamic Police left the BMS and moved to the *Gouvernorat*, and remained there until Ansar Dine/AQIM’s departure from Timbuktu.<sup>1404</sup>

520. The *Hesbah* was led by an emir who, given its specific role and functions and the religious vocation of the *Hesbah*, was chosen amongst the sheikhs,<sup>1405</sup> and reported directly to Abou Zeid.<sup>1406</sup>

521. The *Hesbah* had around ten members, including senior members such as imams and scholars who started working for the *Hesbah* without undergoing any training, and others who were first trained at the training camp.<sup>1407</sup> There were no women among the members.<sup>1408</sup> After Mohammed Moussa became its emir, some members of the *Hesbah* started wearing a vest with the name of the institution written on the back.<sup>1409</sup>

## ii. Role and function of the *Hesbah*

522. As Ansar Dine/AQIM aspired to make Timbuktu’s image match the ideology of Ansar Dine/AQIM,<sup>1410</sup> the role of the *Hesbah* was to monitor the population, condemn offences or violations of Ansar Dine/AQIM’s rules and change any behaviour that it viewed as not being in accordance with these rules.<sup>1411</sup>

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<sup>1402</sup> Mr Al Hassan’s statement MLI-OTP-0051-1032, at 1047-1048; MLI-OTP-0051-1099, at 1113-1114; P-0150: T-099, p. 40; P-0641: T-137, pp. 17-18. P-0065 testified that the *Hesbah* was at the old building of the Malian court before moving to the municipal internet café, although the witness stated that he was not sure about that (P-0065: T-039, p. 20; T-043, p. 5). The Chamber observes that the telecommunications centre was located in front of the building formerly used by the Malian court (Mr Al Hassan’s statement MLI-OTP-0051-1099, at 1114) and that P-0065 may have been confused in testifying that the *Hesbah* was initially at the old building and then moved to the internet café. Nonetheless, the Chamber does not consider this as affecting P-0065’s overall credibility given its insignificance and notes in particular that the witness himself mentioned that he was not sure on this point.

<sup>1403</sup> P-0641: T-137, p. 18; P-0150: T-099, p. 42, *referring to* video MLI-OTP-0012-1793; Mr Al Hassan’s statement MLI-OTP-0051-1032, at 1048.

<sup>1404</sup> *See* paragraph 558 below.

<sup>1405</sup> P-0150: T-120, pp. 80-82.

<sup>1406</sup> P-0150: T-093, p. 27.

<sup>1407</sup> P-0150: T-099, pp. 44-47.

<sup>1408</sup> P-0150: T-094, pp. 18-20.

<sup>1409</sup> P-0150: T-099, p. 46; P-0065: T-043, p. 8; T-046, pp. 46-47. Both witnesses identified the *Hesbah* vest in video MLI-OTP-0009-1749, at 00:07:30:01, 00:07:32:00.

<sup>1410</sup> P-0150: T-099, pp. 39-40.

<sup>1411</sup> P-0626: T-141, pp. 53-54; P-0065: T-038, pp. 46-47; T-043, pp. 4-5; Mr Al Hassan’s statement MLI-OTP-0051-1032, at 1037; P-0608: T-154, pp. 41-43; P-0582’s statement MLI-OTP-0062-3962-R02, at 3975-3976.



523. To this end, the *Hesbah* preached in the mosques and on the streets, and made speeches on the radio concerning Ansar Dine/AQIM's rules.<sup>1412</sup> The *Hesbah* notably targeted scholars and imams, by drafting sermons, and providing money to them, in order to 'silenc[e]' the imams and ensure that they would not oppose the actions of Ansar Dine/AQIM.<sup>1413</sup> Members of the *Hesbah* carried arms.<sup>1414</sup>
524. Although it varied over time, depending on who was the emir of the *Hesbah*,<sup>1415</sup> the *Hesbah* would hand arrested persons over to the Police or write reports and refer cases to the Islamic Court.<sup>1416</sup> The *Hesbah* also supervised the execution of punishments<sup>1417</sup> and was responsible for reciting judgments of the Islamic Court during public executions of those judgments.<sup>1418</sup>
525. The *Hesbah* acted as an oversight body, monitoring the religious compliance of all Muslims with *Sharia*, including by members of the *Hesbah*, the judges of the Islamic Court and the emirs of Ansar Dine/AQIM, and had the power to critique them and voice concerns,<sup>1419</sup> even though the emir of the *Hesbah* was under the authority of Abou Zeid.<sup>1420</sup>

#### a. The *Hesbah* under Al Mahdi

526. The first emir of the *Hesbah* was Al Mahdi. Abou Zeid appointed Al Mahdi as the emir of the *Hesbah*.<sup>1421</sup> Al Mahdi was the emir of the *Hesbah* from the

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<sup>1412</sup> Mr Al Hassan's statement MLI-OTP-0051-1099, at 1112-1113; P-0150: T-101, pp. 54-55; P-0626: T-141, p. 52.

<sup>1413</sup> P-0150: T-099, p. 50.

<sup>1414</sup> P-0150: T-103, p. 11. See video MLI-OTP-0009-1749, at 00:07:16:00 to 00:07:36:00, in which an armed man wearing the red vest of the *Hesbah* is seen sitting next to a man preaching to a crowd; P-0150: T-099, p. 46; P-0065: T-043, p. 8; T-046, pp. 46-47.

<sup>1415</sup> P-0150: T-097, p. 49; T-120, p. 70.

<sup>1416</sup> P-0150: T-097, p. 49, referring to *Hesbah* report MLI-OTP-0055-1813, translation MLI-OTP-0054-0341; pp. 51-52, referring to *Hesbah* report MLI-OTP-0055-1022, translation MLI-OTP-0054-0337; T-099, pp. 56-57, referring to *Hesbah* report MLI-OTP-0055-1024, translation MLI-OTP-0054-0339; T-120, p. 70. See also D-0202: T-203, p. 27. On the *Hesbah* reports, see also the Chamber's findings in section II.D above.

<sup>1417</sup> See paragraph 659 below.

<sup>1418</sup> See paragraph 659 below. See also e.g., paragraph 789 below.

<sup>1419</sup> P-0150: T-117, pp. 20-21, 26.

<sup>1420</sup> P-0654: T-128, p. 37; Mr Al Hassan's statement, MLI-OTP-0051-1155, at 1167, MLI-OTP-0051-1124, at 1133-1134.

<sup>1421</sup> P-0150: T-089, p. 54.

moment it was set up until the first week of September 2012.<sup>1422</sup>

527. At the beginning of the events, whilst Al Mahdi was the emir of the *Hesbah*, members of the *Hesbah* would in principle transfer people to the Islamic Police after arresting them.<sup>1423</sup>
528. As compared to his successor, Al Mahdi was perceived as more lenient in enforcing rules concerning women's clothing;<sup>1424</sup> there was a certain degree of flexibility and under his leadership the *Hesbah* opted to preach rather than to impose the rules upon people.<sup>1425</sup> The *Hesbah* used a gradual approach to *ta'zir* punishment at that time and there were very few instances where punishments were imposed for offences committed in the streets.<sup>1426</sup> Further, while the *Hesbah* attempted to regulate acts happening in the streets, it did not in principle interfere with acts that occurred within people's houses.<sup>1427</sup> During this period, women were not put in prison by the *Hesbah* as the *Hesbah* did not have a prison at that point,<sup>1428</sup> rather the *Hesbah* would transfer arrested persons to the Islamic Police.<sup>1429</sup>
529. The more lenient approach of Al Mahdi concerning the enforcement of the dress code was preferred by those who wanted to sway the population and 'gain their love'.<sup>1430</sup> Indeed, Al Mahdi used the funds of the *Hesbah* 'to win people's hearts and to ensure they love[d] [Ansar Dine/AQIM]'; most of the money was paid to the imams, to people who converted to other religions and then reverted back to Islam and to poor people outside the city.<sup>1431</sup> Aboubacar Al Chinguetti or

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<sup>1422</sup> P-0150: T-089, p. 56.

<sup>1423</sup> P-0150: T-120, p. 70; Mr Al Hassan's statement MLI-OTP-0051-0483, at 0503; MLI-OTP-0051-1032, at 1037-1038; MLI-OTP-0051-1155, at 1165-1166, 1177. *See also* D-0202: T-204, pp. 22-23.

<sup>1424</sup> P-0065: T-046, p. 44.

<sup>1425</sup> P-0065: T-043, p. 4. *See also* P-0004: T-166, pp. 88-89.

<sup>1426</sup> Mr Al Hassan's statement MLI-OTP-0051-1124, at 1143; P-0150: T-107, pp. 37-38. P-0150 explained that under Al Mahdi, members of *Hesbah* were to begin with *ta'zir* punishments gradually, starting with less severe measures such as warnings and fines and that Al Mahdi did not carry out any punishment for offences committed in the street, with two exceptions (P-0150: T-112, pp. 40-42). *See* paragraph 664 below.

<sup>1427</sup> P-0150: T-099, p. 40.

<sup>1428</sup> Mr Al Hassan's statement MLI-OTP-0051-1124, at 1146; P-0150: T-094, p. 10.

<sup>1429</sup> P-0150: T-120, p. 70; Mr Al Hassan's statement MLI-OTP-0051-1032, at 1037-1038; MLI-OTP-0051-1155, at 1165-1166, 1177. *See also* D-0202: T-204, pp. 22-23.

<sup>1430</sup> P-0065: T-046, p. 44.

<sup>1431</sup> P-0150: T-099, p. 50.

Aboubacar ‘the whipper’, also known as ‘Feraoun’,<sup>1432</sup> who was most bent on enforcing the dress code for women<sup>1433</sup> and who was involved in the flogging of a woman while he was working at the *Hesbah*,<sup>1434</sup> viewed Al Mahdi’s approach as being too lenient.<sup>1435</sup> He then left the *Hesbah* for the Islamic Police around June or July 2012.<sup>1436</sup>

#### **b. The *Hesbah* under Mohammed Moussa**

530. Around early September 2012, as Al Mahdi was going to take part in other activities within Ansar Dine/AQIM,<sup>1437</sup> Mohammed Moussa was appointed to succeed Al Mahdi as emir of the *Hesbah*.<sup>1438</sup> Mohammed Moussa was one of the imams of Timbuktu<sup>1439</sup> and a major dignitary.<sup>1440</sup>

531. Mohammed Moussa had many supporters from the ‘radical Islamist groups’, his own tribe Kel Essouk and the tribe of his in-laws, the Imoshar.<sup>1441</sup> Mohammed Moussa also had a special relationship with Iyad Ag Ghaly.<sup>1442</sup>

532. Like other scholars and dignitaries, Abou Zeid and Abou Al Hammam asked Mohammed Moussa to cooperate in the project being proposed in Timbuktu and to forbid his followers from objecting to the projects of Ansar Dine/AQIM, as well as to ‘woo’ them to the Ansar Dine project as much as possible.<sup>1443</sup> However, Abou Zeid and the emirs did not fully trust Mohammed Moussa, as they believed that he was not properly serving the project of AQIM (Al-Qaeda) and the ideology that it enshrined.<sup>1444</sup> They were indeed aware that Mohammed Moussa had ‘national objectives’ and that he did not adhere to AQIM (Al-Qaeda)’s

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<sup>1432</sup> D-0514: T-208, pp. 56-57.

<sup>1433</sup> P-0065: T-041, pp. 11-12. *See* section D.1.c). below.

<sup>1434</sup> Mr Al Hassan’s statement, MLI-OTP-0051-1213, at 1218-1220.

<sup>1435</sup> P-0150: T-093, p. 44.

<sup>1436</sup> P-0150: T-093, p. 44.

<sup>1437</sup> P-0150: T-089, pp. 64, 70.

<sup>1438</sup> P-0150: T-089, p. 73; Mr Al Hassan’s statement MLI-OTP-0051-1032, at 1038; MLI-OTP-0051-1099, at 1119; P-0065: T-043, pp. 3-5. *See also* P-0608: T-154, pp. 37-39.

<sup>1439</sup> P-0626: T-141, p. 53; P-0099: T-145, p. 36. *See* [Defence Final Brief](#), para. 47.

<sup>1440</sup> P-0150: T-094, pp. 49-50.

<sup>1441</sup> P-0150: T-094, pp. 49-50.

<sup>1442</sup> P-0150: T-096, pp. 30-31. *See also* P-0150: T-117, p. 18.

<sup>1443</sup> P-0150: T-117, p. 13.

<sup>1444</sup> P-0150: T-117, pp. 9-10.

international project.<sup>1445</sup> Accordingly, while Mohammed Moussa held senior positions in Timbuktu, including that of the emir of the *Hesbah*, Abou Zeid and Abou Al Hammam would treat Mohammed Moussa akin to ‘any other city scholar who had no special relationship with [AQIM (Al-Qaeda)]’ and did not bring Mohammed Moussa close to them and to their ‘internal projects’.<sup>1446</sup>

533. In relation to Al Mahdi’s relationship with the *Hesbah* after Mohammed Moussa took over its command, Al Mahdi acted as a ‘*Sharia* adviser’<sup>1447</sup> and focused on the implementation of the *Hesbah*’s work.<sup>1448</sup> He was also tasked by Abou Zeid to deliver media statements.<sup>1449</sup> Al Mahdi also supported Mohammed Moussa and took care of some of the *Hesbah*’s activities, when the latter was new to the position and required help.<sup>1450</sup>
534. Mohammed Moussa was viewed by many as being a ‘radical’ or an ‘extremist’ due to his approach in enforcing the dress code.<sup>1451</sup> People referred to him as one of the ‘most infamous’ men in Timbuktu during Ansar Dine/AQIM’s control of Timbuktu.<sup>1452</sup> Mr Al Hassan himself described Mohammed Moussa as being ‘draconian’.<sup>1453</sup>
535. Once Mohammed Moussa became the head of the *Hesbah*, the *Hesbah* started to detain themselves the persons they arrested and did not transfer arrested persons to the Islamic Police, as had been done during the period that Al Mahdi was emir, but rather transferred them to the Central Prison,<sup>1454</sup> or referred them directly to

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<sup>1445</sup> P-0150: T-117, p. 13.

<sup>1446</sup> P-0150: T-117, pp. 10-13.

<sup>1447</sup> P-0150: T-117, pp. 16-18.

<sup>1448</sup> P-0150: T-096, p. 28.

<sup>1449</sup> P-0150: T-089, p. 73.

<sup>1450</sup> P-0150: T-089, p. 73.

<sup>1451</sup> P-0065: T-037, pp. 15-16. P-0150 testified that Mohamed Ag Ghadi or ‘Mohamed the jailer’, who worked for the *Hesbah* under Al Mahdi, left the *Hesbah* when Mohammed Moussa became the emir of the *Hesbah*, because he did not believe in the ‘radical Islamist groups’ vision’ (P-0150: T-094, pp. 47-48). *See also* Mr Al Hassan’s statement MLI-OTP-0051-1155, at 1172-1173.

<sup>1452</sup> P-0608: T-154, pp. 37-39; P-0114’s statement MLI-OTP-0023-0344-R02, at 0385, para. 209;

<sup>1453</sup> Mr Al Hassan’s statement MLI-OTP-0051-1124, at 1145; MLI-OTP-0051-1155, at 1172.

<sup>1454</sup> *See* Mr Al Hassan’s statement MLI-OTP-0051-1032, at 1044-1045; P-0582’s statement, MLI-OTP-0062-3872-R02, at 3889; D-0202: T-203, p. 41. *See* paragraph 561 below for further details on the Central Prison.

the Islamic Court.<sup>1455</sup> Mr Al Hassan explained that he was surprised as it was the function of the Islamic Police to imprison people and that he believed that a lot of Mohammed Moussa's actions were contrary to *Sharia*.<sup>1456</sup> Although the exact number is unknown, a lot of people, including men, women and children were imprisoned at the *Hesbah* while Mohammed Moussa was the emir of the *Hesbah*.<sup>1457</sup>

536. In particular, when Mohammed Moussa became the emir of the *Hesbah*, rather than being enforced through preaching, the dress code became a mandatory rule that was strictly imposed.<sup>1458</sup> Mohammed Moussa would go around the city and when a woman was deemed not appropriately dressed, he would beat them<sup>1459</sup> and imprison them at the BMS, the then headquarters of the *Hesbah*.<sup>1460</sup> Mohammed Moussa notably imprisoned women at the 'ATM room',<sup>1461</sup> a very small room located at the eastern side of the main building of the BMS<sup>1462</sup> which was referred to by some as the 'women's prison'.<sup>1463</sup>

537. As the ATM room faced the street<sup>1464</sup> and only had a glass door in addition to

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<sup>1455</sup> P-0150: T-120, p. 70; Mr Al Hassan's statement MLI-OTP-0051-1032, at 1037-1038; MLI-OTP-0051-1155, at 1165-1166, 1177. *See also* D-0202: T-204, pp. 22-23. Mohammed Moussa would however transfer a person to the Central Prison if that person was accused of a serious offence (Mr Al Hassan's statement MLI-OTP-0051-1155, at 1166).

<sup>1456</sup> Mr Al Hassan's statement MLI-OTP-0051-1124, at 1145-1146, 1148-1149; MLI-OTP-0051-1155, at 1175.

<sup>1457</sup> Mr Al Hassan's statement MLI-OTP-0051-1124, at 1152-1154; MLI-OTP-0051-1155, at 1167; P-0641: T-137, p. 61. The Chamber also refers to the cases of P-0554, P-0547, P-0570, P-0636, Azahara Abdou, P-1710 and P-1711 who were all detained at the BMS, then the *Hesbah's* headquarters, during the period of Mohammed Moussa's tenure as emir of *Hesbah*.

<sup>1458</sup> P-0065: T-043, p. 5. *See also* paragraph 695 below.

<sup>1459</sup> P-0099: T-145, p. 39.

<sup>1460</sup> Mr Al Hassan's statement MLI-OTP-0051-1124, at 1140-1150, 1175; P-0004: T-165, p. 53; P-0114's statement MLI-OTP-0023-0344-R02, at 0385, para. 209; P-0984: T-068, pp. 58-59; T-069, pp. 14-20. The Crisis Committee also negotiated for the release of the women who were detained (P-0114's statement MLI-OTP-0023-0344-R02, at 0385, para. 212). *See also* P-0582's statement, MLI-OTP-0065-0602-R02, at 0603-0611; P-0547: T-151, pp. 19-20. *See also* paragraphs 875 and 903 below.

<sup>1461</sup> Mr Al Hassan's statement MLI-OTP-0051-1124, at 1140-1150, 1175; Blog post MLI-OTP-0061-0051, at 0053. The Chamber also notes its findings below that P-0636, Sallaka Bent Al-Khair and Matalla Arbi were among those who were detained at the BMS.

<sup>1462</sup> P-0055 and P-0057's report MLI-OTP-0041-0426, at 0437. Eric Baccard (P-0055) and P-0057 testified that, based on the various photographs, the length of the room can be estimated to be under 2.40 meters and the width between 1 and 1.4 meters (P-0055 and P-0057's report MLI-OTP-0060-1920, at 1935).

<sup>1463</sup> P-0582's statement MLI-OTP-0065-0602-R02, at 0608-0609; Blog post MLI-OTP-0061-0051, at 0053-0054. *See also* P-0160: T-066, p. 65. The Chamber notes that a separate women's prison was also created by Ansar Dine/AQIM adjacent to the Central Prison (*see* paragraph 561 below).

<sup>1464</sup> P-0608: T-155, p. 23. *See also* P-0055 and P-0057's report MLI-OTP-0041-0426, at 0439.

metal bars,<sup>1465</sup> the detained women were exposed to the public.<sup>1466</sup> The detention conditions at the ATM room were dire: Sallaka Bent Al-Khair (P-0554), who was detained at the ATM room towards the end of 2012, was not given any food and was forced to relieve herself in the same room;<sup>1467</sup> P-0636, who was also detained at the ATM room around October to November 2012 inclusive, was also not given anything to eat and had to endure the smell of urine in the cell.<sup>1468</sup>

538. The actions of Mohammed Moussa were widely known and discussed amongst the civilian population of Timbuktu;<sup>1469</sup> they also culminated in the women's march, where the population protested against the actions of Mohammed Moussa.<sup>1470</sup> The population would also complain about Mohammed Moussa's extremism to members of Ansar Dine/AQIM, including to Adama, Talha and Mr Al Hassan.<sup>1471</sup>

539. According to P-0065, 'Mohammed Moussa's views and approach did not embody the views of other members of Ansar Dine'.<sup>1472</sup> Ansar Dine/AQIM members filed complaints with their respective emirs or with Abou Zeid about Mohammed Moussa, *inter alia* concerning the imprisonment of women, in an attempt to distance themselves from the actions of Mohammed Moussa.<sup>1473</sup> Members of the *Hesbah* also complained that Mohammed Moussa was embezzling money and was no longer paying them the weekly stipend nor household expenses that Al

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<sup>1465</sup> P-0055 and P-0057's report MLI-OTP-0041-0426, at 0442; P-0608: T-154, p. 10.

<sup>1466</sup> P-0608: T-155, p. 23; P-0582's statement, MLI-OTP-0065-0602-R02, at 0608-0611. Sallaka Bent Al-Khair, one of the woman detained there, testified that people from outside could see her and that she felt ashamed (*see* paragraph 841 below). P-0641 testified that when he visited the ATM room, people hid as they did not want people to know that they were detained at the ATM room (P-0641: T-138, p. 40). Recalling that for example Azahara Abdou (P-1134) was detained at the BMS in late November 2012 for around three days, the Chamber notes that the evidence does not support the Defence suggestion that women were only detained at the BMS during Mohammed Moussa's tenure as emir for a maximum of 24 hours ([Defence Final Brief](#), para. 513). In this regard, the Chamber notes that Mr Al Hassan stated that women were detained by Mohammed Moussa for one or two days (Mr Al Hassan's statement MLI-OTP-0051-1155, at 1158-1161).

<sup>1467</sup> *See* paragraph 841 below. Eric Baccard (P-0055) and P-0057 also testified that as at June 2013, a strong smell of urine prevailed in the room (P-0055 and P-0057's report MLI-OTP-0041-0426, at 0442). Based on the evidence of the detention conditions at the BMS the Chamber rejects the Defence suggestion that '[d]etainees were treated well' at the *Hesbah* when Mohammed Moussa joined ([Defence Final Brief](#), para. 134).

<sup>1468</sup> *See* paragraph 864 below.

<sup>1469</sup> Mr Al Hassan's statement MLI-OTP-0051-1155, at 1172.

<sup>1470</sup> *See* section D.2.c) below.

<sup>1471</sup> Mr Al Hassan's statement MLI-OTP-0051-1155, at 1172-1173.

<sup>1472</sup> P-0065: T-050, p. 54.

<sup>1473</sup> Mr Al Hassan's statement MLI-OTP-0051-1155, at 1171-1172.

Mahdi used to provide them with.<sup>1474</sup>

540. P-0065 also testified that '[n]ot only the judges, but most of the actual leaders of [Timbuktu]' preferred the approach of Al Mahdi<sup>1475</sup> and that AQIM members, notably Yahya Abou Al Hammam, were angry at Mohammed Moussa as his actions provoked the population with whom Ansar Dine/AQIM wanted to cultivate a good relationship.<sup>1476</sup>
541. Issues concerning Mohammed Moussa and the *Hesbah* were also raised by the Crisis Committee in meetings with the leaders of Ansar Dine/AQIM.<sup>1477</sup> The concerns expressed about the detention of women, sparked a debate within Ansar Dine/AQIM regarding imprisonment of women - whether that should be permitted in accordance with *Sharia*, as they interpreted it. This prompted a discussion among the emirs specifically about the matter, with the conclusion being that the imprisonment of women was authorised by them. In principle, Mohammed Moussa was allowed to imprison women in accordance with their interpretation of *Sharia*. However, the emirs advised Mohammed Moussa about the necessary criteria or standards for imprisonment of women which were not met by the prison he was using.<sup>1478</sup>
542. The Crisis Committee continued to complain about abuse against women. P-0150 learnt from members of the Committee that women complained against Mohammed Moussa and characterised what happened to them as 'sexual harassment'.<sup>1479</sup> Notably, in October 2012 in a meeting there were complaints about women being assaulted after they had been imprisoned.<sup>1480</sup> During this meeting Abou Zeid promised to investigate the matter but it is not known what

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<sup>1474</sup> P-0150: T-099, pp. 51-52.

<sup>1475</sup> P-0065: T-046, p. 44.

<sup>1476</sup> P-0065: T-050, p. 53. Al Mahdi was also asked by Abou Zeid to issue a statement on the imprisonment of women by the *Hesbah* under Mohammed Moussa (P-0150: T-094, p. 14). *See* P-0150: T-117, p. 14 (stating that Mohammed Moussa was in agreement other members of the groups in terms of applying the project Ansar Dine/AQIM wished to apply in the city and that were it not the objections of the inhabitants, the emirs would not have objected to Mohammed Moussa because he was applying the same project. However, the local population's objection to Mohammed Moussa 'manners' led the emirs to make sure to avoid discord between the population and Ansar Dine/AQIM).

<sup>1477</sup> *See* section D.2.b) below.

<sup>1478</sup> P-0150: T-094, pp. 14-18; Mr Al Hassan's statement MLI-OTP-0051-1155, at 1167-1170, 1175.

<sup>1479</sup> *See* P-0150: T-120, p. 13.

<sup>1480</sup> P-0150: T-092, pp. 27-33, *referring to* video MLI-OTP-0018-0014 dated 9 October 2012.

procedures he conducted other than that Mohammed Moussa was summoned to attend the meeting.<sup>1481</sup> Abou Zeid questioned him and Mohammed Moussa answered the questions posed.<sup>1482</sup> At the end of the meeting, Abou Zeid spoke and promised to take action to address the matter as well as to take action on the other requests presented by the Crisis Committee.<sup>1483</sup> Abou Zeid also gave general advice to the *Hesbah*, the Police and the Security Battalion.<sup>1484</sup> However these discussions and advice failed to bring about meaningful change.<sup>1485</sup> Contemporaneous notes document Mohammed Moussa continuing his exactions in November and December 2012.<sup>1486</sup> Similarly, the Crisis Committee meeting minutes from 29 November 2012 also record that Mohammed Moussa was the centre of all the problems and that he committed all kinds of abuses in the name of religion.<sup>1487</sup>

543. Finally, around the middle or end of December 2012,<sup>1488</sup> in light of the various

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<sup>1481</sup> P-0150: T-092, p. 36.

<sup>1482</sup> P-0150: T-092, p. 36.

<sup>1483</sup> P-0150: T-092, p. 36.

<sup>1484</sup> P-0150: T-092, p. 37.

<sup>1485</sup> Mr Al Hassan's statement MLI-OTP-0051-1155, at 1167-1170; P-0150: T-092, p. 36. The Defence avers that when the issues of women's arrests and detention were brought to the leaders' attention, Abou Zeid initiated an investigation and provided further instructions, which led to an improvement and the representatives of the local population were satisfied with Abou Zeid's response ([Defence Final Brief](#), para. 514). The Chamber notes that, referring to a meeting between Abou Zeid and the Crisis Committee, P-0150 indeed testified that the people were happy with the assurances provided by Abou Zeid that he would 'take action regarding the other requests that were presented by the crisis committee' (P-0150: T-092, pp. 36-37). In this context, P-0150 also stated that 'the *Hesbah* eased its grip on the society', referring to specific issues regarding the schools (P-0150: T-092, p. 37). However, on the specific issue of the imprisonment of women by Mohammed Moussa, P-0150 clearly testified that the 'investigations' conducted by Abou Zeid after the aforementioned meeting did not 'result in any meaningful outcome'. See e.g. paragraphs 858-861, 890-898 below concerning imprisonment by the *Hesbah* under Mohammed Moussa after the women's march. Accordingly, the Chamber dismisses the aforementioned Defence argument. See also paragraph 760 below.

<sup>1486</sup> Notebook MLI-OTP-0003-0154-R03, at 0179, transcript MLI-OTP-0064-0701-R02, at 0750

<sup>1487</sup> Minutes MLI-OTP-0030-1177, at 1195. See also P-0004: T-165, pp. 51-52.

<sup>1488</sup> The Chamber notes that in his statement, Mr Al Hassan refers to an incident involving his neighbour's wife who was arrested by the *Hesbah* under Mohammed Moussa and states that he went to speak with Mohammed Moussa and that, a few days afterwards, Mohammed Moussa was removed from his position (Mr Al Hassan's statement MLI-OTP-0051-1124, at 1150-1151). Based on the description of this incident and the name of the relevant individuals that were mentioned, the Chamber concludes that this is the same incident referenced by D-0544 in his testimony, which occurred around 17 December 2012 (D-0544: T-196, pp. 51-56). The Chamber also notes that a contemporary notebook refers to an incident where Mohammed Moussa arrested several Bella women in early December (MLI-OTP-0003-0154-R03, at 0179, transcript MLI-OTP-0064-0701-R02, at 0750). Further, in the attachment to an email from P-0065, dated 23 December 2012, reference is made to a campaign held on the same day that was led by Abou Al Walid, the new *Hesbah* commander (email MLI-OTP-0018-0996-R01, translation MLI-OTP-0078-9888-R01; attachment MLI-OTP-0018-0997, translation MLI-OTP-0021-0354). On this basis, the Chamber concludes that Mohammed Moussa was replaced by Abou Al Walid as the emir of the *Hesbah*



complaints,<sup>1489</sup> Mohammed Moussa was removed from the position of the emir of the *Hesbah* and was replaced by Abou Al Walid.<sup>1490</sup>

### iii. Funding of the *Hesbah*

544. The *Hesbah* was funded by Abou Zeid,<sup>1491</sup> but it had also received donations from wealthy Arabs from the countryside<sup>1492</sup> and the emirs.<sup>1493</sup> In addition, the *Hesbah* required the people of Timbuktu to pay some of the money they received from farming activity to the *Hesbah*.<sup>1494</sup> Any fines paid by members of Ansar Dine/AQIM also went to the *Hesbah*.<sup>1495</sup>
545. The *Hesbah* under Al Mahdi received sufficient funds from Abou Zeid and other parties to cover its needs.<sup>1496</sup> In contrast, the only source of money that was available to the *Hesbah* under Mohammed Moussa came from the Ansar Dine fund, which was the same fund used to cover the expenses of other organs.<sup>1497</sup> Mohammed Moussa complained that, due to the decrease in the funds allocated by Abou Zeid for the *Hesbah*, it could no longer spend money on the imams nor provide the necessary requirements for *Hesbah* members.<sup>1498</sup> As a result, many members of the *Hesbah* deserted Mohammed Moussa and joined the Islamic Police or the Security Battalion.<sup>1499</sup>

### b) The Islamic Police

546. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses, which, subject to discrete aspects discussed

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towards the middle or end of December 2012. This is also largely consistent with Mr Al Hassan's statement where he indicates that Abou Al Walid worked at the *Hesbah* for one month and a half to two months (Mr Al Hassan's statement MLI-OTP-0051-1099, at 1120-1121).

<sup>1489</sup> Mr Al Hassan's statement MLI-OTP-0051-1124, at 1149; MLI-OTP-0051-1155, at 1171.

<sup>1490</sup> Mr Al Hassan's statement MLI-OTP-0051-1099, at 1116; MLI-OTP-0051-1032, at 1038. *See also* Mr Al Hassan's statement MLI-OTP-0051-1184, at 1196-1197. P-0150 testified that Abou Al Walid was one of the people who were entrusted by and very close to Abou Zeid (P-0150: T-099, p. 17).

<sup>1491</sup> P-0150: T-096, pp. 69-70.

<sup>1492</sup> P-0150: T-096, p. 69.

<sup>1493</sup> P-0150: T-096, p. 69.

<sup>1494</sup> P-0150: T-096, p. 70.

<sup>1495</sup> P-0150: T-096, p. 69.

<sup>1496</sup> P-0150: T-096, pp. 70-71. *See also* P-0150: T-099, p. 51. Abou Zeid used the money designated for the Tariq Ibn Ziyad battalion and not the Ansar Dine fund when Al Mahdi was the emir of the *Hesbah* (P-0150: T-096, pp. 69-70).

<sup>1497</sup> P-0150: T-099, p. 51.

<sup>1498</sup> P-0150: T-099, p. 51.

<sup>1499</sup> P-0150: T-099, p. 51.

below, it finds particularly reliable: P-0582,<sup>1500</sup> a member of Ansar Dine/AIM who worked for the Islamic Police during the relevant period and was in a position to know the inner workings of the Islamic Police; P-0150,<sup>1501</sup> a member of Ansar Dine/AQIM with in-depth knowledge of the groups, their institutions and members, including about the Islamic Police; P-0065,<sup>1502</sup> who had a direct and close professional relationship with Ansar Dine/AQIM and observed the work of Ansar Dine/AQIM and the Islamic Police; and P-0654,<sup>1503</sup> who frequently interacted with members of Ansar Dine/AQIM, including members of the Islamic Police. The Chamber also relies on Mr Al Hassan's own statements, which it finds generally credible and reliable.<sup>1504</sup> Further, the Chamber relies on D-0605,<sup>1505</sup> a member of Ansar Dine/AQIM who worked for the Islamic Police at various points during the relevant period of the charges, where his evidence is

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<sup>1500</sup> The Chamber refers to its findings on the credibility and reliability of P-0582's evidence (*see* section II.B.2.c)iii above).

<sup>1501</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (*see* section II.B.2.a)iii above).

<sup>1502</sup> The Chamber refers to its findings on the credibility and reliability of P-0065's evidence (*see* section II.B.2.a)i above).

<sup>1503</sup> P-0654 (*see* P-0654: T-127 to T-135), a Songhai man, who speaks French, Bambara, and Songhai, was born in Timbuktu and lived there while Ansar Dine/AQIM were in the city, [REDACTED]. The witness mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including [REDACTED]. The Chamber observes that P-0654 gave lengthy testimony regarding the events in Timbuktu and its surroundings during the period of the charges. The witness also had regular contact with Mr Al Hassan (*see e.g.* P-0654: T-128, p. 21). The Chamber notes that the witness's evidence was generally detailed and coherent, in particular in relation to incidents he personally observed and matters within the scope of his direct personal knowledge as an inhabitant of Timbuktu. In this context he testified with precision on various subjects including life in Timbuktu before and after the arrival of Ansar Dine/AQIM, the institutions created by Ansar Dine/AQIM, punishments he personally witnessed such as Dédéou Maiga's amputation and aspects of Mr Al Hassan's roles and functions. Some aspects of his testimony were marked by ambiguity and the Chamber notes that in some cases there were clear inconsistencies between the witness's testimony and other credible and reliable evidence, such as that the main mission of the Islamic Police was to regulate traffic (P-0654: T-128, p. 31). The witness also indicated he was sometimes confused about dates. As regards his [REDACTED] work, the witness gave detailed information as to his working methods (*see e.g.* P-0654: T-127, pp. 41-44), although the Chamber observes that the witness appeared to be somewhat [REDACTED]. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0654 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing his evidence. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate. In the present section as well as in its assessment of Mr Al Hassan's role and functions within Ansar Dine/AQIM, the Chamber relied on P-0654's evidence on specific points where the witness had a heightened basis of knowledge and where his accounts were consistent with other reliable evidence on the record.

<sup>1504</sup> The Chamber refers to its findings on the credibility and reliability of Mr Al Hassan's statements (*see* section II.C above).

<sup>1505</sup> The Chamber refers to its findings on the credibility and reliability of D-0605's evidence (*see* section II.B.2.a)xiii above).

corroborated by other credible and reliable evidence.

### i. Creation of the Islamic Police in Timbuktu

547. In late April/early May of 2012,<sup>1506</sup> after gaining control of the city of Timbuktu,<sup>1507</sup> Ansar Dine/AQIM set up an Islamic Police, within the city of Timbuktu.<sup>1508</sup> The Islamic Police was the most visible of the institutions that were set up.<sup>1509</sup> Ansar Dine/AQIM also set up police stations in Goundam, Tounka and Niafunké.<sup>1510</sup> At the time of the establishment of Ansar Dine/AQIM's Islamic Police in Timbuktu, there was no functioning police force within the city as all the governmental services, including the police, left the city before the departure of the Malian army.<sup>1511</sup>

548. Prior to the establishment of the Islamic Police, Ansar Dine/AQIM's Security Battalion, led by Talha,<sup>1512</sup> was in charge of security and public order in Timbuktu,<sup>1513</sup> and enforced Ansar Dine/AQIM's rules and prohibitions.<sup>1514</sup> Talha

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<sup>1506</sup> P-0150: T-089, pp. 55-56; T-107, p. 78; article MLI-OTP-0033-2995 (citing a source that '*Ansar Dine a installé ce vendredi "une police islamique" à Tombouctou pour appliquer la charia aux voleurs*'). As the article was published on 28 April 2012, a Saturday, the reference to '*ce vendredi*'/'this Friday', likely refers to 27 April 2012. The article also notes that the new *police islamique* was installed at the site of the old *Banque Malienne de la Solidarité*, which as the Chamber discusses further below was the initial location of the Islamic Police; article MLI-OTP-0001-3860, at 3861 (the article, dated 28 April 2012, states that Ansar Dine set up an 'Islamic Police' in Timbuktu to enforce *Sharia* in cases of theft and that the headquarters of the Islamic Police carry the inscription 'Islamic Police' in Arabic as does a car driving through town). The Chamber notes the Defence objections to the reliance on articles MLI-OTP-0033-2995 and MLI-OTP-0001-3860 for the truth of their contents (*see* Defence objections in ICC-02/12-01/18-2122-Conf-AnxA and ICC-02/12-01/18-2091-Conf-AnxB). The Chamber notes that the articles are consistent with P-0150's testimony and have probative value as contemporaneous accounts of the creation of the Islamic Police, thus the Chamber relies on them

<sup>1507</sup> *See* paragraph 451 above.

<sup>1508</sup> P-0150: T-089, pp. 55-56; T-092, p. 37; T-093, pp. 12-13, 22. *See also* P-0150: T-089, pp. 44-46; P-0065: T-038, pp. 48-49; T-046, p. 55-56; P-0654: T-128, pp. 18-19.

<sup>1509</sup> P-0654: T-128, pp. 18-19. On the issue of potential conflation between the Islamic Police and the *Hesbah*, *see* paragraph 559 below.

<sup>1510</sup> P-0150: T-093, pp. 16-18.

<sup>1511</sup> P-0065: T-046, pp. 49-50; *see* paragraph 451 above. The Chamber notes the evidence discussed below of the existence of a Security Battalion that was in charge of security within the city after the takeover of the city by Ansar Dine/AQIM but before the creation of the Islamic Police.

<sup>1512</sup> Talha was also known as Talha Al Chinguetti (P-0150: T-092, p. 38). He was a member of the AQIM's Al Fourqane Battalion (P-0150: T-089, p. 34) and was the head of security and in charge of the army in Timbuktu (P-0065: T-041, pp. 5-7; D-0529: T-189, pp. 11-12).

<sup>1513</sup> P-0150: T-089, pp. 33-34; T-092, p. 37; T-093, pp. 21-23.

<sup>1514</sup> *See* P-0065: T-043, pp. 9-11, *referring to* video MLI-OTP-0001-6931, at 00:00:33:00-00:01:19:04, transcript MLI-OTP-0056-0581, at 0582, translation MLI-OTP-0061-1139, at 1141-1142. The Chamber notes that Abou Zhar, who became an important member of the Police, can be seen in this video (*see* P-0065: T-043, pp. 10-11, *referring to* video MLI-OTP-0001-6931, at 00:00:57:14), however, given that this video was taken before the establishment of the Islamic Police, the Chamber considers that his participation was not in the context of his role as a member of the Islamic Police.

wanted the creation of the Islamic Police to take over some of the work of the Security Battalion.<sup>1515</sup> The Security Battalion became responsible for keeping peace outside of the city and the Islamic Police responsible for security within the city.<sup>1516</sup> The Police had ‘exclusive control over certain things in the city’, including – as discussed in further detail below – certain matters pertaining to the judiciary, work of the Islamic Court and the sanctions, while the Security Battalion had exclusive control over matters such as the checkpoints and exits of the city.<sup>1517</sup> The Islamic Police reported to Abou Zeid about their tasks.<sup>1518</sup>

549. Although the Islamic Police was created at the initiative of the head of the Security Battalion and was part of the security apparatus of the city, the Islamic Police was an independent institution with tasks specific to the internal security of Timbuktu<sup>1519</sup> and had its own reporting structure distinct from the Security Battalion.<sup>1520</sup> The Islamic Police worked with other organs of Ansar Dine/AQIM at times.<sup>1521</sup>

## ii. Leadership of the Islamic Police

550. Ansar Dine/AQIM’s Islamic Police was led by an emir of the Police<sup>1522</sup> who reported to Abou Zeid<sup>1523</sup> and received instructions from him,<sup>1524</sup> as well as from

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<sup>1515</sup> P-0150: T-089, p. 55; T-093, pp. 13, 22-23.

<sup>1516</sup> P-0150: T-089, pp. 33-34; T-093, pp. 22-23; P-0065: T-038, p. 46; T-041, pp. 8-9; T-041, pp. 8-9. The Chamber refers to its finding in paragraph 573 below that the Islamic Police sometimes patrolled with members of the Security Battalion, nonetheless, the Chamber is convinced on the basis to the totality of the evidence that the Islamic Police was the institution primarily responsible for security within the city. The Chamber further notes that the Islamic Police at times undertook missions outside of the city of Timbuktu (*see* paragraphs 551 and 564 below).

<sup>1517</sup> P-0150: T-102, pp. 8-9.

<sup>1518</sup> P-0150: T-093, p. 26.

<sup>1519</sup> P-0150: T-093, pp. 12-14, 22, 25-26; T-102, pp. 8-9, *referring to* press authorisation MLI-OTP-0053-0008, translation MLI-OTP-0078-1650; P-0065: T-038, p. 46; T-041, pp. 8-9.

<sup>1520</sup> P-0150: T-093, pp. 14-15, 22, 26. *See* below discussion of the leadership of the Islamic Police.

<sup>1521</sup> *See* section d) below for the Chamber’s discussion of the collaboration between the various institutions of Ansar Dine/AQIM.

<sup>1522</sup> P-0150: T-093, pp. 15, 26. The leader of the Islamic Police was also commonly referred to by witnesses as the ‘*commissaire*’ or Commissioner of the Police (*see, for example*, P-0654: T-128, p. 19; P-0114’s statement MLI-OTP-0023-0344-R02, at 0385, para. 208; P-0150: T-094, p. 58) or as ‘head’ of the Police (*see* P-0150: T-093, p. 38). The Chamber also notes that P-0582 referred to this position as the director of Police (P-0582’s statement MLI-OTP-0062-3820-R02, at 3838, 3840; MLI-OTP-0062-3679-R02, at 3686). The Chamber understands that all of these designations, ‘emir’, ‘commissioner’, ‘director’, ‘head’, refer to the leader who was in overall charge of the Police.

<sup>1523</sup> P-0582’s statement MLI-OTP-0062-3820-R02, at 3840; P-0150: T-093, p. 26.

<sup>1524</sup> P-0150: T-093, p. 26; T-094, pp. 69-70. *See also* Mr Al Hassan’s statement MLI-OTP-0051-0407, at 0419-0420.

other leaders of Ansar Dine/AQIM.<sup>1525</sup> In addition, the emir of the Police also had to inform Talha and Abou Al Hammam, even though Talha could not give orders to the emir of the Police.<sup>1526</sup>

551. The emir of the Police controlled the Islamic Police and gave orders to subordinates.<sup>1527</sup> The emir of the Police was also responsible for ‘coordinating between the Police and Abou Zeid’ and ensuring that Police officers had the necessary resources,<sup>1528</sup> as well as managing police missions outside the city.<sup>1529</sup>

552. Adama,<sup>1530</sup> the first emir of Police,<sup>1531</sup> was a member of AQIM and belonged to AQIM’s Al Fourqane battalion.<sup>1532</sup> Adama was relieved of his position because of local complaints with respect to his participation in the arrest and beating of a woman in the streets and in her home.<sup>1533</sup> After Adama was relieved of duty, sometime before the Islamic Police switched locations in September 2012,<sup>1534</sup>

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<sup>1525</sup> P-0582’s statement MLI-OTP-0062-3788-R02, at 3792-3794.

<sup>1526</sup> P-0150: T-093, pp. 14-15. Abou Al Hammam was Talha’s superior (P-0150: T-093, p. 26).

<sup>1527</sup> See P-0582’s statement MLI-OTP-0062-3820-R02, at 3830, 3836; MLI-OTP-0062-3820-R02, at 3843; MLI-OTP-0062-3820-R02, at 3844; D-0605: T-192, pp. 83-84; T-193, pp. 8-10. See also Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1200-1201.

<sup>1528</sup> P-0150: T-094, pp. 65-66.

<sup>1529</sup> P-0150: T-118, pp. 31-32, referring to video MLI-OTP-0069-3712, until 00:00:56:03, and to P-0150’s testimony in T-116, p. 40.

<sup>1530</sup> Adama was also known as ‘the Mauritanian’ (P-0150: T-089, p. 56). The Chamber recalls that a few witnesses, for example P-0150, referred the first head of the Police as ‘Adam’ (see e.g. P-0150: T-093, p. 32). The Chamber, noting the witnesses’ description of the first head of the Police, considers this discrepancy of no significance and understands that the witnesses are all speaking of the same person, whom the Chamber refers to as ‘Adama’. Adama was of Mauritanian descent, spoke Arabic and understood French (see P-0150: T-093, p. 32; P-0582’s statement MLI-OTP-0062-3679-R02, at 3687; MLI-OTP-0062-3788-R02, at 3800-3801).

<sup>1531</sup> Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1199-1200; P-0065: T-040, p. 55; P-0150: T-089, p. 56.

<sup>1532</sup> P-0150: T-093, p. 32; P-0582’s statement MLI-OTP-0062-3679-R02, at 3697-3698. See also D-0605: T-192, pp. 79, 83; Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1200.

<sup>1533</sup> Mr Al Hassan’s statement MLI-OTP-0051-1213, at 1218-1220. See D-0605: T-193, pp. 4-8; P-0654: T-128, p. 20; D-0093: T-211, p. 46. See also P-0150: T-093, pp. 37-38. The Chamber notes that D-0514 disagreed with the proposition put to him that Adama was dismissed because he chased a woman into her house and beat her and stated that he was removed because he was too close to population (D-0514: T-208, pp. 54-55). The Chamber considers that Mr Al Hassan and other persons with closer links to the groups were in a position to have greater knowledge of the circumstances of Adama’s removal and also recalls its view that D-0514 displayed a clear bias which resulted in him minimising the conduct of the members of Ansar Dine/AQIM against the population. Considering this, the Chamber does not rely on this aspect of D-0514’s testimony. Further, while P-0582 gave a somewhat differing account of Adama’s removal than other insiders (P-0582’s statement MLI-OTP-0062-3820-R02, at 3837-3840), the Chamber considers that his testimony is not entirely incompatible with their credible testimony that Adama was removed from the commissioner position because of local complaints.

<sup>1534</sup> See Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1199. See also paragraph 519 above and 558 below.

Khaled<sup>1535</sup> became emir of the Police.<sup>1536</sup> Khaled, also a member of AQIM, belonged to the *Tarek Ibn Ziyad* battalion.<sup>1537</sup> Mr Al Hassan was subsequently appointed as commissioner of the Police when Khaled left Timbuktu to prepare for battle in Konna.<sup>1538</sup> The Chamber notes that Mr Al Hassan's leadership role is discussed in the section below, which addresses his role and functions.<sup>1539</sup>

553. Beside the emirs, Abou Zhar,<sup>1540</sup> a member of AQIM,<sup>1541</sup> was a senior member of the Islamic Police<sup>1542</sup> and reported directly to the emir of the Police.<sup>1543</sup> Abou Zhar was a soldier in Al-Qaeda<sup>1544</sup> and acted as an intermediary between the leader of the Islamic Police and the Black Malian members of the Islamic Police who spoke Bambara.<sup>1545</sup> Both Mr Al Hassan and Abou Zhar were deputies of the

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<sup>1535</sup> Khaled was also known as 'Khaled al-Sahraoui' (P-0150: T-116, p. 37). Khaled was both a head of the Police and a member of the *Sharia* committee (P-0150: T-099, p. 59). The Chamber notes that the spellings 'Khalid' and 'Khaled' appears to have been used interchangeably in the transcripts of the proceedings. This discrepancy in spelling is of no significance and the Chamber refers to the second emir of the Police as 'Khaled'.

<sup>1536</sup> Mr Al Hassan's statement MLI-OTP-0051-1184, at 1199; P-0150: T-095, p. 61; P-0065: T-040, pp. 55-56; P-0114's statement MLI-OTP-0023-0344-R02, at 0385, para. 208.

<sup>1537</sup> P-0150: T-090, p. 54.

<sup>1538</sup> See paragraph 1064 below.

<sup>1539</sup> See section F.3 below.

<sup>1540</sup> Several witnesses referred to a person named 'Abu Zhar' (see D-0605: T-194, p. 51) or 'Abou Zahr' (see P-0582's statement MLI-OTP-0062-4075-R02, at 4078), others to 'Abou Thar' (see P-0065: T-037, pp. 30-31) or 'Abu Dhar' (see Mr Al Hassan's statement MLI-OTP-0051-1184, at 1195). From the witnesses' description of the function and role of this person, the Chamber is of the view that the differences in the name are mere spelling differences and the witnesses all referred to the same person, whom the Chamber refers to in the present judgment as 'Abou Zhar'. P-0065 stated that he did not believe that the name was the man's real name and might have been a nickname or a *nom de guerre* (P-0065: T-037, p. 31; T-039, p. 43). Abou Zhar belonged to the Al Fula people (D-0006: T-205, p. 40; P-0065: T-037, p. 26) and was also referred to as Abou Dhar Foulani/Al Foulani (Mr Al Hassan's statement MLI-OTP-0051-0422, 0433); Shown video MLI-OTP-0041-0612, P-0582 identified Abou Zhar (P-0582's statement MLI-OTP-0062-4075-R02, at 4077-4080). The Chamber notes that P-0150 was also shown video MLI-OTP-0041-0612 and identified the man P-0582 called Abou Zhar as 'Aymen Al-Bambari' (P-0150: T-093, pp. 33-35). P-0150 stated that this man whom he sometimes refer to as 'Al-Bambari' was a senior member at the Police station (P-0150: T-098, p. 57). In light of P-0150 and P-0582's identification of the man in video MLI-OTP-0041-0612, the Chamber is satisfied that Abou Zhar was also known as 'Ayman Al-Bambari' and as 'Al-Bambari'.

<sup>1541</sup> D-0605: T-194, pp. 51-52; P-0065: T-037, p. 26; P-0582's statement MLI-OTP-0062-4012-R02, at 4032-4034.

<sup>1542</sup> P-0150: T-098, p. 57; P-0582's statement MLI-OTP-0062-3760-R02, at 3767-3768; MLI-OTP-0062-4012-R02, at 4034-4036; Mr Al Hassan's statement MLI-OTP-0060-1539, at 1554-1555; MLI-OTP-0060-1580, at 1593-1594; MLI-OTP-0060-1631, at 1643-1644; D-0605: T-193, pp. 12-13. See also P-0065: T-040, p. 54; T-037, p. 26.

<sup>1543</sup> See P-0582's statement MLI-OTP-0062-3962-R02, at 3966.

<sup>1544</sup> P-0065: T-040, p. 54.

<sup>1545</sup> P-0582's statement MLI-OTP-0062-3760-R02, at 3767-3768; MLI-OTP-0062-3962-R02, at 3966; MLI-OTP-0062-4012-R02, at 4034. While P-0582 initially stated that Abou Zhar was in charge of the Black members of the Islamic Police who were from the 'south', meaning locals, and spoke Bambara, he clarified that Abou Zhar was a 'leader' because he spoke Khaled's language and acted as an

emir of the Police.<sup>1546</sup> At least at some point during the relevant period, Mr Al Hassan was hierarchically superior to Abou Zhar.<sup>1547</sup>

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intermediary between the Police officers and Khaled, but he was not in charge of anyone (P-0582's statement MLI-OTP-0062-4012-R02, at 4034-4036). P-0582 stated that they had to go through Abou Zhar for everything and he would translate (P-0582's statement MLI-OTP-0062-4012-R02, at 4034-4035). *See also* D-0006: T-205, p. 40.

<sup>1546</sup> *See* Mr Al Hassan's statements MLI-OTP-0051-1184, at 1202; MLI-OTP-0051-0457, at 0464-0465, 0474-0475; MLI-OTP-0051-0767, at 0786-0787; MLI-OTP-0051-0891, at 0897; MLI-OTP-0051-0967, at 0973; MLI-OTP-0060-1423, at 1431; section F.2 below.

<sup>1547</sup> P-0582, an Islamic Police officer who worked with Mr Al Hassan, stated that Mr Al Hassan was Abou Zhar's hierarchal superior (P-0582's statement MLI-OTP-0062-4012-R02, at 4035). The Chamber recalls that D-0605 indicated that Abou Zhar was subordinate to the heads of the Police, *i.e.* Adama and Khalid, but above Mr Al Hassan (D-0605: T-192, pp. 83-84; T-193, pp. 16-18). *See also* [Defence Final Brief](#), para. 523. The Chamber notes that D-0605 did not work with Mr Al Hassan, although [REDACTED] (D-0605: T-193, p. 30). The Chamber notes that D-0605 appears to have primarily worked with the Police from July to October 2012 (*see* D-0605: T-194, pp. 50-52, 64-70), while P-0582 was a member of the Police from July 2012 until he left to participate in the battle of Konna in the beginning of January 2013 (P-0582's statement MLI-OTP-0062-3641-R02, at 3653; MLI-OTP-0062-3679-R02, at 3680-3681; MLI-OTP-0062-3820-R02, at 3833-3835; MLI-OTP-0062-3760-R02, at 3769; on the battle of Konna, *see* paragraph 454 above). Further, the Chamber notes that D-0605 testified that he only worked for a few days with the Police during the time when the battle in Konna was ongoing (early January 2013) and that, during this period, police work was relatively paralysed (*See* D-0605: T-194, pp. 34, 38). D-0605 further stated that he was one of the first people to leave town to transport his family to a safe place (*see* D-0605: T-194, pp. 38-40). The Chamber also notes that, Abou Zhar was away from Timbuktu during the preparation for the battle of Konna (*see* Mr Al Hassan's statement MLI-OTP-0051-0457, at 0474). Given the time of D-0605's tenure at the Police, the chaos of the late period of Ansar Dine/AQIM's control of the city and the fact that D-0605 was only with the Police for a few days in January 2013, and Abou Zhar would not have been present during this period, the Chamber finds that D-0605 may not have been in a position to make observations about the hierarchical position of Abou Zhar *vis-à-vis* Mr Al Hassan, particularly during the last week of the group's control over the city of Timbuktu. The Chamber is of the view that P-0582, given his extended work with the Police and his proximity to Mr Al Hassan, was in a better position to understand the hierarchy of the Police; it thus places greater weight on the evidence that he provides in this regard and is convinced by his testimony. In his statements, Mr Al Hassan described Abou Zhar as 'vice emir' or 'the deputy of the emir' at the time when Mr Al Hassan first joined the Islamic Police (Mr Al Hassan's statements MLI-OTP-0051-1184, at 1202). Throughout his statements, he also referred to Abou Zhar as Adama and later Khaled's deputy (MLI-OTP-0051-0457, at 0464-0465, 0474-0475; MLI-OTP-0051-0767, at 0786-0787; MLI-OTP-0051-0891, at 0897; MLI-OTP-0051-0967, at 0973; MLI-OTP-0060-1423, at 1431). Mr Al Hassan stated that Abou Zhar left the Police during the preparation for the battle in Konna and was not replaced when he left (MLI-OTP-0051-0457, at 0474-0475). Mr Al Hassan stated that he worked with Abou Zhar all the time and the man was the deputy of the emir (MLI-OTP-0051-0598, at 0605). In the case of the two men flogged around 8 July 2012, Mr Al Hassan explained that, as the emir of the Islamic Police (at this time Adama) may have been absent, Abou Zhar designated the person who would carry out the flogging and he designated Mr Al Hassan to carry out the flogging (MLI-OTP-0051-0967, at 0985). The Chamber notes that this incident happened on 8 July 2012, early in Mr Al Hassan's tenure as a Police officer. Mr Al Hassan stated that in the majority of cases, when taking complaints, the emir of the Police, Abou Zhar or another member of the Police was with him (MLI-OTP-0060-1453, at 1462). Mr Al Hassan stated that apart from the emir, only he or Abou Zhar could sign documents like the permission to dig a well (MLI-OTP-0060-1539, at 1554-1555; MLI-OTP-0060-1580, at 1594). Mr Al Hassan stated that he shared an office with the emir of the Police and Abou Zhar (MLI-OTP-0060-1631, at 1644). The Chamber is convinced by Mr Al Hassan's evidence that Abou Zhar was a deputy of the emirs. Further, credible and reliable evidence demonstrates that Mr Al Hassan was also a deputy or assistant of the emirs (*see* the Chamber's discussion of Mr Al Hassan's roles and functions, particularly its discussion of Mr Al Hassan's position) before being himself designated as commissioner of the Police (*see* paragraph 1065 below). The Chamber is of the view that Mr Al Hassan's evidence is not clear on the issue of how

### iii. Membership of the Islamic Police

554. In the early period of Ansar Dine/AQIM's activities in Timbuktu, when the leadership was establishing the institutions, Abou Zeid, Abou Al Hammam, Abdallah Al Chinguetti and Talha considered people and assigned them to institutions, including the Police.<sup>1548</sup> Afterwards, leaders of the Police, including Mr Al Hassan, generally recruited members from the training centres.<sup>1549</sup>
555. The Islamic Police consisted of Malian and non-Malian members.<sup>1550</sup> Members of the Islamic Police included Demba Demba,<sup>1551</sup> Mohamed Ag Mohamed Emetta, designated as the emir of the Prison while still a member of the Police,<sup>1552</sup>

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he positioned himself in relation to Abou Zhar. Considering this, Mr Al Hassan's evidence does not undermine the Chamber's reliance on P-0582's testimony. The Chamber also notes that P-0065 testified that while he did not have a full knowledge of the Islamic Police or the positions held, did not work with the Islamic Police and did not know what went on there, he believed that Mr Al Hassan 'would be the second person in the Islamic Police'; he added that Abou Zhar would also have a status within the Police and was unsure of the hierarchy between Mr Al Hassan and Abou Zhar (P-0065: T-040, p. 54). Further, P-0065 agreed with the proposition put to him that Abou Zhar was a member of Al-Qaeda involved in the more global projects and could pursue objectives independently of Mr Al Hassan, but would, like Mr Al Hassan, have had to defer to Adama or Khaled within the Islamic Police (P-0065: T-046, p. 63). P-0150, who spoke extensively about the Islamic Police, its leadership and Mr Al Hassan's role did not offer testimony about Abou Zhar's, whom he referred to as Al Bambari, specific position in the hierarchy of the Islamic Police. He however referred to him as a 'senior' member of the Police (P-0150: T-093, p. 57) and listed him as one of the few 'primary people regarding the establishment of the Police' (T-089, p. 56). The Chamber further notes that P-0150 placed Mr Al Hassan within the leadership of the Islamic Police but did not similarly place Abou Zhar within the leadership, providing further support for the conclusion that Mr Al Hassan was a hierarchical superior to Abou Zhar.

<sup>1548</sup> P-0150: T-095, pp. 61-62.

<sup>1549</sup> P-0150: T-095, p. 62. *See also* Mr Al Hassan's statement MLI-OTP-0051-1184, at 1201-1202; P-0582's statement MLI-OTP-0062-3679-R02, at 3693, 3695-3696. The Chamber further notes that D-0605 testified that Abou Zhar asked him to join the Islamic Police (D-0605: T-195, p. 91), further demonstrating that in some instances high-level officers also recruited for the Islamic Police.

<sup>1550</sup> P-0582's statement MLI-OTP-0062-3679-R02, at 3697-3698; P-0654: T-128, pp. 34-35; P-0150: T-110, p. 26. The members of the Islamic Police were of various ethnicities including Songhaï, Peul, Tamasheq, Arab and Bambara (P-0582's statement MLI-OTP-0062-3710-R02, at 3721-3722).

<sup>1551</sup> P-0582's statement MLI-OTP-0062-4075-R02, at 4076; MLI-OTP-0065-0577-R02, at 0587-0589. *See also* P-0570's statement MLI-OTP-0049-0047-R05, at 0066, para. 72; P-0622's statement MLI-OTP-0065-0558-R02, at 0565-0566, 0568-0569, paras 41, 52-57; Mr Al Hassan's statement MLI-OTP-0060-1752, at 1755-1757.

<sup>1552</sup> [REDACTED]; P-0150: T-094, pp. 42-46.



Ismael Diallo,<sup>1553</sup> Abou Jabar,<sup>1554</sup> and Aboubacar Al Chinguetti.<sup>1555</sup>

556. During its time in activity, there were 20-40 members of the Islamic Police.<sup>1556</sup>

There were no women among the members.<sup>1557</sup>

557. Members of the Islamic Police wore dark blue vests with the label ‘Islamic Police’ written in white in Arabic and French.<sup>1558</sup> They also generally carried weapons, including Kalashnikovs and whips.<sup>1559</sup>

#### **iv. Headquarters of the Islamic Police and detention facilities used by the Islamic Police**

558. Throughout the groups’ control of Timbuktu, the Police had an office in the

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<sup>1553</sup> P-0582’s statement MLI-OTP-0062-4318-R02, at 4336-4337.

<sup>1554</sup> [REDACTED]. See also P-0150: T-112, pp. 61-62 (recognising Abou Jabar, an Arab from Gao, in a video; stating that Abou Jabar was associated with Al Qaeda and was close to Abou Zeid); T-117, p. 46, referring to video MLI-OTP-0018-0693, at 00:01:32:00 (recognising Abou Jabar in a video). While [REDACTED] referred to ‘Djaber’ and P-0150 referred to ‘Abou Jaber’, the Chamber notes the similarities in the names and the descriptions of the person and concludes that [REDACTED] and P-0150 describe the same person, whom the Chamber will refer to as Abou Jaber. [REDACTED]’s own description of the role of Abou Jaber, contradicts the Defence’s contention that [REDACTED] was ‘suborned’ to Abou Jaber (see [REDACTED]).

<sup>1555</sup> The Chamber notes that Aboubacar Al Chinguetti served with the Police for only a period of time during the relevant period and was otherwise with the *Hesbah*. See P-0065: T-041, pp. 9, 11-12; P-0150: T-099, pp. 43-44; T-110, pp. 15-16. See paragraph 529 above.

<sup>1556</sup> Mr Al Hassan’s statement MLI-OTP-0051-1257, at 1288; MLI-OTP-0051-1184, at 1201 (indicating that there were between 30 and 40 members of the Islamic Police when he joined the Police); MLI-OTP-0051-0422, at 0443 (stating that the membership of the Police was always changing). P-0150 testified that there were more than 20 but less than 30 members of the Police (P-0150: T-094, p. 54). Noting Mr Al Hassan’s statement that the membership of the Police was always changing, the Chamber considers that P-0150’s testimony is not incompatible with Mr Al Hassan’s statement.

<sup>1557</sup> P-0582’s statement MLI-OTP-0062-3710-R02, at 3720-3721; P-0150: T-094, p. 11.

<sup>1558</sup> P-0582’s statement, MLI-OTP-0062-3679-R02, at 3701-3702; MLI-OTP-0062-3986-R02, at 3996; D-0605: T-195, p. 4. See P-0065: T-038, p. 36, referring to video MLI-OTP-0018-0014, transcript MLI-OTP-0033-5279, translation MLI-OTP-0033-5423, at 00:00:27:04; P-0150: T-094, pp. 64-65, referring to video MLI-OTP-0015-0495, at 00:27:26:08 to 00:27:31:11, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288. In these two videos, armed men, wearing the blue vests of the Islamic Police, dark blue with white lettering saying ‘*Police Islamique*’, drive around Timbuktu in a pickup truck and motorcycle.

<sup>1559</sup> P-0150: T-094, pp. 54-55; T-094, pp. 64-65, referring to video MLI-OTP-0015-0495, at 00:27:26:08-00:27:31:11, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288; D-0006: T-207, p. 24; P-0582’s statement, MLI-OTP-0062-3679-R02, at 3702; MLI-OTP-0062-3921-R02, at 3936; MLI-OTP-0062-3950-R02, at 3954; Mr Al Hassan’s statement MLI-OTP-0062-1239, at 1245-1246, 1248; MLI-OTP-0051-0483, at 0503-0509; D-0605: T-195, pp. 4-5, 10-11. See also P-0004: T-165, pp. 72-73.

city.<sup>1560</sup> The Police was initially stationed at the BMS.<sup>1561</sup> In September 2012,<sup>1562</sup> the Police moved its headquarters the ‘*Gouvernorat*’,<sup>1563</sup> which was one of the most important buildings in Timbuktu.<sup>1564</sup>

559. The Chamber notes the Defence contention that misreporting from foreign journalists led to the false conflation of the *Hesbah* and the Islamic Police and the BMS with the Islamic Police and that locals also wrongly conflated the two.<sup>1565</sup> Noting that the BMS was indeed the headquarters of the Islamic Police for a significant portion of Ansar Dine/AQIM’s control of Timbuktu, the Chamber sees no inherent mis-conflation.<sup>1566</sup> Nonetheless, in considering the testimony of the witnesses regarding the activities of the Islamic Police, the Chamber carefully considered the possibility of misidentification of the Islamic Police in relation to other institutions.
560. The BMS building, where the Police was initially stationed,<sup>1567</sup> consisted of a ground floor which was the seat of a former bank and a first floor which consisted

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<sup>1560</sup> P-0150: T-093, pp. 16-18.

<sup>1561</sup> P-0065: T-038, pp. 49-51, *referring to* video MLI-OTP-0015-0495, at 00:28:55:13, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288); T-038, p. 51, *referring to* video MLI-OTP-0015-0495, at 00:29:00:16, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288; P-0150: T-093, pp. 33-36, *referring to* video MLI-OTP-0041-0612, transcript MLI-OTP-0078-5988; T-092, pp. 52-53, *referring to* video MLI-OTP-0025-0010, at 00:08:08:00-00:08:21:16; T-092, pp. 49-50, *referring to* video MLI-OTP-0015-0495, at 00:28:51:03 and 00:29:01:00; T-092, pp. 52-53, *referring to* video MLI-OTP-0025-0010, at 00:08:22:06; P-0608: T-153, p. 79; T-154, p. 20 (the Chamber considers P-0608 to have a good basis of knowledge about the BMS, noting her place of residence in Timbuktu, *see* P-0608: T-153, pp. 54-55); D-0605: T-192, p. 87; P-0654: T-128, p. 46, *referring to* photograph MLI-OTP-0012-1914; P-0595’s statement MLI-OTP-0058-0196-R02, at 0200, para. 25; D-0512’s statement MLI-D28-0006-2611-R04, at 2615, para. 20.

<sup>1562</sup> Mr Al Hassan’s statement MLI-OTP-0051-1032, at 1042 (stating that the Police changed premises from the BMS to the office of the Governor during the 9<sup>th</sup> month); P-0150: T-091, pp. 25-26 (stating that he believed the Police moved from the first Police station to the governor’s office in approximately August or September); T-120, p. 76 (confirming that the move from the first office to the second happened at least after Ramadan 2012). The Chamber takes judicial notice of the fact that in 2012, Ramadan began on 19 July and ended on 18 August. *See also* P-0608: T-154, pp. 37-39, *referring to* MLI-OTP-0061-0051, and p. 66.

<sup>1563</sup> P-0065: T-038, pp. 49; 53-54; T-039, p. 18, *referring to* annotated photograph MLI-OTP-0040-0406; P-0150: T-091, pp. 25-26; T-092, pp. 55-58, *referring notably to* annotated map MLI-REG-0001-0061; P-0608: T-154, p. 20; P-0582’s statement MLI-OTP-0062-3736-R02, at 3744; MLI-OTP-0062-3760-R02, at 3770; D-0605: T-192, p. 87; T-195, p. 5; Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1199.

<sup>1564</sup> D-0605: T-195, pp. 5-6.

<sup>1565</sup> *See* [Defence Final Brief](#), para. 153.

<sup>1566</sup> *See also* paragraph 361 above.

<sup>1567</sup> After the Police moved to the *Gouvernorat* location, the BMS was taken over by the *Hesbah*, the morality brigade, which is discussed further below (*see* paragraph 519 above).

of several rooms.<sup>1568</sup> Some members of the Police could sleep within the BMS.<sup>1569</sup> When the Police was stationed at the BMS, there was one glass entrance door leading to a large room with chairs, where people would wait.<sup>1570</sup> The commissioner's office was located next to this big room<sup>1571</sup> and was shared by the leadership of the Islamic Police, including Mr Al Hassan.<sup>1572</sup> There was also a public area outside the main building, which was the location of the ATM room.<sup>1573</sup>

561. There were detention cells within the BMS.<sup>1574</sup> The Islamic Police also detained people in a small prison created at a Bank known as the BHM, although it was deemed inadequate as the BHM was in the town centre and a lot of prisoners escaped from that location.<sup>1575</sup> In June 2012, Ansar Dine/AQIM turned a pre-existing prison into its Central Prison.<sup>1576</sup> The Central Prison was in/around the former national guard camp and was also referred to as the 'big prison'.<sup>1577</sup> It had separate male and female sections.<sup>1578</sup> The Central Prison was initially supervised and guarded by the Police and a member of the Police, Mohamed Ag Mohamed Emetta, was its warden.<sup>1579</sup> The Central Prison was later taken over by other parts of Ansar Dine/AQIM during the last three months of Ansar Dine/AQIM's control

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<sup>1568</sup> Annex 2 to P-0055 and P-0057's report MLI-OTP-0060-1920, at 1933.

<sup>1569</sup> P-0582's statement MLI-OTP-0062-3921-R02, at 3928-3929. The Chamber notes that, in his testimony about the seat of the Islamic Police and later the *Hesbah*, P-0582 referred to the 'BDM'. In light of the totality of P-0582's evidence, as well as the evidence obtained from other witnesses, the Chamber concludes that the only reasonable inference to be drawn is that the building P-0582 mentioned throughout his statements as the bank 'BDM' referred actually to the 'BMS'. *See also* P-0654: T-128, p. 33; P-0150: T-093, p. 54.

<sup>1570</sup> P-0582's statement MLI-OTP-0062-3921-R02, at 3927-3928.

<sup>1571</sup> P-0582's statement MLI-OTP-0062-3921-R02, at 3931.

<sup>1572</sup> Mr Al Hassan's statement MLI-OTP-0060-1453, at 1459-1460; P-0150: T-093, pp. 50-51; T-093, pp. 55-57, annotating MLI-REG-0001-0064; T-093, pp. 58-59, *referring to* video MLI-OTP-0041-0605, at 00:00:00:23. *See paragraphs 536-537 above.*

<sup>1573</sup> P-0055 and P-0057's report MLI-OTP-0041-0426, at 0437-0478. Further clarification regarding the location of the main entrances of the BMS was provided in report MLI-OTP-0060-1920, at 1934.

<sup>1574</sup> P-0582 explained that they adapted and placed bars on the door of one room, located next to the stairs to the right of the hallway, to be used as a prison when they arrested people (P-0582's statement MLI-OTP-0062-3736-R02, at 3752; MLI-OTP-0062-3921-R02, at 3927-3931, 3934-3937). *See also* P-0150: T-093, pp. 51-57, *referring to* photographs MLI-OTP-0006-1511, MLI-OTP-0006-1512 (stating that he saw rooms where people were detained).

<sup>1575</sup> Mr Al Hassan's statement MLI-OTP-0051-1032, at 1044-1045.

<sup>1576</sup> P-0150: T-094, pp. 42-46; annotated map MLI-REG-0001-0067. *See also* P-0150: T-089, p. 56; T-095, p. 6; Mr Al Hassan's statement MLI-OTP-0051-0513, at 0516.

<sup>1577</sup> P-0582's statement, MLI-OTP-0062-3950-R02, at 3954, MLI-OTP-0062-3872-R02, at 3889; sketch MLI-OTP-0054-0027.

<sup>1578</sup> Mr Al Hassan's statement MLI-OTP-0051-0513, at 0517-0518; P-0065: T-041, p. 59.

<sup>1579</sup> P-0150: T-094, pp. 42-46; Mr Al Hassan's statement MLI-OTP-0051-0513, at 0518-0519.

of Timbuktu.<sup>1580</sup>

562. The *Gouvernorat*, where the Police moved to after leaving the BMS, was a two storey building with two entrances, one main entrance and one restricted to staff.<sup>1581</sup> There were other buildings in the large *Gouvernorat* compound,<sup>1582</sup> including a Governor's residence where some members of the Islamic Police lived with their 'wives'.<sup>1583</sup> At the *Gouvernorat*, Khaled and Mr Al Hassan occupied the same office.<sup>1584</sup> On the first floor, there were accommodations where unmarried Police officers slept,<sup>1585</sup> and on the ground floor there was a living room, the commissioner's office as well as the room used as a prison which was locked.<sup>1586</sup>

563. In addition to their duties within the neighbourhoods of Timbuktu, members of the Police also guarded the Police headquarters<sup>1587</sup> and the Central Prison.<sup>1588</sup>

#### **v. Functions of the Islamic Police**

564. The Police operated within the Timbuktu region, sometimes leaving the city of Timbuktu to go on missions, settle disputes and arrest accused persons.<sup>1589</sup>

565. During Khaled's tenure as head of the Islamic Police, Khaled held meetings and Mr Al Hassan translated what was said in Arabic into Tamasheq.<sup>1590</sup> During the

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<sup>1580</sup> Mr Al Hassan's statement MLI-OTP-0051-0513, at 0518-0519.

<sup>1581</sup> P-0582's statement MLI-OTP-0062-3788-R02, at 3791; MLI-OTP-0062-3921-R02, at 3942-3946, 3949; MLI-OTP-0062-3950-R02, at 3952. P-0582 stated that the Police officers themselves were in charge of the *Gouvernorat*'s security (P-0582's statement MLI-OTP-0062-3950-R02, at 3953-3954).

<sup>1582</sup> P-0582's statement MLI-OTP-0062-3921-R02, at 3943-3944, 3947. *See also* P-0150: T-091, pp. 25-26.

<sup>1583</sup> Mr Al Hassan's statement MLI-OTP-0051-0891, at 0911; MLI-OTP-0051-0912, at 0913, 0922; P-0582's statement MLI-OTP-0062-3921-R02, at 3943-3949; MLI-OTP-0062-3950-R02, at 3952; sketch MLI-OTP-0054-0028, annotated with 'S' for living room, 'C' for commissioner's office, 'P' for prison, 'T' for terrace, 'G' for the guards' house, 'R' for Governor's house.

<sup>1584</sup> P-0582's statement MLI-OTP-0062-3773-R02, at 3778-3779, 3783. *See also* Mr Al Hassan's statement MLI-OTP-0060-1453, at 1461-1462.

<sup>1585</sup> P-0582's statement MLI-OTP-0062-3710-R02, at 3723, 3726; MLI-OTP-0062-3788-R02, at 3791; MLI-OTP-0062-3921-R02, at 3948-3949; MLI-OTP-0062-4037-R02, at 4041-4044.

<sup>1586</sup> P-0582's statement MLI-OTP-0062-3921-R02, at 3943-3949; MLI-OTP-0062-3950-R02, at 3952-3953.

<sup>1587</sup> P-0582's statement MLI-OTP-0062-3736-R02, at 3744-3746; MLI-OTP-0062-3921-R02, at 3929-3930.

<sup>1588</sup> P-0150: T-094, pp. 42-46; Mr Al Hassan's statement MLI-OTP-0051-0513, at 0518-0519.

<sup>1589</sup> Mr Al Hassan's statement MLI-OTP-0060-1729, at 1734-1745. *See also* video MLI-OTP-0069-3712, transcript MLI-OTP-0078-4567, translation MLI-OTP-0078-4633.

<sup>1590</sup> P-0582's statement MLI-OTP-0062-3788-R02, at 3790-3792.

meetings, Khaled transmitted instructions to the Islamic Police members, including from the leaders, notably Yahya and Abdallah.<sup>1591</sup>

566. The general policy direction given by the emirs to the Islamic Police and other relevant institutions was to force the population to adhere to their interpretation of *Sharia*, while at the same time to avoid, as much as possible, any clash with the population.<sup>1592</sup> The implementation of this policy was left to the heads of institutions such as the Islamic Police and the *Hesbah*.<sup>1593</sup> Leaders of the institutions, including the leaders of the Islamic Police, were not instructed in detail as to how to meet the policy objectives but rather they had to interpret and implement it in their own way and according to their own understanding.<sup>1594</sup> Similarly, there were no specific detailed policies for Islamic Police members to follow beyond the instructions received from Abou Zeid.<sup>1595</sup> Leaders such as Abou Zeid were aware that members of the armed groups were acting according to their own preference but, regarding police work, only interfered when clashes and problems took place between the population and members of the group.<sup>1596</sup>
567. While new members of Ansar Dine/AQIM received military and religious training before being dispatched among the different organs,<sup>1597</sup> there was no specific training organised for the Islamic Police's members.<sup>1598</sup>

#### a. Receiving complaints and settling disputes

568. Residents of Timbuktu submitted complaints to the Police,<sup>1599</sup> by calling the

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<sup>1591</sup> P-0582's statement MLI-OTP-0062-3788-R02, at 3792-3793, 3796-3797.

<sup>1592</sup> P-0150: T-094, pp. 68-69.

<sup>1593</sup> P-0150: T-094, pp. 68-69 (stating that the 'policy drawn up by the emirs was to force the population to adhere to Islamic *Sharia* but with avoiding any kind of clash with the population. This was the advice the leaders of the group gave to the heads of the institutions like the police and the *Hesbah*. But implementing the instructions was in the hands of the commissioners of the police and the *Hesbah*. So the commissioners had to interpret it in their own way and implement it according to their understanding because the superiors didn't explain these policy in details. They had specific objectives, and as long as these objectives were achieved and met, they didn't really interfere in the details. The leaders just wanted to force the population to comply with the *Sharia* law according to the group's interpretation of it').

<sup>1594</sup> P-0150: T-094, pp. 68-69.

<sup>1595</sup> P-0150: T-094, pp. 69-70. For the Chamber's findings on these two sets of instructions, see section d)ii.c.

<sup>1596</sup> P-0150: T-094, p. 70.

<sup>1597</sup> See paragraphs 439-440 above.

<sup>1598</sup> P-0150: T-095, p. 60. See also Mr Al Hassan's statement MLI-OTP-0051-1184, at 1202.

<sup>1599</sup> Mr Al Hassan's statement MLI-OTP-0051-0457, at 0472-0485, 0491-0493; P-0065: T-038, pp. 47-48; T-039, p. 24; P-0582's statement MLI-OTP-0062-3845-R02, at 3850-3855; P-0004: T-166, p. 66.

Police, by approaching Police officers in the city or by going directly to the Police headquarters.<sup>1600</sup> The Police could also bring a complaint against a person even if a complaint was not filed by a victim or the victim's relative.<sup>1601</sup>

569. The leaders of the Islamic Police, including Mr Al Hassan, could settle disputes and impose sanctions regarding these disputes,<sup>1602</sup> including in relation to matters of debt.<sup>1603</sup> Matters that could not be settled by the Police would be referred to the Islamic Court, including complex cases.<sup>1604</sup> The Police was also charged with collecting fines.<sup>1605</sup>

#### **b. Issuance of permits, summons, authorisations and security checkpoints**

570. The Islamic Police, along with the Security Battalion, issued permits to dig wells in the desert of north Timbuktu,<sup>1606</sup> which had been an issue causing frequent dispute in the community.<sup>1607</sup> The Islamic Police, in conjunction with the Security Battalion, also issued authorisations for journalists to work in Timbuktu because such security matters were under the co-management of the Security Battalion

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<sup>1600</sup> P-0582's statement MLI-OTP-0062-3736-R02, at 3745; MLI-OTP-0062-3845-R02, at 3847; Mr Al Hassan's statement MLI-OTP-0051-1099, at 1103-1104; MLI-OTP-0062-0969, at 0986.

<sup>1601</sup> P-0150: T-108, pp. 66-67.

<sup>1602</sup> See e.g. P-0582's statement MLI-OTP-0062-3736-R02, at 3738; MLI-OTP-0062-3773-R02, at 3785-3786; MLI-OTP-0062-4117-R02, at 4135; MLI-OTP-0062-3845-R02, at 3851-3855, 3858-3859; MLI-OTP-0062-3773-R02, at 3775-3780.

<sup>1603</sup> P-0150: T-093, pp. 12-13; D-0213: T-197, p. 56; Mr Al Hassan's statement MLI-OTP-0062-0969, at 0985-0987.

<sup>1604</sup> P-0150: T-093, pp. 12-13; Mr Al Hassan's statement MLI-OTP-0062-0969, at 0985-0987. See below.

<sup>1605</sup> Mr Al Hassan's statement MLI-OTP-0062-0988, at 1003-1005. See also below discussion of the Islamic Police's implementation of Islamic Court decisions.

<sup>1606</sup> P-0150 testified that several documents shown to him by the Prosecution were permits to dig wells in the desert in north Timbuktu (P-0150: T-093, p. 20, referring to well permit MLI-OTP-0001-7202, translation MLI-OTP-0069-1678; well permit MLI-OTP-0001-7203, translation MLI-OTP-0034-0043; well permit MLI-OTP-0001-7204, translation MLI-OTP-0069-1680; well permit MLI-OTP-0001-7205, translation MLI-OTP-0069-1682; well permit MLI-OTP-0001-7207, translation MLI-OTP-0077-2738; well permit MLI-OTP-0001-7208, translation MLI-OTP-0052-0013; well permit MLI-OTP-0001-7209, translation MLI-OTP-0077-2740). The aforementioned well permits bear stamps of the Islamic Security, i.e. the Security Battalion and the Islamic Police, including Mr Al Hassan's signature. Further, noting P-0150's authentication of these documents (T-193, pp. 21-25) and that they were photographed by Harald Doornbos (P-0007) at the BMS (P-0007: T-019, p. 20), the Chamber is satisfied that these items are contemporaneous documents issued during the relevant period (see also section II.D above). See Mr Al Hassan's statement MLI-OTP-0060-1539, at 1550-1556. See also P-0620 and P-0621's report MLI-OTP-0064-0175, at 0302, referring to MLI-OTP-0001-7202.

<sup>1607</sup> P-0150: T-093, pp. 20-21.

and the Police.<sup>1608</sup>

571. The Islamic Police issued summons ordering persons to come before the Police.<sup>1609</sup>

572. The Islamic Police gave entry and exit tickets to persons leaving Timbuktu.<sup>1610</sup> They also searched people and cars at the gates of the city during the early stage of Ansar Dine/AQIM's control of the city.<sup>1611</sup>

### c. Regulation of traffic, patrol of Timbuktu and arrests

573. The Islamic Police regulated traffic and provided security within the city of Timbuktu.<sup>1612</sup> They organised patrols of the different neighbourhoods of the city.<sup>1613</sup> At times, the Police would patrol along with members of the *Hesbah*,<sup>1614</sup> and would also sometimes patrol with members of the Security Battalion.<sup>1615</sup>

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<sup>1608</sup> P-0150: T-102, pp. 8-10; T-102, pp. 5-10, *referring to* press authorisation MLI-OTP-0053-0008, translation MLI-OTP-0078-1650 (this document bears stamps of the Islamic Security, *i.e.* Security Battalion and the Islamic Police, including Mr Al Hassan's signature; *see also* other versions of the same document MLI-OTP-0001-7198, translation MLI-OTP-0052-0066, and MLI-OTP-0002-0016, translation MLI-OTP-0078-1638). Noting P-0150's authentication of the press authorisation MLI-OTP-0053-0008 and recalling that different version MLI-OTP-0001-7198 was photographed by Harald Doornbos (P-0007) at the BMS (P-0007: T-019, p. 20; *see also* section II.D above), the Chamber is satisfied of the item's authenticity. *See* Mr Al Hassan's statement MLI-OTP-0060-1539, at 1558-1561, *referring to* permit MLI-OTP-0002-0016, translation MLI-OTP-0034-0202 (stating that he signed the permit to a journalist to film). *See also* P-0620 and P-0621's report MLI-OTP-0064-0175, at 0302, *referring to* press authorisation MLI-OTP-0053-0008.

<sup>1609</sup> P-0150: T-110, p. 68. *See* footnote 3678 below.

<sup>1610</sup> D-0213: T-197, pp. 23-25.

<sup>1611</sup> Mr Al Hassan's statement MLI-OTP-0051-0457, at 0460-0464. *See* P-0150: T-094, p. 67. The Chamber notes that P-0150 testified that the checkpoints and exit of the city were under the control of the Security Battalion (*see* T-102, pp. 8-10; *see* paragraph 548 above), but notes that Mr Al Hassan's statement specifies that the Police only had these responsibilities in an early stage of the groups' control of the city.

<sup>1612</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1287-1288; P-0582's statement MLI-OTP-0062-3736-R02, at 3737; P-0654: T-128, p. 31.

<sup>1613</sup> Mr Al Hassan's statement MLI-OTP-0051-0457, at 0465-0467; MLI-OTP-0051-1184, at 1198-1199; P-0065: T-038, p. 48; T-039, pp. 21-23; P-0150: T-094, p. 58; P-0582's statement MLI-OTP-0062-3736-R02, at 3744-3748; MLI-OTP-0062-3679-R02, at 3704; MLI-OTP-0062-4157-R02, at 4175-4176.

<sup>1614</sup> Mr Al Hassan's statement MLI-OTP-0051-0483, at 0503-0509 (stating that the Police assisted or helped the *Hesbah* with the patrols and that sometimes the Police and the *Hesbah* patrolled together. The majority of the *Hesbah* was not armed so the Police would accompany them. The *Hesbah* would preach, and the members of the Police would accompany them. At times, the *Hesbah* and the Police would share cars). *See also* P-0150: T-099, pp. 55-56 (testifying that the Police and the *Hesbah* tapped into each other's human resources; and that, although he did not remember a practical example of patrols with people from both the *Hesbah* and the Police, he knew that it did happen). The Chamber recalls that there is evidence that at least some members of the *Hesbah* were armed (*see* footnote 523 above).

<sup>1615</sup> Mr Al Hassan's statement MLI-OTP-0051-0717,0719.

During their patrols, Police members carried walkie talkies<sup>1616</sup> and weapons like Kalashnikovs and whips,<sup>1617</sup> and many wore the Islamic Police vest.<sup>1618</sup>

574. The Police officers, in teams,<sup>1619</sup> patrolled the city by vehicle (cars or motorcycles) or on foot in the markets and in other parts of the city.<sup>1620</sup> The Islamic Police patrolled during the day and at night,<sup>1621</sup> with the day patrol aimed at ensuring that people were adhering to the rules of Ansar Dine/AQIM, while the night patrol aimed to keep peace and security and ensure that no crime or theft was committed.<sup>1622</sup>

575. The Islamic Police guarded the markets in Timbuktu, surveying and monitoring the markets and working to maintain security.<sup>1623</sup>

576. The emir of the Police assigned the objectives to the patrols.<sup>1624</sup> In the course of their patrols, the Islamic Police provided security.<sup>1625</sup> The Police also implemented the rules and prohibitions set out by Ansar Dine/AQIM for the

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<sup>1616</sup> P-0582's statement, MLI-OTP-0062-3736-R02, at 3750-3751; MLI-OTP-0062-3773-R02, at 3781-3782; P-0065: T-039, p. 22. *See also* P-0582's statement, MLI-OTP-0062-3736-R02, at 3750 (stating that at the Police, only the director and the commissioner regularly had their own walkie-talkies)

<sup>1617</sup> P-0150: T-094, pp. 64-65, *referring to* video MLI-OTP-0015-0495, at 00:27:26:08-00:27:31:11, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288 (the Chamber notes that the men depicted in the video were wearing the deep blue Islamic Police vest and carrying weapons); Mr Al Hassan's statement MLI-OTP-0062-1239, at 1245-1246. *See also* D-0605: T-195, pp. 10-11.

<sup>1618</sup> D-0213: T-197, pp. 24-25; P-0150: T-094, pp. 64-65, *referring to* video MLI-OTP-0015-0495, at 00:27:26:08-00:27:31:11, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288; P-0641: T-137, pp. 13-14; Mr Al Hassan's statement MLI-OTP-0051-1155, at 1178; MLI-OTP-0051-0422, at 0443-0446, *referring to* video MLI-OTP-0015-0495.

<sup>1619</sup> P-0065: T-039, pp. 23-24.

<sup>1620</sup> Mr Al Hassan's statement MLI-OTP-0051-0457, at 0465-0467; P-0065: T-039, pp. 21-22; P-0582's statement MLI-OTP-0062-3736-R02, at 3743, 3746-3747.

<sup>1621</sup> Mr Al Hassan's statement MLI-OTP-0051-0457, at 0465-0467.

<sup>1622</sup> P-0150: T-094, p. 58.

<sup>1623</sup> Mr Al Hassan's statement MLI-OTP-0051-0513, at 0515-0516; P-0150: T-094, pp. 63-64, *referring to* video MLI-OTP-0018-0483-R01, transcript MLI-OTP-0069-0475; P-0065: T-038, pp. 52-55, *referring to* video MLI-OTP-0018-0483, transcript MLI-OTP-0069-0475. While the Defence argues that the video should be afforded little weight given doubts as to the ability of the video to accurately portray events in Timbuktu, P-0150's inability to authenticate the video and the video's alleged lack of integrity and reliability, the Chamber notes that P-0150 had personal knowledge about the activities of the Islamic Police in the market and as such the Chamber considers his evidence about the activities of the Police within the market depicted in the video reliable. Further noting P-0065's evidence regarding its creation and content (*see also* paragraph 55 above), the Chamber also considers his evidence about the video and what it shows of the Police activities reliable. On the basis of the above, the Chamber dismisses the Defence's objection related to this item.

<sup>1624</sup> P-0150: T-094, p. 58.

<sup>1625</sup> Mr Al Hassan's statement MLI-OTP-0051-0483, at 0507-0508; P-0150: T-094, pp. 61-63, *referring to* video MLI-OTP-0069-3745, at 00:00:00:00-00:00:26:05, transcript MLI-OTP-0078-0338; P-0065: T-046, pp. 52-53. *See* D-0605: T-192, p. 84; T-193, p. 8.



population,<sup>1626</sup> cautioning people to observe the rules, notably in relation to the dress code for women.<sup>1627</sup> They also arrested and sanctioned persons seen as breaking the rules set by Ansar Dine/AQIM, particularly if the person showed what Ansar Dine/AQIM deemed ‘stubbornness’.<sup>1628</sup> During Adama’s time as head of the Islamic Police, a barber was beaten by the Islamic Police for continuing to play music to get people into his barbershop and also a woman was beaten by the Police for continuing to sit with her legs uncovered.<sup>1629</sup> The Police also arrested people in the streets, including smokers.<sup>1630</sup> During the later phase of Ansar Dine/AQIM’s control of the city, they brought people who were

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<sup>1626</sup> Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0465-0467 (stating that the missions of patrols were to secure the city and ensure the prohibition of sins (*‘la convention du convenable et l’interdiction du blâmable’*), which was part of the work of everyone, including the *Hesbah*, the army and the Police); P-0641: T-137, p. 14; P-0150: T-093, pp. 60-61, referring to video MLI-OTP-0018-0379, transcript MLI-OTP-0069-7535, translation MLI-OTP-0069-7539. The Chamber notes the Defence’s objection to the submission and use of this video but considers that it may be relied upon as several witnesses (P-0065, P-0150, P-0626, P-0638) commented meaningfully on the video, it bears indicia of authenticity and appears to be an unmanipulated video of Mr Al Hassan speaking to an interviewer. The Chamber also notes that Mr Al Hassan recognised himself in the video and identified ‘Sheikh Abdallah’ as the person interviewing him about the nature of the Police’s work in the city (Mr Al Hassan’s statement MLI-OTP-0051-0422, at 0430-0434), further supporting the Chamber’s view of the authenticity and reliability of the video. Contrary to the Defence submissions that the Police served a basic law and order function and the imposition of religious rules fell only within the *Hesbah*’s purview (see [Defence Final Brief](#), paras 48-49; [Defence Response Brief](#), paras 71-72) and that the Islamic Police was not involved in issues concerning women or the application of the dress code (see [Defence Final Brief](#), para. 283), the evidence is clear that the Police was also charged, along with the *Hesbah*, with ensuring compliance with Ansar Dine/AQIM’s rules, including in relation to women’s clothing.

<sup>1627</sup> P-0150: T-094, pp. 66-67; T-094, pp. 58-61, referring to video MLI-OTP-0069-3731, at 00:01:17:17-00:01:52, transcript, MLI-OTP-0078-3893; T-094, pp. 60-62, referring to video MLI-OTP-0069-3745, at 00:00:00:00-00:00:26:05, transcript MLI-OTP-0078-0338. While the Defence suggests that P-0150’s evidence is tainted by the Prosecution’s questioning and that in a previous questioning he referred to the men merely as soldiers and then subsequently described them as members of the Islamic Police, the Chamber observes that the two men in video MLI-OTP-0069-3745 are the same seen on video MLI-OTP-0069-3731, noting that they are wearing the same clothes as in video MLI-OTP-0069-3731 and riding the same motorcycle as seen in the first. The Chamber is satisfied that P-0150 credibly and reliably testified about the content of the videos, given his knowledge of the locations and activities depicted in the video. See also Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0467-0469; P-0608: T-155, pp. 15-16. The Chamber notes at times in P-0608’s testimony, it was not clear to the Chamber whether the witness was referring to the *Hesbah* or the Islamic Police. However, the Chamber notes that here the witness emphasised that she was referring to the Islamic Police at the market, and described them as armed soldiers, guards; and that there were many of them. She said that she described this based on what she saw herself and that she heard from others (see also footnote 2198 below). The Chamber also notes that P-0608’s testimony in this regard is consistent with other evidence about the role of the Islamic Police. Thus, the Chamber is satisfied that the witness here is referring specially to the Islamic Police and finds it appropriate to rely on these videos.

<sup>1628</sup> P-0150: T-093, pp. 37-38; T-094, p. 67; P-0557: T-054, p. 38; D-0605: T-192, p. 84. See section g below. *Contra* [Defence Final Brief](#), paras 524-525.

<sup>1629</sup> P-0150: T-093, pp. 37-38.

<sup>1630</sup> P-0150: T-094, p. 67; P-0557: T-054, p. 38.

perceived to violate the rules to the Police headquarters.<sup>1631</sup>

577. The Police had frequent meetings both when they were stationed at the BMS and at the *Gouvernorat*,<sup>1632</sup> including to give reminders not to insult or assault people.<sup>1633</sup>

#### **d. Detention of members of the population**

578. For persons detained because of Islamic Court proceedings, they were detained until the Islamic Court was finished with all the proceedings.<sup>1634</sup> While in pre-trial detention at the Islamic Police, people never had access to a lawyer or to counsel.<sup>1635</sup> During Al Madhi's tenure as emir of the *Hesbah*, the Islamic Police also detained people referred to them by the *Hesbah*.<sup>1636</sup>

579. While the Police was at the BMS, people were detained at the BMS,<sup>1637</sup> at times for as long as three days.<sup>1638</sup> People were sometimes detained for a few hours while in the process of being interrogated by the Police.<sup>1639</sup> The detention conditions at the BMS were squalid, with detainees placed in very small rooms without a fan or electricity.<sup>1640</sup> While on a few discrete occasions, women were detained at the BMS during its tenure as the Police headquarters, this was not a

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<sup>1631</sup> Mr Al Hassan's statement MLI-OTP-0051-0457, at 0469-0470; P-0639's statement MLI-OTP-0072-0290-R03, at 0295, para. 26. *See also* section g below.

<sup>1632</sup> P-0582's statement MLI-OTP-0062-3788-R02, at 3790. The meetings took place whenever necessary, mostly at night, and were not at a determined frequency (P-0582's statement MLI-OTP-0062-3788-R02, at 3790-3791). When these meetings occurred at the BMS, they were on the roof, or in the waiting room (P-0582's statement MLI-OTP-0062-3788-R02, at 3790-3791). P-0582 stated that meetings were notably held to introduce any newcomers and explain the work to them (P-0582's statement MLI-OTP-0062-3788-R02, at 3790). *See also* P-0582's statement MLI-OTP-0062-3788-R02, at 3792-3793, 3796-3797.

<sup>1633</sup> P-0582's statement MLI-OTP-0062-3788-R02, at 3791-3792.

<sup>1634</sup> P-0150: T-094, pp. 70-71; T-095, pp. 5-6.

<sup>1635</sup> P-0150: T-095, p. 61.

<sup>1636</sup> Mr Al Hassan's statements MLI-OTP-0051-1032, at 1037-1038; MLI-OTP-0051-1155, at 1165-1166, 1177. *See* section a)ii.a above.

<sup>1637</sup> P-0582's statement MLI-OTP-0062-3736-R02, at 3752; MLI-OTP-0062-3921-R02, at 3927-3928, 3930-3931, 3934-3937; P-0150: T-093, pp. 51-57, *referring to* photographs MLI-OTP-0006-1511, MLI-OTP-0006-1512; T-094, pp. 71-72.

<sup>1638</sup> P-0582's statement MLI-OTP-0062-3921-R02, at 3930-3931. The Chamber also notes that Dédéou Maiga was detained in the BMS for several days before being sent to the Central Prison (*see* section E.1.g) below. *See also* paragraphs 776-777 below. *See contra* [Defence Final Brief](#), para. 373.

<sup>1639</sup> Mr Al Hassan's statement MLI-OTP-0051-1032, at 1046-1047; MLI-OTP-0051-1155, at 1163-1164.

<sup>1640</sup> P-0150: T-094, p. 72. While the Defence contends that detention conditions were good (*see* [Defence Final Brief](#), para. 491), the Chamber recalls the conditions in which P-0557 (*see* paragraph 775 below); and P-0565's (*see* paragraph 777 below) were detained and finds that the evidence overwhelmingly indicates that the conditions were squalid.

frequent or routine practice.<sup>1641</sup>

580. At the *Gouvernorat* there was also a room used as a prison which was locked.<sup>1642</sup> As noted above, accused persons were also detained at the Central Prison.<sup>1643</sup> Despite the existence of the Central Prison, the Police continued to detain people at their headquarters for short periods and/or before sending them to the Central Prison, both when they were at the BMS and after moving to the *Gouvernorat*.<sup>1644</sup>
581. Once people were detained, the Police members had authority over their detention.<sup>1645</sup> Arrested persons were not informed of their rights and at times were not certain why they were arrested.<sup>1646</sup>

#### e. Investigation and interrogation of suspects

582. The Islamic Police, including Mr Al Hassan, independently carried out investigations and questioned suspects/accused and witnesses, with a special focus on admissions of guilt.<sup>1647</sup> In some cases, torture could be used if the suspects/accused did not confess, after authorisation from the judges of the

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<sup>1641</sup> The Defence contends that the Islamic Police did not detain women at the BMS or at the *Gouvernorat* ([Defence Final Brief](#), paras 134, 437, 526). The Chamber notes that P-0150 testified that he never saw women detained at the BMS and would rule out the possibility that women were detained there without his knowledge given the frequency with which he and members of the *Hesbah* went to the Islamic Police headquarters (P-0150: T-112, pp. 35, 40-41). The Chamber also refers to the informed testimony of P-0582, a member of the Police who testified that no woman was ever brought to the Police prison (P-0582's statement MLI-OTP-0062-3736-R02, at 3753). However, the Chamber notes D-0605's testimony that on at least one occasion, Adama detained women in the former ATM room at the BMS (*see* D-0605: T-194, pp. 16-18, 29-30). While noting its view that D-0605's evidence should only be relied upon when it corroborates other credible and reliable evidence, the Chamber notes that here the witness credibly testified about a specific incident, contrary to P-0150's testimony which essentially centres on what he did not see. The Chamber also notes P-0099's testimony that women were detained at the BMS when it was controlled by the Islamic Police (*see* P-0099: T-145, pp. 34-35), and also its finding that female victim P-0565 was detained at the BMS following her arrest by the Islamic Police (*see* paragraphs 776-777 below). Considering the differing basis of the witnesses' testimony and having found that it happened at least on two occasions, the Chamber concludes that women were not routinely held at the BMS during its tenure as the Police headquarters.

<sup>1642</sup> *See* paragraph 562 above.

<sup>1643</sup> *See* paragraph 563 above.

<sup>1644</sup> P-0150: T-094, p. 42; T-110, pp. 53-54, *referring to* video MLI-OTP-0069-3712, transcript MLI-OTP-0078-4567, translation MLI-OTP-0078-4633; P-0582's statement MLI-OTP-0062-3921-R02, at 3928-3930, 3937-3944. The Chamber also recalls Dédéou Maiga was detained in the BMS for several days before being sent to the big prison (*see* paragraph 820 below).

<sup>1645</sup> P-0150: T-094, p. 69; T-094, pp. 70-71.

<sup>1646</sup> P-0150: T-094, pp. 67-68, 70; T-095, p. 10.

<sup>1647</sup> P-0150: T-092, pp. 60-61; T-095, pp. 8, 10; D-0605: T-193, p. 8; T-192, p. 88; Mr Al Hassan's statement MLI-OTP-0062-1122, at 1137-1138. *See also* section F.3.e).

Islamic Court or Abou Zeid.<sup>1648</sup> Torture generally involved hitting the person.<sup>1649</sup>

#### f. Involvement with the Islamic Court

583. The Islamic Police executed summons issued by the Islamic Court.<sup>1650</sup> The Police also frequently referred cases to the Islamic Court,<sup>1651</sup> drafting investigation reports that were then sent in advance to the Islamic Court<sup>1652</sup> along with the accused<sup>1653</sup> or a complainant.<sup>1654</sup> Members of the Islamic Police, including Mr Al Hassan, who was seen often at the seat of the Islamic Court,<sup>1655</sup> brought accused persons to the Islamic Court; the defendants, even those arrested by the *Hesbah*, were under the supervision and control of the Police during the Islamic Court proceedings.<sup>1656</sup> The Police was also charged with the security of the Islamic Court and its judges; members of the Police would always guard the Islamic Court, being stationed in front of the entrance of the building and of the courtroom during its hearings.<sup>1657</sup> As discussed further below, the Islamic Police implemented decisions of the Islamic Court.<sup>1658</sup>

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<sup>1648</sup> Mr Al Hassan's statement MLI-OTP-0060-1662, at 1669-1677; MLI-OTP-0060-1705, at 1723-1724; MLI-OTP-0062-1122, at 1137-1138; MLI-OTP-0062-1143, at 1152-1154; P-0150: T-095, p. 11. The Chamber notes that while P-0582 did not observe incidents of force being used to obtain a confession and was not aware of it taking place (*see* P-0582's statement MLI-OTP-0065-0602-R02, at 0617-0618; MLI-OTP-0065-0637-R02, at 0639), his evidence does not undermine the credibility of the evidence provided by P-0150 and Mr Al Hassan.

<sup>1649</sup> Mr Al Hassan's statement MLI-OTP-0060-1662, at 1672-1673. *See also* P-0150: T-095, p. 11.

<sup>1650</sup> P-0150: T-095, pp. 57-58. Contrary to the Defence's assertion in paragraph 404 of the [Defence Final Brief](#), P-0150 testified not that the Islamic Police was not involved in summons issued by the Islamic Court, but rather that the Police did 'not participate in the investigations done by the judiciary, it does not involve itself in the issuance of sentences or any to these matters' (*see* P-0150: T-120, p. 71).

<sup>1651</sup> P-0150: T-093, pp. 12-13; T-094, p. 30; P-0099: T-148, pp. 60-61; P-0626: T-141, pp. 56-57; Mr Al Hassan's statement MLI-OTP-0062-0969, at 0985-0987. *See also* P-0582's statement MLI-OTP-0062-3820-R02, at 3825; MLI-OTP-0065-0602-R02, at 0617; MLI-OTP-0062-3773-R02, at 3785-3786; MLI-OTP-0062-4089-R02, at 4098. The Chamber recalls that some complaints were directly settled by the Islamic Police, whereas some had to be referred to the Islamic Court (*see* section g, paragraph 620).

<sup>1652</sup> P-0150: T-107, pp. 29-30, *referring to* article MLI-OTP-0010-0088, at 0098, translation MLI-OTP-0024-0015, at 0043; Mr Al Hassan's statement MLI-OTP-0051-0483, at 0509-0510.

<sup>1653</sup> Mr Al Hassan's statement MLI-OTP-0051-1032, at 1039-1040; MLI-OTP-0051-0483, at 0509-0511; MLI-OTP-0051-0631, 0634; P-0626: T-141, p. 55; T-142, pp. 28-30, 32. *See* paragraphs 1076-1077 below.

<sup>1654</sup> P-0582's statement MLI-OTP-0062-3773-R02, at 3785-3787; MLI-OTP-0062-4089-R02, at 4098.

<sup>1655</sup> P-0150: T-094, pp. 33, 71.

<sup>1656</sup> P-0150: T-094, p. 70; T-095, pp. 5-6; T-096, pp. 58-89; T-120, pp. 69-71; P-0626: T-142, pp. 28-30; D-0605: T-195, p. 5. *See also* P-0582's statement MLI-OTP-0062-3773-R02, at 3786-3787; D-0202: T-204, p. 20. *See* paragraphs 1076-1077 below.

<sup>1657</sup> P-150: T-096, pp. 58-59; T-097, pp. 55-56, 59; T-120, pp. 69-70; 72-73; P-0626: T-142, p. 37; Mr Al Hassan's statement MLI-OTP-0051-0631, at 0636-0637. *See* P-0065: T-042, pp. 35-36, *referring to* video MLI-OTP-0018-0242, transcript MLI-OTP-0069-1858.

<sup>1658</sup> *See* section g; P-0150: T-107, pp. 12-14.

**g. Punishment and the securing of punishment sites**

584. Imprisonment and punishment were fundamental Islamic Police functions.<sup>1659</sup> Islamic Police members hit people who were perceived to have broken the rules of Ansar Dine/AQIM in the streets.<sup>1660</sup> Abou Zeid's instructions issued on 15 August 2012 ordered that *ta'zirs* would only be applied at the Police and *Hesbah* stations.<sup>1661</sup> The Islamic Police continued to hit people at their headquarters.<sup>1662</sup>
585. The Islamic Police adjudicated matters they deemed not serious enough to be referred to the Islamic Court and carried out the punishments directly, without being ordered to do so by the Islamic Court.<sup>1663</sup> Mr Al Hassan was present during such punishments.<sup>1664</sup>
586. The Islamic Police received a document explaining the content of the judgments from the Islamic Court<sup>1665</sup> and maintained an archive system for the judgments.<sup>1666</sup> The Islamic Police was subordinated to the Islamic Court and executed its judgments<sup>1667</sup> as part of the '*comité d'exécution*'.<sup>1668</sup> While Abou

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<sup>1659</sup> Mr Al Hassan's statement MLI-OTP-0051-1124, at 1148. *See also* P-0150: T-093, pp. 37-38; T-094, pp. 66-67; T-095, pp. 37-38.

<sup>1660</sup> P-0150: T-093, pp. 37-38. *Contra* [Defence Final Brief](#), paras 524-525. Mr Al Hassan's statement MLI-OTP-0051-0457, at 0470-0471 (Mr Al Hassan did not recall Police members punishing people during patrols); MLI-OTP-0062-1239, at 1245-1246, 1253-1254 (stating that there was a whip at the police station and the majority of peoples on patrol carried a whip. Mr Al Hassan stated that it was possible that floggings occurred during patrols, but this was forbidden and indeed it was this issue that caused problems for Adama). While Mr Al Hassan stated that the Police never beat people in the streets but rather only punished at the Police headquarters (Mr Al Hassan's statement MLI-OTP-0051-0457, at 0471), his own explanation in relation to Adama's dismissal (*see* Mr Al Hassan's statement MLI-OTP-0051-1213, at 1218-1220 (stating that Adam, Talha and Aboubacar Al Chinguetti had a problem about the flogging of a woman in the street. Someone contacted Sanda and Adam resigned. Adama was eventually fired and Aboubacar Al Chinguetti was fired from the *Hesbah* but Talha was not fired and remained at his security function) undermines this statement. The Chamber also notes that contrary to the Defence's contention that [REDACTED] did not indicate that the Police as an institution was prevented from applying religious rules (*see* P-0150: T-117, pp. 34-35; [Defence Response Brief](#), para. 72).

<sup>1661</sup> *See* section d)ii.c below.

<sup>1662</sup> Mr Al Hassan's statement MLI-OTP-0051-0457, at 0470-0471; P-0582's statement MLI-OTP-0062-3788-R02, at 3808; MLI-OTP-0062-3820-R02, at 3825; MLI-OTP-0062-3845-R02, at 3847-3850; MLI-OTP-0062-3872-R02, at 3879-3880, 3882.

<sup>1663</sup> *See* paragraph 667 below.

<sup>1664</sup> P-0582's statement MLI-OTP-0062-3845-R02, at 3848-3849; MLI-OTP-0062-3872-R02, at 3880-3883; MLI-OTP-0062-3962-R02, at 3967-3969; MLI-OTP-0062-3788-R02, at 3809-3810.

<sup>1665</sup> *See* paragraph 648 below.

<sup>1666</sup> Mr Al Hassan's statement MLI-OTP-0060-1631, at 1643-1644 (stating also that the judgment documents were kept in the office where the leaders sat and they all took care of the documents).

<sup>1667</sup> P-0150: T-107, pp. 11-12; pp. 13-14; D-0605: T-192, pp. 60-61. *See also* P-0150: T-108, pp. 48-49; D-0202: T-203, p. 40; T-204, p. 33.

<sup>1668</sup> *See* paragraph 648 below.

Zeid and Abou Al Hammam gave the general instructions for securing any event,<sup>1669</sup> the Islamic Police managed all tasks related to the enforcement of penalties and implemented the decisions of the Islamic Court,<sup>1670</sup> assisted by other organs of Ansar Dine/AQIM as needed.<sup>1671</sup> In the context of the implementation of the Islamic Court's decisions and the provision of security to the judges, the judiciary and the Police were 'inseparable'.<sup>1672</sup> Where persons were sentenced to public punishment by the Islamic Court, the Police notably took the accused to the public site where the punishment was meted out.<sup>1673</sup>

587. Members of the different institutions, including the Islamic Police and the Security Battalion, participated in securing the location of the punishment sites.<sup>1674</sup>

#### vi. Funding of the Islamic Police

588. As the emir of the region and as the general emir of Timbuktu, Abou Zeid had to provide for all the expenses, including for the needs of the Islamic Police.<sup>1675</sup>

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<sup>1669</sup> P-0150: T-098, p. 41.

<sup>1670</sup> P-0150: T-098, p. 41; T-097, p. 59; T-098, p. 7; T-107, pp. 13-14; T-120, p. 71; P-0626: T-142, pp. 51-52; Mr Al Hassan's statement MLI-OTP-0060-1631, at 1643-1644; MLI-OTP-0062-1095, at 1111-1117. *See also* D-0202: T-203, p. 24; T-204, pp. 14-15; D-0605: T-195, p. 5. Regarding the execution of sanctions imposed by the Islamic Court, D-0605 claimed that it was not the responsibility of the Islamic Police, although sometimes members of it were present and guaranteed security. On this point, the Chamber also notes that D-0605 stated that the carrying out of penalties 'wasn't an obligation' and that 'it wasn't the police who undertook the penalties' (T-195, p. 5). D-0605 however also specified that members of the Islamic Police were sometimes present when penalties were carried out and agreed that they were there to ensure security (T-195, p. 5).

<sup>1671</sup> P-0150: T-098, p. 7. *See e.g.* P-0582's statement MLI-OTP-0062-4075-R02, at 4086-4087; MLI-OTP-0062-4089-R02, at 4094, 4096, 4099; *see* video MLI-OTP-0018-0685, transcript MLI-OTP-0069-1886, translation MLI-OTP-0078-1301; video MLI-OTP-0018-0475, transcript MLI-OTP-0069-1878, translation MLI-OTP-0078-9873.

<sup>1672</sup> P-0150: T-097, p. 59.

<sup>1673</sup> P-0150: T-098, p. 41; P-0065: T-038, p. 48; Mr Al Hassan's statement MLI-OTP-0051-0631, at 0648. *See also* P-0065: T-041, pp. 25, 34-36, *referring to* video MLI-OTP-0018-0649, transcript MLI-OTP-0069-1449, translation MLI-OTP-0078-1886. P-0065 explained that he saw the Islamic Police bringing the man who was convicted to death in an Islamic Police car; he also recognised images of this event. The Chamber also refers back to its prior findings on the role of the Police in other relevant incidents (*see* sections E.1.c); E.1.g); paragraphs 1078).

<sup>1674</sup> P-0150: T-098, p. 41; Mr Al Hassan's statement MLI-OTP-0051-0457, at 0471-0473; MLI-OTP-0051-0631, at 0648; MLI-OTP-0060-1298, at 1309, 1316 *referring to* video MLI-OTP-0018-0379. *See also* P-0065: T-046, pp. 57-58. The Chamber notes the Defence argument that Talha and his security officers were responsible for ensuring security at flogging events ([Defence Final Brief](#), para. 517) but considers, in light of the evidence adduced and its findings in this section as well as other sections regarding the charged incidents, that the Islamic Police played a key role in the securing of punishment sites and the execution of punishments. The Chamber also refers to its prior findings on the role of the Police in other relevant incidents (*see* paragraph 785 above; footnote 2467).

<sup>1675</sup> P-0150: T-096, pp. 71-72.

Each month, the Islamic Police received money to cover expenses from a representative of Abou Zeid.<sup>1676</sup> Abou Al Hammam also contributed for some of the expenses.<sup>1677</sup>

589. Police members did not receive a regular salary, but they received millet, rice, money or clothes for their family.<sup>1678</sup>

### **vii. Dissolution of the Islamic Police**

590. The Police in Timbuktu operated until the Ansar Dine/AQIM soldiers who had attacked Konna and Diabaly returned in January 2013.<sup>1679</sup> At this time, the services of all the institutions stopped and Ansar Dine/AQIM prepared to leave Timbuktu.<sup>1680</sup>

### **c) Islamic Court**

591. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses, which, subject to discrete aspects discussed below, it finds particularly reliable: P-0150,<sup>1681</sup> a member of Ansar Dine/AQIM with in-depth knowledge of the groups, their institutions and members, [REDACTED],<sup>1682</sup> [REDACTED];<sup>1683</sup> P-0626,<sup>1684</sup> a member of Ansar Dine/AQIM who testified about the inner functioning of the Islamic Court; and D-0202,<sup>1685</sup> who [REDACTED] testified about some of its daily activities. The

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<sup>1676</sup> [REDACTED].

<sup>1677</sup> P-0150: T-096, p. 71.

<sup>1678</sup> P-0582's statement MLI-OTP-0062-3788-R02, at 3798.

<sup>1679</sup> P-0150: T-093, p. 31. The context of the witness's testimony indicates that he referenced January 2013 (*see* P-0150: T-090, pp. 60-61).

<sup>1680</sup> P-0150: T-093, p. 31.

<sup>1681</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (*see* section II.B.2.a)iii above).

<sup>1682</sup> P-0150: T-096, pp. 4-6, 28, 45-47; T-104, pp. 20-21.

<sup>1683</sup> P-0150: T-096, pp. 28, 45.

<sup>1684</sup> The Chamber refers to its findings on the credibility and reliability of P-0626's evidence (*see* section II.B.2.a)v above).

<sup>1685</sup> D-0202: T-204, p. 39. The Chamber refers to its findings on the credibility and reliability of D-0202's evidence (*see* section II.B.2.a)ix above) and recalls that it has significant concerns over the credibility of D-0202 and the reliability of the majority of his evidence and that a careful analysis needed to be conducted per subject matter. Regarding D-0202's evidence related to the functioning of the Islamic Court, the Chamber is of the view that D-0202's bias regarding Mr Al Hassan negatively impacted his evidence. This, in conjunction with the fact that D-0202 was not a key player within the Islamic Court, casts doubt on the reliability of his evidence on the judicial process of the Islamic Court, particularly where it involved elements of subjective analysis on D-0202's part. The Chamber however stresses the need to separate certain other parts of D-0202's testimony which pertain to objective facts that he

Chamber further relies on video recordings filmed in 2012 depicting the inside and the setting of the courtroom of the Islamic Court.<sup>1686</sup> The Chamber also relies on a report produced by Al Mahdi on the functioning of the Islamic Court, which it considers reliable.<sup>1687</sup>

### **i. Creation of the Islamic Court**

592. The establishment of the Islamic Court of Timbuktu took more time than the other institutions created by Ansar Dine/AQIM during their control of Timbuktu.<sup>1688</sup> Following initial discussions and consultations,<sup>1689</sup> the decision to establish an Islamic Court was taken after the meeting held on 4 or 5 April 2012 at *Hôtel Bouctou*,<sup>1690</sup> during a dedicated meeting organised in April 2012<sup>1691</sup> by Iyad Ag

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personally witnessed, such as the daily activities of the Islamic Court, the cooperation of the *Hesbah* and the Islamic Police with respect to the Islamic Court, as well as the presence of judges from AQIM on the bench and the role played by some of them within the Islamic Court, which the Chamber finds generally reliable.

<sup>1686</sup> Video MLI-OTP-0018-0249, transcript MLI-OTP-0033-5748; video MLI-OTP-0018-0288, transcript MLI-OTP-0069-0451; video MLI-OTP-0018-0289, transcript MLI-OTP-0069-0453. The Chamber is satisfied that these three videos depict the inside and the setting of the Islamic Court's courtroom in mid-2012 (*see* P-0065: T-042, pp. 43-54, *referring to* email MLI-OTP-0018-1166-R01, at 1166; *see also* paragraph 55 above).

<sup>1687</sup> Report MLI-OTP-0055-0267, translation MLI-OTP-0054-0335. On the reliability of this document, *see also* the Chamber's findings in section II.D above.

<sup>1688</sup> P-0150: T-089, pp. 55-56. Regarding the general establishment of the Islamic Court, the Chamber notes that the Defence alleges that the 'establishment of [*Sharia*] Courts in the North of Mali *predated* Ansar Dine and MNLA and the existence of any tensions and clashes between groups' ([Defence Final Brief](#), para. 325 (emphasis added)). In support of its argument, the Defence refers to an interview reproduced in a media article of a commander from the Sahara Emirate (MLI-OTP-0010-0088, at 0098, translation MLI-OTP-0024-0015) on the basis of which a question was put to P-0150 as to whether it was correct that 'the plan to establish *Sharia* courts in the North *predated* 2012'. The Chamber notes that P-0150 confirmed that this was correct (P-0150: T-107, p. 28). However, the existence of the alleged plan to establish *Sharia* court does not indicate that such courts were established or implemented at that time. To the contrary, the credible and reliable evidence in the case shows that the Islamic Court in Timbuktu was actually established only after Ansar Dine/AQIM took control of the city, which was as of April 2012. As such the argument of the Defence is rejected.

<sup>1689</sup> P-0150: T-096, pp. 4-6. *See also* paragraphs 473-474 above. P-0150 notably testified that Iyad Ag Ghaly met with some people including Houka Houka, Daoud Ali Maiga, Daoud Ali Al Abou Juma and Mohammed Moussa before the establishment of the judicial bench (P-0150: T-096, p. 30).

<sup>1690</sup> *See* paragraph 470 above.

<sup>1691</sup> While the Prosecution alleges that 'the idea of creating an Islamic Court was discussed from the first days of the occupation during meetings involving Iyad Ag Ghaly and Abou Zeid' ([Prosecution Final Brief](#), para. 65), the Defence alleges that the Islamic Court was established several months after the group arrived (Defence Final Brief, para. 50). The Chamber notes that in support of its argument the Defence merely refers to the evidence concerning the first flogging at the Sankoré square which does not specifically address how the Islamic Court was created and when. On this issue, the Chamber notably finds, as further discussed below, that the Islamic Court created its 'Judicial Register' on 7 May 2012. In light of P-0150's evidence, and even if its establishment took more time than the other institutions, the Chamber is satisfied that the key meetings leading to the official establishment of the Islamic Court occurred before that date when Iyad Ag Ghaly was present in Timbuktu, between the meeting at the *Hôtel Bouctou* and the beginning of May, hence in April 2012. The Chamber also notes that P-0150



Ghaly, Abou Zeid and Abou Al Hammam.<sup>1692</sup> This meeting was held in a building called the ‘Thimi house’ (the ‘Thimi house meeting’) and included dignitaries from the local community and Bedouins from the countryside.<sup>1693</sup>

593. Leading up to the meeting, Abou Zeid, Al Mahdi and Abdallah Al Chinguetti drafted a first list of judges and continued working on it for a few days after the meeting.<sup>1694</sup> All was decided in a week or 10 days.<sup>1695</sup>

594. As a result, the Islamic Court was in the ‘first stage of its creation’ in April and May 2012 and wrote its first reports and judgments at that time.<sup>1696</sup> By the beginning of May 2012, the Islamic Court had its official list of judges (the ‘Judicial Register’).<sup>1697</sup> In May 2012, based on his observations of the Islamic Court’s working methods, Al Mahdi produced a report<sup>1698</sup> about the Islamic Court’s organisation and work, which contained three main points.<sup>1699</sup>

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testified that Iyad Ag Ghaly stayed less than a week in Timbuktu after the meeting at *Hôtel Bouctou*, before he went back to Kidal (P-0150: T-090, p. 7; *see also* T-089, p. 56).

<sup>1692</sup> P-0150: T-096, pp. 9-10. The Chamber notes that [REDACTED] (P-0150: T-096, pp. 4, 10).

<sup>1693</sup> P-0150: T-096, pp. 5, 7-9, *referring to* map MLI-REG-0001-0072.

<sup>1694</sup> P-0150: T-096, pp. 14-28, *referring to* notes MLI-REG-0001-0074 and MLI-REG-0001-0075.

<sup>1695</sup> P-0150: T-096, p. 7.

<sup>1696</sup> P-0150: T-104, pp. 19-21, *referring to* photographs MLI-OTP-0055-0209 to MLI-OTP-0055-0268.

On the reliability of these documents, *see* section II.D above. *Contra* [Defence Final Brief](#), para.

<sup>1697</sup> Notebook MLI-OTP-0001-7369, translation MLI-OTP-0077-2768, which contains on the left hand side a ‘Judicial Register’ dated 7 May 2012 and a list of cases on the right hand side. *See* P-0150: T-096, pp. 45-47; P-0626: T-142, pp. 19-21. Questioned as to why Mohamed El-Amin and Al Mahdi appeared on the list, P-0150 stated that the date on the document implies that this document was compiled at the beginning of the work of the Islamic Court, was supposed to be the first list of the judges of the Islamic Court, and was different from the version drafted earlier (P-0150: T-096, pp. 45-47). P-0150 noted that Abdelhay (number 5 on the list) and Sheikh Abdallah Al Chinguetti (number 6 on the list) are listed on this version and that Mohamed Ibrahim is not listed (P-0150: T-096, pp. 46-47). P-0150 testified that the list was in force until the days when the ‘jihadists’ were preparing to leave Timbuktu, the last week of January of 2013 (P-0150: T-096, p. 28). On the reliability of this document, *see* section II.D above.

<sup>1698</sup> P-0150: T-089, p. 56; T-104, pp. 15-17.

<sup>1699</sup> Report MLI-OTP-0055-0267, translation MLI-OTP-0054-0335. On the reliability of this document, *see* section II.D above. The Report addressed the following three main points: ‘(1) The judges (the judge and his panel) are taking too long in the investigation, in a manner that undermines its effectiveness, in addition to the lack of witnesses and the denial involved. If the judge does not use his knowledge in the discharge of his functions, how could he do so based on the results of his investigation, the only outcome of which is conjecture? What is of importance to us is [the principle] (the claimant shall bear the burden of evidence, and he who denies shall swear the oath); (2) the judges have affinities and loyalties with the litigants in the major cases which usually lead to killings, such as disputes relating to land ownership; and (3) lack of commitment to observing the sound path of hearing the litigants in a case; it is the duty of the judge to hear [crossed out word] the claimant and listen to his statements, once done, the latter should be queried in relation to his testimony. The defendant shall also be questioned until he finishes, and he can either confess or an oath-taking exercise ought to be performed. The Court clerk shall take notes. Consultation amongst judges takes place in relation to jurisprudence and the application thereof

595. The Islamic Court was located at the *Hôtel La Maison*<sup>1700</sup> in the north-eastern part of Timbuktu.<sup>1701</sup> The building had two floors.<sup>1702</sup> The judges regularly convened on the upper floor at the right side of the building.<sup>1703</sup>
596. The creation of the Islamic Court had several purposes: it was created to fill a justice and security vacuum in the region after the departure of the Malian authorities, to provide a forum for locals to resolve their disputes, and to regulate and deter criminal activity.<sup>1704</sup> Additionally, another ‘factor’ or ‘goal’ of setting up the Islamic Court was that Ansar Dine/AQIM wanted to impose their own regime or system upon the country.<sup>1705</sup>
597. The newly created Islamic Court of Timbuktu mainly heard disputes on civil cases such as cases about wells, debt, and agriculture, including what was referred to as the ‘social’ cases (such as divorces and marriages) which were dealt with by the *qadis* before 2012,<sup>1706</sup> which the Islamic Court continued to hear during 2012.

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to the cases. Regarding *Sharia* Policy, it should be addressed by those who have the authority to enforce or suspend what they deem enforceable or suspensible’. P-0150 commented upon the report and explained that the first point concentrated on ‘the fact that a reformation [was] needed in the Islamic Court in its entirety because the truth [was] not [being] reached in the best way’ (P-0150: T-104, pp. 16-18). The second point was formulated as a general point regarding judges’ affinities and loyalties with litigants in major cases, but it referred to a specific dispute between the Songo tribe and Mohammed Moussa’s relatives (P-0150: T-104, p. 18). The third point regarded treatment of litigants in the courtroom, which was based on the observation that, ‘when litigants come or someone who is accused, they [were] interrupted when they [spoke] and intimidated in a way that [made] them think that they were speaking in an unreasonable way. So they [were] not given enough chance to formulate their sentence in a good way and not given enough time before questions [were] asked. [...] And sometimes the interruption [came] from the other judges, not necessarily from the president’ (P-0150: T-104, p. 18).<sup>1700</sup> P-0004: T-167, p. 25; P-0114: T-060, pp. 20-21; P-0654: T-128, p. 59; P-0065: T-038, pp. 46-47; T-046, p. 43; D-0240: T-191, pp. 25-27, referring to video MLI-OTP-0009-1749; P-0007: T-019, pp. 9, 21, referring to photograph MLI-OTP-0001-7328; P-0595’s statement MLI-OTP-0058-0196-R02, at 0202, para. 36. See also P-0150: T-096, p. 56; P-0125’s statement MLI-OTP-0023-0004-R03, at 0016, para. 56, 0040, para. 161, referring to video MLI-OTP-0018-0249.

<sup>1701</sup> P-0065: T-042, p. 31; P-0626: T-141, p. 40. P-0065 located the Islamic Court on a satellite map of the city of Timbuktu (P-0065: T-042, pp. 33-34, referring to annotated map MLI-REG-0001-0012). There was a large sign that read ‘Islamic tribunal’ there (P-0065: T-038, p. 47). See also video MLI-OTP-0009-1749, from 00:11:26:00 to 00:12:39:00, transcript MLI-OTP-0028-0839, which shows the Islamic Court in Timbuktu following the departure of the groups (P-0065: T-045, pp. 43-46). The Chamber notes that some witnesses referred to the neighbourhood where the *Hôtel La Maison* was located as Abaradjou or Chechecha (P-0557: T-055, p. 6; T-056, pp. 41-42; P-0520: T-149, pp. 35-37; see also P-0538: T-161, pp. 45-46, 48-50).

<sup>1702</sup> D-0240: T-191, pp. 25-27, 57-58, referring to video MLI-OTP-0009-1749; P-0626: T-141, p. 40. P-0057 and Eric Baccard (P-0055) also produced sketches of the ground floor and first floor of the building (MLI-OTP-0041-0426, at 0461-0462).

<sup>1703</sup> P-0150: T-096, p. 57, referring to video MLI-OTP-0025-0010, at 00:10:04:03, transcript MLI-OTP-003-5244.

<sup>1704</sup> P-0150: T-105, pp. 65-66.

<sup>1705</sup> P-0150: T-105, p. 66.

<sup>1706</sup> P-0150: T-097, pp. 38-39; P-0643: T-083, p. 18. On the role of the *qadis*, see paragraph 421 above.

This was in addition to dealing with specific offences of the rules and prohibitions imposed by the armed groups during their control of Timbuktu as well as offences such as thefts.<sup>1707</sup>

598. Moreover, the Islamic Court had the competence to decide on cases in the whole region beyond the city of Timbuktu.<sup>1708</sup> As a result, the number of cases continued to increase. Nevertheless, the mere increase in volume of cases at the Islamic Court did not mean that more people were being arrested or detained.<sup>1709</sup> To some extent locals started to believe that they ‘would find justice and [...] get confirmation of their rights, which had been ignored in the past’<sup>1710</sup> and people came to the Islamic Court ‘enthusiastically’ because many among the population were hoping to settle cases that had long remained unresolved, irrespective of their ethnic origins.<sup>1711</sup> Regarding the land issues in particular, the Islamic Court was able to resolve a certain number of problems and achieve reconciliation between people of different ethnicities.<sup>1712</sup>
599. There was also a parallel judicial organ within the groups which was meant to deal with the following: (i) matters related only to AQIM and not Ansar Dine; (ii) matters relating only to members of Ansar Dine/AQIM and not the local population; and (iii) ‘scandals’ within Ansar Dine/AQIM that needed to be

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<sup>1707</sup> P-0626: T-141, p. 42; Mr Al Hassan’s statement MLI-OTP-0051-0658, at 0660; P-0150: T-097, pp. 8-9. P-0150 notably stated that throughout the period beginning in April until the amputation of the hand, which P-0150 believed occurred in October, there were repeated thefts in Timbuktu and its surroundings (P-0150: T-094, pp. 21, 30). P-0150 stated that the Police handled the thefts and had released some people who had committed minor thefts before referring them to the Islamic Court (P-0150: T-094, pp. 21-22). P-0150 stated that the Police referred others to the Islamic Court, who would either release or convict them (P-0150: T-094, p. 22). Judgments on the cases were decided at the discretion of the judge; they were *ta’zir* punishments (P-0150: T-094, p. 22). P-0150 explained that thefts were weighed by the judges by the value of the stolen object, the level of the stealer’s treachery, and whether the item was public or private funds (P-0150: T-094, pp. 30-31); the theft of public funds would exempt a person from amputation (P-0150: T-094, pp. 30-31).

<sup>1708</sup> P-0150: T-093, pp. 17-18; Mr Al Hassan’s statement MLI-OTP-0060-1453, at 1476-1477.

<sup>1709</sup> P-0150: T-110, p. 68.

<sup>1710</sup> P-0150: T-107, p. 31, *referring to* article MLI-OTP-0010-0088, at 0098, translation MLI-OTP-0024-0015, at 0042.

<sup>1711</sup> P-0150: T-110, p. 68.

<sup>1712</sup> P-0150: T-107, pp. 31-33. P-0150 elaborated that the court was not able to resolve all issues and referred to a ‘complex issue’: ‘There was land belonging to the Tuareg or light-skinned people, they had lost well, light-skinned people had lost the land as I indicated. There were conflicts between the whites and the blacks, and some people wanted to recover their land which had been taken by the blacks with the aid of official justice at the time’.

‘covered up’.<sup>1713</sup>

600. The judges on such matters were Abdallah Al Chinguetti, Koutaïba, and Al Mahdi.<sup>1714</sup> A case involving a member of the armed groups, that did not pertain to local population, would not be referred to the Islamic Court unless there was a special reason to do so.<sup>1715</sup> However, the emirate wanted the Islamic Court to take a bigger role and would still refer ‘Ansar Dine cases’ to the Islamic Court if it felt that doing so would serve Ansar Dine/AQIM’s interests.<sup>1716</sup>
601. In 2012-2013, Ansar Dine/AQIM applied their own set of rules, which they designated as ‘the Islamic *Sharia*’ and which they understood as a ‘return to the origins’ or the Islamic jurisprudence ‘from its beginning’.<sup>1717</sup> As stated metaphorically by P-0150, Ansar Dine/AQIM ‘brought together all the judges under one roof’ and their judiciary system was meant to replace the Malian governmental judiciary system.<sup>1718</sup>
602. Before 2012, the *qadis* were not allowed to work on criminal matters.<sup>1719</sup> During the control of Timbuktu in 2012-2013 by Ansar Dine/AQIM, the Islamic Court judges had trouble dealing with certain cases they had never seen before.<sup>1720</sup>
603. The punishments imposed by Ansar Dine/AQIM during their control of Timbuktu in 2012-2013 were new to the population of Timbuktu, including to Mr Al Hassan, who saw them in 2012 ‘for the first time’.<sup>1721</sup> In light of this, in at least one case the judges of the Islamic Court took into account the fact that the defendant was unaware of the provisions relating to the crime they allegedly

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<sup>1713</sup> P-0150: T-098, p. 9. See [Defence Final Brief](#), para. 326.

<sup>1714</sup> P-0150: T-098, pp. 9-11.

<sup>1715</sup> P-0150: T-098, p. 9. In this regard, P-0150 also confirmed that the emirs of Ansar Dine/AQIM did not consider themselves above the law and would punish members of Ansar Dine/AQIM or its emirate who caused intentional or accidental harm to locals (P-0150: T-111, pp. 37-38).

<sup>1716</sup> When asked whether civilian justice was for other cases which could be civil in nature or criminal in nature in the two meanings of the word, P-0150 replied that ‘the emirate wanted the Islamic Court to [play] a bigger role and it would refer Ansar Dine cases if it saw that that served an interest for the Islamists group. But originally the plan, as I have previously laid out, was that military cases or cases pertaining to Al-Qaeda would be handled in a parallel justice system, parallel to the Islamic Court of Timbuktu’ (P-0150: T-098, p. 11).

<sup>1717</sup> See paragraph 711 below.

<sup>1718</sup> P-0150: T-097, pp. 39-40.

<sup>1719</sup> See paragraph 422 above.

<sup>1720</sup> P-0150: T-095, p. 7.

<sup>1721</sup> Mr Al Hassan’s statement MLI-OTP-0051-1099, at 1102-1103. See also section A above.

committed.<sup>1722</sup>

## ii. Judges of the Islamic Court

604. In line with their general approach in Timbuktu,<sup>1723</sup> one strategy of the armed groups with regard to the Islamic Court was to comprise the bench of well-known local people.<sup>1724</sup>
605. To select judges for the Islamic Court, Ansar Dine/AQIM's leadership held individual meetings with local judges from different communities and ethnicities of Timbuktu<sup>1725</sup> who were already famous for issuing religious opinions, as well as with grand Imam Essayouti.<sup>1726</sup> Ansar Dine/AQIM's leadership convinced the local judges to either cooperate or to at least not oppose the measures the Ansar Dine/AQIM leadership was about to initiate in the city.<sup>1727</sup> In that way, the Ansar Dine/AQIM's leadership was able to guarantee that the local judges would not stand against any nominee for the judicial bench of the Islamic Court.<sup>1728</sup>
606. When appointing judges, the Ansar Dine/AQIM's leadership placed well-known local judges from every neighbourhood of Timbuktu on the Islamic Court's bench.<sup>1729</sup> The leadership did not follow the traditional criteria that Muslims recognise in their selection of a judge, including 'integrity and impartiality,' as the 'jihadists [...] did not [...] need such criteria';<sup>1730</sup> they required a judge to be someone perceived by the local population as capable of exercising a judicial

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<sup>1722</sup> Islamic Court judgment MLI-OTP-0001-7438, translation MLI-OTP-0078-0215, at 0217.

<sup>1723</sup> See paragraph 465 above.

<sup>1724</sup> P-0150: T-096, p. 12; D-0605: T-192, pp. 56-57. See also P-0626: T-141, p. 38.

<sup>1725</sup> According to P-0150, religious opinions, *fatwas*, sometimes took a tribal dimension (P-0150: T-096, p. 12). P-0150 explained that for example, Houka Houka was the Tuareg's judge, Mohamed Ali-Amin was the Arab's judge, Daoud Ali Maiga was the Songhai's judge, and Daoud Ali Al Abou Juma was the Bellata's judge (P-0150: T-096, p. 12). P-0150 testified that although there was no major disagreement among these scholars in the city and they even collaborated to draft religious opinions on particular matters, the ethnic difference was dominant (P-0150: T-096, p. 12).

<sup>1726</sup> P-0150: T-096, pp. 11-12.

<sup>1727</sup> P-0150: T-096, p. 12.

<sup>1728</sup> P-0150: T-096, p. 12.

<sup>1729</sup> P-0150: T-094, pp. 23-24.

<sup>1730</sup> P-0150: T-096, p. 11. According to P-0150, the 'jihadists' did not follow the traditional criteria Muslims would generally follow in selecting judges and traditionally, a judge should be someone who has attained a high command of Islamic jurisprudence and the principles of that jurisprudence, as well as the public and private morals of the judicial function, 'because the judicial function is an art in and of itself' and that a judge should also have a command of the different Islamic denominations or schools of thought and also have a great deal of intelligence, wisdom, integrity and impartiality.

function, even if, in practice, ‘that person was not in fact capable of that’.<sup>1731</sup> In addition, it was important to the leadership to have people who would be loyal to them.<sup>1732</sup>

607. The selected judges were not required to swear an official oath to AQIM or Ansar Dine.<sup>1733</sup> However, the armed groups’ leadership prohibited certain people from taking up the role of judge of the Islamic Court.<sup>1734</sup> Those who did not agree with them were not allowed to practice as judges.<sup>1735</sup> The local *qadis* who served as local judges before Ansar Dine/AQIM’s control of Timbuktu and who did not agree with Ansar Dine/AQIM’s methods no longer had the right to work as judges.<sup>1736</sup> Some of these judges left Timbuktu as a result, while others stayed in the city but no longer practiced as judges.<sup>1737</sup>

608. The local judges were appointed by Abou Zeid, Abdallah Al Chinguetti and Al Mahdi.<sup>1738</sup> They were selected from different communities and areas of Timbuktu such as the Songhai, Arab, and Tamasheq communities.<sup>1739</sup> The local judges, most of them mentioned on the Judicial Register,<sup>1740</sup> were as follows: (i) Mohamed El-Amin, a local Arab imam and *qadi*, initially ‘chief judge’;<sup>1741</sup> (ii) Houka Houka,<sup>1742</sup> a Tuareg, part of the Kel-Ansar tribe,<sup>1743</sup> initially listed as the deputy chief judge; (iii) Al Mahdi<sup>1744</sup> who was very close to the armed groups’

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<sup>1731</sup> P-0150: T-096, p. 11; T-097 p. 56. On this point, the Chamber notes that the Defence alleges that the judges were appointed based on their knowledge, experience as a judge and rapport with the local community ([Defence Final Brief](#), para. 365). However, the Chamber considers that while this statement is supported by some reliable and credible evidence, it is not mutually exclusive with the additional criteria the Ansar Dine/AQIM’s leadership applied when selecting judges, as stated by P-0150.

<sup>1732</sup> P-0150: T-096, p. 11.

<sup>1733</sup> P-0626: T-144, pp. 56-57. *See also* D-0202: T-202, pp. 91-94; [Defence Final Brief](#), para. 366.

<sup>1734</sup> P-0150: T-097, p. 39.

<sup>1735</sup> P-0150: T-097, pp. 40, 42.

<sup>1736</sup> P-0150: T-097, pp. 39-40.

<sup>1737</sup> P-0150: T-097, p. 42.

<sup>1738</sup> P-0150: T-096, pp. 14-15. P-0150 testified that Abou Zeid was the person who ‘inscrib[ed]’ people on the list but Houka Houka and Al Mahdi played a role in recommending people to be members (P-0150: T-096, p. 30). *See also* P-0150: T-089, p. 47; P-0626: T-141, p. 27; T-142, pp. 5-6.

<sup>1739</sup> P-0150: T-089, pp. 49-50; P-0582’s statements MLI-OTP-0062-3820-R02, at 3824-3825; MLI-OTP-0062-3986-R02, at 3987; Mr Al Hassan’s statement MLI-OTP-0051-0658, at 0688.

<sup>1740</sup> Notebook MLI-OTP-0001-7369, translation MLI-OTP-0077-2768.

<sup>1741</sup> P-0150: T-096, pp. 11-12; Mr Al Hassan’s statement MLI-OTP-0051-0598, at 0624-0626.

<sup>1742</sup> The Chamber notes that Houka Houka was also known as Houka Houka El-Husseini, Muhammad Ibn Al-Husayn and Mohamed Alhousseyni (P-0150: T-089, p. 12). For the purposes of this judgment, the Chamber refers to him as Houka Houka.

<sup>1743</sup> P-0150: T-089, p. 12.

<sup>1744</sup> P-0626: T-142, pp. 9-10; P-0150: T-096, p. 27; Mr Al Hassan’s statement MLI-OTP-0051-0598, at 0624-0625.

leadership;<sup>1745</sup> (iv) Mohamed Ibrahim, a Songhai and a ‘pure Wahhabist’ who practiced scholarly Salafism;<sup>1746</sup> (v) Mohammed Moussa, who belonged to scholarly Salafism;<sup>1747</sup> (vi) Abdel-Haye Bin-Mohamadoun, an imam<sup>1748</sup> influenced by Wahhabist ideas from the Kel Ansar tribe<sup>1749</sup> and related to Houka Houka who helped him secure his role as a secretary of the Islamic Court;<sup>1750</sup> and (vii) Daoud Ali Maiga (also called Daoud Al Koundouri) a famous Songhai<sup>1751</sup> imam,<sup>1752</sup> a ‘pure Wahhabist’,<sup>1753</sup> belonging to scholarly Salafism.<sup>1754</sup> Although they were often absent,<sup>1755</sup> there were also: (viii) Daoud Ali Al Abou Juma (also called Daouda Al Soudani), the imam of Bellafarandi,<sup>1756</sup> Maliki traditionalist,

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<sup>1745</sup> P-0150: T-094, p. 24.

<sup>1746</sup> P-0150: T-096, pp. 23-24.

<sup>1747</sup> P-0150: T-096, p. 33. On Mohammed Moussa’s role at the *Hesbah*, see paragraphs 530-531, 543 above. See also Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1193.

<sup>1748</sup> P-0626: T-141, p. 8; T-144, p. 52; P-0150: T-096, p. 26; D-0202: T-202, p. 93.

<sup>1749</sup> P-0150: T-096, p. 26.

<sup>1750</sup> P-0150: T-096, pp. 28-29; P-0626: T-141, p. 37; [REDACTED].

<sup>1751</sup> P-0202: T-202, p. 95; P-0150: T-096, pp. 12, 23.

<sup>1752</sup> P-0202: T-202, p. 92; P-0626: T-141, p. 66.

<sup>1753</sup> P-0150: T-096, p. 18.

<sup>1754</sup> P-0150: T-096, p. 33. P-0150 explained that there are two branches within Wahhabism. One is called ‘scholarly Salafism’ and another called ‘jihadist Salafism’. Daoud Ali Maiga embraced the branch within Wahhabism referred to as scholarly Salafism and he was against ‘jihadist Salafism’ (T-096, p. 18). P-0150 explained ‘jihadist Salafism’ as follows: ‘Salafism was one before the Afghanistan war. And Salafism was one, and, it is, to hold a viewpoint whereby religion is inspired from the texts of the [*Quran*] and prophetic traditions and the state of Muslims when the [*Quran*] was revealed, which was in the 6<sup>th</sup> or 7<sup>th</sup> century AD. And we should disavow what became of Muslims and their opinions afterwards. This Salafism, later on, they said that the rulers and governments of Arab and Muslim countries have been cooperating with the nonbelievers in the fighting and destruction of some Muslim countries. For example, they say, were it not for Kuwait opening its harbours and naval boundaries to America, America would not have defeated Iraq. And they also say that were it - had Saudi Arabia been – had – were it not for Saudi Arabia’s compliance with America’s future intelligence policy, that would not – it wouldn’t have happened that Muslims got defeated. So it was these ideas. So this is a school of thought that believes that Muslim governments are nonbeliever governments, and, therefore, should be fought. So later on it became called, “jihadist Salafism” (T-096, pp. 18-19). P-0150 added that scholarly Salafism ‘was opposed to jihadists. But in light of the one-on-one meetings that Iyad held with them, [...] Iyad was able to reach an agreement with them, whereby they would be involved in the cooperation with Muslims – as he laid it out to them at the *Bouctou Hôtel* – and for them also not to oppose any of the things that the Islamist group did’ (T-096, p. 33). P-0150 nevertheless explained that Daoud Ali Maiga did fully espouse the ideas of the ‘jihadist’ group and he did not show his face in court footages unless he was filmed without his knowledge (T-096, p. 21).

<sup>1755</sup> P-0626: T-141, p. 67.

<sup>1756</sup> D-0605: T-192, pp. 57-58; P-0150: T-096, p. 19; [REDACTED]. See also paragraph 470 above.

and Sufist;<sup>1757</sup> and (ix) Khatou, a Bellata, a jurist and an imam.<sup>1758</sup> There were no women among the members of the Islamic Court.<sup>1759</sup>

609. Houka Houka was appointed as a judge by Abou Zeid.<sup>1760</sup> Ansar Dine/AQIM's leadership wanted Houka Houka to be a judge because of his reputation among the Tuareg community and because he embraced Wahhabist ideas consistent with that of the 'jihadists'.<sup>1761</sup> Before 2012, Houka Houka was a community judge in the Timbuktu region; he was a teacher and settled social and family disputes at his house.<sup>1762</sup> He was very respected by the population.<sup>1763</sup>

610. After the meeting at the *Hôtel Bouctou*, Houka Houka thanked Iyad Ag Ghaly, and he invited some of the groups' members to his house and they carried on the discussion about Ansar Dine, its program, and his own participation.<sup>1764</sup> After Mohamed El-Amin excused himself from the position of chief judge due to his age and health,<sup>1765</sup> Houka Houka was nominated as the chief judge at the Thimi House meeting by the meeting attendees and thereby became the official head of the Islamic Court.<sup>1766</sup>

611. In this leading role, Houka Houka signed the judgments of the Islamic Court.<sup>1767</sup>

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<sup>1757</sup> P-0150: T-096, p. 19. According to P-0150, 'Sufism is Islamic ideas based on disavowing earthly life, piety and righteousness. They [...] have ideas, such as, believing that the [*Quran*] having hidden meanings, meanings accessible only to those who truly worship God. So they [...] spend a lot of time worshipping God and revering God more than other Muslims. So they think as a result of that, new lights are opened to them, and they have new horizons that God opens to them and that's how they access new information in the [*Quran*] that others cannot access. And this is something that the Wahhabists condemn. So this Sufism, whether we're talking – that's Sufism and that applies to both old and modern Sufism' (P-0150: T-096, p. 20).

<sup>1758</sup> P-0150: T-096, p. 23.

<sup>1759</sup> P-0150: T-094, pp. 18-20. The Chamber notes P-0150's explanation that, for example and in theory, it was possible for women to be assistant judges. However, he clearly stated that there were no women among the members of the Islamic Court at the time. He further specified that there was no woman holding an official position in any of the institutions that were in Timbuktu during the period of the charges (T-094, p. 20; *see also* paragraphs 521, 556 above). The Chamber did not hear evidence to the contrary and considers it established that all members of Ansar Dine/AQIM active in Timbuktu at the time were men.

<sup>1760</sup> P-0626: T-141, p. 27.

<sup>1761</sup> P-0150: T-096, pp. 5, 11.

<sup>1762</sup> P-0150: T-089, p. 12; P-0626: T-141, pp. 26-27; D-0240: T-191, p. 38; Mr Al Hassan's statement MLI-OTP-0051-0598, at 0626.

<sup>1763</sup> D-0240's statement MLI-D28-0006-4222-R01, at 4226. *See also* D-0240: T-191, p. 43.

<sup>1764</sup> P-0150: T-089, p. 39.

<sup>1765</sup> P-0150: T-096, p. 5; Mr Al Hassan's statement MLI-OTP-0051-0598, at 0624.

<sup>1766</sup> P-0150: T-096, pp. 5, 7, 14. *See also* P-0065: T-042, p. 39.

<sup>1767</sup> P-0626: T-142, pp. 38-39, 62-63. *See also* section E.2 below.



Requests would also be sent to him for hearings.<sup>1768</sup> Before March 2013, Houka Houka pledged allegiance to AQIM and was directly under the command of Abou Al Hammam.<sup>1769</sup>

612. Besides their role within the Islamic Court, some judges simultaneously held roles within other Ansar Dine/AQIM institutions. Houka Houka,<sup>1770</sup> Al Mahdi,<sup>1771</sup> Mohammed Moussa,<sup>1772</sup> and Daoud Ali Maiga<sup>1773</sup> were all members of the *Sharia* Committee. Mr Al Hassan knew this.<sup>1774</sup>
613. The *Sharia* Committee,<sup>1775</sup> which was considered as ‘the backbone of decision-making’ in Ansar Dine/AQIM,<sup>1776</sup> was the institution tasked in general with teaching the pillars of *Sharia* and discussing the different definitions of *Sharia* principles<sup>1777</sup> as well as enforcing them.<sup>1778</sup> It was chaired by Abdallah Al Chinguetti<sup>1779</sup> who would eventually decide what the ‘correct’ legal opinion was and was not.<sup>1780</sup> Abou Zeid received conclusions of the committee and each time he received a proposal from the *Sharia* Committee, he would approve it and sign it.<sup>1781</sup>
614. Al Mahdi and Mohammed Moussa were also both substantially involved in the *Hesbah* as its emir, and as such were working with Abou Zeid.<sup>1782</sup> Mohamed

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<sup>1768</sup> P-0099: T-145, p. 38.

<sup>1769</sup> P-0150: T-092, pp. 59-61; T-102, pp. 54-55. P-0150 knew this because Abou Al Hammam told him.

<sup>1770</sup> Mr Al Hassan’s statement MLI-OTP-0060-1327, at 1339-1342.

<sup>1771</sup> P-0150: T-099, p. 58, referring to MLI-REG-0001-0089, translation MLI-REG-0001-0201; T-110, p. 59; T-117, p. 17; Mr Al Hassan’s statement MLI-OTP-0060-1327, at 1339-1341.

<sup>1772</sup> P-0150: T-096, pp. 24-25; Mr Al Hassan’s statement MLI-OTP-0060-1327, at 1339-1342.

<sup>1773</sup> [REDACTED].

<sup>1774</sup> See e.g. Mr Al Hassan’s statement MLI-OTP-0060-1327, at 1339-1342.

<sup>1775</sup> Regarding the members of the *Sharia* Committee, the Chamber notes the testimony of P-0150 who stated the following: ‘The *Sharia* Committee [...], in the beginning in Timbuktu, was limited in terms of its members. The only members were Sheikh Abdallah, then Radwan when he arrived, then Abu al-Baraa. So I will mention these by order of joining the committee: Sheikh Abdallah, Abu al-Baraa, Arabiya. These are three well-known people. The head of the police himself, Khaled al-Sahrawi and Al Mahdi. Later on Radwan joined, in addition to Koutaïba’ (P-0150: T-099, p. 58).

<sup>1776</sup> P-0150: T-099, p. 60.

<sup>1777</sup> P-0150: T-099, pp. 59-60.

<sup>1778</sup> P-0150: T-117, pp. 19-20.

<sup>1779</sup> P-0150: T-099, p. 60; T-100, p. 20.

<sup>1780</sup> P-0150: T-100, p. 9.

<sup>1781</sup> P-0150 stated that he never saw Abou Zeid disagree with the conclusions of the *Sharia* Committee (P-0150: T-100, p. 8).

<sup>1782</sup> See paragraphs 520, 526 and 530 above.

Ibrahim was also a member of the *Hesbah*.<sup>1783</sup>

615. Along with the ‘locals’, three members from AQIM, coming from abroad,<sup>1784</sup> Abdallah Al Chinguetti, Radwan, and Koutaïba, oversaw and took part in the judicial process.<sup>1785</sup> Their aim was to make sure that the Islamic Court was serving the ‘Islamist group’s agenda’<sup>1786</sup> which was consistent with Wahhabism.<sup>1787</sup> In the case of the amputation of Dédéou Maiga, Abdallah Al Chinguetti, Radwan, and Koutaïba took part in the judicial process of this case following Ansar Dine/AQIM’s wish that a theft case would arise in which the judges would not be able to prevent the amputation of a hand.<sup>1788</sup> Similarly, Koutaïba, Radwan, and Abdallah Al Chinguetti insisted on the execution of a member of Ansar Dine/AQIM who deliberately killed his neighbour, because it served their strategy which aimed at: applying the only *hadd* punishment that had yet to be enforced; demonstrating that Ansar Dine/AQIM were applying *Sharia* to everyone, even those within their ranks; and demonstrating that ‘the group[s] [did] not favour whites over blacks, nor Arabs over non-Arabs’.<sup>1789</sup> Koutaïba, Radwan, and Abdallah Al Chinguetti notably pressured Houka Houka, who had a different recommendation, to sign the decision accordingly.<sup>1790</sup>
616. Abdallah Al Chinguetti was appointed from the beginning, and always attended the judicial hearings in an unofficial way, as he was not formally inscribed as a member of the Islamic Court.<sup>1791</sup> In May and June 2012 respectively,<sup>1792</sup> Radwan and Koutaïba were also appointed and unofficially added to the bench.<sup>1793</sup> Although their roles were never made official, their presence on the bench was

<sup>1783</sup> P-0150: T-096, pp. 24-25.

<sup>1784</sup> P-0065: T-042, p. 36; D-0202: T-202, p. 95; Mr Al Hassan’s statement MLI-OTP-0051-0631, at 0632.

<sup>1785</sup> P-0150: T-094, p. 23; T-096, pp. 37, 59-60, 65-66, *referring to* video MLI-OTP-0018-0249, transcript MLI-OTP-0033-5748; *referring also to* video MLI-OTP-0018-0288, transcript MLI-OTP-0069-0451; P-0065: T-042, pp. 52-53, *referring to* video MLI-OTP-0018-0289, transcript MLI-OTP-0069-0453.

<sup>1786</sup> P-0150: T-094, p. 24.

<sup>1787</sup> P-0150: T-096, p. 5. *See also* P-0150: T-094, pp. 52-53; T-104, p. 34; P-0065: T-043, p. 14.. On the definition of Wahhabism as ‘a reform movement within the hanbalite, maddhab’, *see* P-0150: T-105, p. 42.

<sup>1788</sup> P-0150: T-094, pp. 23-24.

<sup>1789</sup> P-0150: T-096, pp. 40-43.

<sup>1790</sup> P-0150: T-096, pp. 41-42.

<sup>1791</sup> P-0150: T-094, p. 24; T-096, p. 37.

<sup>1792</sup> P-0150: T-096, p. 37.

<sup>1793</sup> P-0150: T-094, p. 24; T-096, p. 37.

meant to ‘ensure that the judiciary went according to [Ansar Dine/AQIM’s] plan and vision of how things should be’.<sup>1794</sup> The unofficial appointment of these individuals combined with the official selection of local judges also allowed Ansar Dine/AQIM to remain faithful to their original claims that they would select judges from the people of Timbuktu, known as ‘the city of knowledge and scholars’.<sup>1795</sup>

617. These individuals were all ‘knowledgeable’ so as to serve this function<sup>1796</sup> and they were part of the *Sharia* Committee.<sup>1797</sup> Abdallah Al Chinguetti, who was a member of AQIM<sup>1798</sup> and who was brought to Timbuktu by Abou Zeid under his leadership to ‘monitor all *Sharia* activities’ in the city, was the chairman of the *Sharia* Committee.<sup>1799</sup> Radwan was an affiliate of AQIM and member of Ansar Dine.<sup>1800</sup> He was the main person conveying the armed groups’ ideology, an ideology he designed and put in place.<sup>1801</sup> He was close to the emirs, a prominent adviser to Abou Al Hammam,<sup>1802</sup> and had a role in many institutions, such as serving as a media officer for Ansar Dine/AQIM, reporting for the Islamic Court and the Police, and carrying out punishments.<sup>1803</sup> Koutaïba was a member of AQIM.<sup>1804</sup> He was highly regarded within the armed groups.<sup>1805</sup>

618. In some cases, Abdallah Al Chinguetti, Radwan, and Koutaïba withheld cases from the Islamic Court when they felt that the case would give rise to a conflict, for example, ‘regarding matters pertaining to wells, agricultural lands, and also anything that could affect the future of leadership within the ranks of the Islamist group’.<sup>1806</sup>

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<sup>1794</sup> P-0150: T-096, p. 39.

<sup>1795</sup> P-0150: T-096, p. 39.

<sup>1796</sup> D-0202: T-202, p. 93; P-0065: T-042, pp. 60-61; T-050, p. 31.

<sup>1797</sup> The Chamber refers to its above findings on the composition of the *Sharia* Committee.

<sup>1798</sup> D-0605: T-194, p. 89; P-0582’s statements MLI-OTP-0062-3788-R02, at 3793; MLI-OTP-0062-3986-R02, at 3987-3988. *See also* paragraph 462 above.

<sup>1799</sup> P-0150: T-090, p. 16; T-096, p. 38; [REDACTED].

<sup>1800</sup> P-0150: T-088, p. 40; D-0202: T-202, p. 93.

<sup>1801</sup> P-0150: T-088, p. 40.

<sup>1802</sup> P-0150: T-096, p. 38 ; P-0626 : T-142, p. 6.

<sup>1803</sup> P-0626: T-142, pp. 6-8; P-0065: T-038, pp. 33-34; T-039, p. 14; T-042, pp. 60-61; P-0150: T-096, pp. 37-38; P-0654: T-128, p. 61.

<sup>1804</sup> P-0150: T-096, p. 38; D-0202: T-202, p. 92; P-0065: T-042, p. 61; T-050, p. 31.

<sup>1805</sup> P-0065: T-050, p. 31.

<sup>1806</sup> P-0150: T-096, p. 44.

619. Above these three was Abou Zeid. He paid the funds of the Islamic Court.<sup>1807</sup> Because the Islamic Court was considered a civilian activity of Ansar Dine/AQIM, the funds came directly from Iyad Ag Ghaly who gave money to Abou Zeid to pay for the expenses for Ansar Dine/AQIM activities, which pertained to civilian matters.<sup>1808</sup> Houka Houka received at most one fourth of the funds for the Islamic Court, which he shared with some other judges and used for incidentals.<sup>1809</sup> Some judges were provided with food at the Islamic Court and other daily provisions.<sup>1810</sup>

### iii. Judicial process of the Islamic Court

620. Cases came before the Islamic Court from at least three different sources: individuals,<sup>1811</sup> the *Hesbah*<sup>1812</sup> and the Islamic Police,<sup>1813</sup> with the latter two writing reports to that effect. At least on one occasion, the ‘emirate’, which notably included Abou Zeid, also directly instructed that a case be referred to the Islamic Court through the Islamic Police.<sup>1814</sup> Mr Al Hassan signed at least one report to that effect.<sup>1815</sup>

621. Soon after the Islamic Court started its work, the large number of suspects and cases affected the length of pre-trial detention and this spurred the creation of the public prison since the police station was no longer large enough for all the

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<sup>1807</sup> P-0150: T-096, pp. 68-69; P-0626: T-141, pp. 49-50; Mr Al Hassan’s statement MLI-OTP-0051-0631, at 0641.

<sup>1808</sup> P-0150: T-096, p. 69. *See also* P-0626: T-144, p. 57.

<sup>1809</sup> P-0150: T-096, pp. 67-68; P-0626: T-141, pp. 46, 48-49. The Chamber notes that P-0626 had direct knowledge about at least one member receiving funding, but the Chamber cannot confirm from his testimony that he had actual knowledge of what the other judges received beyond his mere assumption. In any event, the Chamber considers that the apparent discrepancy in the evidence about the precise amount paid to Islamic Court members is not material. *See also* Mr Al Hassan’s statement MLI-OTP-0051-0631, at 0641.

<sup>1810</sup> P-0626: T-141, p. 46. *See also* Monthly budget for the Tribunal MLI-OTP-0009-2390, at 2428-2429. With respect to these two documents dated 9 June and 9 November 2012, the Chamber notes the challenges raised by the Defence at the time of submission, but considers that they have sufficient indicia of reliability and, noting that their content is generally consistent with other relevant evidence on the record, finds it appropriate to rely on them to corroborate P-0626 and P-0150’s accounts about the inner functioning of the Islamic Court, including the above findings on financial matters.

<sup>1811</sup> P-0150: T-097, p. 43; P-0582’s statement MLI-OTP-0062-3773-R02, at 3786-3787.

<sup>1812</sup> *See* paragraph 524 above.

<sup>1813</sup> *See* paragraph 583 above.

<sup>1814</sup> P-0150: T-098, p. 8, *referring to* Islamic Police report MLI-OTP-0001-7522, translation MLI-OTP-0052-0083. On the composition of the ‘emirate’, *see* paragraph 458 above.

<sup>1815</sup> P-0150: T-098, p. 8, *referring to* Islamic Police report MLI-OTP-0001-7522, translation MLI-OTP-0052-0083. Regarding this report, *see also* footnote 3692 below and section II.D.3 above.

detainees.<sup>1816</sup> In addition to crimes that were committed during Ansar Dine/AQIM's control of Timbuktu, the judges of the Islamic Court also considered that they were competent to deal with crimes which occurred before Ansar Dine/AQIM's control of Timbuktu.<sup>1817</sup>

622. In the early stages of its existence, the Islamic Court held hearings twice a week.<sup>1818</sup> When its caseload became higher about a month or two after commencing operations, the Islamic Court began to sit daily.<sup>1819</sup> The Islamic Court sat from 9:00 until 14:00.<sup>1820</sup>

623. The Islamic Court treated all defendants who came before it equally, regardless of whether they were from Ansar Dine/AQIM or from the population, or whether they were 'rich or poor'.<sup>1821</sup> The Islamic Court had people serving as interpreters.<sup>1822</sup>

624. The Islamic Police took care of the security of the Islamic Court.<sup>1823</sup> There were Islamic Police officers stationed in front of the entrance to the building and outside the courtroom during hearings.<sup>1824</sup> There was no waiting room; the accused would wait with the guards.<sup>1825</sup>

625. With regard to cases investigated by the Islamic Police, and referred to the Islamic Court, Mr Al Hassan would notably bring the accused to the Islamic Court along with the Police report.<sup>1826</sup> The Islamic Police could also send a report to the judges in advance.<sup>1827</sup> When the judges received the reports and records from the

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<sup>1816</sup> P-0150: T-095, p. 6.

<sup>1817</sup> Islamic Court judgment MLI-OTP-0001-7373, translation MLI-OTP-0077-2371, at 2372.

<sup>1818</sup> P-0150: T-095, p. 6; article MLI-OTP-0018-0928-R01, translation MLI-OTP-0049-0040-R02, at 0041; Mr Al Hassan's statement MLI-OTP-0051-0598, at 0625. The Chamber notes that Mr Al Hassan also stated that the Islamic Court was sitting every Monday only (Mr Al Hassan's statement MLI-OTP-0051-0598, at 0628) but that he did not remember whether there was another session during the week (Mr Al Hassan's statement MLI-OTP-0051-0598, at 0628-0629). The Chamber considers this slight inconsistency to be minor.

<sup>1819</sup> P-0150: T-095, p. 6. *See also* P-0626: T-141, p. 41.

<sup>1820</sup> P-0626: T-141, p. 41.

<sup>1821</sup> D-0202: T-203, p. 18; P-0065: T-044, p. 66.

<sup>1822</sup> P-0582's statement MLI-OTP-0062-3962-R02, at 3967; P-0150: T-097, pp. 52-53; D-0202: T-203, p. 5.

<sup>1823</sup> *See* paragraph 583 above.

<sup>1824</sup> *See* paragraph 583 above.

<sup>1825</sup> Mr Al Hassan's statement MLI-OTP-0051-0631, at 0637.

<sup>1826</sup> *See* paragraphs 1076-1077 above.

<sup>1827</sup> *See* paragraph 583 above.

Police,<sup>1828</sup> they would indicate the date of the transfer of the accused which could occur the same day or up to one week later.<sup>1829</sup> The Islamic Court would be sent a series of cases and would examine all of them on the days it was sitting.<sup>1830</sup>

626. There were no guards nor Police officers inside the courtroom.<sup>1831</sup> However, the judges who were sitting on a red carpeted floor<sup>1832</sup> had weapons on their laps, and there were weapons on or against the wall, including Kalashnikovs.<sup>1833</sup>
627. The accused would generally be informed of the allegations against them.<sup>1834</sup> The Islamic Court could conduct investigations and had its own investigators<sup>1835</sup> who were designated by the judiciary.<sup>1836</sup> Some accused could stay one or two months

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<sup>1828</sup> D-0202: T-203, p. 8; Mr Al Hassan's statement MLI-OTP-0051-0631, at 0635. The Chamber notes that D-0202 testified that the reports and records from the Police and the *Hesbah* were not taken into consideration by the judges because the Islamic Court was concerned that the Police or *Hesbah* may have practiced some sort of coercion or torture (D-0202: T-203, p. 8). According to D-0202 the judges relied mainly on what the person or the individual said before the Islamic Court (D-0202: T-203, p. 8). The Chamber notes that this aspect of his testimony is not consistent with other credible and reliable evidence related to the inner process of the Islamic Court in particular what type of evidence the judges were taking into consideration to establish the facts they were seized of, as described below. The Chamber also notes that D-0202, while being involved in the activities of the Islamic Court, did not take part in the judges' deliberations (D-0202: T-204, p. 29), and therefore was not able to describe how the Islamic Court rendered decisions and which pieces of evidence they were actually using from one case to another. The Chamber considers that it cannot rely on this part of his testimony. *See also* Mr Al Hassan's statement MLI-OTP-0062-1168, at 1171-1172.

<sup>1829</sup> Mr Al Hassan's statement MLI-OTP-0051-0631, at 0635.

<sup>1830</sup> Mr Al Hassan's statement MLI-OTP-0062-1058, at 1061.

<sup>1831</sup> D-0202: T-204, p. 34; P-0150: T-097, p. 56; Mr Al Hassan's statement MLI-OTP-0051-0631, at 0637. *See also* [Defence Final Brief](#), para. 368.

<sup>1832</sup> P-0065: T-042, p. 53, *referring to* video MLI-OTP-0018-0289; P-0150: T-096, pp. 66-67, *referring to* video MLI-OTP-0018-0288.

<sup>1833</sup> P-0065: T-042, pp. 52-53, *referring to* video MLI-OTP-0018-0289; T-042, p. 58, *referring to* video MLI-OTP-0009-1749; P-0150: T-096, pp. 59-60, *referring to* video MLI-OTP-0018-0249; T-096, pp. 60, 62-63, *referring to* video MLI-OTP-0009-1749; T-096, pp. 65-66, *referring to* video MLI-OTP-0018-0289. The Chamber notes that D-0202 testified that in the courtroom there were sometimes some weapons, but that these weapons were not to threaten or intimidate the speakers: 'They were there just for the security. It was not taken as a form of threat or something.', further describing that the weapons were 'behind the judges [...] hanging on the wall, but it was not to threaten the speaker. There was no threat at all. The speaker would say whatever they wished' (D-0202: T-203, p. 9). The Chamber finds D-0202's evidence on this point to be speculative because he never was a defendant, nor a witness in the courtroom, and thus he could not know what such individuals might have felt. *See also* [Defence Final Brief](#), para. 367.

<sup>1834</sup> P-0150: T-120, p. 8; P-0554: T-064, p. 28. *See also* P-0557: T-054, p. 31; T-055, p. 8; P-0638: T-058, p. 50. *See* [Defence Final Brief](#), para. 369.

<sup>1835</sup> According to P-0150, the investigation could be typically 'just a few lines or sentences drafted by the police and sent to the court' (P-0150: T-097, p. 54). Mr Al Hassan's statements MLI-OTP-0051-0631, at 0634, 0649-0651; MLI-OTP-0062-1143, at 1161.

<sup>1836</sup> Mr Al Hassan's statement MLI-OTP-0051-0631, at 0635-0636. On the investigations which may be done with the Police, the *Hesbah* and the army, *see also* Mr Al Hassan's statement MLI-OTP-0051-0631, at 0649-0651.

in detention depending on the difficulty of the investigations.<sup>1837</sup> However, the Islamic Court's investigative process could be very quick and 'simple'; the way the Islamic Court verified and checked things was 'weak and primitive and [...] very shaky'.<sup>1838</sup> At times, depending on the case, the Islamic Court would not investigate the matter.<sup>1839</sup>

628. The time it took for the Islamic Court to render a decision after receiving a case varied.<sup>1840</sup> At times, the judgment could be made the same day the case was heard,<sup>1841</sup> and the report of the Police had the same date as the judgment.<sup>1842</sup> At others, the hearing and judgment happened on different days.<sup>1843</sup>
629. If there was no confession, or if there were controversies and different claims or if there were multiple parties, the judges of the Islamic Court were actively involved, and investigated the case by relying on available witness evidence and any statement taken under oath.<sup>1844</sup> They also took notes of the different parties' statements, discussed these statements and relied on the factors they were able to observe, in order to conclude whether that person was credible or not.<sup>1845</sup>
630. Alternatively, when there were no denials or associated controversies, the judges mainly verified the authenticity of the Police report by re-investigating the defendant.<sup>1846</sup> If a report from the Islamic Police indicated that the accused confessed, the Islamic Police report was considered by the judges, who then

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<sup>1837</sup> Mr Al Hassan's statements MLI-OTP-0051-0631, at 0635. *See also* MLI-OTP-0062-1143, at 1163.

<sup>1838</sup> P-0150: T-098, p. 17, *referring to* Islamic Court judgment MLI-OTP-0068-4789, translation MLI-OTP-0078-1778. On the speed and time issues, *see also* Mr Al Hassan's statement MLI-OTP-0062-0988, at 0995.

<sup>1839</sup> Mr Al Hassan's statement MLI-OTP-0062-1143, at 1161; Mr Al Hassan's statement MLI-OTP-0062-0988, at 0995.

<sup>1840</sup> P-0150: T-097, pp. 57-58.

<sup>1841</sup> Mr Al Hassan's statements MLI-OTP-0062-1143, at 1161; MLI-OTP-0062-0988, at 0994. While the Chamber does not have any evidence about the dates the hearings took place, it does have evidence of the dates of the Police reports (which were written the day the accused was transferred to the Islamic Court and their case was heard) and the dates of the Islamic Court judgments. Thus, the Chamber infers from the fact that sometimes the date on the Police report coincides with the date on the judgment, that these cases were heard the same day the judgment was made.

<sup>1842</sup> Mr Al Hassan's statement MLI-OTP-0062-0988, at 0994-0995, *referring to* Islamic Court judgment MLI-OTP-0001-7438, translation MLI-OTP-0078-0215, at 0998-0999, *referring to* Islamic Court judgment MLI-OTP-0001-7434, translation MLI-OTP-0078-1626. *See also* Mr Al Hassan's statement MLI-OTP-0062-1143, at 1161.

<sup>1843</sup> P-0150: T-097, pp. 57-58.

<sup>1844</sup> P-0150: T-097, pp. 54-55; Mr Al Hassan's statement MLI-OTP-0062-0988, at 1000.

<sup>1845</sup> P-0150: T-097, pp. 54-55. *See also* Mr Al Hassan's statement MLI-OTP-0062-0988, at 1002-1003.

<sup>1846</sup> P-0150: T-097, p. 54; Mr Al Hassan's statement MLI-OTP-0062-1168, at 1172-1173.

questioned the accused and heard any witnesses in order to assess whether the report was accurate.<sup>1847</sup> Mr Al Hassan was familiar with these procedures.<sup>1848</sup>

631. Some defendants were sentenced because they were ‘not able to defend themselves’ against the Police report.<sup>1849</sup> For example, in one case, it was enough for the Police to say that they caught people who were ‘attempting to rob a place’. When the judge asked these people whether that was true, if they responded hesitantly or spoke in unconvincing language, they would be convicted. The judge would then sentence them on the basis of the Police’s statement.<sup>1850</sup>
632. Regarding the evidentiary requirements, the Islamic Court would first focus on confessions.<sup>1851</sup> However, in some cases, if it was known that a confession was elicited through torture, and if the person denied their guilt during trial in a consistent way, the Islamic Court would not base a *hadd* sentence on such a confession.<sup>1852</sup> Nevertheless, it was permissible to use the confession, even if elicited through torture, for a *ta’zir* verdict.<sup>1853</sup>
633. The judges also considered witnesses’ evidence.<sup>1854</sup> The judges could call witnesses, including members of the Islamic Police.<sup>1855</sup> In principle, a person accused before the Islamic Court could call witnesses to testify, notably to confirm or deny a fact.<sup>1856</sup> The judges could also ask questions to the witnesses.<sup>1857</sup> The process of hearing witnesses could take as little as five

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<sup>1847</sup> Mr Al Hassan’s statement MLI-OTP-0062-1143, at 1156-1157.

<sup>1848</sup> Mr Al Hassan’s statement MLI-OTP-0062-1143, at 1156-1157.

<sup>1849</sup> P-0150: T-098, pp. 18, 24, *referring to* Islamic Court judgment MLI-OTP-0068-4705, translation MLI-OTP-0078-0248.

<sup>1850</sup> P-0150: T-098, p. 17.

<sup>1851</sup> P-0150: T-094, p. 31. *See also* Mr Al Hassan’s statement MLI-OTP-0060-1662, at 1670-1673. *See* paragraph 629 above.

<sup>1852</sup> Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378, at 2380; P-0150: T-111, pp. 44-45.

<sup>1853</sup> P-0150: T-111, p. 44.

<sup>1854</sup> P-0150: T-094, p. 31; Mr Al Hassan’s statement MLI-OTP-0062-1168, at 1173.

<sup>1855</sup> P-0150: T-094, p. 33; T-097, p. 55; T-107, pp. 29-30. The Chamber also notes the experience of D-0240, who testified that he served as a witness at a hearing at *Hôtel La Maison* and stated that he was not given any instructions as to what to say or not say and that no one tried to influence him through the hearing (D-0240’s statement MLI-D28-0006-4222-R01, at 4231-4232; D-0240: T-191, pp. 17-18).

<sup>1856</sup> P-0626: T-142, p. 37 ; T-144, p. 88; P-0065: T-042, p. 63; D-0202: T-203, pp. 4-5 *See also* [Defence Final Brief](#), para. . *See also* paragraph 843 below regarding P-0554’s experience at the Islamic Court and her brother speaking on her behalf.

<sup>1857</sup> P-0626: T-144, p. 88.



minutes.<sup>1858</sup> An Islamic Police report could also suffice as one ‘witness’ before the Islamic Court, without the officer of the Police needing to be present.<sup>1859</sup>

634. For most cases, including theft, two witnesses, who were considered ‘fair witnesses’ (‘a person who is known not to be someone who commits objectionable acts in public’) were required.<sup>1860</sup> For some other cases, such as those of fornication and adultery, the standard was for four ‘fair witnesses’ to testify to a confirmed incident, which was qualified by P-0150 as ‘impossible or quasi-impossible’ in practice, as the four witnesses had to witness the same incident at the same time and give a detailed description of the incident.<sup>1861</sup>

635. However, the Chamber notes there were several instances where, when there was no confession, nor the requisite number of witnesses, the Islamic Court would judge an individual, on the basis of what was available to it (for example, a Police report and in-court testimony of an accused). In these cases, as a result of the circumstances and uncertainties, they would avoid *hadd* punishment and proceed by way of *ta’zir*,<sup>1862</sup> which could include discretionary punishments such as shaving the person’s head and covering it with degrading material<sup>1863</sup> or ordering the person to walk through the streets of Timbuktu with the items they stole.<sup>1864</sup> There were also some instances where they mitigated the punishment commensurately with the nature of the crime in question,<sup>1865</sup> by taking into account certain factors when sentencing, such as time-served.<sup>1866</sup>

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<sup>1858</sup> See e.g. D-0240’s statement MLI-D28-0006-4222-R01, at 4231-4232.

<sup>1859</sup> P-0150: T-094, p. 33; T-098, p. 24. See also P-0626: T-142, pp. 28-29.

<sup>1860</sup> P-0150: T-094, p. 31; T-110, pp. 82-83; Mr Al Hassan’s statement MLI-OTP-0062-0988, at 1000.

<sup>1861</sup> P-0150: T-094, pp. 31-32.

<sup>1862</sup> P-0150: T-094, pp. 22-23; T-095, pp. 44-46, referring to Islamic Court judgment MLI-OTP-0068-4782, translation MLI-OTP-0078-1722; T-097, p. 36, referring to Islamic Court judgment MLI-OTP-0068-4705, translation MLI-OTP-0078-0248; T-098, p. 24, referring to Islamic Court judgment MLI-OTP-0068-4705, translation MLI-OTP-0078-0248; T-111, pp. 19-20; Islamic Court judgment MLI-OTP-0001-7437, translation MLI-OTP-0078-0212, at 0213. See also Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378, at 2380; Islamic Court judgment MLI-OTP-0068-4786, translation MLI-OTP-0069-3227; Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378, at 2379; P-0065: T-041, pp. 51-53. See also [Defence Final Brief](#), paras 370-371.

<sup>1863</sup> Islamic Court judgment MLI-OTP-0001-7373, translation MLI-OTP-0077-2371. See paragraphs 997-998 below.

<sup>1864</sup> Islamic Court judgment, MLI-OTP-0001-7376, translation MLI-OTP-0078-5997. See paragraphs 1028-1029 below.

<sup>1865</sup> P-0150: T-120, pp. 4-5.

<sup>1866</sup> Islamic Court judgment MLI-OTP-0001-7373, translation MLI-OTP-0077-2371, at 2372.

636. During the hearings, the judges of the Islamic Court would question the accused person before them. The accused did not have any representation before the Islamic Court such as an advisor, counsellor or lawyer. In cases where an Islamic Police report was available, the accused would be confronted with that report and questioned as to whether the information was right or wrong. The accused was not allowed to refuse to answer a question; ‘this type of liberty’ did not exist at the Islamic Court. The person, however, could admit to, or deny having done, something.<sup>1867</sup> In cases that relied on confessions, the defendant was also allowed – in principle – to argue that the confession was provided under torture with a possibility that the Islamic Court then would not take this evidence into consideration.<sup>1868</sup>
637. There were no lawyers at the Islamic Court.<sup>1869</sup> During the hearings, the parties were given little chance to formulate their narrative: as explained by P-0150, ‘when litigants [came] or someone who [...] [was] accused, they [were] interrupted when they [spoke] and intimidated in a way that [made] them think that they were speaking in an unreasonable way. So they [were] not given enough chance to formulate their sentence in a good way and not given enough time before questions [were] asked. [...]. And sometimes the interruption [came] from the other judges, not necessarily from the president’.<sup>1870</sup>
638. It was not possible for the defendant to object or to criticise the impartiality of the bench.<sup>1871</sup> However, some judges were excluded from proceedings to protect against undue influence. For example, P-0150 testified that:

[...] the bench in and of itself exercised self-oversight. So it happened sometimes that Mohamed Moussa and Daoud Ali Maiga be excluded from court hearings on defendants accused of killing that took place in one of the Songhai villages, the defendants that were fired at by MNLAs members. It was noticed at the court hearings that Mohamed Moussa was siding with the amoshak (phon) his in-laws, the family of his wife, while Daoud Ali Maiga

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<sup>1867</sup> P-0626: T-142 pp. 36-37; T-144, p. 88. *See also* [Defence Final Brief](#), para. 374.

<sup>1868</sup> Mr Al Hassan’s statement MLI-OTP-0062-1143, at 1166. The Chamber notes that Mr Al Hassan did not remember any case where a confession was not taken into consideration (Mr Al Hassan’s statement MLI-OTP-0062-1168, at 1170-1171).

<sup>1869</sup> P-0065: T-042, p. 63; P-0626: T-142, p. 37; P-0150: T-095, pp. 60-61; T-097 p. 56; D-0202: T-204, p. 30; P-0557: T-054, p. 43; P-0004: T-166, p. 21.

<sup>1870</sup> P-0150: T-104, p. 18; P-0557: T-055, p. 11.

<sup>1871</sup> P-0150: T-097, p. 54.

was siding with the Songhai who were fired at. So these two judges were both excluded from the court hearings in that case.<sup>1872</sup>

639. After the hearings, the judges would deliberate and one or more persons would take minutes during the deliberations.<sup>1873</sup>
640. In deliberating on a case, the judges in some instances looked at religious texts or jurisprudential opinions on a given subject.<sup>1874</sup> The Islamic Court judges were most of the time governed by the Maliki doctrine which was dominant in the region and in Timbuktu.<sup>1875</sup> While the Islamic Court followed the Malikite school of thought, the judges would consult many available resources, most of which fell under the Wahhabist school of thought, including old and modern *Quranic* commentaries.<sup>1876</sup> These texts were available in electronic libraries where old and modern texts were available in the same place.<sup>1877</sup> The members of the Islamic Court used a computer to find resources.<sup>1878</sup>
641. More concretely, during the deliberations, Abdallah Al Chinguetti monitored the use of Islamic references by the judges and sometimes pushed the judges to use different references other than the Maliki doctrine, such as the Hanbali doctrine. As described by P-0150:

So if it didn't concern him that much, he doesn't interfere. He just leaves the judges to -- to apply their own vision in certain such as divorce and marriage and the small cases of theft. [*sic*] But when the case is important for him and might have an impact or give a specific impression that is desired such as, for example, the enforcement of penalty publicly, and when that of course is broadcast on social -- in the social media and others, so Sheikh Abdallah played an important role in giving his opinion in different references coming from different Islamic doctrines in a way to push the judges to use different references other than the Maliki doctrine. Or sometimes he would try to convince the judges that some Maliki scholars had different opinions such as, for example, some of the Moroccan Maliki scholars who had opinions close to the Hanbali doctrine. So he used to shed light on such opinions so that he can add to the Maliki doctrine used in the Islamic court and to push the judges in a

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<sup>1872</sup> P-0150: T-097, p. 54. *See also* T-120, p. 72.

<sup>1873</sup> P-0150: T-097, p. 57.

<sup>1874</sup> P-0150: T-096, p. 35. *See also* P-0065: T-042, pp. 45-46. P-0065 noted that this was what he remembered, but that he was focused on something else during his visit (P-0065: T-042, p. 46).

<sup>1875</sup> P-0150: T-097, p. 8; T-107, pp. 79-80; T-113, p. 13. P-0150 also testified that most people in Timbuktu, Azawadi Arabs, and most North Africans believed in Maliki's ideas (P-0150: T-096, p. 16). *See also* [Defence Final Brief](#), para. 361.

<sup>1876</sup> P-0150: T-096, p. 35.

<sup>1877</sup> P-0150: T-096, p. 36.

<sup>1878</sup> P-0150: T-096, pp. 63-64.

certain direction that would make the system go in accordance with the plan and the vision of the group.<sup>1879</sup>

642. As for Radwan, Koutaïba, and Abdallah Al Chinguetti, the local judges also focused and listened to what they would say; there was no debate, nobody would interrupt them, and their opinions would prevail.<sup>1880</sup> The examination of precise issues and the reaching of ‘the more correct opinion’ was ‘almost in their hands’<sup>1881</sup> (as stated in the French transcript: ‘*l’examen de questions précises et la recherche des opinions les plus justes étaient devenus leur apanage*’).<sup>1882</sup> As explained by P-0150, in reaching the Islamic Court’s final verdict, Houka Houka deferred to their opinions, even though it might not necessarily have been ‘the opinion he would have opted for, were it up to him’.<sup>1883</sup> For example, Abdallah Al Chinguetti, Radwan and Koutaïba pressured Houka Houka to sign a decision in the case leading to the execution of Moussa in a way they felt would serve Ansar Dine/AQIM’s strategy.<sup>1884</sup> Abdallah Al Chinguetti, Radwan, and Koutaïba therefore played an influential role during the deliberations on cases and in the Islamic Court’s decision-making process. By the end of the armed groups’ control of Timbuktu, the Islamic Court was essentially under the ‘almost total control and under significant sway’ of Abdallah Al Chinguetti, Radwan, and Koutaïba.<sup>1885</sup>
643. Concerning the actual drafting of the judgment, the phases through which the drafting passed were as follows: first, each judge independently wrote his own verdict on the matter as ‘proposals’. The judges then shared these proposals with one another for their consideration. Then, Houka Houka would consider the other judges’ verdicts as proposals, and draft a version which he thought was most appropriate, potentially disagreeing with some of the proposals.<sup>1886</sup> Then there would be a formal meeting on the final judgment where the other judges would

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<sup>1879</sup> P-0150: T-098, pp. 42-43.

<sup>1880</sup> P-0065: T-042, pp. 39-40; P-0626: T-142, p. 9; T-144, p. 63. *See also* P-0150: T-096, pp. 36, 40. [REDACTED].

<sup>1881</sup> P-0150: T-096, p. 36.

<sup>1882</sup> P-0150: T-096, p. 33.

<sup>1883</sup> P-0150: T-096, p. 40. As stated by P-0626, Abdallah Al Chinguetti’s ‘opinions would not be contested. If he says that in a particular matter the ruling to be applied is so and so, that would be the final say on that matter’ (P-0626: T-142, pp. 9, 40; T-144, p. 63).

<sup>1884</sup> *See* paragraph 615 above.

<sup>1885</sup> P-0150: T-096, p. 36.

<sup>1886</sup> [REDACTED].

review and agree to the decision.<sup>1887</sup>

644. The judgment would then be written in the handwriting of someone who writes well, such as Radwan or Abdallah Al Chinguetti, and then Mustapha Mohamed Issa would type the judgment on the computer.<sup>1888</sup>
645. Once a decision was typed and finalised, Houka Houka had to stamp and sign it, as he was the only person who could sign the final version of judgments of the Islamic Court.<sup>1889</sup> As noted above, the decision-making was however in the hands of other – more influential judges – including notably Abdallah Al Chinguetti.<sup>1890</sup> All depended on the way these influential judges understood things: Houka Houka would sign the final judgments on the basis of their understanding, despite not being the one to decide the verdict.<sup>1891</sup> As such, some perceived Houka Houka's role as symbolic.<sup>1892</sup> Ansar Dine/AQIM's strategy was to give the false impression that the judgments came from locals, and were not from Ansar Dine/AQIM.<sup>1893</sup>
646. As a final step, the judges consulted Abou Zeid before issuing the judgments<sup>1894</sup> as the judgments were sent for approval to him.<sup>1895</sup> Abou Zeid would examine

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<sup>1887</sup> [REDACTED].

<sup>1888</sup> P-0626: T-142, pp. 10-11, 39, 48; P-0150: T-097, p. 58. P-0150 testified that, during the 'occupation' of Timbuktu, Mustapha ('Hamutfa') Mohamed Issa, never joined the 'jihadists' 'in a formal way' but he was working with his uncle, Houka Houka, and was in charge of typing and copying on the computer the decisions of the Islamic Court (T-090, p. 67; T-096, pp. 71-72. *See also* D-0202: T-202, p. 99). According to P-0150, Mustapha Mohamed Issa never received a salary for typing down judgments and decisions (T-096, pp. 71-72).

<sup>1889</sup> P-0150: T-097, pp. 58-59.

<sup>1890</sup> *See* discussion immediately above.

<sup>1891</sup> P-0150: T-096, p. 40; P-0626: T-144, p. 63.

<sup>1892</sup> P-0065: T-042, p. 39.

<sup>1893</sup> P-0626 testified that the 'jihadist groups wanted to show that the judgments and the signatures on judgments came from the locals, not from the groups, but these matters, certainly the judicial matters, were in the hands of Abdallah Al Chinguetti' (P-0626: T-142, pp. 39-40). P-0065 also testified that Al-Qaeda wanted to give people the false impression that what was going on was a continuation of pre-existing circumstances, that the 'Islamists' were just doing what the judges had always been doing, and that they wanted to give the impression that they were not present (P-0065: T-050, p. 30). When asked whether Al-Qaeda tried to make Houka Houka seem more important than he was, P-0065 answered, 'Yes. They always try to hide behind the locals and to make it look like the locals are managing what happens in Timbuktu before the eyes of the media and the world' (P-0065: T-046, p. 38).

<sup>1894</sup> Mr Al Hassan's statement MLI-OTP-0051-0631, at 0642-0644, at 0647.

<sup>1895</sup> [REDACTED]. The Judgment was sent '*pour appreciation*' (Mr Al Hassan's statement MLI-OTP-0051-0631, at 0643). The investigator added the following: 'so then we can say that there was no independence of justice' and Mr Al Hassan replied 'it is possible, we can say that' (Mr Al Hassan's statement MLI-OTP-0051-0631, at 0644). He would then ask the emir of the Police about the status of

the content of the judgments and would give the order to execute them or not.<sup>1896</sup> He could therefore reverse a decision of the Islamic Court.<sup>1897</sup> Mr Al Hassan knew that Abou Zeid had to approve the execution of the judgments because he many times himself had to wait for his approval.<sup>1898</sup> As stated by P-0150, Abou Zeid was ‘always behind the curtains [...] for giving effects to things’.<sup>1899</sup> Abou Zeid wanted to be very close to and follow the workings of the Islamic Court and also archived the judgments the Islamic Court reached.<sup>1900</sup>

647. There was no opportunity for the parties to appeal a judgment from the Islamic Court.<sup>1901</sup> Mr Al Hassan was also aware of this.<sup>1902</sup>

648. Once a judgment was issued, it was generally the role of the Islamic Police to execute it.<sup>1903</sup> This was done in the context of a ‘*comit[é] d’ex[é]cution*’.<sup>1904</sup> This *comité* would be constituted on a case-by-case basis: the emirs of Ansar Dine/AQIM would designate an emir who would decide in turn who would execute the sentence.<sup>1905</sup> At least two copies of each judgment were made and one stayed within the Islamic Court while the other was given to the Police.<sup>1906</sup> In any case, the Islamic Police would act as an ‘inseparable’ ‘sword of the

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the judgment (Mr Al Hassan’s statement MLI-OTP-0051-0631, at 0643). On Abou Zeid’s role and influence, *see also* P-0150: T-096, p. 15; P-0654: T-128, p. 36.

<sup>1896</sup> Mr Al Hassan’s statement MLI-OTP-0051-0631, at 0642-0643.

<sup>1897</sup> Mr Al Hassan’s statement MLI-OTP-0051-0631, at 0655.

<sup>1898</sup> Mr Al Hassan’s statement MLI-OTP-0051-0631, at 0643.

<sup>1899</sup> P-0150: T-096, p. 15 .

<sup>1900</sup> P-0150: T-098, pp. 4-5.

<sup>1901</sup> P-0150: T-093, p. 19; T-097, p. 59. P-0150 stated: ‘Never. But I can tell you I can draw your attention that there was a possible form of appeals within Islamic - the Islamic judicial system, but not at the Timbuktu court we’re talking about. Because in the old judicial system, if the defendant is unsatisfied with the judge’s verdict and he thinks that some other judge in another land is more learned than the first judge, he can take his complaint there and, in that case, there would be a correspondent sent to both judges. This was not available in the Timbuktu example’. *See also* Mr Al Hassan’s statement MLI-OTP-0051-0658, at 0689; P-0557: T-055, p. 11; D-0202: T-204, pp. 30-31.

<sup>1902</sup> Mr Al Hassan’s statement MLI-OTP-0051-0658, at 0689.

<sup>1903</sup> *See* paragraph 586 above.

<sup>1904</sup> *See* paragraph 586 above.

<sup>1905</sup> Mr Al Hassan explained that ‘every judgment ha[d] its emir’ (MLI-OTP-0051-0631, at 0653). Abou Zeid designated an emir for a judgment and this emir would decide the persons who would execute the sentence with him (at 0654). The ‘*comite d’execution*’ was the Police. Mr Al Hassan did not know whether Abou Zeid was consulting somebody else regarding the execution of the judgments (at 0655). On this matter, notably on the role of Abou Al Hammam, *see also* P-0150: T-098, p. 41; P-0065: T-042, pp. 40, 44).

<sup>1906</sup> P-0150: T-098, p. 3; Mr Al Hassan’s statements MLI-OTP-0051-0631, at 0652; MLI-OTP-0060-1631, at 1643-1644. *See also* D-0202: T-204, pp. 20-22.

judiciary'<sup>1907</sup> and would take care of the security of the execution site.<sup>1908</sup>

649. Either Mr Al Hassan or somebody else would come to take the person from the Islamic Court house.<sup>1909</sup> On average, sentences were usually carried out one or two days after sentences were passed.<sup>1910</sup>

650. The judges at times would personally attend sentences and executions.<sup>1911</sup>

651. Concerning Iyad Ag Ghaly's involvement with the Islamic Court activities, there was no administrative rule in place that required Iyad Ag Ghaly to be aware of the judgments the Islamic Court reached.<sup>1912</sup> Nevertheless, Abou Zeid spoke to Iyad Ag Ghaly daily and updated him on all new developments in Timbuktu.<sup>1913</sup>

#### **d) Collective work of the institutions**

652. For the factual findings in this section, the Chamber relies primarily on the evidence of the following individuals, which, subject to discrete aspects discussed below, it finds particularly reliable: Mr Al Hassan,<sup>1914</sup> P-0150<sup>1915</sup> and P-0582,<sup>1916</sup> three members of Ansar Dine/AQIM who described the functions of the institutions created by Ansar Dine/AQIM in Timbuktu in 2012-2013; and P-0065,<sup>1917</sup> who had a direct and close professional relationship with Ansar Dine/AQIM and observed the work of the groups' institutions; as well as on documents MLI-OTP-0001-7193 and MLI-OTP-0001-7194 ('Abou Zeid's

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<sup>1907</sup> P-0150: T-097, p. 59.

<sup>1908</sup> See paragraph 587 above.

<sup>1909</sup> P-0626: T-142, pp. 37-38.

<sup>1910</sup> Mr Al Hassan's statements MLI-OTP-0051-0631, at 0652; MLI-OTP-0062-1058, at 1060, referring to report MLI-OTP-0001-7459, translation MLI-OTP-0077-2424; and to Islamic Court judgment MLI-OTP-0001-7426, translation MLI-OTP-0078-0188.

<sup>1911</sup> P-0150: T-098, p. 36, referring to video MLI-OTP-0009-1749, transcript MLI-OTP-0028-0839; P-0626: T-142, p. 56.

<sup>1912</sup> P-0150: T-098, p. 6.

<sup>1913</sup> P-0150: T-098, p. 6.

<sup>1914</sup> The Chamber refers to its findings on the credibility and reliability of Mr Al Hassan's statements (see section II.C above).

<sup>1915</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (see section II.B.2.a)iii above). P-0150: T-096, pp. 5-6, 28. See also report MLI-OTP-0055-0267, translation MLI-OTP-0054-0335.

<sup>1916</sup> The Chamber refers to its findings on the credibility and reliability of P-0582's evidence (see section II.B.2.c)iii above).

<sup>1917</sup> The Chamber refers to its findings on the credibility and reliability of P-0065's evidence (see section II.B.2.a)i above).

Instructions’).<sup>1918</sup>

### i. Collaboration between the institutions

653. The work of the Security Battalion, the *Hesbah*, the Islamic Police and the Islamic Court overlapped in practice and there was a shared responsibility for the implementation of rules and prohibitions adopted by Ansar Dine/AQIM.<sup>1919</sup> Ansar Dine/AQIM’s equipment was available to everyone within the groups, and assets were shared; members of each institution could be moved or asked to assist another institution in case of need.<sup>1920</sup>
654. All members of the institutions answered to the leadership of Ansar Dine/AQIM.<sup>1921</sup> Reports from the various institutions were submitted to the office of the leadership.<sup>1922</sup> The Chamber is unable to reach conclusive findings on whether there was a full organisational hierarchy between the different

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<sup>1918</sup> Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369. As to the authenticity of those items, the Chamber notes that Harald Doornbos (P-0007) photographed documents MLI-OTP-0001-7193 and MLI-OTP-0001-7194 at the BMS (*see* P-0007: T-019, p. 20; *see* section II.D.1 above). The Chamber further notes that P-0150 recognised those documents and provided detailed testimony as to their content and the context that led to their adoption (*see* P-0150: T-095, pp. 38-41; T-100, pp. 9-10; T-102, pp. 13-16). P-0150 notably testified that those documents contain Abou Zeid’s instructions to the people in charge of the city of Timbuktu, that is the Police and the *Hesbah*, but also all the ‘jihadists’ in the city, in order to solve problems and disputes that arose at the time (P-0150: T-095, p. 39). P-0150 further identified ‘Abdelamid Abou Zeid’ written on the stamp at the bottom of document MLI-OTP-0001-7193 and the date ‘27 Ramadan 1433’, ‘Equivalent to: 15 August 2012’, written at the bottom of document MLI-OTP-0001-7194 (P-0150: T-095, p. 39). The Chamber notes in particular that P-0150 testified that he saw the documents in Timbuktu in 2012 and provided information in his possession about its drafting and related discussions (P-0150: T-095, pp. 40-41). The Chamber finds the testimony of P-0150 on those documents particularly reliable in light of his position at the time. The Chamber also notes that Mr Al Hassan recognised those documents as the second set of instructions from the emir and stated that they were issued after the dismissal of Adama (Mr Al Hassan’s statement MLI-OTP-0051-0483, at 0500-0503). In light of the abovementioned elements, the Chamber is satisfied that these items dated 15 August 2012 are contemporaneous of the charged period and that they were drafted by Ansar Dine/AQIM’s leadership during the charged events. The Chamber accordingly concludes that they reflect instructions given by Abou Zeid to members of Ansar Dine/AQIM in Timbuktu at that point in time, and dismisses the Defence’s objections to these documents on the basis that they are photographs of documents which Harald Doornbos is not in a position to authenticate (*see* ICC-01/12-01/18-1629-Conf and annexes).

<sup>1919</sup> P-0065: T-039, p. 43; Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1198; MLI-OTP-0051-0457, at 0465-0467. *See also* P-0150: T-098, p. 7.

<sup>1920</sup> P-0150: T-098, pp. 7-8; T-099, p. 55; P-0065: T-039, p. 43. *See also* P-0582’s statement MLI-OTP-0062-4117-R02, at 4127; Mr Al Hassan’s statements MLI-OTP-0051-0483, at 0509; MLI-OTP-0051-0767, at 0769.

<sup>1921</sup> P-0150: T-117, p. 24.

<sup>1922</sup> P-0150: T-117, p. 24.



institutions created by Ansar Dine/AQIM in 2012-2013.<sup>1923</sup> However, besides the specific role exercised by the leadership, in particular Abou Zeid, the Islamic Court had a special status among all the institutions created by Ansar Dine/AQIM.<sup>1924</sup>

655. At the beginning of events, every member of the groups was interpreting and applying *Sharia* and ‘every member thought that he understood the nature of the *Sharia* that the group wanted to implement’.<sup>1925</sup> Over time, this role was limited to the Security Battalion, the *Hesbah*, and the Islamic Police; later it was the Islamic Court which was interpreting the nature of *Sharia*, with the Islamic Police and the *Hesbah* implementing the Islamic Court’s decisions.<sup>1926</sup>
656. Concerning patrols, at the beginning of the events, there was no coordination between the Security Battalion, the *Hesbah* and the Islamic Police.<sup>1927</sup> At some point, whenever encountering violations of Ansar Dine/AQIM’s rules and prohibitions, the Security Battalion called either the Islamic Police or the *Hesbah*.<sup>1928</sup> The Police and *Hesbah* were then doing the same work in parallel<sup>1929</sup> and could tap into each other’s resources: when the Police thought it needed additional members, it could rely on the *Hesbah*, and vice versa.<sup>1930</sup>

## ii. Joint efforts in the implementation of the rules and punishments

657. Violations to Ansar Dine/AQIM’s rules and prohibitions were sanctioned by

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<sup>1923</sup> The Chamber notes the Defence argument that the Islamic Police ranked lowest in the organisational hierarchy of the group (see [Defence Final Brief](#), para. 73, referring to P-0654: T-134, p. 21). The Chamber is however unconvinced by P-0654’s testimony on the rank and hierarchy between the different institutions created by Ansar Dine/AQIM, noting that the witness was not an insider and seemed to provide his opinion on the matter, and that the matter of the hierarchy between the institutions was highly complex and not straightforward even to senior members of Ansar Dine/AQIM (see P-0150: T-117, pp. 21, 23-24, 26-27). As stated by P-0150, ‘If we say that the *Hesbah* is the second highest body after the judiciary, here we’re talking about the religious aspect and we cannot compare it to the security or the police as if they were governed by the judiciary, but we can comment on the tasks carried out by those organs. In the end, there is a leadership, an emirs’ office. Reports were submitted to that office and the – everyone who carried out duties reported and answered to that office’ (P-0150: T-117, p. 24).

<sup>1924</sup> P-0150: T-107, pp. 13-14; T-108, pp. 48-49; D-0605: T-192, pp. 60-61. See [Defence Final Brief](#), para. 418.

<sup>1925</sup> P-0150: T-098, p. 7; P-0654: T-128, p. 65.

<sup>1926</sup> P-0150: T-098, p. 7.

<sup>1927</sup> P-0150: T-099, p. 55.

<sup>1928</sup> P-0150: T-099, p. 55. See also T-112, p. 59.

<sup>1929</sup> P-0150: T-099, p. 55; P-0065: T-038, p. 47; T-046, pp. 45-46; P-0641: T-137, p. 18; T-138, pp. 68-69; P-0099: T-147, p. 57.

<sup>1930</sup> P-0150: T-099, p. 55.

punishments, either a *hadd* (*hudud* in plural), which referred to what was considered as a prescribed penalty by the *Quran* and the *Hadiths*,<sup>1931</sup> or a *ta'zir*, a discretionary punishment on issues for which punishments were not expressly regulated.<sup>1932</sup> These two categories of punishments were known by Mr Al Hassan while he was working at the Islamic Police.<sup>1933</sup>

**a. Islamic Court's exclusive competence for *hudud* punishments**

658. Only the Islamic Court could impose *hudud* punishments.<sup>1934</sup> These punishments could be imposed for offences such as adultery (*zina*) and theft.<sup>1935</sup> The penalties pronounced by the Islamic Court for such offences, sometimes referred to as 'big *Sharia*',<sup>1936</sup> notably consisted of floggings, for a defined number of lashes, and the amputation of the hand.<sup>1937</sup>
659. The execution of *hudud* punishments, which was considered a 'victory' by Ansar Dine/AQIM members,<sup>1938</sup> and which took place in public,<sup>1939</sup> was announced to the public on the radio and over loudspeakers, in order to 'incite' the population to attend,<sup>1940</sup> although the local population was not expressly required to do so.<sup>1941</sup> Before the public execution of a *hadd* punishment, the sentencing judgment was typically read out by a member of the *Hesbah*, whose role was to monitor the implementation of the judgments,<sup>1942</sup> in line with Ansar

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<sup>1931</sup> P-0150: T-093, pp. 70-71; T-094, p. 47; T-095, p. 41; P-0626: T-142, p. 53; P-0065: T-041, pp. 51-52; D-0605: T-192, p. 74.

<sup>1932</sup> P-0150: T-093, p. 71; T-094, p. 22; T-095, p. 41; P-0065: T-041, pp. 51-52. *See also* D-0202: T-203, p. 23.

<sup>1933</sup> Mr Al Hassan's statements MLI-OTP-0051-1067, at 1092-1097; MLI-OTP-0051-1184, at 1205-1211; MLI-OTP-0051-1213, at 1214-1217.

<sup>1934</sup> P-0150: T-095, p. 33; D-0202: T-203, p. 37.

<sup>1935</sup> P-0150: T-093, pp. 71-73; D-0605: T-192, p. 74. *See also* P-0150: T-105, pp. 42-43.

<sup>1936</sup> *See e.g.* P-0582's statements MLI-OTP-0062-3736-R02, at 3742; MLI-OTP-0062-3788-R02, at 3809.

<sup>1937</sup> P-0150: T-093, pp. 71-73; P-0065: T-037, p. 29; P-0626: T-142, p. 53. *See also* Mr Al Hassan's statement MLI-OTP-0051-1067, at 1092-1093.

<sup>1938</sup> P-0150: T-093, pp. 73-74.

<sup>1939</sup> P-0065: T-040, pp. 29-30; T-041, p. 51; D-0605: T-194, p. 74. *See also* P-0984: T-068, p. 65.

<sup>1940</sup> P-0150: T-093, p. 72; T-110, pp. 5-6; P-0984: T-068, p. 65. *See also* P-0582's statements MLI-OTP-0062-3788-R02, at 3809; MLI-OTP-0062-3736-R02, at 3743; MLI-OTP-0062-3897-R02, at 3908; P-0125's statement MLI-OTP-0023-0004, at 0025, para. 100.

<sup>1941</sup> P-0150: T-110, pp. 5-6; D-0605: T-195, p. 101.

<sup>1942</sup> P-0150: T-095, p. 34; T-120, p. 71; P-0065: T-040, p. 44. *See also* P-0150: T-108, p. 73.

Dine/AQIM's interpretation of *Sharia*.<sup>1943</sup>

660. The Police commissioner was in principle responsible for choosing the people to carry out the sentence.<sup>1944</sup> However, in practice, many members of Ansar Dine/AQIM wanted to participate in the punishment as something which they believed would bring them closer to God.<sup>1945</sup> As a result, many people wanted to take this task upon themselves and they would divide up the meting of the punishment by themselves or the emir in charge of the location where the punishment was to be executed – emir of the Police, the *Hesbah* or the Security Battalion – would designate the people responsible for the flogging.<sup>1946</sup>
661. The implementation of *hudud* punishments was a way for Ansar Dine/AQIM's members to 'take pride' in having enforced their conception of 'God's *Sharia*'<sup>1947</sup> and was a tool to advertise for their cause as well as to demonstrate that the local population was in compliance with Ansar Dine/AQIM's directives.<sup>1948</sup> Notably, as described by P-0150, '[t]he armed group was hoping that an incident would occur [...] where the judges [could not] exonerate the defendant from a hand amputation sentence'.<sup>1949</sup> When such a case was brought before the Islamic Court, which resulted in the amputation of Dédéou Maiga,<sup>1950</sup> the 'overwhelming majority of the members of the armed group and possibly also all the elite that were leading the group' were very happy that the *hadd* was enforced.<sup>1951</sup> Ansar Dine/AQIM deemed it a major victory that 'the world knows that they enforced

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<sup>1943</sup> Regarding the way some witnesses described their understanding of the applicable rules, *see* P-0150: T-108, pp. 52-53, 57. *See also* T-095, p. 51; P-0626: T-142, pp. 54-55; P-0582's statement MLI-OTP-0062-3872-R02, at 3881-3882. In this regard, the Chamber notes that the Defence relies on an excerpt of P-0150's testimony to allege that individuals were only flogged if they were fully clothed ([Defence Final Brief](#), para. 487, *referring to* P-0150: T-111, p. 58). The Chamber notes that the question asked to P-0150 was limited to the time when Al Mahdi was emir of the *Hesbah* and focused on whether during that time, in his knowledge, anyone was flogged without clothes pursuant to a judgment from the Islamic Court, which the witness denied (*see* P-0150: T-111, p. 58). The Chamber finds that, contrary to what the Defence appears to allege, the witness did not refer to a general rule applied by Ansar Dine/AQIM during the execution of punishments.

<sup>1944</sup> P-0150: T-095, p. 34.

<sup>1945</sup> P-0150: T-095, pp. 34-35; T-098, p. 37; T-102, p. 50.

<sup>1946</sup> P-0150: T-095, pp. 34-35; Mr Al Hassan's statement MLI-OTP-0051-0457, at 0471-0473.

<sup>1947</sup> P-0150: T-093, p. 74.

<sup>1948</sup> P-0150: T-093, pp. 73-74, 76.

<sup>1949</sup> P-0150: T-094, p. 22. *See also* T-094, p. 24.

<sup>1950</sup> P-0150: T-094, p. 23. While this part of P-0150's testimony does not explicitly refer to Dédéou Maiga, since his was the only amputation that was executed in Timbuktu (*see* P-0150: T-097, p. 13), the Chamber considers it clear that P-0150's testimony refers to his case. *See* section E.1.g) below.

<sup>1951</sup> P-0150: T-094, pp. 23, 25-28.

the *hudud* of God as per the [*Quran*],<sup>1952</sup> as ‘to manifest the enforcement of *hudud* in Timbuktu was of paramount importance [...] because that would stand as proof for the outside world that they were indeed enforcing God’s *Sharia* in any land that was under their control’.<sup>1953</sup> There was also a belief that the enforcement of *hudud* punishments would prevent crime and ensure deterrence, particularly in light of the public nature of the punishments,<sup>1954</sup> and ‘purify’ people who committed violations.<sup>1955</sup> Mr Al Hassan acknowledged that a person who is publicly punished is a person whose ‘dignity has been humiliated’.<sup>1956</sup>

### **b. Shared responsibility for *ta’zir* punishments**

662. *Ta’zir* punishments were used to sanction diverse violations of the rules and prohibitions adopted by Ansar Dine/AQIM in Timbuktu in 2012-2013.<sup>1957</sup> They included a range of measures, from reprimands to arrests and imprisonments, including the detention of women,<sup>1958</sup> as well as beatings, floggings, and fines, depending on the offence committed and the discretion of the person or judge deciding on the *ta’zir*.<sup>1959</sup>
663. In principle, members of Ansar Dine/AQIM, in particular of the Security Battalion, the Police or the *Hesbah*, who encountered violations first informed the person of the rule and advised them not to re-offend; if the person showed what members of Ansar Dine/AQIM deemed ‘stubbornness’, they imposed a

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<sup>1952</sup> P-0150: T-094, p. 21.

<sup>1953</sup> P-0150: T-094, pp. 24-25.

<sup>1954</sup> P-0150: T-093, p. 71; T-108, p. 73; P-0065: T-040, pp. 32-33; T-046, p. 10. *See also* P-0150: T-095, p. 34; T-105, p. 44. *See also* Mr Al Hassan’s statement MLI-OTP-0062-1257, at 1265.

<sup>1955</sup> P-0150: T-095, pp. 8, 35; T-105, pp. 43-44.

<sup>1956</sup> *See* Mr Al Hassan’s statement MLI-OTP-0062-1257, at 1266.

<sup>1957</sup> P-0150: T-095, p. 36. *See also* P-0626: T-141, pp. 55-56. *See* section D.1 below.

<sup>1958</sup> P-0150: T-112, p. 48. *See* paragraph 697 below.

<sup>1959</sup> P-0150: T-094, pp. 22-23; T-095, pp. 36-37; T-098, pp. 18-19; T-112, pp. 40-41, 43. *See also* P-0626: T-142, pp. 52-53; P-0582’s statement MLI-OTP-0062-3845-R02, at 3862-3864; Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1208-1209; MLI-OTP-0060-1511, at 1531. *See* section D.1 below. In relation to the Defence argument that the ‘proper [*ta’zir*] for dress code violations was a warning, not detention’ and that ‘[i]n case of continuous violations, women were asked to wait at the BMS until their guardian arrived’ (*see* para. 283 of the [Defence Final Brief](#)), the Chamber refers to its findings in section D.1.c) below. The Chamber notably recalls that P-0150 testified that ‘the act of waiting at the police station while one’s tutor or guardian shows up’ was one of the measures for cases of women who are unveiled in public, but was not part of the *ta’zir* punishment (P-0150: T-112, pp. 47-48).

*ta'zir* punishment on that person.<sup>1960</sup> In *practice*, the reference to ‘stubbornness’ was a common argument that members of Ansar Dine/AQIM such as Mohammed Moussa would use to punish anyone among the population of Timbuktu.<sup>1961</sup>

664. Although the Islamic Court could decide to sentence a person to a *ta'zir*, such punishments could be executed without any judgment.<sup>1962</sup> These punishments could be carried out directly in the streets.<sup>1963</sup> At the beginning of Ansar Dine/AQIM’s control of Timbuktu, any member of Ansar Dine/AQIM was able to impose *ta'zir* punishments on anyone they deemed to be in violation of the rules.<sup>1964</sup> Following issues arising from this practice, Ansar Dine/AQIM sought to limit these functions to the Islamic Court, the Islamic Police and the *Hesbah*.<sup>1965</sup>

### c. Instructions regarding *ta'zir* punishments

665. Around the time Mr Al Hassan started working for the Police,<sup>1966</sup> Abou Zeid issued ‘small instructions’ to members of Ansar Dine/AQIM: a two-page document written in Arabic which listed the various types of infringements to the rules together with how Ansar Dine/AQIM members were to respond to them, including the corresponding *ta'zir* punishments which could be applied in case of re-offence.<sup>1967</sup> Members of the Islamic Police, including Mr Al Hassan, read it and its content was read to them at the BMS; it was also read out on Radio Bouctou.<sup>1968</sup>

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<sup>1960</sup> P-0150: T-094, pp. 66-67; T-095, p. 40; Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0467-0471; MLI-OTP-0051-1184, at 1208-1209. *See also* Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369; P-0150: T-112, pp. 40-42. *See* section D.1 below, in particular paragraphs 675, 696-697, 706-707, 724.

<sup>1961</sup> P-0150: T-094, p. 17.

<sup>1962</sup> P-0150: T-095, p. 41; P-0582’s statement MLI-OTP-0062-3845-R02, at 3848-3849.

<sup>1963</sup> P-0150: T-095, p. 36; T-107, p. 26. *See e.g.* paragraph 584 above and paragraph 707 below.

<sup>1964</sup> P-0150: T-095, pp. 36-37; T-107, p. 26.

<sup>1965</sup> P-0150: T-095, pp. 36-37, 41; T-107, p. 26.

<sup>1966</sup> *See* Mr Al Hassan’s statements MLI-OTP-0051-1184, at 1211; MLI-OTP-0051-1213, at 1214.

<sup>1967</sup> Mr Al Hassan’s statements MLI-OTP-0051-0483, at 0486-0490, 0499-0500 (referring to ‘small instructions’ as opposed to the subsequent more detailed instructions dated 15 August 2012); MLI-OTP-0051-1184, at 1205-1207, 1210-1211; MLI-OTP-0051-1213, at 1214-1216. *See also* P-0582’s statement MLI-OTP-0062-3872, at 3883-3884.

<sup>1968</sup> Mr Al Hassan’s statement MLI-OTP-0051-0483, at 0486-0490. The Chamber notes that Mr Al Hassan stated that the emir read the content of the document to members of the Islamic Police at the

666. Later, on 15 August 2012, following complaints,<sup>1969</sup> notably related to the chasing of women into their homes because of the way they were dressed,<sup>1970</sup> Abou Zeid issued further ‘compulsory instructions’ to ‘the police, *Hisba* and all soldiers’ (‘Abou Zeid’s Instructions’).<sup>1971</sup> This is a two-page document which provided more detailed instructions to all members of Ansar Dine/AQIM,<sup>1972</sup> including by setting out ‘process[es] to be followed for *Sharia* violations’. In relevant parts, the document directed that: (i) ‘[h]ouses ‘may not be entered other than with the authorisation of the Emir of the Emirate of Tombouctou’; (ii) ‘[m]ovement at night-time is generally permitted’ and they were ‘not to stop [a man and woman] walking together, except in suspicious locations [...] where adultery is presumably committed’; (iii) ‘the person who [committed a] violation shall be informed of the *Sharia* rules and the consequences of reoffending’; (iv) in the event of reoffending, the person ‘is to be taken to the police or *Hisba* station to receive the *ta’zir*’; and (v) ‘[t]a’zir will only be applied at police and *Hisba* stations’,<sup>1973</sup> ‘after an adequate investigation’.<sup>1974</sup> The instructions also provided general directives with respect to the fact that ‘[a]ll [m]uslims shall be treated with kindness and friendliness’ and ‘brothers shall not use physical force excessively’. Mr Al Hassan knew about Abou Zeid’s Instructions, which were formally communicated by Abou Zeid to the Islamic Police.<sup>1975</sup> Following the issuance of Abou Zeid’s Instructions, the prior practices continued to happen but

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BMS. It is however not clear to the Chamber whether Mr Al Hassan referred to Abou Zeid or to the emir of the Police when he mentioned the ‘emir’ in those excerpts of his statement. In any case, what is clear from this evidence is that someone read this document to members of the Islamic Police, including Mr Al Hassan, who were aware of its content and consulted it at the Police headquarters (*see also* MLI-OTP-0051-1213, at 1215).

<sup>1969</sup> P-0150: T-095, pp. 39-40; T-107, p. 26.

<sup>1970</sup> On Abou Zeid’s reactions to the problems raised related to violence against women, *see* paragraph 746 below. *See also* Mr Al Hassan’s statement MLI-OTP-0051-0483, at 0500-0501, and paragraph 552 above.

<sup>1971</sup> Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369.

<sup>1972</sup> Mr Al Hassan’s statement MLI-OTP-0051-0483, at 0500-0503.

<sup>1973</sup> Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369; P-0150: T-095, pp. 39-40; T-107, p. 26.

<sup>1974</sup> Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369. P-0150: T-095, p. 40. The Chamber notes that Abou Zeid’s instructions specify that ‘[g]uards at check-points shall arrest violators and surrender them to the police or the *Hisba* in conjunction with a detailed report on the nature of the violation along with the first report in relation to the *Sharia* rule and the warning’.

<sup>1975</sup> Mr Al Hassan’s statement MLI-OTP-0051-0483, at 0496-0498.

‘not as before’.<sup>1976</sup>

667. For the violations that the Islamic Police determined itself competent to punish, the emir of the Police decided on the punishment, notably whether to exonerate or to punish the person, without any interference from Abou Zeid or being ordered to do so by the Islamic Court.<sup>1977</sup> *Ta’zir* punishments, which were frequent at the police station,<sup>1978</sup> were applied right away following the decision of the Islamic Police, notably in the Police courtyard, in front of the Police leaders and any Police member who was present and wanted to attend; for cases of flogging, the emir of the Police instructed a Police officer to administer the lashes.<sup>1979</sup> Mr Al Hassan was aware of this.<sup>1980</sup>

668. The *Hesbah* also directly carried out the *ta’zir* punishments it pronounced.<sup>1981</sup>

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<sup>1976</sup> P-0150: T-095, p. 41. *See also* P-0150: T-117, pp. 36-37.

<sup>1977</sup> Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1210; P-0582’s statements MLI-OTP-0062-3788-R02, at 3808, 3810; MLI-OTP-0062-3820-R02, at 3825; MLI-OTP-0062-3845-R02, at 3847-3850; MLI-OTP-0062-3872-R02, at 3879-3880, 3882-3883. *See also* P-0150: T-102, pp. 13-14. The Defence, citing P-0150’s testimony and a press article MLI-OTP-0024-0015, at 0034, contends that the Islamic Police could only hand out *ta’zir* punishments when compelled to by the Islamic Court (*see* [Defence Final Brief](#), para. 525). The Chamber notes P-0150’s evidence that ‘*ta’zir* punishments that are not handed down by the judge are carried out by the *Hesbah*’ and his explanation that if the *Hesbah* pronounces a punishment, they have to carry them out and if the judge hands down a *ta’zir* punishment, the Police carry out the punishment (P-0150: T-112, p. 43). The Chamber is of the view that P-0150’s testimony is not incompatible with P-0582’s testimony. While P-0150 appears to make a categorical statement about the carrying out of *ta’zir* punishments, he further detailed that the *Hesbah* carried out their own *ta’zirs* while the Police carried out the ones decided by the judges. In the scenario he described, he did not indicate what would occur if the Police issued a *ta’zir*, nor did he state that the Police did not have such authority. Further, the Chamber while noting that the interview by Sheikh Abd-Al Aziz Habib (Interview MLI-OTP-0024-0015, at 0034) states that the Police could not carry out *ta’zirs* absent judicial order, the Chamber is convinced by P-0582’s first hand account that the Police indeed issued and carried out *ta’zir* punishments upon their own authority. The Chamber further notes that P-0582 stated that the Police could call the Islamic Court to ask what the applicable sanction for a case would be, but they often decided the case themselves (P-0582’s statement MLI-OTP-0062-3788-R02, at 3808). Mr Al Hassan also stated that in most cases the emir of the Police asked the Islamic Court whether *ta’zir* punishments were to be applied at the Police headquarters or in public (Mr Al Hassan’s statement MLI-OTP-0051-0483, at 0509, 0511-0512). The Chamber does not consider this evidence inconsistent with the above findings and is satisfied in light of the totality of the evidence that, while the Islamic Police could contact the Islamic Court when faced with a case to inquire as to the applicable sanction, the [emir of the] Islamic Police also had the authority to issue *ta’zir* punishments on its own, without being compelled to by the Islamic Court.

<sup>1978</sup> Mr Al Hassan’s statement MLI-OTP-0060-1511, at 1531.

<sup>1979</sup> P-0582’s statements MLI-OTP-0062-3788-R02, at 3808-3810; MLI-OTP-0062-3845-R02, at 3847-3850; MLI-OTP-0062-3872-R02, at 3879-3883; MLI-OTP-0062-3962-R02, at 3967-3969; Mr Al Hassan’s statements MLI-OTP-0062-1058, at 1072; MLI-OTP-0051-0457, at 0467-0471.

<sup>1980</sup> *See notably* Mr Al Hassan’s statements MLI-OTP-0060-1511, at 1531; MLI-OTP-0062-1058, at 1072; MLI-OTP-0051-0457, at 0467-0471.

<sup>1981</sup> P-0150: T-112, p. 43. For an instance of the *Hesbah* carrying out a punishment, *see* P-0150: T-112, pp. 41, 43. *See also* T-102, pp. 50-51.

669. In late stages, around November or December 2012, as problems and complaints continued to arise, the *Hesbah* and the Police were instructed to no longer punish offenders unless ordered by the Islamic Court.<sup>1982</sup>

## **D. RULES AND PROHIBITIONS ACCORDING TO ANSAR DINE/AQIM'S 'ISLAMIC SHARIA'**

### **1. Different rules and prohibitions**

670. As already explained, Ansar Dine/AQIM took control of Timbuktu in April 2012 and set up institutions which were responsible for the implementation of the rules and prohibitions adopted during the period of the charges and for the punishments of the violations of these rules. These rules notably included the prohibition of murder<sup>1983</sup> and theft,<sup>1984</sup> and also covered several aspects of the life in Timbuktu, as detailed below. In the present section, the Chamber discusses the rules and prohibitions which are of most relevance to the charges, *i.e.* the rules on relationships between men and women, the rules on alcohol, the rules concerning women, the rules on tobacco, the rules concerning religious practices, the rules on music, entertainment and leisure activities, the rules on schools and the rules on men's appearance.

671. Mr Al Hassan knew about this set of rules and prohibitions; he notably knew which behaviour was prohibited and was generally aware of the different types of punishment.<sup>1985</sup>

#### **a) Rules on relationships between men and women**

672. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed

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<sup>1982</sup> P-0150: T-097, pp. 9-10; T-107, p. 27; T-117, p. 37. *See also* T-102, p. 14.

<sup>1983</sup> *See* paragraph 615 above and paragraph 1078 below. Regarding the specific rules applicable in cases involving murder, the concepts of *qisas* and *diya*, *see* P-0150: T-108, pp. 66-69.

<sup>1984</sup> *See e.g.* sections E.1.g) and E.2 below.

<sup>1985</sup> The Chamber relies mainly on Mr Al Hassan's detailed statements which clearly show his knowledge in this regard (*see e.g.* MLI-OTP-0051-1067, at 1092-1095; MLI-OTP-0051-1184, at 1204-1211; MLI-OTP-0051-1213, at 1214-1216; MLI-OTP-0051-1124, at 1142-1146, 1152-1153; MLI-OTP-0051-0457, at 0467-0470; MLI-OTP-0051-0483, at 0486-0501; MLI-OTP-0060-1580, at 1601-1603; MLI-OTP-0060-1605, at 1608-1613; MLI-OTP-0051-0658, at 0660), as well as relevant facts established in the sections on the instructions regarding *ta'zir* punishments (*see* section C.4.d)ii.c above) and Mr Al Hassan's role and functions within Ansar Dine/AQIM (*see* section F.3 below).



below, it finds particularly reliable: P-0150<sup>1986</sup> and D-0529,<sup>1987</sup> two members of Ansar Dine/AQIM who described the rules on the relationships between men and women and the way they were applied by Ansar Dine/AQIM in Timbuktu in 2012-2013; P-0065,<sup>1988</sup> who was present in Timbuktu during the relevant period; and other witnesses who, as regular inhabitants of Timbuktu, testified as to how the rules were applied in 2012-2013.

673. Ansar Dine/AQIM required that relationships between men and women be restricted to the framework of marriage; they prohibited men and women they deemed ‘marriageable’ to mix or to have sexual intercourse if they were not married, the latter referred to as *zina*, as part of the rules they imposed on the population<sup>1989</sup> as well as on members of their groups.<sup>1990</sup>
674. The prohibition on men and women mixing was officially announced to the population.<sup>1991</sup> Men and women could not go outside with a member of the other gender if they were not blood relatives or married to each other.<sup>1992</sup> Local parties and festivities were generally forbidden, including religious festivities not recognised by Ansar Dine/AQIM, and those exceptionally allowed by the armed groups forbade mixing.<sup>1993</sup>
675. Men and women who were seen together in public, for instance walking or riding together in vehicles or on bikes, could be asked to justify their kinship and, if they were not relatives or married to each other, were told to separate and could be disciplined, whether verbally or physically, and punished if considered

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<sup>1986</sup> The Chamber refers to its findings on the credibility and reliability of P-0150’s evidence (*see* section II.B.2.a)iii above). P-0150 met Abdallah Al Chinguetti for the first time [REDACTED] (P-0150: T-088, pp. 43-45).

<sup>1987</sup> The Chamber refers to its findings on the credibility and reliability of D-0529’s evidence (*see* footnote 1107 above).

<sup>1988</sup> The Chamber refers to its findings on the credibility and reliability of P-0065’s evidence (*see* section II.B.2.a)i above).

<sup>1989</sup> P-0065: T-037, pp. 21-22; P-0150: T-093, p. 73; T-098, pp. 21-23. *See also* P-0557: T-054, pp. 14, 17-18; T-054, p. 21; D-0315: T-186, pp. 31-32; P-0622’s statement MLI-OTP-0065-0558-R02, at 0564 to 0565, paras 34-35. The Chamber notes that the Defence does not contest the existence of a prohibition of *zina* ([Defence Final Brief](#), para. 53).

<sup>1990</sup> P-0150: T-103, p. 6; D-0529: T-189, pp. 7-8, 48-49. *See also* paragraphs 678-684 below.

<sup>1991</sup> P-0654: T-128, pp. 64-65; P-0608: T-153, p. 74; P-0984: T-068, pp. 55-57; P-0150: T-098, p. 22.

<sup>1992</sup> P-0608: T-153, p. 74; P-0547: T-151, p. 14; V-0001: T-168, p. 34; P-0150: T-098, pp. 22-23. *See also* D-0315: T-186, pp. 31-32; P-0622’s statement MLI-OTP-0065-0558-R02, at 0564, para. 34.

<sup>1993</sup> P-0150: T-098, p. 22; P-0602: T-085, p. 15; P-0538: T-161, p. 12; P-0557: T-054, p. 22. *See also* P-0565: T-051, p. 13.

‘stubborn’.<sup>1994</sup>

676. At some point, following complaints from the population, the *Sharia* Committee discussed whether it was possible for men to have women who were not members of their immediate family ride with them on bikes, and concluded that there were different views on the matter.<sup>1995</sup> Abou Zeid then instructed members of the armed groups not to stop men and women and ask them to justify their kinship when seen together ‘riding bicycles, camels and donkeys, as well as walking in pairs [...] on the road’, except in ‘suspicious cases’.<sup>1996</sup>

677. Men and women found to have engaged in sexual relationships outside of marriage were to be punished following specific rules: (i) a person married to another would be executed by stoning;<sup>1997</sup> and (ii) an unmarried person would be punished by a hundred lashes.<sup>1998</sup>

678. The Chamber notably received evidence in relation to the following case.<sup>1999</sup> One

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<sup>1994</sup> P-0150: T-098, pp. 22-23; T-100, pp. 9-10; P-0547: T-151, pp. 14, 16; P-0557: T-054, pp. 14, 17-18; V-0001: T-168, p. 35. *See also* P-0638: T-057, pp. 63-67; P-0602: T-084, p. 79; P-0622’s statement MLI-OTP-0065-0558-R02, at 0564, para. 35.

<sup>1995</sup> P-0150: T-100, pp. 9-10.

<sup>1996</sup> Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369; P-0150: T-100, pp. 9-10; T-102, pp. 14-15. In relation to MLI-OTP-0001-7193 and MLI-OTP-0001-7194, the Chamber refers to its previous finding regarding the authenticity of the document and the reliability of P-0150’s testimony on the content of this document (*see* footnote 1918 above).

<sup>1997</sup> The charges in the present case include a number of cases of punishment by flogging for *unmarried* individuals; it is not alleged that executions by stoning took place in Timbuktu in 2012-2013.

<sup>1998</sup> P-0065: T-037, p. 22; P-0150: T-093, p. 73; D-0529: T-189, pp. 7-8; D-0605: T-194, p. 74. *See also* P-0099: T-145, p. 19; D-0202: T-204, pp. 41-42; P-0984: T-068, p. 63; P-0638: T-057, pp. 63-64.

<sup>1999</sup> For the factual findings on this case, the Chamber relies primarily on the evidence of the following witnesses which it finds particularly reliable: (i) D-0213, who was present shortly after the event took place and spoke with the girl as well as her family, and was also present at the BMS when the suspect was identified; (ii) P-0582, who was present during the initial interrogation of the suspect at the BMS and when the punishment was carried out; (iii) P-0150, who was aware of the incident and the proceeding before the Islamic Court. The Chamber also relies on Mr Al Hassan’s statement, in which he described being present during the suspect’s interrogation at the BMS as well as during his public flogging.

night, in August 2012,<sup>2000</sup> Abou Boccar,<sup>2001</sup> a member of the Islamic Police,<sup>2002</sup> had sexual intercourse with a girl after pointing at her with his weapon and threatening to take her to the Islamic Police station.<sup>2003</sup> Once they were informed of the event, members of Ansar Dine/AQIM arranged for the girl to be transported to the hospital,<sup>2004</sup> before taking her to the BMS, the then headquarters of the Islamic Police, in order to identify the individual who raped her among all of the members of the Islamic Police.<sup>2005</sup> The girl twice identified Abou Boccar as the person who raped her, and he was then arrested.<sup>2006</sup> Mr Al Hassan was actively involved in the investigation and notably participated with the emir of the Police in the questioning of the girl and of Abou Boccar at the BMS.<sup>2007</sup> Mr Al Hassan, who came from the same region as the girl and therefore ‘underst[ood] the mentality’, listened and talked to her and was very angry that day.<sup>2008</sup> The Police drafted a report on the case which was then sent to the Islamic Court.<sup>2009</sup> According to Mr Al Hassan, this was the only complaint of rape that was received by the Police and apart from that case, he did not hear of any other cases of

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<sup>2000</sup> The Chamber notes document MLI-OTP-0003-0195-R02, at 0196, which refers to a rape committed by an ‘Islamist’ police officer in Abaradjou on 20 August 2012 and states that the Police officer was in detention and awaiting trial. The Chamber also takes note of List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063, which refers at number 20 to Abu-Bakr Diku, with the date of imprisonment 21 August 2012 for adultery, and whom P-0150 identified as the same person as the Police officer sentenced for extra-marital intercourse (*see* P-0150: T-097, pp. 21-25). In light of these elements and the evidence mentioned below, the Chamber finds that the incident took place in August 2012.

<sup>2001</sup> Several witnesses referred to a person named ‘Boccar’ (*see* D-0213: T-197, p. 26), ‘Bocar’ (*see* P-0654: T-128, p. 92), ‘Abu-Bakr Diku’ (*see* P-0150: T-097, p. 24) or ‘Abou Baccar Burkinabi’ (*see* Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0477), all referring to a member of Ansar Dine/AQIM accused of raping a girl. The relevant judgment from the Islamic Court refers to the individual as ‘Boubakr Birkina’. From the witnesses’ description and on the basis of the facts described in the Islamic Court judgment, the Chamber is of the view that the differences in the name are mere spelling or interpretation differences and all referred to the same person, whom the Chamber refers to in the present judgment as ‘Abou Boccar’.

<sup>2002</sup> D-0213: T-197, pp. 26, 31-32, 34; Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0477-0478; P-0150: T-097, p. 24.

<sup>2003</sup> D-0213: T-197, pp. 25-29; Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0477-0478; P-0150: T-097, pp. 24-25; Islamic Court judgment MLI-OTP-0001-7483, translation MLI-OTP-0077-2254.

<sup>2004</sup> D-0213: T-197, pp. 26, 29-31; Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0478.

<sup>2005</sup> D-0213: T-197, pp. 26, 29-32; Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0478. *See also* P-0582’s statement MLI-OTP-0062-3788-R02, at 3814.

<sup>2006</sup> D-0213: T-197, pp. 31-32, 34; Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0478-0479. *See also* P-0582’s statement MLI-OTP-0062-3788-R02, at 3814.

<sup>2007</sup> D-0605: T-193, pp. 37, 40-41, 44-47; T-195, pp. 92-93; P-0582’s statements MLI-OTP-0062-3788-R02, at 3813-3815; MLI-OTP-0062-3872-R02, at 3887-3888; MLI-OTP-0062-3820-R02, at 3823-3824; MLI-OTP-0062-4117-R02, at 4135. *See also* Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0479.

<sup>2008</sup> D-0605: T-193, pp. 37, 40-41.

<sup>2009</sup> P-0582’s statement MLI-OTP-0062-3872-R02, at 3887-3888. *See also* D-0605: T-195, pp. 92-93.

rape.<sup>2010</sup>

679. Abou Boccar was detained at the Central Prison,<sup>2011</sup> from where he escaped at one point together with a member of the population who was also detained, but they were caught and re-imprisoned.<sup>2012</sup> When Abou Boccar escaped, the emirs undertook extensive efforts to capture him – including by offering a reward, which was announced on the radio –, as they feared being accused of helping him escape because he was a member of Ansar Dine/AQIM and they wanted to make sure that he be punished to show that they were ‘not discriminatory in the enforcement of God’s verdicts’.<sup>2013</sup>
680. On 27 August 2012, in a judgment in case 08/1433-2012, the Islamic Court sentenced Abou Boccar to receive a *hadd* of 100 lashes and to be banished (by means of imprisonment) for one year.<sup>2014</sup> The judgment provides that the Islamic Court heard Abou Boccar’s oral statement, in which he admitted that while he was armed and after threatening the girl to take her to the Islamic Police station at a late hour of the night, he had committed extra-marital sexual intercourse; the Islamic Court added that this was evidence in support of the girl’s claim that she was raped.<sup>2015</sup> The Islamic Court further found that the girl was not to receive a *hadd* ‘on the basis of suspicion that she was coerced’ to have sexual intercourse.<sup>2016</sup>

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<sup>2010</sup> Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0477, 0481.

<sup>2011</sup> Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0479; P-0582’s statement MLI-OTP-0062-3872-R02, at 3889. *See* paragraph 561 above.

<sup>2012</sup> P-0654: T-128, pp. 91-93; T-134, pp. 46-49; Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0479; P-0582’s statements MLI-OTP-0062-3788-R02, at 3815-3817; MLI-OTP-0062-3872-R02, at 3889-3890. *See also* D-0213: T-097, pp. 34-35. *See also* paragraph 820 below.

<sup>2013</sup> P-0150: T-090, p. 15; D-0213: T-197, pp. 34-35; P-0582’s statement MLI-OTP-0062-3788-R02, at 3816-3817.

<sup>2014</sup> Islamic Court judgment MLI-OTP-0001-7483 (signed and stamped), translation MLI-OTP-0077-2254. *See also* other versions of the same document MLI-OTP-0002-0053 (signed and stamped), translation MLI-OTP-0078-0280; and MLI-OTP-0053-0168 (signed and stamped), translation MLI-OTP-0077-2229. P-0150 identified this last document as the judgment of the *Sharia* court of Timbuktu on Boubakr from Burkina Faso or Abu-Bakr Diku and recognised the signature of Houka Houka at the bottom (P-0150: T-097, pp. 23-24). On the authentication of the judgment in this case, *see also* the Chamber’s findings in section II.D.4 above. *See also* P-0150: T-097, p. 26; Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0479-0480.

<sup>2015</sup> Islamic Court judgment MLI-OTP-0001-7483, translation MLI-OTP-0077-2254. *See also* P-0150: T-111, p. 25.

<sup>2016</sup> Islamic Court judgment MLI-OTP-0001-7483, translation MLI-OTP-0077-2254; P-0150: T-097, pp. 26-27; T-111, pp. 25-26. *See also* P-0626: T-142, pp. 63-64.

681. The Chamber received evidence on the reasoning of the judges in this case. When asked to comment on the judgment, P-0150 confirmed that Abou Boccar ‘was accused of rape but not convicted of rape’.<sup>2017</sup> P-0150 stated that the case was discussed by the Islamic Court as being a case of ‘*zina* by coercion’,<sup>2018</sup> that ‘the notion [...] of rape [was not] discussed’ and that ‘the term “rape” was neglected’ in the case.<sup>2019</sup> He added that the judges did not ‘take into account the question of rape, but [...] used coercion to spare the woman’,<sup>2020</sup> in order not to apply to her a sentence of *hadd* which would normally be applied for cases of adultery.<sup>2021</sup>

682. P-0150 notably stated the following:

In this case the judges focused only on the extramarital intercourse [...]. As for the fact that he was carrying weapons and that he threatened the girl, the court was not concerned about that because this was the daily practice of the members of the group. And this person belonged to the police and he had the opportunity to go in a patrol by himself and he found a woman. Usually the police patrols, when they see a woman in a late hour of the night, they either tell her off or take her back to her place, or sometimes take her to the police station. And this person threatened the woman to take her to the police station. And we think that he raped her or maybe reached an agreement with her to have sex with her, then leave her and not take her to the police station. At the end the court focused only on proving that this person raped the woman as she claimed because it was the woman who came to the court and filed a complaint.<sup>2022</sup>

683. Asked to elaborate as to what he meant when he said that the Islamic Court was not concerned about the fact that Abou Boccar was armed, P-0150 added:

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<sup>2017</sup> P-0150: T-097, pp. 29-30.

<sup>2018</sup> P-0150: T-111, pp. 27-28. Concerning the jurisprudence related to ‘*zina* by coercion’, see P-0150: T-111, pp. 28-29. When asked what would the punishment be for a man committing rape under Islamic law, P-0150 replied the following: ‘If we look at rape from an Islamic point of view it means coercing a woman [...] to commit *zina* or intercourse. Whether this coercion comes from the woman or the man, it works on both sides. But the factor that is considered in *Sharia* is that the person who is coerced to participate in such act should not be punished. But the judge has got the right to use *ta’zir*, that is appropriate with using force against someone else, and this can be a separate judgment to the extramarital intercourse judgment’ (P-0150: T-097, p. 30). P-0150 explained that the members of Ansar Dine/AQIM applied the Islamic jurisprudence ‘from its beginning’ and that under this conception, rape was a form of coercion and that the sentence was left to the discretion of the judges (P-0150: T-111, p. 26). P-0150 also stated: ‘the term “rape” is not defined in Islamic *Sharia* in the chapter concerning sexual relations. It has a separate chapter where it concerns coercion, to coerce a woman or her body. So it wasn’t defined in the [*Quran*] or in the *Hadith*. And the judges are free — or it is up to them to decide on a judgment in a similar case’ (P-0150: T-111, pp. 25-26). See also T-111, p. 24.

<sup>2019</sup> P-0150: T-111, pp. 25, 27-28.

<sup>2020</sup> P-0150: T-111, p. 26.

<sup>2021</sup> P-0150: T-097, p. 29; T-111, p. 26.

<sup>2022</sup> P-0150: T-097, pp. 24-25.

[...] the police and the *Hesbah* carried arms in the streets and they threatened everyone who did not abide by the rules. And being outside at this late hour of the night was considered a violation of the rules, so carrying weapons was not considered a crime but it was evidence that she was coerced.<sup>2023</sup>

684. Public announcements were made on the radio and via a megaphone at the site of punishment,<sup>2024</sup> explaining that a member of Ansar Dine/AQIM ‘wanted to abuse’ a girl, that the girl had complained against the ‘combatant’, and that the groups’ member would be punished in an impartial way.<sup>2025</sup> Abou Boccar was flogged in public,<sup>2026</sup> receiving 50 lashes respectively from Abou Zhar and from another member of Ansar Dine/AQIM in turn,<sup>2027</sup> in the presence of the civilian population of Timbuktu, as well as notably members of the *Hesbah* and the Islamic Police, including Mr Al Hassan.<sup>2028</sup> Ansar Dine/AQIM also awarded financial compensation to the victim.<sup>2029</sup>

#### **b) Rules on alcohol**

685. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0638,<sup>2030</sup> an inhabitant of Timbuktu who was arrested, detained and flogged for drinking alcohol by Ansar Dine/AQIM in Timbuktu in 2012; P-0065,<sup>2031</sup> who witnessed the destruction of bars by Ansar Dine/AQIM in Timbuktu in 2012; and D-0529,<sup>2032</sup> a member of Ansar Dine/AQIM who received teaching on the ideology of the groups. The Chamber also relies on video recording MLI-OTP-0001-6931 related to the destruction of alcohol by members of Ansar Dine/AQIM in Timbuktu in 2012.

<sup>2023</sup> P-0150: T-097, p. 27. *See also* T-097, pp. 29-30.

<sup>2024</sup> P-0582’s statement MLI-OTP-0062-3872-R02, at 3890, 3892; P-0654: T-134, pp. 48-49.

<sup>2025</sup> P-0654: T-134, p. 49.

<sup>2026</sup> P-0654: T-134, pp. 48-49; Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0480; P-0582’s statements MLI-OTP-0062-3820-R02, at 3828-3829; MLI-OTP-0062-3872-R02, at 3890-3891.

<sup>2027</sup> P-0582’s statements MLI-OTP-0062-3820-R02, at 3828-3829; MLI-OTP-0062-3872-R02, at 3893-3894.

<sup>2028</sup> Mr Al Hassan’s statement MLI-OTP-0051-0457, at 0480; P-0582’s statement MLI-OTP-0062-3872-R02, at 3891-3892, 3894-3895.

<sup>2029</sup> D-0605: T-193, pp. 37, 41; P-0582’s statement MLI-OTP-0062-3788-R02, at 3815.

<sup>2030</sup> The Chamber refers to its findings on the credibility and reliability of P-0638’s evidence (*see* section II.B.2.a)vi above).

<sup>2031</sup> The Chamber refers to its findings on the credibility and reliability of P-0065’s evidence (*see* section II.B.2.a)i above).

<sup>2032</sup> The Chamber refers its findings on the credibility and reliability of D-0529’s evidence (*see* footnote 1107 above).

686. Ansar Dine/AQIM prohibited the consumption of alcohol as part of the rules they imposed on the population<sup>2033</sup> as well as on members of their groups<sup>2034</sup> during their control of Timbuktu in 2012-2013. Shortly after they took control of Timbuktu, members of Ansar Dine/AQIM started destroying places that sold alcohol and/or their contents.<sup>2035</sup> During one of those events notably, Talha and other members of Ansar Dine/AQIM, including Abou Zhar, violently broke into the locked premises of a place selling alcohol and smashed crates of bottles on the ground while laughing.<sup>2036</sup>
687. Members of Ansar Dine/AQIM carried out inspections at the entry and exit checkpoints of Timbuktu and confiscated alcohol if found.<sup>2037</sup> They also arrested people who disobeyed the rules on the prohibition of alcohol and beat or flogged them, sometimes on the spot.<sup>2038</sup>
688. In this regard, the Chamber heard the story of P-0638 who described his arrest and subsequent flogging by members of Ansar Dine/AQIM for drinking alcohol towards the beginning of the groups' control over Timbuktu.<sup>2039</sup> P-0638 was arrested by members of Ansar Dine/AQIM after he drank alcohol in a bar in

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<sup>2033</sup> P-0065: T-037, p. 27; P-0626: T-141, pp. 51-52; D-0551: T-200, p. 76. *See also* P-0603: T-125, p. 15; P-0639's statement MLI-OTP-0072-0290-R03, at 0296, para. 28; P-0582's statement MLI-OTP-0062-4157-R02, at 4160; D-0093: T-211, p. 44; D-0315: T-186, p. 56; Mr Al Hassan's statement, at MLI-OTP-0051-1067, at 1092-1094. The Chamber notes that the Defence does not contest the existence of a ban on alcohol imposed by Ansar Dine/AQIM during their control of Timbuktu in 2012-2013, but alleges that the ban was supported by the local population ([Defence Final Brief](#), para. 600). However, on this last point, the Chamber notes that the Defence relies on the testimony of witnesses describing their general perception of alcohol in Muslim communities. It also notes that these witnesses were not questioned about the ban on alcohol put into place by Ansar Dine/AQIM and whether it was supported by the population of Timbuktu.

<sup>2034</sup> D-0529: T-189, pp. 48-49.

<sup>2035</sup> Video MLI-OTP-0001-6931, at 00:00:33:00 to 00:01:19:04, transcript MLI-OTP-0056-0581, translation MLI-OTP-0061-1139. This video recording depicts the destruction of a place selling alcohol and its contents by members of Ansar Dine/AQIM in Timbuktu, shortly after they took control of the city in 2012 (*see* P-0065: T-043, pp. 10-11; P-0150: T-092, pp. 38-39); P-0065: T-037, p. 27; T-044, p. 13; P-0654: T-128, pp. 64-65; T-130, p. 46; P-0638: T-058, p. 7. *See also* P-0641: T-139, pp. 21-22; notebook MLI-OTP-0003-0062, at 0105, translation MLI-OTP-0064-0608, at 0652; D-0240's statement MLI-D28-0006-4222-R01, at 4229-4230, paras 26-28.

<sup>2036</sup> Video MLI-OTP-0001-6931, at 00:00:33:00 to 00:01:19:04, transcript MLI-OTP-0056-0581, translation MLI-OTP-0061-1139. On this video, *see* P-0065: T-043, pp. 10-11; P-0150: T-092, pp. 38-39.

<sup>2037</sup> D-0202: T-203, pp. 94-95; D-0529: T-189, pp. 51-52, 57; P-0626: T-141, pp. 18-20.

<sup>2038</sup> P-0150: T-097, pp. 9-10, *referring to* notebook MLI-OTP-0001-7356 (left-hand side of document), translation MLI-OTP-0034-0061; T-107, pp. 36-38, *referring to* document MLI-OTP-0010-0088, at 0099, translation MLI-OTP-0024-0015, at 0044-0045; P-0065: T-037, p. 27; P-0654: T-134, p. 23; D-0605: T-194, p. 77; T-195, p. 27. *See also* P-0603: T-125, p. 22; D-0202: T-203, pp. 95-97.

<sup>2039</sup> *See* P-0638: T-057, pp. 53-54. As to the timing of the event, *see* section II.B.2.a)vi, in particular paragraph 227, above.

Timbuktu and was seen carrying bottles of wine on his way home.<sup>2040</sup> He was taken to the BMS where he remained for around four days,<sup>2041</sup> without knowing why or what would happen to him,<sup>2042</sup> and felt afraid there.<sup>2043</sup> He was eventually transferred to the *Hôtel La Maison*,<sup>2044</sup> where he was told that he would receive 40 lashes because he drank alcohol, and was flogged right away by members of Ansar Dine/AQIM,<sup>2045</sup> before being released.<sup>2046</sup>

### c) Rules concerning women

689. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds reliable: P-0150<sup>2047</sup> and P-0626,<sup>2048</sup> two members of Ansar

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<sup>2040</sup> P-0638: T-057, pp. 52-53; T-058, pp. 33-36. P-0638 testified that the bar was located ‘beside the stadium, close to the energy building’ (P-0638: T-058, p. 33). P-0638 testified that, while he was walking along the side of the road, in front of the stadium, a car with a black flag and coated with ‘reddish’ or ‘yellowish’ sand came out of the Mali energy building and stopped him (P-0638: T-058, p. 34). P-0638 had never seen the car before (P-0638: T-058, p. 34). P-0638 testified that there were four people in the car, including ‘Omar’ Ould Hamaha, who told him to throw the bottles away and, at the back, ‘Islamist’ children around 14-15 years old with Kalashnikovs (P-0638: T-057, p. 53; T-058, pp. 34-35, 38-39). According to P-0638, they were wearing the Islamic clothing, yellow garments, and some of them were wearing military trousers (P-0638: T-058, p. 36). Independently of P-0638’s identification of the person he named ‘Omar’ Ould Hamaha, the Chamber is satisfied that, based on the witness’s detailed description of these events – including relevant details above –, the persons who arrested P-0638 were members of Ansar Dine/AQIM.

<sup>2041</sup> P-0638: T-057, pp. 53-54; T-058, pp. 36, 39-42. The Chamber further observes that, during his detention at the BMS, P-0638 notably saw Adama and ‘Boubacar’ there (P-0638: T-057, p. 54; T-058, p. 45).

<sup>2042</sup> P-0638: T-058, pp. 36-37, 42-44. P-0638 did not know that it was prohibited to drink alcohol and did not know why he was taken to the BMS (P-0638: T-058, pp. 36-37, 42). P-0638 stated that he heard that it was prohibited later, when it was announced that ‘jihad has begun and if they found someone who drank alcohol, they would be whipped’ (P-0638: T-058, pp. 36-37). According to P-0638, nobody told him why he was arrested or questioned him because ‘Omar’ Ould Hamaha took him there [i.e. the BMS] and brought the proof of P-0638’s consumption of alcohol (P-0638: T-058, pp. 43-44). P-0638 testified that he was not asked to sign any document because at that time there was no signed documentation, the documents were created afterwards, when ‘they’ had set themselves up (P-0638: T-058, p. 44).

<sup>2043</sup> P-0638: T-058, pp. 42-43.

<sup>2044</sup> P-0638: T-057, p. 54; T-058, pp. 46-49. P-0638 testified that Adama and ‘Boubacar’ put him in a car and that he was taken with other people to the *Hôtel La Maison* (P-0638: T-057, p. 54; T-058, pp. 46-48). P-0638 stated that he learnt their names because he heard colleagues call them (P-0638: T-058, p. 45). P-0638 testified that he did not know the people with whom he was in the car and that they were armed (P-0638: T-058, pp. 47-48). The Chamber further notes that P-0638 described with great details the location of the *Hôtel La Maison* (P-0638: T-058, pp. 48-49). In light of the aforementioned and the other evidence in the case, the Chamber considers that P-0638 was taken to the seat of the Islamic Court (*see* paragraph 595 above).

<sup>2045</sup> P-0638: T-057, p. 54; T-058, pp. 50-51, 54-55.

<sup>2046</sup> P-0638: T-057, p. 54; T-058, p. 55.

<sup>2047</sup> The Chamber refers to its findings on the credibility and reliability of P-0150’s evidence (*see* section II.B.2.a)iii above).

<sup>2048</sup> The Chamber refers to its findings on the credibility and reliability of P-0626’s evidence (*see* section II.B.2.a)v above).



Dine/AQIM who described the rules concerning women and the way they were applied by Ansar Dine/AQIM in Timbuktu in 2012-2013; and P-0065,<sup>2049</sup> who was present in Timbuktu during the relevant period and had a direct and close professional relationship with Ansar Dine/AQIM. The Chamber also relies on the evidence of female inhabitants of Timbuktu who testified about how they experienced their everyday life under the control of Timbuktu by the armed groups. In addition, the Chamber relies on videos recordings MLI-OTP-0015-0495, MLI-OTP-0018-0483 and MLI-OTP-0018-0488, and Abou Zeid's Instructions MLI-OTP-0001-7193 and MLI-OTP-0001-7194.

690. As part of the rules Ansar Dine/AQIM imposed on the population during their control of Timbuktu in 2012-2013, women were subjected to various restrictions linked to their appearance and their circulation in the public space.

691. Abou Zeid decided to make 'clothing in accordance with *Sharia*' available to the population, and sent someone to Algeria to bring back religious *Sharia*-compliant *hijabs*.<sup>2050</sup> Al Mahdi, who was the head of the *Hesbah* at the time, however refused to accept the merchandise as the clothing they were able to obtain was not deemed adequate in light of the temperatures of Timbuktu.<sup>2051</sup>

692. Because the population did not have the means to obtain this specific clothing,<sup>2052</sup>

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<sup>2049</sup> The Chamber refers to its findings on the credibility and reliability of P-0065's evidence (*see* section II.B.2.a)i above).

<sup>2050</sup> P-0150: T-102, p. 12.

<sup>2051</sup> P-0150: T-102, p. 12.

<sup>2052</sup> Video MLI-OTP-0018-0488, transcript MLI-OTP-0031-0444, translation MLI-OTP-0031-0446, which depicts an interview filmed around the end of September or beginning of October 2012 (*see* P-0150: T-102, pp. 10-12), in which Al Mahdi is notably seen stating: '[w]e the police asked women of the town to wear clothing in accordance with *Sharia* when they left to go to work, when they left their houses to go to work. But unfortunately, we don't have the means to make available dress in accordance with *Sharia* in its doctrinal concept 100 per cent. The people do not have the means to obtain clothing in accordance with *Sharia*, and that is why we have only asked women to wear a covering object. That is to say, to wear what they have as a covering object. The situation can be resumed as follows, if God so wishes, until such time as dress in accordance with *Sharia* in its doctrinal concept is available'; P-0608: T-155, pp. 19-20). The Chamber notes that P-0150 explained that the 'jihadists' views regarding women and outfits are laid out in this interview, as well as 'the stamps of the police and the *Hesbah* on the matter'. P-0150 testified that the remarks began with the word 'we', referring to the 'jihadists occupying Timbuktu' (P-0150: T-102, pp. 12-13). He further explained that the statement was made on behalf of the emirate, Abou Zeid, who was above the Police level; this is why, although a member of the *Hesbah* – Al Mahdi – is giving this speech, the expression 'we the police officers' is used (P-0150: T-108, pp. 37-38). *See also* video MLI-OTP-0009-1749, transcript MLI-OTP-0028-0839, at 00:07:16:20 to 00:08:09:17, which notably depicts a member of the population complaining that poor families have to take credits to buy the veil that they require women to wear.

a flexible approach was recommended under Al Mahdi's leadership of the *Hesbah* in particular: it involved requiring women to cover their heads while allowing them to dress themselves in whatever covering clothing was available in Timbuktu.<sup>2053</sup>

693. Witnesses testified about the specific type of clothing women were required to wear, with some mentioning the wearing of *hijab*,<sup>2054</sup> *abaya*,<sup>2055</sup> gloves,<sup>2056</sup> and black robes or veils that would only show the eyes.<sup>2057</sup> The evidence is not conclusive that Ansar Dine/AQIM explicitly required the wearing of all these particular items of clothing as a general policy throughout the whole period of the control of Timbuktu by the armed groups. In addition, it is unclear to the Chamber if these witnesses were referring to a particular period of the armed groups' control of the city or to the entire period. The Chamber finds that there was a perception that Ansar Dine/AQIM required women to wear these items.
694. Further, in light of the totality of the evidence on this matter, the Chamber concludes that the dress code requirements continuously imposed by Ansar Dine/AQIM<sup>2058</sup> were *at minimum* the following: outside of their house, all women, as well as girls who had reached puberty,<sup>2059</sup> had to cover their head with

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<sup>2053</sup> P-0065: T-043, p. 4; T-046, p. 44; P-0150: T-092, p. 34; T-102, p. 12; video MLI-OTP-0018-0488, transcript MLI-OTP-0031-0444, translation MLI-OTP-0031-0446, as mentioned above.

<sup>2054</sup> P-0538: T-161, p. 16; P-0608: T-155, pp. 14, 21-22.

<sup>2055</sup> P-0547: T-151, pp. 14-16.

<sup>2056</sup> P-0004: T-165, pp. 20-21; P-0984: T-068, p. 58; P-0608: T-155, pp. 14, 21-22; P-0610: T-159, pp. 23-24, 27-28, referring to video MLI-OTP-0018-0056, at 00:00:00:00 to 00:00:00:18 and 00:00:32:24. See also P-0160: T-066, p. 74; T-067, p. 7; V-0002: T-170, p. 28; P-0622's statement MLI-OTP-0065-0558-R02, at 0564, para. 31.

<sup>2057</sup> P-0654: T-129, p. 31; T-134, pp. 52-55; P-0565: T-052, pp. 13-14; V-0001: T-168, p. 33; P-0638: T-057, p. 67. See also V-0002: T-170, p. 28.

<sup>2058</sup> P-0150: T-094, p. 17; video MLI-OTP-0015-0495, at 00:36:12:00 to 00:37:07:21, transcript MLI-OTP-0033-5189. This excerpt of the video depicts Abou Al Baraa preaching in a mosque in Timbuktu in 2012 and stating that '[TRANSLATION] Our Almighty Lord ordered them to comply with the religious veil. They must not be overly soft in speech, or make their words tender. They must not kick the ground causing their anklets to resound, or display their charms ostentatiously. They must put on their all-body covering robes. [...]' (see also P-0099: T-145, pp. 67-68; T-146, pp. 14-15; P-0150: T-101, pp. 55, 57-58; P-0065: T-043, p. 20). P-0150 explained that Abou Al Baraa was referring to a verse from the *Quran*, in the chapter of An-Nur, to say that women cannot do whatever they want, that they have to be covered and not draw attention to themselves (P-0150: T-101, p. 58). On the existence of a dress code imposed by Ansar Dine/AQIM, see P-0065: T-037, p. 13; P-0538: T-161, p. 15; P-0984: T-068, p. 56; P-0554: T-064, p. 10; document MLI-OTP-0001-7235, translation MLI-OTP-0078-1599. With respect to this document, the Chamber refers to its relevant discussion on posters (see paragraph 477 above).

<sup>2059</sup> P-0065: T-044, p. 13; P-0626: T-143, pp. 30-31. See also P-0654: T-129, pp. 32-35. See also paragraphs 728, 730 below.

a veil<sup>2060</sup> and their entire body<sup>2061</sup> with clothes that were not see-through and which did not show the shape of the body, and not use adornment.<sup>2062</sup> The armed groups provided aid to some women to buy such clothing.<sup>2063</sup> As a consequence, and because the armed groups' leaders believed that sleeping outside may lead to people getting naked or revealing parts of their bodies, those who slept in front of their houses in summertime were forced to get inside their homes despite the hot weather.<sup>2064</sup> Christian women had to conform to the same rules regarding the dress code and could not wear any outfit pointing to the Christian faith.<sup>2065</sup>

695. As of September 2012, under his leadership of the *Hesbah*, Mohammed Moussa implemented a more radical approach regarding the dress code for women.<sup>2066</sup> That approach involved a strengthening of the above mentioned rules regarding the covering of the whole body and the head.<sup>2067</sup> In town, some merchants sold the type of clothing required by Mohammed Moussa and were ordered to reduce their profit margin when selling it to women.<sup>2068</sup>

696. Women found in violation of the rules were strongly advised to respect the dress code.<sup>2069</sup> Abou Zeid's Instructions issued on 15 August 2012 stated concerning 'women unveiled in public' that:

(a) [i]f she is accompanied by a man, then the man is to be asked to impose the wearing of the veil upon her. She shall also be informed of the consequences of failing to comply or repeating the act in the future. (b) If the woman is on her own or accompanied by other women, then she is to be informed of the

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<sup>2060</sup> P-0626: T-143, p. 28; P-0004: T-164, p. 16; T-165, pp. 20-21; P-0608: T-153, p. 74; P-0610: T-158, p. 54; P-0114: T-060, p. 19; P-0150: T-090, p. 18; T-102, p. 12, *referring to* video MLI-OTP-0018-0488; T-104, pp. 29-30. *See also* P-0114's statement MLI-OTP-0023-0344-R02, at 0373, para. 128.

<sup>2061</sup> P-0636: T-071, p. 18; P-0984: T-068, p. 58; P-0641: T-137, pp. 14, 53; P-0065: T-037, p. 13; T-044, p. 11. *See also* P-0160: T-066, p. 74; T-067, p. 7; P-0622's statement MLI-OTP-0065-0558-R02, at 0564, para. 31.

<sup>2062</sup> P-0150: T-092, p. 34. *See e.g.* video MLI-OTP-0018-0483, transcript MLI-OTP-0069-0455 (which depicts women, wearing pink veils and no gloves, walking on one of the roads of the Timbuktu market in 2012; *see* P-0065: T-038, p. 54; P-0150: T-094, p. 63; P-0654: T-134, p. 66; P-0160: T-067, pp. 30-31); video MLI-OTP-0018-0056 (which notably depicts women walking and handing out food without wearing gloves in Timbuktu; *see* P-0160: T-067, p. 31; P-0150: T-107, p. 39).

<sup>2063</sup> P-0065: T-037, p. 16. *See also* P-0150: T-104, p. 30.

<sup>2064</sup> P-0150: T-090, pp. 18-19.

<sup>2065</sup> P-0150: T-104, pp. 29-30.

<sup>2066</sup> P-0065: T-037, pp. 15-16; T-043, p. 5; P-0608: T-155, pp. 14-15, *referring to* MLI-OTP-0061-0044.

<sup>2067</sup> P-0150: T-094, p. 13; P-0654: T-129, p. 31; T-134, pp. 52-55; P-0547: T-151, pp. 15-16; P-0603: T-125, p. 47. *See also* P-0602: T-084, p. 78.

<sup>2068</sup> P-0150: T-094, p. 13; P-0603: T-125, p. 47; P-0654: T-134, p. 54.

<sup>2069</sup> P-0065: T-043, p. 4; T-046, p. 44; P-0150: T-110, pp. 21-22; T-112, pp. 46-47.

matter in accordance with the stipulations of the *Sharia*, in addition to the consequences of repeating this act.<sup>2070</sup>

697. The same Instructions stated that ‘(c) [i]n the case of repeated resistance, her guardian is to be notified and if she reoffends afterwards, then the *ta’zir* is to be applied’.<sup>2071</sup> Indeed, when women were considered ‘stubborn’ and did not completely cover their bodies or their head, they could be detained and/or hit.<sup>2072</sup> Under the leadership of Mohammed Moussa, many women who did not comply with the rules were punished and imprisoned,<sup>2073</sup> although Mohammed Moussa’s extreme response to violations was controversial within the armed groups.<sup>2074</sup>

698. The Instructions also stated that:

(d) [i]f an unveiled woman seeks shelter in a house, she may not be followed into that house. The owner of the house, if available, shall be notified of the impermissibility of her act, and they shall request him to give information about her guardian, if he has such information. (e) An unveiled woman in her own home cannot be spoken to.<sup>2075</sup>

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<sup>2070</sup> Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369. The Chamber refers to its findings regarding the authenticity of these documents (*see* footnote 1918 above).

<sup>2071</sup> Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369.

<sup>2072</sup> P-0150: T-102, p. 14. Regarding the *ta’zir* mentioned in Abou Zeid’s Instructions, the Chamber takes note of P-0150’s testimony on this excerpt of the document (P-0150: T-102, p. 14; T-112, pp. 47-48). The Chamber particularly notes that women considered to be ‘unveiled in public’ by members of the armed groups could receive a *ta’zir*, which could take the form of detention or blows (*see* P-0150: T-102, p. 14; *see also* P-0602: T-084, pp. 82-83). On the types of punishments implemented against women who did not comply with the dress code requirements, the Chamber also notes the evidence of P-0065 and P-0626, who both testified that they could not remember or did not witness any punishment against women for not being dressed properly (*see* P-0065: T-037, p. 16; T-044, p. 13; P-0626: T-143, pp. 30-31). The Chamber however considers that the fact that these two men did not remember or witness such punishments is not indicative of what happened at the time in Timbuktu, in light of the other credible and reliable evidence on the matter (*contra* [Defence Final Brief](#), para. 283).

<sup>2073</sup> P-0150: T-094, pp. 13-15; T-102, p. 13, *referring to* video MLI-OTP-0018-0488; P-0557: T-054, pp. 25-28; T-056, pp. 51-54; P-0608: T-153, pp. 78-84; T-154, p. 8; P-0547: T-151, p. 17; T-152, pp. 52-53; P-0565: T-051, pp. 33-34; T-052, p. 14; P-0602: T-084, pp. 80-82; T-085, pp. 39-40; P-0654: T-129, pp. 32-35. Concerning this part of P-0654’s testimony, the Chamber notes that the witness refers to an incident where women were arrested by a patrol led by Mohammed Moussa in June 2012. The Chamber however refers to its previous finding that Mohammed Moussa became the head of the *Hesbah* only later on, in September 2012. In light of this finding, and noting that P-0654 clearly identified Mohammed Moussa as the chief of the patrol and that he was sometimes confused about dates (*see* footnote 2092 below), the Chamber considers that this incident took place under Mohammed Moussa’s leadership of the *Hesbah*. *See also* P-0099: T-145, pp. 39, 40; P-0582’s statement MLI-OTP-0065-0602-R02, at 0603-0613. *See* the Chamber’s findings in the cases of Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547).

<sup>2074</sup> *See* section C.4.a)ii.b above.

<sup>2075</sup> Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369.

699. Throughout the whole period relevant to the charges, members of Ansar Dine/AQIM patrolled the city daily to control the correct implementation of the dress code of women.<sup>2076</sup> Members of the *Hesbah* notably preached in the streets and on the radio regarding the way women should dress.<sup>2077</sup>
700. Once, under Al Mahdi's leadership of the *Hesbah*, armed members of the *Hesbah* entered the hospital to look for women not dressed correctly but, following complaints from the doctors, Abou Zeid issued a warning that *Hesbah* members should not go into the hospital.<sup>2078</sup> However, it is not clear to the Chamber whether this warning was complied with.<sup>2079</sup>
701. There were also cases of women being chased inside their houses by Ansar Dine/AQIM for not covering their head.<sup>2080</sup> On the 27<sup>th</sup> day of Ramadan, in August 2012, members of Ansar Dine/AQIM flogged women and chased at least one of them into her house for allegedly violating the dress code.<sup>2081</sup>
702. Beside the dress code, other aspects of women's lives were regulated. Ansar Dine/AQIM forbade the use of products such as creams, perfumes and soaps used by women, as well as for women to braid their hair with extensions.<sup>2082</sup> Members of Ansar Dine/AQIM also called upon women to stay at home,<sup>2083</sup> and women

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<sup>2076</sup> P-0150: T-094, p. 60; T-102, p. 13, referring to video MLI-OTP-0018-0488; P-0065: T-037, p. 15; T-044, p. 12; D-0529: T-189, pp. 10-11; P-0547: T-151, pp. 14-16. See also paragraphs 573-574, 576 above.

<sup>2077</sup> P-0150: T-101, pp. 54-55, referring to video MLI-OTP-0009-1749, transcript MLI-OTP-0028-0839, at 00:07:16:20 to 00:08:09:17; T-102, p. 5; D-0529: T-189, pp. 10-11.

<sup>2078</sup> P-0150: T-117, pp. 30-34.

<sup>2079</sup> P-0150: T-117, p. 31.

<sup>2080</sup> P-0150: T-092, pp. 33-35; P-0654: T-129, pp. 31-35; P-0004: T-165, p. 33. See also P-0125's statement MLI-OTP-0023-0004, at 0025, para. 99. It is not clear to the Chamber whether the cases discussed by witnesses in this footnote all took place before or after Abou Zeid issued his Instructions.

<sup>2081</sup> P-0004: T-164, p. 76; T-165, pp. 32-34; D-0213: T-197, pp. 14-18; P-0547: T-152, pp. 18-20. See also P-0654: T-128, p. 20; Mr Al Hassan's statement MLI-OTP-0051-0483, at 0501; MLI-OTP-0051-1213, at 1218-1220.

<sup>2082</sup> P-0984: T-068, p. 52; T-069, p. 5; P-0565: T-051, p. 13; T-052, p. 4. See also P-0160: T-066, p. 74; T-067, pp. 7-8; P-0065: T-044, p. 13.

<sup>2083</sup> Video MLI-OTP-0015-0495, at 00:36:12:00 to 00:37:07:21, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288; P-0150: T-116, pp. 50-51. The excerpt of the video depicts Abou Al Baraa preaching in a mosque in Timbuktu in 2012 and stating, with respect to women, '[TRANSLATION] [...] What does our Lord tell them? He tells them: "Abide in your homes and flaunt not your charms as they did flaunt them in the prior Age of Ignorance." Today, may God spare us, the secularists and those consumed with self-indulgence and aberrance are saying about "abide in your homes", I mean they are commenting on our Lord's words, may God spare us, they say that it means an imprisonment of women, a restriction of women, an uprooting of women's liberties, and that women are hence deprived of freedom.

who went out alone after a certain time at night were considered ‘suspicious’ and could be arrested.<sup>2084</sup>

703. Although Ansar Dine/AQIM did not explicitly forbid women from going to the market or working,<sup>2085</sup> women feared going outside and, in their everyday life, the sight of members of the armed groups scared them.<sup>2086</sup> Because of their fear, women drastically reduced how frequently they went outside and attended social gatherings; some women no longer left their home.<sup>2087</sup> Women described how

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Do they know better, or does God?’ (see also P-0099: T-145, pp. 66-68; T-146, pp. 14-15; P-0150: T-101, pp. 55, 57-58; P-0065: T-043, p. 20). Concerning the statement ‘abide in your homes’, P-0150 explained that Abou Al Baraa referred to a verse from the *Quran*, in the chapter of Al-Ahzab, and testified that it was a restriction to the freedom of women and a form of imprisonment (P-0150: T-101, p. 58). P-0150 added that, in the video recording, one of the preachers of the group explained this verse from the *Quran* and requested that this verse be applied in Timbuktu to call upon women to stay at home (P-0150: T-116, pp. 50-51). See also P-0608: T-125, p. 18; P-0099: T-146, p. 34.

<sup>2084</sup> P-0150: T-102, pp. 15-16, referring to Abou Zeid’s Instructions MLI-OTP-0001-7194, translation MLI-OTP-0077-2369; T-102, p. 13; P-0602: T-084, pp. 83-84; P-0608: T-153, pp. 75, 77-78; T-155, pp. 12-13, referring to document MLI-OTP-0061-0044. See paragraphs 682-683 above. The Chamber notes the Defence argument that ‘[t]he prohibition on working at night applied to men as well as women, as did the restrictions on circulating late at night’ ([Defence Final Brief](#), para. 588, referring to P-0150: T-102, pp. 9-10, 15-16). The Chamber however considers that the evidence mentioned by the Defence does not support the fact that men were *per se* restricted in their ability to work or to circulate at night, and is unable to make such a finding on the basis of the evidence before it. As mentioned in this footnote, the Chamber has however received evidence showing that, by being outside alone after a certain time at night, women were automatically considered ‘suspicious’.

<sup>2085</sup> D-0315: T-185, p. 32; P-0150: T-107, pp. 38-40; D-0605: T-194, pp. 26-28; D-0211: T-190, pp. 55-56; Video MLI-OTP-0018-0483, transcript MLI-OTP-0069-0455 (which depicts women, wearing pink veils and no gloves, walking on one of the roads of the Timbuktu market in 2012; see P-0065: T-038, p. 54; T-046, p. 53; P-0150: T-094, p. 63; P-0654: T-134, p. 66; P-0160: T-067, pp. 30-31); Video MLI-D28-0006-3315, at 00:00:00:16 to 00:00:04:48 (see D-0211: T-190, pp. 53, 55; D-0512: T-181, pp. 22-23). See also P-0638: T-057, p. 71; D-0512’s statement MLI-D28-0006-2611-R01, at 2616, para. 31.

<sup>2086</sup> P-0608: T-153, pp. 74-75; P-0554: T-064, p. 11; P-0639: T-136, p. 24; P-0602: T-084, pp. 80-83; V-0002: T-169, p. 84; T-170, pp. 27, 29; P-0065: T-037, p. 15; T-044, p. 12. See also video MLI-OTP-0018-0482, transcript MLI-OTP-0069-0473 (see P-0065: T-038, p. 44). The individual in the video states the following: ‘[TRANSLATION] When it comes to the new [phon.] rules that are being applied to women, my point of view is essentially this. I’m a native of Timbuktu, a Muslim, and I genuinely want women to be genuinely well dressed. But when it comes to ... in order for ... the women are being harassed here – because the women are even being harassed now. Just at the sight of someone with a weapon, or holding a whip, a woman may flee. That also isn’t right. Honestly, it’s too much, it’s over the top. And there are families where the woman – even if she’s among family, wearing a T-shirt – if someone goes by who’s armed, just that, at the sight of that, she’ll be frightened. She’ll throw ... even if she has a cup, she’ll throw on the ground, it’s too much’ (transcript MLI-OTP-0069-0473). See also P-0582’s statement MLI-OTP-0062-4157-R02, at 4161.

<sup>2087</sup> P-0554: T-064, p. 11; P-0608: T-153, pp. 74-75; P-0654: T-130, pp. 58-59; V-0002: T-169, p. 84; T-170, p. 29; P-0639: T-136, p. 24. On this, and the impact on women, see [LRVs Final Brief](#), notably paras 214-215 and 240-241. V-0002 (see V-0002: T-169 to T-170), a Muslim Songhai woman, is responsible for the [REDACTED], and is the president of an association, [REDACTED], which is a participating victim in the proceedings. The witness is also [REDACTED], amongst being affiliated with other similar associations at a domestic and international level (V-0002: T-069, pp. 70-74). V-0002 was present in Timbuktu when the ‘jihadists’ arrived, but fled the city within a week of the ‘occupation’ because, as a women’s activist, she was scared. She returned to Timbuktu in 2013 just after the city was ‘freed’ (V-0002: T-169, pp. 83-84, 86). V-0002 mainly testified about her activities with local associations and her

they did not go out much to avoid ‘problems’, fearing they might be arrested and sanctioned,<sup>2088</sup> and testifying that ‘whatever you did, the way that you covered your body, they always found something to say that you hadn’t totally covered your body’.<sup>2089</sup> This had consequences on the ability of women to earn money.<sup>2090</sup>

#### d) Rules on tobacco

704. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0638<sup>2091</sup> and P-0654,<sup>2092</sup> two inhabitants of Timbuktu who were smokers at the time; P-0150<sup>2093</sup> and D-0529,<sup>2094</sup> two members of Ansar Dine/AQIM who described the prohibition on tobacco and the

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interactions with victims. The Chamber observes that the witness’s evidence was generally coherent and precise. The Chamber notes that V-0002 clearly explained the means by which she gathered information, noting that she had private meetings with individuals where she listened to the person in a closed space, as well as meetings involving multiple women where they could collectively share their experiences (V-0002: T-169, pp. 91-92; T-170, pp. 15-16). As to the objectives of the association with which V-0002 was affiliated, she noted that it sought to gather together women from all ethnic groups to facilitate social cohesion and lasting peace, [REDACTED] (V-0002: T-169, pp. 77, 79-80; T-170, p. 7). The witness emphasised, however, that women were never encouraged to attend group meetings by the prospect of receiving money (V-0002: T-170, p. 17). The Chamber further observes that although V-0002 acknowledged she is not a legal expert (V-0002: T-170, p. 8; [Defence Response Brief](#), para. 101), she [REDACTED] (V-0002: T-170, pp. 8-9). The witness also openly acknowledged that part of her work involved helping identify women who might be able to become *partie civile* in criminal proceedings (V-0002: T-170, p. 18). The Chamber takes note of D-0514’s evidence that V-0002 was known to ‘propagate rumors’ and was the ‘lynchpin for building cases’ ([Defence Response Brief](#), para. 101, *referring to* D-0514: T-208, pp. 29, 31), but absent further details does not consider this undermines the credibility or reliability of V-0002’s evidence. The Chamber similarly dismisses the Defence’s entirely speculative assertion that V-0002’s evidence must be treated with caution given the inference that her testimony was directed towards seeking a financial advantage for her association ([Defence Response Brief](#), para. 102). While the Chamber remains cognisant that V-0002’s evidence of the experience of the population during the period of Ansar Dine/AQIM’s control of Timbuktu is largely based on information she received from women following her return to the city (V-0002: T-170, pp. 4-5; *see* [Defence Response Brief](#), para. 101), the Chamber does not consider this impacts the overall credibility or reliability of her evidence on the topics about which she testified. Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds V-0002 to be a generally credible and reliable witness, although remains cognisant of the foregoing considerations in assessing her evidence. The Chamber notes that this is a general assessment of the witness’s testimony and that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate.

<sup>2088</sup> P-0608: T-153, pp. 74-75.

<sup>2089</sup> P-0554: T-064, p. 11.

<sup>2090</sup> V-0002: T-169, pp. 90, 93-94.

<sup>2091</sup> The Chamber refers to its findings on the credibility and reliability of P-0638’s evidence (*see* section II.B.2.a)vi above).

<sup>2092</sup> The Chamber refers to its findings on the credibility and reliability of P-0654’s evidence (*see* footnote 1503 above).

<sup>2093</sup> The Chamber refers to its findings on the credibility and reliability of P-0150’s evidence (*see* section II.B.2.a)iii above).

<sup>2094</sup> The Chamber refers to its findings on the credibility and reliability of D-0529’s evidence (*see* footnote 1107 above).

way it was applied by Ansar Dine/AQIM in Timbuktu in 2012-2013; P-0608,<sup>2095</sup> who, during one of her visits in Timbuktu in 2012, saw the inspections carried out at the market by members of Ansar Dine/AQIM; and P-0603,<sup>2096</sup> an inhabitant of Timbuktu who personally witnessed several people arrested and/or flogged for smoking cigarettes. The Chamber also relies on video recordings relating to the burning of tobacco by members of Ansar Dine/AQIM in Timbuktu in 2012.<sup>2097</sup>

705. Although Abou Zeid doubted the need to exercise prohibitions in relation to matters which were the subject of debate among Muslim scholars,<sup>2098</sup> Ansar Dine/AQIM prohibited the consumption and sale of tobacco as part of the rules they imposed on the population<sup>2099</sup> as well as on members of their groups<sup>2100</sup> during their control of Timbuktu in 2012-2013. Members of Ansar Dine/AQIM carried out inspections for prohibited items at the market and in shops.<sup>2101</sup> They also carried out inspections at the entry and exit checkpoints of the city and confiscated cigarettes if they were found.<sup>2102</sup>

706. Nevertheless, people continued to sell and to smoke cigarettes in secret,<sup>2103</sup> using

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<sup>2095</sup> The Chamber refers to its findings on the credibility and reliability of P-0608's evidence (*see* footnote 2198 below).

<sup>2096</sup> The Chamber refers to its findings on the credibility and reliability of P-0603's evidence (*see* footnote 2286 below).

<sup>2097</sup> MLI-OTP-0018-0685, MLI-OTP-0018-0475 and MLI-OTP-0015-0495.

<sup>2098</sup> P-0150: T-100, pp. 11-12; T-112, pp. 44-45. P-0150 explained that there were discussions among scholars on the prohibition on tobacco and 'tabaka', in addition to narcotics, and that Abou Zeid himself doubted that he needed to exercise prohibitions on things subject of debates among other scholars (P-0150: T-100, pp. 11-12). Questioned as to whether it was correct that smoking was not consistent with 'Wahhabist views', P-0150 stated: 'Within all Islamic schools of thought and jurisprudence, smoking is a matter of circumstances. It does not exist in the texts. [...] [S]ome schools of thought like the Wahhabist school, thought it was *haram*. Illicit. [...]' (P-0150: T-112, pp. 44-45). *See also* D-0605: T-194, p. 80.

<sup>2099</sup> P-0638: T-057, pp. 58, 60-61; P-0150: T-090, pp. 18-19; D-0605: T-194, pp. 79-80; P-1086: T-121, pp. 61-63; P-0654: T-128, pp. 64-65; T-130, pp. 42-43. *See also* P-0639's statement MLI-OTP-0072-0290-R03, at 0296, para. 28; Mr Al Hassan's statement MLI-OTP-0051-1067, at 1094-1095; P-0065: T-046, p. 69. With respect to P-0065's testimony that [REDACTED] does not cast doubt on the fact that, as a general rule, Ansar Dine/AQIM prohibited the use of tobacco by the population during their control of Timbuktu in 2012-2013.

<sup>2100</sup> D-0529: T-189, pp. 48-49; document MLI-OTP-0002-0759, translation MLI-OTP-0078-6164 (indicating that the recruit shall 'abstain from sins, such as smoking').

<sup>2101</sup> P-0654: T-128, p. 65; P-0608: T-155, pp. 15-16, *referring to* article MLI-OTP-0061-0044, at 0045. *See also* P-0622's statement MLI-OTP-0065-0558-R02, at 0565-0566, para. 41.

<sup>2102</sup> D-0202: T-203, pp. 94-95; D-0529: T-189, pp. 51-52, 57; P-0626: T-141, pp. 18-20. On this topic, the Chamber also takes note of Abou Zeid's Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369, which notably set out the process to be followed for *Sharia* violations, such as selling or using tobacco.

<sup>2103</sup> P-0638: T-057, p. 60; P-1086: T-121, pp. 61-63. *See also* P-0622's statement MLI-OTP-0065-0558-R02, at 0565, paras 38-40; P-0065: T-046, pp. 68-69.



the code word ‘paracetamol’ to obtain them.<sup>2104</sup> During the patrols of the city, in particular during Al Mahdi’s leadership of the *Hesbah*, members of Ansar Dine/AQIM stopped people who were smoking, took their cigarettes away and advised them with a few words before leaving them.<sup>2105</sup>

707. The ones who were considered ‘stubborn’ and who, despite the initial warnings, continued to sell cigarettes or to smoke, could be arrested, detained and/or beaten or flogged, sometimes directly in the streets.<sup>2106</sup> Some cases involving big packages of tobacco were referred to the Islamic Court.<sup>2107</sup>

708. In any case, members of Ansar Dine/AQIM confiscated and destroyed the cigarettes they found:<sup>2108</sup> notably, at some points during the control of the city, members of Ansar Dine/AQIM, including members of the Islamic Police, burned large amounts of tobacco in the city.<sup>2109</sup>

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<sup>2104</sup> P-0638: T-057, pp. 60-61.

<sup>2105</sup> P-0150: T-094, p. 67; T-097, pp. 9-10; T-099, p. 57; P-0638: T-057, pp. 60-62; P-0654: T-134, pp. 29-30. *See also* Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369.

<sup>2106</sup> P-0150: T-093, pp. 52-53; T-094, p. 67; P-0654: T-134, pp. 22-23, 86; P-0603: T-125, pp. 23-24, 50-52; P-0557: T-054, p. 38; D-0605: T-194, pp. 80-82. *See also* Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369; P-0622’s statement MLI-OTP-0065-0558-R02, at 0565, paras 38-40; P-0626: T-141, pp. 19-20, 23-24; T-144, p. 69. *See* paragraphs 662-663 above.

<sup>2107</sup> P-0150: T-097, pp. 9-10, *referring to* the left-hand side of document MLI-OTP-0001-7356, translation MLI-OTP-0034-0061.

<sup>2108</sup> P-0638: T-057, pp. 61-62; D-0605: T-194, pp. 80, 82-83; P-0150: T-094, p. 67; T-102, pp. 39-40; P-0654: T-130, p. 46; P-0065: T-044, p. 13. *See also* Abou Zeid’s Instructions MLI-OTP-0001-7193, translation MLI-OTP-0077-2366; MLI-OTP-0001-7194, translation MLI-OTP-0077-2369; P-0622’s statement MLI-OTP-0065-0558-R02, at 0565-0566, para. 41; notebook MLI-OTP-0003-0062-R02, at 0107, transcript MLI-OTP-0064-0608-R02, at 0654.

<sup>2109</sup> Video MLI-OTP-0018-0685, transcript MLI-OTP-0069-1886, translation MLI-OTP-0078-1301; video MLI-OTP-0018-0475, transcript MLI-OTP-0069-1878, translation MLI-OTP-0078-9870; video MLI-OTP-0015-0495, at 00:29:30:00 to 00:30:04:00, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288. The first video recording, MLI-OTP-0018-0685, depicts the burning of hundreds of cartons of cigarettes by members of Ansar Dine/AQIM, including members of the Islamic Police (*see* P-0065: T-043, pp. 11-12; P-0582’s statement MLI-OTP-0062-4075-R02, at 4081-4087; MLI-OTP-0062-4089-R02, at 4093-4094, 4102-4104). On the Defence objection regarding this video recording (*see* ICC-01/12-01/18-1631-Conf-AnxV), the Chamber observes that the editing seems restricted to ‘plans de coupe’ and does not alter the basic narrative of the video recording, which depicts the destruction of stocks of tobacco by Ansar Dine/AQIM in Timbuktu in 2012. The second video recording, MLI-OTP-0018-0475, depicts an interview with a member of the Islamic Police who is shown explaining the circumstances of the destruction of the stocks of tobacco as shown in video recording MLI-OTP-0018-0685 (*see* P-0065: T-045, p. 62; P-0582’s statement MLI-OTP-0062-4340-R02, at 4353-4355). The Chamber finds that P-0065 is particularly qualified to testify about the origin and context of these two video recordings (P-0065: T-043, p. 11; T-045, p. 62) and the Chamber is satisfied that they were filmed in Timbuktu in 2012. The third video recording, MLI-OTP-0015-0495, depicts a distinct event from the previous two video recordings and shows the burning of dozens of cartons of cigarettes by members of Ansar Dine/AQIM. *See* paragraph 55 above.

709. Following an order from Abou Zeid, Mr Al Hassan participated as a member of the Islamic Police in the search of the warehouses of Timbuktu and seizure of cigarettes, as part an operation involving many members of Ansar Dine/AQIM, including members of the Islamic Police, the *Hesbah* and the Security Battalion.<sup>2110</sup> He also attended, along with Talha and Adama, the subsequent burning of dozens of boxes full of cartons of cigarettes which were discovered.<sup>2111</sup> Mr Al Hassan stated that, before that event, smoking was not prohibited.<sup>2112</sup>

**e) Rules concerning religious practices**

710. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0004<sup>2113</sup> and P-0065,<sup>2114</sup> who were present in Timbuktu during the relevant period and witnessed the application of the rules; P-0150,<sup>2115</sup> a member of Ansar Dine/AQIM who described the rules concerning religious practices and the way they were applied by Ansar Dine/AQIM; and P-0152,<sup>2116</sup> an expert in armed conflict with experience in the conflict in Mali.

711. Abdallah Al Chinguetti ‘inspired’ the leaders Abou Zeid and Abou Al Hammam to believe that the enforcement of ‘*Sharia* in full’ required putting an end to all anti-monotheistic manifestations.<sup>2117</sup> Indeed, AQIM was a Salafiya movement

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<sup>2110</sup> Mr Al Hassan’s statement MLI-OTP-0051-0767, at 0770-0776, referring to video MLI-OTP-0015-0495, at 00:29:30:00 to 00:30:04:00, transcript MLI-OTP-0033-5189, translation MLI-OTP-0033-5288.

<sup>2111</sup> Mr Al Hassan’s statement MLI-OTP-0051-0767, at 0770-0776.

<sup>2112</sup> Mr Al Hassan’s statement MLI-OTP-0051-0767, at 0771-0772.

<sup>2113</sup> The Chamber refers to its findings on the credibility and reliability of P-0004’s evidence (*see* footnote 2231 below).

<sup>2114</sup> The Chamber refers to its findings on the credibility and reliability of P-0065’s evidence (*see* section II.B.2.a)i above).

<sup>2115</sup> The Chamber refers to its findings on the credibility and reliability of P-0150’s evidence (*see* section II.B.2.a)iii above).

<sup>2116</sup> The Chamber refers to its findings on the credibility and reliability of P-0152’s evidence (*see* footnote 894 above).

<sup>2117</sup> P-0150: T-100, pp. 20-21. P-0150 added that Koutaïba and Abdallah Al Chinguetti always had the ears of Abou Zeid and Abou Al Hammam and that ‘these two were already at his command’ (P-0150: T-100, p. 20). According to P-0150, Abou Zeid and Abou Al Hammam perceived Koutaïba and Abdallah Al Chinguetti as scholars (P-0150: T-100, p. 22; T-103, p. 36). *See also* P-0065: T-043, p. 14. During his stay in Timbuktu, journalist David Blair (P-0010) visited a destroyed building, which was a former AQIM training centre (P-0010: T-020, pp. 7-9). Once on site, he encountered an individual who had worked there and gave him a detailed account of the routine at this facility (P-0010: T-020, p. 9). He also collected a series of documents written in Arabic. The witness explained that there were a lot of sheets of scattered pages of documents lying amid the rubble of the training centre and that he gathered as many as he could (P-0010: T-020, p. 12). In most cases, they contained religious matters, religions sermons,

based on a very strict reading of the holy text of the *Quran*,<sup>2118</sup> promoting a return to the origin of the belief.<sup>2119</sup>

712. In order to teach or enlighten<sup>2120</sup> the so-called ‘ignorant’<sup>2121</sup> people of Timbuktu with what Ansar Dine/AQIM considered to be the real faith,<sup>2122</sup> Ansar Dine/AQIM members regulated and/or banned a certain number of religious practices that they considered as sorcery, polytheism and/or heresy: the latter included notably the practice of some Sufi orders to celebrate saints, protective amulets, the role of marabouts as religious intermediaries and, more generally, magic considered as ‘invalidator’ of Islam.<sup>2123</sup>
713. During their control of the city, Ansar Dine/AQIM did not allow for any faith other than the Muslim faith and forbade the showing of any sign of another faith.<sup>2124</sup> They knew that some people were Christians and they indirectly asked them to hide in their homes, but the Christians were not detained or ‘monitored’.<sup>2125</sup> The church buildings were not destroyed,<sup>2126</sup> but the clergymen disappeared from Timbuktu: some left the city, while others hid in their homes and did not engage in any activity.<sup>2127</sup>
714. Ansar Dine/AQIM forbade the people of Timbuktu to celebrate the Maouloud

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*Quranic* verses, most of it downloaded from the internet (P-0010: T-020, p. 13). Amongst these documents, there were a textbook MLI-OTP-0002-0760 (untitled ‘the Monotheism Course’), translation MLI-OTP-0078-6166 and a guideline MLI-OTP-0002-0776 (untitled ‘Explanation and Clarification of how an Unwitting Polytheist is not a Muslim’), translation MLI-OTP-0078-6188.

<sup>2118</sup> P-0152: T-032, p. 28.

<sup>2119</sup> P-0152’s report MLI-OTP-0031-0496, at 0517 (stating that the Salafiyya promotes a return to the origin of the belief). *See also* P-0065: T-044, p. 10; P-0150: T-111, pp. 26-27.

<sup>2120</sup> Video MLI-OTP-0009-1749, at 00:07:06:00-00:08:42:00, transcript MLI-OTP-0028-0839, at 0845.

On this speech, *see* paragraph 488, footnote 1306 above.

<sup>2121</sup> General instructions MLI-OTP-0024-2320, at 2329, translation MLI-OTP-0027-0964, at 0974; video MLI-OTP-0018-0149, at 00:09:13:22 to 00:10:10:13, transcript MLI-OTP-0033-5439 and video MLI-OTP-0018-0209, transcript MLI-OTP-0033-5744, translation MLI-OTP-0033-5439; video MLI-OTP-0018-0356, transcript MLI-OTP-0025-0057, translation MLI-OTP-0025-0043; video MLI-OTP-0015-0495, at 00:37:40:00 to 00:37:57:00, transcript MLI-OTP-0033-5189.

<sup>2122</sup> Video MLI-OTP-0001-6931, at 00:00:33:00-00:02:10:00, transcript MLI-OTP-0056-0581, at 0582-0583, translation MLI-OTP-0061-1139, at 1142 (video on which members of Ansar Dine/AQIM tell members of the population ‘we came here to teach you the real faith’).

<sup>2123</sup> P-0152’s report MLI-OTP-0031-0496, at 0517; P-0065: T-044, pp. 15-16; audio MLI-OTP-0038-0886, transcript MLI-OTP-0056-0843, translation MLI-OTP-0063-1029, at 1035 (*see* P-0150: T-102, pp. 23-25).

<sup>2124</sup> P-0150: T-104, p. 29.

<sup>2125</sup> P-0150: T-104, p. 29.

<sup>2126</sup> P-0150: T-104, p. 29.

<sup>2127</sup> P-0150: T-104, p. 30.

festival, a Muslim celebration of the Prophet's birth, because Ansar Dine/AQIM considered this practice as a prohibited innovation in the religion that should be avoided.<sup>2128</sup> The population was very angry about this decision, but 'the force that was shown to the population every day' made it unable to protest, despite its condemnation and objection.<sup>2129</sup> In October 2012, during the celebration of Tabaski, a group of girls were arrested and brought to the BMS during the evening.<sup>2130</sup>

715. Regarding the ways of praying, there were posters or signs in the city showing what men should wear so that the various parts of the body used for ablutions would not be covered up with clothing.<sup>2131</sup> An Ansar Dine/AQIM member attacked a person during Ramadan, because the grilling or barbequing at the beginning and end of the day was forbidden.<sup>2132</sup>

716. One of the priorities Ansar Dine/AQIM leaders identified was putting an end to the non-monotheistic manifestations practised around graves.<sup>2133</sup> In April 2012, they decided that Al Mahdi would start setting up the *Hesbah* to carry out these tasks and would report directly to Abdallah Al Chinguetti.<sup>2134</sup> In return, Abdallah Al Chinguetti would provide Al Mahdi with the information and jurisprudential sources that he should rely on.<sup>2135</sup>

717. In that context, Abdallah Al Chinguetti wrote a letter regarding the need to level graves to the level of soil and asked Al Mahdi to disseminate its content to the

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<sup>2128</sup> P-0150: T-102, pp. 44-45; P-0114's statement MLI-OTP-0023-0344-R02, at 0373, para. 128. The Chamber notes D-0551's testimony that the Crisis Committee sent a delegation to discuss the celebration of festivals, notably the Maouloud festival, with Ansar Dine/AQIM (D-0551: T-200, p. 78). The Chamber finds established, in light of P-0150's direct testimony on the matter, that despite the organisation of a meeting between members of Ansar Dine/AQIM and local scholars, the leadership of Ansar Dine/AQIM issued an official order to prohibit the celebration of the Maouloud (*see* P-0150: T-102, pp. 45-47). *Contra* [Defence Final Brief](#), para. 602.

<sup>2129</sup> P-0150: T-102, pp. 45-47.

<sup>2130</sup> P-0608: T-154, pp. 12-15.

<sup>2131</sup> P-0654: T-128, p. 63.

<sup>2132</sup> P-0150: T-093, p. 40. P-0150 stated that this rule was part of the rules imposed during Ramadan after a meeting of the *Shura* council (P-0150: T-093, p. 42). P-0150 explained that the *Shura* council believed that many of the people who were obliged to fast during Ramadan would not fast, thus rules were imposed to show that the entire city of Timbuktu was abiding by the fasting (P-0150: T-093, p. 42). P-0150 stated that although he could not remember them exactly, there were many rules with regards to Ramadan, including not to open any restaurants until the end of the day (P-0150: T-093, p. 42).

<sup>2133</sup> P-0150: T-089, p. 53.

<sup>2134</sup> P-0150: T-089, p. 53.

<sup>2135</sup> P-0150: T-089, p. 53.

entire population over the radio and ‘in any other occasion’.<sup>2136</sup> Ansar Dine/AQIM stated that ‘[a]mong the greatest forbidden acts, which the *Sharia* has commanded be rectified and eradicated, are constructing graves above ground level, erecting structures over graves and utilising them as places of worship and shrines’;<sup>2137</sup> that ‘such acts exceed the proper bounds of religion and alarmingly lead to, and instigate, polytheism’ and that the ‘hadiths of the Prophet which forbid building structures on graves or praying at them are many’.<sup>2138</sup> After enumerating the different theological sources, Ansar Dine/AQIM concluded that ‘the destruction of structures built upon graves [was] [...] part of the Sunah of the Prophet and [...] [was] not degrading of the deceased Muslims or disrespectful to the virtuous saints’ and that ‘the demolition that [...] [was] prescribed in the Hadith [...] [did] not prohibit that a grave be built at the height of the span of one hand to make clear that it is a grave and protect it from desecration’.<sup>2139</sup>

718. Ansar Dine/AQIM classified practices around graves to three types: the first type were allowed practices, which included ‘*Sharia*-compliant’ visits, consisting in saluting graves, reciting *Quranic* verses, and making a prayer for the dead;<sup>2140</sup> the second type was called the ‘nonconformist visit’ which was a prohibition and objectionable act: the visitor was not allowed to touch the grave with his hands, to kiss the grave with his lips, to take some soil from around the grave as a form of blessing or to take certain belongings from the grave for the purpose of further blessing in the future.<sup>2141</sup> The third type was called the ‘high offence’ and a non-monotheistic act: the visitor could not ask the person buried in the grave to achieve something for him in life.<sup>2142</sup> Al Mahdi along with other members of the *Hesbah*, would compel the people who violated such rules and would force them, while they were armed, to leave the cemeteries.<sup>2143</sup> Mr Al Hassan supported the fact that people be prevented from doing these practices around the graves.<sup>2144</sup>

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<sup>2136</sup> P-0150: T-089, p. 53.

<sup>2137</sup> Document MLI-OTP-0002-0757, translation MLI-OTP-0034-1363, at 1364.

<sup>2138</sup> Document MLI-OTP-0002-0757, translation MLI-OTP-0034-1363, at 1364.

<sup>2139</sup> Document MLI-OTP-0002-0757, translation MLI-OTP-0034-1363, at 1364.

<sup>2140</sup> P-0150: T-094, p. 8.

<sup>2141</sup> P-0150: T-094, p. 8.

<sup>2142</sup> P-0150: T-094, pp. 8-9.

<sup>2143</sup> P-0150: T-90, p. 17.

<sup>2144</sup> P-0150: T-094, p. 9.

719. Regarding prayers, all men were supposed to go to the mosque on Friday and to close their shops and businesses.<sup>2145</sup> Ansar Dine/AQIM imposed limitations on the opening of shops, requiring notably that shops be closed during prayers, as part of the rules they imposed on the population during their control of Timbuktu in 2012-2013.<sup>2146</sup> Members of Ansar Dine/AQIM carried out inspections and forced shops open in infringement with this rule to close.<sup>2147</sup>
720. Beside regulating the activities around the prayers and graves, Ansar Dine/AQIM members confiscated and burned what they called ‘talismans’ or assimilated objects, such as rings, spells, tables or amulets<sup>2148</sup> that people put on to protect from spirits and bad luck, and which could be used for different reasons and purposes.<sup>2149</sup> AQIM believed that putting on these amulets was a violation of monotheism because people wearing this writing or amulet believed that they can protect them, while, according to AQIM, the ‘proper belief’ was that only God could protect you.<sup>2150</sup>

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<sup>2145</sup> P-0004: T-165, p. 64.

<sup>2146</sup> P-0984: T-068, pp. 63-64; P-0150: T-102, pp. 43-44, *referring to* video MLI-OTP-0009-1749, at 00:08:46:20 to 00:09:24:12; P-0065: T-038, p. 43; video MLI-OTP-0009-1749, at 00:08:44:03 to 00:09:30:09, transcript MLI-OTP-0028-0839. This excerpt of the video depicts a Friday prayer in a mosque of Timbuktu in 2012, during which Abdallah Al Chinguetti notably states that ‘[TRANSLATION] From now on, when it’s time for prayer, the shops need to close, and the shopkeepers need to come and pray. You must all practise the way of prayer and command your children to practise it and requiring that shops be closed during prayer and for merchants to pray’ (*see* P-0065: T-038, pp. 38-40; P-0150: T-102, pp. 42-43).

<sup>2147</sup> P-0984: T-068, pp. 64-65; P-0150: T-102, pp. 43-44, *referring to* video MLI-OTP-0009-1749, at 00:08:46:20 to 00:09:24:12.

<sup>2148</sup> P-0150: T-098, p. 27, *referring to* Islamic Police report MLI-OTP-0001-7560, translation MLI-OTP-0052-0031; P-0150: T-102, pp. 25-26, *referring to* MLI-OTP-0055-0610, photograph MLI-OTP-0055-1047, translation MLI-OTP-0080-2208. Referring to MLI-OTP-0055-0610, P-0150 confirmed that he had said in his prior statement to the Prosecution that he had doubts about the reason why amulets would be at the Islamic Court, which he explained was based on his knowledge of the methods used to seize amulets and confiscate them, namely that it was the *Hesbah*’s and the Police’s method but not the judge’s method (P-0150: T-112, p. 20). He said that if he had doubts it is because the cases were many in number and the situations could be different (P-0150: T-112, p. 21). He elaborated that ‘[s]ince I didn’t do that myself, I might think that those amulets had been confiscated by the *Hesbah* and left there. And I might also think that the police might have confiscated them and put them there’, that ‘the presence of the amulets at the tribunal is quite special. But it’s not completely a possibility to rule out’, and ‘[t]he judges said that they had found evidence that incriminated those people. Perhaps the judges had found those amulets’ (P-0150: T-112, pp. 20-21).

<sup>2149</sup> P-0065: T-043, p. 13. *See* video MLI-OTP-0001-6931, at 00:02:12:00 to 00:00:26:23. *See also* paragraph 721 below.

<sup>2150</sup> P-0065: T-043, p. 14.

721. Ansar Dine/AQIM members searched people<sup>2151</sup> with amulets<sup>2152</sup> and if found they would be seized and confiscated<sup>2153</sup> or burned in front of everyone.<sup>2154</sup> For example, P-0641 was stopped by the Police for wearing a ring on his finger.<sup>2155</sup> Mr Al Hassan wrote a Police report concerning a man who was arrested in the town of Léré while practising magic or using amulets.<sup>2156</sup> One person was convicted because he used amulets and talisman and tables, for holding down *Quranic* verses and for ripping off writings of *Quranic* verses.<sup>2157</sup> Most of sheikhs who had a special place within the Sufist framework and whose role was to write down amulets left the city when Ansar Dine/AQIM arrived.<sup>2158</sup>
722. Ansar Dine/AQIM also damaged monuments of historical value to the population of Timbuktu, such as the *Monument des Martyrs* and the Al Farouk monument; Sanda Ould Boumama explained that the latter was destroyed because it went against Ansar Dine/AQIM's vision of the religion.<sup>2159</sup> Ansar Dine/AQIM further believed that any sort of physical manifestation, including drawings, of anything

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<sup>2151</sup> Notebook MLI-OTP-0003-0154-R03, at 0173, transcript MLI-OTP-0064-0701-R02, at 0737.

<sup>2152</sup> P-0150 explained that documents MLI-OTP-0055-0610, MLI-OTP-0055-1047, MLI-OTP-0055-1182 are amulets and that the 'jihadists' call them talisman (P-0150: T-102, pp. 25-26).

<sup>2153</sup> P-0150: T-094, p. 67; T-090, p. 19; T-100, pp. 12-15; T-101, p. 15; T-102, p. 44; T-112, pp. 20-21; D-0605: T-194, p. 82. P-0150 explained that Abou Zeid started doubting the activities of his soldiers, for example, their confiscation of valuable assets because they contained magic, e.g. rings containing amulets or talismans (P-0150: T-100, p. 12). P-0150 further explained that amulets and other invocations were also discussed, for instance invocations that had *Quran* written inside, because 'many people', including the 'jihadists', knew that those were not actually prohibited (P-0150: T-100, pp. 12-13). See also Islamic Court judgment MLI-OTP-0001-7468 (signed and stamped), translation MLI-OTP-0077-2433.

<sup>2154</sup> P-0150: T-102, pp. 30, 32, referring to video MLI-OTP-0001-6931, at 00:02:12:00 to 00:02:26:23, transcript MLI-OTP-0056-0581, translation MLI-OTP-0061-1139. P-0150 speculated that the video might have been shot in the first week of April 2012 (P-0150: T-102, pp. 32, 38). P-0150 noted that the footage appeared to him 'with a good degree of certainty' to have been produced by the media outlet on the basis of previously filmed footages compiled and put together (P-0150: T-102, pp. 38-39).

<sup>2155</sup> P-0641 stated that he was stopped by [REDACTED] (P-0641: T-138, p. 7). He added that 'When he caught me he said - well, he saw the ring that I had on my finger and he said, he said it was a talisman, so he took it. And that same man in 2013, [REDACTED], I learned that he actually went mad. When he took off the ring, he said that the ring had no powers and that I should follow God only'. He stated that the Police was at the BMS at that time (P-0641: T-138, p. 8), referring to photograph MLI-OTP-0060-4390 (P-0641: T-138, p. 9) and video MLI-OTP-0015-0495, at 00:28:52:22 (P-0641: T-138, pp. 10-11).

<sup>2156</sup> Islamic Police report MLI-OTP-0001-7543 (handwritten, signed and stamped), translation MLI-OTP-0052-0029 (stating that this was a 'magic or amulets case' and that a man was arrested in Léré while practising magic or using amulets). See Mr Al Hassan's statement MLI-OTP-0060-1580, at 1599-1602. See also section II.D.

<sup>2157</sup> P-0150: T-098, p. 28, referring to Islamic Court judgment MLI-OTP-0068-4712, translation MLI-OTP-0069-4704.

<sup>2158</sup> P-0065: T-044, pp. 15-16.

<sup>2159</sup> See paragraph 1034 below.

considered as having a soul was forbidden in Islam.<sup>2160</sup> Ansar Dine/AQIM destroyed items such as statuettes as they deemed them idols or manifestations of human beings which were forbidden according to their doctrine and jurisprudence.<sup>2161</sup> Images of human faces and drawings were also erased on billboards, signs and mural paintings, notably at the *Monument de la Paix*.<sup>2162</sup>

**f) Rules on music, entertainment and leisure activities**

723. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0150,<sup>2163</sup> a member of Ansar Dine/AQIM who described the rules concerning music and the way they were applied by Ansar Dine/AQIM in Timbuktu in 2012-2013; and P-0608,<sup>2164</sup> who was present in Timbuktu for some periods in 2012 and knew musicians.

724. Ansar Dine/AQIM prohibited the playing of music in public and loudly at home, as well as dancing in clubs, as part of the rules they imposed on the population during their control of Timbuktu in 2012-2013.<sup>2165</sup> The playing of music on the radio became forbidden.<sup>2166</sup> Music-listening devices and loudspeakers could be confiscated and sometimes destroyed,<sup>2167</sup> and people who were considered ‘stubborn’ and repeatedly refused to obey the rules on the prohibition of music could be arrested, detained and/or beaten,<sup>2168</sup> although there was no systematic

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<sup>2160</sup> P-0065: T-043, p. 17; P-0150: T-102, pp. 20, 23, referring to video MLI-OTP-0009-1749, at 00:03:51:00 to 00:04:16:00.

<sup>2161</sup> Video MLI-OTP-0001-6931, at 00:01:38:00 to 00:02:06:00, transcript MLI-OTP-0056-0581, translation MLI-OTP-0061-1139 (see P-0065: T-043, p. 15; P-0150: T-102, pp. 37-39); P-0150: T-102, p. 39, referring to video MLI-OTP-0001-6931, at 00:01:38:00 to 00:01:54:05; P-0065: T-043, pp. 16-17, referring to video MLI-OTP-0001-6931, at 00:01:38:00 to 00:01:51:00.

<sup>2162</sup> P-0150: T-102, pp. 22-23, referring to video MLI-OTP-0009-1749, at 00:03:51:00 to 00:04:16:00; video MLI-OTP-0017-0027, at 00:00:51:08 to 00:01:39:12, transcript MLI-OTP-0033-5228, translation MLI-OTP-0033-5405; video MLI-OTP-0025-0010, at 00:07:05:00 to 00:07:19:11, translation MLI-OTP-0033-5488; V-0002: T-169, p. 85; T-169-FRA, p. 85.

<sup>2163</sup> The Chamber refers to its findings on the credibility and reliability of P-0150’s evidence (see section II.B.2.a)iii above).

<sup>2164</sup> The Chamber refers to its findings on the credibility and reliability of P-0608’s evidence (see footnote 2198 below).

<sup>2165</sup> P-0150: T-090, pp. 18-19; T-091, pp. 7-8; P-0608: T-153, p. 75; P-0114: T-060, p. 31. See also P-0654: T-130, pp. 28-29.

<sup>2166</sup> D-0093: T-211, p. 17.

<sup>2167</sup> P-0150: T-090, p. 19; T-092, p. 48; T-119, pp. 6-7; P-0065: T-046, pp. 12-13. See also P-0547: T-152, p. 38; P-0622’s statement MLI-OTP-0065-0558-R02, at 0565, para. 36.

<sup>2168</sup> P-0150: T-093, pp. 37-39, 52-53; T-119, pp. 6-7; P-0641: T-137, pp. 61-65, 67-68. See also notebook MLI-OTP-0003-0154-R03, at 0177-0178, transcript MLI-OTP-0064-0701-R02, at 0746-0747.



punishment regarding music, neither within *Sharia*, nor within the rules of the groups.<sup>2169</sup>

725. In addition, the population of Timbuktu could no longer play or perform music during festive ceremonies and events, such as marriages and baptisms.<sup>2170</sup> Some musicians, fearing being put in prison, fled the city of Timbuktu.<sup>2171</sup> One female musician notably stated that she was afraid and moved far away from Timbuktu as she knew that ‘if [she] went to Tombouctou and sang that [...] wouldn’t be something they’d like [her] to do’.<sup>2172</sup>

#### g) Rules on schools

726. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0654,<sup>2173</sup> who was present in Timbuktu during the events and visited a public school in the city in 2012; and D-0540,<sup>2174</sup> who [REDACTED] a *Quranic* school in Timbuktu in 2012, and was able to testify about the organisation of this school during the events. The Chamber also relies

<sup>2169</sup> P-0150: T-119, pp. 6-9. On this topic, *see* section C.4.d)ii.b above.

<sup>2170</sup> P-0608: T-153, pp. 76-77; P-0603: T-125, pp. 16, 60-61; P-0602: T-085, p. 15; P-0654: T-132, p. 64; P-0638: T-058, p. 6; P-0557: T-054, p. 22; P-0065: T-037, p. 23. *See also* D-0240’s statement MLI-D28-0006-4222-R01, at 4234, para. 43.

<sup>2171</sup> P-0608: T-153, pp. 76-77; P-0654: T-132, p. 64. *See also* Video MLI-OTP-0035-0073, transcript MLI-OTP-0056-0820, translation MLI-OTP-0061-1274.

<sup>2172</sup> Video MLI-OTP-0035-0073, transcript MLI-OTP-0056-0820, translation MLI-OTP-0061-1274.

<sup>2173</sup> The Chamber refers to its findings on the credibility and reliability of P-0654’s evidence (*see* footnote 1503 above).

<sup>2174</sup> D-0540 (*see* D-0540: T-183 to T-184), a nomadic man from the [REDACTED], with familial links to [REDACTED] (D-0540: T-183, pp. 6-7), travelled to Timbuktu in 2012, after Ansar Dine/AQIM had taken control of the city, and returned to his normal place of residence after Ansar Dine/AQIM left (D-0540: T-183, pp. 39-42, 49; T-184, pp. 25-26, 34). When D-0540 arrived in Timbuktu, Ansar Dine/AQIM [REDACTED] in the south of Timbuktu (D-0540: T-183, pp. 47, 49, 51-52, 55, 57; T-184, pp. 25, 41-42). The witness mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. The Chamber observes that D-0540 clearly outlined what he knew and remembered although had limited recollections or knowledge of various topics, notably stating that he was ‘somebody who often forgets’, and seemed hesitant to discuss certain matters, including sermons given by armed groups in *Quranic* schools, the existence and functioning of the Islamic Court and Houka Houka’s role, and the reason he visited the Islamic Police (*see e.g.* D-0540: T-184, pp. 11, 33-34, 39-40, 49-52, 57-59). The witness also stated that he does not know Mr Al Hassan (D-0540: T-183-FRA, p. 7), and the Chamber notes that despite [REDACTED], the witness was not deeply involved with the groups and indicated that he did not know much about their internal workings (*see e.g.* D-0540: T-183, pp. 47-49; T-184, pp. 33, 39-40, 53-56). Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds D-0540 to be a generally credible and reliable witness although remains cognisant of the foregoing considerations in assessing his evidence, in particular the limited relevance of his evidence. The Chamber notes that this is a general assessment of the witness’s testimony and that it has also carefully assessed the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate.

on video recording MLI-OTP-0011-0423,<sup>2175</sup> which depicts Sanda Ould Boumama talking about the re-opening of schools during the control of Timbuktu by the armed groups, as well as video recordings MLI-OTP-0012-1580, MLI-OTP-0012-1578 and MLI-OTP-0012-1579, which depict the classes held at one school in Timbuktu in 2012 after its re-opening following certain conditions.

727. During their control of Timbuktu, Ansar Dine/AQIM did not accept the form of education taught in public schools; therefore, these schools, which did not reflect their values, remained closed after the arrival of the armed groups in Timbuktu.<sup>2176</sup>
728. Ansar Dine/AQIM however allowed and ensured that ‘Arabic’ and *Quranic* schools or *madrasas* functioned.<sup>2177</sup> At one of the *Quranic* schools set up for children of the members of the armed groups, the *Quran* and other religious texts

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<sup>2175</sup> Video MLI-OTP-0011-0423, at 00:01:43:24 to 00:01:54:00, transcript MLI-OTP-0015-0071, translation MLI-OTP-0016-0439, which depicts Sanda Ould Boumama stating ‘[w]e have allowed Arabic and religious schools to reopen; public schools cannot open until their programmes are changed to match Islamic values’ (see P-0150: T-102, p. 18). The Chamber notes that, although P-0150 did not testify as to the circumstances of the creation of this excerpt of the video recording, the excerpt was shown to P-0150 during his testimony and the witness clearly identified Sanda Ould Boumama on it. The Chamber further notes that this video recording bears Al Jazeera’s logo and was published on Al Jazeera English’s YouTube page on 13 April 2012, which indicates that the video recording was filmed before that date. The Chamber also notes that the video recording and the YouTube description under the video recording indicate that it was filmed by Mohamed Vall, reporting for Al Jazeera from inside Timbuktu. The Chamber considers the video recording presents sufficient indicia of reliability and authenticity and dismisses the related Defence objection.

<sup>2176</sup> P-0654: T-128, p. 5; D-0540: T-184, p. 46; P-0610: T-158, pp. 9-10; video MLI-OTP-0011-0423, at 00:01:43:24 to 00:01:54:00, transcript MLI-OTP-0015-0071, translation MLI-OTP-0016-0439 (see P-0150: T-102, p. 18); P-0150: T-102, pp. 19-21; P-0654: T-129, pp. 16-17, 23. See also P-0608: T-153, p. 74; P-0622’s statement MLI-OTP-0065-0558-R02, at 0567, para. 50; Article MLI-OTP-0001-4887, at 4889. The Chamber notes that the Defence alleges that ‘public schools continued to operate’ ([Defence Final Brief](#), paras 563-564, referring to P-0654: T-128, pp. 4-5). The Defence also argues that ‘[a]lthough some schools closed, this occurred before Ansar Dine arrived in Timbuktu, and was due to a variety of factors including the fact that teachers stopped being paid (due to the events in Bamako) and insecurity caused by the MNLA. After its arrival, the MNLA also stole property and occupied school buildings’. As to the first argument, the Chamber notes that P-0654’s testimony refers to the reopening of some schools at a specific point during the year, to allow children in upper-level classes to take their exams, as further described below. Concerning the second argument, while the Chamber does not ignore the constraints imposed on schools and teachers because of the armed conflict and the situation of the Malian State prior to 2012, the credible and reliable evidence shows that, during most of the relevant period of the control of Timbuktu by the armed groups, public schools of Timbuktu remained closed for ideological reasons.

<sup>2177</sup> Video MLI-OTP-0011-0423 at 00:01:43:24 to 00:01:54:00, transcript MLI-OTP-0015-0071, translation MLI-OTP-0016-0439; D-0540: T-184, p. 46. See also D-0540: T-183, pp. 47, 49, 51-52; T-184, pp. 25, 41. See also Article MLI-OTP-0001-4887, at 4889.

were taught to children,<sup>2178</sup> following the Malekite school of thought.<sup>2179</sup> In the *madrasas*, Ansar Dine/AQIM did not give orders as to what could be taught,<sup>2180</sup> but they paid the teachers and provided food for the children.<sup>2181</sup> Male and female students were separated in class.<sup>2182</sup> Female teachers taught girls.<sup>2183</sup> Female students were asked to cover themselves, except for their face and hands, in order to attend class.<sup>2184</sup>

729. Following the closure of public schools, some local inhabitants decided to send their children to other regions to continue their education.<sup>2185</sup>

730. At some point, following concerns raised by the population, the armed groups' leadership and the Crisis Committee reached an agreement for some schools to be re-opened to allow children in upper-level classes to take their exams.<sup>2186</sup> Some conditions had to be followed: male and female students were separated in class and female students had to cover themselves with a veil or headscarf.<sup>2187</sup>

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<sup>2178</sup> P-0150: T-092, p. 50; D-0540: T-183, pp. 52-53. In light of the details provided by the witnesses, the Chamber finds that P-0150 and D-0540 testified about the same *Quranic* school in the relevant parts of their testimony.

<sup>2179</sup> D-0540: T-183, pp. 54-56, 62-64, referring to document MLI-OTP-0055-0143, translation MLI-OTP-0078-6280, and document MLI-D28-0006-5301, at 5449-5450, translation MLI-D28-0006-5451.

<sup>2180</sup> D-0540: T-183, p. 64. See also D-0202: T-203, pp. 49-51.

<sup>2181</sup> [REDACTED]; D-0202: T-202, p. 15.

<sup>2182</sup> P-0150: T-100, p. 13; D-0202: T-203, pp. 49-50. See also D-0540: T-183, p. 53.

<sup>2183</sup> P-0150: T-107, p. 40; D-0540: T-183, p. 53.

<sup>2184</sup> D-0202: T-203, pp. 51-52. See also P-0150: T-102, p. 19, referring to video MLI-OTP-0011-0423, at 00:01:43:24 to 00:01:54:00.

<sup>2185</sup> D-0512: T-181, pp. 11, 47-48; D-0512's statement MLI-D28-0006-2611-R04, at 2614, para. 15; P-0610: T-158, pp. 9-10; P-0654: T-129, p. 23; P-0114: T-060, p. 7.

<sup>2186</sup> P-0654: T-128, pp. 4-5; T-129, pp. 10-12, referring to Article MLI-OTP-0012-2013. See also videos MLI-OTP-0012-1580; MLI-OTP-0012-1578; MLI-OTP-0012-1579; MLI-OTP-0012-1585, transcript MLI-OTP-0069-1660. The Chamber notes that P-0654 testified that this event took place in late May or June 2012, as students had to be prepared for the exams in June (see P-0654: T-129, pp. 7, 11). Having regard to the content of Article MLI-OTP-0012-2013, which refers to exams held in October 2012, the Chamber finds that P-0654 might have made a mistake as to the specific date schools re-opened for students to take their exams in 2012. The Chamber however considers that it does not affect the reliability of P-0654's testimony on this topic or of the video recordings and dismisses the related Defence objections.

<sup>2187</sup> Article MLI-OTP-0012-2013; P-0654: T-129, pp. 4-7, 10-12; T-128, p. 4; videos MLI-OTP-0012-1580; MLI-OTP-0012-1578; MLI-OTP-0012-1579. The three video recordings depict students at the lycée Mahamane Alassane Haïdara in Timbuktu and show boys and girls sitting in different classes (see P-0654: T-129, pp. 4-7). The second and third video recordings, MLI-OTP-0012-1578 and MLI-OTP-0012-1579, depict a girls' class and show all the girls in the class wearing headscarves or veils (see P-0654: T-129, pp. 6-7). See also video MLI-OTP-0012-1585, transcript MLI-OTP-0069-1660, which depicts a young woman interviewed about going back to class and the practice of separating the two genders in the classrooms, who states that they will respect their desires so as there not to be any issues (see P-0654: T-129, pp. 8-10).

731. For other students and for the rest of the school year, schools remained closed in Timbuktu.<sup>2188</sup> In December 2012, following discussions with the Crisis Committee, Ansar Dine/AQIM endorsed the start of the following school year and indicated its commitment to ‘support those in charge of education’. While a document available to the Chamber sets out how they consider education ‘should be run’, the Chamber is not in a position to conclude – without more – that this way forward was effectively implemented in Timbuktu during the period of the charges.<sup>2189</sup>

#### **h) Rules on men’s appearance**

732. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0004<sup>2190</sup> and P-0654,<sup>2191</sup> two inhabitants of Timbuktu who, based on their experiences, described the requirements linked to men’s appearance and the way they were applied in Timbuktu.

733. Ansar Dine/AQIM requested men to obey certain rules regarding their appearance, in particular regarding the length of trousers and the wearing of a beard, as part of the rules they imposed on the population<sup>2192</sup> as well as on members of their groups<sup>2193</sup> during their control of Timbuktu in 2012-2013.

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<sup>2188</sup> P-0654: T-129, pp. 14-15. *See also* D-0512’s statement MLI-D28-0006-2611-R04, at 2614, para. 15.

<sup>2189</sup> Document MLI-OTP-0022-0286, translation MLI-OTP-0067-1096. Having considered the Defence’s objections to the submission of this document, the Chamber finds that the items bears sufficient indicia of reliability and is notably of the view that its content is coherent with the body of evidence on the record, amongst other things on the work and mandate of the Crisis Committee (*see* section 2.b) below). This dated and signed document refers to relevant discussions as well as Ansar Dine/AQIM’s *project* of re-opening school for the following school year. In any event, the Chamber notes that as of the end of January 2013, Ansar Dine/AQIM no longer controlled the city.

<sup>2190</sup> The Chamber refers to its findings on the credibility and reliability of P-0004’s evidence (*see* footnote 2231 below).

<sup>2191</sup> The Chamber refers to its findings on the credibility and reliability of P-0654’s evidence (*see* footnote 1503 above).

<sup>2192</sup> P-0004: T-165, p. 27; p. 41, *referring to* Notebook MLI-OTP-0030-1044, at 1069-1070; P-0654: T-128, pp. 13-14, 63-64; T-130, pp. 54-55; P-0150: T-090, p. 19; P-0638: T-057, p. 67. *See also* P-0065: T-037, p. 16; T-044, p. 11; P-0984: T-068, p. 59; P-0608: T-153, p. 74. *See also* Notebook MLI-OTP-0003-0154-R03, at 0179, transcript MLI-OTP-0064-0701-R02, at 0750. Concerning the Defence objection regarding the two Notebooks, *see* footnote 2231 below. The Chamber notes that the Defence does not contest the existence of a dress code for men imposed by Ansar Dine/AQIM (*see* [Defence Final Brief](#), para. 586).

<sup>2193</sup> Document MLI-OTP-0002-0759, translation MLI-OTP-0078-6164; P-0150: T-113, pp. 12-13; P-0654: T-128, p. 17. *See also* P-0565: T-051, pp. 20-21; P-0608: T-153, p. 60; P-0638: T-057, p. 58; T-058, p. 15. In light of the totality of the evidence, the Chamber considers that members of Ansar Dine/AQIM had to abide by the same rules as the population regarding their appearance.

Members of Ansar Dine/AQIM asked men wearing trousers they considered too long to shorten them or cut them themselves.<sup>2194</sup> A man was caught and flogged for wearing long trousers and a bracelet, and his trousers and bracelet were cut.<sup>2195</sup>

## **2. Effects of the rules and prohibitions and the punishments on the population**

### **a) Economical and psychological consequences**

734. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds reliable: P-0004,<sup>2196</sup> who heard in the context of the Crisis Committee the complaints of members of the population of Timbuktu; P-0065,<sup>2197</sup> who was present in Timbuktu during the relevant period; P-0608,<sup>2198</sup>

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<sup>2194</sup> P-0654: T-130, pp. 54-57; T-134, pp. 68-69; P-0638: T-057, p. 67; T-058, pp. 82-84, *referring to* Video MLI-OTP-0069-4624, at 00:16:01:03 to 16:10:15:00, transcript MLI-OTP-0078-4603, translation MLI-OTP-0078-4686 (identifying himself on the video during his interview with Lemine at the Auberge du Désert, and identifying Sanda; testifying that on the video he was trying to shorten his trousers as it was not allowed to have long trousers and the trousers could not exceed the maximum length; and that the spokesperson, Sanda Ould Boumama, ‘could bring you in at any time’). *See also* P-0547: T-151, p. 14; Notebook MLI-OTP-0003-0154-R03, at 0180, 0182, transcript MLI-OTP-0064-0701-R02, at 0751, 0756.

<sup>2195</sup> P-0557: T-054, pp. 14-16; T-055, p. 52. *See also* P-0004: T-165, pp. 42-44, *referring to* MLI-OTP-0030-1177, at 1253; Notebook MLI-OTP-0003-0154-R03, at 0180, 0182, transcript MLI-OTP-0064-0701-R02, at 0751, 0756.

<sup>2196</sup> The Chamber refers to its findings on the credibility and reliability of P-0004’s evidence (*see* footnote 2231 below).

<sup>2197</sup> The Chamber refers to its findings on the credibility and reliability of P-0065’s evidence (*see* section II.B.2.a)i above).

<sup>2198</sup> P-0608 (*see* P-0608: T-153 to T-155), a Muslim woman of Songhai ethnicity, is [REDACTED] and human rights advocate (P-0608: T-153, pp. 48-51). The witness was present in Timbuktu in April 2012, left for Bamako towards the end of [REDACTED], and returned twice to Timbuktu during the period of Ansar Dine/AQIM’s control, [REDACTED] (P-0608: T-153, pp. 53-54, 78-79; T-154, pp. 60, 77-78). She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. The Chamber considers that P-0608 offered a valuable perspective on events, as an educated person from Timbuktu, who observed, described, analysed and wrote about what she experienced while in Timbuktu in the period of the charges and about what she learned from others (P-0608: T-153, pp. 48-52; T-154, pp. 79-80). P-0608 clearly distinguished between what she saw or heard herself and information she received from others and clearly stated where something was her opinion (*see e.g.* P-0608: T-153, pp. 58-59; T-154, pp. 10-11, 19-20, 21-22, 29, 42, 46, 79-81, 82-83, 88, 92-94; T-155, pp. 14, 18-19). Notwithstanding her background as a human rights advocate, the Chamber observes that the witness was balanced in her testimony (*see e.g.* P-0608: T-154, pp. 93-94), including towards the accused, describing him, based on what she heard, as a good person, stating that she did not deem him to be responsible for the acts that brought him to the Court and confirming that in 2018 she was critical of the fact that he had been brought to the Court (P-0608: T-154, pp. 56-59, *referring to* Facebook post MLI-D28-0005-7606). The witness also demonstrated a critical approach to information she received, acknowledging for instance the difficulties in obtaining reliable information at the time that armed groups were in Timbuktu, and acknowledging issues with sources of information including RFI and ORTM, which according to the witness were respectively thought to belong to the ‘rebel group’ (P-0608: T-153, p. 58; T-154, pp. 80-81, *referring to* MLI-D28-0005-7648), or tended to reflect the position of state authorities (P-0608:

who was present in Timbuktu for some periods in 2012; and D-0272, who was in contact with individuals of Timbuktu during 2012.<sup>2199</sup>

735. The control of Timbuktu by Ansar Dine/AQIM as of April 2012 had significant consequences on the local population, both economically and psychologically. The city's economy was impacted: some jobs as well as activities related to tourism disappeared,<sup>2200</sup> and the activities around the *Monument de la Paix* stopped, including the ones around the gardens which were completely neglected<sup>2201</sup> and which could not supply the markets of the city with fruits and vegetables.<sup>2202</sup> This situation was particularly hard for women who worked at the *Jardin de la Paix*.<sup>2203</sup>
736. The psychological impact of the control of Timbuktu by Ansar Dine/AQIM was also important. Firstly, people saw foreigners imposing their terms on them: they could only accommodate their life and their system of living to the interpretation of Islamic *Sharia* which was imposed with a force of arms in the city.<sup>2204</sup> As

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T-154, p. 82). The witness also frankly acknowledged the use of dark humour or satire in her writing (P-0608: T-154, p. 76), which the Chamber considers added to her credibility. The Chamber notes that P-0608 showed some confusion between different organs of Ansar Dine/AQIM, notably the *Hesbah* and the Islamic Police (*see e.g.* P-0608: T-153, p. 80; T-154, pp. 38-42, 64-65, 72-73; T-155, pp. 19-21) and as to the names, nationalities and identities of a handful of individuals (P-0608: T-155, pp. 8-12; *see Defence Final Brief*, para. 261). The Chamber notes that P-0608's opinion that newspapers stories on rapes at the Islamic Police by 'jihadists' were 'false' seems to be based on the fact that the witness herself neither saw nor heard about such events (*see* P-0608: T-154, p. 80; *Defence Final Brief*, para. 294). To the extent relevant to the issue of rapes perpetrated at the BMS during the period of the charges, the Chamber gives this testimony low weight in light of the numerous direct accounts of rapes perpetrated at the BMS during this period (*see* notably cases of P-0636, P-0570 and P-0547). However, the Chamber does not consider the fact that the witness neither saw nor heard of the rapes to affect the credibility or reliability of her evidence as a whole, taking into account the witness's limited presence in Timbuktu and sources of information. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0608 to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and reiterates that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate, also bearing in mind the specific caveats mentioned above including the time period in which the witness was actually present in Timbuktu and her sources of information. Finally, with respect to [REDACTED], which mainly express the opinion of the witness about certain events in Timbuktu, the Chamber refers to them only to the extent considered relevant and bearing in mind the aforementioned matters in its assessment of material written by the witness.

<sup>2199</sup> The Chamber refers to its findings on the credibility and reliability of D-0272's evidence (*see* section II.B.2.b)i above). For this section, the Chamber finds D-0272's testimony particularly important as someone who himself left Timbuktu owing to the arrival of the armed groups.

<sup>2200</sup> P-0641: T-139, p. 23; P-0065: T-044, p. 9; T-050, pp. 34-35.

<sup>2201</sup> V-0002: T-169, pp. 81, 84-85, 90. *See* also LRVs Brief, paras 240-241.

<sup>2202</sup> V-0002: T-169, p. 85.

<sup>2203</sup> V-0002: T-169, p. 85.

<sup>2204</sup> P-0065: T-044, p. 9; T-050, p. 35.

explained by a witness:

C'était ainsi parce que la population se... se sentait vraiment occupée et... et... qu'est-ce qu'on dit... et vraiment, tout le monde... tout le monde se... On était dans une position de... de résistance, mais une résistance pacifique. Il fallait vraiment... c'est comme si tout le monde s'était dit entre nous : ces gens-là, ils sont... ils ne sont pas venus pour nous faire du bien ; ils disent qu'ils amènent la charia, alors que nous, nous... ou bien qu'ils vont nous rendre musulmans alors que nous, nous sommes déjà musulmans, et depuis longtemps, Tombouctou même, c'est une ville musulmane. Donc, il y avait... il y avait cette philosophie ou cette façon. On s'était entendu. C'est comme s'il y avait eu une réunion sans l'avoir, où tout le monde... personne ne voulait vraiment rien avoir à faire avec eux.<sup>2205</sup>

737. People felt that Ansar Dine/AQIM wanted to inform the population what 'Islam instructs people to do' because they considered that the Muslim people of Timbuktu were not 'practising Muslims' and therefore not 'real Muslims'.<sup>2206</sup> Secondly, the believers of Sufism who hold the saints in very high regards were impacted, notably by the demolition of mausoleums.<sup>2207</sup> People who were found praying and for whom Islam was important found themselves the target of actions that were 'totally unacceptable' and 'were told they were obliged to behave properly. [Their] dignity was disregarded'.<sup>2208</sup>
738. In Timbuktu, people felt that everything changed,<sup>2209</sup> that they did not have the freedom to do what they wanted to do<sup>2210</sup> and that the atmosphere of the city was 'terror everywhere'<sup>2211</sup> and confinement.<sup>2212</sup> People had the feeling that Ansar Dine/AQIM members 'fell on [them]',<sup>2213</sup> 'quashed [their] good spirits',<sup>2214</sup> that

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<sup>2205</sup> P-0608: T-154-FRA, p. 25. The Chamber notes that the English interpretation of this excerpt is less detailed and the transcript reads 'That's the way it was. The people really felt occupied. How should I put this? Truly, everyone – it was we were putting up passive resistance. It was as if everyone had said to one another those people have not come to do good. They have come to bring *Sharia* law in or make us Muslim. But, you know, we already were Muslims. Timbuktu has been a Muslim city for a very long time, so that was the principle. It's as if there had been a meeting. No one wanted to have anything to do with them, other than a few cases'.

<sup>2206</sup> D-0202: T-203, p. 86.

<sup>2207</sup> P-0065: T-50, pp. 35-36.

<sup>2208</sup> P-0554: T-064, p. 11.

<sup>2209</sup> P-0602: T-084, p. 78.

<sup>2210</sup> P-0638: T-057, pp. 58-59; P-0547: T-151, p. 14.

<sup>2211</sup> P-0639's statement, MLI-OTP-0072-0290-R03, at 0297, para. 31; P-0639: T-136, p. 22.

<sup>2212</sup> P-0004: T-164, p. 64.

<sup>2213</sup> P-0554: T-064, p. 10.

<sup>2214</sup> P-0538: T-161, p. 13.

they ‘were always present’,<sup>2215</sup> transforming the city ‘into the bush’<sup>2216</sup> as ‘even going to buy spices became a problem’.<sup>2217</sup> From their point of view, Timbuktu became a ‘dead city’ or a ‘ghost town’ with many people being afraid of going out from fear of being reprimanded or brutalised.<sup>2218</sup> Mr Al Hassan knew that people ‘could not do anything’ concerning the punishments, that ‘everybody was afraid of the word “jihadist” or “terrorist”’ and that ‘people would fear being punished’.<sup>2219</sup>

739. Acts of violence and beatings, involving weapons and whips were frequent during 2012.<sup>2220</sup> There was a perception that Ansar Dine/AQIM members could do whatever they wanted to show their power.<sup>2221</sup> Imams and the Crisis Committee therefore advised people to avoid contact with Ansar Dine/AQIM members or having problems with them.<sup>2222</sup>

740. A lot of people from Timbuktu left the city because of the violence,<sup>2223</sup> or because they did not want to submit themselves to the new rules and prohibitions imposed by Ansar Dine/AQIM.<sup>2224</sup> Many people fled to Mopti or Bamako.<sup>2225</sup> Despite the fact that leaving the city required a car and a certain level of financial resources,<sup>2226</sup> some people made the journey out of the city on foot or on camels, often leaving everything behind.<sup>2227</sup>

741. The people who stayed behind did not necessarily do so because they wanted to, but rather because they were unable or did not have the resources to.<sup>2228</sup> Some

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<sup>2215</sup> P-0603: T-125, p. 17; P-0638: T-057, p. 58.

<sup>2216</sup> P-0538: T-161, p. 13.

<sup>2217</sup> P-0538: T-161, p. 13.

<sup>2218</sup> P-0639: T-136, p. 23; V-0002: T-169, p. 89; video MLI-OTP-0017-0027, at 00:01:59:00 to 00:02:27:30, transcript MLI-OTP-0033-5228, translation MLI-OTP-0033-5405. *See also* P-0622’s statement, MLI-OTP-0065-0558-R02, at 0563, para. 28; P-0565: T-051, p. 26; P-0547: T-152, p. 6.

<sup>2219</sup> Mr Al Hassan’s statement, MLI-OTP-0051-1099, at 1102-1103.

<sup>2220</sup> *See e.g.* P-0150: T-093, pp. 37-38, 41; P-0004: T-164, pp. 102, 106.

<sup>2221</sup> P-0004: T-164, p. 102; P-0547: T-152, p. 19.

<sup>2222</sup> P-0004: T-164, pp. 101-102; P-0114’s statement MLI-OTP-0023-0344-R02, at 0373, para. 129; P-0622’s statement, MLI-OTP-0065-0558-R02, at 0563, para. 28.

<sup>2223</sup> P-0639: T-136, p. 26. *See also* P-0160: T-066, pp. 15-16.

<sup>2224</sup> D-0272: T-182, pp. 25, 98, 102.

<sup>2225</sup> P-0160: T-066, pp. 15-16; P-0608: T-153, p. 74.

<sup>2226</sup> D-0272: T-182, pp. 99-100.

<sup>2227</sup> P-0639: T-136, p. 26; D-0272: T-182, p. 100.

<sup>2228</sup> P-0150: T-094, p. 53; P-0608: T-154, pp. 25; D-0272: T-182, pp. 99-100.



people stayed behind to take care of their family or property.<sup>2229</sup> Some also stayed behind to mount passive resistance against the armed groups.<sup>2230</sup>

**b) The Crisis Committee**

742. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed

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<sup>2229</sup> D-0272: T-182, p. 99.

<sup>2230</sup> P-0065: T-044, p. 10; P-0608: T-154, p. 25.

below, it finds reliable: P-0004,<sup>2231</sup> P-0114,<sup>2232</sup> D-0551,<sup>2233</sup> and P-0150,<sup>2234</sup> who

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<sup>2231</sup> P-0004 (*see* P-0004: T-164 to T-167), a Muslim Songhai man born in Timbuktu, lived in Timbuktu during the period of its control by Ansar Dine/AQIM (P-0004: T-164, pp. 7, 11). [REDACTED]. P-0004 was also a member of the Crisis Committee from April 2012 (P-0004: T-165, p. 9), [REDACTED]. P-0004 mainly testified about events in Timbuktu immediately prior to and during the period of Ansar Dine/AQIM's control of the city, notably his participation in meetings of the Crisis Committee and his interactions with Mr Al Hassan. The Chamber considers P-0004 to be a very knowledgeable witness, who provided clear and balanced testimony. P-0004 recounted events to the best of his knowledge and did not hesitate to indicate when he did not know the answer to the questions posed. The witness also showed no desire to have Mr Al Hassan incriminated, nor bias towards him or Ansar Dine/AQIM (*see e.g.* P-0004: T-165, pp. 40-41, 73, 83). The Chamber finds that while P-0004 was not an insider, he nonetheless had a good knowledge of Ansar Dine/AQIM, which he obtained *inter alia* through his activity as a member of the Crisis Committee, and notes that he was able to distinguish amongst the different institutions, even if he did not know their respective structures precisely. P-0004's testimony was corroborated by the minutes of meetings of the Crisis Committee and [REDACTED]. P-0004 testified that as [REDACTED], so that he would have the same level of information as everyone else (P-0004: T-165, pp. 56-59). P-0004 further testified that during Ansar Dine/AQIM's control of Timbuktu, as a witness of the 'occupation', he [REDACTED]. [REDACTED]. Based on the Chamber's holistic assessment of the evidence, including the foregoing, and notably given P-0004's role in the Crisis Committee and the fact that his testimony was supported by [REDACTED], the Chamber finds P-0004 to be a generally credible and reliable witness, especially in establishing the facts around the Crisis Committee. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate. As to the Defence objections regarding the admissibility and reliability of the minutes of the Crisis Committee and [REDACTED] (ICC-01/12-01/18-2551-Conf-Anx1), the Chamber notes the witness's clear and detailed testimony on the drafting and content of these documents. In particular, the Chamber notes that P-0004: (i) recognised these documents (as a whole and in parts); (ii) named their respective drafters and identified their handwriting; (iii) discussed their content following questions from both parties; and (iv) openly acknowledged where he had limited / less involvement and knowledge about the documents. Further, with respect to [REDACTED] (P-0004: T-167, pp. 27-29). The Chamber also observes that the incidents recorded in these documents are generally consistent with the other credible evidence on the record concerning the situation in Timbuktu at the time. In light of the above, and in the absence of evidence to the contrary, the Chamber is also unconvinced by the Defence's challenges related to the 'chain of custody' or preservation of these documents (*see* ICC-01/12-01/18-2551-Conf-Anx1, pp. 14-15). The Chamber considers that both the Crisis Committee minutes and [REDACTED] are reliable contemporaneous materials which may be relied upon to establish relevant facts, notably those concerning the role and functioning of the Crisis Committee. In the present section, the Chamber accordingly relied upon the minutes and the notes, mainly along with other corroborative evidence and, where that is not the case, the Chamber extracted from them the information which could be clearly and objectively ascertained, as further discussed below.<sup>2232</sup> The Chamber refers to its findings on the credibility and reliability of P-0114's evidence (*see* footnote 892 above). Recalling that P-0114 was also a member of the Crisis Committee and attended its meetings, the Chamber considers that his testimony with respect to the operation and meetings of the Crisis Committee is credible and reliable.

<sup>2233</sup> D-0551 (*see* D-0551: T-200 to T-201), a Muslim Songhai man, was born in Timbuktu (D-0551: T-200, p. 7) and lived there when Ansar Dine/AQIM were present in the city. D-0551, a [REDACTED]. D-0551 was also a member of the Crisis Committee in 2012 and attended its meetings (D-0551: T-200, pp. 59, 69). He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. The Chamber observes that overall D-0551 provided clear and balanced testimony and remained objective and truthful throughout. He clearly understood the questions that were put to him and provided precise answers. Given D-0551's background and status, the Chamber considers that he had a sufficient basis of knowledge with respect to the topics on which he testified, including the Crisis Committee and judicial institutions. The Chamber observes further that D-0551 testified that he met Mr Al Hassan in three different settings and did not know him in a negative capacity (D-0551: T-200, pp. 85-89). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0551 to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

all attended at least some of the meetings of the Crisis Committee and/or are familiar with its functioning.

743. The Crisis Committee started to function at the end of April 2012<sup>2235</sup> but was only properly operational after the departure of the MNLA from Timbuktu.<sup>2236</sup> Initially, in light of the growing number of misunderstandings between the MNLA and Ansar Dine/AQIM on the one side, and the people of Timbuktu on the other side, the mayor of the urban commune decided to put together a certain number of notables, *chefs de quartier*, customary chiefs and religious persons to constitute the Crisis Committee.<sup>2237</sup> In total, there were more than 20 members of the Crisis Committee, with a diverse representation.<sup>2238</sup> There were no women.<sup>2239</sup> The task of this group was to approach Ansar Dine/AQIM leaders, tell them about the problems of the population and negotiate with them.<sup>2240</sup>
744. The Crisis Committee would meet every week,<sup>2241</sup> initially at the town hall.<sup>2242</sup> However, on 24 June 2012, an emissary of the commissioner of the Islamic Police brought a summons from the latter, stating that all meetings had to be previously

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<sup>2234</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (*see* section II.B.2.a)iii above). The Chamber notes that P-0150 also attended some of the meetings of the Crisis Committee with Ansar Dine members, as well as a preparatory meeting before a Crisis Committee meeting (P-0150: T-092, pp. 25, 28-29, 33).

<sup>2235</sup> D-0551: T-200, pp. 51, 66-67; P-0004: T-164, p. 68. *See also* P-0114's statement MLI-OTP-0023-0344-R02, at 0376, para. 146; P-0582's statement MLI-OTP-0062-4089-R02, at 4105. Initially, the MNLA had called upon some people to have an interface between the armed groups and the population of Timbuktu, and had a first meeting to this effect (P-0004: T-164, p. 67; D-0551: T-200, p. 51).

<sup>2236</sup> P-0004: T-164, pp. 67-68.

<sup>2237</sup> P-0004: T-164, pp. 68-69; D-0551: T-200, pp. 66-67; P-0150: T-110, pp. 67-68; T-092, p. 22. *See also* P-0114's statement MLI-OTP-0023-0344-R02, at 0376, para. 146.

<sup>2238</sup> P-0004: T-164, p. 71. P-0004 testified that in the development of the Crisis Committee there was a concern for representativity, as all the sectors and neighbourhood had to be represented, and accordingly the number of members was increased from 15 to 18 in April 2012 (P-0004: T-165, pp. 8-9, *referring to* minutes MLI-OTP-0030-1084, at 1170). The majority of the Crisis Committee were black Tamasheq and Songhai (P-0004: T-164, pp. 75-76). Hallé Ousmane was the president of the Crisis Committee and was rarely absent (P-0004: T-164, p. 73-74; P-0654: T-127, p. 56). Diadié Hamadoun was the vice-president (P-0004: T-164, pp. 73-74; *see also* P-0654: T-127, p. 56). Sane Chirfi Alpha and Assoura Albadia were the administrative secretaries of the Crisis Committee, and Sane Chirfi Alpha, a Songhai dignitary, was the first/primary administrative secretary for the entire period (P-0004: T-164, pp. 65-66). Sane Chirfi Alpha managed the secretariat and when he was absent, the deputy secretary would take his place. However, some tasks of the administrative secretariat were entrusted to either one or the other on occasion (P-0004: T-164, p. 75). Assoura Albadia was a Songhai who was a retired teacher and the assistant or the deputy administrative secretary of the Crisis Committee (P-0004: T-164, pp. 74-75).

<sup>2239</sup> P-0114's statement MLI-OTP-0023-0344-R02, at 0376, para. 146.

<sup>2240</sup> P-0150: T-110, p. 67.

<sup>2241</sup> P-0004: T-164, pp. 86-87; D-0551: T-200, p. 69; P-0114's statement MLI-OTP-0023-0344-R02, at 0379, para. 164.

<sup>2242</sup> P-0004: T-164, pp. 68, 77.

authorised.<sup>2243</sup> After that, the Crisis Committee had to request authorisation to meet every time, and from then, they met at the vice-president's house.<sup>2244</sup> Sometime after, a meeting of the Crisis Committee was organised with Abou Zeid at his residence.<sup>2245</sup> All members of the Crisis Committee were summoned to be present.<sup>2246</sup> At this meeting, apart from Abou Zeid, who was chairing the meeting,<sup>2247</sup> Iyad Ag Ghaly, Mokhtar Belmokhtar and Sanda Ould Boumama were also present.<sup>2248</sup> Abou Zeid told the Crisis Committee that as far as holding meetings was concerned, it had to inform them.<sup>2249</sup> He also stated that 'in the town or country, you can do nothing without the authorisation of the government. And today, throughout the entire world, everybody knows that [we] are the ones who are governing Timbuktu'.<sup>2250</sup> After this meeting, the Crisis Committee started to have an 'official existence' with regards to Ansar Dine/AQIM.<sup>2251</sup> While Ansar Dine/AQIM members did not always attend the Crisis Committee meetings, some meetings were held with their attendance.<sup>2252</sup> Sanda Ould Boumama was the intermediary or interface between the Crisis Committee and Ansar Dine/AQIM.<sup>2253</sup>

745. The Crisis Committee was concerned with the daily life of the population of Timbuktu; it would seek to address social or structural problems faced and find a solution with Ansar Dine/AQIM's leaders and other actors.<sup>2254</sup> This included dealing with issues of security in the city or specific incidents,<sup>2255</sup> the provision

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<sup>2243</sup> P-0004: T-164, pp. 77-79, 81, *referring to* notebook MLI-OTP-0003-0062, at 0111, 0115, transcript MLI-OTP-0064-0608-R02, at 0658, 0662.

<sup>2244</sup> P-0004: T-164, pp. 77, 107-108, *referring to* minutes MLI-OTP-0030-1044-R01, at 1078.

<sup>2245</sup> P-0004: T-164, pp. 81-82.

<sup>2246</sup> P-0004: T-164, pp. 81-82.

<sup>2247</sup> P-0004: T-164, p. 84. Iyad Ag Ghaly also took the floor to speak (P-0004: T-164, p. 84). *See also* minutes MLI-OTP-0030-1084, at 1136.

<sup>2248</sup> P-0004: T-164, pp. 83-84.

<sup>2249</sup> P-0004: T-164, p. 80.

<sup>2250</sup> P-0004: T-164, p. 84.

<sup>2251</sup> P-0004: T-164, p. 84.

<sup>2252</sup> P-0114's statement MLI-OTP-0023-0344-R02, at 0379, para. 165; P-0004: T-165, p. 13, *referring to* minutes MLI-OTP-0030-1171, at 1173; P-0150: T-092, p. 21, *referring to* video MLI-OTP-0018-0014, at 00:00:00 to 00:02:12:18, transcript MLI-OTP-0033-5279, translation MLI-OTP-0033-5423; P-0150: T-092, p. 29.

<sup>2253</sup> D-0551: T-200, p. 81.

<sup>2254</sup> D-0551: T-200, pp. 77-78; P-0114's statement MLI-OTP-0023-0344-R02, at 0378, para. 163; P-0150: T-092, p. 22.

<sup>2255</sup> D-0551: T-200, pp. 68-70; P-0004: T-164, pp. 76-77.

and passage of humanitarian aid,<sup>2256</sup> education,<sup>2257</sup> the supply of water and electricity/energy,<sup>2258</sup> facilitating agriculture,<sup>2259</sup> celebration of festivals,<sup>2260</sup> and making hospitals safe.<sup>2261</sup> Additionally, when people were victims of acts of violence, they could contact the Crisis Committee on an individual basis to inform it of what had happened.<sup>2262</sup> When people were victims of theft or criminal acts, the Crisis Committee would take steps with Ansar Dine/AQIM to find a solution.<sup>2263</sup>

746. The Crisis Committee took note of a number of abuses and violence committed against women because of the way they were dressed,<sup>2264</sup> including women being chased after, notably to their homes.<sup>2265</sup> In particular, when women were imprisoned, the Crisis Committee could intervene with the Police to seek to obtain their freedom.<sup>2266</sup> In August 2012, when the problem related to violence against women was put to the leaders of Ansar Dine/AQIM, they said that the names of the perpetrators and victims had to be provided<sup>2267</sup> and that there would be sanctions.<sup>2268</sup> When Abou Zeid learned about the problems with the population, he stated that he was opposed to these actions which had not been taken in his name.<sup>2269</sup> He provided gifts and apologies.<sup>2270</sup> Abou Zeid stated also that his position was that Ansar Dine/AQIM should first apply a period of observation and explanation before sanctions were imposed.<sup>2271</sup> In addition, on

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<sup>2256</sup> D-0551: T-200, pp. 68, 71; P-0004: T-165, p. 5, *referring to* minutes MLI-OTP-0030-1084, at 1170; P-0114's statement MLI-OTP-0023-0344-R02, at 0379.

<sup>2257</sup> D-0551: T-200, pp. 68, 72-74, 78; P-0150: T-092, p. 29; P-0114's statement MLI-OTP-0023-0344-R02, at 0378-0379, para. 163. *See also* document MLI-OTP-0022-0286, translation MLI-OTP-0067-1096.

<sup>2258</sup> P-0150: T-092, p. 22; D-0551: T-200, pp. 68, 74; P-0004: T-164, pp. 76-77; T-166, p. 82; P-0114's statement MLI-OTP-0023-0344-R02, at 0378-0379, para. 163.

<sup>2259</sup> D-0551: T-200, pp. 71-72; P-0004: T-165, p. 5, *referring to* minutes MLI-OTP-0030-1084, at 1170.

<sup>2260</sup> D-0551: T-200, p. 78.

<sup>2261</sup> D-0551: T-200, pp. 77-78; P-0004: T-165, p. 5, *referring to* minutes MLI-OTP-0030-1084; P-0114's statement MLI-OTP-0023-0344-R02, at 0378-0379, para. 163.

<sup>2262</sup> P-0004: T-164, p. 106; T-165, pp. 23-24, *referring to* minutes MLI-OTP-0030-1084, at 1155. *See also* minutes MLI-OTP-0030-1084, at 1136.

<sup>2263</sup> D-0551: T-200, pp. 77-78.

<sup>2264</sup> P-0004: T-165, pp. 33-34.

<sup>2265</sup> P-0004: T-165, pp. 32-33.

<sup>2266</sup> D-0551: T-200, p. 77.

<sup>2267</sup> P-0004: T-165, p. 35, *referring to* minutes MLI-OTP-0030-1044-R01, at 1069.

<sup>2268</sup> P-0004: T-165, pp. 40-41.

<sup>2269</sup> P-0004: T-167, p. 13.

<sup>2270</sup> P-0004: T-165, p. 41; T-167, pp. 13-14.

<sup>2271</sup> P-0004: T-167, p. 13; P-0150: T-092, pp. 32-33, 36.

15 August 2012, Abou Zeid issued instructions to members of Ansar Dine/AQIM, notably the *Hesbah*, setting out processes to be followed for the application of *ta'zir* punishments.<sup>2272</sup>

747. Later, the Crisis Committee raised the issue of violence against women again with the leaders of Ansar Dine/AQIM, in particular with regard to Mohammed Moussa and his men's behaviour.<sup>2273</sup> At a preparatory meeting attended by Abdallah Chinguetti, Sanda Ould Boumama and Al Mahdi, the members of the Crisis Committee spoke about what happened to women after they were imprisoned, specifically about the conditions of their detention, their harassment as well as (sexual) assault by Mohammed Moussa and his men at the BMS.<sup>2274</sup>
748. Minutes were taken in all meetings of the Crisis Committee by either of the two administrative secretaries – Sane Chirfi Alpha and Assoura Albadia.<sup>2275</sup> At the beginning of the meeting, the minutes of the previous meeting would be read and adopted.<sup>2276</sup>
749. Although the Crisis Committee was involved in a wide range of matters, was in contact with Ansar Dine/AQIM<sup>2277</sup> and did find some solutions with them,<sup>2278</sup> Ansar Dine/AQIM leaders did not always give the Crisis Committee the final word, nor were its interventions always effective.<sup>2279</sup> For instance, the Ansar

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<sup>2272</sup> See paragraph 666 above.

<sup>2273</sup> P-0004: T-165, p. 29, referring to minutes MLI-OTP-0030-1044-R01, at 1068-1070; P-0150: T-092, p. 21, referring to video MLI-OTP-0018-0014, transcript MLI-OTP-0033-5279, translation MLI-OTP-0033-5423; P-0150: T-092, pp. 28-29, 33-34; minutes MLI-OTP-0030-1177, at 1193-1195. See also P-0004: T-165, pp. 51, 53.

<sup>2274</sup> P-0150: T-092, p. 35. The Chamber understands in context that the '*Hesbah* centre' that P-0150 refers to is the BMS (see P-0150: T-094, pp. 72-74).

<sup>2275</sup> P-0004: T-164, pp. 65-66, 85-86, 100. P-0004 testified that it was the rule for the minutes to indicate the time the meeting started and ended, although sometimes the person taking the minutes would not indicate that (P-0004: T-165, pp. 18-19, referring to minutes MLI-OTP-0030-1084, at 1148). With respect to the list of participants for meetings, P-0004 explained that sometimes everybody would write down their names and contact details but generally, it was the administrative secretary who would do that and record who was present (P-0004: T-165, p. 47, referring to minutes MLI-OTP-0030-1177, at 1250). Sometimes the minutes would record who was absent or excused from the meeting as well (P-0004: T-164, p. 89, referring to minutes MLI-OTP-0030-1044-R01, at 1047-1048).

<sup>2276</sup> P-0004: T-164, pp. 86-87.

<sup>2277</sup> D-0551: T-200, p. 79.

<sup>2278</sup> D-0551: T-200, p. 78.

<sup>2279</sup> P-0150: T-092, p. 37; P-0004: T-165, p. 41. See also P-0004: T-165, p. 14, referring to minutes MLI-OTP-0030-1171, at 1173. In this regard, the Chamber notes the Defence's contention ([Defence Final Brief](#), para. 58) that the Ansar Dine/AQIM worked collaboratively with the Crisis Committee showing that they were responsive to requests and complaints from the local population. The Chamber considers

Dine/AQIM leaders did not allow the Crisis Committee to manage the distribution of humanitarian aid or assistance.<sup>2280</sup> Similarly, when people reported acts of violence to the Crisis Committee, it could only encourage the population to avoid any provocative behaviour that could give rise to problems and to stay ‘coolheaded’, avoiding actions that could be deemed to be ‘provocations’.<sup>2281</sup>

750. The Crisis Committee continued meeting throughout the entire duration of the Ansar Dine/AQIM’s control of Timbuktu and did not stop functioning until the end of January 2013.<sup>2282</sup>

751. While not a member of the Crisis Committee itself, Mr Al Hassan met – alongside other members of Ansar Dine/AQIM – with members of the Crisis Committee on at least two occasions.<sup>2283</sup> In particular, he was present during a meeting held on 9 September 2012 as the deputy of Adama, where the issue of exactions and abuses against the population, as well as the need to educate people rather than brutalise them, was discussed, albeit the precise details of this discussion are not established.<sup>2284</sup> Mr Al Hassan was never the main person in charge in the Crisis

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that while Ansar Dine/AQIM did have contact with the Crisis Committee on a range of issues, the latter’s interventions were often ineffective and the Crisis Committee was not allowed to function with any degree of independence.

<sup>2280</sup> P-0004: T-165, pp. 13-14.

<sup>2281</sup> P-0004: T-164, pp. 101-102, 106, *referring to* minutes MLI-OTP-0030-1084, at 1104.

<sup>2282</sup> D-0551: T-200, p. 69.

<sup>2283</sup> In a meeting on 18 January 2013, the Crisis Committee was convened at the Islamic Police, where Adama, Mr Al Hassan, and Arab traders were present (Notebook MLI-OTP-0003-0154-R03, at 0185, transcript MLI-OTP-0064-0701-R02, at 0762). Mr Al Hassan also attended a meeting at *Hôtel Bouctou* between the Crisis Committee and a committee from the Dogon region (Mr Al Hassan’s statement MLI-OTP-0051-0557, at 0562). Contemporaneous notes also refer to this meeting (Notebook MLI-OTP-0003-0154-R03, at 0173, transcript MLI-OTP-0064-0701-R02, at 0738). The Chamber recalls its above assessment of the general reliability of the notebooks and Crisis Committee’s minutes. The Chamber further observes that the notebook entries and minutes relied upon here are precise and such that there is no reason to doubt that they objectively record relevant details, including Mr Al Hassan’s participation in these events. Accordingly, and having considered other relevant evidence discussed further immediately below, the Chamber considers it established that Mr Al Hassan met, at least on two occasions, alongside other members of Ansar Dine/AQIM, with members of the Crisis Committee.

<sup>2284</sup> Mr Al Hassan was present at a meeting of the Crisis Committee on 9 September 2012, with the Police (Minutes MLI-OTP-0030-1177, at 1249-1250). P-0004 explained that the person noted as ‘adjoint’ (or deputy) next to the *commissaire* in this meeting was Mr Al Hassan, while the *commissaire* was Adama (P-0004: T-165, pp. 50-51). P-0004: T-165, pp. 46-47, 50-51, *referring to* minutes MLI-OTP-0030-1177, at 1249-1250. P-0004 [REDACTED] (P-0004: T-165, p. 45). P-0004 stated that he was not sure, but it appeared that the minutes for this meeting were in the handwriting of Assoura Albadia (P-0004: T-165, p. 46).

Committee meetings with Ansar Dine/AQIM.<sup>2285</sup>

**c) The women's march**

752. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which it finds reliable: P-0603,<sup>2286</sup> who was present at the front of the women's march, taken to the *Gouvernorat* and thereafter released; D-0315,<sup>2287</sup> who was present at the back of the march; P-

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<sup>2285</sup> D-0551: T-200, pp. 87-88. P-0004 testified that in the meeting with the Arab traders, Mr Al Hassan 'would say in French what the others said in Arabic' (P-0004: T-165, p. 84). Mr Al Hassan also stated that he attended a meeting at *Hôtel Bouctou* between the Crisis Committee and a committee from the Dogon region, as an interpreter (Mr Al Hassan's statement MLI-OTP-0051-0557, at 0562). *See also* P-0150: T-118, pp. 32-33, *referring to* video MLI-OTP-0018-0014; [Defence Final Brief](#), para. 72.

<sup>2286</sup> P-0603 (*see* P-0603: T-125 to T-127), a Muslim woman with links to [REDACTED], was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the city (P-0603: T-125, pp. 6-7). She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. The Chamber observes that P-0603 testified about what she heard and saw and did not speculate. She provided further details when asked, as well as spontaneously, and her account was consistent throughout her testimony. While noting that the witness – who cannot read and write – could not provide or confirm certain numerical details (such as dates, distance, number of people), the Chamber has no doubt as to the accuracy of her account. Specifically, in relation to the women's march, the Chamber considers that P-0603 had a good basis of knowledge for her testimony, given that she was at the front of and leading the march and that she was taken to the *Gouvernorat*, and thereafter released. As concerns the fact that P-0603 mentioned the name of Mr Al Hassan only after she was interviewed by the Prosecution, the Chamber accepts the witness's explanation (P-0603: T-126, p. 48; T-127, pp. 19-21) and finds no issue of credibility in this respect. Specifically, the Chamber notes that P-0603 confirmed that 'Mr Al Hassan did not do anything' bad to her, that he did not speak to the group of women in the context of the women's march (P-0603: T-126, p. 48) and that she could not 'lie about him because he did not do anything' (P-0603: T-127, p. 21). Noting the consistency of her account on this point, that she learned Mr Al Hassan's name from the exchanges at the time, and further identified him from a photo (P-0603: T-126, p. 18, *referring to* MLI-OTP-0041-0605), the Chamber does not give weight to P-0603 failing to recognise Mr Al Hassan in one particular photograph (P-0603: T-126, p. 90, *referring to* MLI-OTP-0022-0482). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0603 to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and reiterates that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>2287</sup> D-0315 (*see* D-0315: T-185 to T-186), a Tamasheq woman, was born in Timbuktu although lived [REDACTED] when Ansar Dine/AQIM were in present in Timbuktu (D-0315: T-185, pp. 6-7; T-186, p. 52). [REDACTED] (D-0315: T-185, pp. 6-7, 56). The witness mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. The Chamber considers that the witness was generally straightforward in her testimony and clearly noted when she did not know or did not witness something directly (*see e.g.* D-0315: T-185, pp. 16, 42-43, 49), as well as when she did not remember certain details, explaining notably that she did not know at the time that she would have to 'tell the tale' and would be asked 'all these' questions (*see e.g.* D-0315: T-185, pp. 55). In relation to the women's march, the Chamber considers that while D-0315's testimony was generally reliable, she was not at the front of the march, joined in later, and could not clearly see everything from her position at the back of the march, some 20-25 metres from the front (D-0315: T-185, p. 50). In fact, the witness herself noted that she did not see details like the women being released from the BMS and would not be able to say even if women were physically harmed from her position at the back (D-0315: T-185, pp. 50-51). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0315 to be a generally credible and reliable witness although remains cognisant of the foregoing considerations in assessing her evidence, in particular as regards the women's march. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the



0065,<sup>2288</sup> who observed the demonstration; and P-0582,<sup>2289</sup> a member of the Islamic Police who was present on the day of the march.

753. On 6 October 2012,<sup>2290</sup> women of Timbuktu gathered in a demonstration (also called ‘women’s march’) to express their anger<sup>2291</sup> and to protest against the rules and prohibitions imposed on them by Ansar Dine/AQIM,<sup>2292</sup> in particular concerning the strictness in enforcing the dress code<sup>2293</sup> and detention of women.<sup>2294</sup> Further, women were angry because they found it difficult to go to the market and go about their regular trade.<sup>2295</sup> More specifically, the women were protesting against the actions of Mohammed Moussa,<sup>2296</sup> under whose authority restrictions on women, particularly the dress code, were enforced very strictly.<sup>2297</sup> Mohammed Moussa’s men had also been violent towards women.<sup>2298</sup>

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credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis, as appropriate.

<sup>2288</sup> The Chamber refers to its findings on the credibility and reliability of P-0065’s evidence (*see* section II.B.2.a)i above). In relation to the women’s march, the Chamber notes that P-0065 was present at the event and observed the demonstration (P-0065: T-038, pp. 41-43; T-050, p. 29).

<sup>2289</sup> The Chamber refers to its findings on the credibility and reliability of P-0582’s evidence (*see* section II.B.2.c)iii above). With respect to the women’s march, P-0582 stated that Mr Al Hassan told him that he had to be posted near a small roundabout, leading to the roundabout of *Flamme de la Paix*, where the march was initially supposed to end (P-0582’s statement MLI-OTP-0062-4157-R02, at 4180-4182). P-0582 later stated that he was posted at the Al Farouk monument (P-0582’s statement MLI-OTP-0065-0577-R02, at 0592). P-0582 was present and saw the women’s march (P-0582’s statement MLI-OTP-0062-4157-R02, at 4177).

<sup>2290</sup> *Message porté* MLI-OTP-0012-0975; P-0065: T-038, p. 42; P-0603: T-125, p. 36. *See* P-0608: T-154, pp. 49-51, *referring to* MLI-OTP-0061-0007. *See also* articles MLI-OTP-0001-4074; MLI-OTP-0033-4305. The Chamber notes that these last two documents are contemporaneous press articles, dated 8 and 9 October 2012, respectively. The Chamber finds that these items have sufficient indicia of reliability and considers it appropriate to rely on them in order to corroborate testimonial evidence on the record regarding the timeframe and unfolding of the women’s march.

<sup>2291</sup> P-0603: T-125, p. 35; P-0065: T-040, pp. 56-57. *See also* D-0551: T-200, pp. 82-83.

<sup>2292</sup> P-0603: T-125, p. 35; P-0065: T-038, p. 42; T-050, p. 29; D-0551: T-200, pp. 82-83. *See also* article MLI-OTP-0033-4305; P-0150: T-104, p. 38.

<sup>2293</sup> P-0603: T-125, p. 35; P-0065: T-038, p. 42; T-050, pp. 29, 52-53; T-040, p. 57.

<sup>2294</sup> P-0654: T-129, p. 43; P-0547: T-153, pp. 3-4; Mr Al Hassan’s statement MLI-OTP-0051-1155, at 1172.

<sup>2295</sup> P-0603: T-125, p. 35. *See* P-0608: T-154, p. 51. According to the Chamber, this evidence shows that women in the market found it difficult to carry on with their regular trade.

<sup>2296</sup> D-0315: T-185, pp. 45-46; D-0551: T-200, p. 82; P-0654: T-129, pp. 42-43; P-0065: T-050, pp. 28-29; P-0065: T-050, pp. 52-53; P-0603: T-126, p. 48. *See also* article MLI-OTP-0001-4074, at 4074.

<sup>2297</sup> The Chamber refers to its relevant findings on the various rules and prohibitions concerning women (*see* section 1.c) above).

<sup>2298</sup> D-0551: T-200, pp. 82-83; P-0603: T-125, pp. 35-36; P-0608: T-154, pp. 49-51. Based on the fact that P-0608 was not present at that particular incident herself, the Chamber considers that it cannot precisely ascertain the details of the specific incident which prompted the demonstration. Rather, it is satisfied from the overall evidence that there was at least one incident of Mohammed Moussa’s men acting violently towards a woman, which was the immediate trigger of the demonstration, although based on the evidence no specific conclusions are formulated here with respect to this incident.

754. The day before the march, Mr Al Hassan told Islamic Police officers that women wanted to march and he indicated where the officers had to be posted to maintain security.<sup>2299</sup> The Police officers were brought to the location of the march on the day, in Abou Zhar's vehicle.<sup>2300</sup> Mr Al Hassan was not initially with the police force deployed at the location.<sup>2301</sup>
755. On the day of the march, many women started progressively gathering in some places in Timbuktu, such as the fish market, Bellafarandi, as well as the Badjinde market<sup>2302</sup> and decided to march together towards the BMS.<sup>2303</sup> While the exact number was difficult to ascertain, it was more than one hundred women.<sup>2304</sup> There were no men participating at the protest, with the exception of the imam of Bellafarandi.<sup>2305</sup>
756. The women were walking empty-handed, without carrying anything that could be used as a weapon.<sup>2306</sup> The women were shouting slogans such as 'Long Live Mali'.<sup>2307</sup> Women also took off their veils to show their discontentment and that they did not agree with the restrictions imposed on them.<sup>2308</sup> In particular, P-0603 stated:
- 'We took off our saris because we wanted to show them that we did not agree with what they were asking us to do. It was up to us to wear what we wanted to, not what they wanted us to. Even if we went to the market and didn't wear a sari, they would whip us. We didn't agree with that'.<sup>2309</sup>
757. While the women were marching, members of the Islamic Police fired shots in the air, causing the women to lie on the ground and then resume marching once

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<sup>2299</sup> P-0582's statements MLI-OTP-0062-4157-R02, at 4180-4181; MLI-OTP-0062-4157-R02, at 4177, 4180-4182; MLI-OTP-0065-0577-R02, at 0592. P-0582 also stated that the day before the march was organised, four women came to the Police to ask for permission to march (P-0582's statement MLI-OTP-0062-4157-R02, at 4180).

<sup>2300</sup> P-0582's statement MLI-OTP-0062-4185-R02, at 4189.

<sup>2301</sup> P-0582's statement MLI-OTP-0062-4185-R02, at 4190.

<sup>2302</sup> P-0603: T-127, pp. 10-11; P-0065: T-050, p. 29; P-0608: T-155, p. 22; D-0315: T-185, pp. 46, 49.

<sup>2303</sup> P-0603: T-127, pp. 11-12; P-0608: T-155, p. 22; D-0315: T-185, p. 49.

<sup>2304</sup> P-0603: T-125, pp. 37-38; T-127, p. 11. *See also* article MLI-OTP-0001-4074, at 4074.

<sup>2305</sup> P-0603: T-125, p. 38; T-126, p. 62.

<sup>2306</sup> P-0603: T-127, pp. 13-14.

<sup>2307</sup> P-0603: T-127, p. 12.

<sup>2308</sup> D-0315: T-185, p. 46; P-0608: T-155, p. 22. *See also* blog post MLI-OTP-0061-0007.

<sup>2309</sup> P-0603: T-127, p. 12.

the shooting was over.<sup>2310</sup> At least one woman was physically hurt by Ansar Dine/AQIM members during the demonstration.<sup>2311</sup> The noise from the demonstration forced Talha to come out from the BMS; he spoke to the officers, asking them to stop firing and to listen to the women as to why they were protesting.<sup>2312</sup> A number of other officials, including Mr Al Hassan, also came to the location where the shots were fired.<sup>2313</sup>

758. Of the women who were marching, seven<sup>2314</sup> were taken to the *Gouvernorat* in a vehicle.<sup>2315</sup> Some of these women escaped.<sup>2316</sup> There were armed officers in front of the door and so the rest of the women felt like they were not free to leave.<sup>2317</sup>

759. After a while, Mr Al Hassan, Sanda and Mohammed Moussa arrived at the place where the women were sitting.<sup>2318</sup> After speaking to each other and the imam, they called the women one by one.<sup>2319</sup> While Sanda and Mohammed Moussa spoke to the women, Mr Al Hassan was writing, but did not speak.<sup>2320</sup> Mohammed Moussa told the women that they should buy a *hijab* from the market, which his wife was selling, and should wear gloves on their hands, after which they would be allowed to move around freely.<sup>2321</sup>

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<sup>2310</sup> P-0603: T-125, p. 36; T-127, p. 14; P-0582's statements MLI-OTP-0062-4157-R02, at 4182; MLI-OTP-0062-4185-R02, at 4191-4192, 4195. *See also* article MLI-OTP-0001-4074, at 4074. From the evidence and context, the Chamber finds that the shots in the air were fired notably by members of the Islamic Police.

<sup>2311</sup> P-0065: T-050, p. 29; article MLI-OTP-0001-4074. *See also* D-0315: T-185, p. 51.

<sup>2312</sup> P-0603: T-125, p. 37; T-127, p. 15; D-0315: T-185, p. 46.

<sup>2313</sup> P-0582's statement MLI-OTP-0062-4185-R02, at 4192, 4193.

<sup>2314</sup> P-0603: T-125, pp. 37, 39-40. P-0582 testified that the person who shot in the air was put in the vehicle and the women were asked to meet the Police (MLI-OTP-0062-4185-R02, at 4191). P-0608 also testified that she had heard that Tina was 'taken inside the BMS to discuss the women's concerns' (P-0608: T-155, p. 22). However, the Chamber notes that P-0608 was not in Timbuktu when this happened (P-0608: T-155, p. 22) and that P-0582's testimony on this count was not clear as to whether the women were asked to meet the Police on their own, or whether they were also taken in the vehicle along with the man who fired the shot in the air, and whether they were arrested or went on their own volition. The Chamber therefore finds that P-0603's evidence, as someone who was actually taken to the *Gouvernorat* along with the other women, must be accorded greater weight. In the overall circumstances, the Chamber considers that the women were indeed arrested and taken to the *Gouvernorat* against their will.

<sup>2315</sup> P-0603: T-125, pp. 40-41.

<sup>2316</sup> P-0603: T-125, pp. 38, 42.

<sup>2317</sup> P-0603: T-125, pp. 43-45.

<sup>2318</sup> P-0603: T-125, pp. 44-46.

<sup>2319</sup> P-0603: T-125, pp. 45-46.

<sup>2320</sup> P-0603: T-125, pp. 46-47. *See also* T-126, pp. 51-52.

<sup>2321</sup> P-0603: T-125, p. 46. Incidentally, the high cost of the *hijab* was one of the initial reasons for the protest of the women as well (P-0603: T-125, p. 36).

760. The women left the *Gouvernorat* early in the evening.<sup>2322</sup> At the time of leaving, Mr Al Hassan told the women that if they ever took part in another march without permission,<sup>2323</sup> they would be punished.<sup>2324</sup> After that time, the women did not organise any other marches.<sup>2325</sup> However, women in general continued to face problems and suffer incidents of violence.<sup>2326</sup>

## E. CHARGED INCIDENTS

### 1. Events involving individual victims

#### a) Case of the two young men flogged around 8 July 2012 (the ‘two men’)

761. For the factual findings in this section, the Chamber relies primarily on the following evidence which, subject to discrete aspects discussed below, it finds particularly reliable: the testimony of P-0065,<sup>2327</sup> who was present at this

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<sup>2322</sup> P-0603: T-125, p. 49.

<sup>2323</sup> In this regard, the Chamber notes that there seems to be factually contradictory evidence on whether the women had obtained permission to march. On the one hand, P-0603 stated that the march was spontaneous (P-0603: T-127, p. 11). On the other hand, P-0582 stated that four women had come to the Islamic Police the day before to seek permission for the march, and that after, Mr Al Hassan directed the Police officers where to be stationed on the day of the march (P-0582’s statement MLI-OTP-0062-4157-R02, at 4180-4181), which suggests therefore that the march was not spontaneous. However, to the Chamber this is not necessarily in contradiction. The Chamber notes that while P-0582 testified that four women had come to seek permission for the march, it is not clear whether they were actually granted the permission by the Islamic Police. It does suggest however, that at the least, the Islamic Police was aware that such a march might take place on 6 October 2012, as a result of which Mr Al Hassan stationed members of the Islamic Police at various locations. In addition, the Chamber does not consider that all women in Timbuktu were organized to an extent that each of them would be aware that four women had gone the previous day to the Islamic Police to seek permission for a march. Indeed, the Chamber finds it plausible that some of the women, including P-0603 herself, could have joined the march spontaneously on the day (and indeed have believed that it was spontaneous).

<sup>2324</sup> P-0603: T-125, p. 49.

<sup>2325</sup> P-0603: T-125, p. 49.

<sup>2326</sup> P-0150: T-092, p. 36; article MLI-OTP-0001-4074. A notebook discusses an incident where Mohammed Moussa arrested ten Bella women in early December (MLI-OTP-0003-0154-R03, at 0179; transcript MLI-OTP-0064-0701-R02, at 0750). D-0544 called Mr Al Hassan on 17 December 2012, about his wife who was arrested, and Mr Al Hassan called him back and told him that his wife was with Mohammed Moussa (D-0544: T-196, pp. 53-54; MLI-D28-0006-3342-R01, at 3346). *See also* minutes MLI-OTP-0030-1177, at 1195. These minutes are from a meeting dated 29 November 2012 and P-0004 stated that the term ‘*exactions*’ referred to abuse and violence against women (P-0004: T-165, p. 60). In this regard, the Chamber notes that D-0551 and D-0315 testified that after the women’s march, the situation became better for women (D-0551: T-200, pp. 83-84; D-0315: T-185, p. 51; *see also* [Defence Final Brief](#), para. 276). The Chamber consider that this evidence does not contradict its finding above. Rather, it appears to the Chamber that D-0551 and D-0315’s testimony relate to the immediate aftermath of the women’s march. However, in the longer term, the Chamber finds that women continued to face problems stemming from Mohammed Moussa’s actions. *See also* paragraph 542 above.

<sup>2327</sup> The Chamber refers to its findings on the credibility and reliability of P-0065’s evidence (*see* section II.B.2.a)i above).

incident; and associated video evidence.<sup>2328</sup> The Chamber also relies on Mr Al Hassan's statements.<sup>2329</sup>

762. On or around 8 July 2012, members of the Islamic Police<sup>2330</sup> arrested two men in Timbuktu<sup>2331</sup> for consuming alcohol.<sup>2332</sup> The Majority, Judge Akane dissenting, finds that the two men were brought to the Islamic Court by members of Ansar Dine/AQIM and were sentenced for drinking alcohol.<sup>2333</sup> The two civilian

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<sup>2328</sup> The Chamber notes that a video purportedly depicting the event of the flogging was submitted into evidence (video MLI-OTP-0018-0693, transcript MLI-OTP-0069-1464, translation MLI-OTP-0078-1304). P-0065, who testified that he was present at [REDACTED] this incident (P-0065: T-040, pp. 39, 48) recognised video MLI-OTP-0018-0693 as footage of the punishment of young men for drinking alcohol [REDACTED] (P-0065: T-040, pp. 39-40, 43-44). P-0150 similarly identified the same video as showing 'police beating criminals' and said that while he was not certain whether a *hadd* or a *ta'zir* was being implemented, he believed that the Police were beating alcohol drinkers because there were so many lashes given (P-0150: T-095, pp. 52-53, *referring to* video MLI-OTP-0018-0693). The Chamber further notes that several other videos depicting different extracts of MLI-OTP-0018-0693 were also submitted into evidence (video MLI-OTP-0018-0184; video MLI-OTP-0018-0185, transcript MLI-OTP-0069-0435; video MLI-OTP-0018-0186; video MLI-OTP-0018-0187, transcript MLI-OTP-0069-0437; video MLI-OTP-0018-0188, transcript MLI-OTP-0078-5982; video MLI-OTP-0018-0189, transcript MLI-OTP-0033-5739, translation, MLI-OTP-0033-5432; video MLI-OTP-0018-0190). The Chamber notes the Defence objection to video MLI-OTP-0018-0693 on the basis that it has been edited and its related submission that the fact that there are individual extracts may indicate that MLI-OTP-0018-0693 lacks digital integrity (*see* ICC-01/12-01/18-1631-Conf-AnxV, p. 21 and related annexes; ICC-01/12-01/18-2122-Conf-AnxA, pp. 49-51; [Defence Final Brief](#), para. 456). While remaining cognisant of the fact that MLI-OTP-0018-0693 appears to be compiled of the various individual extracts, the Chamber is satisfied on the basis of the images depicted therein and the foregoing evidence that the footage in MLI-OTP-0018-0693 on the core of the event (in particular at 00:01:16:00 to 00:05:06:00) relates to the single incident of the flogging of the two men. Regarding this material, *see also* paragraph 55 above.

<sup>2329</sup> The Chamber refers to its findings on the credibility and reliability of Mr Al Hassan's statements (*see* section II.C above). The Chamber also observes that when shown images depicting this incident, Mr Al Hassan provided several details voluntarily which are, as discussed in the present section, largely consistent with other evidence before the Chamber.

<sup>2330</sup> Mr Al Hassan's statement MLI-OTP-0051-0967, at 0977.

<sup>2331</sup> Video MLI-OTP-0018-0693. Concerning the date of this incident, the Chamber notes that P-0065 could not recall when the flogging of the two men took place (P-0065: T-040, p. 40). Notwithstanding, the Chamber notes that article MLI-OTP-0033-4224 dated Sunday 8 July 2012 states that the sentence of two people convicted of alcohol consumption in Timbuktu was executed on that Sunday. P-0065 testified that the article relates to the same event of men being punished for drinking alcohol and that [REDACTED] (P-0065: T-040, pp. 57-58; T-040-FRA, p. 58, *referring to* article MLI-OTP-0033-4224). In relation to MLI-D28-0004-2959, which is the metadata of video MLI-OTP-0018-0693, P-0065 confirmed the creation and modification date shown is 9 June 2013 but noted that depending on the parameters of the computer, sometimes the date changes when the file is transferred or published on the internet and saved again (P-0065: T-049, p. 46). Noting P-0065's explanation, this evidence has no bearing on the Chamber's conclusion about the date of video MLI-OTP-0018-0693. Based on the foregoing the Chamber is satisfied that the flogging of the two men occurred on or around 8 July 2012. The Chamber also infers from this that the two men were arrested around that date.

<sup>2332</sup> P-0065: T-040, pp. 44, 49, *referring to* MLI-OTP-0018-0693; Video MLI-OTP-0018-0693, at 00:01:16:00 to 00:02:24:00, translation MLI-OTP-0078-1304, at 1306. *See also* Mr Al Hassan's statement MLI-OTP-0051-0967, at 0977.

<sup>2333</sup> Mr Al Hassan's statement MLI-OTP-0051-0967, at 0977. The Defence submits that a reasonable inference is that the punishment was also ordered by the Islamic Court ([Defence Final Brief](#), para. 457, *contra* [Prosecution Final Brief](#), para. 227). **The Majority** notes that Mr Al Hassan was shown images of

men,<sup>2334</sup> one dressed in blue clothing and the other in a striped t-shirt, were handcuffed together; the Islamic Police took them<sup>2335</sup> to a square near the BMS<sup>2336</sup> in order to be flogged in front of a crowd of people,<sup>2337</sup> including children.<sup>2338</sup>

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the event and asked to recount the circumstances. In response he described that the two men had been arrested by the Police for drinking alcohol, they were brought before the ‘Tribunal’ and condemned to 40 lashes by the ‘Tribunal’ – a point clearly confirmed by Mr Al Hassan. On the basis of this statement by Mr Al Hassan, the Majority finds that the two men were brought before the Islamic Court by members of the Ansar Dine/AQIM. The Majority notes that when asked about the event, P-0150 did not think that this was a Court decision because there was no recitation of a Court decision in public as usually, when the Islamic Court issues a decision, it would be read out loud by a member of the *Hesbah* at the enforcement stage. P-0150 added that he could only see that this was a Police action to bring over the men and beat them up. However, he went on to acknowledge ‘I cannot speak with certainty about the subject’ (P-0150: T-095, p. 53). The Majority therefore considers this evidence does not undermine the probative value of the direct evidence provided by Mr Al Hassan.

**Judge Akane** considers that in this particular instance, Mr Al Hassan’s statement alone is insufficient to find that the two men were brought before the Islamic Court. Notably, Judge Akane observes that the relevant videos depict the two men being brought to the scene of the flogging and being flogged, without any recitation of an Islamic Court judgment, which is in contrast with other incidents of floggings preceded by an Islamic Court judgment (*see* paragraph 789 below). Judge Akane notes that P-0150 testified indeed that he did not believe that there was a court decision in this case because there was no recitation of a court decision in public (P-0150: T-095, p. 53). P-0150 also testified that typically a member of the *Hesbah* would read a Court decision out loud; however, here the Police brought the ‘criminals’ over and beat them (P-0150: T-095, p. 53). For these reasons, Judge Akane considers that the floggings of the two men was a *ta’zir* imposed directly by the Islamic Police without an Islamic Court judgment (*see also* [Prosecution Final Brief](#), para. 227).

<sup>2334</sup> Based on the two men’s clothing, the fact that in principle there was a separate parallel judicial organ which was meant to deal with, *inter alia*, matters relating only to members of Ansar Dine/AQIM and not the local population (*see* paragraph 599 above), and the general circumstances concerning their flogging, including its public nature, the Chamber finds that the two young men were civilian members of the population of Timbuktu at the time of the charged events (*contra* [Defence Final Brief](#), para. 457). *See also* P-0638: T-058, p. 70.

<sup>2335</sup> Video MLI-OTP-0018-0693, at 00:01:15:13 to 00:02:25:06, translation MLI-OTP-0078-1304, at 1306; P-0065: T-040, pp. 48-49. P-0065 testified that everyone wearing a blue vest was from the Islamic Police (P-0065: T-040, p. 50). D-0605 also confirmed that a member of the Islamic Police wearing the vest of the Islamic Police was present to the right of the person being whipped (D-0605: T-195, p. 26). The Chamber infers from the above that the two men in handcuffs were brought by members of the Islamic Police.

<sup>2336</sup> P-0065: T-040, pp. 39-40, 43. P-0065 also identified the location where this incident took place on a satellite image (P-0065: T-040, pp. 59-60, *referring to* MLI-REG-0001-0009). P-0150 similarly identified video MLI-OTP-0018-0693 as being filmed at the square next to the first office of the Police (P-0150: T-095, pp. 52-53). *See also* P-0603: T-125, p. 11. Noting the description of the location by the witnesses, the Chamber finds that the location was near the BMS (*see* paragraph 558 above). *See also* Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0979-0981.

<sup>2337</sup> The Chamber notes that P-0065 testified that he could not remember exactly how he became aware that [REDACTED] and explained that usually he would know what was going on and why, as it was being carried out in a public square and the information was available to everyone (P-0065: T-040, pp. 43-44). P-0065 also testified that whenever there was a punishment, it always started with a person explaining to everyone what was going on over loudspeakers, that they were there to execute a particular punishment on the people, so that everyone realised what was going on instead of asking questions (P-0065: T-040, p. 44). He did not recall whether in this scene someone read out what was going on over the loudspeakers (P-0065: T-040, p. 46).

<sup>2338</sup> Video MLI-OTP-0018-0693, at 00:02:13:10 to 00:04:05:00.

763. Members of the Islamic Police and other members of Ansar Dine/AQIM were present,<sup>2339</sup> including Mr Al Hassan,<sup>2340</sup> Abou Zhar,<sup>2341</sup> Abou Jabar<sup>2342</sup> and Abdallah ‘the Burkinabé’.<sup>2343</sup> Mr Al Hassan and Abou Zhar were both overseeing the execution of this punishment in particular.<sup>2344</sup> Mr Al Hassan gave the key to Abou Zhar to unlock the handcuffs chaining the two individuals, so that the

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<sup>2339</sup> P-0065: T-040, pp. 50, 53; T-049, p. 43; T-049-FRA, p. 43. Mr Al Hassan also testified that the Police and Ansar Dine were present during the flogging (Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0977-0978).

<sup>2340</sup> The Chamber notes that several witnesses consistently identified Mr Al Hassan on video MLI-OTP-0018-0693. P-0065 identified Mr Al Hassan several times on video MLI-OTP-0018-0693, at 00:02:09:11 as the individual to the left of the man in blue, wearing a sand-coloured boubou and turban and holding a whip in his right hand, in the sequence ending at 00:02:20:21 as the individual giving the key to unlock the handcuffs chaining the two individuals to Abou Zhar, at 00:02:53:02 as the individual on the extreme left, at 00:03:21:06 as the individual whipping the man in blue, and 00:04:27:17 as the individual whipping the man in the striped shirt (P-0065: T-040, pp. 49-53). P-0150 similarly identified Mr Al Hassan on video MLI-OTP-0018-0693, at 00:02:21:10 as the individual with his hand raised and wearing a dark green turban, at 00:02:30:05 as the individual on the left of the screen, and 00:03:17:00 and 00:04:20:19 as the person holding the whip (P-0150: T-095, pp. 56-57). P-0582 similarly identified Mr Al Hassan on video MLI-OTP-0018-0693, at 00:02:32:13 as the person wearing a khaki boubou with military pants and blue socks without a vest, at 00:02:18:16 as the person with a whip in his hand (P-0582’s statement MLI-OTP-0062-4318-R02, at 4326-4328). P-0638 similarly identified Mr Al Hassan on video MLI-OTP-0018-0693, at 00:02:11:21 to 00:02:27:16 as the person in a yellow boubou with a turban, facing the person wearing a t-shirt (P-0638: T-058, pp. 69, 71-72; MLI-REG-0001-0018). The Chamber is also satisfied on the basis of its own assessment of the evidence that Mr Al Hassan was present.

<sup>2341</sup> P-0065 also identified Abou Zhar on video MLI-OTP-0018-0693, at 00:02:18:06 as the individual in the white turban between the person in blue and the person with the striped shirt, at 00:02:18:12 as the individual with a white turban between the man in blue and the man with a striped shirt, at 00:02:47:21 to 00:02:51:09 as the individual whipping the man in blue, and 00:03:45:04 to 00:03:55:15 as the individual in a white turban, whipping the man with a striped shirt (P-0065: T-040, pp. 47-48, 50-53). The Chamber notes that neither P-0150 nor P-0582 could identify this person (P-0150: T-095, p. 57, *referring to* video MLI-OTP-0018-0693, at 00:02:49:03; P-0582’s statement MLI-OTP-0062-4318-R02, at 4326, *referring to* video MLI-OTP-0018-0189, at 00:00:25:00). Although the person identified by P-0065 as Abou Zhar has his face hidden, the Chamber recalls that P-0065 was present at the event [REDACTED], and he explained that this is how he could identify the person notwithstanding the fact that his face was covered (P-0065: T-040, p. 48). P-0065 also testified that he knew these people and could recognise some people by the manner they walked or the way they appeared (P-0065: T-040, p. 48). On the basis of the foregoing, the Chamber relies on P-0065’s identification of Abou Zhar.

<sup>2342</sup> P-0150: T-117, pp. 46, 55, *referring to* video MLI-OTP-0018-0693, at 00:01:32:00; document MLI-REG-0001-0107. P-0150 testified that Abou Jabar was associated with Al Qaeda and that he thinks that Abou Jabar was close to Abou Zeid (P-0150: T-112, p. 62).

<sup>2343</sup> Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0980. In relation to the Defence’s submission that Mr Al Hassan was ‘suborned’ to Abou Jaber at this event ([Defence Final Brief](#), para. 523), the Chamber recalls its finding that Mr Al Hassan’s own description of the role of Abou Jaber contradicts this contention (*see* footnote 1554 above).

<sup>2344</sup> P-0065: T-040, p. 54, *referring to* video MLI-OTP-0018-0693. P-0065 acknowledged that he did not have full knowledge of the Islamic Police and the positions held within the Islamic Police and said that he was not able to identify who gave instructions to whom between Mr Al Hassan and Abou Zhar (P-0065: T-040, p. 54). Mr Al Hassan stated that it was he who carried out the flogging with Abou Zhar (Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0983). Mr Al Hassan explained that, as the emir of the Islamic Police may have been absent, Abou Zhar was in charge of designating the person who would carry out the flogging (Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0985). In relation to the Defence’s submission that Abou Zhar ranked higher than Mr Al Hassan at this event ([Defence Final Brief](#), para. 523), the Chamber refers to its finding at paragraph 553 above.

punishment could be executed.<sup>2345</sup> Members of Ansar Dine/AQIM present secured the site of the flogging.<sup>2346</sup>

764. Both Abou Zhar and Mr Al Hassan whipped the man wearing blue clothing,<sup>2347</sup> and the man wearing a striped t-shirt.<sup>2348</sup> Both victims showed visible signs of being in pain as they were being whipped.<sup>2349</sup> Mr Al Hassan meted out at least 34 lashes on the man in blue clothing<sup>2350</sup> and at least 37 lashes on the man in the striped t-shirt.<sup>2351</sup> Each victim received around 80 lashes in total.<sup>2352</sup>

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<sup>2345</sup> P-0065: T-040, pp. 50-51, *referring to* video MLI-OTP-0018-0693 in sequence ending at 00:02:20:21; Mr Al Hassan's statement MLI-OTP-0051-0967, at 0984.

<sup>2346</sup> *See* video MLI-OTP-0018-0693, at 00:02:09:00 to 00:04:06:00, which depicts members of Ansar Dine/AQIM, many of whom are armed, surrounding the two men who were flogged. The Chamber considers that by doing so they were securing the site of the floggings, noting also that the same was done for other public floggings carried out by Ansar Dine/AQIM at the time (*see e.g.* paragraphs 785 and 847 below).

<sup>2347</sup> P-0065 identified Abou Zhar and Mr Al Hassan whipping the man dressed in blue (P-0065: T-040, p. 52, *referring to* video MLI-OTP-0018-0693, at 00:02:51:09 and 00:03:21:06 respectively). P-0150 similarly identified Mr Al Hassan whipping this man (P-0150: T-095, pp. 56-57, *referring to* video MLI-OTP-0018-0693, at 00:03:17:00). P-0582 also identified Mr Al Hassan whipping this man (P-0582's statement MLI-OTP-0062-4318-R02, at 4325, *referring to* video MLI-OTP-0018-0189, at 00:00:55:15). In addition, while D-0605 stated that for this *ta'zir* he was not in attendance and did not know whether Mr Al Hassan was present, he also testified that the person 'whipping the individual wearing blue [...] looks like Mr Al Hassan' (D-0605: T-195, p. 26, *referring to* video MLI-OTP-0018-0693, at 00:03:21:23, 00:04:20). Mr Al Hassan also testified that only About Zhar and himself flogged the men (Mr Al Hassan's statement MLI-OTP-0051-0967, at 0983-0986).

<sup>2348</sup> P-0065 identified Abou Zhar and Mr Al Hassan whipping the man dressed in the striped shirt (P-0065: T-040, p. 53, *referring to* video MLI-OTP-0018-0693, at 00:03:45:04 to 00:03:55:15, and 00:04:15:19 to 00:04:27:17 respectively). P-0150 similarly identified Mr Al Hassan whipping this man (P-0150: T-095, pp. 56-57, *referring to* video MLI-OTP-0018-0693, at 00:04:20:19). The Chamber notes that P-0638 identified the victim in the striped t-shirt as Zakaria, a person who had his own store and was an apprentice, and with whom P-0638 used to drink before the 'occupation' (P-0638: T-058, pp. 36-37, 69-72; T-058-FRA, p. 76, *referring to* video MLI-OTP-0018-0693, at 00:02:11:21 to 00:02:27:16; MLI-REG-0001-0018). Mr Al Hassan also testified that only About Zhar and himself flogged the men (Mr Al Hassan's statement MLI-OTP-0051-0967, at 0983-0986).

<sup>2349</sup> Video MLI-OTP-0018-0693, at 00:02:48:00 to 00:03:41:00, and 00:04:18:00 to 00:04:48:00.

<sup>2350</sup> Video MLI-OTP-0018-0693, at 00:03:14:00 to 00:03:42:00. The Chamber further notes that Abou Zhar meted out at least 35 lashes on the man in blue clothing (video MLI-OTP-0018-0693, at 00:02:47:00 to 00:03:14:00).

<sup>2351</sup> Video MLI-OTP-0018-0693, at 00:04:15:00 to 00:04:48:00. The Chamber further notes that Abou Zhar meted out at least 37 lashes on the man in the striped t-shirt (video MLI-OTP-0018-0693, at 00:03:44:00).

<sup>2352</sup> The Chamber notes that video MLI-OTP-0018-0693 depicts each man receiving between 69 and 74 lashes, however it is not clear if all the lashes were captured on the recording. Article MLI-OTP-0033-4224 records that the correspondent indicated that each of these two men received 80 lashes. As noted above, P-0065, who was present at the event, testified that [REDACTED] (P-0065: T-040, pp. 57-58). The Chamber accordingly relies on the number of lashes [REDACTED] in article MLI-OTP-0033-4224. The Chamber further notes that when asked if this 'is a *ta'zir*', D-0605 stated that he did not know whether it was a *ta'zir* or a *hadd* because it was not clear how many strokes were actually meted out. In particular he stated that he did not know 'whether it's the *hadd* for an adultery or for consuming alcohol, or whether it's just simply a *ta'zir*'. However, D-0605 confirmed in general that the whipping is a *ta'zir* when it is a penalty for consuming alcohol (D-0605: T-195, p. 27).



**b) Case of Ibrahim bin Al-Husayn, case 01/1433-2012<sup>2353</sup>**

765. For the factual findings in this section, the Chamber relies primarily on the written Islamic Police report and Islamic Court judgment in relation to the case, which it finds reliable.<sup>2354</sup> The Chamber also relies on Mr Al Hassan's statements.<sup>2355</sup>
766. The Islamic Police arrested Ibrahim bin Al-Husayn, a civilian who owned his shop,<sup>2356</sup> for, *inter alia*, selling alcohol.<sup>2357</sup>
767. On 16 July 2012, Mr Al Hassan wrote and signed an Islamic Police report<sup>2358</sup> regarding Ibrahim bin Al-Husayn's arrest, which states that the latter was 'interrogated and tortured, but to no avail'.<sup>2359</sup> Ibrahim bin Al-Husayn was

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<sup>2353</sup> The Chamber notes that different spellings of the victim's name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Ibrahim bin Al-Husayn (a.k.a Ibrahim Bin al-Husayn and Ibrahim Bin el Hussein). Notwithstanding the differences in spelling, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual and for the sake of clarity, uses the spelling which appears in the charges.

<sup>2354</sup> See section II.D above.

<sup>2355</sup> The Chamber refers to its findings on the credibility and reliability of Mr Al Hassan's statements (see section II.C above). The Chamber also notes that Mr Al Hassan was questioned extensively on this incident and that he provided several details, including those that are not reflected in the documents that he was shown (see Mr Al Hassan's statement MLI-OTP-0060-1511, at 1525-1528 referring to Islamic Police report MLI-OTP-0001-7514).

<sup>2356</sup> Islamic Court judgment MLI-OTP-0053-0372 (signed and stamped), translation MLI-OTP-0078-0049.

<sup>2357</sup> Islamic Police report MLI-OTP-0001-7514 (right hand side), translation MLI-OTP-0034-0169. On the entity responsible for the arrest, the Chamber further notes that Islamic Court judgment MLI-OTP-0001-7490, translation MLI-OTP-0078-1636 (see below) provides that the man was caught by the police while drinking and concludes that the man was arrested by the Islamic Police. Regarding the other circumstances relating to his arrest, the report notes that Ibrahim bin Al-Husayn 'was arrested after his residence had been placed under surveillance for a period of time'; '[h]e was arrested in the act of selling alcohol' and 'was found in possession of seven bags of alcohol'; 'there was a woman present, who was neither his wife nor sister'; '[a]lso present was a client, who was drunk'; '[h]e was also drunk' (see Islamic Police report MLI-OTP-0001-7514 (right hand side), translation MLI-OTP-0034-0169, at 0170).

<sup>2358</sup> Islamic Police report MLI-OTP-0001-7514 (right hand side), translation MLI-OTP-0034-0169. P-0150 testified that this document was signed by Mr Al Hassan and emanated from the Islamic Police (P-0150: T-095, pp. 11-12). The Chamber notes that Mr Al Hassan recognised his handwriting and signature on MLI-OTP-0001-7514 (right hand side) (Mr Al Hassan's statement MLI-OTP-0060-1511, at 1525). Mr Al Hassan also confirmed that he had written the report after the interrogation (Mr Al Hassan's statements MLI-OTP-0060-1511, at 1525; MLI-OTP-0060-1662, at 1679). On the authentication of this document, see also the Chamber's findings in section II.D.3.

<sup>2359</sup> Islamic Police report MLI-OTP-0001-7514 (right hand side), translation MLI-OTP-0034-0169, at 0170. The report states that he was 'interrogated and tortured, but to no avail', and that 'he only said that the alcohol was brought by the assistant of a bus driver who works for the company JDF' and that 'he did not know his name'. The Chamber notes that P-0150 testified that torture was authorised in certain cases, this being one of the cases when torture was authorised, and noted that torture was authorised when there was strong evidence against a specific person and the person did not admit guilt (P-0150: T-095, p. 14). See also P-0626: T-143, pp. 5-6. On the other hand, D-0605 testified in relation to this Police report that according to the information he had, the Islamic Police did not practice torture, testifying that '[e]ven the Islamic police don't torture. The Islamic police probably interrogated him. They applied *ta'zir*,

‘tortured’,<sup>2360</sup> at a location other than the Islamic Police office,<sup>2361</sup> for the purpose of obtaining the name of his alcohol supplier.<sup>2362</sup> The Islamic Police report was received by the Islamic Court.<sup>2363</sup>

768. Also on 16 July 2012, in a judgment in case 01/1433-2012,<sup>2364</sup> the Islamic Court

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but they didn’t torture him. According to the information that I had, the Islamic police did not practice torture’ (D-0605: T-195, pp. 12, 15-16). However, the Chamber notes that D-0605 also testified that he did not know and did not hear anything about this case (D-0605: T-195, pp. 103-104). D-0605 also stated that ‘[a]ccording to the law, the police don’t torture people. But if you come to Mali, you will see that torture is widely practised, even if it is not something that is recognised or stated’ (D-0605: T-195, p. 15). In light of D-0605’s elaborated testimony on the practice of torture, the Chamber does not consider that D-0605’s evidence is incompatible with that of P-0150. In addition, contrary to the Defence submission that P-0150’s testimony on this point constitutes mere speculation as he had no personal knowledge of any cases involving the use of force and could not comment on such cases (*see* Defence objection in relation to document MLI-OTP-0068-4692, ICC-01/12-01/18-1866-Conf-Anx5 and related annexes), the Chamber considers P-0150 to be in a good position to make such observations based on his role and position at the time, notwithstanding that he may not have been a witness to specific investigation sessions or use of force (*see* P-0150: T-095, p. 8), and therefore relies on this testimony. The Chamber also notes that, when asked if it was normal to use torture, D-0093 testified that ‘[n]o, it’s not a normal method, I agree. But even in normal times, to get the person to speak it is used’ (D-0093: T-211, p. 42). Mr Al Hassan also testified that Ibrahim bin Al-Husayn was tortured and that torture was the task of the emir of the Islamic Police (Mr Al Hassan’s statement MLI-OTP-0060-1662, at 1678). In light of the foregoing considerations, the Chamber relies on the Islamic Police report and the witnesses’ evidence to conclude that ‘torture’ was used against Ibrahim bin Al-Husayn during his interrogation.

<sup>2360</sup> The Defence submits that the Chamber cannot find that Ibrahim bin Al-Husayn was tortured, within the meaning of the Statute, as the Islamic Police report contains no description of the alleged torture and it would be impermissible to take judicial notice of facts ‘in connection with terms that have legal qualifications concerning intent’ ([Defence Final Brief](#), para. 314). When asked what the usage of the word torture entails for him, D-0202 testified that ‘[f]or example, if the police arrest someone drinking alcohol, a police officer, a cop of some kind, might inflict something upon the person the second time he sees him. I may characterise that as torture. So he might give him some hits with a stick. That’s what I characterised as a form of torture’ (D-0202: T-204, pp. 40-41). In light of the evidence discussed in the preceding footnote, the Chamber rejects the Defence’s submission and finds that Ibrahim bin Al-Husayn was ‘tortured’ by members of Ansar Dine/AQIM, in the sense that he was subject to a form of physical violence prior to the drafting of the Islamic Police report, while the exact degree of suffering inflicted is unknown.

<sup>2361</sup> Mr Al Hassan’s statement MLI-OTP-0060-1511, at 1530.

<sup>2362</sup> Mr Al Hassan’s statement MLI-OTP-0060-1662, at 1678-1679. The Islamic Police report states that Ibrahim bin Al-Husayn said that he does not know the name of the person who brought the alcohol (Islamic Police report MLI-OTP-0001-7514, translation MLI-OTP-0034-0169).

<sup>2363</sup> The Chamber infers that this report was received by the Islamic Court, noting that it was photographed by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24). *See also* section II.D.3 above.

<sup>2364</sup> Islamic Court judgment MLI-OTP-0053-0372 (signed and stamped), translation MLI-OTP-0078-0049. *See also* different versions of the same document MLI-OTP-0001-7490 (signed and stamped), translation MLI-OTP-0078-1636, MLI-OTP-0002-0088 (signed and stamped), translation MLI-OTP-0078-0381, and MLI-OTP-0068-4692 (unsigned and unstamped), translation MLI-OTP-0069-3240. P-0150 identified MLI-OTP-0068-4692 as the judgment from the Islamic Court on the case of ‘Ibrahim Bin Husayn’, and identified Houka Houka as the name at the bottom of the document (P-0150: T-095, pp. 15-16). P-0150 also identified MLI-OTP-0053-0372 the officially stamped version of the same judgment and identified Houka Houka’s signature above the Islamic justice stamp on this document (P-0150: T-095, p. 19). Although P-0626 said he could not remember [REDACTED] (P-0626: T-142, pp. 69-70), P-0626 also identified a stamp of the Islamic Court on MLI-OTP-0002-0088 (P-0626: T-142, p. 66). Noting the submission of the stamped and signed version of the judgment into the record, the

sentenced Ibrahim bin Al-Husayn to 40 lashes<sup>2365</sup> and a fine of ‘fifty thousand CFA francs (10,000 CFA riyals)’<sup>2366</sup> and ordered that his shop be closed for a period to be determined by the Islamic Police.<sup>2367</sup> The judgment states that the individual admitted to drinking and selling alcohol at his shop, was caught by the Islamic Police while drinking, and was drunk and in possession of wine.<sup>2368</sup> The individual was detained for two months after the Islamic Court judgment.<sup>2369</sup> On the basis of the evidence submitted, the Chamber is not satisfied that Ibrahim bin Al-Husayn was flogged or injured as a result of the flogging.<sup>2370</sup>

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Chamber dismisses the Defence objection to MLI-OTP-0068-4692 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). On the authentication of these documents, *see also* the Chamber’s findings in section II.D above.

<sup>2365</sup> Islamic Court judgment MLI-OTP-0053-0372 (signed and stamped), translation MLI-OTP-0078-0049, at 0050. P-0150 explained that the punishment of 40 lashes given to Ibrahim bin Al-Husayn was the *hadd*, given to those who drink alcohol, and should be implemented without the sentenced person wearing any clothes (P-0150: T-095, pp. 16, 18, *referring to* MLI-OTP-0068-4692).

<sup>2366</sup> P-0150 testified that permitting such a fine was part of Islamic judiciary rules (P-0150: T-095, pp. 17-18).

<sup>2367</sup> Islamic Court judgment MLI-OTP-0053-0372 (signed and stamped), translation MLI-OTP-0078-0049, at 0050. When questioned as to why the judgment of the Islamic Court indicated that the Islamic Police would be the one to determine how long the man’s shop would be closed, P-0150 explained that the judgment included three factors: the *hadd*, the fine determined by the judge himself without using any religious text, and the *ta’zir*. P-0150 explained that in this case, the *ta’zir* was the closing of the shop. P-0150 said he did not know why this determination was given to the Islamic Police but he would guess that this was ‘an honour given to the police because of their great efforts in arresting this person and prosecuting them’ (P-0150: T-095, pp. 17-18).

<sup>2368</sup> Islamic Court judgment MLI-OTP-0053-0372 (signed and stamped), translation MLI-OTP-0078-0049, at 0050. P-0150 explained that the judges based judgments on admissions or witnesses and they needed a strong foundation for their judgments and needed to rely on evidence. According to P-0150, when there is enough evidence to prove that the person is guilty, a judgment is passed upon them. He stated that in this particular case, the judge gave a ‘very strong judgment’ because the suspect did not ‘admit in the beginning of the case’ and was ‘very stubborn’. P-0150 stated that the preaching lessons that the judges gave to suspects gave them no choice but to admit guilt. He explained that in this case, force was used against the suspect and he still did not admit guilt to the Police and only admitted his guilt when he was advised by the judge. P-0150 indicated that despite this eventual admission, the suspect still had to receive the ‘sentence of 40 lashes and a fine of 10,000 CFA riyals’ (P-0150: T-095, pp. 17-18).

<sup>2369</sup> Mr Al Hassan’s statements MLI-OTP-0060-1511, at 1527; MLI-OTP-0062-1143, at 1160.

<sup>2370</sup> The Chamber notes that the Prosecution refers to article MLI-D28-0004-3116, dated 16 July 2012 and published by Maliweb, which reports that an individual accused of drinking alcohol received 40 lashes at the market and was brought to the hospital, and avers that this demonstrates the severity of Ibrahim bin Al-Husayn’s injury ([Prosecution Final Brief](#), para. 230, *referring to* article MLI-D28-0004-3116; *see contra* [Defence Final Brief](#), para. 315). The Chamber observes that the article refers to a Timbuktu resident accused of drinking alcohol receiving 40 lashes at the Timbuktu market from Ansar Dine ‘[TRANSLATION] on Monday’. However, the Chamber notes that the relevant part of the article concerning the flogging and the injury suffered is extremely brief and contains insufficient information for it to conclude that it depicts the flogging of Ibrahim bin Al-Husayn. Absent further supporting evidence, the Chamber is not satisfied beyond reasonable doubt that Ibrahim bin Al-Husayn was flogged and subsequently taken to the hospital as a result of an injury suffered during the flogging.

### c) Case of P-0565 and P-0557

769. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: the direct victims themselves, P-0565<sup>2371</sup> and P-0557;<sup>2372</sup> P-0150,<sup>2373</sup> a member of Ansar Dine/AQIM who was present at

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<sup>2371</sup> P-0565 (*see* P-0565: T-051 to T-053), a Muslim Bella Tamasheq woman who speaks Songhai and Tamasheq and who was 14-15 years old at the time of events, was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the city (P-0565: T-051, pp. 8-10). She is married to P-0557 (P-0565: T-051, p. 8). P-0565 was admitted as a participating victim in the proceedings. She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation and that of P-0557. The Chamber observes that P-0565 testified about what she remembered in an objective manner, putting the events in context and distinguishing between those she observed herself and those she learnt about through other means. P-0565 provided a generally consistent narrative and showed that she had a very good memory despite her young age at the time of the events. She was forthcoming in admitting that there were details that she had forgotten (*see e.g.* P-0565: T-053, p. 45). Her recollection was detailed, contextualised and generally consistent with other key accounts of the same events, notably P-0557's. The Chamber observes that her recollection of specific details, such as dates, may have been influenced by her level of literacy. However, despite some confusion in the witness's narrative regarding the sequence and duration of events (*see e.g.* in relation to the exact day of her flogging, P-0565: T-051, pp. 15-16; T-053, pp. 5-6), the Chamber is satisfied that the witness was truthful in describing what happened to her. The Chamber assesses P-0565's evidence bearing in mind the fact that she is married to P-0557, however as detailed below rejects the Defence's suggestion that P-0565's and P-0557's accounts of their arrests are not credible or bear signs of collusion (*see Defence Final Brief*, paras 182, 435). In relation to the Defence's allegation that after speaking to France 2 journalists and FIDH, P-0557 and P-0565 changed and aggravated their accounts (*Defence Final Brief*, para. 170, citing generally to *Defence Final Brief*, paras 436-443), the Chamber assesses the Defence's arguments in the cited paragraphs on a case-by-case basis as necessary below and as a whole considers the submission to be without foundation. Further, the Chamber finds the Defence's allegation that the fact that the witnesses were shown photos or videos by journalists increased the 'likelihood for tainted evidence' is speculative and unsupported by any evidence (*see Defence Final Brief*, para. 171; *see also* P-0557: T-057, p. 30). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0565 to be a generally credible and reliable witness. Nevertheless, having regard to the aforementioned considerations, it has assessed the weight to be accorded to the witness's evidence on a case-by-case basis where appropriate.

<sup>2372</sup> P-0557 (*see* P-0557: T-054 to T-057), a Muslim Songhai man who speaks Songhai, Tamasheq, Arabic, and some French, was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the city (P-0557: T-054, pp. 7-8). He is married to P-0565 (P-0557: T-054, p. 8). P-0557 was admitted as a participating victim in the proceedings. He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including his own victimisation and that of P-0565. The Chamber observes that P-0557 had a good knowledge of the locations and customs in Timbuktu. The witness was also able to distinguish between the events he directly witnessed and those he gained knowledge of through other means (*see e.g.* P-0557: T-054, pp. 14-15). The Chamber considers that P-0557 provided a generally consistent narrative, which is also in line with the narrative provided by P-0565. The Chamber notes some inconsistencies in P-0557's testimony when discussing details of certain events, for example in relation to whether he was told that he and P-0565 would be punished for not being married and whether he knew what conduct was considered forbidden (*see* P-0557: T-056, pp. 32-33; T-057, pp. 5-6). However, the Chamber finds that such inconsistencies are either irrelevant or minor, and that they were adequately addressed and clarified during the questioning of the witness. The Chamber also notes that while the witness stated that he generally makes '[a] lot of mistakes' when he writes, he was clearly able to explain annotations he made in his drawing of the BMS (*see* P-0557: T-054, pp. 8, 49). The Chamber also notes that the witness contacted the Prosecution to request financial aid on one occasion when P-0565 suffered from illness (P-0557: T-056, pp. 54-55). The witness received a transfer in the amount of 36,100 CFA for medication from the Prosecution and he did not have to produce the

[REDACTED] the flogging of P-0557 and P-0565; and P-0065,<sup>2374</sup> who was present at the flogging. The Chamber also relies on video evidence of the Islamic Court<sup>2375</sup> and of the flogging of P-0565 and P-0557,<sup>2376</sup> which it finds reliable.

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receipts or the prescriptions (P-0557: T-056, pp. 54-55). The Chamber further notes that P-0557 also received assistance from other organisations (*see* P-0557: T-056, pp. 55-57; T-057, pp. 16-17, 23-24). Although at the outset the witness appeared evasive about these facts related to the funds, he was forthcoming about them when asked directly and the Chamber is of the view that these facts do not detract from the witness's credibility on the relevant charged events. The Chamber assesses P-0557's evidence bearing in mind the fact that he is married to P-0565, however as detailed below rejects the Defence's suggestion that P-0565's and P-0557's accounts of their arrests are not credible or bear signs of collusion (*see* [Defence Final Brief](#), paras 182, 435). In relation to the Defence's allegation that after speaking to France 2 journalists and FIDH, P-0557 and P-0565 changed and aggravated their accounts ([Defence Final Brief](#), para. 170, citing generally to [Defence Final Brief](#), paras 436-443), the Chamber assesses the Defence's arguments in the cited paragraphs on a case-by-case basis as necessary below and as a whole considers the submission to be without foundation. Further, the Chamber finds the Defence's allegation that the fact that the witnesses were shown photos or videos by journalists increased the 'likelihood for tainted evidence' is speculative and unsupported by any evidence (*see* [Defence Final Brief](#), para. 171; *see also* P-0557: T-057, p. 30). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0557 to be a generally credible and reliable witness. Nevertheless, having regard to the aforementioned considerations, it has assessed the weight to be accorded to the witness's evidence on a case-by-case basis where appropriate.

<sup>2373</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (*see* section II.B.2.a)iii above).

<sup>2374</sup> The Chamber refers to its findings on the credibility and reliability of P-0065's evidence (*see* section II.B.2.a)i above).

<sup>2375</sup> The Chamber notes that videos purportedly depicting the Islamic Court and its courtroom were submitted into evidence and commented on notably by P-0065, P-0565 and P-0557. P-0065 explained the background of these videos as follows: he visited [REDACTED] the Islamic Court the day before a *hadd* for adultery was executed on two young people for the first time (P-0065: T-042, pp. 37-38). P-0065 recognised several videos [REDACTED], notably videos MLI-OTP-0018-0242 and MLI-OTP-0018-0249 (P-0065: T-042, p. 35, *referring to* video MLI-OTP-0018-0242; P-0065: T-042, pp. 50-51, *referring to* video MLI-OTP-0018-0249). While P-0065 testified that he visited the Islamic Court for the first time 'around mid-December 2012' (P-0065: T-042, p. 38), the Chamber concludes that the witness was in fact referring to mid-June 2012, noting that he made the link between his first visit at the Islamic Court and the flogging of P-0565 and P-0557, which he stated happened the next day, and recognised emails he sent about the events on 21 June 2012 (P-0065: T-042, pp. 37-38; T-040, pp. 34-35; T-042, p. 54, *referring to* MLI-OTP-0018-1171-R01, translation MLI-OTP-0078-2364-R01, MLI-OTP-0018-1166-R01, translation MLI-OTP-0078-2356-R01), and recalling P-0065's acknowledgment several times during his testimony that he had issues remembering dates. Therefore, while P-0065 testified that he was present [REDACTED] proceedings at the Islamic Court the day before the flogging of P-0565 and P-0557, and contrary to the assertion of the Prosecution (*see* [Prosecution Final Brief](#), para. 213; *see also* [Defence Final Brief](#), para. 445), [REDACTED]. These videos of the Islamic Court and of other proceedings were nevertheless presented to the witnesses to identify the location of the Islamic Court, the courtroom and the judges they could recognise and who were also present for their respective hearings. In light of this and recalling its prior findings (*see* section II.B.2.a)i above), the Chamber is satisfied that these videos show the Islamic Court and its proceedings during the relevant charged period.

<sup>2376</sup> The Chamber notes that various videos purportedly depicting the flogging were submitted into evidence and commented on notably by P-0065, the victims themselves and P-0150. P-0065, who was present [REDACTED] the flogging, recognised several pieces of footage of the punishment for adultery executed on a woman and a man [REDACTED] in Timbuktu in the first half of 2012 (P-0065: T-039, pp. 55-57; T-040, pp. 12-14, *referring to* video MLI-OTP-0009-1749, at 00:04:33:13 to 00:04:50:13, at 00:05:02:11 to 00:05:19:11 and 00:05:20:06 to 00:05:31:01; P-0065: T-040, pp. 8-9, *referring to* video MLI-OTP-0018-0252; P-0065: T-040, pp. 14-15, *referring to* video MLI-OTP-0018-0251; P-0065: T-040, p. 17, *referring to* video MLI-OTP-0018-0291; P-0065: T-040, pp. 23-24, *referring to* video MLI-

770. One day in June 2012, P-0565 and P-0557, two civilian inhabitants of Timbuktu, were standing together in front of P-0565's house in Timbuktu.<sup>2377</sup> P-0565 and P-

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OTP-0018-0284; P-0065: T-040, pp. 26-27, *referring to* video MLI-OTP-0018-0285; P-0065: T-040, pp. 28-29, *referring to* video MLI-OTP-0018-0286). P-0065 stated that [REDACTED] (P-0065: T-040, p. 33). P-0565 recognised herself and the event in the same videos (P-0565: T-052, pp. 6-8, *referring to* video MLI-OTP-0009-1749, at 00:04:28:00 to 00:06:02:00; pp. 8-9, *referring to* MLI-OTP-0018-0284). In relation to the Defence objection disputing the commentary in video MLI-OTP-0009-1749 (*see* ICC-01/12-01/18-1621-Conf-AnxIII and related annexes), the Chamber notes that the video was used with P-0565 without sound and dismisses the objection (when relying on this video elsewhere in the judgment, the Chamber also disregarded the commentary). The Chamber notes that P-0557 also recognised himself and the event in videos MLI-OTP-0009-1749, at 00:04:29:21 to 00:06:02:00 (T-055, pp. 34, 36-38), MLI-OTP-0017-0027, at 00:04:33:21 to 00:04:41:14 (T-055, pp. 38-39), MLI-OTP-0018-0246 (T-055, pp. 39, 43-44) and MLI-OTP-0018-0247 (T-055, p. 44). The Chamber also notes that while videos MLI-OTP-0018-0246 and MLI-OTP-0018-0247 were not shown to P-0065, they clearly relate to the same event as the other videos and accordingly dismisses the Defence objection that there is no evidence available from the source of MLI-OTP-0018-0246 as to its reliability or originality (*see* ICC-01/12-01/18-1652-Conf-AnxV and related annexes). Noting that both witnesses clearly and without hesitation recognised themselves in the images and recognised the events of which they were victims, the Chamber similarly finds unpersuasive the Defence submissions that: (i) P-0557 cannot validate videos MLI-OTP-0018-0246 and MLI-OTP-0018-0247 as he was unable to see or hear the events because his head was covered with a shirt and that his personal knowledge may be based on press coverage (*see* ICC-01/12-01/18-1652-Conf-AnxV and related annexes); and (ii) that P-0565 was not in a position to testify as to the accuracy of MLI-OTP-0018-0284 for the portions of the events which she was unable to see while her head was covered (*see* ICC-01/12-01/18-1621-Conf-AnxIII and related annexes). P-0150, who testified to being present at the event of P-0565 and P-0557's flogging, similarly recognised videos MLI-OTP-0018-0251, MLI-OTP-0009-1749, MLI-OTP-0018-0252, MLI-OTP-0018-0284, MLI-OTP-0018-0291, MLI-OTP-0018-0285 and MLI-OTP-0018-0286 as relating to this event. He testified that MLI-OTP-0018-0251 was filmed on the eastern side of Sankoré square, during the enforcement of a fornication *hadd* (P-0150: T-096, pp. 52-53; T-098, pp. 45-47). He testified in relation to video MLI-OTP-0009-1749 that 00:02:43:21 to 00:02:53:08 was filmed in the north-eastern part of the courtyard where two people accused of committing extra-marital intercourse were flogged and the footage was filmed during that event (P-0150: T-093, pp. 48-49), that 00:04:33:12 to 00:04:51:03 depicted the beginning of the enforcement of a flogging *hadd* on a man and a woman who were sentenced for fornication (P-0150: T-098, p. 33), that 00:05:01:17 to 00:05:19:06 depicted the preparation made to enforce the *hadd* on the people convicted of *zina* or extra-marital intercourse in Timbuktu (P-0150: T-098, p. 45), and that 00:05:19:24 to 00:05:35:09 shows the convicted woman being given 100 lashes (P-0150: T-098, p. 50). P-0150 testified that MLI-OTP-0018-0252 depicts members of Islamic Police with the two victims and also shows photographers whom he believed were from the official ORTM radio station (P-0150: T-098, pp. 37-38). He testified that MLI-OTP-0018-0284 depicted the beating of the convicted woman in Sankoré square (T-098, pp. 53-54) and that the other videos depict the same event (P-0150: T-098, pp. 47-48, *referring to* MLI-OTP-0018-0291; T-098, p. 55, *referring to* MLI-OTP-0018-0285; T-098, p. 57, *referring to* MLI-OTP-0018-0286). P-0150 was not certain who filmed video MLI-OTP-0009-1749 but corroborated that [REDACTED] others filmed the event (P-0150: T-098, p. 36). P-0150 also testified that video MLI-OTP-0041-0616 was likely filmed while they were waiting for the beginning of the enforcement of the *hadd* on fornication which was to take place at Sankoré Square (P-0150: T-094, pp. 46-47). The Chamber further notes that according to P-0065, the Islamic Police tried to interrupt the filming, but Radwan and Koutaïba intervened and explained there were orders from above authorising it (P-0065: T-049, p. 22). Having regard to the foregoing evidence, and recalling its prior findings (*see* section II.B.2.a)i above), the Chamber is satisfied that the aforementioned videos are reliable and that they depict the flogging event of P-0565 and P-0557. *See also* Mr Al Hassan's statement where he similarly recognised video MLI-OTP-0009-1749 as depicting the flogging of the couple at Sankoré square (Mr Al Hassan's statements MLI-OTP-0051-0936, at 0939-0940; MLI-OTP-0060-1684, at 1690-1692).

<sup>2377</sup> P-0565: T-051, pp. 15-16; P-0557: T-054, pp. 29-30; T-056, pp. 33-34. In relation to the date of the events, the Chamber notes that neither P-0565 nor P-0557 could remember the exact day of their flogging, or whether it took place before or after Ramadan (P-0557: T-054, p. 29; P-0565: T-051, pp. 15-16).

0557 had been in a relationship for around one year and were not married although they wanted to get married,<sup>2378</sup> and had a child together.<sup>2379</sup>

771. While they were speaking, a motorbike passed followed by a ‘Kabra’ vehicle, and both stopped.<sup>2380</sup> Several men got out of the vehicle.<sup>2381</sup> The group spoke Arabic and was armed.<sup>2382</sup> The group included Demba Demba<sup>2383</sup> and Adama,<sup>2384</sup> who were part of the Islamic Police; the Chamber therefore finds that P-0565 and P-0557 were arrested as explained below by the Islamic Police.<sup>2385</sup>

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However, the Chamber notes that P-0565 indicated that it took place in 2012 by reference to the age of her child (*see* P-0565: T-051, p. 15). The Chamber further notes that P-0065 confirmed the flogging of P-0565 and P-0557 was ‘in the first half of 2012’ (P-0065: T-040, pp. 33-36) and that concerning the exact date, recognised emails he sent on 21 June 2012 regarding the events (P-0065: T-040, pp. 34-36, *referring to* MLI-0018-1171-R01, translation MLI-OTP-0078-2364-R01 and MLI-OTP-0018-1166-R01, translation MLI-OTP-0018-2356-R01; *see also* P-0065: T-042, p. 54). While he did not recall how long after the flogging the email was sent, he stated that such an email would be sent immediately after or at the same time if internet was available on the same day (P-0065: T-040, p. 34; T-042, pp. 53-54). *See also* P-0150: T-098, pp. 33, 36. Based on all of the aforementioned, the Chamber concludes that the events took place in June 2012. *See also* Mr Al Hassan’s statements MLI-OTP-0051-1184, at 1191; MLI-OTP-0051-0422, at 0452-0453. The Chamber notes that P-0557 testified that in 2012 [REDACTED] (P-0557: T-054, p. 9; *see also* T-055, p. 27). Based on this evidence and the circumstances surrounding P-0565 and P-0557’s arrest and floggings, the Chamber also is satisfied that the victims were civilian members of the population of Timbuktu at the time of the charged events.

<sup>2378</sup> P-0565: T-052, p. 28. Both witnesses testified that they wanted to get married even before the detention and the ensuing judgment, with P-0557 noting that he did not have sufficient means at the time (P-0565: T-052, pp. 28-29; P-0557: T-055, p. 58; T-056, p. 23). *See also* P-0639’s statement MLI-OTP-0072-0290-R03, at 0308, para. 60 (testifying that his relative, who the Chamber infers, based on the description of the individual, is P-0557, told him that he wanted to marry for a long time but that his girlfriend’s family said that he did not have any job and that he could not pay the dowry).

<sup>2379</sup> P-0557: T-054, pp. 8-9, 30. The Chamber notes a slight contradiction in P-0557’s testimony in that he states on the one hand that his first child with P-0565 was born in the third month of 2012, and also that he married P-0565 in the third month of 2012 (P-0557: T-054, pp. 8-9), but on the other that he had a child with P-0565 prior to the marriage (P-0557: T-054, pp. 30-31), that P-0565’s family knew before the marriage that P-0557 was the father of the child (P-0557: T-056, pp. 22-23), and that he was punished for having a child outside of marriage (P-0557: T-056, p. 36). The Chamber is nevertheless satisfied on the basis of all the evidence that P-0557 and P-0565 had a child before they were married. The Chamber finds that P-0565 and P-0557’s child was born sometime between March and May 2012 (P-0557: T-054, pp. 8-9; P-0565: T-051, p. 15).

<sup>2380</sup> P-0557: T-054, p. 30; P-0565: T-051, pp. 16-17.

<sup>2381</sup> P-0565: T-051, pp. 16-17; P-0557: T-054, pp. 30, 34.

<sup>2382</sup> P-0565: T-051, pp. 17-18; P-0557: T-054, p. 36.

<sup>2383</sup> P-0565: T-051, p. 17; P-0557: T-054, pp. 29, 36. P-0557 recognised Demba Demba in photograph MLI-OTP-0012-1844 (P-0557: T-055, p. 51).

<sup>2384</sup> P-0557: T-054, pp. 29, 35-36; T-056, p. 35.

<sup>2385</sup> The Chamber notes that P-0565 and P-0557 did not mention that the group of men belonged to the Islamic Police, although P-0557 indicated that they were ‘Islamists’ and belonged to Ansar Dine (P-0557: T-054, pp. 33, 37). P-0557 could not testify on the ethnicity of those who captured him but was certain that they were part of Ansar Dine (P-0557: T-054, pp. 29, 33-34; *see also* T-054, pp. 11, 13). P-0565 did not identify the persons who returned to her house the next day as members of Ansar Dine/AQIM but referred to them as the same people that arrested P-0557 (*see* P-0565: T-051, pp. 17-18). The Chamber notes further that Mr Al Hassan stated that it was the *Hesbah* who carried out the arrest of P-0565 and P-0557, not the Police, stating that if it was the Police then he himself would have

772. Adama and Demba Demba questioned P-0557 and P-0565 about their relationship and when their answers did not match, realised that they were lying.<sup>2386</sup>

773. P-0565 rushed into her house and appeared to faint.<sup>2387</sup> P-0557 was arrested immediately and driven to the BMS.<sup>2388</sup> P-0565 was not apprehended at that time but the next day, when the Islamic Police returned to the house to arrest P-0565 and take her to the BMS.<sup>2389</sup> The Chamber notes that several rumours circulated in Timbuktu as to what prompted the arrests; however, the Chamber finds credible and relies on P-0565's and P-0557's accounts on this matter.<sup>2390</sup>

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known about it (Mr Al Hassan's statements MLI-OTP-0051-1184, at 1187; MLI-OTP-0051-0422, at 0452-0453). Nevertheless, the Chamber notes that both P-0565 and P-0557 recognised Adama and Demba Demba as part of the group who arrested P-0557, that it has been established that these individuals were part of the Islamic Police at the time of the events (*see* section C.4.b) above), and that, after being arrested, P-0565 and P-0557 were brought to the BMS, which was the seat of the Islamic Police at the time. Noting these factors, the Chamber gives more weight to the direct evidence from P-0565 and P-0557 regarding the identity of those who arrested them over Mr Al Hassan's assumption that if the Police had made an arrest he would have known about it, and finds that P-0565 and P-0557 were arrested by the Islamic Police.

<sup>2386</sup> P-0557: T-054, pp. 30, 36-37; T-056, p. 24; P-0565: T-051, pp. 16-17.

<sup>2387</sup> P-0565: T-051, pp. 17-18; P-0557: T-054, pp. 30, 37. The Chamber notes it is not completely clear from the witnesses' testimony whether P-0565 fainted or only pretended to faint (*see* [Prosecution Final Brief](#), para. 213) but considers that nothing turns on this point.

<sup>2388</sup> P-0557: T-054, pp. 30, 40; P-0565: T-051, pp. 17-18. The fact that P-0557 (and P-0565) were arrested and taken to the BMS is also corroborated by P-0603 (P-0603, T-125, pp. 54-55). *See also* P-0603: T-125, p. 59, *referring to* video MLI-OTP-0039-0574, at 00:00:14:20 to 00:00:18:02.

<sup>2389</sup> P-0565: T-051, pp. 18-19, 20-22, 24; T-053, p. 6. The Chamber recalls its finding above that the persons who arrested P-0565 were members of the Islamic Police. P-0565 further testified that she thought she should leave the town, but because the men knew where she lived and had taken P-0557, which she thought happened 'because of her', she decided to follow her mother's suggestion and stay in town (P-0565: T-051, pp. 18-19). P-0565 testified that after they arrested her, they asked her numerous questions (P-0565: T-051, pp. 19-20). The fact that P-0565 (and P-0557) were arrested and taken to the BMS is also corroborated by P-0603 (P-0603: T-125, pp. 54-55). *See also* P-0603: T-125, p. 59, *referring to* video MLI-OTP-0039-0574, at 00:00:14:20 to 00:00:18:02.

<sup>2390</sup> The Chamber notes the Defence argument that P-0557's and P-0565's version of their arrests lacks credibility and bears signs of collusion, and that what in fact occurred was that P-0557 voluntarily denounced himself and P-0565 to Adama so that the couple could marry despite their families' objections ([Defence Final Brief](#), paras 431-435). At the outset, in relation to the Defence suggestion that P-0557 approached Adama before his arrest, the Chamber notes that P-0557 testified that he did not speak to Adama before the arrest (P-0557: T-054, pp. 29, 35-36; T-056, p. 35). The Chamber considers P-0557's evidence on this point unaffected by the Defence assertion that call data records confirm contacts on 13 June 2012 between a named individual and a phone number attributed to Adama ([Defence Final Brief](#), para. 433), noting that the name of this individual does not correspond to P-0557's name; and that in addition, P-0557 was not questioned about whether this was his phone number. Next, the Chamber notes that it received evidence of various rumours as to what prompted P-0565's and P-0557's arrests. Several witnesses testified as to having heard that the arrests were triggered by P-0557 himself going to the Police in light of objections from his and P-0565's families to the prospect of a marriage. Notably P-0641 testified that he knew P-0557 and heard this, without specifying where he heard this (P-0641: T-138, p. 56; T-140, pp. 8, 10); D-0213 testified that he heard this on the street (D-0213: T-197, p. 35; T-197, pp.



774. P-0557 was held at the BMS for three days.<sup>2391</sup> He saw Oumar and Talha at the BMS and ‘a lot of people’, some of them carrying weapons.<sup>2392</sup> During his detention, P-0557 was taken out of his cell on one occasion for a meeting where

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46-47, 49-50, 53); D-0551 did not specify how he learned the information (D-0551: T-200, pp. 84-85); and P-0004 heard the story from a friend from Abaradjou and provided his comment on notes on the subject (P-0004: T-166, pp. 89-90; T-167, p. 5; notebook MLI-OTP-0003-0062, at 0111). A similar version of events is recorded in MLI-OTP-0034-0630-R01, at 0633, although the Chamber notes that P-0160, who was asked about the account, did not have specific knowledge of this case (P-0160: T-067, pp. 52-53, *referring to* MLI-OTP-0034-0630-R01, at 0633). P-0065, on the other hand, testified that he understood at the time that it was P-0565’s *father* who had asked for P-0565 to be prosecuted (P-0065: T-049, p. 21). In contrast, P-0150 testified that he never heard any information of someone filing a complaint against the couple (P-0150: T-108, p. 63). For their part, P-0565 and P-0557 did not elaborate during their testimony on what generated their arrest, although they indicated that they were not aware of anyone from P-0565’s family filing a complaint with the Islamic Court and that such a thing would have been highly unlikely (P-0557: T-056, p. 26; P-0565: T-052, p. 32; *see also* P-0557: T-056, p. 22-23; P-0565: T-052, p. 28). In light of the foregoing, the Chamber considers that the evidence on this issue reflects the fact that there were various and conflicting rumours circulating in Timbuktu on what triggered the arrests of P-0557 and P-0565. On the other hand, it finds P-0565’s and P-0557’s accounts of their arrests internally consistent and generally consistent between one another, as well as detailed and plausible. It accordingly rejects the Defence’s suggestion that P-0565’s and P-0557’s accounts on this point are not credible or bear signs of collusion, and relies on P-0565’s and P-0557’s accounts of their arrests. Relatedly, the Chamber also rejects the Defence assertion that P-0557 and P-0565 ‘accepted the application of [*Sharia*] to avoid societal stigma or to be purified’ ([Defence Final Brief](#), paras 431, 485), which the Chamber considers to be highly speculative and not supported by the evidence.

<sup>2391</sup> The Chamber notes that there is conflicting evidence on the subject of the detention. P-0582 testified that P-0557 (and P-0565) were not detained and that the decision in their case was rendered the day following their arrest, although he emphasised during his testimony his lack of knowledge of the case and noted that he was not present when they were arrested (P-0582’s statement MLI-OTP-0062-3897-R01, at 3899-3901). For his part, P-0557 indicated consistently that three days elapsed between when he and P-0565 saw each other face to face and the time they were flogged (P-0557: T-054, p. 30; T-055, p. 5). He was confronted with a previous interview where he had indicated that he was locked up for two nights and judged on the third day (P-0557: T-056, pp. 59-67, *referring to* video MLI-D28-0004-3798, transcript MLI-D28-0004-3810). P-0565 was read a passage of P-0557’s victim application form, where P-0557 stated that he was detained for two days and that he was flogged the third day (P-0565: T-053, pp. 31-33) and was also shown an article of 21 June 2012 indicating that P-0557 was at the BMS for 48 hours (P-0565: T-053, pp. 15-16). P-0565 could not confirm or deny this information because she indicated that she did not understand what 48 hours represents in terms of time (P-0565: T-053, p. 16). The Chamber notes that the witness’s explanation of being locked up for two nights and judged on the third day is consistent with the notion of being detained for three days. The Chamber considers that the witnesses competently explained the sequence of events and provided accounts that, on these points, are compatible at their core. In addition, noting that P-0557 did not specify *when* during his time at the BMS he saw Oumar (P-0557: T-054, pp. 40-41, 44-47; *contra* [Defence Final Brief](#), paras 438-439), the Chamber dismisses the Defence argument that P-0557 could only have been detained for one night based on call data record evidence that Oumar Ould Hamaha only arrived in Timbuktu on 20 June 2012 (*see* [Defence Final Brief](#), paras 438-439). Based on all of the foregoing, the Chamber concludes that P-0557 was detained at the BMS for three days and rejects the Defence assertion that P-0557 did not spend any time in detention or alternatively that he could only have been held for one night ([Defence Final Brief](#), paras 436-439). *See also* Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1187-1188 (stating that the individuals in question were imprisoned for a short time before being brought before the courts).

<sup>2392</sup> P-0557: T-054, pp. 40-41, 44-47. Concerning the identification of Talha, P-0557 testified that he knew Talha as his neighbour identified him one day; that he had seen Talha from Ansar Dine the day the ‘Islamists’ took food from the shops to distribute it to the people; that he saw Talha bringing a white person in a vehicle (P-0557: T-054, pp. 46-47), and he recognised Talha on photograph MLI-OTP-0022-0480 (P-0557: T-055, pp. 48-49). The Chamber is unpersuaded by the Defence objection that the source and date of the image are relevant as they inform the physical appearance of Talha (*see* ICC-01/12-01/18-1652-Conf-AnxV), noting that the witness identified Talha without hesitation.

he met ‘highly ranked’ persons from Ansar Dine/AQIM,<sup>2393</sup> including Sanda<sup>2394</sup> and Mohammed Moussa.<sup>2395</sup> During the meeting, he was asked questions by Sanda, Mohammed Moussa and Adama.<sup>2396</sup> Sanda asked him to tell the truth about the ‘the circumstances in which [he] found himself’ and P-0557 responded that he had a child with P-0565 out of wedlock.<sup>2397</sup> He was then taken back to his cell.<sup>2398</sup>

775. P-0557 was kept at the BMS<sup>2399</sup> in a 2x2 metre prison room, half of the room was walled with glass and the other half had a ‘grilled’ door.<sup>2400</sup> There was a window that was opened, under which there was a generator that gave off a lot of heat.<sup>2401</sup> He was given milk and pasta and a pot, to be used as a toilet, inside the same room.<sup>2402</sup> He shared his cell with another prisoner.<sup>2403</sup> P-0557 was not allowed any visits, including from his family.<sup>2404</sup> P-0557 was given no explanation for his arrest.<sup>2405</sup>

776. P-0565 was also taken to and held in detention during the day at the BMS.<sup>2406</sup>

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<sup>2393</sup> P-0557: T-054, p. 41.

<sup>2394</sup> P-0557: T-054, pp. 44-45. The Chamber notes that P-0557 recognised Sanda on photograph MLI-OTP-0022-0473 (P-0557: T-055, p. 48). The Chamber is unpersuaded by the Defence objection that the source and date of the image are relevant as they inform the physical appearance of Sanda (*see* ICC-01/12-01/18-1652-Conf-AnxV and related annexes), noting that the witness identified Sanda without hesitation. P-0557 further testified that Sanda told him that if Sanda was not there, he would be replaced by Adama and if the latter was not there then he would be replaced by ‘Hamed Moussa’ (P-0557: T-054, p. 47). The Chamber notes that the man P-0150 and P-0065 identified as Sanda Ould Boumama in video MLI-OTP-0018-0291 appears to be the same man P-0557 identified as Sanda in photograph MLI-OTP-0022-0473 (P-0150: T-098, p. 48, *referring to* video MLI-OTP-0018-0291, at 00:00:17:09; P-0065: T-040, p. 18, *referring to* video MLI-OTP-0018-0291, at 00:00:06:06 and 00:00:14:03). Additionally, the Chamber notes that both P-0150 and P-0099 identified Sanda as the person in photograph MLI-OTP-0022-0473 (*see* P-0150: T-090, p. 10; P-0099: T-146, p. 31). The Chamber is satisfied that the man in photograph MLI-OTP-0022-0473 is Sanda Ould Boumama.

<sup>2395</sup> P-0557: T-054, p. 45.

<sup>2396</sup> P-0557: T-054, pp. 30, 44-45.

<sup>2397</sup> P-0557: T-054, pp. 30, 39-40, 45-46; T-055, p. 4 ; T-056, pp. 35-36.

<sup>2398</sup> P-0557: T-054, pp. 45-46.

<sup>2399</sup> P-0557: T-054, pp. 49-51, *referring to* MLI-OTP-0046-8867 which P-0557 recognised as a sketch of the BMS he drew when he was interviewed by Prosecution.

<sup>2400</sup> P-0557: T-054, p. 42.

<sup>2401</sup> P-0557: T-054, pp. 42-43.

<sup>2402</sup> P-0557: T-054, p. 43.

<sup>2403</sup> P-0557: T-054, pp. 42, 47-48.

<sup>2404</sup> P-0557: T-054, p. 43.

<sup>2405</sup> P-0557: T-054, pp. 30, 39. Regarding the issue of whether P-0557 knew that having children out of wedlock might make him liable for punishment, *see* P-0557: T-056, pp. 32-33; T-057, p. 5.

<sup>2406</sup> P-0565: T-051, pp. 21-22. The Chamber notes that the witness described the location of the BMS and explained that she knows the road towards the BMS and its surroundings very well (P-0565: T-051, pp. 21-22; T-052, p. 35; T-053, p. 7). Noting P-0565’s evidence, in particular that the BMS was located

Over the course of two days,<sup>2407</sup> she was taken daily to the BMS and was sent back home in the evening, to take care of her child.<sup>2408</sup> At the BMS she saw various individuals all wearing the same type of outfit,<sup>2409</sup> but she was only able to recognise Mohammed Moussa.<sup>2410</sup> P-0565 did not know at the time that P-0557 was being held in the same building.<sup>2411</sup>

777. P-0565 was held alone in a BMS room.<sup>2412</sup> The room did not have any furniture or a toilet; she had to relieve herself in the room.<sup>2413</sup> The room did not have a window or ventilation.<sup>2414</sup> Water was available but P-0565 was not given anything to eat.<sup>2415</sup> P-0565 was not allowed to go out, as the room was closed.<sup>2416</sup> P-0565 received no visits and nobody came to see her.<sup>2417</sup> P-0565 received no explanation as to why she had been apprehended.<sup>2418</sup>

778. The day of their judgment,<sup>2419</sup> P-0565 and P-0557 were brought in separate

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at ‘Yobu Tao’ (P-0565: T-051, p. 22) and other relevant findings of the Chamber on the location of the BMS, the Chamber dismisses the Defence’s suggestion that P-0565’s description of the place she was taken to corresponds to the Islamic Court and not the BMS (*see* [Defence Final Brief](#), paras 441-443).

<sup>2407</sup> The Chamber observes that there is some lack of clarity regarding the length of P-0565’s detention at the BMS (*see* P-0565: T-053, p. 50). Notwithstanding, in the view of the Chamber, despite some imprecisions, the evidence shows that the Islamic Police came to P-0565’s house one day, but she was not arrested on that day; it was the next day that she was taken to the BMS and taken home in the evening; she was again picked up the second morning and taken to the BMS and then returned back home again in the evening; and the following day, she was picked up, taken for trial and later punishment with P-0557 (P-0565: T-051, pp. 17-18, 20-24; T-053, pp. 6, 50; *see also* P-0557: T-055, pp. 4-6). It also notes the witness’s evidence that she was not allowed to go out, as the room was closed (P-0565: T-051, pp. 25-26). Based on this evidence, the sequence of events, and the Chamber’s prior finding on P-0557’s length of detention, the Chamber finds that P-0565 spent two days in detention at the BMS. Based on all of the foregoing, the Chamber accordingly dismisses the Defence argument that the evidence does not support the allegation that P-0565 was detained (*see* [Defence Final Brief](#), paras 436, 440-443). *See also* Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1187-1188 (stating that the individuals in question were imprisoned for a short time before being brought before the courts).

<sup>2408</sup> P-0565: T-051, p. 21; P-0557: T-055, pp. 4-5.

<sup>2409</sup> P-0565: T-051, p. 22.

<sup>2410</sup> P-0565: T-051, p. 28.

<sup>2411</sup> P-0565: T-052, p. 36; T-053, p. 9.

<sup>2412</sup> P-0565: T-051, pp. 25-26. *See also* P-0565: T-052, p. 35.

<sup>2413</sup> P-0565: T-051, pp. 25-26.

<sup>2414</sup> P-0565: T-051, pp. 25-26.

<sup>2415</sup> P-0565: T-051, pp. 25-26.

<sup>2416</sup> P-0565: T-051, pp. 25-26. P-0565 testified that she did not know whether the room was locked (P-0565: T-051, p. 26).

<sup>2417</sup> P-0565: T-051, pp. 25-26.

<sup>2418</sup> P-0565: T-051, p. 23.

<sup>2419</sup> As noted above, the Chamber found that prior to this P-0557 and P-0565 were held in detention at the BMS for three and two days, respectively.

vehicles to the seat of the Islamic Court.<sup>2420</sup> P-0557 was transported by Aboubacar Al Chinguetti,<sup>2421</sup> and P-0565 by other members of Ansar Dine/AQIM.<sup>2422</sup> As set out below, P-0565 and P-0557 were then brought in front of their judges separately.

779. P-0557 was taken upstairs to a room, and he was asked to sit in the centre of a carpet with Ansar Dine/AQIM ‘people’ sitting around him.<sup>2423</sup> Houka Houka was the judge dealing with the case.<sup>2424</sup> Houka Houka read and spoke in Arabic and

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<sup>2420</sup> P-0557: T-055, p. 6; T-056, pp. 41-43. The Chamber notes that P-0557 recognised on video the building where he was ‘judged’ (P-0557: T-055, pp. 31-32, *referring to* video MLI-OTP-0018-0242, at 00:00:00:00 to 00:00:07:08), which P-0065 also identified as the Islamic Court (P-0065: T-042, p. 35). P-0557 also recognised on a video the room upstairs where ‘judgment’ is carried out (P-0557: T-055, p. 32, *referring to* video MLI-OTP-0018-0249, at 00:00:02:13), which is also identified by P-0065 as the courtroom (P-0065: T-042, pp. 50-51). In addition, in the same video MLI-OTP-0018-0249, P-0557 identified Houka Houka as the person holding a *Quran* in his hands and next to him a person who was the same person translating what Houka Houka was saying to P-0557 in Songhai during his own hearing; he also recognised a person dressed in black and holding the computer as one of the individuals who flogged him (P-0557: T-055, pp. 32-33, *referring to* video MLI-OTP-0018-0249). P-0557 was forthcoming in specifying that this individual was one of the people who flogged him and that he saw that on the television (P-0557: T-055, p. 33). The Chamber finds unpersuasive the Defence submission that P-0557’s personal knowledge of these images is unclear, that he is not shown in the clip and that his personal knowledge may be based on press coverage (*see* ICC-01/12-01/18-1652-Conf-AnxV and related annexes), noting that P-0557 was straightforward in recognising the room as the place where judgment is passed and that as noted above, the witness openly clarified when his knowledge of events was not based on direct perception. For her part, P-0565 testified that on the third day after being taken to the BMS, before being taken to the square, she was taken to a big building to see a judge in an office which she was told was a judge’s office (P-0565: T-051, p. 23; T-052, pp. 47-49; T-053, p. 7). Although P-0565 does not mention being brought there at the same time as P-0557, the Chamber does not consider this to be a significant discrepancy noting that the core of P-0565’s narrative about being brought to the judge’s office remains consistent with the core of P-0557’s account. Based on the evidence, the Chamber finds that the proceedings for P-0565 and P-0557 were conducted at the seat of the Islamic Court. *See also* Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1187-1188.

<sup>2421</sup> P-0557: T-055, pp. 10-12. P-0557 recognised Aboubacar Al Chinguetti (Boubacar) on photograph MLI-OTP-0022-0488 (P-0557: T-055, p. 49; *see also* P-0582’s statement MLI-OTP-0062-4060-R02, at 4072). The Chamber is unpersuaded by the Defence objection that the source and date of this photograph are relevant as they inform the physical appearance of this individual (*see* ICC-01/12-01/18-1652-Conf-AnxV and related annexes), noting that P-0557 identified Boubacar without hesitation. The Chamber understands that P-0150 testified that Boubacar was present at the flogging of P-0565 and P-0557, which took place after the judgment (as described below), referring to him as Aboubacar Al Chinguetti (P-0150: T-093, p. 49, *referring to* video MLI-OTP-0009-1749, at 00:02:48:18). Mr Al Hassan similarly stated that Boubacar was present at the flogging (Mr Al Hassan’s statement MLI-OTP-0060-1684, at 1692, *referring to* video MLI-OTP-0009-1749, at 00:02:43:00).

<sup>2422</sup> Although P-0565 did not testify about the identity of those transporting her, considering that P-0557 was transported by member of Ansar Dine/AQIM Aboubacar Al Chinguetti and that both P-0565 and P-0557 were taken from the headquarters of the Islamic Police (the BMS) to the Islamic Court, the Chamber infers that P-0565 was also transported by members of Ansar Dine/AQIM.

<sup>2423</sup> P-0557: T-055, pp. 6-7.

<sup>2424</sup> P-0557: T-055, pp. 7-8. The Chamber notes that the witness recognised Houka Houka on photograph MLI-OTP-0022-0465 (P-0557: T-055, p. 48). The Chamber is unpersuaded by the Defence objection that the date of the picture is relevant as the physical appearance of Houka Houka may depend upon the time the picture was taken (*see* ICC-01/12-01/18-1652-Conf-AnxV and related annexes), noting that the witness identified Houka Houka without hesitation. P-0557 described Houka Houka as a tall, older man,

someone next to him translated into Songhai.<sup>2425</sup> Houka Houka read three pages from the *Quran*, including a page where it was written that ‘anyone who has a child out of wedlock is to be flogged until blood runs’.<sup>2426</sup> P-0557 was told ‘here it is written that a man and a woman have a child outside marriage, they have to be given one hundred lashes’.<sup>2427</sup> P-0557 was asked whether he knew anybody else who had done the same thing, to which he said he did not.<sup>2428</sup>

780. P-0557 did not have a lawyer to represent him during the trial nor did any member of his family accompany him.<sup>2429</sup> P-0557 believed that he could not bring any witness.<sup>2430</sup> P-0557 did not speak during the trial.<sup>2431</sup> P-0557 did not see anybody taking notes,<sup>2432</sup> and was not asked to sign any papers after the judgment was rendered.<sup>2433</sup> P-0557 could not appeal the decision.<sup>2434</sup>

781. As for P-0565, once at the Islamic Court, she was taken to a small office<sup>2435</sup> where she met Adama,<sup>2436</sup> Houka Houka,<sup>2437</sup> Sanda,<sup>2438</sup> another ‘judge’,<sup>2439</sup> and Mohammed Moussa.<sup>2440</sup> P-0565 did not know whether they were armed.<sup>2441</sup> The judge read the *Quran* in Arabic, a language that P-0565 did not understand, and

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who is of Tamasheq ethnicity and speaks Tamasheq, with a mark on his face, who generally wears a chocolate-coloured turban and a white boubou (P-0557: T-055, pp. 7-8). He also testified that Houka Houka was in Timbuktu before the arrival of Ansar Dine and that he knew Houka Houka from before, and that he used to come to P-0557’s fields (P-0557: T-055, p. 7).

<sup>2425</sup> P-0557: T-055, p. 8. The Chamber notes that P-0557 testified that he speaks Songhai, as well as Arabic, Tamasheq, and some French (P-0557: T-054, p. 8).

<sup>2426</sup> P-0557: T-055, p. 8.

<sup>2427</sup> P-0557: T-054, p. 31.

<sup>2428</sup> P-0557: T-055, p. 9. P-0557 testified that this was a lie which he told because he did not want this to happen to anybody else (P-0557: T-055, p. 9).

<sup>2429</sup> P-0557: T-055, pp. 8, 10. In relation to the Defence’s submission that the issue of legal representation is moot ‘given the substantial evidence that [P-0557] initiated the proceedings, particularly as he conceded that his confession was true and reliable’ ([Defence Final Brief](#), para. 444), the Chamber recalls that it rejected the Defence suggestion that P-0557 himself initiated the proceedings.

<sup>2430</sup> P-0557: T-055, p. 9. P-0557 testified that ‘[n]o, I couldn’t bring witnesses. And besides, at that time, who [...] Even if you could have asked for witnesses, who would have accepted to be a witness on my behalf?’

<sup>2431</sup> P-0557: T-055, p. 11.

<sup>2432</sup> P-0557: T-055, p. 10.

<sup>2433</sup> P-0557: T-055, p. 10.

<sup>2434</sup> P-0557: T-055, p. 11.

<sup>2435</sup> P-0565: T-051, pp. 29-30; T-052, pp. 36-37, 47-50.

<sup>2436</sup> P-0565: T-051, pp. 29-30, 36-37. P-0565 testified that she knew Adama since the arrival of the ‘Islamists’ (P-0565: T-051, p. 37; T-052, p. 15).

<sup>2437</sup> P-0565: T-051, p. 37; T-052, pp. 40-41.

<sup>2438</sup> P-0565: T-051, p. 37.

<sup>2439</sup> P-0565: T-051, pp. 29-30.

<sup>2440</sup> P-0565: T-051, p. 33.

<sup>2441</sup> P-0565: T-051, p. 30.

no one translated what he was saying.<sup>2442</sup>

782. The person P-0565 identified as the ‘judge’ told her in Tamasheq, ‘[n]ow we are going to wash you of all your sins’.<sup>2443</sup> When he finished speaking, he asked her if she knew other persons who had had children out of wedlock, to which P-0565 replied she did not.<sup>2444</sup> The judge then showed a document to P-0565 and indicated that she should ‘marry’ otherwise ‘two years would be awaiting [her]’.<sup>2445</sup>

783. This judge was the only one who spoke during the session.<sup>2446</sup> He did not ask P-0565 any questions nor did he give her the opportunity to speak,<sup>2447</sup> other than what was said above and other than asking P-0565 if she spoke Tamasheq to which she responded that she did not, because she wanted to be able to ‘hear better what they had to say’.<sup>2448</sup> Nobody assisted her during the session.<sup>2449</sup> The judge did not explain why she was there<sup>2450</sup> and when he showed a document to P-0565, the judge kept that piece of paper.<sup>2451</sup> At the end of the session, the judge pronounced the sentence in Arabic and Tamasheq.<sup>2452</sup>

784. After their judgments were rendered, P-0565 and P-0557 were taken to the Sankoré square,<sup>2453</sup> the place where, as elaborated below, they were flogged in

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<sup>2442</sup> P-0565: T-051, p. 36. The Chamber notes that P-0565 testified that she speaks Tamasheq and Songhai and does not understand Arabic (P-0565: T-051, pp. 8, 36; *contra* [Defence Final Brief](#), para. 444).

<sup>2443</sup> P-0565: T-051, pp. 31-32.

<sup>2444</sup> P-0565: T-051, p. 32.

<sup>2445</sup> P-0565: T-051, p. 32.

<sup>2446</sup> P-0565: T-051, pp. 30-31.

<sup>2447</sup> P-0565: T-051, p. 31.

<sup>2448</sup> P-0565: T-051, p. 30.

<sup>2449</sup> P-0565: T-051, p. 31.

<sup>2450</sup> P-0565: T-051, p. 32.

<sup>2451</sup> P-0565: T-051, p. 32-33.

<sup>2452</sup> P-0565: T-051, p. 36.

<sup>2453</sup> P-0557: T-054, p. 31; T-055, p. 13, 17; P-0565: T-051, p. 38-39. The Chamber notes that P-0065 seems to testify that the judgment was passed on the day he visited the Islamic Court and that the flogging took place *the next day* (P-0065: T-042, pp. 38, 41, 54; T-049, p. 22). As outlined previously, the Chamber however notes that P-0065 does not appear to have attended P-0565’s and P-0577’s hearings and no evidence suggests that he might have been aware of the exact chronology of the events, including the exact time the judgment against them was rendered. The Chamber further recalls that P-0065 acknowledged several times during his testimony that he had issues remembering dates and accordingly finds more reliable P-0557’s and P-0565’s evidence on the sequencing of the events.

public.<sup>2454</sup>

785. Vehicles arrived at the site, including one from the Islamic Police, and the exits and entrances were closed off with vehicles.<sup>2455</sup> Members of Ansar Dine/AQIM secured the four quarters of the square.<sup>2456</sup> A security cordon was created around the location, to prevent protests or objections.<sup>2457</sup> Talha, who was present,<sup>2458</sup> was responsible for ensuring security.<sup>2459</sup>

786. People, including children, were standing all around to watch the punishment –

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<sup>2454</sup> The Chamber notes that it is not disputed by the Defence that P-0565 and P-0557 were flogged pursuant to an Islamic Court judgment ([Defence Final Brief](#), para. 431). The Chamber notes the Defence's argument that the flogging of P-0565 and P-0557 'transpired in a manner consistent with the pre-2012 application of [*Sharia*]' is not supported by any reference to the evidence ([Defence Final Brief](#), para. 431). In any event, the Chamber recalls its finding that the punishments imposed by Ansar Dine/AQIM during their control of Timbuktu in 2012-2013 were new to the population of Timbuktu (*see* paragraph 603 above).

<sup>2455</sup> P-0557: T-055, p. 17; P-0150: T-093, pp. 72-73. *See also* P-0065: T-040, p. 20, *referring to* video MLI-OTP-0009-1749, at 00:05:20:08. Mr Al Hassan also identified the same car as belonging to the Police, noting that it was used by the Police in general, although he said he did not know on that specific day if it was the Police driving the car (Mr Al Hassan's statement MLI-OTP-0051-0936, at 0943-0944, *referring to* video MLI-OTP-0009-1749, at 00:04:44:00).

<sup>2456</sup> P-0557: T-055, p. 17; P-0150: T-093, p. 73.

<sup>2457</sup> P-0065: T-039, p. 57, *referring to* video MLI-OTP-0009-1749, at 00:04:33:22.

<sup>2458</sup> P-0065 testified that Talha was present at the event (P-0065: T-046, pp. 56-57; T-049, p. 25, *referring to* article MLI-OTP-0018-0928, at 0930, translation MLI-OTP-0049-0040, at 0042). The Chamber further notes that there are conflicting identifications of Talha in videos of the events: P-0150 identified an individual dressed in white as Talha (P-0150: T-098, pp. 51-53, *referring to* video MLI-OTP-0009-1749, at 00:05:34:13; P-0150: T-093, p. 49, *referring to* video MLI-OTP-0009-1749, at 00:02:48:18), whereas Mr Al Hassan identified this same person as Adama (Mr Al Hassan's statements MLI-OTP-0051-0936, at 0949-0950, *referring to* video MLI-OTP-0009-1749, at 00:05:35:00; MLI-OTP-0060-1684, at 1693-169, *referring to* video MLI-OTP-0009-1749, at 00:02:46:00). Further still, on footage of what he identified as the same event, P-0150 also identified as Talha a different individual dressed differently and who is holding a heavy machine gun (P-0150: T-098, p. 34, *referring to* video MLI-OTP-0009-1749, at 00:04:36:14). This is the same individual identified by P-0065 as being part of the security cordon (P-0065: T-039, p. 57, *referring to* video MLI-OTP-0009-1749, at 00:04:33:22). Noting the consistent evidence on Talha's presence at the events, the Chamber does not consider the discrepancies in the identifications of Talha to be significant and is satisfied on the basis of the evidence received that he was present at the events. In addition, the Chamber notes that in relation to the vehicle on the right in video MLI-OTP-0018-0291, at 00:00:04:21, P-0150 testified that it belonged to Talha and the Security Battalion, and that this vehicle was also called Hamza's car and he was the person who had control over the car (P-0150: T-098, p. 48, *referring to* video MLI-OTP-0018-0291, at 00:00:04:21). P-0065 testified that this vehicle was seized from the Malian army and belonged to Al-Qaeda, and was usually used by Youssof (P-0065: T-040, pp. 17-18, *referring to* video MLI-OTP-0018-0291, at 00:00:06:06).

<sup>2459</sup> P-0065: T-046, pp. 56-57; T-049, p. 25, *referring to* article MLI-OTP-0018-0928, at 0930, translation MLI-OTP-0049-0040, at 0042. Concerning the content of the article, P-0065 stated that [REDACTED] (P-0065: T-046, pp. 55-56).

which had been announced on Radio Bouctou<sup>2460</sup> and by loudspeaker<sup>2461</sup> – be carried out.<sup>2462</sup> This incident was well attended by people and was the first incident of flogging in Timbuktu since the arrival of Ansar Dine/AQIM.<sup>2463</sup> When he saw the people there, P-0557 felt afraid and ashamed.<sup>2464</sup>

787. The Islamic Police was present to carry out the enforcement of the sentence.<sup>2465</sup> Mr Al Hassan was present at the event, wearing the vest of the Islamic Police.<sup>2466</sup> He was among the small group of Ansar Dine/AQIM members forming a circle around P-0565 during her flogging to ensure the security of the event and the

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<sup>2460</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0307, paras 58-59. Further, the Chamber notes that P-0065 explained that the execution of adultery punishments should take place openly in a public square; he did not know how people knew that there was going to be a punishment and if this type of punishment was announced in advance in some way, but the city of Timbuktu is a small city and anything would be announced and relayed among the people very fast (P-0065: T-039, pp. 58-59). *See also* Mr Al Hassan's statement MLI-OTP-0051-1184, at 1188.

<sup>2461</sup> P-0603: T-125, p. 56; T-127, p. 6. *See also* D-0514: T-208, p. 56.

<sup>2462</sup> P-0150: T-093, p. 73; P-0065: T-039, pp. 58-59, *referring to* video MLI-OTP-0009-1749, at 00:04:48:16; P-0065: T-040, pp. 31-32, *referring to* video MLI-OTP-0009-1749, at 00:05:07:24 to 00:05:12:23; P-0565: T-051, p. 39; P-0557: T-055, p. 17.

<sup>2463</sup> P-0150: T-093, p. 72; T-096, p. 53; T-098, pp. 35-36, *referring to* video MLI-OTP-0009-1749, at 00:04:32:23 to 00:04:51:02, transcript MLI-OTP-0028-0839, at 0843-0844. *See also* P-0622's statement MLI-OTP-0065-0558-R02, at 0564 to 0565, para. 35.

<sup>2464</sup> P-0557: T-055, pp. 17-18, 53. On the deep impact of this trauma, *see also* [LRVs Final Brief](#), para. 158. The Chamber also notes that P-0603, who was coming 'from the village' at the time, testified that she could not stop and watch because it was 'such a shameful thing for us' (P-0603: T-125, p. 54).

<sup>2465</sup> P-0150: T-093, pp. 72-73.

<sup>2466</sup> P-0065 and P-0150, both present at the event, testified to Mr Al Hassan's presence there. P-0065 identified Mr Al Hassan in various pieces of video footage of this event (P-0065: T-040, pp. 23, 25-26, *referring to* video MLI-OTP-0018-0284, at 00:00:00:00; T-040, pp. 21-22, *referring to* video MLI-OTP-0009-1749, at 00:05:30:07 (P-0065 explained that he believed this was Mr Al Hassan and recognised what he was wearing, but the image was of very poor quality); T-040, p. 10, *referring to* video MLI-OTP-0018-0252, at 00:00:08:06 (P-0065 explained that, despite only seeing him from behind on the footage, it is clear that it is Al Hassan. P-0065 added that he was present and recalled these events); T-040, pp. 27-28, *referring to* video MLI-OTP-0018-0285, at 00:00:05:08). P-0150 similarly identified Mr Al Hassan in videos of the event (P-0150: T-093, p. 49, *referring to* video MLI-OTP-0009-1749, at 00:02:48:18; P-0150: T-098, pp. 38-39, *referring to* MLI-OTP-0018-0252, at 00:00:07:01; T-098, pp. 50-51, *referring to* video MLI-OTP-0009-1749, at 00:05:30:10; T-098, pp. 52-53, *referring to* video MLI-OTP-0009-1749, at 00:05:34:13; T-098, pp. 53-54, *referring to* video MLI-OTP-0018-0284 at 00:00:18:07). The Chamber considers that nothing turns on P-0150's previous misidentification of Mr Al Hassan as the person in a white dress at the end of video MLI-OTP-0018-0284, noting the witness's explanations of his prior responses (*see* P-0150: T-113, pp. 75-77, *referring notably to* video MLI-OTP-0018-0284). Mr Al Hassan himself also stated that he was present at the event (Mr Al Hassan's statements MLI-OTP-0051-1184, at 1186; MLI-OTP-0051-0936, at 0948-0949, *referring to* video MLI-OTP-0009-1749, at 00:05:32:00; MLI-OTP-0060-1684, at 1693-1696, *referring to* video MLI-OTP-0009-1749, at 00:02:46:00 to 00:02:48:00). *See also* D-0514: T-208, pp. 57-58. The Chamber is also satisfied from its own view of the relevant video evidence that Mr Al Hassan was present. In relation to the Prosecution assertion that video footage shows Mr Al Hassan wearing a Police jacket, sitting on the ground close to Adama while the sentence against P-0557 and P-0565 is announced ([Prosecution Final Brief](#), paras 217 and 278), the Chamber recalls that it does not rely on the identification of Adama in this video (*see* footnote to the below paragraph). *See also* [Prosecution Closing Statement, T-213](#), pp. 23-24; Defence Closing Statement, T-214, pp. 34-37.



implementation of the sanction,<sup>2467</sup> and was also present at the event proximate to the time of P-0557's flogging.<sup>2468</sup>

788. The following other persons were also present at the event of the flogging of P-0565 and P-0557: Adama,<sup>2469</sup> Radwan,<sup>2470</sup> Koutaïba,<sup>2471</sup> Houka Houka,<sup>2472</sup> Sanda Ould Boumama,<sup>2473</sup> Mohammed Moussa,<sup>2474</sup> Al Mahdi,<sup>2475</sup> Aboubacar Al

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<sup>2467</sup> See footnote above; videos MLI-OTP-0018-0284; MLI-OTP-0009-1749, at 00:05:30:03. The Chamber notes that the Prosecution asserts that Mr Al Hassan formed part of the security cordon around P-0565 during her flogging ([Prosecution Final Brief](#), para. 217; [Prosecution Closing Statement, T-213](#), pp. 23-24) whereas it is disputed by the Defence that Mr Al Hassan acted as part of a security cordon, with the Defence characterising his presence at the event as 'simply standing in the background' and as 'an irrelevant bystander' and submitting that it has not been established that Mr Al Hassan was present in a 'non-administrative capacity' (Defence Closing Statement, T-214, pp. 34-37; [Defence Final Brief](#), paras 521-522). Based on the video evidence, the Chamber considers that Mr Al Hassan is not simply acting as a bystander at this event but rather is clearly part of a small group of Ansar Dine/AQIM members, some of whom were armed, who formed a circle around P-0565 during the flogging to ensure the security of the event and the implementation of the sanction, regardless of the fact that Mr Al Hassan himself may not have been armed at the time.

<sup>2468</sup> See footnote above; video MLI-OTP-0018-0285, at 00:00:05:08, where Mr Al Hassan is seen walking in the background towards a vehicle behind P-0557. Based on the fact that P-0557 has his head covered in this scene and recalling its findings below that P-0557's head was covered before he was flogged, the Chamber is satisfied that this scene was filmed proximate to his flogging. See also [Prosecution Closing Statement, T-213](#), pp. 23-24; Defence Closing Statement, T-214, pp. 34-37.

<sup>2469</sup> P-0565: T-052, p. 41. The Chamber recalls that in the context of seeing Adama on the occasion of her judgment, P-0565 testified that she knew Adama since the arrival of the 'Islamists' (P-0565: T-051, p. 37; T-052, p. 15). See also Mr Al Hassan's statement MLI-OTP-0051-1184, at 1189-1190; D-0514: T-208, pp. 57-58.

<sup>2470</sup> P-0065: T-040, p. 11, referring to video MLI-OTP-0018-0252, at 00:00:14:07; pp. 19-21, referring to video MLI-OTP-0009-1749, at 00:05:20:08 and 00:05:30:07; p. 26, referring to video MLI-OTP-0018-0284, at 00:00:12:09; P-0150: T-098, p. 34, referring to video MLI-OTP-0009-1749, at 00:04:46:04; p. 39, referring to video MLI-OTP-0018-0252, at 00:00:12:13; pp. 50-51, referring to video MLI-OTP-0009-1749, at 00:05:30:10. P-0150 further testified that Radwan was present to '[t]ake a portion of the blessing that the people would receive as a result of the enforcement of the first *hadd* in Timbuktu', that he had a media role and would write a report outlining his observations on the matter, and that Radwan's presence as a member of the *Sharia* Committee was important to give legitimacy to what was going on (P-0150: T-098, pp. 36-37). See also Mr Al Hassan's statement MLI-OTP-0051-0936, at 0941-0943, referring to video MLI-OTP-0009-1749, at 00:04:44:00.

<sup>2471</sup> P-0150: T-098, p. 39, referring to video MLI-OTP-0018-0252, at 00:00:12:13; pp. 53-54, referring to video MLI-OTP-0018-0284, at 00:00:18:07; P-0065: T-040, p. 11, referring to video MLI-OTP-0018-0252, at 00:00:14:07. P-0150 further testified that Koutaïba was at the scene for the same reasons as Radwan except Koutaïba's presence was more important because he was an official judge 'within Al-Qaeda' and his attendance in the events was important to the emirs Abou Zeid and Abou Al Hammam (P-0150: T-098, p. 39). P-0150 testified that Koutaïba was present to count the number of flogs, noting that as a *qadi* or a judge, he was the one who needed to make sure that the number of lashes was accurate (P-0150: T-108, p. 61).

<sup>2472</sup> P-0150: T-096, p. 53, referring to video MLI-OTP-0018-0251, at 00:00:00:02; P-0065: T-040, p. 16, referring to video MLI-OTP-0018-0251, at 00:00:00:02. See also Mr Al Hassan's statement MLI-OTP-0051-1184, at 1189-1190.

<sup>2473</sup> P-0150: T-098, p. 48, referring to video MLI-OTP-0018-0291, at 00:00:17:09; P-0065: T-040, p. 18, referring to video MLI-OTP-0018-0291, at 00:00:06:06 and 00:00:14:03. See also Mr Al Hassan's statement MLI-OTP-0060-1684, at 1692-1693, referring to video MLI-OTP-0009-1749, at 00:02:43:00.

<sup>2474</sup> P-0150: T-094, p. 47, referring to video MLI-OTP-0041-0616, at 00:00:00:00.

<sup>2475</sup> P-0150: T-094, p. 47, referring to video MLI-OTP-0041-0616; T-098, pp. 50-51, referring to video MLI-OTP-0009-1749, at 00:05:30:10. See also below paragraph.

Chinguetti,<sup>2476</sup> Zakaria,<sup>2477</sup> Mohamed the jailer,<sup>2478</sup> Al-Hadi Aymushagi,<sup>2479</sup> Imam Ben Essayouti,<sup>2480</sup> Alfradi Wangara,<sup>2481</sup> Daoud Ali Al Abou Juma,<sup>2482</sup> Mohamed Ibrahim,<sup>2483</sup> the head of one of the training centres Nassar,<sup>2484</sup> as well another member of the Islamic Police,<sup>2485</sup> among other persons.<sup>2486</sup>

789. Al Mahdi, as the head of *Hesbah* at the time,<sup>2487</sup> announced in Arabic via a megaphone that a punishment of whipping would be executed on a young man and a young woman for adultery.<sup>2488</sup> In the announcement, it was underlined that

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<sup>2476</sup> P-0150: T-093, p. 49, referring to video MLI-OTP-0009-1749, at 00:02:48:18. See also Mr Al Hassan's statement MLI-OTP-0060-1684, at 1692, referring to video MLI-OTP-0009-1749, at 00:02:43:00. See also paragraphs above and below on his role in the transporting and flogging of P-0557.

<sup>2477</sup> P-0150: T-093, p. 49, referring to video MLI-OTP-0009-1749, at 00:02:48:18.

<sup>2478</sup> P-0150: T-094, p. 47, referring to video MLI-OTP-0041-0616, at 00:00:06:12.

<sup>2479</sup> P-0150: T-094, p. 49, referring to video MLI-OTP-0041-0616, at 00:00:15:19. See also P-0150: T-094, p. 54; MLI-REG-0001-0070.

<sup>2480</sup> P-0150: T-094, p. 50, referring to video MLI-OTP-0041-0616, at 00:00:21:24; T-096, p. 53, referring to video MLI-OTP-0018-0251, at 00:00:00:02; P-0065: T-040, p. 16, referring to video MLI-OTP-0018-0251, at 00:00:00:02. See also P-0125's statement MLI-OTP-0023-0004-R03, at 0037, para. 151, referring to video MLI-OTP-0018-0251.

<sup>2481</sup> P-0150: T-094, pp. 50-51, referring to video MLI-OTP-0041-0616, at 00:00:21:24.

<sup>2482</sup> P-0150: T-094, p. 50, referring to video MLI-OTP-0041-0616, at 00:00:21:24.

<sup>2483</sup> P-0150: T-098, p. 36, referring to video MLI-OTP-0009-1749, at 00:04:32:23 to 00:04:51:02 (identifying Mohamed Ibrahim as the individual in blue standing next to Al Mahdi and testifying that he was there to translate Al Mahdi's words from Arabic into the local Songhai language). P-0065 did not recognise this individual from the back but confirmed that the person was interpreting what Al Mahdi was saying from Arabic to Songhai, which most of the attending spectators spoke (P-0065: T-040, p. 10, referring to video MLI-OTP-0018-0252, at 00:00:02:10).

<sup>2484</sup> P-0150: T-098, pp. 50-51, referring to video MLI-OTP-0009-1749, at 00:05:30:10. See also paragraph below on this individual's role in the flogging of P-0565.

<sup>2485</sup> P-0065: T-040, p. 10, referring to video MLI-OTP-0018-0252, at 00:00:06:15 (identifying the individual to the far right as a member of the Islamic Police carrying a Kalashnikov rifle; P-0065 explained that the fact that he belongs to the Islamic Police can clearly be seen from his vest); P-0150: T-098, p. 50, referring to video MLI-OTP-0009-1749, at 00:05:30:10 (identifying the person on the far left as belonging to the Islamic Police).

<sup>2486</sup> The Chamber notes that in one instance P-0150 and P-0065 identified a particular individual as different persons. In video MLI-OTP-0018-0252, P-0150 identified the person on the left leaning against the white vehicle as Ayman Al Bambari, or the Bambara person, although noted he was not sure (P-0150: T-098, p. 39, referring to video MLI-OTP-0018-0252, at 00:00:07:01) whereas P-0065 identified this person as Adama (P-0065: T-040, p. 11, referring to video MLI-OTP-0018-0252, at 00:00:08:06). The Chamber considers that nothing turns on this point, noting that the person's face is completely obscured. Noting the unclarity of the evidence on these points, the Chamber does not rely on this specific identification.

<sup>2487</sup> P-0150: T-093, p. 72.

<sup>2488</sup> P-0150: T-098, pp. 33-34, 45-46, referring to video MLI-OTP-0009-1749, at 04:46:04 and 00:05:19:03; p. 38, referring to video MLI-OTP-0018-0252; p. 47, referring to video MLI-OTP-0018-0251, transcript MLI-OTP-0078-1425, translation MLI-OTP-0078-1427; pp. 49-50, referring to video MLI-OTP-0018-0291, transcript MLI-OTP-0078-9905, translation MLI-OTP-0078-9907; P-0065: T-039, p. 58, referring to video MLI-OTP-0009-1749, at 00:04:45:16; P-0065: T-040, p. 14, referring to video MLI-OTP-0009-1749, at 00:05:19:10; pp. 9-10, referring to video MLI-OTP-0018-0252, at 00:00:02:10. See also P-0557: T-055, p. 13; P-0639's statement MLI-OTP-0072-0290-R03, at 0307 to 0308, para. 59; D-0514: T-208, pp. 56-57; Mr Al Hassan's statements MLI-OTP-0051-1184, at 1188-1189; MLI-OTP-0051-0936, at 0941-0943, referring to video MLI-OTP-0009-1749, at 00:04:44:00. In

adultery was a serious sin against Allah and that those who committed it were punished with one hundred lashes.<sup>2489</sup> Before reading the judgment itself, Al Mahdi gave a long introduction in which he spoke of the lack of enforcement of Islamic rule for many years in the country and said that the time had come for Islamic rule to come back and that the *hadd* was the first one enforced in Timbuktu.<sup>2490</sup> He also stated that *zina* is one of the biggest sins and one of the biggest deviances according to Islamic *Sharia*.<sup>2491</sup> Mohamed Ibrahim stood next to Al Mahdi and translated Al Mahdi's words from Arabic into the local Songhai language.<sup>2492</sup>

790. Adama ordered P-0565 to cover her face, and she covered her eyes in order not to be recognised by the crowd.<sup>2493</sup> P-0565 was flogged 100 times<sup>2494</sup> on her back

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relation to the role of Al Mahdi at this flogging event, the Chamber notes that P-0150's testimony contradicts the Defence's argument that as emir of the *Hesbah*, Al Mahdi oversaw the execution of the flogging and ensured through his presence that it was carried out in a manner consistent with *Sharia* ([Defence Final Brief](#), para. 521). To the contrary, P-0150 testified that while it was Al Mahdi's duty as a member of the *Hesbah* to make sure that the measures taken by the person doing the flogging and the judges should be in keeping with the rules of *Sharia*, Al Mahdi did not fulfil his duty; P-0150 testified that '[t]here was no sophisticated or well-oiled system within the *Hesbah*. The procedures were not being followed at the outset, so as emir of the *Hesbah*' Al Mahdi, 'like all the other members of the armed groups, would assist in these events. And nobody took up their functions - well, the person flogging should be designated by the judge or by the *Hesbah*. But as you can see, there were dozens of perpetrators. So things were not done in an orderly fashion for [Al Mahdi] to be able to take up [his] functions within this institution' (P-0150: T-108, p. 61).

<sup>2489</sup> P-0150: T-098, pp. 45-46, *referring to* video MLI-OTP-0009-1749, at 00:05:19:03, transcript MLI-OTP-0028-0839. The Chamber notes that in a video of this speech P-0557 identified Al Mahdi as the imam of the mosque of Bellafarandi and the person standing next to him in blue and interpreting as Doud/David (P-0557: T-055, pp. 36-37, *referring to* MLI-OTP-0009-1749, at 00:04:47:08; T-055, p. 45, *referring to* MLI-OTP-0018-0243). P-0565 also testified that an imam spoke in Songhai, asking the people to '[c]ome and see somebody who has had a child out of wedlock and see how they will be treated', and that she did not know the imam but he was someone who delivered sermons; she testified that no one was translating what he said (P-0565: T-051, pp. 40-42). The Chamber notes that P-0565 and P-0557 appear to misidentify Al Mahdi and Mohamed Ibrahim; however, given the circumstances, the trauma of the events on these victims, and the limited knowledge they had of the individuals, the Chamber considers these misidentifications understandable. The Chamber is also of the view that these misidentifications are minor and insignificant. The Chamber does not consider these misidentifications of Al Mahdi and Mohamed Ibrahim to otherwise impact the overall reliability of P-0557's or P-0565's account of the event.

<sup>2490</sup> P-0150: T-098, pp. 35-36, *referring to* video MLI-OTP-0009-1749, at 00:04:32:23 to 04:51:02, transcript MLI-OTP-0028-0839, at 0843-0844.

<sup>2491</sup> P-0150: T-098, p. 46, *referring to* video MLI-OTP-0009-1749, at 00:05:02:00, transcript MLI-OTP-0028-0839.

<sup>2492</sup> P-0150: T-098, p. 36, *referring to* video MLI-OTP-0009-1749, at 00:04:51:02; p. 47, *referring to* video MLI-OTP-0018-0251, transcript MLI-OTP-0078-1425, translation MLI-OTP-0078-1427.

<sup>2493</sup> P-0565: T-052, p. 42. Although the Chamber notes the Defence suggestion that P-0565's face was covered as a measure taken '[t]o avoid disproportionate humiliation' ([Defence Final Brief](#), para. 485), the Chamber considers in the full circumstances of P-0565's public flogging that the measure had little, if any, effect in mitigating the humiliation she experienced.

<sup>2494</sup> P-0565: T-051, p. 42. *See also* Mr Al Hassan's statement MLI-OTP-0051-1184, at 1187.

with a whip<sup>2495</sup> by four members of Ansar Dine/AQIM<sup>2496</sup> including Al Mahdi,<sup>2497</sup> Nassar,<sup>2498</sup> and Aboubacar Al Chinguetti.<sup>2499</sup> Aboubacar Al Chinguetti in particular flogged P-0565 in a very forceful manner,<sup>2500</sup> such that he earned a nickname because of it.<sup>2501</sup> P-0565 felt pain on her back.<sup>2502</sup> Radwan said '[i]t's finished' to end the flogging.<sup>2503</sup> P-0639 who was in the crowd found

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<sup>2495</sup> P-0565: T-051, pp. 42-43; T-052, pp. 6-10, *referring to* video MLI-OTP-0009-1749, at 00:04:28:00 to 00:06:02:00, translation MLI-OTP-0028-0839, at 0843-0844 and video MLI-OTP-0018-0284, transcript MLI-OTP-0069-1864, translation MLI-OTP-0078-1880, at 1883.

<sup>2496</sup> While the Chamber only received evidence on the identities of three of the persons who flogged P-0565, the Chamber is satisfied that all four persons who flogged P-0565 were members of Ansar Dine/AQIM, considering it was Ansar Dine/AQIM carrying out the punishment and that three of the four persons who flogged P-0565 were named members of Ansar Dine/AQIM.

<sup>2497</sup> P-0150: T-108, p. 55; P-0065: T-040, p. 19, *referring to* video MLI-OTP-0009-1749, at 00:05:20:08. The Chamber further notes P-0150's testimony about the level of force used. P-0150 agreed with the proposition that Al Mahdi did not flog the woman hard when he flogged her (P-0150: T-108, p. 56-57, *referring to* article MLI-OTP-0024-3077, translation MLI-OTP-0049-0036, at 0038). P-0150 noted that Al Mahdi did not use a rope to beat the woman and that he 'deliberately did not use a severe beating because Al Mahdi 'didn't think that the ultimate aim of *hadd* and punishment is to harm' (P-0150: T-108, p. 57). P-0150 indicated that *Sharia* did not require the person doing the flogging to be a smaller size than the person receiving the flogging, rather the person doing the flogging must be of medium build, not particularly strong and not overzealous (P-0150: T-108, p. 57). P-0150 was of the view that this applied to Al Mahdi when he executed the flogging, however, P-0150 noted that at the time of these events, the aim was '[n]ot necessarily to apply the rules. There was a little bit of chaos going on. I wouldn't say that the *Sharia* rules were applied in a theoretical manner at the time' (P-0150: T-108, p. 57). P-0150 stated that in principle the emir of the *Hesbah* should stop someone who was using excessive force, however, there was '[c]haos reigning in Timbuktu and the *Sharia* was not being applied as it should have been' (P-0150: T-108, pp. 60-61). P-0150 explained that the most appropriate stick among all the sticks prepared was chosen (P-0150: T-108, p. 55). The witness did note that all the sticks were subsequently used to administer the beatings, whether they were the one chosen or not (P-0150: T-108, p. 56).

<sup>2498</sup> P-0150: T-098, p. 52, *referring to* video MLI-OTP-0009-1749, at 00:05:34:13; T-098, p. 54, *referring to* video MLI-OTP-0018-0284.

<sup>2499</sup> D-0514: T-208, pp. 19, 56-57.

<sup>2500</sup> D-0514 who was in the crowd, testified that Aboubacar Al Chinguetti flogged P-0565 (and P-0557) 'in a very forceful manner indeed' (D-0514: T-208, pp. 56-57). Noting D-0514's evidence on the level of force used and the other evidence from P-0565 on the pain she experienced and her injuries which followed the flogging (*see* paragraph below), the Chamber dismisses the Defence suggestion that P-0565 was not beaten in a severe way ([Defence Final Brief](#), para. 486).

<sup>2501</sup> D-0514, who was in attendance at the flogging, testified that Boubacar was also called Feraoun, and that people called Boubacar Feraoun because he would flog people forcefully; D-0514 stated that Boubacar got this nickname because when he was flogging P-0557 and P-0565, he 'was doing it in a very forceful manner indeed' and 'from that day onwards, he was called or given the nickname Feraoun' (D-0514: T-208, pp. 56-57).

<sup>2502</sup> P-0565: T-052, p. 11. Notwithstanding P-0150's testimony that Al Mahdi did not flog the woman hard when he flogged her, the Chamber accepts P-0565's testimony that she felt pain on her back, recalling that Al Mahdi was not the only person who flogged P-0565, and recalling in particular D-0514's evidence that Boubacar flogged P-0565 in a very forceful manner (D-0514: T-208, pp. 56-57).

<sup>2503</sup> P-0150: T-098, p. 55, *referring to* video MLI-OTP-0018-0284, transcript MLI-OTP-0069-1864, translation MLI-OTP-0078-1880. P-0150 also testified that Koutaïba was present to count the number of flogs, noting that as a *qadi* or a judge, he needed to make sure that the number of lashes was accurate (P-0150: T-108, p. 61).

it unbearable to watch.<sup>2504</sup> P-0565 felt that nobody could come to her rescue.<sup>2505</sup>

791. Aboubacar Al Chinguetti ordered that P-0557 be flogged with a rope folded in two,<sup>2506</sup> a tool usually used for beating camels, which P-0150 termed ‘unimaginable’ in the context of the rules to be followed for a flogging.<sup>2507</sup> Radwan covered P-0557’s head with a yellow shirt.<sup>2508</sup> P-0557 was flogged 100 times<sup>2509</sup> by four persons,<sup>2510</sup> including Al Mahdi,<sup>2511</sup> Radwan<sup>2512</sup> and Aboubacar Al Chinguetti.<sup>2513</sup> Aboubacar Al Chinguetti in particular flogged P-0557 in a very forceful manner.<sup>2514</sup>

792. Following the floggings, Sanda Ould Boumama gave an interview during which

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<sup>2504</sup> P-0639’s statement MLI-OTP-0072-0290-R03, at 0308, para. 59.

<sup>2505</sup> P-0565: T-052, p. 13.

<sup>2506</sup> P-0557: T-055, p. 12.

<sup>2507</sup> The Chamber notes that commenting on the manner in which P-0557 was beaten, P-0150 testified that ‘[t]here were no rules followed. [...] So, for example, the tool used for beating, we use this tool for beating camels, it’s a rope folded in two. [...] These are all unimaginable things’ (P-0150: T-098, p. 58, referring to video MLI-OTP-0018-0286, transcript MLI-OTP-0069-1399).

<sup>2508</sup> P-0557: T-055, p. 19. While the witness does not refer to Radwan by name, the Chamber finds that he refers to Radwan in light of the other video evidence showing how Radwan was dressed, noting that the witness describes him as the person dressed in black with a black turban.

<sup>2509</sup> P-0557: T-055, pp. 18-19; P-0150: T-098, p. 57, referring to video MLI-OTP-0018-0285; P-0065: T-040, pp. 27-28, referring to video MLI-OTP-0018-0285, at 00:00:04:14 and 00:00:07:16 to 00:00:12:06. See also Mr Al Hassan’s statement MLI-OTP-0051-1184, at 1187; P-0150: T-098, pp. 56-57, referring to video MLI-OTP-0018-0285, translation MLI-OTP-0078-9928, transcript MLI-OTP-0078-9923. The Chamber considers speculative the Defence assertion that P-0150 did not remember that Al Mahdi flogged P-0557 25 times which ‘suggests that P-0557 did not react in a way that left an impression’ (Defence Final Brief, para. 486). In light of P-0557’s testimony that the beating left him with enduring scarring and D-0514’s testimony that Aboubacar Al Chinguetti flogged P-0557 in a very forceful manner (see below), the Chamber accordingly rejects the Defence suggestion that P-0557 was not beaten in a severe way (Defence Final Brief, para. 486).

<sup>2510</sup> P-0557: T-055, pp. 18-19. The Chamber notes that P-0557 clarified that he did not see with his own eyes that he was flogged by four different people but that he saw this on television afterwards. See also D-0514: T-208, pp. 56-57.

<sup>2511</sup> P-0150: T-108, p. 59, referring to video MLI-OTP-0018-0285 and video MLI-OTP-0017-0027, at 00:04:16:00 to 00:04:36:00; P-0557: T-055, pp. 38-39, referring to video MLI-OTP-0017-0027, at 00:04:35:14. The Chamber notes that P-0557 did not identify Al Mahdi by name. In light of the totality of the evidence, including P-0150’s testimony, the Chamber considers that Al Mahdi is depicted in video MLI-OTP-0017-0027, at 00:04:35:14. P-0557 also identified the person in photograph MLI-OTP-0022-0475 as one of the people who flogged him (P-0557: T-055, pp. 49-50). The Chamber is unpersuaded by the Defence objection that the date of the picture is relevant as the physical appearance of Al Mahdi may depend upon the time the image was taken (see ICC-01/12-01/18-1652-Conf-AnxV and related annexes).

<sup>2512</sup> P-0150: T-098, p. 57, referring to video MLI-OTP-0018-0286, at 00:00:15:17; P-0065: T-040, pp. 30-31, referring to video MLI-OTP-0018-0286, at 00:00:11:08 to 00:00:17:09. See also P-0557: T-055, pp. 25, 43, referring to video MLI-OTP-0018-0246. See also Mr Al Hassan’s statement MLI-OTP-0051-0936, at 0945, referring to video MLI-OTP-0009-1749, at 00:04:54:00; at 0950, referring to video MLI-OTP-0009-1749, at 00:05:45:00.

<sup>2513</sup> D-0514: T-208, pp. 19, 56-57.

<sup>2514</sup> D-0514 who was in the crowd, testified that Aboubacar Al Chinguetti flogged P-0557 (and P-0565) ‘in a very forceful manner indeed’ (D-0514: T-208, pp. 56-57).

he explained the enforcement of the *hadd*.<sup>2515</sup>

793. An ambulance<sup>2516</sup> was already waiting at the site of the flogging.<sup>2517</sup> P-0565 and P-0557 were taken to the hospital, where they were prescribed medicine<sup>2518</sup> and later taken back to their homes.<sup>2519</sup>

794. At about 16:00 the same day, members of Ansar Dine/AQIM also imposed the sentence that a religious marriage ceremony be conducted.<sup>2520</sup> Houka Houka told P-0557 that he and P-0565 had to get married, otherwise each of them would be imprisoned for two years.<sup>2521</sup> The members of Ansar Dine/AQIM went to P-0565's and P-0557's houses to organise a 'dowry'.<sup>2522</sup> P-0557 was directed to pay a sum of money for this 'dowry'.<sup>2523</sup> Houka Houka, Adama and a third person

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<sup>2515</sup> P-0654: T-129, pp. 25-28, *referring to* video MLI-OTP-0020-0103, transcript MLI-OTP-0056-0787, translation MLI-OTP-0061-1128; P-0150: T-098, pp. 58-60, *referring to* video MLI-OTP-0020-0103. Noting P-0654's comments on the video, and notwithstanding P-0150's lack of personal knowledge of the circumstances of its creation, the Chamber considers it appropriate to rely on this item (*contra* ICC-01/12-01/18-1866-Conf-Anx5).

<sup>2516</sup> P-0065 confirmed that a mistake in the commentary on video MLI-OTP-0009-1749 was that it showed a doctor and the nurse who attended the event and described them as the people who were about to be sanctioned (P-0065: T-047, pp. 48, 52, *referring to* video MLI-OTP-0009-1749, at 00:04:57:00 to 00:04:59:00).

<sup>2517</sup> P-0565: T-051, pp. 43-45; P-0557: T-055, p. 37, *referring to* video MLI-OTP-0009-1749, at 00:04:56:18; P-0065: T-040, pp. 11-12, *referring to* video MLI-OTP-0018-0252, at 00:00:14:07. *See also* Mr Al Hassan's statements MLI-OTP-0051-1184, at 1188-1189; MLI-OTP-0051-0936, at 0944-0945, *referring to* video MLI-OTP-0009-1749, at 00:04:50:00.

<sup>2518</sup> P-0565: T-051, pp. 43-45; P-0557: T-054, pp. 30-31; T-055, pp. 22-23; P-0150: T-108, pp. 61-62. *See also* P-0603: T-125, pp. 57-58. The Chamber considers ill-founded the Defence suggestion that the victims did not incur severe injuries simply because they were prescribed paracetamol ([Defence Final Brief](#), para. 486), also in light of the other evidence regarding the injuries sustained by the victims and the traditional treatment obtained by P-0557 (*see* paragraph below).

<sup>2519</sup> P-0565: T-051, pp. 43, 45.

<sup>2520</sup> P-0565: T-051, pp. 32, 45-46; P-0557: T-054, p. 31; T-055, p. 26. *See also* P-0065: T-040, p. 34, *referring to* MLI-OTP-0018-1171-R01, translation MLI-OTP-0078-2364-R01. The Chamber notes that P-0150 stated that although Malikite rules prohibit the marriage of two people after they commit adultery and the man would have to be banished, within the rules of Islamic justice, a judge needs to apply the Islamic doctrine that is most suited to the instance; the judge can adopt a hard or soft line, depending on what he believes is the appropriate solution; P-0150 stated that the approach taken was the easier option for the couple (P-0150: T-108, p. 62). P-0150 stated that the easier option was a form of compensation for the hurt that was inflicted on them (P-0150: T-108, p. 62).

<sup>2521</sup> P-0557: T-054, p. 31; T-055, p. 26.

<sup>2522</sup> P-0565: T-051, pp. 45-46; P-0557: T-054, p. 31. *See also* P-0065: T-040, p. 34.

<sup>2523</sup> P-0557: T-054, p. 31. P-0557 also testified that after the flogging the 'Islamists' came back to P-0557's house and offered him some money. P-0557 refused but his sister did take that money (P-0557: T-055, p. 28). The Chamber notes that P-0150 testified that after the flogging the Ansar Dine/AQIM gave the two individuals a dowry to help them get married (P-0150: T-108, pp. 61-62). P-0004 also confirmed that after the punishment, the couple was given a dowry and some gifts and were able to marry (P-0004: T-166, p. 90). Similarly, D-0213 testified that, after *Sharia* was applied, the man (corresponding to P-0557) told him that his wedding had taken place the previous evening and that Adama gave him 20,000 francs as a contribution and 5 kilos of millet (D-0213: T-197, pp. 49-50). D-0213 did not know

carried out a ceremony without P-0565 and P-0557 being present.<sup>2524</sup> There was no celebration with friends after.<sup>2525</sup> The money was handed over and the marriage carried out.<sup>2526</sup>

795. The ceremony performed by the members of Ansar Dine/AQIM was not in keeping with the customs, so P-0557 felt it would have to be done again,<sup>2527</sup> whether or not the previous marriage was binding.<sup>2528</sup>
796. A second wedding conducted at the mosque<sup>2529</sup> took place later in a very discreet manner<sup>2530</sup> with no celebration.<sup>2531</sup> P-0557 gave 80,000 francs for the second marriage.<sup>2532</sup>
797. After the marriage, members of Ansar Dine/AQIM visited P-0557 on occasion with tea and sugar, to have tea together.<sup>2533</sup> They asked him if he would want to join their group.<sup>2534</sup> P-0557 did not answer, the members of Ansar Dine/AQIM ‘took their tea and left’.<sup>2535</sup>
798. Following the flogging, P-0557 had marks all over his body, on his shoulders, back and thighs.<sup>2536</sup> P-0557 still has scars on his shoulders, back and neck from

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how the marriage was celebrated (D-0213: T-197, p. 50). While the Chamber notes its previous finding that D-0213’s testimony bears little weight, the Chamber notes that D-0213, P-0004 and P-0150’s testimony that Ansar Dine/AQIM gave P-0557 money is not inconsistent with his testimony that he separately paid a ‘dowry’ for the marriage.

<sup>2524</sup> P-0557: T-055, pp. 26-27; P-0565: T-051, pp. 46-47. P-0603 also testified that, based on what she heard from people talking about it everywhere, it was the ‘Islamists’ who married P-0565 and P-0557 after the flogging (P-0603: T-125, p. 58).

<sup>2525</sup> P-0557: T-055, p. 27.

<sup>2526</sup> P-0557: T-054, p. 31.

<sup>2527</sup> P-0557: T-055, p. 27; T-056, p. 41. The Chamber notes that P-0565 similarly stated that the first wedding was ‘[n]ot in keeping with our rules’ (P-0565: T-052, p. 51). P-0565 further testified that marriages are traditionally conducted at the mosque; the couple is represented by their relatives; and then somebody is sent to ask whether they are in agreement with the marriage; and that if the marriage is celebrated, then ‘we’re quite simply taken to our husband’ (P-0565: T-051, p. 47).

<sup>2528</sup> P-0557: T-056, p. 40.

<sup>2529</sup> P-0565: T-052, p. 50. *See also* P-0557: T-054, p. 31.

<sup>2530</sup> P-0565: T-052, p. 52.

<sup>2531</sup> P-0565: T-051, pp. 47-48; P-0557: T-054, p. 31. The Chamber notes that P-0557’s testimony suggests that the second marriage was close in time to the first one.

<sup>2532</sup> P-0557: T-054, p. 31. *See also* P-0565: T-052, p. 53.

<sup>2533</sup> P-0557: T-055, p. 27. The Chamber notes that P-0557 does not specifically identify these people as members of Ansar Dine/AQIM but from his evidence understands that he refers to the same group as those who carried out his marriage (*see* P-0557: T-055, pp. 26-27).

<sup>2534</sup> P-0557: T-055, p. 27.

<sup>2535</sup> P-0557: T-055, p. 27.

<sup>2536</sup> P-0557: T-055, p. 23.

the flogging and the traditional treatment P-0557 received following the flogging.<sup>2537</sup> When describing the impact of the public flogging on his life, P-0557 ‘[couldn’t] find the words to describe how [he] was treated after the events’;<sup>2538</sup> it was ‘really something which hurt [him] deep down inside’, ‘[his friends and parents had] never seen something like that [...] like [his] flogging’, and ‘relationships [he] had with [his] family were not the same after the incident. [...] neighbours and friends, it’s even worse. [...] it’s very difficult’.<sup>2539</sup> Rumours also circulated in the city about the circumstances surrounding the marriage.<sup>2540</sup>

799. After the flogging, P-0565’s whole back and body hurt and her mother helped her treat the wounds.<sup>2541</sup> There was an inflammation on her back, bruising, and her back was very red.<sup>2542</sup> She had to sleep on her chest.<sup>2543</sup> P-0565’s family thought she had been killed.<sup>2544</sup> Today, she has no physical scars of the flogging.<sup>2545</sup>

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<sup>2537</sup> P-0557: T-055, p. 24. The Chamber notes photographs MLI-OTP-0046-9035, MLI-OTP-0046-9036, MLI-OTP-0046-9039, MLI-OTP-0046-9041, MLI-OTP-0046-9042, MLI-OTP-0046-9043, and MLI-OTP-0046-9044, which P-0557 testified, showed scars where he was flogged on his back (P-0557: T-055, pp. 29-31). P-0557 also clarified that he went to see a traditional doctor who opened the wounds to remove the coagulated blood on all the marks on his back, as shown on the photographs (P-0557: T-056, pp. 46-50; T-055, pp. 23-24). The Chamber finds unpersuasive the Defence objections to these photographs on the basis of lack of evidence of provenance, and that a person’s back is an area of the body a person cannot identify or recognise with precision (*see* ICC-01/12-01/18-1652-Conf-AnxV and related annexes), noting that the photographs were taken in 2017 (*see* ICC-01/12-01/18-1652-Conf-AnxV) and that P-0557 confirmed during his testimony that he still has scars on his body and that these photographs are of him and that the scars he has in his back are the result of his flogging (P-0557: T-055, pp. 24, 29-31). *See also* Dr Sommerland’s report MLI-D28-0006-2725-R01, at 2727 (testifying that while some small areas of scarring seem unlikely to be the result of flogging with a whip, a vertical scar over the lower left back could have been caused by a superficial laceration produced by the trauma described). The Chamber is satisfied based on all of the evidence that at least some of the scars visible resulted from the flogging and/or the traditional treatment which followed. The Chamber notes that Dr Brian Sommerland (*see* D-0500: T-177; Dr Sommerland’s reports MLI-D28-0006-2730-R01, MLI-D28-0006-2778-R01, MLI-D28-0006-2734-R01, MLI-D28-0006-2722-R01, MLI-D28-0006-2725-R01, and MLI-D28-0006-2737-R01 introduced through Rule 68(3) of the Rules) is a plastic surgeon specialising in assessing scarring. He appeared before the Chamber as an expert and mainly testified about expert reports he prepared on his assessment of the scars and lesions of various witnesses. The Chamber observes that Dr Sommerland was a knowledgeable expert who testified carefully, never overstressing his conclusions and acknowledging the weaknesses and limitations of the exercise he was asked to undertake in this case, including the poor quality of the material he worked with and the fact that he did not have all relevant information in his possession. The Chamber finds him to be a generally credible and reliable expert but assesses the credibility, reliability and weight of the witness’s evidence on specific issues on a case-by-case basis in light of these limitations, as appropriate.

<sup>2538</sup> P-0557: T-055, p. 54.

<sup>2539</sup> P-0557: T-055, pp. 53-54.

<sup>2540</sup> The Chamber refers to its finding above about the rumours circulating regarding the marriage.

<sup>2541</sup> P-0565: T-052, p. 11.

<sup>2542</sup> P-0565: T-052, p. 11. *See also* D-0500: T-177, pp. 16-17 (testifying that in his expert opinion, the flogging resulted in bruising and contusion and swelling and discomfort, but did not leave scars).

<sup>2543</sup> P-0565: T-052, p. 12.

<sup>2544</sup> P-0565: T-051, p. 46.

<sup>2545</sup> P-0565: T-052, p. 18. *See also* D-0500: T-177, pp. 16-17.



Although P-0565 kept all her friends after the flogging, everybody knows what happened.<sup>2546</sup> She was 14 years old at the time and her parents comforted her.<sup>2547</sup>

**d) Case of Mohamed Oye Ag Inhinane (P-0580)**

800. For the factual findings in this section, the Chamber relies primarily on the evidence of Gaichatane Mohamed (P-0642), the wife of the direct victim Mohamed Oye Ag Inhinane (P-0580),<sup>2548</sup> whose testimony, subject to discrete

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<sup>2546</sup> P-0565: T-052, pp. 12, 15.

<sup>2547</sup> P-0565: T-051, p. 7; T-052, pp. 12-13.

<sup>2548</sup> Gaichatane Mohamed (P-0642: T-156 to T-157), a Muslim woman, lived in Timbuktu when Ansar Dine/AQIM were present in the city (P-0642: T-156, pp. 8-9). The witness is married to Mohamed Oye Ag Inhinane (P-0580) (P-0642: T-156, pp. 8-9). She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation as well as the victimisation of members of her family. Regarding the experiences of her husband and daughter, the Chamber notes that P-0642's evidence is limited and that the witness did not try to say more than she knew about what happened to them. The witness was also open and frank in her testimony about having spoken with her husband about the case (*see* P-0642: T-157, pp. 8-12). P-0642 was clear in distinguishing between what she saw and heard herself and what she was told by others. Although she was not clear on some details, the Chamber is of the view that the witness's illiteracy may have contributed to her inaccuracy regarding certain dates and details. Indeed, P-0642 openly noted that she did not remember everything (P-0642: T-156, p. 11). While taking into account the fact that the witness is married to P-0580 in its assessment of her evidence, the Chamber considers unsupported the Defence argument that the witness was coached by her husband, or that her evidence was likely 'a result of influence as opposed to true memory recall' ([Defence Final Brief](#), paras 182, 465; *see also* Defence Closing Statements, T-214, p. 65; [Defence Final Brief](#), para. 466). In relation to the Defence assertion that it would be unfair to rely on the witness in relation to the case of P-0580 given that 'the Defence was denied the opportunity to test the veracity of P-0580's account and that [the witness's] testimony departed from the confirmed charges in several material aspects' ([Defence Final Brief](#), paras 460, 464), the Chamber considers that no prejudice arises from the Chamber's reliance on the witness's evidence in relation to the case of P-0580 and her daughter, Azahara. In this regard, the Chamber notes the limited nature of the witness's direct evidence on these incidents, and further recalls that the Defence was afforded the opportunity to cross-examine P-0642 regarding the evidence she gave in court. Further, the Chamber dismisses the Defence argument that the witness's evidence of P-0580's arrest and punishment for selling cigarettes and tobacco is 'outlandish [and] incoherent' because flogging was not imposed as a penalty for the sale of cigarettes (Defence Closing Statements, T-214, p. 65; [Defence Final Brief](#), para. 462), noting that it finds fully credible and reliable the limited evidence from the witness regarding P-0580's arrest and flogging, and recalling its general finding that persons who sold cigarettes could indeed be arrested, detained and flogged (*see* paragraph 707 above). Regarding the names of the persons who were accompanying 'Hamed Moussa', the Chamber notes that the witness did not remember the names in the examination-in-chief but confirmed certain names when questioned by the Defence (*see* P-0642: T-156, p. 32; T-157, pp. 40-41). The Chamber is of the view that the matter does not reflect negatively on the witness's credibility. On the subject of Mr Al Hassan and his role in the events, the Chamber notes that the witness was open and clear that she had heard about the accused from her husband and others and that they both heard about the case through the media (*see* P-0642: T-157, pp. 8-9, 12-16). The Chamber considers the witness's frankness in acknowledging these influences to add to her credibility and finds reasonable that the witness had a certain impression about the role of the accused on this basis (*contra* [Defence Final Brief](#), para. 465; *see also* [Defence Final Brief](#), para. 199). The Chamber is also of the view that the witness's participation in the victims' association appears to be somewhat limited and in any case the Chamber is satisfied that the witness testified as to her own personal experiences (*see* P-0642: T-157, pp. 7-8). The Chamber further finds that in the context of its assessment of the witness's evidence as a whole and recalling the limited evidence she provided regarding her husband and daughter, there is no evidence that offers of aid affected the witness's credibility (*see* P-0642: T-157, p. 5; *contra* [Defence](#)

aspects discussed below, it finds particularly reliable.

801. During the period of the charges, Mohamed Oye Ag Inhinane had a shop beside the BMS where he sold products including cigarettes and tobacco.<sup>2549</sup>

802. One day, which the Chamber is satisfied was between April 2012 and January 2013,<sup>2550</sup> members of Ansar Dine/AQIM<sup>2551</sup> arrested Mohamed Oye Ag Inhinane at his shop for selling tobacco.<sup>2552</sup>

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[Final Brief](#), para. 170). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Gaichatane Mohamed to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>2549</sup> P-0642: T-156, pp. 12-13; T-157, pp. 38-40. Shown a photograph of a shop, P-0642 stated that the location did not look like the location of P-0580's shop. However she noted that 'even if she remember[ed] the locations, [she had] forgotten' (P-0642: T-157, p. 25, *referring to* photograph MLI-D28-0005-7727). P-0642 testified that in 2012, she had visited the shop (P-0642: T-157, p. 25). Another witness, P-0641, testified that P-0580's shop was at *Yoboutao* and was empty but that he knew nothing more of him (P-0641: T-140, pp. 14-15). Regardless of whether P-0642 could identify the shop on the basis of a photograph and irrespective of any unclarity in P-0642's evidence on what happened to the BMS during the time of the events (*see* P-0642: T-157, pp. 38-40), the Chamber is satisfied that the shop existed, noting that the core point of P-0642's testimony that P-0580 had a shop near the BMS is corroborated by P-0641 on this point (*contra* Defence Closing Statements, T-214, p. 65).

<sup>2550</sup> The Chamber notes that the evidence on the time period of this event is unclear. On the one hand, P-0642 testified that P-0580 was tortured, mistreated and detained by 'the mujahedeen' for 'several years' and also testified that she saw him again after he was taken 'after a year or so' (P-0642: T-156, p. 11; *see also* [Defence Final Brief](#), para. 467). On the other hand, the description given by P-0642 of his arrest and detention indicates that it happened during the period of the charges, noting, *inter alia*, that she mentioned the involvement of 'Hamed Moussa' (P-0642: T-156, p. 24), the prohibition of smoking and tobacco (P-0642: T-156, p. 12) and also the period when the Malian government returned to Timbuktu and the armed groups departed (P-0642: T-156, pp. 27-28). Noting these details and notwithstanding the other uncertainties surrounding P-0642's evidence on the time period of these events, including the length of P-0580's detention, the Chamber is satisfied that the relevant events occurred during the control of the city of Timbuktu by Ansar Dine/AQIM between April 2012 and January 2013.

<sup>2551</sup> The Chamber notes that P-0642 refers to the persons who took her husband as 'the mujahedeen' (P-0642: T-156, p. 11) but notes that in her testimony she used this term to refer to the armed groups who 'occupied' Timbuktu (P-0642: T-156, pp. 8-9). In addition, P-0642 mentions P-0580 being taken to a location which the Chamber considers to be a reference to the Central Prison, used by Ansar Dine/AQIM during the period of their control of the city (*see* below and paragraph 561 above), and notes that P-0642 also mentions the involvement of 'Hamed Moussa' in the events involving P-0580 (P-0642: T-156, p. 24), and that her understanding was that P-0580 was arrested for selling tobacco which was prohibited (P-0642: T-156, p. 12). On the basis of the foregoing, the Chamber is satisfied that the persons who arrested P-0580 were members of Ansar Dine/AQIM.

<sup>2552</sup> P-0642 testified that a group took P-0580, left with him and headed for the river (P-0642: T-156, p. 11). The Chamber notes that P-0642's account of P-0580's arrest is based on: (i) what she was told by her daughter who witnessed the event and at the time was in front of the shop where P-0580 sold goods (P-0642: T-156, pp. 11-12); (ii) P-0580's cousins who came to inform P-0642 that P-0580 was no longer at the shop (P-0642: T-156, pp. 13-14) and that they had seen him taken in a car and that the people who took him had tied him up and were kicking him (P-0642: T-156, p. 16) (the Chamber notes that the witness used the expression 'the children' to refer to P-0580's cousins, *see* P-0642: T-156, p. 20); and (iii) her 'neighbours' who told P-0642 that 'they' had taken him away with them (P-0642: T-156, p. 16).

803. Members of Ansar Dine/AQIM took Mohamed Oye Ag Inhinane to the Central Prison.<sup>2553</sup> During the period of his detention, Mohamed Oye Ag Inhinane was whipped on a tarmac road by members of Ansar Dine/AQIM: two men held him by the hands and two men held him by the head and three men beat him with a whip.<sup>2554</sup>
804. His wife, Gaichatane Mohamed, who was six months pregnant at the time, fell and became unconscious when she saw Mohamed Oye Ag Inhinane being whipped; she eventually woke up in the hospital and discovered that [REDACTED].<sup>2555</sup>
805. Mohamed Oye Ag Inhinane was detained for some time at the aforementioned

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P-0642 testified that she did not know why P-0580 was arrested but stated that '[t]hey said that he was selling tobacco. And that was prohibited' (P-0642: T-156, p. 12). The Chamber is satisfied on the basis of this evidence that P-0580 was arrested for selling tobacco. The Chamber notes that P-0642 testified that Mr Al Hassan was 'at the head' of the group of people who came and took P-0580 (P-0642: T-156, p. 11). Regarding her basis of knowledge, the witness said that she 'heard about it via the children; my daughter, who was in front of the shop and who was bleeding' (P-0642: T-156, p. 12), but provided no further specification as to how her daughter would have known or been able to identify Mr Al Hassan as the head of the group who arrested P-0580. Noting the lack of details on P-0642's evidence on this matter, the Chamber does not consider this evidence sufficient to make a finding that Mr Al Hassan was at the head of the group of people who came and took P-0580.

<sup>2553</sup> The Chamber observes that P-0642 went to see P-0580 at this location herself (P-0642: T-156, p. 22) and described it as the guards' camp (P-0642: T-156, pp. 16, 19-21; *see also* pp. 16-19). The Chamber notes that P-0642 further testified that the 'Tamasheq people' also called the guards' camp the 'big' camp and said that the camp was located on the exit from the town towards the west (P-0642: T-156, p. 21). Based on her description of the camp, the Chamber considers that P-0642 is referring to the Central Prison (*see* paragraph 561 above). Recalling its finding that P-0580 was arrested by members of Ansar Dine/AQIM and its finding that Ansar Dine/AQIM had control of the Central Prison during the period that they controlled Timbuktu (*see* paragraph 561 above), the Chamber infers that it was members of Ansar Dine/AQIM who took P-0580 to the Central Prison.

<sup>2554</sup> P-0642: T-156, pp. 21-22; T-157, p. 55. She said that she saw this incident on a tarmac road on the way to the place where P-0580 was being held (P-0642: T-156, pp. 21-22). While openly acknowledging that she was wearing a veil and she could not see who beat P-0580, and that she was far away and there was a vehicle between them (P-0642: T-156, p. 22; T-157, p. 55), the Chamber considers that the witness was clear in her description of seeing men holding P-0580 and beating him with a whip, and she also testified that she could see that P-0580 had fallen or was seated (P-0642: T-156, p. 22; T-157, p. 55). The Chamber therefore relies on P-0642's evidence of seeing P-0580 whipped. Recalling its finding that P-0580 was arrested by members of Ansar Dine/AQIM (*see* above), and noting P-0642's evidence that this incident happened as she was on her way to see P-0580 at the camp where he was detained by members of Ansar Dine/AQIM, the Chamber infers that it was members of Ansar Dine/AQIM who whipped P-0580.

<sup>2555</sup> P-0642: T-156, pp. 22-23; T-157, p. 50. P-0642 was open in her testimony that when she first got up, she did not know what had happened to her and was told that she would be told what had happened when she got home (P-0642: T-157, p. 50). She further testified that she knew that she had had a miscarriage before she was told by her sisters, noting, when 'something like that happens, one does have a feeling about it' (P-0642: T-157, p. 50). Contrary to the Defence assertion that P-0642's evidence on this point is a 'factually impossible claim that greatly diminish[es] her credibility' ([Defence Final Brief](#), para. 467), the Chamber considers it entirely reasonable that the witness did not initially know what had happened to her pregnancy, noting that she was unconscious and only woke up in hospital.

prison<sup>2556</sup> and was released after money was paid by the family.<sup>2557</sup>

806. Gaichatane Mohamed described that Mohamed Oye Ag Inhinane was in a bad state when he was seen again.<sup>2558</sup> While accepting that he was in a bad state when he was seen again, considering the uncertainties surrounding the length of time between Mohamed Oye Ag Inhinane's whipping and when he was seen again, the Chamber considers that the evidence is insufficient to link the physical and mental injuries described by Gaichatane Mohamed to Mohamed Oye Ag Inhinane's whipping on the tarmac road by Ansar Dine/AQIM.<sup>2559</sup>

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<sup>2556</sup> P-0642 stated that she did not see P-0580 again at that time and the only information the family received was that he was at the guards' camp (P-0642: T-156, p. 23). P-0642 stated that meals could not be taken to the guards' camp, testifying that P-0580's relatives went with meals and were refused entry into the camp (P-0642: T-156, p. 23). The Chamber notes that the evidence on the length of P-0580's detention at the camp is not clear. P-0642 testified that P-0580 was released 'a long time' later (P-0642: T-156, p. 23) and that she saw him again after he was taken 'after a year or so' (P-0642: T-156, p. 11). The witness also stated that she was not 'in a good state of mind' at the time and acknowledged that she did not recall how much time passed before P-0580 was released (P-0642: T-156, p. 23). Based on this evidence, the Chamber makes no specific finding on the length of P-0580's detention; however, it considers that based on the evidence he spent some time at the aforementioned prison.

<sup>2557</sup> P-0642: T-156, pp. 23-24. The Chamber notes that P-0642 testified that as regards the money that was paid, the intermediary was 'Hamed Moussa' and the chief was Mr Al Hassan (P-0642: T-156, p. 24). She also testified that she did not know who 'Hamed Moussa' was exactly, but she heard people call them 'mujahideen' thus she also called them that (P-0642: T-156, p. 24). P-0642 stated that she did not know them at all, saying '[y]ou had no right to look at them. We were veiled' (P-0642: T-156, p. 24). She elaborated that '[w]hat I mean by that is that we had to stay veiled. And being veiled all the time, we couldn't look at people. You weren't allowed to look at the person opposite to see who it was' (P-0642: T-156, p. 24). The Chamber notes that there is a lack of details as to the witness's knowledge of 'Hamed Moussa' as well as in relation to Mr Al Hassan's alleged role in receiving the money. The Chamber is not satisfied that the evidence in relation to who the money was paid to proves that 'the intermediary was Hamed Moussa and the chief was [...] [Mr] Al Hassan'. P-0642 noted that 'some old memories are coming up and I can't tell you much' but stated that when the money was paid, P-0580 was released and he came home (P-0642: T-156, pp. 24-26).

<sup>2558</sup> P-0642: T-156, p. 11. P-0642 testified that: P-0580 could not walk because he was ill, he was throwing up blood because of the internal injuries (P-0642: T-156, p. 26); P-0580 had bruises, and bumps on his skin and body down to his back, and still had the scars on his body 'to this day' (P-0642: T-156, p. 26); P-0642 was part of a group taking care of him and giving him treatment as there was no hospital (P-0642: T-156, pp. 26-27); P-0580 could not shower by himself and had to be held up by someone and helped into the shower (P-0642: T-156, p. 27); P-0580 was in this condition until the Malian government returned to Timbuktu and Ansar Dine/AQIM departed (P-0642: T-156, pp. 27-28); and P-0580 continues to suffer to the point that at times he can no longer eat or drink (P-0642: T-156, p. 45). According to P-0642, as a consequence of his experience, P-0580 became mentally unstable (P-0642: T-156, p. 45; T-157, p. 59).

<sup>2559</sup> On the one hand, the Chamber notes that P-0642 testified that P-0580 told her that the injuries were caused by 'the lashes' he received (P-0642: T-156, pp. 26, 45). On the other hand, and as noted several times above, the Chamber observes that P-0642's evidence on the time period of events is very unclear: P-0642 testified that P-0580 was tortured, mistreated and detained by 'the mujahideen' for 'several years' and also testified that she saw him again after he was taken 'after a year or so' (P-0642: T-156, p. 11). In light of the uncertainties surrounding P-0642's evidence on the time period of the events, and since her evidence suggests in any event that she only saw P-0580 again *a long time* after the whipping on the tarmac road, the Chamber considers there is insufficient evidence to link the injuries described by P-

**e) Case of Azahara, the daughter of Mohamed Oye Ag Inhinane (P-0580) and Gaichatane Mohamed (P-0642)**

807. For the factual findings in this section, the Chamber relies primarily on the evidence of Gaichatane Mohamed (P-0642),<sup>2560</sup> who is the mother of Azahara - the direct victim - and whose testimony, subject to discrete aspects discussed below, it finds particularly reliable.

808. Around the time of Mohamed Oye Ag Inhinane's arrest,<sup>2561</sup> his daughter Azahara was hit on the head with a stone in front of his shop.<sup>2562</sup> The Chamber considers there to be insufficient evidence to make a finding on the identity of the person/s who hit Azahara with the stone.<sup>2563</sup>

809. She was bleeding and was taken to the hospital but she did not receive any

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0642 to P-0580's whipping on the tarmac road. In addition, the Chamber notes that it received evidence about another incident concerning P-0580: P-0641 testified that P-0580 worked with the Arabs unloading lorries and was beaten while unloading a lorry at Niafunké, for singing a song against Ansar Dine, and said that this is the only incident he was aware of concerning P-0580 (P-0641: T-139, pp. 6-9; T-140, pp. 14-15, 49-50). P-0641's testimony on P-0580 being beaten is based on what he heard from P-0580 himself (P-0641: T-139, pp. 7-9). According to P-0641, P-0580 did not tell him exactly which group beat him but that those who beat him said that he was tarnishing the name of Ansar Dine, and that is the reason why they beat him (P-0641: T-156, p. 7; *see also* [Defence Final Brief](#), paras 461-463). P-0642 testified that she never saw P-0580 out of Timbuktu and did not believe that he transported goods (P-0642: T-157, p. 26), and gave a series of contradictory answers to questions on whether P-0580 was ever beaten outside of Timbuktu (*see* P-0642: T-157, pp. 36-38). However, the Chamber notes that the questions on this point were put to P-0642 in a convoluted way and considers that it is not clear that the witness fully understood them. Accordingly the Chamber does not consider that this matter affects the overall credibility or reliability of P-0642's evidence, including her evidence on having witnessed P-0580 being whipped in Timbuktu and finds speculative the Defence's suggestion that changes in the accounts of P-0642 and P-0580 are attributable to the promise of aid from certain NGOs ([Defence Final Brief](#), paras 170, 461-462). However, this evidence indicates that P-0580 may have been subjected to other ill treatment during the period of Ansar Dine/AQIM's control of Timbuktu besides the whipping on the tarmac road, and the Chamber has insufficient evidence about the circumstances or perpetrators of that treatment to make any additional findings in that regard. For this additional reason, the Chamber considers there to be insufficient evidence to link the injuries P-0642 saw on P-0580, a long time after he was whipped, to P-0580's whipping on the tarmac road.

<sup>2560</sup> The Chamber refers to its findings on the credibility and reliability of Gaichatane Mohamed's evidence (*see* footnote 2548 above).

<sup>2561</sup> *See* section d) above.

<sup>2562</sup> P-0642: T-156, pp. 10-16.

<sup>2563</sup> The Chamber notes that the Prosecution asserts that it was members of Ansar Dine/AQIM who hit the daughter, leaving her to bleed from the head ([Prosecution Final Brief](#), para. 264). The Chamber notes that P-0642 testified that their daughter did not know the person who hit her, noting that she was 'a very young girl; so she didn't know about this sort of thing' (P-0642: T-156, p. 14). P-0642 further testified that she could not say how old P-0580's daughter was at the time (P-0642: T-156, p. 15). The Chamber considers this evidence to be insufficient to make a finding on the identity of the person or persons who hit Azahara with the stone.

treatment there.<sup>2564</sup> Some treatment was eventually purchased for her at a pharmacy.<sup>2565</sup>

810. Azahara ‘gets a crisis’ every time she remembers ‘these things’.<sup>2566</sup> When this occurs, it takes her weeks to get over it and during this period, she does not eat or go to school.<sup>2567</sup>

**f) Case of (i) Khudi Bint Ibrahim and ‘Abdallah Bin Mukha, case 48/1433-2012; (ii) Bint Bint Ibrahim and Ikhmad Bin Muhammad, case 49/1433-2012; and (iii) Al-Husayn Bin ‘Umar and Halimah Bint Muhammad, case 54/1433-2012<sup>2568</sup> (the ‘three “couples”’)<sup>2569</sup>**

811. For the factual findings in this section, the Chamber relies primarily on written reports from the *Hesbah* and the Islamic Police in relation to Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad as

<sup>2564</sup> P-0642: T-156, pp. 12, 15. The Chamber notes that P-0642 stated that she did not know the names of the ‘bad people’ but ‘just [knew] the name of the one who you have in detention here, and also Hamed Moussa and the others’ (P-0642: T-156, p. 15).

<sup>2565</sup> P-0642: T-156, pp. 15-16. The Chamber does not consider it significant that the witness may not have been able to correctly identify the specific pharmacy in photographs shown to her, or that she misidentified the specific pharmacy in question (*see* P-0642: T-157, p. 21), noting that P-0642 herself stated that she had difficulty telling what was true or false based on photographs due to the passage of time but she was consistent on the core fact that they asked for Azahara to be treated and that she received treatment (*see* P-0642: T-157, pp. 22-23; *contra* [Defence Final Brief](#), para. 467). *See also* P-0642: T-157, pp. 16, 21-23, 44, 48-49. On the issue of whether Azahara refused later medical treatment, the Chamber notes that P-0642 testified that the Prosecution agreed to arrange for a medical visit for her (P-0642: T-157, p. 16), but when questioned as to whether P-0642 refused to have the ‘ICC’ organise a medical examination for Azahara, P-0642 stated that she had said the investigator could take the daughter to the hospital if the girl agreed; however she had explained to the investigators that Azahara would never accept to go (P-0642: T-157, p. 16). The Chamber considers that P-0642 was open and forthcoming on this subject, and considers unsupported the Defence assertion that ‘P-0642 also made it impossible for the Prosecution to verify P-0580’s account that [the] daughter had fits and was injured by glass by testifying that her daughter would refuse to be examined by a doctor’ ([Defence Final Brief](#), para. 464).

<sup>2566</sup> P-0642: T-156, p. 45. P-0642 testified that this incident ‘is why she still has problems, even today’ (P-0642: T-156, p. 15). P-0642 added that this is called ‘madness’ in Tamasheq (P-0642: T-156, p. 45).

<sup>2567</sup> P-0642: T-156, p. 45.

<sup>2568</sup> The Chamber notes that different spellings of the victims’ names appear in the [Confirmation Decision](#) and relevant evidentiary documents: Khudi Bint Ibrahim (a.k.a. Kadeyya Walat-Ibrahim and Khoudi Bint-Ibrahim), ‘Abdallah Bin Mukha (a.k.a. Abdalla Bin-Moukha), Ikhmad Bin Muhammad (a.k.a. Ikhmad Bin-Mohamed), Al-Husayn Bin ‘Umar (a.k.a. al-Husayni Muhammad ‘Umar, El-Hussein Bin-Oumar and Al-Husyan Bin Umar) (the Chamber considers that the reference to ‘Al-Husyan Bin Umar’ in the [Confirmation Decision](#) is a typographical error) and Halimah Bint Muhammad (a.k.a. Halimah Muhammad and Halima Bint-Mohamed). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals, and for the sake of clarity, uses the spelling which appears in the charges.

<sup>2569</sup> While the [Confirmation Decision](#) describes these incidents as the case of the ‘three couples’, the Chamber is mindful that the father of Halimah Bint Muhammad, when filing a complaint with the police, stated that Halimah Bint Muhammad was drugged and forced to commit adultery (Islamic Police report MLI-OTP-0001-7549, translation MLI-OTP-0034-0177). In this context, this person cannot be considered to be in a ‘couple’ with Al-Husayn Bin ‘Umar.

well as the Islamic Court's written judgments in relation to each of the victims, which it finds reliable.<sup>2570</sup> The Chamber also relies on other documentary evidence<sup>2571</sup> as well as photographs depicting the flogging of the victims<sup>2572</sup>,

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<sup>2570</sup> See section II.D above.

<sup>2571</sup> The Chamber notes that two emails and an associated attachment purportedly relating to the flogging of the three 'couples' were submitted into evidence (email MLI-OTP-0018-1033-R01, translation MLI-OTP-0067-1012-R01, email MLI-OTP-0018-1032-R01, translation MLI-OTP-0067-1010-R01, and attachment MLI-OTP-0018-1035, translation MLI-OTP-0078-2346). P-0065 identified the two emails as emails sent on 29 November 2012 (P-0065: T-041, pp. 56, 61-62). The first email MLI-OTP-0018-1033-R01 provides information about floggings carried out that day by the Islamic Police against six persons for extra-marital sexual intercourse. It also contains attachment MLI-OTP-0018-1035, [REDACTED] (P-0065: T-041, pp. 56-57), which relates to the same events. The second email MLI-OTP-0018-1032-R01, which has the subject line '[p]hotos of one of the people who were publicly subjected to the *hadd* today for extra-marital intercourse,' contains photograph MLI-OTP-0018-2590 (P-0065: T-041, pp. 61-62) (discussed below). The Chamber notes that email MLI-OTP-0018-1033-R01 and its attachment MLI-OTP-0018-1035 provide a narrative closely consistent with the information in the written reports and Islamic Court judgments mentioned below regarding the three 'couples'. Specifically, in relation to one of the couples, this email and attachment provide that the couple, 'A. H. and Kh. A.', were arrested by a *Hesbah* patrol on 21 November 2012 for engaging in a relationship which resulted in the birth of a child and they were each sentenced to whipping. The Chamber observes that these facts are consistent with the information from the *Hesbah* report and Islamic Court judgment regarding 'Abdallah Bin Mukha and Khudi Bint Ibrahim (*see below Hesbah* report MLI-OTP-0055-1024 and Islamic Court judgment MLI-OTP-0001-7431). In relation to another of the 'couples', the same email and attachment provide that the couple, 'Mr 'A. M. and Ms B. B.', were arrested by the *Hesbah* in the Sans Fil neighbourhood on 25 November 2012 and they were each sentenced to 100 lashes after they confessed to having extra-marital intercourse. These facts are consistent with the information from the Islamic Court judgment regarding Ikhmad Bin-Mohamed and Bint Bint-Ibrahim (*see below Islamic Court judgment MLI-OTP-0001-7430*). In relation to another of the 'couples', the same email and attachment provide that two of the people punished were half-siblings, 'Mr H. 'A. and his sister Ms H. M.', who were accused of engaging in a sexual relationship which resulted in the birth of a child; the Islamic police arrested them in Goundam on 22 November 2012 following a complaint from the girl's father and brought them back to Timbuktu; both confessed to the judge and they were each sentenced to 200 lashes, and the man to be banished for one year. These facts are consistent with the information from the Islamic Police report and Islamic Court judgment regarding Al-Husayn Bin 'Umar and Halima Bint Mohamed (*see below Islamic Police report MLI-OTP-0001-7549; Islamic Court judgment MLI-OTP-0001-7425*). The fact of the father having made a complaint is also consistent with P-0150's evidence on Islamic Police report MLI-OTP-0001-7549, based on what he knew about the case (*see below P-0150: T-111, pp. 29-30*). The Chamber notes that there is a slight discrepancy between the email and the attachment concerning the number of lashes the individuals were sentenced. However, it does not consider this discrepancy to be significant considering the information about the number of lashes specified in the attachment to the email (MLI-OTP-0018-1035, which describes the floggings in more detail) is consistent with the number of lashes imposed in the Islamic Court judgment (MLI-OTP-0001-7425). Attachment MLI-OTP-0018-1035 further provides that all three 'couples' had been in prison since their arrests, a fact that is consistent with the reference in the *Hesbah* report and one of Islamic Court judgments to the prior imprisonment of at least two of the 'couples' (*Hesbah* report MLI-OTP-0055-1024; Islamic Court judgment MLI-OTP-0001-7425). Therefore, the Chamber is satisfied on the basis of the foregoing that the two emails and the attachment relate to the same events as described in the *Hesbah* and Islamic Police reports and three Islamic Court judgments mentioned below.

<sup>2572</sup> Photographs MLI-OTP-0018-2590, MLI-OTP-0018-2593, MLI-OTP-0018-2594 and MLI-OTP-0018-2595. P-0065 recognised photographs MLI-OTP-0018-2590, MLI-OTP-0018-2593 and MLI-OTP-0018-2594 as photographs taken in 2012 in Timbuktu, during the armed groups' control of the city (P-0065: T-041, pp. 49-55). P-0065 [REDACTED] remembered the photographs very well (P-0065: T-041, pp. 49-50, 54-55, 57). He testified that MLI-OTP-0018-2593 shows a woman being whipped although he did not know who she was and for what reason she was being whipped. P-0065 also testified that MLI-OTP-0018-2594 is a photograph of the same event as shown in MLI-OTP-0018-2593, but taken

which it also finds reliable. The Chamber further relies on Mr Al Hassan's statements which, subject to discrete aspects discussed below, it finds reliable.<sup>2573</sup>

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from a different angle (P-0065: T-041, pp. 52, 54). While P-0065 did not testify about photograph MLI-OTP-0018-2595, the Chamber notes that it is identical to MLI-OTP-0018-2594. P-0065 further testified that another photograph (MLI-OTP-0018-2590) shows a person covered and dressed in black who is there to be whipped, at the heart of the square that is in the middle of the market in Timbuktu (P-0065: T-041, p. 56). In addition to P-0065, P-0150 and P-0582 also provided evidence regarding these photographs. P-0150 testified that photograph MLI-OTP-0018-2594 showed a woman who was going to be beaten later standing in the square near the first police station with members of the Police standing around her (P-0150: T-099, p. 14), although he acknowledged that he could not remember if he was present at this event or not (P-0150: T-108, p. 65). P-0582 testified that photograph MLI-OTP-0018-2594 was taken at the edge of the small market, when Adama was still the Police director, and showed a woman about to be flogged that day (P-0582's statement MLI-OTP-0062-4117-R02, at 4122-4125). Although he said he did not know the woman or why she was about to be flogged and could not remember whether he was present during the event, he testified that he had seen that image before, possibly on the Police computer (P-0582's statement MLI-OTP-0062-4117-R02, at 4121-4122, 4125). He also stated that he was already in Timbuktu when this event took place (P-0582's statement MLI-OTP-0062-4117-R02, at 4124-4125). The Chamber notes that the three photographs MLI-OTP-0018-2593, MLI-OTP-0018-2594 and MLI-OTP-0018-2595 depict several of the same members of the armed groups (wearing the same outfits) standing around the same woman (wearing the same outfit). In light of these elements and the testimony of P-0065 regarding these photographs, the Chamber concludes that they all depict the same event, which is the flogging of one woman. However, there is no evidence on the record allowing the Chamber to *directly* connect this event with the incident of the flogging of the three 'couples'. Nevertheless, P-0065 testified that another photograph (MLI-OTP-0018-2590) shows a person covered and dressed in black who is there to be whipped, at the heart of the square that is in the middle of the market in Timbuktu (P-0065: T-041, p. 56). The Chamber recalls that email MLI-OTP-0018-1032-R01 (*see above*), which has the subject line '[p]hotos of one of the people who were publicly subjected to the *hadd* today for extra-marital intercourse', contains this same photograph. Further, P-0065 testified that while he could not remember the event itself, email MLI-OTP-0018-1033-R01 and attachment MLI-OTP-0018-1035 likely concern the same event as the three photographs MLI-OTP-0018-2590, MLI-OTP-0018-2593 and MLI-OTP-0018-2594 (P-0065: T-041, p. 57). The Chamber further considers that there are clear similarities between the four photographs MLI-OTP-0018-2590, MLI-OTP-0018-2593, MLI-OTP-0018-2594 and MLI-OTP-0018-2595, noting that they obviously depict the same buildings in the background, the same individuals wearing the same clothes standing or sitting in the crowd in the background in the same or similar positions to watch the execution of the floggings. The Defence submits that the photographs are unreliable due to the potential modifications made to them as reflected in their metadata, referring to the report of expert P-0075 where it is stated that there are indicia that the photographs were accessed or modified by external software (Defence Closing Statements: T-214, p. 62, *referring to* P-0075's report MLI-OTP-0062-2399, at 2449). The Chamber observes that in the relevant part of his report, P-0075 also states that '[TRANSLATION] this does not mean that the contents of the file itself have been modified' (P-0075's report MLI-OTP-0062-2399, at 2449). Indeed, the Chamber considers that the mere fact that the metadata records a subsequent change does not *per se* mean that the contents of the photographs have been modified. Noting the testimony regarding these photographs and their connection with the documentary evidence as discussed above, as well as the apparent similarities between the photographs as outlined above, the Chamber is satisfied that these four photographs were taken on the same day and depict the event of the flogging of the three 'couples'. It therefore dismisses the related Defence objections that there is insufficient evidence on the date, location and author of photographs MLI-OTP-0018-2590, MLI-OTP-0018-2593, MLI-OTP-0018-2594 (*see* ICC-01/12-01/18-1631-Conf-AnxV and related annexes), or that P-0638 had no personal knowledge of the means by which photograph MLI-OTP-0018-2595 was produced (*see* ICC-01/12-01/18-1644-Conf-AnxV and related annexes).

<sup>2573</sup> The Chamber refers to its findings on the credibility and reliability of Mr Al Hassan's statements (*see* section II.C above). With respect to each of the floggings, the reliability of Mr Al Hassan's statement has been considered below on a case-by-case basis, taking into account the level of details he provided and the manner in which he provided his answers.



812. Between 25 November and 28 November 2012, a series of written reports from the *Hesbah* and the Islamic Police and Islamic Court judgments were issued in relation to the following six civilians,<sup>2574</sup> as described below: Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad.
813. On 25 November 2012, the *Hesbah* referred a case of extra-marital intercourse between Khudi Bint Ibrahim and ‘Abdallah Bin Mukha to the Islamic Court, after investigating and interrogating the people involved.<sup>2575</sup> The *Hesbah* report, signed by Mohammed Moussa<sup>2576</sup> and received by the Islamic Court,<sup>2577</sup> provides that both individuals admitted to the extra-marital intercourse and that they had been referred to the public prison and subsequently to the Islamic Court.<sup>2578</sup>
814. Following this report, the next day, on 26 November 2012, in a judgment in case 48/1433-2012, the Islamic Court sentenced this first couple, Khudi Bint Ibrahim and ‘Abdallah Bin Mukha, to a *hadd* of 100 lashes each ‘before a group of believers’ and ‘Abdallah Bin Mukha to banishment from the town for one year.<sup>2579</sup> The judgment, signed by Houka Houka, provides that both individuals

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<sup>2574</sup> Based on the facts and circumstances concerning each case, notably the circumstances of the arrests, as well as the fact that the victims were brought before the Islamic Court (*see* paragraph 599 above), the Chamber finds that the victims were civilian members of the population of Timbuktu at the time of the charged events.

<sup>2575</sup> *Hesbah* report MLI-OTP-0055-1024, translation MLI-OTP-0054-0339. P-0150 identified MLI-OTP-0055-1024 as a referral by the *Hesbah* to the Islamic Court signed by Mohammed Moussa regarding a case of fornication against Khudi Bint Ibrahim and ‘Abdallah Bin Mukha after the *Hesbah* investigated and interrogated the people involved (P-0150: T-099, p. 56). The report provides that ‘Abdallah Bin Mukha admitted to committing extra-marital intercourse with Khudi Bint Ibrahim until she gave birth to a child (who died later on), and that Khudi Bint Ibrahim admitted that she had just come out of her postpartum period after committing extra-marital intercourse with ‘Abdallah Bin Mukha. Noting P-0150’s basis of knowledge regarding the activities of the *Hesbah*, the Chamber dismisses the Defence objection to MLI-OTP-0055-1024 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). On the authentication of this document *see also* the Chamber’s findings in section II.D.5 above.

<sup>2576</sup> P-0150: T-099, p. 56.

<sup>2577</sup> The Chamber infers that this report was received by the Islamic Court, noting that it was collected by P-0055 and P-0057 from the seat of the Islamic Court, namely the *Hôtel La Maison* (*see* P-0590 reports MLI-OTP-0069-8559, at 8616; P-0055 report MLI-OTP-0056-0026, at 0034). On the seizure of items from the *Hôtel La Maison* into evidence bag MLI-OTP-0005-0025, *see* section II.D above.

<sup>2578</sup> *Hesbah* report MLI-OTP-0055-1024, translation MLI-OTP-0054-0339, at 0340.

<sup>2579</sup> Islamic Court judgment MLI-OTP-0001-7431 (signed and stamped), translation MLI-OTP-0078-0203, at 0204. *See also* different version of the same document MLI-OTP-0068-4749 (unsigned and unstamped), translation MLI-OTP-0078-0395. P-0150 recognised MLI-OTP-0001-7431 and MLI-OTP-0068-4749 as the Islamic Court’s judgment in the same case as the aforementioned *Hesbah* report concerning Khudi Bint Ibrahim and ‘Abdallah Bin Mukha, who confessed to having committed fornication to the *Hesbah* (P-0150: T-099, pp. 56-57). On the authentication of this document *see also* the Chamber’s findings in section II.D above.

confessed to the *Hesbah* and to the Islamic Court, and that they had conceived a child out of wedlock.<sup>2580</sup>

815. Also on 26 November 2012, in a judgment in case 49/1433-2012, the Islamic Court sentenced Bint Bint Ibrahim and Ikhmad Bin Muhammad to a *hadd* of 100 lashes each ‘before a group of believers’ and Ikhmad Bin Muhammad to banishment.<sup>2581</sup> The judgment provides that the Islamic Court carried out an investigation into the case of Bint Bint Ibrahim, who confessed to having committed extra-marital sexual intercourse with Ikhmad Bin Muhammad, who himself acknowledged this, and that they both confessed to the Islamic Court and to the *Hesbah*.<sup>2582</sup>

816. Also on 26 November 2012, Mr Al Hassan signed a Police report regarding a sexual relationship between Al-Husayn Bin ‘Umar and his half-sister Halima Bint Muhammad.<sup>2583</sup> Mr Al Hassan also wrote this report.<sup>2584</sup> The report, formally addressed to and received by the Islamic Court,<sup>2585</sup> records the location of the

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<sup>2580</sup> Islamic Court judgment MLI-OTP-0001-7431 (signed and stamped), translation MLI-OTP-0078-0203, at 0204.

<sup>2581</sup> Islamic Court judgment MLI-OTP-0001-7430 (signed and stamped), translation MLI-OTP-0078-0200, at 0201. *See also* different version of the same document MLI-OTP-0001-7431 (signed and stamped), translation MLI-OTP-0078-0203, at 0205. P-0150 identified MLI-OTP-0001-7430 as the Islamic Court judgment in the case of Bint Bint-Ibrahim, who confessed to fornication with someone called Ikhmad Bin-Mohamed (P-0150: T-102, p. 17). P-0150 also testified that MLI-OTP-0001-7430 was signed by Houka Houka (P-0150: T-102, p. 17). On the authentication of the judgment in this case *see also* the Chamber’s findings in section II.D above.

<sup>2582</sup> Islamic Court judgment MLI-OTP-0001-7430 (signed and stamped), translation MLI-OTP-0078-0200.

<sup>2583</sup> Islamic Police report MLI-OTP-0001-7549, translation MLI-OTP-0034-0177. P-0150 identified MLI-OTP-0001-7549 as an Islamic Police report signed by Mr Al Hassan in the case of fornication between a man and his half-sister (P-0150: T-098, p. 31). Although unable to identify the main characteristics of MLI-OTP-0001-7549, P-0620 and P-0621 also concluded that the signature may have been drawn by Mr Al Hassan (P-0620 and P-0621’s report MLI-OTP-0064-0175, at 0301-0302). P-0150 testified that the Islamic Police report concerned a case of fornication between a man and his half-sister and that it was signed by Mr Al Hassan (P-0150: T-098, p. 31). P-0150 also testified that this complaint was reported to the police in Goundam, and that based on what he knew about the case, the father had filed a complaint (P-0150: T-111, pp. 29-30, *referring to* MLI-OTP-0001-7549; article MLI-OTP-0018-1033-R01). On the authentication of this document *see also* the Chamber’s findings in section II.D above.

<sup>2584</sup> Islamic Police report MLI-OTP-0001-7549, translation MLI-OTP-0034-0177. The Chamber notes that Mr Al Hassan recognised his handwriting and signature on MLI-OTP-0001-7549 and confirmed that he wrote the report (Mr Al Hassan’s statements MLI-OTP-0060-1446, at 1450-1452; MLI-OTP-0060-1453, at 1454). *See also* the Chamber’s findings in section II.D above.

<sup>2585</sup> The Chamber notes that MLI-OTP-0001-7549 (left hand side), translation MLI-OTP-0034-0177, which reads ‘[t]o the Islamic Court’ appears to be the other side of MLI-OTP-0001-7549. *See similarly* P-0150: T-098, p. 27. The Chamber further notes that P-0150 testified that if the Police received a complaint of *zina*, it was correct that they were obliged to transmit it to the Islamic Court (P-0150: T-111, p. 30). The Chamber infers that Islamic Police report MLI-OTP-0001-7549 was received by the

crime as being in Goundam and records that the relationship resulted in the birth of a child out of wedlock.<sup>2586</sup>

817. Following this report, two days later on 28 November 2012, in a judgment in case 54/1433-2012, the Islamic Court sentenced Al-Husayn Bin ‘Umar and Halima Bint Muhammad, to 100 lashes as a *hadd* for extra-marital sexual intercourse and to an additional 100 lashes as *ta’zir* after spending three days in prison.<sup>2587</sup> The judgment provides that the victims confessed to having committed extra-marital sexual intercourse even though they were maternal half-siblings, and states that they were aware that extra-marital sexual intercourse was impermissible and that consanguineous relatives such as one’s own sister are unmarriageable.<sup>2588</sup>

818. All six individuals sentenced for committing extra-marital sexual intercourse

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Islamic Court, on the basis that it was addressed to the Islamic Court and additionally that it was photographed by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24). *See also* section II.D above.

<sup>2586</sup> Islamic Police report MLI-OTP-0001-7549, translation MLI-OTP-0034-0177, at 0178.

<sup>2587</sup> Islamic Court judgment MLI-OTP-0001-7425 (signed and stamped), translation MLI-OTP-0078-0185, at 0186. *See also* different versions of the same document MLI-OTP-0001-7426 (signed and stamped), translation MLI-OTP-0078-0188, and MLI-OTP-0068-4757 (unsigned and unstamped), translation MLI-OTP-0078-0407. P-0150 acknowledged that [REDACTED] (P-0150: T-111, p. 31) but testified that MLI-OTP-0068-4757 was the ‘judgment of the *Sharia* court of Timbuktu’ in the case of the two half-siblings convicted of fornication (P-0150: T-098, p. 32). P-0150 also testified that MLI-OTP-0001-7425 was the stamped version of the judgment in the same case, signed by Houka Houka (P-0150: T-098, p. 32). P-0150 testified that he recognised two signatures on the document, the one appearing underneath the stamp being Houka Houka’s signature and that while he did not know which signature appears above the signature, it appears to be Houka Houka’s signature reversed (P-0150: T-098, p. 32). Noting the submission of the stamped and signed version of the judgment, the Chamber dismisses the Defence objection to MLI-OTP-0068-4757 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). On the authentication of this document, *see also* the Chamber’s findings in section II.D above.

<sup>2588</sup> Islamic Court judgment MLI-OTP-0001-7425 (signed and stamped), translation MLI-OTP-0078-0185, at 0186.

were flogged<sup>2589</sup> for around 100 lashes each,<sup>2590</sup> at the Sankoré square<sup>2591</sup> on the same day, on or around 29 November 2012,<sup>2592</sup> in front of a crowd of people including children.<sup>2593</sup> Members of Ansar Dine/AQIM present secured the site of the flogging.<sup>2594</sup> Mr Al Hassan was present during the flogging of one of the women.<sup>2595</sup> Mr Al Hassan was at the forefront of the members of Ansar

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<sup>2589</sup> The Chamber notes that with respect to case of a man and his half-sister, Mr Al Hassan states that nothing was decided for the woman (Mr Al Hassan's statement MLI-OTP-0062-1058, at 1063; [Defence Final Brief](#), para. 382). However, this statement appears to contradict the judgment of the Islamic Court, which states that in relation to these two individuals that 'they were sentenced' to a number of lashes (Islamic Court judgment MLI-OTP-0001-7425 (signed and stamped), translation MLI-OTP-0078-0185). Further, as noted above, the Chamber is satisfied that emails MLI-OTP-0018-1033-R01 and MLI-OTP-0018-1032-R01 and the attachment MLI-OTP-0018-1035 relate to the same events as described in the abovementioned *Hesbah* and Islamic Police reports and Islamic Court judgments. Noting further the testimony of P-0065 on the two emails and the attachment (*see* above) and the Chamber's findings on the credibility of the witness (*see* section II.B.2.a) above), the Chamber relies on the two emails and the attachment, together with photographs MLI-OTP-0018-2590, MLI-OTP-0018-2593, MLI-OTP-0018-2594 and MLI-OTP-0018-2595, as evidence of the execution of the sentences set out in the three abovementioned Islamic Court judgments.

<sup>2590</sup> The Chamber recalls the sentence pronounced by the Islamic Court (*see* above) and, absent other evidence indicating otherwise, infers that the six individuals were flogged for around 100 lashes each on the same day, on or around 29 November 2012.

<sup>2591</sup> As to the location of the floggings, P-0065 identified the location on photograph MLI-OTP-0018-2590 as being the square that is in the middle of the market in Timbuktu (P-0065: T-041, p. 56). P-0150 identified the location on photograph MLI-OTP-0018-2594 as the square near the first police station (P-0150: T-099, p. 14). P-0638 identified the location on photograph MLI-OTP-0018-2595 as the Sankoré square (P-0638: T-058, pp. 74-76). P-0582 identified the location on photograph MLI-OTP-0018-2594 as being the edge of the small market, although he testified that he did not know the name of the place (P-0582's statement MLI-OTP-0062-4117-R02, at 4123-4124).

<sup>2592</sup> As to the date of the floggings, P-0065 testified that the two emails MLI-OTP-0018-1033-R01 and MLI-OTP-0018-1032-R01 dated 29 November 2012 were written on the same day as the events, which took place on a Thursday morning; however, he was not sure whether the emails were sent on the same day or not, as that depended on the availability of internet in Timbuktu (P-0065: T-041, p. 61). Nevertheless, the Chamber notes that 29 November 2012 was indeed a Thursday and is satisfied on the basis of the date of the emails and the testimony of P-0065 that the floggings occurred on or around 29 November 2012. On the basis of the available evidence, the Chamber is unable to conclude that the additional 100 lashes imposed on Al-Husayn Bin 'Umar and Halima Bint Muhammad as a *ta'zir* was executed on the same day, but finds that the 100 lashes imposed on these victims as a *hadd* was executed on or around 29 November 2012, together with the remaining four victims.

<sup>2593</sup> Photographs MLI-OTP-0018-2590, MLI-OTP-0018-2593, MLI-OTP-0018-2594, MLI-OTP-0018-2595 (depicting a crowd of people); article MLI-OTP-0001-4878.

<sup>2594</sup> *See* photographs MLI-OTP-0018-2590, MLI-OTP-0018-2593, MLI-OTP-0018-2594, and MLI-OTP-0018-2595, which depict members of Ansar Dine/AQIM, many of whom are armed, surrounding the woman who was flogged. The Chamber considers that by doing so they were securing the site of the floggings, noting also that the same was done for other public floggings carried out by Ansar Dine/AQIM at the time (*see e.g.* paragraphs 785 above and 847 below).

<sup>2595</sup> Several witnesses identified Mr Al Hassan in two photographs depicting the flogging of one woman (MLI-OTP-0018-2594 and MLI-OTP-0018-2595). P-0150, P-0582, P-0065, and P-0641 identified Mr Al Hassan in photograph MLI-OTP-0018-2594 (P-0150: T-099, pp. 14-15; MLI-REG-0001-0080; P-0582's statement MLI-OTP-0062-4117-R02, at 4122; P-0065: T-041, pp. 54-55; P-0641: T-138, p. 57). P-0638 similarly identified Mr Al Hassan in photograph MLI-OTP-0018-2595 (P-0638: T-058, p. 76; *see also* MLI-REG-0001-0019). Mr Al Hassan also recognised himself in photograph MLI-OTP-0018-2595 (Mr Al Hassan's statements MLI-OTP-0051-0967, at 0973-0974; MLI-OTP-0062-1058, at 1064-1065). The Chamber is also satisfied on the basis of its own assessment that Mr Al Hassan was present.

Dine/AQIM present, next to Abou Zhar and within proximity of the woman who was flogged, among the small group of Ansar Dine/AQIM members forming a circle around the woman.<sup>2596</sup> The Majority, Judge Prost dissenting, is not satisfied that Mr Al Hassan flogged Al-Husayn Bin ‘Umar.<sup>2597</sup> Other members of the

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Noting the other evidence on this matter the Chamber dismisses the Defence objection that the identification by P-0638 was elicited in an ‘unsafe’ manner (*see* ICC-01/12-01/18-1644-Conf-AnxV and related annexes).

<sup>2596</sup> *See* photographs MLI-OTP-0018-2594; MLI-OTP-0018-2595.

<sup>2597</sup> The Chamber notes that Mr Al Hassan referred to the case of a man who committed adultery with his ‘sister’, which resulted in the birth of a girl and the father filing a complaint in Goundam, and testified that he participated in the flogging of the man (Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0986-0988). Noting the similarity in the facts described, the Chamber considers that this refers to the third ‘couple’ Al-Husayn Bin ‘Umar and his half-sister Halima Bint Muhammad. Mr Al Hassan later stated, referring to the same incident, that he was the one who flogged the man who committed adultery (Mr Al Hassan’s statement MLI-OTP-0062-1058, at 1081-1082). The Chamber notes that the only evidence available on this point is the statement of Mr Al Hassan. The Defence submits that Mr Al Hassan’s statements cannot be relied upon ([Defence Final Brief](#), paras 298-303; [Defence Response Brief](#), para. 90). In particular, it challenges the manner in which the relevant evidence was elicited and avers that this was ‘a key example of inappropriate memory prods’. For reasons mentioned above in its assessment on the general reliability of Mr Al Hassan’s statements (*see* section II.C above), the Chamber dismisses these arguments. Further, the Chamber recalls that during his interview on 6 October 2017 Mr Al Hassan volunteered to Prosecution investigators that he had personally flogged a man who had committed adultery with his half-sister (Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0986-0988). He confirmed this assertion in the same interview giving additional details, after having been re-warned of his right not to incriminate himself, and again in subsequent interviews several months later in March of 2018 (Mr Al Hassan’s statement MLI-OTP-0062-1058, at 1081-1082). The Chamber recalls in particular its finding that, given the circumstances in which the relevant evidence was elicited, the claim that this was a false memory is without merit and it must rather be seen as a voluntary admission by Mr Al Hassan (*see* paragraph 313 above).

The Defence also submits that Mr Al Hassan was prejudiced as he was not permitted to present evidence concerning the incident involving Al-Husayn Bin ‘Umar through D-0231 and that D-0231 ‘was in a position to provide the Chamber with the truth on the fact that the persons in question were not flogged’ ([Defence Final Brief](#), para. 386; [Defence Response Brief](#), para. 90). The Chamber recalls that it rejected the Defence’s request to introduce the prior recorded testimony of D-0231 pursuant to Rule 68(2)(b) of the Rules based on the discretionary factors under Rule 68(2)(b)(i) of the Rules (*see* [Decision on Defence Rule 68\(2\)\(b\) Request for D-0231](#)). In the Chamber’s view, the Defence’s argument on this point constitutes an impermissible attempt to re-litigate this issue and is unmeritorious. In this regard, the Chamber also notes that the Defence did not seek leave to appeal the decision denying the introduction of D-0231’s prior recorded testimony. Further, noting that the evidence of D-0231 has not been formally submitted, the Chamber may not consider the potential evidence of D-0231 in making its factual determination concerning Al-Husayn Bin ‘Umar. Accordingly, the Chamber dismisses the Defence’s submission that the Defence’s inability to successfully introduce the prior recorded testimony of D-0231 has a bearing on the Chamber’s assessment of the evidence on the record concerning the flogging of Al-Husayn Bin ‘Umar.

However, notwithstanding the foregoing, for the following reasons, **the Majority** is not satisfied that Mr Al Hassan personally flogged Al-Husayn Bin ‘Umar. The Majority observes that when he was shown photographs depicting the scene where the six individuals were flogged, Mr Al Hassan notably answered as follows, ‘[Interviewer]: *D’accord. Est-ce que ça vous rafraîchit la mémoire si je vous dis que cette femme a également été flagellée ce jour-là?* [Mr Al Hassan]: *Je ne me souviens pas.* [Interviewer]: *D’accord. Est-ce que ça vous rafraîchit la mémoire si je vous dis que au [phon.] moins 6 personnes ont été flagellées ce jour-là?* [Mr Al Hassan]: *C’est possible.* [Interviewer]: *Vous n’avez aucun souvenir d’un jour où il y a eu au moins 6 personnes flagellées à YOBOUTAO ?* [Mr Al Hassan]: *Je ne me souviens pas*’ (Mr Al Hassan’s statement MLI-OTP-0062-1058, at 1077). Subsequently, when he was asked further details about the floggings, Mr Al Hassan responded ‘*[c]omme je vous ai dit, je ne me souviens*

Islamic Police were also present,<sup>2598</sup> including Abdallah ‘the Burkinabé’.<sup>2599</sup>

*de rien du tout de ce jour-là*’ (Mr Al Hassan’s statement MLI-OTP-0062-1084, at 1086). The Majority considers that these answers provided by Mr Al Hassan demonstrate that, at the time of the interviews, Mr Al Hassan’s memory concerning this incident was such that he could not recall details. The Majority has also considered the fact that the Islamic Court sentenced Al-Husayn Bin ‘Umar and Halima Bint Muhammad to 200 lashes in total, comprising 100 lashes on two different days (*see above*) which means that these two individuals were flogged on around 29 November 2012, but also on a separate date (*see also* P-0065: T-048, pp. 61-63). Considering the totality of the circumstances, and having also duly considered the fact that it is the only piece of evidence in the present case that the Prosecution relies upon to establish that Mr Al Hassan flogged Al-Husayn Bin ‘Umar, the Chamber considers that Mr Al Hassan’s statement is insufficient in this regard to make a finding beyond reasonable doubt that Mr Al Hassan flogged Al-Husayn Bin ‘Umar.

**Judge Prost** recalls that the Chamber found that Al-Husayn Bin ‘Umar was publicly flogged for having extra-marital sexual relations with his half-sister, on the basis of a judgment from the Islamic Court, for which Mr Al Hassan wrote and signed the report of the Islamic Police. On the evidence before the Chamber the victim was flogged on the same day as his half-sister and two other couples sentenced for extra-marital sexual intercourse and Mr Al Hassan was present at the flogging of one of the women (Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0986). As found by the Chamber, in October 2017 Mr Al Hassan volunteered that he had flogged the man who committed adultery with his ‘sister’ (Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0988). As noted by the Majority, in a subsequent interview on the subject, Mr Al Hassan could not recall details of the flogging of others on that day. However, he did make the following statements at that time regarding the flogging of the man who committed adultery with his sister: [Interviewer]: *Donc, est-ce que tous ces détails-là vous ... vous rafraîchissent la mémoire par rapport à ce qui s’est passé?* [Mr Al Hassan]: *Je me souviens le jour où on a flagellé la personne qui a eu ... qui a commis l’adultère avec sa sœur. J’étais là. Je me souviens que j’étais présent. [...]* [Interviewer]: *Mais maintenant on essaye de savoir si vous vous souvenez avoir participé aux autres flagellations physiquement ce jour-là.* [Mr Al Hassan]: *Je me souviens de la personne qui a commis l’adultère avec sa sœur. [...]* [Mr Al Hassan]: *C’est moi qui l’ai flagellée. [...]* [Mr Al Hassan]: *Je faisais partie, hein, des personnes qui ont été choisies pour le flageller. Mais les autres, je ne pense pas que je les ai flagellées*’ (Mr Al Hassan’s statement MLI-OTP-0062-1058, at 1081-1082). On the basis of these repeated statements, Judge Prost is satisfied that while Mr Al Hassan did not remember the details of the flogging of the others that day, he had a very clear and distinct memory that he was present at, and participated in this specific flogging of the man who committed adultery with his half-sister. Being fully satisfied as to the voluntariness of Mr Al Hassan’s statements on these matters (*see* section II.C above), Judge Prost considers that this evidence, combined with the evidence that he was present that day at another of the floggings, taken cumulatively, establishes beyond reasonable doubt that Mr Al Hassan personally flogged Al-Husayn Bin ‘Umar. Judge Prost respectfully disagrees with the Majority and considers it speculative to rely on the vague comments in the chat (MLI-OTP-0018-0777, translation MLI-OTP-0078-9758) put to P-0065 to evidence that the flogging took place on another day (P-0065: T-048, pp. 61-63). Moreover, Judge Prost is of the view that this evidence, even taken at its highest, creates no reasonable doubt as to the fact that during the period of early May to mid – January 2012, in his role with the Islamic Police, Mr Al Hassan personally flogged Al-Husayn Bin ‘Umar.

<sup>2598</sup> P-0150: T-099, p. 14, *referring to* photograph MLI-OTP-0018-2594. Concerning the rest of the people shown in the picture, P-0150 stated that he knew them but could not remember their names, and explained that he was not going to point out any other member of the Police as he sometimes got confused between members of the Police and members of the security battalion (P-0150: T-099, pp. 15-16). P-0065 also identified a member of the Islamic Police in photograph MLI-OTP-0018-2594 (P-0065: T-041, p. 54).

<sup>2599</sup> P-0582 identified Abdallah ‘the Burkinabé’ as the individual in photograph MLI-OTP-0018-2594 wearing a black boubou, a black turban and military pants (P-0582’s statement MLI-OTP-0062-4117-R02, at 4122-4123). P-0150 identified this person as being a member of the Islamic Police and stated that it was the person in the middle, third from the left starting from the orange-red boubou, dressed in black clothing with a black turban (P-0150: T-099, pp. 14-16, *referring to* photograph MLI-OTP-0018-2594). P-0065 also identified this person as a member of the Islamic Police (P-0065: T-041, p. 54). P-0641 identified this person as ‘the Burkina person’ or Burkinabé (P-0641: T-138, pp. 57-58). Mr Al Hassan also identified this individual as ‘Abdallah Al Burkini’ who was a soldier within the Islamic Police (Mr Al Hassan’s statement MLI-OTP-0051-0967, at 0973-0975).

About Zhar was also present and participated in the flogging of one woman.<sup>2600</sup>

**g) Case of Dédéou Muhammad Maiga ('Dédéou Maiga')**

819. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0595,<sup>2601</sup> [REDACTED], who visited Dédéou Maiga while he was detained and met with Ansar Dine/AQIM to discuss his release, and also spent time with him at the hospital where he was taken following his amputation and afterwards until his death; P-0638,<sup>2602</sup> P-0639,<sup>2603</sup> and P-0654,<sup>2604</sup> who witnessed the amputation, and, in the case of P-0654, visited Dédéou Maiga at the hospital in Timbuktu afterwards; P-0150,<sup>2605</sup> a member of Ansar Dine/AQIM who the Chamber considers to be in a good position in light of his role to testify as to how the case was perceived within Ansar Dine/AQIM, although he was not present himself at the amputation; and P-0582,<sup>2606</sup> a member

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<sup>2600</sup> P-0065 identified About Zhar as the individual in photograph MLI-OTP-0018-2593 seen whipping a lady in a public square before everyone in the city of Timbuktu (P-0065: T-041, pp. 52-53). Mr Al Hassan also identified this individual as About Zhar (Mr Al Hassan's statement MLI-OTP-0051-0967, at 0973).

<sup>2601</sup> P-0595 (*see* P-0595: T-070; P-0595's statement MLI-OTP-0058-0196-R02 introduced through Rule 68(3) of the Rules), a Muslim Songhai man who speaks Songhai, French, a bit of Tamasheq, Arabic, and Bambara, grew up in Timbuktu (P-0595: T-070, pp. 7-8; P-0595's statement MLI-OTP-0058-0196-R02, at 0198, para. 12). He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, in particular Dédéou Maiga's amputation and related events. While the witness was not present in Timbuktu for the entire period of its control by Ansar Dine/AQIM, testifying that he also went to Bamako during this period, including about one month after the 'occupation' (P-0595: T-070, pp. 7-8), P-0595 was notably present in Timbuktu a few days before Eid and stayed until Dédéou Maiga's amputation, leaving the city towards the end of September 2012 (P-0595's statement MLI-OTP-0058-0196-R02, at 0199, para. 16). [REDACTED] (P-0595's statement MLI-OTP-0058-0196-R02, at 0199, para. 17). The Chamber observes that P-0595's testimony was coherent and comprehensive and was of such a detailed and contextualised nature that it was clear to the Chamber that he knew Dédéou Maiga well and was in a position to credibly testify about his experience and the events surrounding the amputation of Dédéou Maiga's hand and its aftermath. In addition, P-0595's in-court testimony was generally consistent with his prior recorded testimony introduced through Rule 68(3) of the Rules. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0595 to be a generally credible and reliable witness.

<sup>2602</sup> The Chamber refers to its findings on the credibility and reliability of P-0638's evidence (*see* section II.B.2.a)vi above).

<sup>2603</sup> The Chamber refers to its findings on the credibility and reliability of P-0639's evidence (*see* footnote 2786 below).

<sup>2604</sup> The Chamber refers to its findings on the credibility and reliability of P-0654's evidence (*see* footnote 1503 above).

<sup>2605</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (*see* section II.B.2.a)iii above).

<sup>2606</sup> The Chamber refers to its findings on the credibility and reliability of P-0582's evidence (*see* section II.B.2.c)iii above). P-0582 did not attend the amputation, explaining that he was scared and could not handle it (P-0582's statement MLI-OTP-0062-3820-R02, at 3826-3827). P-0582 stated that he was not involved in the case before the sanction was executed (P-0582's statement MLI-OTP-0062-3897-R02,

of Ansar Dine/AQIM who saw Dédéou Maiga in detention prior to the amputation and who, although he was not in Timbuktu on the day of the amputation, watched the video of the amputation on a computer when he returned. The Chamber also relies on the evidence of Dr Bertrand Ludes (P-0598),<sup>2607</sup> an expert who produced two reports on the evidence related to the amputation of Dédéou Maiga based on his evaluation of various videos and photographs, reports which the Chamber finds reliable. The Chamber additionally refers to photographic and video evidence of the amputation<sup>2608</sup> and its aftermath, as well as the Islamic Court's

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at 3904). *See also* P-0582's statements MLI-OTP-0062-3788-R02, at 3815-3816; MLI-OTP-0062-3820-R02, at 3826; MLI-OTP-0062-3897-R02, at 3904.

<sup>2607</sup> Bertrand Ludes (*see* P-0598's first expert report MLI-OTP-0060-9465-R01; P-0598's second expert report MLI-OTP-0062-0689-R01 introduced through Rule 68(2)(b) of the Rules) is a professor of Forensic Medicine at the University Paris Descartes and Director of the Institut Médico-Légal de Paris. His two reports, which relate to the amputation of Dédéou Maiga, were submitted into evidence as expert reports. The witness's two reports, based on his evaluation of various videos and photographs (*see* P-0598's first expert report MLI-OTP-0060-9465-R01, at 9470 to 9471), offer detailed information about the injury suffered by Dédéou Maiga, as well as the consequences for the victim and the possible complications from such an injury. The Chamber notes that it takes into account the absence of examination by the Defence in its assessment of the probative value and weight to be afforded to the witness's testimony. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Bertrand Ludes to be a credible and reliable witness and relies on his reports.

<sup>2608</sup> The Chamber notes that various videos and photographs purportedly depicting the event of the amputation were submitted into evidence. In relation to the video, P-0654 recognised several pieces of footage [REDACTED] just prior to the amputation (P-0654: T-128, pp. 67, 75-77, 85, *referring to* videos MLI-OTP-0012-1544, MLI-OTP-0012-1546, MLI-OTP-0012-1547, MLI-OTP-0012-1549). P-0654 testified that [REDACTED] the general scene, but not the actual amputation (P-0654: T-128, p. 69). The Chamber notes that P-0150 testified that video MLI-OTP-0012-1546 was shot near the 'Adalai' hotel as part of the preparations for the execution of Mohammed Moussa (P-0150: T-089, pp. 70-73, *referring to* video MLI-OTP-0012-1546). He also [REDACTED] (P-0150: T-089, p. 72, *referring to* video MLI-OTP-0012-1546, at 00:00:13:08). However, the Chamber notes P-0150's testimony that he was not present at Dédéou Maiga's amputation (P-0150: T-094, pp. 20-21; T-110, p. 81) and, in light of the above, relies instead on P-0654's testimony regarding the event depicted in the video. The Chamber does not consider this apparent mistake by P-0150 to affect the overall credibility or reliability of his evidence, noting that the footage only depicts a crowd of people, is very brief (approximately 30 seconds), and that P-0150 noted that he was not one hundred percent sure (P-0150: T-089, p. 72). Having regard to the foregoing evidence, the Chamber is satisfied that these videos depict the event of the amputation of Dédéou Maiga. In relation to the photographs, P-0065 stated that he was not present at the amputation and testified that photographs MLI-OTP-0018-2357, MLI-OTP-0018-2358 and MLI-OTP-0018-2573 were pictures he was given in Timbuktu of the person whose hand was cut off for theft (P-0065: T-041, pp. 17-21, 24; T-048, p. 43). P-0065 said that he did not know who took these photos, or remember exactly who gave them to him, but testified that he believed it was someone from the media office, in non-official terms, as people outside members of the media office were not allowed to film this event (P-0065: T-041, pp. 19-21). The Chamber relies on P-0065's evidence of being given these pictures from a person within the armed groups, which is logical given the nature of his relationship with the armed groups. In this context, the Chamber notes that P-0065's description of limitations on the filming of the event is consistent with P-0654's aforementioned evidence (P-0654: T-128, p. 69). In addition, the Chamber notes that P-0595 recognised Dédéou Maiga on photograph MLI-OTP-0018-2357 (P-0595: T-070, pp. 22-23) and that P-0638, who was present at the amputation, also recognised the victim of the amputation (whom he said he did not know before) on the same photograph (P-0638: T-058, pp. 61, 63). The Chamber further notes that these photographs are consistent with P-0638's and P-0654's description



written judgment in Dédéou Maiga's case, all of which the Chamber finds reliable.

820. In early August 2012,<sup>2609</sup> in Timbuktu, the Islamic Police,<sup>2610</sup> in particular Adama and Mr Al Hassan,<sup>2611</sup> arrested Dédéou Maiga, a civilian inhabitant of

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of Dédéou Maiga at the scene, notably that he was tied to a chair (*see below*). The Chamber is accordingly satisfied that these photographs depict the event of the amputation of Dédéou Maiga and dismisses the related Defence objections that there is insufficient evidence on the date, location and author of these photographs, and that the identification by P-0638 was elicited in an 'unsafe way' (*see* ICC-01/12-01/18-1631-Conf-AnxV and related annexes; ICC-01/12-01/18-1644-Conf-AnxV and related annexes ). *See also* P-0598's report MLI-OTP-0062-0689-R01, at 0691-0692.

<sup>2609</sup> P-0150: T-097, pp. 12-13, *referring to* list of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063, on which 'Dadu Muhammed Miga' is listed as number three with the remarks 'Tombouctou' 'theft' 'hand cut off' and the date of imprisonment is noted as 9 August 2012. The Chamber considers this to be a reference to Dédéou Maiga noting the evidence that his was the only amputation that took place in Timbuktu during the control of the town by the armed groups (*see e.g.* P-0150: T-097, p. 13). The Chamber notes that Dédéou Maiga's hand was amputated on 16 September 2012 (*see* paragraph 824 below) and that Mr Al Hassan's statement that Dédéou Maiga was in prison for one to two months (Mr Al Hassan's Statement MLI-OTP-0051-0658, at 0678) also indicates that Dédéou Maiga was arrested around early August. The Chamber further observes that P-0595, who returned to Timbuktu from Bamako two days before Eid (*i.e.* around 16 August 2012), testified that he was in Mopti, on his way back to Timbuktu from Bamako, when his older brother called to tell him that the 'Islamists' had taken Dédéou Maiga (P-0595: T-070, pp. 8-9). The Chamber also notes the account given by Dédéou Maiga in video MLI-OTP-0077-4046 in which Dédéou Maiga refers to being arrested from his home in the fourth month after the arrival of the armed groups (video MLI-OTP-0077-4046, translation MLI-OTP-0077-4051, at 4051), which the Chamber considers as referring to August 2012. Based on the foregoing evidence, the Chamber concludes that the arrest of Dédéou Maiga occurred in early August 2012. The Chamber observes that, in his prior recorded testimony, P-0595 stated that it was one day in September 2012, while on his way to Timbuktu, that he received a call from his brother saying that the 'Islamists' had arrested Dédéou Maiga (P-0595's statement MLI-OTP-0058-0196-R02, at 0200, para. 23). The Chamber does not consider the discrepancy as to whether the arrest occurred in August or September 2012 to be significant or in any way affecting the credibility of P-0595. *See also* P-0582's statement MLI-OTP-0062-3897-R02, at 3905.

<sup>2610</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0204, para. 48; P-0582's statement MLI-OTP-0062-3897-R02, at 3904-3905. The Chamber notes that Defence counsel put to P-0595 that in video MLI-OTP-0077-4046, translation MLI-OTP-0077-4051, Dédéou Maiga identified the MNLA as 'summoning him to be arrested' (P-0595: T-070, pp. 43-44). The Chamber does not consider this to be established in the video, noting that the video records rather that the question is put to Dédéou Maiga '[TRANSLATION] the people from the MNLA took you, the people from AQMI came to arrest you' (video MLI-OTP-0077-4046, translation MLI-OTP-0077-4051, at 4052), and notes in any event that for his part P-0595 responded that 'Dédéou said that it wasn't the MNLA, the MNLA who arrested him', and clarified that Dédéou Maiga did not tell him who arrested him, noting that he himself was not in Timbuktu at the time Dédéou Maiga was arrested (P-0595: T-070, pp. 43-45). Noting the evidence below about the judgment rendered by the Islamic Court and the execution of the imposed sentence, the Chamber considers there is no doubt that Ansar Dine/AQIM were responsible for Dédéou Maiga's arrest, judgment and punishment. Concerning the specific organ responsible for Dédéou Maiga's arrest, the Chamber notes that P-0595 testified that Dédéou Maiga was detained at the Islamic Police and that P-0582 stated that he was arrested and brought to the police station at the 'BDM'. While P-0582 stated that the Islamic Police (and later the *Hesbah*) was located in the 'BDM', the Chamber has inferred that this is a reference to the BMS, *see* footnote 1569 above. Noting the aforementioned evidence that Dédéou Maiga was taken to the Islamic Police/BMS, the time period of the arrest (early August 2012) (*see* paragraph 558 above), and the involvement of Mr Al Hassan and Adama (*see* immediately below), the Chamber is satisfied that Dédéou Maiga was arrested by the Islamic Police.

<sup>2611</sup> Mr Al Hassan's Statement MLI-OTP-0051-0658, at 0676-0679.

Timbuktu,<sup>2612</sup> for alleged theft.<sup>2613</sup> Dédéou Maiga was detained first at the BMS, the then headquarters of the Islamic Police,<sup>2614</sup> for around three days<sup>2615</sup> and then at the Central Prison<sup>2616</sup> for between four to five weeks.<sup>2617</sup> At some point, Dédéou Maiga escaped from the Central Prison, together with a member of Ansar Dine/AQIM who was also being detained, but they were caught by members of the population and re-imprisoned.<sup>2618</sup>

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<sup>2612</sup> According to P-0595, Dédéou Maiga became an apprentice driver for a trader who had buses on the Timbuktu-Bamako route (P-0595's statement MLI-OTP-0058-0196-R02, at 0199-0200, paras 18, 21-22). After this, Dédéou Maiga drove trucks with his boss to Algeria and Mauritania (P-0595's statement MLI-OTP-0058-0196-R02, at 0199, para. 18). However, during the events of 2012-2013, Dédéou Maiga did nothing and would stay indoors as he was afraid (P-0595's statement MLI-OTP-0058-0196-R02, at 0199-0200, paras 21-22). Based on this evidence and the circumstances surrounding his arrest and punishment, the Chamber is satisfied that Dédéou Maiga was a civilian member of the population of Timbuktu at the time of the charged events.

<sup>2613</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0200-0201, para. 28. *See also* P-0595: T-070, pp. 37-41, *referring to* video MLI-OTP-0077-4046; P-0654: T-128, p. 66; T-134, p. 45; Mr Al Hassan's statement MLI-OTP-0051-0658, at 0677-0678; article MLI-OTP-0010-0088, translation MLI-OTP-0024-0015, at 0044. The Chamber notes the discrepancies in the evidence about the precise reason for Dédéou Maiga's arrest, in particular between P-0595 and an account given by Dédéou Maiga in video MLI-OTP-0077-4046 in which Dédéou Maiga refers to being arrested because one of his acquaintances was among the MNLA and lied about him (video MLI-OTP-0077-4046, translation MLI-OTP-0077-4051). The Chamber does not consider the discrepancies in the evidence about the reason for Dédéou Maiga's arrest to be significant, noting the consistency on the core fact that Dédéou Maiga was arrested.

<sup>2614</sup> *See* paragraph 558 above.

<sup>2615</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0200, 0204, paras 25, 48; P-0582's statement MLI-OTP-0062-3897-R02, at 3904-3905.

<sup>2616</sup> The Chamber notes that P-0595 testified that while Dédéou Maiga was imprisoned, he would go to greet Dédéou Maiga and bring him food at the 'big prison', located in Djingareyber (P-0595's statement MLI-OTP-0058-0196-R02, at 0202, para. 35; P-0595: T-070, p. 47). P-0582 testified that after his escape from the BMS they caught the man again and brought him to the 'big prison', and that he went to see the man at the 'big prison', but did not speak to him (P-0582's statement MLI-OTP-0062-3897-R02, at 3904-3906). P-0582 further testified that the 'big prison' was adjacent to the camp of the Malian army, next to Djingareyber (P-0582's statements MLI-OTP-0062-3872-R02, at 3889; MLI-OTP-0062-3950-R02, at 3954). P-0654 also testified that Dédéou Maiga was at the 'big prison' (P-0654: T-134, p. 45), which he located behind the Djingareyber mosque (P-0654: T-128, pp. 92-93). Based on the above descriptions of the prison, the Chamber considers that the witnesses are referring to the Central Prison (*see also* paragraph 561 above).

<sup>2617</sup> The Chamber notes that P-0595 testified that Dédéou Maiga spent two weeks in the 'big prison' (P-0595's statement MLI-OTP-0058-0196-R02, at 0204, para. 48), but that there is around five weeks between the date of Dédéou Maiga's arrest (early August 2012) and his amputation (16 September 2012, *see below*). Mr Al Hassan stated that Dédéou Maiga was in prison for one to two months (Mr Al Hassan's statement MLI-OTP-0051-0658, at 0678). Taking into account the evidence that during the period between early August and 16 September 2012, Dédéou Maiga was also detained at the BMS for around three days (*see above*) and that he escaped from the Central Prison for a day (*see below*), the Chamber concludes that Dédéou Maiga was detained at the Central Prison for between four to five weeks. The Chamber does not consider this finding to cast any overall doubt on the reliability P-0595's testimony, noting that P-0595 only returned to Timbuktu after Dédéou Maiga had already been arrested (*see* P-0595's statement MLI-OTP-0058-0196-R02, at 0200, paras 23-24).

<sup>2618</sup> P-0595: T-070, pp. 47-49, *referring to* articles MLI-OTP-0012-1965; MLI-OTP-0012-2060; P-0654: T-128, pp. 91-93, *referring to* article MLI-OTP-0012-1965; T-129, pp. 29-30, *referring to* article MLI-OTP-0012-2060; T-134, pp. 46-49, *referring to* article MLI-OTP-0012-2060; P-0582's statements MLI-

821. Following Dédéou Maiga's arrest, P-0595 along with three other persons went to the Islamic Police at the BMS.<sup>2619</sup> P-0595 met with Talha,<sup>2620</sup> who asked them to pay what Dédéou Maiga had taken.<sup>2621</sup> Two Islamic Police officers and an Arab man were also present,<sup>2622</sup> and Sanda Ould Boumama was also briefly present.<sup>2623</sup> P-0595 and a relative also went to the Islamic Court to see Houka Houka and Daoud Ali Al Abou Juma and inquire whether they could do something to release Dédéou Maiga.<sup>2624</sup> Dédéou Maiga was also at the Islamic Court that day, and was chained at the hands and feet.<sup>2625</sup>

822. On 12 September 2012, in a judgment in case 17/1433-2012, signed by Houka

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OTP-0062-3788-R02, at 3815-3817; MLI-OTP-0062-3872-R02, at 3889-3890; MLI-OTP-0062-3897-R02, at 3904; Mr Al Hassan's statement MLI-OTP-0051-0658, at 0678. The Chamber does not consider the issue of whether Dédéou Maiga and the other person were caught on the day of their escape or five days after to be significant, also noting that P-0582's recollection of five days is an approximation (P-0582's statement MLI-OTP-0062-3788-R02, at 3817). In relation to the Prosecution's objections to the submission of articles MLI-OTP-0012-1965 and MLI-OTP-0012-2060 (*see* ICC-01/12-01/18-1623-Conf-AnxV and related annexes), the Chamber notes that although P-0595 did not offer specific substantive comments on the content of these articles, P-0654 commented [REDACTED] (P-0654: T-128, p. 90; T-129, p. 29).

<sup>2619</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0200, paras 24-25.

<sup>2620</sup> The Chamber notes that P-0595 did not identify Talha by name but testified that when he arrived at the BMS station, he asked at the door for the commissioner's office and when he arrived at the commissioner's office, a man seated in the office introduced himself as the commissioner (P-0595's statement MLI-OTP-0058-0196-R02, at 0200, para. 26). P-0595 described the man as an Arab with '[TRANSLATION] red skin'; thin and wearing corrective glasses and military dress the colour of the National Guard (P-0595's statement MLI-OTP-0058-0196-R02, at 0200, para. 26). He testified that people said they knew the man and saw him in Timbuktu before the crisis, but P-0595 had never seen him before (P-0595's statement MLI-OTP-0058-0196-R02, at 0200, para. 26). P-0595 identified this commissioner whom he met at the BMS on photograph MLI-OTP-0022-0480 (P-0595's statement MLI-OTP-0058-0196-R02, at 0209, para. 73), an individual which other witnesses have identified as Talha (*see* footnote 2392 above). Having regard to the witness's physical description of this person and his identification on photograph MLI-OTP-0022-0480, the Chamber considers that the witness is referring to Talha when testifying about the person he met at the BMS about Dédéou Maiga's case.

<sup>2621</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0201, para. 28. P-0595 testified that Dédéou Maiga was asked to repay 20 bags of rice that he had stolen and that P-0595 bought the rice at the market and returned to the BMS the next day (P-0595's statement MLI-OTP-0058-0196-R02, at 0201-0202, paras 33-34).

<sup>2622</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0200, para. 27.

<sup>2623</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0201, para. 32. The Chamber notes that the witness recognised Sanda Ould Boumama on photograph MLI-OTP-0022-0473 (P-0595's statement MLI-OTP-0058-0196-R02, at 0209, para. 73; P-0595: T-070, pp. 11-12).

<sup>2624</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0202, para. 36. P-0595 testified that the Islamic Court was at the *Hôtel La Maison* and referred to Houka Houka as the prosecutor and 'Daouda' the imam of Bellafarandi as the investigative judge of the 'Islamists' (P-0595's statement MLI-OTP-0058-0196-R02, at 0201, para. 36). The Chamber notes that P-0595 recognised Houka Houka in photograph MLI-OTP-0022-0465 (P-0595's statement MLI-OTP-0058-0196-R02, at 0209, para. 73). The Chamber understands from context that the 'Douda' referred to by P-0595 is Daoud Ali Al Abou Juma (*see* paragraph 470 above).

<sup>2625</sup> P-0595: T-070, pp. 15-16; P-0595's statement MLI-OTP-0058-0196-R02, at 0201, para. 30.

Houka,<sup>2626</sup> the Islamic Court sentenced Dédéou Maiga to have his hand cut off ‘once confirmation was made that the *Sharia* conditions were fulfilled for the amputation *hadd*’.<sup>2627</sup> The Majority, Judge Akane dissenting, finds that a Police report was drafted by Mr Al Hassan prior to the judgment.<sup>2628</sup> Dédéou Maiga appeared before the Islamic Court.<sup>2629</sup> Members of Ansar Dine/AQIM did not allow anyone else to enter the room where the proceedings took place.<sup>2630</sup> The judgment indicates that Dédéou Maiga ‘confessed’ to theft and that the Islamic Court pronounced the sentence following an inquiry into the circumstances of the case.<sup>2631</sup> Along with the local judges, Koutaïba, Radwan and Abdallah Al Chinguetti were overseeing and taking part in the judicial process.<sup>2632</sup> Dédéou Maiga was brought back to the prison after his judgment.<sup>2633</sup>

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<sup>2626</sup> Islamic Court judgment MLI-OTP-0001-7474 (signed and stamped), translation MLI-OTP-0077-2242. *See also* different versions of the same document MLI-OTP-0053-0154 and MLI-OTP-0053-0156 (both signed and stamped), translations MLI-OTP-0070-2225, MLI-OTP-0002-0051 (signed and stamped), translation MLI-OTP-0078-0276. Both P-0150 and P-0626 identified this as a judgment of the Islamic Court (P-0150: T-097, pp. 18-19, *referring to* MLI-OTP-0053-0156; P-0626: T-142, pp. 64-65, *referring to* MLI-OTP-0002-0051). P-0150 also identified the signature of Houka Houka on this judgment and confirmed that the stamp at the top and bottom says Islamic Justice (P-0150: T-097, p. 20, *referring to* MLI-OTP-0053-0156). [REDACTED] also recognised the stamp of the Islamic Court and stated that he believes the signature is that of Houka Houka ([REDACTED]). Further, P-0150 identified MLI-OTP-0068-4704 as being the unofficial version of the Islamic Court’s judgment in the case, meaning the document was the draft before it was stamped by the Islamic Court and signed by the judge (P-0150: T-097, pp. 16-17), and also identified MLI-OTP-0001-7392 (right hand side) as containing the draft judgment in this case (P-0150: T-097, pp. 15-16). On the authentication of the judgment in this case, *see also* the Chamber’s findings in section II.D above. The Chamber notes that P-0150 further testified that he knew that only one person in Timbuktu had his hand amputated and he recalled that ‘Daoud Mohamed Maiga’ was the one whose hand was amputated, [REDACTED] that ‘Daoud Mohamed Maiga’ was among the names (P-0150: T-097, p. 13).

<sup>2627</sup> Islamic Court judgment MLI-OTP-0001-7474, translation MLI-OTP-0077-2242.

<sup>2628</sup> Mr Al Hassan’s statement, MLI-OTP-0060-1298, at 1312. **Judge Akane** notes that in the relevant excerpt, Mr Al Hassan merely responds ‘[c]’est vrai’ to the Prosecution investigator’s suggestion that he had drafted a Police report concerning this case. Mr Al Hassan has provided no further details on the report, including on its timing or its use before the Islamic Court. Nor has a Police report concerning Dédéou Maiga been submitted into evidence in the present trial proceedings. In these circumstances, Judge Akane considers that there is insufficient evidence to conclude that Mr Al Hassan wrote a Police report concerning Dédéou Maiga and that it would be prejudicial to make such a finding only on the basis of Mr Al Hassan’s statement.

<sup>2629</sup> Islamic Court judgment MLI-OTP-0001-7474 (signed and stamped), translation MLI-OTP-0077-2242.

<sup>2630</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0201, para. 31. The Chamber notes that P-0595 also confirmed that when Dédéou Maiga was in the courtroom facing trial, he was not accompanied by anybody who could speak on his behalf and in his defence (P-0595: T-070, pp. 15-16). However, P-0595’s basis of knowledge for this evidence is unclear since his testimony is unclear as to whether he was present or not at the Islamic Court on the day of Dédéou Maiga’s judgment (*see* P-0595: T-070, pp. 15-16). The Chamber therefore finds P-0595’s statements on this matter particularly unclear and accordingly will not rely on this part of his evidence.

<sup>2631</sup> Islamic Court judgment MLI-OTP-0001-7474, translation MLI-OTP-0077-2242.

<sup>2632</sup> P-0150: T-094, p. 23.

<sup>2633</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0202, para. 35.

823. On the morning of 16 September 2012, P-0595 returned to the BMS to ask again for Dédéou Maiga's release as he was still detained even though P-0595 had brought rice to the BMS as requested.<sup>2634</sup> Talha<sup>2635</sup> told P-0595 to make additional payments for other things which he said Dédéou Maiga had taken, which P-0595 did.<sup>2636</sup> After P-0595 paid, Talha told him that Dédéou Maiga would be released.<sup>2637</sup>
824. On 16 September 2012,<sup>2638</sup> members of Ansar Dine/AQIM publicly amputated Dédéou Maiga's hand as described below. Ansar Dine/AQIM made public announcements prior to the event and invited the population to come to the square for the amputation.<sup>2639</sup>
825. Many people, including young and old members of the population of Timbuktu, were present at the amputation,<sup>2640</sup> which took place behind the market *Yoboutao*, in a large square near the *Hôtel Azalai*.<sup>2641</sup> Members of Ansar Dine/AQIM present included Adama,<sup>2642</sup> Talha,<sup>2643</sup> Houka Houka,<sup>2644</sup> and members of the Islamic

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<sup>2634</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0203, para. 38.

<sup>2635</sup> The Chamber notes that P-0595 does not refer to Talha by name but refers to the '[TRANSLATION] commissioner' (P-0595's statement MLI-OTP-0058-0196-R02, at 0203, para. 38; *see* footnote 2620 above with respect to the Chamber's discussion on P-0595 not identifying Talha by name). From the context of P-0595's evidence, the Chamber finds that this is the same individual referred to previously by the witness, which the Chamber considers is Talha.

<sup>2636</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0203, para. 38.

<sup>2637</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0203, para. 38. P-0595 stated that, following this, he was surprised to learn that Dédéou Maiga's hand was going to be amputated as he had been told the same morning that Dédéou Maiga would be released (P-0595's statement MLI-OTP-0058-0196-R02, at 0203, para. 40).

<sup>2638</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0203, para. 40, and at 0208, para. 71; P-0595: T-070, pp. 13-14, *referring to* medical record MLI-OTP-0058-0219. *See also* notebook MLI-OTP-0003-0154-R03, at 0178.

<sup>2639</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0203, para. 39; P-0639's statement MLI-OTP-0072-0290-R03, at 0308, para. 62; notebook MLI-OTP-0003-0154-R03, at 0178; P-0125's statement MLI-OTP-0023-0004-R03, at 0026, para. 105. *See also* P-0582's statement MLI-OTP-0062-3897-R02, at 3908; P-0638: T-058, pp. 9, 61.

<sup>2640</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0308, para. 62; P-0654: T-128, pp. 67-68. The Chamber notes specifically that P-0603, P-0638, P-0639 and P-0654 testified that they were present at the amputation (P-0603: T-125, pp. 19-20; P-0638: T-058, pp. 61-62; P-0639's statement MLI-OTP-0072-0290-R03, at 0308-0309, paras 62-64; P-0654: T-128, p. 67).

<sup>2641</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0308, para. 62; P-0638: T-058, pp. 61-62; P-0654: T-128, pp. 75-76, *referring to* video MLI-OTP-0012-1544; notebook MLI-OTP-0003-0154-R03, at 0178. *See also* P-0582's statement MLI-OTP-0062-3897-R02, at 3910, 3916.

<sup>2642</sup> P-0654: T-128, pp. 67, 76, *referring to* video MLI-OTP-0012-1549, at 00:00:29:02.

<sup>2643</sup> P-0654: T-128, pp. 67, 75, *referring to* video MLI-OTP-0012-1544, at 00:00:04:19 (identifying Talha as the person in the forefront of the image on the right of the screen). *See also* P-0654: T-134, p. 52.

<sup>2644</sup> P-0638: T-058, pp. 62-64.

Police,<sup>2645</sup> amongst others.<sup>2646</sup> Mr Al Hassan did not attend the event.<sup>2647</sup> The chief physician of Timbuktu, Dr Ibrahim Maiga, was also present.<sup>2648</sup>

826. Cars were parked surrounding the area and members of Ansar Dine/AQIM ensured security of the site.<sup>2649</sup> Members of Ansar Dine/AQIM tied Dédéou Maiga to a chair and his ankles were restrained with chains,<sup>2650</sup> and his head covered.<sup>2651</sup> While Ansar Dine/AQIM gave Dédéou Maiga a type of injection sometime prior to the amputation, what was administered is unknown.<sup>2652</sup> A member of Ansar Dine/AQIM carrying a weapon announced the sentence in

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<sup>2645</sup> P-0654: T-128, p. 75, *referring to* video MLI-OTP-0012-1544, at 00:00:23:14.

<sup>2646</sup> P-0654: T-128, pp. 67-68. The Chamber notes that P-0638 testified that Abou Zeid was also present dressed in white but acknowledged that he did not know him and that it was just other people saying that it was him (P-0638: T-058, p. 64). The Chamber has not made a finding on Abou Zeid's presence based on this evidence.

<sup>2647</sup> P-0654: T-131, pp. 42-44; T-134, pp. 37, 40-41; Mr Al Hassan's statement MLI-OTP-0051-0658, at 0680-0681. *See also* [Defence Final Brief](#), para. 516. The Chamber notes that, during his testimony, P-0654 corrected his prior statement to the Prosecution that Mr Al Hassan was present during the amputation of Dédéou Maiga, and confirmed that he did not remember the presence of Mr Al Hassan during this event (P-0654: T-131, pp. 42-44; T-134, pp. 40-41). P-0654 notably acknowledged that some of the names he gave in his prior statement to the Prosecution were not correct and explained that some mistakes may have been made, and the fact that he did not make any corrections was 'just human nature' (P-0654: T-131, p. 46; T-134, p. 41). The Chamber is satisfied with P-0654's explanation and, based on the abovementioned evidence, concludes that Mr Al Hassan did not attend the event.

<sup>2648</sup> P-0654: T-128, pp. 67-68, 76-77, *referring to* video MLI-OTP-0012-1547 (identifying the chief doctor as the person in the middle of the screen wearing a white shirt and blue trousers).

<sup>2649</sup> P-0638: T-058, p. 62; P-0654: T-128, pp. 67-68.

<sup>2650</sup> P-0654: T-128, p. 69; photographs MLI-OTP-0018-2357, MLI-OTP-0018-2358, and photograph MLI-OTP-0018-2573. *See also* P-0638: T-058, p. 62; P-0598's second expert report MLI-OTP-0062-0689-R01, at 0691 (describing that two rounds of rope were at Dédéou Maiga's abdomen and his right forearm was fixed on the right armrest of the chair by a knot from a rope connected with his right ankle). *See also* notebook MLI-OTP-0003-0154-R03, at 0178.

<sup>2651</sup> Photograph MLI-OTP-0018-2358.

<sup>2652</sup> The Defence submits that Dédéou Maiga stated that he had been injected with anaesthetics prior to the amputation and that he did not feel anything (*see* [Defence Final Brief](#), para. 489). The Chamber notes that contrary to the Defence's submissions, the relevant part of the video does not record Dédéou Maiga stating that he received anaesthetics, but rather that he received 'a type of injection' (video MLI-OTP-0042-0157, at 00:03:20:00 to 00:03:45:00, transcript MLI-OTP-0069-7008). In the relevant part of P-0654's testimony, on which the Defence also relies, the witness stated that to the best of his knowledge, the doctor did not give any injection (P-0654: T-134, pp. 51-52). When asked if anaesthesia was administered prior to the amputation, P-0654 testified that he has asked the doctor and was told that nothing was given before the amputation (P-0654: T-128, p. 68). *See also* P-0125's statement MLI-OTP-0023-0004-R03, at 0027, para. 107. The Chamber further notes that UN reports MLI-OTP-0030-0390, at 0418, and MLI-OTP-0030-0367, at 0378-0379, respectively provide in relation to this incident that two syringes were used to inject the victim before the amputation and that the victim received anaesthetics prior to the amputation. However, the Chamber notes that it has no evidence on the sources of the information used in these UN reports on this point (notably, P-0595 testified that he himself did not speak to a UN fact-finding mission and did not know whether Dédéou spoke to a UN fact-finding mission (P-0595: T-070, pp. 34-36)). The Chamber has therefore not relied on it on this aspect. On the basis of the aforementioned evidence, the Chamber concludes that there is insufficient evidence to make a finding on the exact substance that was administered to Dédéou Maiga prior to the amputation.

Arabic and explained what Dédéou Maiga was convicted of.<sup>2653</sup> After the speech, there was a call for volunteers among Ansar Dine/AQIM members and a member of Ansar Dine/AQIM<sup>2654</sup> came forward and cut off Dédéou Maiga's right hand with a saw/machete.<sup>2655</sup> Dédéou Maiga's hand fell and was wrapped in a handkerchief.<sup>2656</sup> Dédéou Maiga's arm was then put into hot palm oil.<sup>2657</sup>

827. Members of Ansar Dine/AQIM then asked a doctor to take care of Dédéou Maiga, who was taken to the regional hospital of Timbuktu and operated on.<sup>2658</sup>

828. P-0639, who was in the crowd and watched the amputation, said that after it was over people left very quickly and the sky became dark as it was a '[TRANSLATION] cruel act'.<sup>2659</sup> P-0654, who was also in the crowd, stated that after witnessing the amputation, '[t]he morale was broken [...] [t]here was hardly any movement in the town [...] [i]t was as silent as a cemetery', '[t]he people

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<sup>2653</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0308-0309, para. 63; P-0638: T-058, pp. 61-62; P-0654: T-128, p. 69.

<sup>2654</sup> The Chamber notes that P-0654 testified that the person who amputated Dédéou Maiga was 'Bakar', who was also known as 'Firhaoun' (P-0654: T-128, pp. 69, 72-74; *see also* paragraph 529 above concerning 'Feraoun'). P-0582 and P-0065 testified that the person who carried out the amputation is the same person who executed the man in the same location (P-0582's statement MLI-OTP-0062-3897-R02, at 3908-3909). P-0065 testified that this person who carried out the execution [of Moussa] belonged to the Tariq Ibn Ziyad battalion (P-0065: T-041, p. 44). P-0150 testified that the execution of Moussa was carried out by Yazid the Algerian, also known as Al Jazairi, who belonged to the battalion of Tariq Ibn Ziyad (P-0150: T-095, pp. 27-28). [REDACTED]. In light of the conflicting evidence on this point, the Chamber is unable to establish the exact identity of the individual who carried out the amputation. However, in light of the circumstances of Dédéou Maiga's amputation, the Chamber finds that the individual who carried out the amputation was a member of Ansar Dine/AQIM. *See also* P-0639's statement MLI-OTP-0072-0290-R03, at 0309, para. 63.

<sup>2655</sup> Photograph MLI-OTP-0018-2357; photograph MLI-OTP-0018-2358; P-0638: T-058, pp. 61-62; P-0654: T-128, pp. 69, 72-74 (testifying that the nerves were cut by several cuts which removed Dédéou Maiga's hand); P-0598's first expert report MLI-OTP-0060-9465-R01, at 9467-9468 (describing the amputation as a clean cut).

<sup>2656</sup> P-0654: T-128, p. 69.

<sup>2657</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0309, para. 63.

<sup>2658</sup> P-0654: T-128, p. 69; P-0595's statement MLI-OTP-0058-0196-R02, at 0204, paras 41-42. The Chamber notes there is a discrepancy of three hours between P-0654 and P-0595 as to the time that Dédéou Maiga came out of the operating room but does not consider this to be significant. *See also* P-0598's first expert report MLI-OTP-0060-9465-R01, at 9468; notebook MLI-OTP-0003-0154-R03, at 0178. In relation to videos of Dédéou Maiga in hospital, *see* P-0654: T-128, pp. 82-86, *referring to* videos MLI-OTP-0012-1568, MLI-OTP-0012-1569, MLI-OTP-0012-1570, MLI-OTP-0012-1571, MLI-OTP-0012-1572. In video MLI-OTP-0012-1568, P-0595 identified Dédéou Maiga in a blue boubou, alongside a doctor wearing a red shirt and Sanda Ould Boumama who is standing next to the doctor in a white outfit with a white turban and two pistols and speaking to Dédéou Maiga (P-0595: T-070, pp. 22-24, *referring to* video MLI-OTP-0012-1568, at 00:00:12:07). The Chamber notes that P-0595 also confirmed [REDACTED] presence at the hospital (P-0595's statement MLI-OTP-0058-0196-R02, at 0204, para. 45). In relation to photographs of Dédéou Maiga in hospital, *see* P-0595: T-070, pp. 22-23, *referring to* photograph MLI-OTP-0012-1501.

<sup>2659</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0309, para. 63.

didn't feel comfortable', and 'everybody stayed inside their houses'.<sup>2660</sup> A local described the amputation as a 'cold shower thrown at the city'.<sup>2661</sup>

829. At the hospital, Sanda Ould Boumama offered Dédéou Maiga's family a sum of money,<sup>2662</sup> telling them that it was God who asked for the amputation of the hand or foot when someone steals and that they had to do what God asked.<sup>2663</sup> The family refused the money, telling Sanda Ould Boumama that the groups had amputated Dédéou Maiga's hand because no one in Timbuktu could prevent them from doing so.<sup>2664</sup>

830. Both Dédéou Maiga<sup>2665</sup> and Sanda Ould Boumama<sup>2666</sup> were interviewed at the hospital. During that interview, Sanda Ould Boumama stated: 'So I said that [...] it is in our programme of applying *Sharia*. It is a mistake that was committed by our brother, Mahamane Dido Maiga (*sic*), and it was treated in accordance with what God tell us, that is, *Sharia*. So I think that when you make a minor comparison between the application of *Sharia* and what is done in other places and, above all, in Mali and in neighbouring countries, with this kind of [...] behaviour, I think that it is very little. So that [...] I think that I've even seen people who were burnt in Nigeria, and I've also seen other people who were beaten to death in Bamako. So – but all that, that is not a problem because [...] the problem that the others do not go along with and they will never accept that the application of *Sharia* will be a reality in our Islamic world. So I think the problem now is application [...] of *Sharia*. It is not something else'.<sup>2667</sup>

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<sup>2660</sup> P-0654: T-128, pp. 73-74.

<sup>2661</sup> Notebook MLI-OTP-0003-0154-R03, at 0178.

<sup>2662</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0204, para. 44; P-0654: T-128, pp. 16-17. The Chamber notes that there is a discrepancy between the testimony of P-0595 and P-0654 as to precisely how much money was offered, but does not consider this discrepancy to be significant noting the overall consistency between the accounts of P-0595 and P-0654 as to the fact that money was offered to the family.

<sup>2663</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0204, para. 44.

<sup>2664</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0204, para. 44.

<sup>2665</sup> P-0654: T-128, pp. 71, 83-84, *referring to* video MLI-OTP-0012-1572, transcript MLI-OTP-0069-1658; video MLI-OTP-0012-1569, transcript MLI-OTP-0069-1654.

<sup>2666</sup> P-0654: T-128, pp. 87-89, *referring to* video MLI-OTP-0012-1573, transcript MLI-OTP-0069-1832, translation MLI-OTP-0069-1926. *See also* P-0654: T-128, pp. 87-88, *referring to* video MLI-OTP-0012-1573, at 00:00:01:15.

<sup>2667</sup> Video MLI-OTP-0012-1573, transcript MLI-OTP-0069-1832, translation MLI-OTP-0069-1926; P-0654: T-128, pp. 87-88. *See also* P-0654: T-128, pp. 87-88, *referring to* video MLI-OTP-0012-1573, at 00:00:01:15 (recognising Sanda Ould Boumama); P-0638: T-059, p. 24.



831. During his interview, Dédéou Maiga notably referred to assurances given to him by Ansar Dine/AQIM that he would be taken care of after the amputation, stating ‘[w]ell, this is the application of *Sharia*. I committed the crime of theft. With regards to *Sharia*, my hand had to be cut off. But before doing so, they reassured me that in doing so, they were going to take complete care of me and effective responsibility for me, whether it be for food, medicines. And once [...] my health was restored, then this would be forgotten and my offences would be deleted’.<sup>2668</sup>
832. Dédéou Maiga stayed in hospital for four to five days.<sup>2669</sup> While there, he received medication for his hand from the doctor.<sup>2670</sup>
833. Following the amputation, Dédéou Maiga was socially rejected and ‘almost lost his mind’.<sup>2671</sup> Afterwards, towards the end of September 2012, Dédéou Maiga went to Bamako to receive care.<sup>2672</sup> While there, he continued to take medication and he received a prosthesis through the ICRC.<sup>2673</sup> The only help Dédéou Maiga received for his care in Bamako came from the ICRC.<sup>2674</sup> P-0595 testified that it hurt the family to see Dédéou Maiga’s hand amputated.<sup>2675</sup>
834. In 2013, Dédéou Maiga returned to Timbuktu and would go out in town for short periods of time before returning home.<sup>2676</sup> Dédéou Maiga sometimes complained of headaches but he was ‘fine morally’.<sup>2677</sup> Some people, including the marabouts

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<sup>2668</sup> Video MLI-OTP-0012-1569, transcript MLI-OTP-0069-1654. The Chamber notes that this video was interpreted into English in the courtroom (T-128, pp. 83-84). *See also* P-0654: T-128, pp. 82-86. While the Defence relies on the video and submits that Dédéou Maiga accepted the application of *Sharia* to ‘avoid societal stigma or to be purified’ ([Defence Final Brief](#), para. 485), the Chamber considers this to be a mischaracterisation of the relevant evidence, none of which support the Defence’s proposition.

<sup>2669</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0204, para. 46. *See also* P-0603: T-125, pp. 19-20.

<sup>2670</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0204, para. 46.

<sup>2671</sup> P-0654: T-128, p. 93.

<sup>2672</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0199, 0204, paras 16, 47; P-0595: T-070, pp. 25, 52.

<sup>2673</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0205, para. 50.

<sup>2674</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0204-0205, paras 46, 52. Regarding Dédéou Maiga’s treatment in hospital in Bamako, the Chamber also takes note of video MLI-OTP-0001-7077, at 00:16:20:00 to 00:20:42:00 and transcript MLI-OTP-0069-9140, at 9155-9158, noting the general consistency between this evidence and the other evidence that Dédéou Maiga received treatment in Bamako and, in relation to this part of the video, dismisses the related Defence objection that the Prosecution should have introduced this item through a witness (*see* ICC-01/12-01/18-2121-Conf-AnxA, p. 83).

<sup>2675</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0208, para. 70.

<sup>2676</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0205-0206, paras 54, 57.

<sup>2677</sup> P-0595’s statement MLI-OTP-0058-0196-R02, at 0206, para. 57.

and the imam, came to greet and perform blessings for Dédéou Maiga.<sup>2678</sup>

835. Toward the end of 2016, Dédéou Maiga's mental state started deteriorating.<sup>2679</sup> P-0595 saw Dédéou Maiga remove his prosthesis and throw it to the ground twice.<sup>2680</sup> After the amputation of his hand, Dédéou Maiga 'had a poor emotional state' and his morale was low; P-0595 understood that for Dédéou Maiga, his life was over.<sup>2681</sup> Before the events, Dédéou Maiga was someone who worked, and was learning to be a driver and a plumber.<sup>2682</sup> As Dédéou Maiga had his dominant hand cut off and became partially permanently incapacitated, he could no longer work.<sup>2683</sup>
836. Dédéou Maiga then became sick with a suspected chest related illness and died on 29 December 2017.<sup>2684</sup>
837. According to Dr Ludes, the amputation cut would have caused significant suffering, notably during amputation, but also during the 'secondary therapeutic treatment', even assuming that Dédéou Maiga might have been drugged.<sup>2685</sup> Dr Ludes was of the view that such an amputation may cause pain in the 'phantom limb'.<sup>2686</sup> Further, in particular for a person who worked manually as a plumber, such amputation would not allow him to carry out this professional occupation and he would require professional retraining.<sup>2687</sup> Dr Ludes also noted that Dédéou Maiga, who was most likely right-handed according to his statements, would no longer have been able to write with his right hand and would have had to learn to write and to do all the gestures of everyday life with his non-dominant left

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<sup>2678</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0208, para. 69.

<sup>2679</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0206, 0208, paras 58-59, 69; P-0595: T-070, pp. 25-27.

<sup>2680</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0206, paras 58-59.

<sup>2681</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0206, para. 59; P-0595: T-070, p. 29.

<sup>2682</sup> P-0595: T-070, p. 29; video MLI-OTP-0012-1572, transcript MLI-OTP-0069-1658. *See also* P-0654: T-128, pp. 82-83.

<sup>2683</sup> P-0595: T-070, p. 29. *See also* P-0598's first expert report MLI-OTP-0060-9465-R01, at 9468.

<sup>2684</sup> P-0595's statement MLI-OTP-0058-0196-R02, at 0206-0208, paras 60-65, 68; P-0595: T-070, pp. 27-28. *See also* P-0595: T-070, pp. 14-15, *referring to* death certificate MLI-OTP-0058-0231; P-0639's statement MLI-OTP-0072-0290-R03, at 0309, para. 63.

<sup>2685</sup> P-0598's first expert report MLI-OTP-0060-9465-R01, at 9467.

<sup>2686</sup> P-0598's first expert report MLI-OTP-0060-9465-R01, at 9468.

<sup>2687</sup> P-0598's first expert report MLI-OTP-0060-9465-R01, at 9468.

hand.<sup>2688</sup>

### **h) Cases of Sallaka Bent Al-Khair (P-0554) and Madou Traoré**

838. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: one of the direct victims herself, Sallaka Bent Al-Khair (P-0554);<sup>2689</sup> her partner, Hamma M'Bara Arby (P-0984), who was with her the night of her arrest;<sup>2690</sup> P-0641,<sup>2691</sup> who saw Sallaka Bent Al-Khair

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<sup>2688</sup> P-0598's first expert report MLI-OTP-0060-9465-R01, at 9468. *See also* video MLI-OTP-0001-7077, at 00:17:39:00 to 00:20:19:00, transcript MLI-OTP-0069-9140, at 9156-9157.

<sup>2689</sup> Sallaka Bent Al-Khair (*see* P-0554: T-064 to T-065), a Muslim woman who speaks Songhai and understands a bit of Bambara and French (P-0554: T-064, pp. 6-7), and who is illiterate (P-0554: T-064, p. 7), lived in Timbuktu when Ansar Dine/AQIM were present in the city (P-0554: T-064, pp. 6-8). The witness is married to Hamma M'Bara Arby (P-0984) (P-0554: T-064, p. 7). She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation. The Chamber notes that the witness stated what happened to her at the time of events clearly and maintained her account, including during cross-examination. The Chamber notes in addition that during cross-examination, the witness made a visible effort to provide details and to elaborate on her answers. In relation to her motivations to testify, the Chamber notes that the witness openly indicated that she expects justice from the Court, as the 'Islamists' ruined her and her children's lives (P-0554: T-064, pp. 27-29, 45-46). The witness was very clear as to the sequence of events, and the Chamber finds detailed and plausible her account of her arrest and detention, including with respect to being detained for a number of nights in between her judgment and her flogging (*see* below). In light of these findings, the Chamber finds unsupported the Defence submission that her evidence on certain points is marked by exaggeration and inaccuracy ([Defence Final Brief](#), para. 450; *see also* para. 452). In addition, the Chamber considers that the witness was measured and frank in testifying about her small business, openly admitting that she did not know who destroyed it or when she had to stop trading and that she could not estimate its value (P-0554: T-064, pp. 7-8, 45; *contra* [Defence Final Brief](#), para. 453). On the issue of her interactions with journalists (*see* P-0554: T-065, pp. 27-30, *referring to* tweet MLI-D28-0004-6988), in the Chamber's view the fact that the witness told her story to journalists, irrespective of whether or not she herself sought out those journalists (*see* ICC-01/12-01/18-1620-Conf and related annexes), does not undermine her credibility. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Sallaka Bent Al-Khair to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>2690</sup> Hamma M'Bara Arby (*see* P-0984: T-068 to T-069), a Muslim man who speaks Songhai and a little bit of French, Arabic and Bambara, lived in Timbuktu when Ansar Dine/AQIM v in the city (P-0984: T-068, pp. 48, 52), until late December 2012 when he left on the night of Sallaka Bent Al-Khair's arrest. He returned to Timbuktu when the French and the Malian armies returned (P-0984: T-068, pp. 68-69, 73). The witness is married to Sallaka Bent Al-Khair (P-0554) (P-0984: T-068, p. 48). He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including Sallaka Bent Al-Khair's victimisation. The Chamber observes that Hamma M'Bara Arby was calm throughout his testimony, including during cross examination and was open in his opinion about the armed groups being 'evildoers' (P-0984: T-068, p. 54). In relation to his motivations to testify, the Chamber notes that the witness openly confirmed that he seeks compensation (P-0984: T-069, p. 36). Taking into account this open admission, the content of his evidence and his demeanour, the Chamber finds that the witness's desire for compensation did not undermine his credibility (*contra* [Defence Final Brief](#), para. 454). The Chamber notes that the witness had limited direct interactions with the armed groups. He was also forthcoming in acknowledging that he had never seen any public punishments. The Chamber is of the view that, by so doing, he properly differentiated between things he directly witnessed and things he

detained at the BMS and was present at the flogging of Sallaka Bent Al-Khair and Madou Traoré; and P-0065<sup>2692</sup> who was also present at the floggings. The Chamber additionally relies on video<sup>2693</sup> and photographic<sup>2694</sup> evidence of the

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knows without being a direct witness (P-0984: T-069, p. 13). In relation to his testimony regarding Mr Al Hassan, Mohammed Moussa and Ansar Dine/AQIM, the Chamber notes that the witness's knowledge is limited and indirect and that this evidence is part of a larger body of second hand evidence about Mr Al Hassan's role as the chief of the Police. Given the second hand nature of the witness's evidence on these matters, the Chamber considers that his misidentification of an individual in a photograph as Mr Al Hassan (*see* P-0984: T-069, pp. 7-8, 11-12, 27-28, *referring to* photograph MLI-OTP-0022-0471) does not undermine his testimony (*contra* [Defence Final Brief](#), paras 285, 454). In relation to his testimony on having received compensation from the Prosecution to cover certain medical expenses for himself and his family (*see* P-0984: T-069, pp. 28-35), the Chamber notes that the witness was forthright and prompt with his admission and provided an explanation, without hesitation or equivocation, that he received compensation from the Prosecution for these medical expenses. The Chamber considers that there is a sufficient connection between the assistance received from the Prosecution and the events which caused harm to the witness and his family. This matter accordingly has no impact on the credibility of the evidence he provided before the Chamber (*contra* [Defence Final Brief](#), paras 453-454). Finally, the Chamber observes that the elements of his testimony relied on with respect to this incident relate to: (i) uncontested background to the witness's relationship to Sallaka Bent Al-Khair; (ii) elements of Sallaka Bent Al-Khair's arrest which are either largely uncontested (*see* [Defence Final Brief](#), paras 385, 447) or on which there is also other consistent evidence; and (iii) the impact of the events on Sallaka Bent Al-Khair. Thus, while taking into account the fact that Sallaka Bent Al-Khair and Hamma M'Bara Arby are married in its assessment of their evidence, the Chamber considers unfounded the overall Defence intimation that corroboration between the two must be precluded on the basis that they are married (*see* [Defence Final Brief](#), paras 182, 454). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Hamma M'Bara Arby to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>2691</sup> The Chamber refers to its findings on the credibility and reliability of P-0641's evidence (*see* section II.B.2.a)vii above).

<sup>2692</sup> The Chamber refers to its findings on the credibility and reliability of P-0065's evidence (*see* section II.B.2.a)i above).

<sup>2693</sup> The Chamber notes that several videos purportedly depicting the event of the flogging of Madou Traoré and Sallaka Bent Al-Khair were submitted into evidence: video MLI-OTP-0018-0400, transcript MLI-OTP-0069-0465; video MLI-OTP-0018-0401, transcript MLI-OTP-0069-0467; video MLI-OTP-0018-0402, transcript MLI-OTP-0069-1868, translation MLI-OTP-0078-1295; video MLI-OTP-0018-0404; video MLI-OTP-0018-0406, transcript MLI-OTP-0069-1668; video MLI-OTP-0018-0407, transcript MLI-OTP-0069-2651, translation MLI-OTP-0077-0729; video MLI-OTP-0018-0408, transcript MLI-OTP-0069-9200, translation MLI-OTP-0069-9200; video MLI-OTP-0018-0737, transcript MLI-OTP-0069-1469, translation MLI-OTP-0078-1307; video MLI-OTP-0018-0738; video MLI-OTP-0018-0739, transcript MLI-OTP-0078-1445, translation MLI-OTP-0078-1447; video MLI-OTP-0018-0741, transcript MLI-OTP-0068-0103, translation MLI-OTP-0078-1889; video MLI-OTP-0018-0742, transcript MLI-OTP-0069-2653, translation MLI-OTP-0077-0735; video MLI-OTP-0018-0744, transcript MLI-OTP-0069-1896, translation MLI-OTP-0069-2010; video MLI-OTP-0018-0030; video MLI-OTP-0072-0240, transcript MLI-OTP-0080-1440, translation MLI-OTP-0080-1444. P-0065, who testified that he was present at [REDACTED] this incident (P-0065: T-042, p. 4) recognised several pieces of footage for the execution of a flogging punishment at the market square in Timbuktu of a man and a woman called 'Sallaka Bent Al-Khair' (P-0065: T-042, pp. 4, 19, 20-21; P-0065's handwriting MLI-REG-0001-0011). He described the flogging of the woman and a man as 'the same event', which happened at the same time on the same day, with the man being flogged before the woman (P-0065: T-042, pp. 19, 20-21). Specifically, P-0065 recognised the following videos: MLI-OTP-0018-0737 (T-042, p. 4); MLI-OTP-0018-0407 (T-042, pp. 6-7); MLI-OTP-0018-0738 (T-042, p. 10); MLI-OTP-0018-0400 (T-042, pp. 12-13); MLI-OTP-0018-0739 (T-042, p. 14); MLI-OTP-0018-0401 (T-042, p. 17); MLI-OTP-0018-0408 (T-042, pp. 19, 21); MLI-OTP-0018-0741 (T-042, pp. 21-22); MLI-OTP-0018-0742

event, as well as on the Islamic Court's written judgments in the case of Sallaka Bent Al-Khair,<sup>2695</sup> and Madou Traoré,<sup>2696</sup> all of which the Chamber finds reliable.

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(T-042, p. 24); MLI-OTP-0018-0744 (T-042, p. 25); MLI-OTP-0018-0404 (T-042, p. 26); MLI-OTP-0018-0402 (T-042, p. 26); MLI-OTP-0018-0406 (T-042, p. 27). The Chamber further notes that video MLI-OTP-0018-0030 is a compilation of various extracts from some of the aforementioned videos, and that video MLI-OTP-0072-0240 shows the same scene as that in some of the previous videos, shot from a different angle. The Chamber further notes that Sallaka Bent Al-Khair recognised herself wearing a sari and 'Madou' wearing a white polo shirt on one of the aforementioned videos (P-0554: T-64, pp. 40-41, *referring to* video MLI-OTP-0018-0408). In addition, the Chamber notes that the witness's name is read out in video MLI-OTP-0018-0741, transcript MLI-OTP-0068-0103, translation MLI-OTP-0078-1889 ('Silka bint Al Kahyr') (*see also* P-0150: T-099, pp. 22-23). Further, the Chamber notes that P-0150 identified video MLI-OTP-0018-0741 as relating to the judgment against Sallaka Bent Al-Khair (P-0150: T-099, pp. 22-23) and identified videos MLI-OTP-0018-0742, MLI-OTP-0018-0744, MLI-OTP-0018-0404 and MLI-OTP-0018-0402 as relating to the same event (P-0150: T-099, pp. 23-24, 27-28). In relation to video MLI-OTP-0072-0240, P-0641 identified it as relating to the incident of the flogging of the woman who was caught with a married man who fled on a motorbike when she was caught and who was detained at the 'ATM' (P-0641: T-138, pp. 43-44, 54; *see also* P-0641: T-137, p. 60; T-138, pp. 37-42). P-0641 also identified videos MLI-OTP-0018-0741 and MLI-OTP-0018-0408 as relating to the same event in video MLI-OTP-0072-0240 (P-0641: T-138, pp. 55-56). While P-0641 initially testified that video MLI-OTP-0072-0240 was filmed by Demba Demba (P-0641: T-138, p. 54), he later testified that he could see Demba Demba holding a phone in the footage itself (P-0641: T-140, p. 22, *referring to* video MLI-OTP-0072-0240, at 00:00:14:00) and said that he therefore did not know who filmed it (P-0641: T-140, pp. 21-22). P-0641 testified that he received video MLI-OTP-0072-0240 on his phone (P-0641: T-138, p. 54), and said that on a small telephone it comes in the form of an audio whereas on a larger telephone it comes in the form of images (P-0641: T-138, p. 54; T-140, pp. 21-23). Having regard to all of the foregoing evidence, as well as the content of the images depicted in the abovementioned videos, the Chamber is satisfied that they depict the event of the flogging of Madou Traoré and Sallaka Bent Al-Khair. Noting the parity between the images in video MLI-OTP-0072-0240 and many of the other aforementioned videos, the Chamber dismisses the Defence challenge to the authenticity and reliability of video MLI-OTP-0072-0240 and does not consider that the discrepancies in P-0641's testimony about the video's author cast doubt on its reliability (*see* ICC-01/12-01/18-1871-Conf-Anx1 and related annexes).

<sup>2694</sup> P-0065 testified that he thought [REDACTED] photograph MLI-OTP-0018-2654, but he was not sure (P-0065: T-042, pp. 17-18). Noting the consistency between this image and those in the videos of this event relied upon by the Chamber, the Chamber is satisfied that this photograph depicts the flogging event of Madou Traoré and dismisses the related Defence objection to photograph MLI-OTP-0018-2654 on the basis that there is no reliable evidence of the time, date, location and author of the item sufficient to indicate its source, originality and integrity (*see* ICC-01/12-01/18-1631-Conf-AnxV and related annexes).

<sup>2695</sup> Islamic Court judgment MLI-OTP-0001-7413 (signed and stamped), translation MLI-OTP-0077-2378. *See also* different version of the same document MLI-OTP-0068-4779 (unsigned and unstamped), translation MLI-OTP-0078-1768. P-0150 recognised MLI-OTP-0001-7413 as a judgment of the Islamic Court stamped and signed by Houka Houka (P-0150: T-099, pp. 19-20). P-0150 also recognised MLI-OTP-0068-4779 as the judgment in the same case (P-0150: T-099, p. 19). P-0150 explained that the name was 'El-Salika', although it was written 'Al-Salik' on the document (P-0150: T-099, p. 19). The Chamber notes that different spellings of the victim's names appear in the relevant documents. Notwithstanding the differences in spelling, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to Sallaka Bent Al-Khair (P-0554). Noting the submission of the stamped and signed version of the judgment into the record, the Chamber dismisses the Defence objection to Islamic Court judgment MLI-OTP-0068-4779 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). On the authentication of the judgment in this case *see also* the Chamber's findings in section II.D above.

<sup>2696</sup> Islamic Court judgment MLI-OTP-0001-7411 (signed and stamped), translation MLI-OTP-0077-2373. *See also* different version of the same document MLI-OTP-0068-4782 (unsigned and unstamped), translation MLI-OTP-0078-1772. P-0150 identified MLI-OTP-0068-4782 as a judgment in a fornication

839. Towards the end of 2012, Sallaka Bent Al-Khair, a civilian inhabitant of Timbuktu, and Hama M'Bara Arby had been in a relationship for one year<sup>2697</sup> and were not married.<sup>2698</sup> At the time, Hama M'Bara Arby was already married to another person.<sup>2699</sup> Sallaka Bent Al-Khair and Hama M'Bara Arby feared that, if found together, they would be punished by Ansar Dine/AQIM.<sup>2700</sup> Sallaka Bent Al-Khair believed that if she was arrested she would be put in prison and flogged<sup>2701</sup> and that if Hama M'Bara Arby was arrested, Ansar Dine/AQIM would do the same or maybe worse: they would dig a hole, put them into it and stone them to death.<sup>2702</sup>
840. One night, at the end of December 2012,<sup>2703</sup> Hama M'Bara Arby picked up Sallaka Bent Al-Khair at approximately 22:00 or 23:00<sup>2704</sup> and took her on his

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case in which the accused was judged on the basis of a *ta'zir* (P-0150: T-095, p. 44). He identified the name 'Sheikh Judge Mohamed Bin-el-Houssein, a.k.a Houka Houka' at the bottom of MLI-OTP-0068-4782 as the judge and 'Ansar Dine, Timbuktu *Sharia* court' written at the top right-hand corner of MLI-OTP-0068-4782 (P-0150: T-095, p. 45). P-0150 further identified MLI-OTP-0001-7411 as the official version of the judgment in this case, bearing the 'new' stamp of the Islamic Court as well as Houka Houka's signature (P-0150: T-095, p. 46). Noting submission of the stamped and signed version of the judgment, the Chamber dismisses the Defence objection to MLI-OTP-0068-4782 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). On the authentication of this document *see* also the Chamber's findings in section II.D above.

<sup>2697</sup> P-0984: T-068, p. 51. *See also* D-0514: T-208, p. 44 (testifying that in 2012, P-0554 and P-0984 had been in a relationship for a long time and would meet in a house opposite the mosque). According to D-0514, people tried to prevent them from meeting, saying that 'even if you do meet, you shouldn't meet next to the mosque' (D-0514: T-208, p. 44). D-0514 stated that the two did not want to stop meeting (D-0514: T-208, p. 44).

<sup>2698</sup> P-0554: T-064, p. 13; P-0984: T-068, p. 51. The Chamber notes that they got married after the events in question, in a religious wedding in Timbuktu (P-0554: T-064, p. 38; P-0984: T-068, p. 73). The Chamber notes that in 2012 Sallaka Bent Al-Khair had a small business selling goods (P-0554: T-064, pp. 7-8, 45). Based on this evidence and the circumstances surrounding her arrest and flogging, the Chamber finds that Sallaka Bent Al-Khair was a civilian member of the population of Timbuktu at the time of the charged events.

<sup>2699</sup> P-0984: T-068, p. 48.

<sup>2700</sup> P-0554: T-064, pp. 13, 15; P-0984: T-068, pp. 66-67. The Chamber notes that Sallaka Bent Al-Khair and Hama M'Bara Arby do not specifically refer to the groups Ansar Dine/AQIM in their testimony on this point but rather refer to the 'Islamists' and the 'criminals' respectively. However, noting that both witnesses are referring to the groups who arrested them, who the Chamber finds below was Ansar Dine/AQIM, the Chamber considers that the witnesses refer here to members of Ansar Dine/AQIM.

<sup>2701</sup> P-0554: T-064, pp. 13, 15.

<sup>2702</sup> P-0554: T-064, p. 15; P-0984: T-068, p. 69.

<sup>2703</sup> Noting the date of the Islamic Court judgment in the case of Sallaka Bent Al-Khair and the timeline of events she provided (*see* below), the Chamber concludes that the arrest must have taken place before the judgment date and hence occurred at the end of December 2012.

<sup>2704</sup> Hama M'Bara Arby testified that they met at approximately 22:00, after work; before the 'occupation', they would meet well before that, but they feared they would be seen meeting up (P-0984: T-068, p. 66). Sallaka Bent Al-Khair testified that she was arrested sometime between 20:00 and 23:00, although she could not remember exactly when (P-0554: T-064, p. 14). The Islamic Court judgment provides that she was arrested at 23:00 (Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378).

motorbike to his place.<sup>2705</sup> About 30 minutes after their arrival,<sup>2706</sup> a group of four or five armed<sup>2707</sup> members of Ansar Dine/AQIM<sup>2708</sup> knocked on the door.<sup>2709</sup> When Hamma M'Bara Arby opened the door, they asked what he was doing there, and he responded '[t]his is my place'.<sup>2710</sup> The men went into the living room and found Sallaka Bent Al-Khair.<sup>2711</sup> She rushed upstairs, jumped from the first floor and fell.<sup>2712</sup> She hurt her hip, elbows and neck when she jumped.<sup>2713</sup> The members of Ansar Dine/AQIM arrested her for alleged extra-marital sexual intercourse.<sup>2714</sup> The men pushed her and beat her and her clothes and underclothes

<sup>2705</sup> P-0984: T-068, pp. 66-67; P-0554: T-064, p. 13.

<sup>2706</sup> P-0554: T-064, p. 13.

<sup>2707</sup> The Chamber notes that Sallaka Bent Al-Khair and Hamma M'Bara Arby testified that the men were five in number, although Sallaka Bent Al-Khair said she was not certain (P-0554: T-064, p. 14; P-0984: T-068, p. 67), whereas the Islamic Court judgment records that there were four men (Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378). The Chamber does not consider this to be a significant discrepancy. Both witnesses testified that the men were armed (P-0554: T-064, pp. 13-14; P-0984: T-068, pp. 68-69).

<sup>2708</sup> The Chamber notes that the Islamic Court judgment provides that Sallaka Bent Al-Khair was arrested by 'four of the Mujahidin' who then handed her over to the *Hesbah* (Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378). P-0150 testified that '[s]he was arrested by four people from the Mujahideen, and it wasn't said to her that they were from the Police or the *Hesbah*. We knew that they are from the Security Battalion, or the guards of the centres, and she was then transferred or handed over to the *Hesbah* and then referred to the judiciary' (P-0150: T-099, pp. 19-20, referring to Islamic Court judgment MLI-OTP-0068-4779, translation MLI-OTP-0078-1768). Sallaka Bent Al-Khair described the men as 'Islamists' and testified that the men were wearing *réglans* with a garment on top with lots of pockets and short trousers (P-0554: T-064, pp. 13-14). Hamma M'Bara Arby specified that they wore traditional clothing, the *réglans*, and flak jackets with cartridges – which was their normal attire (P-0984: T-068, pp. 67-68). Based on the foregoing evidence, the Chamber is satisfied that the individuals who carried out the arrest were members of Ansar Dine/AQIM. In relation to the languages spoken by these people, Sallaka Bent Al-Khair testified that they spoke Arabic and Tamasheq (P-0554: T-064, pp. 13-14). Hamma M'Bara Arby testified that they spoke both Songhaï and Arabic (P-0984: T-069, pp. 21-22). The Chamber notes that Hamma M'Bara Arby was confronted with his prior statement where he stated that they spoke Arabic only (P-0984: T-069, p. 21). The Chamber considers that this minor discrepancy about the specific languages used does not affect the credibility or reliability of the two witnesses' evidence on this point.

<sup>2709</sup> P-0554: T-064, p. 13; P-0984: T-068, p. 67. As to the circumstances of this visit, D-0514 testified that people tried to prevent Sallaka Bent Al-Khair and Hamma M'Bara Arby from meeting next to the mosque and stated that, as the two did not want to stop meeting, people from the mosque denounced them (D-0514: T-208, p. 44). D-0514 also testified that the armed groups' member had laid in waiting for them and, when the couple entered, they stopped them and arrested them in front of the door (D-0514: T-208, p. 44). The Chamber notes that D-0514's basis of knowledge regarding the exact circumstances of the arrest is however unclear.

<sup>2710</sup> P-0984: T-068, p. 67. See also D-0514: T-208, p. 44.

<sup>2711</sup> P-0984: T-068, p. 67.

<sup>2712</sup> P-0554: T-064, p. 13.

<sup>2713</sup> P-0554: T-064, pp. 15, 17.

<sup>2714</sup> Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378. The Chamber notes that the judgment states that Sallaka Bent Al-Khair was found in the company of an unrelated man, in a house with no other people, undressed, in the night at a late hour and in possession of 'tools for indecent purposes', and arrested at 23:00. It further provides that four mujahidin handed her over to the *Hesbah*, and that the emir of the *Hesbah* came to the house and found proof confirming that both were in the house together. It also states that the description provided did not meet what the *Sharia* required for

came open.<sup>2715</sup> Meanwhile, Hamma M'Bara Arby managed to escape and fled.<sup>2716</sup>

841. The members of Ansar Dine/AQIM took Sallaka Bent Al-Khair to the BMS, at that time the headquarters of the *Hesbah*, and put her in the ATM room.<sup>2717</sup> The cell was extremely small and had bars, she could see outside and people from outside could see inside; however the room was closed and she could not leave it.<sup>2718</sup> She was alone in the room.<sup>2719</sup> Sallaka Bent Al-Khair was not given anything to eat during the period of her detention but was given some milk, which she refused to take.<sup>2720</sup> The room smelled dreadful and it was difficult for her to breathe.<sup>2721</sup> There was no toilet in the room, and '[e]verything happened in the same room'.<sup>2722</sup> Three persons came to visit her.<sup>2723</sup> Sallaka Bent Al-Khair was

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establishing the commission of extra-marital sexual intercourse. On the basis of the foregoing, the Chamber considers that the reason for the arrest of Sallaka Bent Al-Khair was alleged extra-marital sexual intercourse.

<sup>2715</sup> P-0554: T-064, p. 18. Sallaka Bent Al-Khair testified that all her body hurt (P-0554: T-064, p. 18). As noted above, the Chamber considers the witness's account of her arrest to be credible and reliable, which includes the evidence that she was beaten during her arrest (*contra* [Defence Final Brief](#), para. 451).

<sup>2716</sup> P-0554: T-064, p. 13; P-0984: T-068, p. 67. Hamma M'Bara Arby testified that he grabbed his motorbike and went to Sallaka Bent Al-Khair's house where he met her elder brother who advised him to flee from Timbuktu (P-0984: T-068, pp. 67-68). Thereafter, Hamma M'Bara Arby succeeded in fleeing to Bamako (P-0984: T-068, p. 71). He testified that he was told by his older son, his big brother and his parents that the armed groups searched everywhere for him, they even put out a bounty for information on where he could be found (P-0984: T-068, pp. 69-70). *See also* D-0514: T-208, p. 44.

<sup>2717</sup> P-0554: T-064, pp. 19-20. Sallaka Bent Al-Khair testified that she was taken to a place called the police or the '*gendarmerie*', a two storey house next to *Yoboutao* (P-0554: T-064, pp. 19-20). The Chamber notes that this is corroborated by P-0641 who testified that he saw her at the 'ATM' and stating that '[a]nyone who went by could have seen her' (P-0641: T-137, p. 60; T-138, p. 39). The Chamber further notes that Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378, states that after her arrest, Sallaka Bent Al-Khair was handed over to the *Hesbah*, which the Chamber finds was based at the BMS as of the end of December 2012 (*see* paragraph 519 above). The Chamber further considers that P-0554's description of her cell is consistent with other evidence describing the ATM room at the BMS (*see* paragraph 537 above), and notes that P-0641 testified specifically that he saw P-0554 at the 'ATM' (P-0641: T-137, p. 60; T-138, p. 39). Based on the foregoing, the Chamber finds that Sallaka Bent Al-Khair was taken to the BMS, and specifically to the ATM room. The Chamber also notes that it is not contested by the Defence that Sallaka Bent Al-Khair was taken to the BMS (which was then under the *Hesbah*'s control) ([Defence Final Brief](#), para. 385). As noted above, the Chamber considers P-0554's account of her arrest to be credible and reliable. This includes the evidence of her conditions of detention, which the Chamber further notes are consistent with the evidence of P-0636 on detention conditions at the BMS (*see* paragraph 537 above) (*contra* [Defence Final Brief](#), para. 451).

<sup>2718</sup> P-0554: T-064, pp. 19-21.

<sup>2719</sup> P-0554: T-064, p. 21.

<sup>2720</sup> P-0554: T-064, p. 22.

<sup>2721</sup> P-0554: T-064, p. 21.

<sup>2722</sup> P-0554: T-064, p. 22. Taking Sallaka Bent Al-Khair's testimony on this point as a whole, the Chamber understands that she had to relieve herself in the room (*contra* [Defence Final Brief](#), para. 448).

<sup>2723</sup> P-0554: T-064, p. 22. The Chamber notes that this is corroborated by P-0641 who testified that he was there when her sister came to give water to Sallaka Bent Al-Khair (P-0641: T-138, pp. 39-40, 43).



ashamed and scared for her safety.<sup>2724</sup> In the evening of the next day, those detaining her took her to another room where other people were present.<sup>2725</sup>

842. After a couple of days of detention,<sup>2726</sup> members of Ansar Dine/AQIM took Sallaka Bent Al-Khair to the Islamic Court.<sup>2727</sup> There were more than four people in the room there.<sup>2728</sup> These people had papers in front of them and read from those papers, and Sallaka Bent Al-Khair believed that they were the ones rendering the judgment.<sup>2729</sup>

843. Members of the Islamic Court told Sallaka Bent Al-Khair that she was accused of extra-marital sexual intercourse.<sup>2730</sup> They also told her that she had been taken there for her ‘judgment, [her] sentencing’, and Sallaka Bent Al-Khair understood that she was taken there to be tried.<sup>2731</sup> During the proceedings they did not give her the opportunity to speak herself, and she also did not think she ‘[w]as able to speak’.<sup>2732</sup> Sallaka Bent Al-Khair did not understand what the people said, rather

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<sup>2724</sup> P-0554: T-064, p. 22.

<sup>2725</sup> Sallaka Bent Al-Khair described this room as ‘close to the other’ (P-0554: T-064, pp. 22-23; T-064-FRA, p. 22).

<sup>2726</sup> Sallaka Bent Al-Khair testified that she spent a night ‘there’, referring to the room she was brought to after being arrested, and the next day she was taken to the place where she received a judgment (P-0554: T-064, pp. 22-24, 27; T-065, p. 24). P-0641 testified that Sallaka Bent Al-Khair was kept at the ‘ATM’ for several days (P-0641: T-137, p. 60). Regarding the exact date of the hearing of Sallaka Bent Al-Khair before the Islamic Court, the Chamber notes that the Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378 is dated 1 January 2013. *See also* P-0554: T-065, p. 9 (where Sallaka Bent Al-Khair accepted the proposition that the date of the judgment was 1 January 2013). The Chamber concludes that the judgment was indeed typed and signed that day, which, in light of the other reliable evidence on the Islamic Court’s processes (*see* paragraph 628 above and generally section C.4.c)iii xx) does not necessarily mean that the hearing occurred on the same day. In any event, the Chamber considers that Sallaka Bent Al-Khair was taken to the Islamic Court after the days she spent in detention at the BMS, which occurred before 1 January 2013.

<sup>2727</sup> P-0554: T-064, pp. 22-24, 27; T-065, p. 24. The Chamber notes that Sallaka Bent Al-Khair recognised the room where her judgment was passed on video MLI-OTP-0018-0249 (P-0554: T-064, p. 40), which other witnesses have identified as showing the Islamic Court (*see* P-0557: T-055, p. 32; P-0065: T-042, pp. 50-51). In relation to video MLI-OTP-0018-0249, *see also* paragraph 55 above. The Chamber further notes that Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378 corroborates Sallaka Bent Al-Khair’s attendance at the Islamic Court.

<sup>2728</sup> P-0554: T-064, p. 27.

<sup>2729</sup> P-0554: T-064, p. 27.

<sup>2730</sup> P-0554: T-064, p. 28 (testifying that she was told what she was being accused of). Although the witness did not elaborate on exactly what she was told in this regard, noting that Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378 refers to the charge of extra-marital sexual intercourse, the Chamber considers it sufficiently clear that this was what Sallaka Bent Al-Khair was accused of.

<sup>2731</sup> P-0554: T-065, p. 6.

<sup>2732</sup> P-0554: T-065, pp. 5, 8.

her older brother, who was present, understood.<sup>2733</sup> He spoke on her behalf.<sup>2734</sup> Although Sallaka Bent Al-Khair admitted that she had been together with a married man,<sup>2735</sup> she stated that ‘[w]hether I agree or not, that doesn’t mean anything. It’s of no use. They just wanted to do what they did. Whether I was in agreement or not’.<sup>2736</sup>

844. The Islamic Court sentenced Sallaka Bent Al-Khair to 95 lashes by way of *ta’zir*.<sup>2737</sup> The Islamic Court’s judgment was delivered orally<sup>2738</sup> and eventually recorded in writing in case 66/1434-2013.<sup>2739</sup> Sallaka Bent Al-Khair was not given any paper to sign and could not challenge the decision.<sup>2740</sup> The proceedings

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<sup>2733</sup> P-0554: T-064, p. 28.

<sup>2734</sup> P-0554: T-065, pp. 5, 24. The witness testified that her brother tried to speak in her favour so that she would be released but this was not accepted, and that he spoke but that this did not help the case (P-0554: T-065, pp. 5, 24). The Chamber finds that Sallaka Bent Al-Khair’s brother spoke on her behalf, contrary to the Prosecution allegation that no one was able to speak on her behalf ([Prosecution Final Brief](#), para. 269. *See also* [Defence Final Brief](#), para. 449). As to whether Sallaka Bent Al-Khair was able to call witnesses on her behalf and the conflicting positions of the parties on this point ([Prosecution Final Brief](#), para. 269; [Defence Final Brief](#), para. 449), the Chamber notes that in court Sallaka Bent Al-Khair testified that she was not able to call witnesses to defend herself (P-0554: T-064, p. 28; T-065, pp. 6-8). When confronted with her prior statement in which she stated ‘[I] did not bring witnesses to defend me. They told me that I could have done it, but I did not. They would not have been believed. They are suing, but not investigating. Even if someone had something to contradict them, he would not have been heard’, Sallaka Bent Al-Khair insisted that she was not told that she could bring witnesses to defend herself (P-0554: T-065, p. 8), although she also agreed with the proposition that she chose not to call any witnesses because the charge was true (P-0554: T-065, p. 24). Noting the nuances in the witness’s prior testimony on this point, the Chamber does not consider her testimony in court to contain a significant discrepancy on this issue although the Chamber makes no finding as to whether or not she could bring witnesses. However, on the calling of witnesses, D-0514 testified that, when the armed groups’ members came to Hamma M’Bara Arby’s place, Hamma M’Bara Arby came out and said that the woman was his wife and he was told ‘[w]ell, if she is your wife, leave her here and go and get some witnesses to testify to that effect’ (D-0514: T-208, p. 44). Nevertheless, it is unclear whether Sallaka Bent Al-Khair was present during this conversation and, in any case, the basis of knowledge of D-0514 on this issue is very unclear and seems to be based on what he heard. The Chamber therefore gives a very low probative value to D-0514’s statement on this matter.

<sup>2735</sup> P-0554: T-064, pp. 25-26; T-065, p. 8.

<sup>2736</sup> P-0554: T-065, p. 24.

<sup>2737</sup> Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378. The judgment states that the Islamic Court did not find that extra-marital sexual intercourse was established to the *Sharia* standard, in that this would have required direct observation by eye witnesses and that Sallaka Bent Al-Khair was sentenced to 95 lashes by way of *ta’zir*. Sallaka Bent Al-Khair testified that the sentence was pronounced (that she would be imprisoned and flogged with one hundred lashes) and afterwards she was taken to prison (P-0554: T-064, p. 29). According to P-0065, Sallaka Bent Al-Khair was sentenced to 80 lashes as a *ta’zir* punishment for adultery (P-0065: T-042, p. 20). The Chamber relies on the sentence as stated in the Islamic Court’s written judgment, however it considers the discrepancies between this and the number of lashes stated by Sallaka Bent Al-Khair and P-0065 to be minor. On whether Sallaka Bent Al-Khair was also sentenced to imprisonment, the Chamber refers to its finding below.

<sup>2738</sup> P-0554: T-064, p. 29.

<sup>2739</sup> Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378. On the authentication of this judgment *see also* the Chamber’s findings in section II.D above.

<sup>2740</sup> P-0554: T-064, p. 30.

lasted for about one hour.<sup>2741</sup> Sallaka Bent Al-Khair was detained for two to five days following her judgment.<sup>2742</sup>

845. On 1 January 2013, in a judgment in case 68/1434-2013, the Islamic Court sentenced Madou Traoré, a civilian inhabitant of Timbuktu, to a *ta'zir* of 50 lashes and a fine of 20,000 CFA riyals.<sup>2743</sup> The judgment states that Madou Traoré was arrested on the 'basis of a solid charge of extra-marital sexual intercourse' but that he denied the charges, that no eyewitnesses were found, and

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<sup>2741</sup> P-0554: T-064, p. 28.

<sup>2742</sup> The Prosecution alleges that Sallaka Bent Al-Khair was detained for approximately four days after the pronouncement of her sentence and before her flogging ([Prosecution Final Brief](#), para. 270), whereas the Defence submits that her account of being detained for several nights between her judgment and her flogging is factually impossible given that the Islamic Court judgment in her case and the video of her flogging are both dated 1 January 2013 ([Defence Final Brief](#), para. 451). The Chamber first notes that the witness's own account of having been detained between the judgment and her flogging is detailed and was consistent between direct and cross-examination, although there were some variations in her evidence on the precise length of her detention. Sallaka Bent Al-Khair testified that after her hearing before the Islamic Court she was taken to prison and detained for several days: she initially testified that she spent four days in this prison (P-0554: T-064, p. 31), then testified that she spent four to five days there (P-0554: T-065, p. 10), and then later stated that she spent two or three days at the prison (P-0554: T-065, p. 25). The Chamber does not consider the discrepancy on the number of days (between two or five) to be significant in context of her entire narrative. Second, the Chamber notes that when confronted during her testimony with a video of herself speaking in which she *did not* mention being detained between the judgment and the flogging (P-0554: T-065, pp. 18-23, *referring to* video MLI-OTP-0056-0270, transcript MLI-OTP-0069-2402, translation MLI-OTP-0080-1688), Sallaka Bent Al-Khair maintained that after the judgment (before the flogging), she was first taken to prison (P-0554: T-065, pp. 20, 25). Notwithstanding that she does not mention being detained a second time in this video, the Chamber does not consider this video necessarily to be contradicting her account of having been detained a second time. Third, the Chamber notes that she also provided some degree of detail with respect to the place where she says she was imprisoned (*see* P-0554: T-064, pp. 29-31; T-065, pp. 20, 25). Fourth, the Chamber notes that Sallaka Bent Al-Khair's testimony of having been detained at two separate locations is supported by P-0641, who testified that she was first imprisoned at the ATM and then was kept afterwards in the 'main prison' (P-0641: T-137, p. 60), although the Chamber notes that the basis of P-0641's knowledge of this information is unclear. Fifth, while the Chamber indeed finds below that P-0554's flogging occurred on 1 January 2013, it also recalls its finding above that the date of the Islamic Court judgment (1 January 2013) does not necessarily equate to the date of her hearing at the Islamic Court (*contra* [Defence Final Brief](#), para. 451). On the other hand, the Chamber notes that witness D-0514 testified that the flogging occurred two days after P-0554's arrest (D-0514: T-208, p. 44), but notes that the basis of knowledge of D-0514 on this issue is very unclear and seems to be based on what he heard, and the Chamber therefore gives a very low probative value to D-0514's statement on this matter. In addition, the Chamber notes that Sallaka Bent Al-Khair also testified that the Islamic Court indicated to her as part of her sentence that she would be sent to prison and then flogged (P-0554: T-064, p. 29), whereas her Islamic Court judgment states that she was sentenced to 95 lashes and does not mention imprisonment (*see* Islamic Court judgment MLI-OTP-0001-7413 (signed and stamped), translation MLI-OTP-0077-2378). Nevertheless, the Chamber does not consider this to be determinative of the matter. Therefore, taking the evidence on this matter as a whole, the Chamber accepts as credible and reliable Sallaka Bent Al-Khair's evidence that she was detained in between her judgment and the flogging for a period of between two to five days.

<sup>2743</sup> Islamic Court judgment MLI-OTP-0001-7411, translation MLI-OTP-0077-2373. On the authentication of this judgment *see also* the Chamber's findings in section II.D above. Based on the circumstances surrounding his sentence and flogging, the Chamber finds that Madou Traoré was a civilian member of the population of Timbuktu at the time of the charged events.

that he appeared before the Islamic Court.<sup>2744</sup>

846. Following, on 1 January 2013<sup>2745</sup> members of Ansar Dine/AQIM took Sallaka Bent Al-Khair by car to the public square at the Timbuktu market *Yoboutao*,<sup>2746</sup> together with Madou Traoré.<sup>2747</sup>

847. Members of the Islamic Police were present at the flogging, including Khaled,<sup>2748</sup> Ismael Diallo,<sup>2749</sup> and Demba Demba,<sup>2750</sup> as well as a member of the *Hesbah*, Al

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<sup>2744</sup> The Chamber notes the Defence's suggestion that it cannot reach '[a]ny conclusions concerning the proceedings before the Islamic Tribunal' in the case of Madou Traoré because of the '[a]bsence of evidence adduced on this issue' ([Defence Final Brief](#), para. 455). The Chamber however recalls its prior finding that the Islamic Court judgments, including the one issued against Madou Traoré, are reliable evidence. The Chamber further notes that, questioned as to how a sentence was reached in this case where the accused did not confess and there were no witnesses, P-0150 explained that when the Islamic Court thinks that the person is guilty but the requirement to impose a *hadd*, meaning a confession or witnesses, were not met, the *hadd* could not be applied to the accused; P-0150 added that since the Islamic Court believed, on the basis of available evidence, namely the Police reports submitted after interrogating the person, that the man was guilty, they came up with the *ta'zir* punishment (P-0150: T-095, p. 45, *referring to* Islamic Court judgment MLI-OTP-0068-4782). P-0150 testified that the punishment imposed was 'tough' because it was half the *hadd* prescribed by *Sharia* (P-0150: T-095, pp. 45-46). *See also* [Defence Final Brief](#), para. 372.

<sup>2745</sup> Concerning the date of the flogging, P-0065 recognised an email he sent on 3 January 2013 regarding the event (P-0065: T-042, pp. 28-30, *referring to* email MLI-OTP-0018-0977-R01, translation MLI-OTP-0069-3236-R01). While he did not remember how long after the event he sent the email as this would have depended on the availability of internet, he testified that he was sure that the event happened on a Tuesday because the email mentions a Tuesday and where [REDACTED] in the same week, they would mention only the day when the event took place (P-0065: T-042, pp. 29-30). The Chamber notes that 1 January 2013 was indeed a Tuesday. Based on the aforementioned, the Chamber concludes that the flogging of Sallaka Bent Al-Khair and Madou Traoré took place on 1 January 2013.

<sup>2746</sup> P-0554: T-064, pp. 31, 33. *See also* P-0065: T-042, pp. 4, 13; P-0641: T-138, p. 55, *referring to* video MLI-OTP-0018-0741; D-0514: T-208, p. 44.

<sup>2747</sup> P-0554: T-064, pp. 31-33. *See also* P-0554: T-064, p. 41, *referring to* video MLI-OTP-0018-0408, at 00:00:05:13. P-0641 testified that the Police officers were the ones who brought the woman in a van and flogged her (P-0641: T-138, p. 38). Concerning his basis of knowledge about the role of the Police, P-0641 stated that he was at his workplace when he was told that they were taking someone to be flogged, and that at that time the news was travelling about the town a lot and anyone who was interested could go and see (P-0641: T-138, p. 43).

<sup>2748</sup> Several witnesses identified Khaled on videos of this event: P-0150: T-095, p. 48, *referring to* video MLI-OTP-0018-0737; P-0150: T-099, p. 22, *referring to* video MLI-OTP-0018-0741, at 00:00:28:15; P-0065: T-042, p. 5, *referring to* video MLI-OTP-0018-0737, at 00:00:06:23; P-0065: T-042, pp. 20-21, *referring to* video MLI-OTP-0018-0408, at 00:00:01:07; P-0065: T-048, p. 71, *referring to* video MLI-OTP-0018-0737, at 00:00:15:16; P-0065: T-048, p. 72; P-0065: T-048, p. 72; T-049, pp. 4, 7-10; P-0641: T-138, p. 53, *referring to* video MLI-OTP-0072-0240, at 00:01:04:16; P-0099: T-146, p. 33, *referring to* video MLI-OTP-0018-0408, at 00:00:02:00. P-0065 testified that he could not remember who was in charge of executing the punishment but as Khaled who was the head of the Islamic Police was present, it is likely that he was in charge of execution of the punishment (P-0065: T-042, p. 9).

<sup>2749</sup> *See findings below on the role of Ismael Diallo in the flogging.*

<sup>2750</sup> P-0641: T-138, pp. 55-56, *referring to* video MLI-OTP-0018-0741, 00:00:24:05 and video MLI-OTP-0018-0742, at 00:00:08:12. *See also* P-0582's statement MLI-OTP-0062-4318-R02, at 4337-4338, *referring to* video MLI-OTP-0018-0742, at 00:00:08:24; P-0641: T-138, p. 54.

Yazid,<sup>2751</sup> among other members of Ansar Dine/AQIM.<sup>2752</sup> Members of Ansar Dine/AQIM present secured the site of the flogging.<sup>2753</sup>

848. In front of a crowd of people, including children,<sup>2754</sup> member of the *Hesbah* Al Yazid read out Sallaka Bent Al-Khair's and Madou Traoré's sentences via a megaphone.<sup>2755</sup>

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<sup>2751</sup> See finding below on the role of Al Yazid in the reading of Sallaka Bent Al-Khair's sentence.

<sup>2752</sup> Concerning the presence of Mr Al Hassan, the Chamber notes that P-0065 initially identified an individual in video MLI-OTP-0018-0407 as Mr Al Hassan (P-0065: T-042, p. 9, referring to video MLI-OTP-0018-0407, at 00:00:10:00 (referring to the person on the extreme left of the image)), but that when looking at a better quality version of the video, testified that he did not think that this was Mr Al Hassan (P-0065: T-048, p. 71 and generally pp. 63-70, referring to video MLI-OTP-0018-0742, at 00:00:11:00 and 00:00:12:00, and screenshots MLI-D28-0004-3458 (screenshot from video MLI-OTP-0018-0742, at 00:00:11:00), MLI-D28-0004-3453 (enlarged version of MLI-D28-0004-3458), and MLI-D28-0004-3459 (screenshot from video MLI-OTP-0018-0742, at 00:00:12:00). The Chamber further notes that P-0150 testified that whether or not Mr Al Hassan was present during the event filmed on video MLI-OTP-0018-0741 was not something that could be found out just by watching the video because the film did not cover everything (P-0150: T-118, p. 44). The Chamber makes no finding on Mr Al Hassan's presence at this event based on the foregoing evidence (see also [Defence Final Brief](#), paras 385, 516). As to the presence of others at this event, see also Mr Al Hassan's statement MLI-OTP-0062-1194, at 1206-1208 referring to video MLI-OTP-0018-0406 (testifying that he recognised *Yoboutao* on this video, and identifying people on the video as a mix of the Police, the *Hesbah*, the army, and a lot of soldiers); Mr Al Hassan's statement MLI-OTP-0062-1194, at 1212-1214, 1216, referring to video MLI-OTP-0018-0407, at 00:00:05:12 (testifying that the person on the far right of the screen is a Foulani member of the Police although Mr Al Hassan does not remember his name and testifying that the person is wearing a military jacket and a gun and that it was normal for the Police to dress like that); Mr Al Hassan's statement MLI-OTP-0062-1218, at 1226-1227, referring to video MLI-OTP-0018-0401 (testifying that the person on the left of the person being flogged is the same Foulani member of the Police as previously identified); Mr Al Hassan's statement MLI-OTP-0062-1218, at 1232-1233, referring to video MLI-OTP-0018-0408, at 00:00:03:02 (testifying that the person on the left of the image wearing a black turban looks like member of the *Hesbah* called Abu Charhabil Al Libi).

<sup>2753</sup> See videos MLI-OTP-0018-0400, MLI-OTP-0018-0401 MLI-OTP-0018-0402, MLI-OTP-0018-0404, MLI-OTP-0018-0407, MLI-OTP-0018-0408, MLI-OTP-0018-0737, MLI-OTP-0018-0738, MLI-OTP-0018-0741, MLI-OTP-0018-0742, MLI-OTP-0018-0030, MLI-OTP-0072-0240, which depict members of Ansar Dine/AQIM, many of whom are armed, surrounding Sallaka Bent Al-Khair and Madou Traoré before, after and during the floggings. The Chamber considers that by doing so they were securing the site of the floggings, noting also that the same was done for other public floggings carried out by Ansar Dine/AQIM at the time (see e.g. paragraph 785 above regarding the flogging of P-0565 and P-0557).

<sup>2754</sup> The Chamber notes that the crowd can be seen in videos MLI-OTP-0018-0741, MLI-OTP-0018-0742, and MLI-OTP-0072-0240. Although these videos are related to Sallaka Bent Al-Khair, the Chamber considers that the crowd depicted equally relates to Madou Traoré, noting the direct proximity between Madou Traoré's flogging and Sallaka Bent Al-Khair's. The Chamber also notes that P-0641 testified that he was present at the flogging (P-0641: T-137, p. 60; T-138, p. 38). While he did not remember her name, the Chamber is satisfied that this part of P-0641's evidence refers to Sallaka Bent Al-Khair, noting that he referred to her as the woman who was taken to the ATM after she was caught with a man who was married and who got on his motorbike and fled when she was caught (P-0641: T-137, p. 60), and recognised her flogging on videos which the Chamber has found relate to Sallaka Bent Al-Khair's flogging.

<sup>2755</sup> Video MLI-OTP-0018-0408, transcript MLI-OTP-0069-9200, translation MLI-OTP-0069-9200, video MLI-OTP-0018-0741, transcript MLI-OTP-0068-0103, translation MLI-OTP-0078-1889, video MLI-OTP-0018-0742, transcript MLI-OTP-0069-2653, translation MLI-OTP-0077-0735. P-0065

849. Members of Ansar Dine/AQIM flogged Madou Traoré first.<sup>2756</sup> Before being flogged, members of Ansar Dine/AQIM made Madou Traoré remove a jumper he was wearing.<sup>2757</sup> He was flogged<sup>2758</sup> at least 39 times in total,<sup>2759</sup> by at least

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testified that an individual with a loudspeaker announced the case for which the punishment would be executed and its details to the audience present (P-0065: T-042, p. 6, *referring to* video MLI-OTP-0018-0737, at 00:00:06:23, transcript MLI-OTP-0069-1469, translation, MLI-OTP-0078-1307). The Chamber notes that P-0150 identified the person reading Madou Traoré's sentence in video MLI-OTP-0018-0737 as Al Yazid, a member of the *Hesbah* who worked with Al Mahdi (P-0150: T-095, p. 48, *referring to* video MLI-OTP-0018-0737). The Chamber notes that this is the same person featured in videos MLI-OTP-0018-0741 and MLI-OTP-0018-0742 reading the sentence of Sallaka Bent Al-Khair. *See also* Mr Al Hassan's statement MLI-OTP-0062-1218, at 1229-1231, *referring to* video MLI-OTP-0018-0408, at 00:00:08:07. The Chamber notes that this person read out Madou Traoré's judgment as follows '[...] [w]ho was arrested on a serious charge of extramarital sexual intercourse and who denied it, having failed to identify any witnesses who saw him with their own eyes, we have sentenced him to the following: first, to the *ta'zir* of 50 lashes, and second, to the fine of 20,000 CFA riyals. Allah is the Arbiter of success. Praise be to Allah, Lord of the worlds. The Judicial Council, Tombouctou *Sharia* Court, presided over by Judge Sheikh Mohamed Bin-Houssein, alias, Houka Houka' (*see* P-0150: T-095, p. 49, *referring to* video MLI-OTP-0018-0407, transcript MLI-OTP-0069-2651, translation MLI-OTP-0077-0729). The Chamber notes that these details correspond to the content of Islamic Court judgment MLI-OTP-0001-7411, translation MLI-OTP-0077-2373 relating to Madou Traoré.

<sup>2756</sup> P-0065: T-042, p. 20, *referring to* video MLI-OTP-0018-0408, at 00:00:05:19). *See also* P-0554: T-064, pp. 33-34.

<sup>2757</sup> P-0065: T-042, pp. 7, 10-11.

<sup>2758</sup> Commenting on the way the flogging was conducted, P-0150 testified that the person depicted on video MLI-OTP-0018-0738, at 00:00:17:07, was a member of the *Hesbah* and was holding a stick from a green tree, a new one, in his hand (P-0150: T-095, p. 50). P-0150 testified that a member of the *Hesbah* was expected to inspect the quality of the tool which would be used for beating because this falls under prescribed rules and therefore requires inspection (P-0150: T-095, p. 50). P-0150 testified that normally in a case of flogging, a stick would be used made from tree material that is not solid (P-0150: T-095, pp. 50-51). P-0150 testified that the stick had to be green and could not be very thick, thin, long or short (P-0150: T-095, p. 51). The Chamber observes that the person holding the stick, wearing a black turban, appears to be preparing to begin to beat Madou Traoré. Regarding video MLI-OTP-0018-0400, P-0150 stated that he did not see anything in violation of the prescribed rules of how to carry out a beating (P-0150: T-095, p. 51). P-0150 explained that according to the prescribed rules, the person doing the beating should be 'an average man, average in terms of his bodily strength, not too strong and not too weak, and when he beats he should not raise his hand so high that his armpit would appear' (P-0150: T-095, p. 51). P-0150 stated that the *Hesbah* would ask the person to hold his hand with a rope to ensure that the hand stays a certain level (P-0150: T-095, p. 51). P-0150 testified that he did not know whether the person doing the beating in video MLI-OTP-0018-0400 followed the rules or was '[j]ust beating like a regular kind of beating' (P-0150: T-095, p. 51). The Chamber notes that in video MLI-OTP-0018-0400, the person administering the flogging is not visible save for part of their hand. Regarding video MLI-OTP-0018-0739, P-0150 noted that in his view, the manner in which the flogging was carried out was similar to the rules (P-0150: T-095, pp. 51-52). P-0150 stated however that the nature of the person was also a factor (P-0150: T-095, p. 52). According to P-0150, the person implementing the sentence in this video might be someone of a strong bodily strength and thus did not qualify to carry out the beating according to the rules (P-0150: T-095, p. 52). P-0150 indicated that in his view, the person implementing the sentence was trying to follow the rules by not raising his arm and only moving the first part of the arm; however, in P-0150's view, the man was not fully in compliance with the guidelines (P-0150: T-095, p. 52, *referring to* video MLI-OTP-0018-0739). Having regard to the nuances of P-0150's testimony on the way the flogging was conducted, and in particular noting the abovementioned limitations of what can be seen in video MLI-OTP-0018-0400, the Chamber does not consider this evidence supportive of the Defence assertion that P-0150 testified that Madou Traoré was flogged in a manner 'fully compliant' with *Sharia* (*contra* [Defence Final Brief](#), para. 487).

<sup>2759</sup> Videos MLI-OTP-0018-0739, MLI-OTP-0018-0401, MLI-OTP-0018-0400. Although the Chamber notes that video MLI-OTP-0018-0400 does not depict the identity of the person conducting the flogging,

two members of the Islamic Police: Khaled,<sup>2760</sup> and Ismael Diallo.<sup>2761</sup> Despite evidently attempting to maintain his composure, Madou Traoré showed visible signs of being in pain as he was flogged.<sup>2762</sup> He was also bleeding following the flogging.<sup>2763</sup>

850. After his flogging, Madou Traoré got into a car and members of Ansar Dine/AQIM brought Sallaka Bent Al-Khair out of the car to be flogged.<sup>2764</sup>

851. Sallaka Bent Al-Khair was visibly in significant pain during her flogging by members of Ansar Dine/AQIM, writhing around and crying out and collapsing

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the Chamber is satisfied that it is not duplicative of the other two videos MLI-OTP-0018-0739 or MLI-OTP-0018-0401, noting that each of these three video recordings is filmed from a different vantage point and that [REDACTED].

<sup>2760</sup> P-0065: T-042, pp. 10-11, *referring to* video MLI-OTP-0018-0738, at 00:00:17:07; P-0065: T-042, p. 17-18, *referring to* photograph MLI-OTP-0018-2654. Concerning the whip Khaled used, P-0065 explained that the image did not clearly show what the whip was made of, but there were two possibilities: it could be leather, or it could be a stick (P-0065: T-042, p. 18).

<sup>2761</sup> P-0582's statement MLI-OTP-0062-4340-R02, at 4342, *referring to* MLI-OTP-0018-0401; at 00:00:00:15, at 4335-4336, *referring to* MLI-OTP-0018-0739, at 00:00:14:17. *See also* P-0065: T-042, p. 15, *referring to* MLI-OTP-0018-0739, at 00:00:13:06. The Chamber also notes that P-0641 testified that an individual, who the Chamber considers is the same aforementioned person as the one identified by P-0582 and P-0065, was 'a Peulh person who was one of the Islamists' (P-0641: T-138, p. 38; T-138, pp. 44, 48, *referring to* video MLI-OTP-0072-0240, at 00:00:41:19).

<sup>2762</sup> Videos MLI-OTP-0018-0400 and MLI-OTP-0018-0739. *See also* P-0065: T-042, pp. 6-7, 12.

<sup>2763</sup> Video MLI-OTP-0018-0739. In relation to the red trace on the white t-shirt Madou Traoré wore, P-0065 said that it could be blood or paint and that he was not sure; he explained that he did not remember seeing any traces before the flogging started, [REDACTED] (P-0065: T-042, pp. 14-17, *referring to* video MLI-OTP-0018-0739, at 00:00:01:05). The Chamber notes that according to P-0065, [REDACTED] it was paint and not blood, although he was not certain (P-0065: T-042, pp. 14, 17, *referring to* video MLI-OTP-0018-0401). The Chamber considers, having regard to the nature of the red trace and the fact that Madou Traoré was being flogged on the back, that the red trace is blood, not paint and infers that the blood resulted from the flogging (*contra* [Defence Final Brief](#), para. 487). The Chamber further notes that P-0065 testified that he did not remember having seen anyone bleeding during a flogging (P-0065: T-047, pp. 49, 52). The Chamber does not consider this testimony to be determinative on this issue. The Chamber further notes that Sallaka Bent Al-Khair testified that Madou Traoré was flogged until his back was full of wounds (P-0554: T-064, p. 33). *See also* Mr Al Hassan's statement MLI-OTP-0062-1218, at 1235-1236, *referring to* video MLI-OTP-0018-0408, at 00:00:06:00 (observing that on the t-shirt is a trace that looks like blood).

<sup>2764</sup> P-0065: T-042, p. 21, *referring to* video MLI-OTP-0018-0408, at 00:00:05:19. Regarding the car, P-0065 testified that it was an Islamic Police vehicle, which was always used by Islamic Police members, usually to bring someone to execute a punishment in a public square (P-0065: T-042, pp. 6, 8-9, *referring to* video MLI-OTP-0018-0737, at 00:00:06:23 and video MLI-OTP-0018-0407, at 00:00:33:09). However, P-0065 nonetheless noted that, as vehicles were shared between different sections, it could have equally been used by the *Hesbah* (P-0065: T-046, p. 49; T-049, p. 11). P-0065 identified the poster on the right-hand rear window of the car as the logo and banner of the Islamic groups, including Al-Qaeda and Ansar Dine: a black banner on which is written 'There is no God but God' (P-0065: T-042, pp. 8-9, *referring to* video MLI-OTP-0018-0407, at 00:00:33:09). P-0641 also identified this car as the 'police van' (P-0641: T-138, p. 56, *referring to* video MLI-OTP-0018-0408, at 00:00:01:21). *See also* P-0641: T-138, p. 38. *See also* Mr Al Hassan's statement MLI-OTP-0062-1194, at 1208-1210 *referring to* video MLI-OTP-0018-0406, at 00:00:09:17.

on the ground.<sup>2765</sup> Sallaka Bent Al-Khair's breasts became exposed at one stage during her flogging.<sup>2766</sup> A member of Ansar Dine/AQIM paused the flogging, ordered that Sallaka Bent Al-Khair not be filmed, and covered her with a jacket; then the flogging continued.<sup>2767</sup> She was flogged by a number of persons,<sup>2768</sup> including member of the Islamic Police, Ismael Diallo.<sup>2769</sup> Concerning the way the flogging was inflicted, P-0150 explained by reference to a video of the event that no rules were taken into consideration, and that everything was done 'just as the group liked'.<sup>2770</sup> P-0641 testified that the flogging really disgusted everyone and '[r]eally broke his heart'.<sup>2771</sup> Members of Ansar Dine/AQIM flogged Sallaka

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<sup>2765</sup> Videos MLI-OTP-0018-0744, MLI-OTP-0018-0404, MLI-OTP-0018-0402, MLI-OTP-0072-0240. See also Mr Al Hassan's statement MLI-OTP-0062-1239, at 1243-1244, referring to video MLI-OTP-0018-0030 (stating that he can hear the woman on the extract crying and thinks she is crying because she is being flogged).

<sup>2766</sup> Videos MLI-OTP-0018-0744, MLI-OTP-0018-0404, MLI-OTP-0072-0240. P-0065 testified that Sallaka Bent Al-Khair continued to uncover her chest out of pain and that to be partially nude like that in public in the circumstances was '[a] scandal [...] by all measures' (P-0065: T-042, pp. 26-27, referring to video MLI-OTP-0018-0402). Concerning the state of undress of the witness in video MLI-OTP-0018-0744, P-0150 testified that for a man, they could take off any clothing that might reduce the level of pain, removing the first layer of thick clothing (called '*dithar*') and leaving the second one of thin clothing (called '*shar*') (P-0150: T-099, p. 24); however, 'according to all evidence', it was important for a woman to be covered while she is beaten (P-0150: T-099, p. 24). The Chamber considers speculative the Defence assertion that Sallaka Bent Al-Khair chose not to wear clothes under her scarf, which resulted in her inadvertent exposure ([Defence Final Brief](#), para. 487).

<sup>2767</sup> Video MLI-OTP-0018-0402; P-0065: T-042, p. 26, referring to video MLI-OTP-0018-0402; video MLI-OTP-0072-0240, transcript MLI-OTP-0080-1440, translation MLI-OTP-0080-1444.

<sup>2768</sup> The Chamber notes that videos MLI-OTP-0018-0402, MLI-OTP-0018-0404, MLI-OTP-0018-0744 and MLI-OTP-0072-0240 show Sallaka Bent Al-Khair being flogged by different persons.

<sup>2769</sup> The Chamber notes that videos MLI-OTP-0018-0744 and MLI-OTP-0072-0240 show Sallaka Bent Al-Khair being flogged by the person identified by P-0582 as Ismael Diallo (see P-0582's statement MLI-OTP-0062-4340-R02, at 4342, referring to video MLI-OTP-0018-0401, at 00:00:00:15; MLI-OTP-0062-4318-R02, at 4335-4336, referring to video MLI-OTP-0018-0739, at 00:00:14:17) and recalls that P-0065 testified that he recognised this person as a member of the Islamic Police (P-0065: T-042, p. 15, referring to video MLI-OTP-0018-0739, at 00:00:13:06). The Chamber notes that it does not rely on evidence from Sallaka Bent Al-Khair herself to establish that this individual was a member of the Islamic Police (*contra* [Defence Response Brief](#), para. 4, footnote 20).

<sup>2770</sup> P-0150: T-099, p. 27, referring to video MLI-OTP-0018-0404. The Chamber notes that Sallaka Bent Al-Khair herself stated, when testifying about the arrival of the armed groups in Timbuktu, that '[o]ur dignity was disregarded [...] Islam does not tolerate the humiliations that they inflicted upon people' (P-0554: T-064, p. 11).

<sup>2771</sup> P-0641: T-139, p. 33 (testifying that the flogging caused a great deal of impact, 'affected us a great deal', and really disgusted everyone. He testified that it really broke his heart, and that as for the children who were there, he thought that they should not even have seen such things, an adult being struck and parts of her body out). The Chamber notes that while Sallaka Bent Al-Khair is not named in this part of P-0641's evidence, the Chamber is satisfied that she is the individual referenced, noting that the question which preceded this response referred to a part of P-0641's prior statement where he discussed having witnessed her flogging (see P-0641: T-139, pp. 31-33).



Bent Al-Khair at least 50 times.<sup>2772</sup>

852. Sallaka Bent Al-Khair suffered from injuries and still has painful scars on her back and shoulders from the flogging.<sup>2773</sup> She also has health issues, including blood pressure.<sup>2774</sup> Sallaka Bent Al-Khair was very ashamed due to the flogging and still suffers socially.<sup>2775</sup> She felt that since this event, everyone speaks badly behind her back and she cannot go out, talk to her friends in public or go to public ceremonies.<sup>2776</sup> She feels pain because people talk about it, even to her children.<sup>2777</sup>

### i) Case of the old man named Foma

853. For the factual findings in this section the Chamber relies primarily on the testimony of P-0603 who personally saw what happened to the victim and who knew him well and which, subject to discrete aspects discussed below, the Chamber finds particularly reliable. The Chamber also refers to P-0639's

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<sup>2772</sup> Videos MLI-OTP-0072-0240; MLI-OTP-0018-0402, MLI-OTP-0018-0404. Although video MLI-OTP-0072-0240 was filmed by a different person than the individual who filmed videos MLI-OTP-0018-0402 and MLI-OTP-0018-0404 (*see above*), the Chamber is satisfied that it is not duplicative of the other two videos, noting that in video MLI-OTP-0018-0402 the victim is covered with a jacket, which is not the case in video MLI-OTP-0072-0240, and that in video MLI-OTP-0018-0404, a different person is conducting the flogging than the one shown in video MLI-OTP-0072-0240, which can be seen clearly from the different shoes worn by the person conducting the flogging.

<sup>2773</sup> P-0554: T-064, p. 37. The Chamber also notes that video MLI-OTP-0009-1749, at 00:06:03:00 to 00:07:05:00, transcript MLI-OTP-0028-0839, at 0844-0845 depicts a woman being interviewed. The Chamber is of the view that this woman is Sallaka Bent Al-Khair, noting her name and the fact that the video states that she was flogged 95 times in public for adultery. In this video, Sallaka Bent Al-Khair shows scars which are said to be from the flogging. The Chamber notes that P-0065 confirmed that his impression when he saw the marks in this video was that they were not from flogging but that they were likely from skin products (P-0065: T-047, pp. 49, 52). The Chamber considers P-0065's comments on this point to be speculative and does not rely on this part of his evidence (*contra* [Defence Final Brief](#), para. 487). *See also* P-0984: T-068, p. 73.

<sup>2774</sup> P-0554: T-064, pp. 42-43. *See also* P-0984: T-068, p. 75). The Chamber recalls its finding above that the issue of Hamma M'Bara Arby having received compensation from the Prosecution to cover certain medical expenses for himself and his family has no impact on the credibility of his evidence.

<sup>2775</sup> P-0554: T-064, pp. 42-43. *See also* P-0984: T-068, p. 73. The Chamber notes that these comments are consistent with Sallaka Bent Al-Khair's own statements in video MLI-OTP-0009-1749, at 00:06:03:00 to 00:07:05:00, transcript MLI-OTP-0028-0839, at 0844-0845, that she was ashamed at the time to be hit in front of everyone and that she would have preferred to die rather than suffer the shame, and that when she leaves her house today, she is still ashamed. *See also* article MLI-OTP-0059-0391, at 0393 (reporting that, in describing her experience, she stated '[e]verybody was there: women, children, every kind of people [...] I had blood everywhere [...] I will never forget what they did to me'). The Chamber notes that article MLI-OTP-0059-0391 was written by journalist David Blair (P-0010) based on his interview with Sallaka Bent Al-Khair (P-0010: T-020, p. 21; T-021, pp. 21-22) and published on 3 February 2013.

<sup>2776</sup> P-0554: T-064, p. 42.

<sup>2777</sup> P-0554: T-064, p. 43.

statement which it also finds reliable with regard to key aspects of this event.<sup>2778</sup>

854. One afternoon in 2012 before Ramadan,<sup>2779</sup> an elderly Black civilian man of about 50-60 years old, known as Foma, thin and short in stature, was in a public street<sup>2780</sup> when Aboubacar Al Chinguetti<sup>2781</sup> approached him and tried to take him away by force for smoking a cigarette.<sup>2782</sup> When he refused, the old man fell to the ground and Aboubacar Al Chinguetti flogged him with ten lashes on the spot, in the market, in front of others.<sup>2783</sup>

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<sup>2778</sup> The Chamber refers to its findings on the credibility and reliability of P-0603's and P-0639's evidence (see footnote 2286 above and footnote 2786 below). With regard to this particular incident, both witnesses were able to provide detailed first-hand information and made clear distinctions about what they did and did not know. The Chamber considers it clear from her testimony that P-0603 witnessed the incident herself (P-0603: T-125, p. 25 ('I saw a case, of an old person called Foma')), and observes that P-0603 provided clear details about the identity of the victim and the circumstances of the incident (P-0603: T-125, pp. 25-26) (*contra* [Defence Final Brief](#), para. 480). P-0639's evidence is consistent with P-0603's testimony regarding the fact that an old man was beaten in the market for smoking a cigarette. The Chamber finds P-0639's evidence in relation to this specific incident to be reliable. Besides P-0603's and P-0639's testimony, the Chamber notes that P-0641 was also asked about this incident during his testimony. P-0641 confirmed that he did not know an individual called Foma who sold sheep at the market, nor had he heard of any incidents concerning people who sold sheep at the market. However, he also conceded that 'there are a lot of people who sell sheep' (P-0641: T-140, p. 13). The Chamber considers that P-0641's absence of knowledge of this incident does not in essence contradict the narrative of the other two witnesses who testified in detail about the occurrence of this event.

<sup>2779</sup> P-0603: T-125, pp. 25-26; P-0639's statement MLI-OTP-0072-0290-R03, at 0307, para. 57. The Chamber recalls its finding that P-0557's flogging took place around June 2012 (see paragraph 770 above). Noting P-0603's specification that the incident occurred before Ramadan in 2012 and the references in her evidence of the event to the person known as Feraoun and the prohibition on smoking (see below), as well as P-0639's evidence on the timing of the event, the Chamber is satisfied that the event occurred during the period of the charges (*contra* [Defence Final Brief](#), para. 479).

<sup>2780</sup> P-0603: T-125, pp. 25-26; P-0639's statement MLI-OTP-0072-0290-R03, at 0307, para. 57. Based on the witnesses' description of the elderly man, the Chamber finds that Foma was a civilian member of the population of Timbuktu at the time of the charged event.

<sup>2781</sup> P-0603: T-125, pp. 25-26; P-0639's statement MLI-OTP-0072-0290-R03, at 0307, para. 57. P-0603 explained she did not know the name of this individual but could recognise him if she saw him, and described him as very tall and dark, and very wicked and severe, and stated that it was why they called him 'Faraouna' (P-0603: T-125, pp. 25-26). The Chamber notes that D-0514 testified that member of Ansar Dine/AQIM Aboubacar Al Chinguetti was known as 'Feraoun' because he would flog people forcefully (D-0514: T-208, pp. 56-57) (see paragraph 529 above). The Chamber considers that P-0603 clearly described the person who carried out the flogging and explained that she knew him only by the name 'Faraouna' (*contra* [Defence Final Brief](#), para. 480). P-0639 describes the people who flogged the man as (in French) '*malfaiteurs*', although he did not personally see them as he arrived after the event (P-0639's statement MLI-OTP-0072-0290-R03, at 0307, para. 57). In relation to the term '*malfaiteurs*', P-0639 refers in another part of his statement to the (in French) '*malfaiteurs djihadistes*' who came to apply *Sharia* in Timbuktu (P-0639's statement MLI-OTP-0072-0290-R03, at 0295, para. 23). Based on the timing of the event during the control of the city by the armed groups and the way the witnesses described the man who flogged Foma, the Chamber infers that Foma was flogged by a member of Ansar Dine/AQIM during the groups' control of Timbuktu in 2012, specifically member of Ansar Dine/AQIM Aboubacar Al Chinguetti, who was also known as Feraoun (*contra* [Defence Final Brief](#), paras 480-481).

<sup>2782</sup> P-0603: T-125, pp. 24-26; P-0639's statement MLI-OTP-0072-0290-R03, at 0307, para. 57.

<sup>2783</sup> P-0603: T-125, pp. 25-26; P-0639's statement MLI-OTP-0072-0290-R03, at 0307, para. 57.

855. Foma was seen crying in the middle of the market right after the event.<sup>2784</sup>  
Following the incident, he was unwell and uneasy.<sup>2785</sup>

**j) Case of Azahara Abdou (P-1134)**

856. For the factual findings in this section related to Azahara Abdou (P-1134)'s arrest and detention, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: P-0639,<sup>2786</sup> who is closely related to Azahara Abdou and who witnessed Azahara Abdou's arrest, went to the BMS following the arrest, and saw her shortly after her release; P-0603,<sup>2787</sup> who is also Azahara Abdou's relative and who saw Azahara Abdou at the BMS while Azahara Abdou was detained there and spoke to her after her release from detention; and P-0641,<sup>2788</sup> who also saw Azahara Abdou while she was in detention at the BMS.

857. For the factual findings in this section related to Azahara Abdou's rape<sup>2789</sup> in detention, the Majority, Judge Akane dissenting,<sup>2790</sup> relies primarily on the following evidence which, subject to discrete aspects discussed below, it finds

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<sup>2784</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0307, para. 57.

<sup>2785</sup> P-0603: T-125, p. 25 (explaining that since the incident, Foma 'is not calm, or his spirits are not well').

<sup>2786</sup> P-0639 (*see* P-0639: T-136; P-0639's statement MLI-OTP-0072-0290-R03 introduced through Rule 68(3) of the Rules), a Muslim Songhai man, was born in Timbuktu and moved in and out of the city while Ansar Dine/AQIM where there (P-0639: T-136, pp. 42-43; P-0639's statement MLI-OTP-0072-0290-R03, at 0311, para. 68). [REDACTED] (P-0639: T-136, p. 29; P-0639's statement MLI-OTP-0072-0290-R03, at 0302, para. 46). He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including Azahara Abdou's victimisation. P-0639 clearly distinguished in his testimony events that he saw or heard himself, readily acknowledging where information he gave was based on what he heard from others (*see e.g.* P-0639: T-136, pp. 43-44). In relation to Azahara Abdou in particular, the Chamber observes that P-0639 was able to provide detailed information on what he directly witnessed and made clear distinctions about what he did and did not know. Concerning the discrepancies raised by the Defence between the evidence of P-0639 and other witnesses, the Chamber considers that this does not impact the credibility of his account, finding that P-0639 testified in a detailed and contextualised manner about his own personal experiences (*see e.g.* P-0639: T-136, pp. 50-55). When asked whether it was correct that 'a lot of stories were told about [Azahara Abdou] in 2012', P-0639 testified convincingly that he was not aware of that (P-0639: T-136, p. 55). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0639 to be a generally credible and reliable witness.

<sup>2787</sup> The Chamber refers to its findings on the credibility and reliability of P-0603's evidence (*see* footnote 2286 above).

<sup>2788</sup> The Chamber refers to its findings on the credibility and reliability of P-0641's evidence (*see* section II.B.2.a)vii above).

<sup>2789</sup> The Chamber notes that the use of the word 'rape' within the factual findings is intended to have a purely factual meaning, as it transpires from the evidence before the Chamber, and is not intended to pre-suppose legal findings, which are addressed subsequently.

<sup>2790</sup> **Judge Akane** dissents in that she does not consider there to be a sufficient evidentiary basis to find that Azahara Abdou was raped while detained at the BMS, for the reasons below.

particularly reliable: a press article written by journalist David Blair (P-0010)<sup>2791</sup> after he interviewed Azahara Abdou in February 2013,<sup>2792</sup> the core facts of which

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<sup>2791</sup> David Blair (*see* P-0010: T-020; T-021), a former journalist, was the chief foreign correspondent for the *Daily Telegraph* from 2011 to 2016 (P-0010: T-020, p. 6). The witness reported from Timbuktu from 1 to 5 February 2013, and notably testified as to the circumstances of his collection of certain documents written in Arabic, which he found amidst the rubble of a former AQIM training centre (P-0010: T-020, pp. 6-9, 12-13; T-021, p.13), as well as his interviews with local inhabitants (*see e.g.* P-0010: T-020, pp. 21-22; T-021, pp. 21-23, 33-35). The Chamber considers that the witness provided very precise answers, giving details where he clearly recalled information (P-0010: T-021, pp. 10, 31) and not speculating when he did not (P-0010: T-021, p. 11). The witness also specified the basis of his knowledge and working methodologies, noting that he received information relevant to his reporting by speaking to people, moving around the city and working with the aid of a local guide (P-0010: T-020, p. 8). The Chamber finds the witness' account of his collection, storage and transmission of documents to the Prosecution, and his assurances that – to the best of his knowledge – they were not modified or tampered with (P-0010: T-020, pp. 12-13, 19; T-021, pp. 13-14, 20. *See also* P-0963's Declaration MLI-OTP-0072-0449-R01; P-0102's report MLI-OTP-0074-1909; P-0102: T-023, pp. 25-26) to be credible and reliable. In relation to libel proceedings brought against the *Daily Telegraph* in the United Kingdom in respect of the publication of the contents of documents found by the witness in 2003 and related articles, several of which are attributed to him (*see* [Defence Final Brief](#), para. 151; MLI-D28-0004-0224), the Chamber notes that although the court in those proceedings found that the *Daily Telegraph* had adopted and embellished statements in the documents, the authenticity of the documents, and the witness's account of how he found them was not in question (P-0010: T-021, p. 27, *referring to* MLI-D28-0004-0224). Whilst the Chamber is mindful of the witness's association with these allegations of 'embellishment', it finds in the aforementioned context that these proceedings do not undermine the overall credibility and reliability of the witness or the article he authored in relation to Azahara Abdou, also particularly having regard to the witness's detailed account on the process he followed to interview the victim and the writing and publishing of said article (P-0010: T-021, pp. 33-37. *Contra* [Defence Final Brief](#), para. 151). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds David Blair to be a generally credible and reliable witness. As to the probative value and reliability of articles written by the witness, the Chamber's observations are set out below.

<sup>2792</sup> Article MLI-OTP-0059-0391. David Blair testified that he interviewed Azahara Abdou as part of his visit to Timbuktu in February 2013 and published an article based on her story on 3 February 2013 (P-0010: T-020, pp. 7, 21; T-021, p. 35, *referring to* article MLI-OTP-0059-0391). The Chamber notes that David Blair had a precise recollection of the date and manner in which he came to meet with Azahara Abdou and interview her (*see* P-0010: T-020, pp. 21-22; T-021, pp. 21-23, 33-35). The Chamber also notes that Azahara Abdou told David Blair that she had been taken to a hospital to be treated and that David Blair did not go to the hospital to verify this (P-0010: T-021, p. 22). Nevertheless, the Chamber finds David Blair credible and reliable when he testified that the interview with Azahara Abdou was the basis for the story of the female victim which he described in the article (P-0010: T-020, p. 21). The Chamber notes that not only does David Blair remember details about how he came to meet and interview Azahara Abdou but he also remembers talking with her at quite some length about whether or not she would accept her name and her picture to be revealed in the article, which she agreed to (*see* P-0010: T-021, pp. 23, 34-35). He testified that the conversation with her was translated by his guide, and that the interview took place in a quiet area just outside the victim's home (P-0010: T-021, p. 34). The Chamber notes that David Blair did not speculate about the exact length of the interview (P-0010: T-021, pp. 34-35) and that he testified to having written his article a short time after the interview took place, following the notes he had taken during the interview (P-0010: T-021, pp. 35-36). He added that he had read a previous interview of Azahara Abdou published by another press agency although he did not refer to this other article in his article (P-0010: T-021, p. 36). David Blair also testified that if any changes were made to the substance of the article during the editing process then he would expect to receive a call to discuss this, and that he does not remember any conversation of that kind in relation to this article (P-0010: T-021, p. 37). Based on the foregoing, the Chamber is satisfied that David Blair's interview with Azahara Abdou in February 2013 formed the basis of the article, that David Blair wrote the article a short time after the interview took place, and that there were no changes on substance to the article between its writing and publication. The Chamber considers the removal of redactions to this article (to a signature on the bottom of the document and identity of the source) immaterial to any of the witness testimony

are repeated in other press material related to Azahara Abdou.<sup>2793</sup> The Chamber

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regarding it (*contra* Defence objection to the submission of the unredacted version in ICC-01/12-01/18-2148-Conf-Anx1) and relies on the unredacted version of the article. In light of David Blair's detailed description of the interview process and his clear recollection of it and identification of Azahara Abdou as the interviewee, the Chamber considers the article in these particular circumstances to be reliable and does not consider that the circumstances of the preparation and publication of Article MLI-OTP-0059-0391, undermine his credibility or the reliability of Article MLI-OTP-0059-0391 (*contra* [Defence Final Brief](#), para. 151). For the reasons stated, **the Majority** further considers that the article's use does not cause prejudice to the fairness of the trial.

**Judge Akane** joins the Majority in considering article MLI-OTP-0059-0391 to be reliable to the extent that it was written by David Blair based on his interview with Azahara Abdou in the circumstances he described. However, for the reasons explained below, Judge Akane departs from the Majority in that she does not consider the article to form a sufficient evidentiary basis on which to make a finding on the rape of Azahara Abdou.

<sup>2793</sup> Audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666 and article MLI-OTP-0033-1586. In relation to audio recording MLI-OTP-0014-5534, **the Majority** notes that this audio recording submitted by bar table motion by the Prosecution, purports to be an interview with Azahara Abdou from early 2013. The Defence submits that this item is not self-authenticating, should have been introduced through a witness (in particular one which the Prosecution considered qualified to identify and authenticate the voice of the person speaking), and that any probative value of this item is seriously diminished by the lack of opportunity to cross-examine the source of the information (*see* ICC-01/12-01/18-2122-Conf-AnxA, pp. 27-28). Initially, the Majority notes that under the Statute there are no requirements for authentication of documentary material, contrary to the case in some legal traditions, nor is there any obligation to submit such material through a witness, as evidenced by the extensive material submitted by both parties in this case by motion without testimony. Instead, in accordance with Article 69 of the Statute such material may be submitted and freely assessed as provided for under Rule 63(2) of the Rules, with these factors being relevant to the weight and probative value of the evidence. Following this approach, the Majority is of the opinion that the absence of evidence as to the circumstances in which the recording was made and the lack of opportunity to cross examine the source of the information, does reduce the probative value of the recording and the use to be made of the evidence. At the same time, the Majority notes that the audio recording submitted by the Prosecution dates from 5 February 2013, not long after the events, and was obtained from the website of Europe 1, an established radio broadcaster in France. The interviewer at the close of the interview identifies himself as Xavier Yvon, Europe 1 and a reporter of that name was employed by Europe 1 from 2011-2016. As to the content, the interviewee is identified as Azahara Abdou and she describes, with some specificity, her detention and rape in Timbuktu in November 2012. The Majority considers that in these combined circumstances, there is sufficient indicia of credibility and reliability to support that this is a recording of an authentic radio interview with Azahara Abdou. Thus, in the opinion of the Majority, while its evidentiary value is such that it is insufficient alone to support a finding in relation to what Azahara Abdou describes in the interview, the recording has enough probative value to constitute some evidence that she was detained and raped as described in November 2012 by members of the armed groups controlling Timbuktu at that time. As a result, notwithstanding the lack of information regarding the circumstances of this recording or testimony from its source, the Majority is satisfied that the interviewee is Azahara Abdou, and relies on this audio recording as evidence to be assessed with other reliable evidence of relevance.

**Judge Akane** concurs with the Majority to the extent that there are no legal requirements for authentication under the Statute, while this may be relevant in assessing the weight and probative value of a piece of evidence. However, she departs from the Majority in its analysis of audio recording MLI-OTP-0014-5534 and its assessment of the item's probative value. First, Judge Akane notes the lack of authentication of the audio recording. Next, noting the nature of the item, namely an audio recording of an interview with a victim recounting her experience, Judge Akane considers that in such a case where the evidence is used to establish the facts of what happened to the victim, it must be weighed taking into account the difference with evidence in the form of oral testimony before the Chamber, and with 'prior recorded testimony' taken and submitted in accordance with Rule 68 of the Rules. Further, Judge Akane also notes the lack of information regarding the circumstances of this recording and other details, such as interactions before the interview between the interviewer and the interviewee, and whether this or the

does not rely on P-0636's evidence to make factual findings in relation to Azahara Abdou.<sup>2794</sup>

858. One day around late November 2012 during the time that Mohammed Moussa

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interview by David Blair was conducted first. Judge Akane considers these factors relevant in assessing the probative value and weight of the item. Judge Akane also notes unexplained discrepancies between this item and David Blair's article MLI-OTP-0059-0391 on some points such as the night on which the alleged rape occurred and whether Azahara Abdou was flogged before her arrest. As a result of all of these factors, Judge Akane accords this audio recording MLI-OTP-0014-5534 negligible probative value, if any.

In relation to article MLI-OTP-0033-1586, **the Majority** notes that that article is dated 4 February 2013 and purports to reflect an interview with Azahara Abdou where she recounts the event of her arrest and detention, as well as the death of her older brother. Although the Chamber received no evidence about the basis for the information in the article and the circumstances of its drafting or publication, the Majority notes that the name and age of the victim as well as the core facts of Azahara Abdou's victimisation are identical to the article written by David Blair. As a result, the Majority relies on this article to the extent that the information therein is consistent with other reliable evidence (*contra* [Defence Final Brief](#), para. 211).

**Judge Akane** departs from the Majority in its analysis of article MLI-OTP-0033-1586 for the same reasons as in relation to audio recording MLI-OTP-0014-5534. Judge Akane likewise accords this article negligible probative value, if any, also noting the lack of authentication of the article, as well as the lack of information regarding the basis for the information in the article and the circumstances of its drafting or publication and discrepancies between this and David Blair's article MLI-OTP-0059-0391 on some points such as the circumstances of the death of Azahara Abdou's relative and whether Azahara Abdou was flogged.

<sup>2794</sup> The Chamber notes that it is the Prosecution's assertion that Azahara Abdou was detained in the same cell as P-0636 ([Prosecution Final Brief](#), paras 255, 260) whereas the Defence submits that P-0636's description of the girl in question does not correspond to Azahara Abdou ([Defence Final Brief](#), paras 211, 220). P-0636 testified that when she was detained in a cell at the 'Islamic Police', another girl later joined her in the same cell (P-0636: T-071, pp. 22, 26-27, 35). P-0636 stated that she knew the girl from before and that they were from the same neighbourhood, as their families did not live far from each other [REDACTED] (P-0636: T-071, pp. 35, 58). P-0636 testified that she could not remember the girl's name, and said that the girl had a nickname that she could not remember since it was a long time ago (P-0636: T-071, p. 35). Questioned about the girl's age, P-0636 said that she could not tell the age because the girl was rather overweight and in her view 'you get a false idea' of the age of overweight people, but that girl was young, a little bit older than P-0636 herself (P-0636: T-071, p. 35). P-0636 further testified that she did not ask the girl the reason why she was there (P-0636: T-071, p. 36). The Chamber also notes that P-0636 testified about an event concerning the brother of the girl she was detained with, which she said she found out about from her uncle who went to the brother's burial (P-0636: T-071, p. 59). She testified that the girl's older brother went to ask the 'Islamists' to free his sister; there was a quarrel, he got angry and he tried to leave; they wanted to make him understand what had happened, he did not want to listen to them and he left furious, and when he turned his back, the 'Islamists' shot him in the head and he died there and then (P-0636: T-071, p. 59). While the Chamber notes this story and other evidence align with regard to the fact that [REDACTED] (*see* P-0639's statement MLI-OTP-0072-0290-R03, at 0298-0302, paras 37-45; article MLI-OTP-0059-0391, at 0392), the Chamber notes that the details of the various accounts are not consistent. The Chamber notes in particular that, when confronted with P-0636's account on this point, P-0639 testified that the details were not true and that it could be a rumour which did not apply to his brother (P-0639: T-136, p. 54). Accordingly, the evidence does not prove that it was Azahara Abdou who was detained in the same cell as P-0636 and to whom P-0636 refers in her testimony on this point. The Chamber therefore does not rely on P-0636's evidence to make factual findings in relation to Azahara Abdou. However, the Chamber does not consider this issue to affect the reliability or credibility of P-0636's account of her own victimisation (*contra* [Defence Final Brief](#) para. 220).

was in charge of the *Hesbah*,<sup>2795</sup> Azahara Abdou,<sup>2796</sup> a civilian inhabitant of Timbuktu,<sup>2797</sup> was arrested from her home by members of Ansar Dine/AQIM<sup>2798</sup>

<sup>2795</sup> Concerning the date of the event, the article written by David Blair dates Azahara Abdou's arrest as occurring in late November (article MLI-OTP-0059-0391, at 0392), which is also the month given in audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666. Article MLI-OTP-0033-1586, dated 4 February 2013, records Azahara Abdou stating that the incident happened '[TRANSLATION] a month and a half ago]', although it is not clear when the interview forming the basis of this article took place. The date provided in the article written by David Blair is compatible with MLI-OTP-0028-0934-R01 which is a weekly health information report for the period 26 November to 2 December 2012, which makes reference to the '[TRANSLATION] [i]njury of a woman in prison following a hysterical attack by shards of glass in Timbuktu'. It is also compatible with P-0639's testimony who initially stated that the event happened after the death of his brother (P-0639's statement MLI-OTP-0072-0290-R03, at 0302, para. 46), but later corrected that the death of his brother occurred later, which is reflected on a timeline he drew at the time of his statement (P-0639's statement MLI-OTP-0072-0290-R03, at 0311-0312, paras 70-72; Annex 6 to P-0639's statement MLI-OTP-0072-0325). Regarding the date of the brother's death, P-0639 agreed that it was very close to the liberation of Timbuktu and confirmed that 24 January 2013 was the date of death that was officially given, although he testified that he could not say the exact date of death and that 'neither the government, neither the hospital were present at the time, so they didn't pay attention to that' (P-0639: T-136, pp. 45-47; P-0639's statement MLI-OTP-0072-0290-R03, at 0312, para. 71). P-0639 also confirmed that the event with Azahara Abdou happened well after [REDACTED] (P-0639: T-136, p. 45), which the Chamber recalls was around June 2012 (*see* paragraph 773 above). The Chamber also notes that some of the evidence connects this event with Mohammed Moussa. D-0512, whose account is based on what she heard from the daughter of her sister who spoke to Azahara Abdou after Azahara Abdou was released (D-0512's statement MLI-D28-0006-2611-R04, at 2618, paras 45, 47; D-0512: T-181, pp. 50-51), testified that Azahara Abdou was arrested when 'Hamed Moussa' was in charge (D-0512's statement MLI-D28-0006-2611-R04, at 2618, para. 47; D-0512: T-181, p. 50). P-0641 did not remember when the event with Azahara Abdou happened (P-0641: T-138, p. 77) but testified that it was 'Hamed Moussa' who did not accept the release of Azahara Abdou (P-0641: T-138, p. 73. *See also* P-0641: T-138-FRA, pp. 71-73). Article MLI-OTP-0033-1586 also states that Azahara Abdou said that 'Ahmed Mossa' and his men were the ones to tell her that she was not dressed properly when she was arrested, and that she was raped by his subordinates. Based on the foregoing, including the evidence from D-0512, P-0641, and article MLI-OTP-0033-1586 suggesting that this event took place while Mohammed Moussa was in charge of the *Hesbah*, which the Chamber finds to be from September to December 2012 (*see* paragraphs 530, 543 above), the Chamber considers that the arrest of Azahara Abdou occurred after September 2012 and more precisely around late November 2012 (*see also* [Prosecution Final Brief](#), paras 252-256; [Defence Final Brief](#), para. 211).

<sup>2796</sup> The Chamber notes that witnesses and items of evidence refer to Azahara Abdou by various names including Azahara Abdou (P-0639's statement MLI-OTP-0072-0290-R03, at 0302; article MLI-OTP-0033-1586), Azahara Abdou Maiga (P-0010: T-021, p. 21; article MLI-OTP-0059-0391, at 0391; audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666), Azou (P-0622: T-160, p. 13; D-0512's statement MLI-D28-0006-2611-R04, at 2618, para. 45), Azou Dicko (P-0603: T-125, p. 27), Aza Abdou (P-0641: T-138, p. 73), Azahara Maiga (D-0512's statement MLI-D28-0006-2611-R04, at 2618, para. 45) and Zahra Abdou (D-0512: T-181, pp. 21-22, *referring to* article MLI-D28-0005-8188). The Chamber notes that several of the witnesses consistently identified Azahara Abdou on a photograph in article MLI-OTP-0059-0391, at 0391 (P-0639: T-136, p. 20; P-0603: T-126, pp. 17-18; P-0622: T-160, p. 13; D-0512's statement MLI-D28-0006-2611-R04, at 2618, para. 49). The Chamber is satisfied on the basis of the evidence of each witness about this person that they refer to the same individual, namely Azahara Abdou.

<sup>2797</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0302-0306, paras 46-47; P-0622: T-160, p. 13; D-0512's statement MLI-D28-0006-2611-R04, at 2618, para. 45; P-0603: T-125, p. 27; P-0641: T-138, p. 73. Based on this evidence and the circumstances surrounding her arrest and detention, the Chamber is satisfied that the victim was a civilian member of the population of Timbuktu at the time of the charged events.

<sup>2798</sup> The Chamber is satisfied that the persons who arrested Azahara Abdou were members of Ansar Dine/AQIM noting Azahara Abdou was taken to the BMS during the period of time when this location was being used by Ansar Dine/AQIM and the references in the evidence to Mohammed Moussa's role

in front of members of her family<sup>2799</sup> for not wearing a veil.<sup>2800</sup> Azahara Abdou was around 20 years old at the time.<sup>2801</sup> Two armed members of Ansar Dine/AQIM came out of a pickup and pursued Azahara Abdou, who ran into her house.<sup>2802</sup> They grabbed her by her hand and hit her when she resisted.<sup>2803</sup> The members of Ansar Dine/AQIM took Azahara Abdou to the BMS,<sup>2804</sup> which was the headquarters of the *Hesbah* at that time.<sup>2805</sup> Her family came to seek her release at the BMS but a decision was taken not to release her.<sup>2806</sup>

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in the events (*see* footnote 2795 above, *referring to* D-0512's statement MLI-D28-0006-2611-R04, at 2618, para. 47; D-0512: T-181, p. 50; P-0641: T-138, p. 73; article MLI-OTP-0033-1586).

<sup>2799</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0302-0306, paras 46-47.

<sup>2800</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0302-0306, paras 46-47. The Chamber notes that P-0639's direct evidence about Azahara Abdou's arrest is generally consistent with the information in article MLI-OTP-0059-0391 (which states that Azahara Abdou was arrested outside while hanging laundry as she was unveiled), as well as evidence from other witnesses who learned about the arrest later: P-0603 testified that she was told by Azahara Abdou's mother that Azahara Abdou had left and gone to get water and the 'Islamists' said that she was not covered, and that Azahara Abdou's parents begged the 'Islamists' to leave the girl but they refused (P-0603: T-125, pp. 27-28, 30). P-0622, who testified that he learned about this incident in the week that it happened, when he went to Timbuktu to meet his wife's mother and whose information is based on what he heard from her (P-0622's statement MLI-OTP-0065-0558-R02, at 0564, para. 33; P-0622: T-160, pp. 43-44), testified that from what he knew, one day Azahara Abdou was doing laundry in the yard of her house and when she went up to the roof to hang up her laundry the 'Islamists' saw her; they entered the yard, asked her to come down and brought her to the bank because she was not covered according to their rules (P-0622's statement MLI-OTP-0065-0558-R02, at 0564, para. 33). *See also* P-0641: T-138, p. 77; audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666; article MLI-OTP-0033-1586.

<sup>2801</sup> Article MLI-OTP-0059-0391, at 0391. *See also* audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666; article MLI-OTP-0033-1586.

<sup>2802</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0302-0306, paras 46-47.

<sup>2803</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0302-0306, paras 46-47.

<sup>2804</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0303-0305, paras 47-49, 51; Annex 5 to P-0639's statement MLI-OTP-0072-0324 (drawing of P-0639's route from the house to the BMS). P-0639 also identified the BMS during his interview with the Prosecution (P-0639's statement MLI-OTP-0072-0290-R03, at 0314, para. 76, *referring to* MLI-OTP-0048-0729, MLI-OTP-0012-1726, at 00:00:00:10). P-0603: T-125, pp. 27-28. The Chamber notes that P-0603 described the place where she saw Azahara Abdou, stating that '[w]hen you get to the BMS, where there's the window, when you go a bit behind, that is where they put the women. And you could see them through the window' (P-0603: T-125, p. 28). P-0603 also identified the BMS and marked where Azahara Abdou was held (P-0603: T-126, p. 14, *referring to* MLI-OTP-0048-0729, MLI-REG-0001-0211). P-0641: T-138, p. 74; article MLI-OTP-0059-0391, at 0392. *See also* P-0622's statement MLI-OTP-0065-0558-R02, at 0564, para. 32 (testifying that from what he heard, Azahara Abdou was locked up in the bank which is on the edge of the *Yoboutao* market); D-0512's statement MLI-D28-0006-2611-R04, at 2618, para. 47; audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666.

<sup>2805</sup> *See* paragraph 519 above.

<sup>2806</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0303-0305, paras 17, 48-50, 52-53. The Chamber notes that P-0639's testimony that the family came to seek Azahara Abdou's release is generally consistent with other evidence: P-0641 testified that a lot of people came to beg [for Azahara Abdou's release] but the wish was not accepted, and that he saw Azahara Abdou's mother and older brother sleeping outside the BMS (P-0641: T-138, pp. 73-74); article MLI-OTP-0059-0391 states that when Azahara Abdou's father came to plead for her release, he was sent away with a warning that if he came back his daughter would be detained for a month and beaten everyday (article MLI-OTP-0059-0391, at 0392). The Chamber does not consider the discrepancies over certain details between these accounts to



859. While in detention, Azahara Abdou had a fit,<sup>2807</sup> hit a glass window at the BMS, and injured herself.<sup>2808</sup> Following her fit at the BMS, she was taken to the hospital and then returned to detention.<sup>2809</sup>

860. The Majority, Judge Akane dissenting,<sup>2810</sup> finds that during her stay at the BMS, Azahara Abdou was taken out of her cell and into a separate room, where five members of the *Hesbah*, who all had their faces concealed, took turns in forcing her to have sexual intercourse with them.<sup>2811</sup> The Majority further finds that these

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be material, in particular whether Azahara Abdou's mother and brother slept outside the BMS, noting the consistency on the core fact that members of Azahara Abdou's family came to seek her release.

<sup>2807</sup> The Chamber notes that P-0639 testified that Azahara Abdou never had these fits before and that to this day she still suffers from 'crises' (P-0639's statement MLI-OTP-0072-0290-R03, at 0305, para. 54; P-0639: T-136, pp. 49-50). P-0639 also rejected the suggestion that Azahara Abdou had suffered from these 'crises' since childhood (P-0639: T-136, p. 50). The Chamber notes that P-0639's evidence that Azahara Abdou never had fits *before* her detention is not consistent with other reliable evidence that Azahara Abdou had fits before (*see* P-0603: T-125, p. 31; P-0622: T-160, p. 42; D-0512's statement MLI-D28-0006-2611-R04, at 2618, para. 46). In light of the available and contradictory evidence on the matter, the Chamber makes no finding as to when Azahara Abdou developed this condition (*see also* [Defence Final Brief](#), para. 211).

<sup>2808</sup> P-0603 testified that she saw Azahara Abdou, hitting and banging on the glass of a window at the BMS, and that she injured her hand (P-0603: T-125, p. 28). She testified that, knowing she had 'a crisis', P-0603 could not abandon her (P-0603: T-125, p. 27). P-0603 further testified that after Azahara Abdou hit the window, the 'Islamists' asked P-0603 to leave and she left, leaving Azahara Abdou's mother there (P-0603: T-125, pp. 28-29). The Chamber notes that P-0603's testimony of seeing Azahara Abdou hitting a glass window at the BMS is generally consistent with other evidence that Azahara Abdou had a fit while at the BMS (*see* P-0639's statement MLI-OTP-0072-0290-R03, at 0305, para. 54. *See also* article MLI-OTP-0059-0391, at 0392; P-0641: T-138, pp. 72, 77; T-140, p. 12 (*see also* P-0641: T-138-FRA, p. 71); P-0622's statement MLI-OTP-0065-0558-R02, at 0564, para. 33; P-0622: T-160, p. 42.

<sup>2809</sup> P-0641: T-138, pp. 72-74; article MLI-OTP-0059-0391, at 0392. *See also* P-0622's statement MLI-OTP-0065-0558-R02, at 0564, para. 33. *See also* weekly health information report for the period 26 November to 2 December 2012 MLI-OTP-0028-0934-R01 which refers to '[TRANSLATION] [i]njury of a woman in prison following a hysterical attack by shards of glass in Timbuktu'. The Chamber notes that D-0512 testified that based on what she heard, the 'Islamists' (permanently) released Azahara Abdou on the night she had a 'crisis' because of this (D-0512's statement MLI-D28-0006-2611-R04, at 2618, para. 47). The Chamber has not relied on this evidence, noting that D-0512's account, which is based on what she heard from the daughter of her sister who spoke to Azahara Abdou after Azahara Abdou was released (D-0512's statement MLI-D28-0006-2611-R04, at 2618, paras 45, 47; D-0512: T-181, pp. 50-51), is inconsistent with the more direct account of P-0641 (who saw Azahara Abdou being brought back and locked up again with his own eyes) and the information contained in article MLI-OTP-0059-0391, based on David Blair's interview with Azahara Abdou herself (which is that Azahara Abdou was returned to her cell after hospital treatment) (*contra* [Defence Final Brief](#), para. 211). The Chamber also does not consider it determinative on this point that the weekly health information report MLI-OTP-0028-0934-R01 makes no reference to the victim having been returned to prison, noting that the report only provides brief information about the issue (*contra* [Defence Final Brief](#), para. 211). The Chamber has additionally not made a finding on who took Azahara Abdou to the hospital, noting that the evidence on this point is not clear.

<sup>2810</sup> **Judge Akane** dissents in that she does not consider there to be a sufficient evidentiary basis to find that Azahara Abdou was raped while detained at the BMS, for the reasons below.

<sup>2811</sup> The **Majority** recalls that its finding that Azahara Abdou was raped is primarily based on the article MLI-OTP-0059-0391 written by David Blair after his February 2013 interview with Azahara Abdou, about which he testified at some length before the Chamber (*see* footnote 2792 above). Article MLI-OTP-0059-0391, written by David Blair, states that on the fourth night of her detention, Azahara Abdou

men put a gun to her head and told her to be quiet or otherwise she would be

was taken from her cell into a neighbouring room where five men, all with their faces concealed, took turns to rape her; the article also quotes Azahara Abdou as stating that the men put a gun to her head and told her to be silent or she would be killed (article MLI-OTP-0059-0391, at 0391-0392). The Majority notes that the core of this information, in particular in relation to the circumstances of the rape and the number of perpetrators, is consistent with the information in: (i) audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666, which records the interviewer stating that on the second night, armed men dragged Azahara Abdou into a bank office and raped her for three hours, and records Azahara Abdou as saying that there were five men with masks on their faces, a gun was put to her head and she was told that if she shouted, they would kill her, and that when they finished, she was brought back and locked up again; and (ii) the information in article MLI-OTP-0033-1586, which states that Azahara Abdou said that she was raped by five subordinates of ‘Ahmed Mossa’ on her second day in prison. The Majority notes that there are some discrepancies in the evidence as to whether the rape occurred on the second or fourth night (David Blair’s article MLI-OTP-0059-0391 records that it was the fourth night whereas audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666 provides it was the second night), and about whether Azahara Abdou was also flogged at some stage (David Blair’s article MLI-OTP-0059-0391 provides that, before the period of detention during which she was raped, Azahara Abdou was first arrested in November 2012 and flogged with a whip made of camel skin for having pictures of western pop stars on her mobile phone) and article MLI-D28-0005-8188, at 8190, dated 14 October 2021, which refers to a person recognised by D-0512 as ‘Zahra Abdou’ as having been publicly flogged in Timbuktu in 2012, does not mention a rape (D-0512: T-181, pp. 21-22, *referring to* article MLI-D28-0005-8188, at 8190). Nevertheless, the Majority does not consider these discrepancies to be material, noting the consistency between David Blair’s article and audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666 and article MLI-OTP-0033-1586 on the core fact that Azahara Abdou was raped by five men during her detention (*contra* [Defence Final Brief](#), paras 210-211). For the reasons set out previously, the Majority has found the article MLI-OTP-0059-0391 to be credible and reliable. In light of this, the Majority considers that, in accordance with Rule 63(2) of the Rules, the probative value and weight of article MLI-OTP-0059-0391 should be freely assessed based on its content, reliability and credibility, while also taking into account other available evidence. In the view of the Majority, this evidence should not be evaluated as a separate category or type of evidence (an interview recorded by a journalist) nor should its weight or probative value be influenced or determined by comparison to other ‘categories’ of evidence, such as prior recorded testimony under Rule 68 of the Rules. In the view of the Majority, the evidence should be assessed by examining the document itself, the detailed testimony as to its creation and any other evidence of relevance. Applying this analysis, the Majority considers that this article represents a reliable and detailed account of what Azahara Abdou stated happened to her. In addition, her account is strikingly similar to a pattern of conduct described by other victims, who experienced detention and sexual violence in like circumstances, and is thus supported by this additional evidence in the case. Further, as discussed, the absence of testimony from the source and evidence as to the creation of audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666 has an impact on its probative value. However, for the Majority it constitutes credible and reliable evidence, which, as noted above, is amply consistent with the contents of article MLI-OTP-0059-0391 in relation to all the central points of what Azahara Abdou experienced, to be corroborative of the same. Thus, in the view of the Majority, MLI-OTP-0059-0391 as introduced through the testimony of David Blair, and in combination with the other evidence detailed above, is sufficient to establish beyond reasonable doubt that Azahara Abdou was forced to have sexual intercourse during her detention with five men, and that penetration occurred in the case of each man. Based on the fact that this rape happened while Azahara Abdou was in detention at the BMS, which was the headquarters of, and under the control of, the *Hesbah* at that time, and the men were armed, and notwithstanding that their faces were concealed, the Majority infers that the men were members of Ansar Dine/AQIM, specifically the *Hesbah*, also noting that this is consistent with the information in article MLI-OTP-0033-1586, which states that Azahara Abdou said that she was raped by five subordinates of ‘Ahmed Mossa’, who the Majority considers to be a reference to the *Hesbah*’s Mohammed Moussa. The Chamber notes that P-0639 stated that he was asked whether he knew if Azahara Abdou had been raped at the BMS and that he could not say, he has not heard of it and Azahara Abdou does not talk of it (P-0639’s statement MLI-OTP-0072-0290-R03, at 0306, para. 55). The Chamber also notes that P-0639 stated that Azahara Abdou does not like to talk about what happened and [REDACTED] ‘[TRANSLATION] there are things we don’t say’, although he knew she ‘[TRANSLATION] was subjected to things in prison’ (P-0639’s statement MLI-OTP-0072-0290-R03, at 0305, para. 54). The Majority considers it understandable that Azahara Abdou may not have told P-

killed.<sup>2812</sup>

861. Around three days after her arrest, Azahara Abdou was released and returned home.<sup>2813</sup> She remained in a distressed state following the events.<sup>2814</sup>

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0639 of her rape and does not consider this evidence to affect its foregoing finding, or the credibility of P-0639's evidence regarding Azahara Abdou. The Chamber also notes that P-0603 stated that she was not able to see what happened to Azahara Abdou (P-0603: T-125, p. 31). Finally, the Chamber also does not consider it determinative that the weekly health information report MLI-OTP-0028-0934-R01 makes no reference to injuries other than from the broken glass (*contra* [Defence Final Brief](#), para. 211), noting, as above that the report only provides brief information about the issue and that there is no consistent evidence that Azahara Abdou was taken to hospital following the rape (*see* footnote 2813 below).

**Judge Akane** dissents from the Majority in that she does not consider there to be a sufficient evidentiary basis to find that Azahara Abdou was raped while detained at the BMS. At the outset, it is recalled that Judge Akane affords negligible probative value to audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666 and article MLI-OTP-0033-1586, if any, and thus considers that these items should not be regarded as reliable corroborative evidence. Further, while finding David Blair fully credible and considering his article MLI-OTP-0059-0391 to be the results of his serious and professional interview of Azahara Abdou, and noting that David Blair's article was submitted through his testimony, his article should not be considered as having the same probative value as the oral or prior recorded testimony of Azahara Abdou (unlike for example the case of P-0570). Judge Akane notes that David Blair's article represents the outcome of a journalistic interview of the victim as opposed to an oral testimony of Azahara Abdou before the Chamber. The article is also distinct from a prior recorded testimony taken and submitted in accordance with Rule 68 of the Rules, documented for example by the Court's professional criminal investigators. In such a case the investigators record the witness's statement with careful scrutiny, often over multiple days of interviews (as in the case of P-0570, *see* P-0570's statement MLT-OTP-0049-0047-R05, at 0047), with appropriate procedural safeguards including reading the recorded statement back to the interviewee, having the statement signed by the interviewee and at times confronting the interviewee with inconsistencies based on different source of evidence (as in the case of P-0570, *see e.g.* P-0570's statement MLT-OTP-0049-0047-R05, at 0070, para. 94). Judge Akane additionally notes discrepancies between David Blair's article and other evidence regarding points such as the night on which the rape occurred, whether Azahara Abdou was flogged, and the circumstances of the death of Azahara Abdou's relative. In all of these circumstances, and noting the absence of other reliable testimonial or other types of evidence on the subject of Azahara Abdou's rape, Judge Akane does not consider the evidence sufficient to make beyond reasonable doubt findings on the rape of Azahara Abdou. Judge Akane also dissents from the Majority's view that Azahara Abdou's case is 'strikingly similar to a pattern of conduct described by other victims, who experienced detention and sexual violence in like circumstances, and is thus supported by this additional evidence in the case'. While acknowledging that evidence of pattern of conduct could be used to support factual findings on a case-by-case basis, Judge Akane respectfully disagrees that this is such a case. Judge Akane considers that it cannot be said that all or most of the detained female victims at the BMS were raped in a pattern similar to that described in David Blair's article in relation to Azahara Abdou. Moreover, for example, facts related to the total number of female victims actually detained at the BMS or other places during the relevant time is unknown. There are also variations between the evidence of the limited number of witnesses who testified on this subject, and in Azahara Abdou's case, David Blair's article lacks details to determine the existence of this 'striking similar pattern'. Finally, Judge Akane notes that the Chamber does not make a positive finding with regard to the Prosecution's assertion that Azahara Abdou was detained in the same cell as P-0636 as detailed above, which has a negative impact on the fact finding of Azahara Abdou's rape, in her view.

<sup>2812</sup> Article MLI-OTP-0059-0391, at 0391-0392. *See also* audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666. The Majority notes that it is not completely clear which one of the men put a gun to Azahara Abdou's head but the Majority does not consider this minor unclarity to affect the fact that Azahara Abdou was raped by five men when she was detained at the BMS.

<sup>2813</sup> The Chamber notes that there are differing accounts on the precise length of Azahara Abdou's detention (*see also* [Defence Final Brief](#), para. 211). P-0639 stated that the day following Azahara

### k) Case of P-0636

862. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: the direct victim herself, P-0636;<sup>2815</sup> and P-

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Abdou's arrest, he left for 48 hours to Tonka, and that Azahara Abdou was home when he returned (P-0639's statement MLI-OTP-0072-0290-R03, at 0305, para. 54; P-0639: T-136, pp. 48-49), which would make her release sometime within three days of her arrest. P-0639 however acknowledged that he was not present when Azahara Abdou returned home (P-0639: T-136, pp. 48-49). P-0639 also stated that when he returned home following Azahara Abdou's release, he was told that she had been locked up for around four to five days (P-0639's statement MLI-OTP-0072-0290-R03, at 0305, para. 54). The article written by David Blair records that Azahara Abdou was released on the fifth day, in the morning (MLI-OTP-0059-0391, at 0392). P-0603 testified that Azahara Abdou was in prison for one night and one day (P-0603: T-125, p. 28), although the basis of knowledge for this statement is not entirely clear. *See also* article MLI-OTP-0033-1586. The Chamber relies on the most direct evidence on this point, being P-0639's testimony that he went to Tonka for 48 hours the day after Azahara Abdou's arrest and that Azahara Abdou was already at home when he returned, and finds that around three days after her arrest, Azahara Abdou was released and returned home. The Chamber also notes that audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666, records the interviewer stating that following her release, Azahara Abdou underwent surgery and remained in hospital for two weeks. Noting that this piece of information is uncorroborated by any other source, the Chamber makes no factual findings in this regard.

<sup>2814</sup> P-0639's statement MLI-OTP-0072-0290-R03, at 0305, para. 54. *See also* audio recording MLI-OTP-0014-5534, transcript MLI-OTP-0069-1666 (recording that Azahara Abdou stated in relation to the incident '[TRANSLATION] my heart hurts [...] I remembered what happened here. It hurts badly. It's like there's something missing in my life').

<sup>2815</sup> P-0636 (*see* P-0636: T-071 to T-072), a Tamasheq woman who speaks Bambara, understands Songhai and French and used to understand a few words of Arabic (P-0636: T-071, p. 14; T-072, p. 8), lived in Timbuktu when Ansar Dine/AQIM were present in the city (P-0636: T-071, p. 12). The witness was 12 to 13 years old at the time of the events (P-0636: T-071, p. 12) and was married (P-0636: T-071, pp. 13-14). P-0636 was admitted as a participating victim in the proceedings. She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation. Despite her vulnerability and very young age at the time of events, P-0636 responded firmly to the questions asked during her testimony, including during the cross-examination. Although her evidence is very general as regards the armed groups and she understandably did not know the role of Ansar Dine/AQIM's different institutions, the Chamber observes that the witness was able to describe in simple and compelling terms the things that happened to her, including the place where she was detained. While P-0636 openly stated that she had the courage to come and testify because people proposed to help her to obtain reparations (P-0636: T-071, p. 63), the Chamber does not consider that P-0636's wish to receive reparations in itself suggests in any way that she intended to lie when called to provide evidence as a witness. In addition, in testifying that there have been people who helped her (P-0636: T-071, p. 64), the witness clearly clarified that she received psychological, rather than financial help and the Chamber draws no adverse inference from the fact that P-0636 did not want to provide the name of the person of trust to whom she spoke in this regard (*see* P-0636: T-072, p. 55). While P-0636 indeed stated that she was worried before her testimony because she had never spoken before an authority figure and was scared that she may be arrested and imprisoned because that is 'what tribunals and judges do', she also rejected the suggestion that she was worried that she may get into trouble if she said something wrong and said that she was 'not afraid of saying anything' (P-0636: T-072, pp. 57, 59-60). Considering the witness's frank and open answers in this regard, the Chamber does not consider that P-0636's in court testimony was influenced by fear, or, as submitted by the Defence, that she was reluctant to testify since her account was not based on true memory recall ([Defence Final Brief](#), para. 223). While P-0636's statement that she had never spoken before to an authority figure is inconsistent with the fact that she appeared before a judge in Bamako, the Chamber does not consider this matter significant, noting that her testimony in Bamako took place in a very different setting to her testimony before the Court and

0610,<sup>2816</sup> [REDACTED] whose account is based on what she was told by P-0636 and whose evidence largely corroborates P-0636's account regarding her detention.

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that while acknowledging that she went to Bamako, P-0636 stated that she did not know the person there with whom she spoke (P-0636: T-072, p. 24). The Chamber notes that while there is indeed a discrepancy or possible mistake in P-0636's account regarding the birth date of her child (*see* P-0636: T-071, pp. 47, 49. *See also* [Defence Final Brief](#), para. 219), the Chamber recalls that the witness was forthcoming in explaining that she found it difficult to remember dates (*see* P-0636: T-072, pp. 4) and finds that this discrepancy or possible mistake does not affect her credibility. The Chamber additionally notes some discrepancies between P-0636's testimony and certain documents recording previous accounts given by P-0636, notably concerning: (i) the date of her rape (*grille de recueil de témoignages de victime* MLI-OTP-0071-0477-R01, at 0479, which is purportedly P-0636's 2015 statement to FIDH, records that P-0636's rape occurred at the very beginning of the arrival of the armed groups in the city, although when asked whether she told 'the white person' or P-0524 that she was raped at the very beginning of the 'occupation', P-0636 testified that 'everything was done during the occupation of Timbuktu' (*see* P-0636: T-072, pp. 18-19); civil party complaint MLI-OTP-0024-2814, at 2827 also records that P-0636's rape occurred a few days after the capture of Timbuktu); (ii) the sequence of events (*grille de recueil de témoignages de victime* MLI-OTP-0071-0477-R01, at 0479 records that P-0636's rape occurred one evening when she was forced into a house by three armed men and that later on another separate occasion, P-0636 was taken to the 'Islamic Police'; *see similarly* civil party complaint MLI-OTP-0071-2814, at 2827); and (iii) the length of her detention (*grille de recueil de témoignages de victime* MLI-OTP-0071-0477-R01, at 0479, states that P-0636 arrived in the morning and was not released until late in the evening after her father intervened; civil party complaint MLI-OTP-0071-2814, at 2827, states that P-0636 was arrested and sentenced by the Islamic Court to spend 24 hours in the Police station but was freed, her father having come to claim her in the evening). However, in relation to item MLI-OTP-0071-0477-R01, the Chamber notes that while its content was generally broached during P-0636's testimony and P-0636 was questioned about it, the Defence did not use the document to confront P-0636 with what she is alleged to have said therein (*see* P-0636: T-072, p. 16; ICC-01/12-01/18-1643-Conf-AnxIII, pp. 3-4, where the Defence submits that the item is relevant to assess the methodology of the formation of the document and the credibility of P-0636 and others and notes that it does not submit the item for the truth of its content). In addition, the Chamber notes that P-0636 was not questioned about MLI-OTP-0024-2814. The Chamber has accordingly afforded no weight to the information contained in those documents. Further and in any event, the Chamber considers that the discrepancies identified above are typical variations attributable to the very young age of the witness at the time and her vulnerability, noting also her difficulty in remembering dates (*see* P-0636: T-072, p. 4) (*contra* [Defence Final Brief](#), para. 217. *See also* [Prosecution Response Brief](#), paras 87-89). The Chamber accordingly does not find that the discrepancies mentioned above affect P-0636's credibility or the overall reliability of her testimony. Assessing the witness's evidence as a whole as discussed below, the Chamber also finds unsupported the Defence suggestion that P-0636's memory and account of her rape and detention were tainted by 'leading questions' which may have been put in the context of the FIDH interview ([Defence Final Brief](#), paras 172, 217. *See also* [Defence Final Brief](#), para. 221). Accordingly, notwithstanding the abovementioned discrepancies, the Chamber has no doubt that P-0636 experienced the events she described and finds truthful in particular her account concerning her detention, including the sexual violence she suffered from. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0636 to be a generally credible and reliable witness. Nevertheless, having regard to the aforementioned considerations, it has assessed the weight to be accorded to the witness's evidence on a case-by-case basis where appropriate.

<sup>2816</sup> The Chamber refers to its findings on the credibility and reliability of P-0610 (*see* footnote 3147 below). P-0610 testified about the experience of one of [REDACTED] based on what she says she was told by this person (P-0610: T-158, pp. 55-59). The Chamber notes that the Defence asserts that P-0610 referred to P-0636's experience (*see* [Defence Final Brief](#), para. 218. *See also* [Prosecution Response Brief](#), para. 92; P-0636: T-072, pp. 41-49). Noting the similarity in the name (*see* P-0636: T-071, p. 12), as well as between P-0636's account and the narrative provided by P-0610, the Chamber finds that P-0610 refers to P-0636 in this part of her evidence.

863. One day around October to November 2012 inclusive,<sup>2817</sup> P-0636, a civilian inhabitant of Timbuktu who was 12 to 13 years old at the time,<sup>2818</sup> was stopped in the street by members of Ansar Dine/AQIM<sup>2819</sup> in a vehicle because she was not wearing a veil.<sup>2820</sup> They pushed her into the vehicle<sup>2821</sup> and one of them said she had to be taken and locked up, words to the effect of ‘take this child to the place where the mosquitoes are and several days afterwards you will know why [she] was arrested’.<sup>2822</sup> They took P-0636 to the BMS, which was the headquarters of the *Hesbah* at that time.<sup>2823</sup> Once there, nobody spoke to P-0636

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<sup>2817</sup> The Chamber notes that there are differing accounts on the date of this event. The Prosecution asserts that the event took place around November 2012 ([Prosecution Final Brief](#), para. 260). P-0636 testified that she was raped ‘in the middle of the occupation’ (P-0636: T-072, p. 18) and that the events she suffered from occurred in August 2012 (P-0636: T-071, p. 60), but recalls that P-0636 testified that she found it somewhat difficult to remember dates (*see* P-0636: T-072, pp. 4). P-0610 described what happened to P-0636 as occurring two months after P-0610’s own return to Timbuktu (P-0610: T-158, p. 60), which she said was in August 2012 during Ramadan (P-0610: T-158, pp. 10-11), *i.e.* around October 2012. The Chamber does not consider this discrepancy significant noting the difference of only two months between P-0636 and P-0610’s approximations and, having regard to the foregoing, including P-0636’s difficulty with dates, the Chamber finds that the event occurred around October to November 2012 inclusive.

<sup>2818</sup> P-0636: T-071, p. 12. Based on the circumstances surrounding her arrest and detention, the Chamber is satisfied that the victim was a civilian member of the population of Timbuktu at the time of the charged events.

<sup>2819</sup> The Chamber notes that P-0636 refers to these individuals as ‘armed Islamists’ and testified that she does not know their name (P-0636: T-071, pp. 19-20). The Chamber infers that they are members of Ansar Dine/AQIM noting the time period of the events in question, and that P-0636 was taken to the BMS which the Chamber has found was being used by Ansar Dine/AQIM at the time (*see* paragraph 519 above) for not wearing a veil which was one of the rules imposed and enforced by Ansar Dine/AQIM at the time (*see* paragraphs 694, 697, 699 above) (*contra* [Defence Final Brief](#), paras 256, 260).

<sup>2820</sup> P-0636: T-071, pp. 19-20. The Chamber notes that this account is generally consistent with the evidence of P-0610, who testified that she heard from P-0636 that the latter was sitting in front of her door and some ‘Islamists’ went by in a vehicle; P-0636 was wearing a headscarf, but she was not wearing a long-sleeved blouse and that is why they took her, because she was not covered up (P-0610: T-158, pp. 56, 58).

<sup>2821</sup> P-0636: T-071, pp. 20-21. P-0636 testified that some of the men spoke Arabic, a language she could not understand very well, whilst others spoke Tamasheq, a language she did understand (P-0636: T-071, p. 20).

<sup>2822</sup> The Chamber heard various versions of the statement which P-0636 says she was told: ‘[t]ake this bedeviled child and take her and put her in that place where the mosquitoes are to be found’ (P-0636: T-071, p. 21); ‘this woman from hell needed to be put in that location where the mosquitoes were to be found for two days for her to know just what she’d done’ (P-0636: T-071, p. 24); ‘take this child to the place where the mosquitoes are and several days afterwards you will know why it was arrested’ (P-0636: T-072, p. 34). *See also* P-0636: T-072, p. 38. When confronted with part of her prior recorded testimony suggesting that P-0636 was only told upon arrival at the police station that she would be locked up, P-0636 insisted that she was told this when she was arrested (P-0636: T-072, pp. 34-37). Concerning the issue of whether P-0636 was told these words when she was arrested or when she arrived at the place of her detention, the Chamber considers this discrepancy to be minor.

<sup>2823</sup> The Chamber notes that P-0636 testified that she was taken to the location of the ‘Islamic Police’ (P-0636: T-071, pp. 22, 40-41). However, the Chamber notes that P-0636 testified that she did not know places very well (P-0636: T-071, pp. 40-41) and that she understood what the ‘Islamic police’ was when she was taken to the place she was detained, because of their flags and the signs that were there (P-0636: T-072, pp. 28-29). Noting that the witness was not familiar with the role of the different institutions of

about why she was being arrested.<sup>2824</sup>

864. At the BMS, the members of Ansar Dine/AQIM put P-0636 in the ATM room.<sup>2825</sup> The cell had a glass door and a little window.<sup>2826</sup> The cell smelled as though people had urinated there.<sup>2827</sup> Through the glass door, P-0636 could not see what was going on outside but from the outside people could see what was happening inside the room.<sup>2828</sup> The door was locked.<sup>2829</sup> The members of Ansar Dine/AQIM detaining her gave P-0636 nothing to eat and refused to give her the food her family had brought for her.<sup>2830</sup> There was no bed or furniture in the cell, just a mat

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Ansar Dine/AQIM, the Chamber does not give much weight to her statements that she was taken to the Islamic Police at the time. Nevertheless, in relation to the building where she was taken, P-0636 testified that the house where she was detained was a one storey house (P-0636: T-071, p. 23) although she could not state the precise location (P-0636: T-072, p. 22) and said that before she was arrested she had never seen that house (P-0636: T-071, p. 39). She testified that there were lots of people inside and outside the house and that the people outside the house were wearing khaki clothing, had turbans on their heads and were all armed (P-0636: T-071, p. 23). P-0636 also testified that the place had a flag, which she described as a black flag with a white circle in the middle of it and Arabic writings (P-0636: T-071, pp. 22, 40-41). The Chamber considers misconceived the Defence's argument that P-0636 did not remember the building shown in this photograph before her testimony and that her testimony was influenced by photographs shown to the witness during her witness preparation ([Defence Final Brief](#), paras 201, 203. *See also* [Prosecution Response Brief](#), para. 91), noting that the witness clarified in court in this context that she did not recognise places by photograph and that if she were physically in front of the place, she might be in a position to recognise it (P-0636: T-072, pp. 56-57). Further, although P-0636 noted in court that she struggles to recognise things or places from photographs (P-0636: T-072, pp. 56-57), P-0636 testified in court that photograph MLI-OTP-0048-0729 looked 'like the Islamists' place' (P-0636: T-072, p. 56). The Chamber notes that the building in photograph MLI-OTP-0048-0729 was identified by other witnesses as the BMS (*see e.g.* P-0603: T-126, p. 14, *referring to* MLI-OTP-0048-0729; P-0610: T-158, p. 58, *referring to* video MLI-OTP-0015-0495, at 00:28:51:02). The Chamber further notes that P-0610 testified that she learned from P-0636 that the latter was put in the 'Islamic Police prison' at the 'BDM' bank (P-0610: T-158, pp. 54-56). The Chamber notes that P-0610 referred to the bank as the 'BDM' but, as explained, the Chamber has inferred that this is a reference to the BMS (*see* footnote 3153 below). The Chamber also notes that although she testified that she was in a state of panic in that place (P-0636: T-071, p. 22), P-0636 was able to give details regarding the cell she was held in (*see* below). The Chamber further considers unfounded the Defence's argument that P-0636's description of the cell was elicited by the Prosecution based on leading questions and photos shown to the witness during her preparation ([Defence Final Brief](#), para. 203. *See also* [Prosecution Response Brief](#), para. 91), noting that P-0636 demonstrated during her testimony that she was quite capable of describing the place based on her recollection, stating, for instance, when asked if the room was a small room that the cell was not that small (*see* P-0636: T-071, pp. 26-27). Taking all the details into account, the Chamber finds that P-0636 was taken to the BMS (*contra* [Defence Final Brief](#), paras 203, 217. *See also* [Prosecution Response Brief](#), paras 58, 87-91).

<sup>2824</sup> P-0636: T-071, p. 24.

<sup>2825</sup> P-0636: T-071, pp. 26-27. While noting her evidence that her cell was 'not that small', the Chamber considers that P-0636's description of her cell is otherwise consistent with other evidence describing the ATM room at the BMS, in particular the reference to the cell being one room and having a glass door through which people outside could see in (*see* paragraph 537 above). Based on the foregoing, the Chamber finds that this cell described by P-0636 was the ATM room.

<sup>2826</sup> P-0636: T-071, p. 26.

<sup>2827</sup> P-0636: T-071, p. 27.

<sup>2828</sup> P-0636: T-071, p. 27.

<sup>2829</sup> P-0636: T-071, p. 27.

<sup>2830</sup> P-0636: T-071, p. 34.

on the floor and P-0636 leaned up against the wall during the night.<sup>2831</sup>

865. On the first night of her detention at the BMS, three armed members of the *Hesbah* came into her cell and took her to another room, with no furniture, just a carpet on the floor.<sup>2832</sup> The three men forced her to have sexual intercourse with them, one after the other, at gunpoint.<sup>2833</sup> P-0636 felt that there ‘was no one to protect [her]’ and that she ‘had no power’.<sup>2834</sup> Afterwards, the men took P-0636 back to the cell.<sup>2835</sup>

866. Initially P-0636 was alone in the cell, and the next day she was joined by another girl.<sup>2836</sup>

867. P-0636 was detained for between one and three days,<sup>2837</sup> after which she was

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<sup>2831</sup> P-0636: T-071, pp. 25, 35.

<sup>2832</sup> P-0636: T-071, p. 33. Based on the fact that this sexual assault happened while P-0636 was in detention at the BMS, which was the headquarters of, and under the control of, the *Hesbah* at that time, and the men were armed, the Chamber infers that the men were members of Ansar Dine/AQIM, specifically the *Hesbah*.

<sup>2833</sup> P-0636: T-071, p. 31. P-0636 testified that the people who raped her wore khaki-coloured clothing, two were younger and one was older (P-0636: T-071, p. 33). When asked to explain what ‘rape’ meant to her, the Chamber notes that P-0636 circled the sexual organ of the man on a diagram as the part of the man used to rape her, and circled the sexual organ of the female as the part of the body where the man used his sexual organ on her (P-0636: T-071, p. 31); MLI-REG-0001-0020), and indicated that there was penetration (P-0636: T-071, p. 33). Based on the foregoing evidence, the Chamber finds that penetration occurred and the three men forced P-0636 to have sexual intercourse with them. The Chamber notes that it is not clear which one of the men was holding the gun but the Chamber does not consider that this detail affects the fact that P-0636 was forced to have sexual intercourse with the three men.

<sup>2834</sup> P-0636: T-071, p. 31.

<sup>2835</sup> P-0636: T-071, pp. 33-34.

<sup>2836</sup> P-0636: T-071, pp. 26-27.

<sup>2837</sup> The Chamber notes that there are different accounts regarding the length of P-0636’s detention. P-0636 consistently testified in-court that she was detained for three days (P-0636: T-071, pp. 29, 38). P-0636 rejected the suggestion that she had previously told P-0524 and ‘the white person’ that she arrived in the morning and was released late at night (P-0636: T-072, pp. 19-20). When confronted with her prior recorded statement in which she stated that she ‘stayed there from early evening until the next day [...] The next morning around 8 to 9 a.m., they freed me’, P-0636 testified that when she said the day after that, she meant the third day (P-0636: T-072, pp. 40-41). The Chamber also notes that P-0610 testified that she learned from P-0636 that the latter spent about one day in prison (P-0610: T-158, pp. 58-59). However, when confronted with P-0610’s written statement that P-0636 spent one day in prison from 9:00 in the morning until 15:00 hours or 16:00 hours, P-0636 disagreed with this account and maintained her position (P-0636: T-072, pp. 48-49). As noted above, despite the discrepancies in her account regarding the length of her detention, the Chamber finds P-0636’s account concerning her detention and rape generally credible and reliable and finds, based on the evidence, that she was detained for between one and three days (*contra* [Defence Final Brief](#), para. 218. *See also* [Prosecution Response Brief](#), para. 92).



released.<sup>2838</sup> Upon release, P-0636 went home.<sup>2839</sup> P-0636 did not immediately talk to the members of her family about what had happened to her during detention, out of shame.<sup>2840</sup> She did not speak about it initially with her husband.<sup>2841</sup> Eventually, she spoke to her aunt about it and her aunt tried to make her forget the incident.<sup>2842</sup> P-0636 felt that her life was over.<sup>2843</sup> She also spoke to her uncle about it and the way her aunt and uncle spoke to her subsequently ‘made [her] disgusted in [herself]’.<sup>2844</sup> She testified that since those events, her aunt and uncle ‘no longer loved or accepted [her], they considered [her] to be another person’,<sup>2845</sup> ‘a lesser kind of person’.<sup>2846</sup> P-0636 testified that she will never be able to forget what happened to her until her dying day.<sup>2847</sup>

868. P-0636 subsequently became pregnant.<sup>2848</sup> Her husband refused to recognise the child.<sup>2849</sup> P-0636 testified that when the child arrived, at first there was no problem, the family even baptised the child, but gradually as the child was growing up, they said that the child was light-skinned and they were dark-skinned.<sup>2850</sup> She was told to leave with the child;<sup>2851</sup> and when she returned to her father’s home, her own father also refused to recognise the child.<sup>2852</sup>

### **I) Case of Matalla Arbi (P-1708)**

869. For the factual findings in this section, the Chamber relies on the testimony of P-0641, who was personally involved in dealing with this incident, and which, subject to discrete aspects discussed below, the Chamber finds particularly

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<sup>2838</sup> P-0636: T-071, p. 38. P-0636 said that she never went back to the place she was detained (P-0636: T-071, p. 38). The Chamber further notes that P-0610 testified that she heard from P-0636 that the latter’s husband went to fetch her and that the ‘Islamists’ had said to her that if she wore those kinds of clothes again, she would be hit (P-0610: T-158, pp. 58-59).

<sup>2839</sup> P-0636: T-071, p. 39.

<sup>2840</sup> P-0636: T-071, p. 40.

<sup>2841</sup> P-0636 testified in court that she did not speak with her husband about her rape ‘at the time’ (P-0636: T-071, p. 40).

<sup>2842</sup> P-0636: T-071, p. 40.

<sup>2843</sup> P-0636: T-071, p. 42.

<sup>2844</sup> P-0636: T-071, p. 42.

<sup>2845</sup> P-0636: T-071, p. 42.

<sup>2846</sup> P-0636: T-071, p. 43.

<sup>2847</sup> P-0636: T-071, p. 42.

<sup>2848</sup> P-0636: T-071, p. 46.

<sup>2849</sup> P-0636: T-071, p. 46. The Chamber is satisfied on the basis of the evidence that P-0636’s then husband rejected the child as a result of the rape.

<sup>2850</sup> P-0636: T-071, p. 47.

<sup>2851</sup> P-0636: T-071, p. 47.

<sup>2852</sup> P-0636: T-071, pp. 47, 64.

reliable.<sup>2853</sup>

870. One Friday, during the control of Timbuktu by Ansar Dine/AQIM in 2012-2013, at a time when the armed groups required the market to be closed on Fridays,<sup>2854</sup> people leaving the mosque heard Matalla Arbi (P-1708) yelling and asking for Kader Khalil, a member of the Crisis Committee, to be called.<sup>2855</sup> Matalla Arbi was a familiar face of the market of Timbuktu, where he helped people, and was considered to be ‘mentally unstable’.<sup>2856</sup>

871. When P-0641 approached Mohammed Moussa to explain Matalla Arbi’s mental condition, Mohammed Moussa responded that it is because he was mentally unstable that Matalla Arbi was being locked up and that locking Matalla Arbi up would be a good thing and would calm him down.<sup>2857</sup> Matalla Arbi was imprisoned in the ATM room of the BMS by members of Ansar Dine/AQIM.<sup>2858</sup> The duration and the exact conditions of Matalla Arbi’s imprisonment are unknown.

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<sup>2853</sup> The Chamber refers to its findings on the credibility and reliability of P-0641’s evidence (*see* section II.B.2.a)vii above). Regarding this specific incident, the Chamber notes that, following P-1708’s arrest, P-0641 personally approached Mohammed Moussa to explain the mental state of Matalla Arbi (P-1708) (P-0641: T-138, pp. 79-80). The Chamber therefore considers that P-0641 is well placed to describe how P-1708 was treated by Mohammed Moussa and is satisfied that P-0641 described what he remembered truthfully. The Chamber also dismisses the Defence’s contention that P-0641’s evidence has been tainted by improper questioning (*see* footnote 2993 below).

<sup>2854</sup> *See* paragraph 722 above.

<sup>2855</sup> P-0641: T-138, p. 79; T-138-FRA, pp. 77-78. The Chamber understands from the context that P-0641 was referring to P-1708 shouting as he was being taken to the BMS by members of Ansar Dine/AQIM. *See* footnote below regarding the Chamber’s conclusion that P-1708 was taken to the BMS.

<sup>2856</sup> P-0641: T-138, p. 79.

<sup>2857</sup> P-0641: T-138, pp. 79-80; T-138-FRA, pp. 77-78. The Chamber notes P-0638’s testimony in which he stated, regarding two persons called Moulaye and Hamakey, who were drinking and smoking, that ‘Islamists don’t touch people who are mad. If they see that you are mad, then you are not arrested because you’re not normal’ (P-0638: T-059, p. 18). Nevertheless, the Chamber considers that P-0638’s general statement, which did not mention the case of P-1708 in particular, does not undermine the reliability of P-0641’s first-hand statement regarding what happened to P-1708.

<sup>2858</sup> P-0641: T-138, p. 79. The Chamber notes that, during his testimony, P-0641 referred to the place where P-1708 was detained as the ATM room in the ‘bank’ (P-0641: T-138, p. 79). On the basis of his testimony viewed as a whole, the Chamber understands that the witness refers to the BMS when he mentions the ‘bank’ in the context of this incident. Further, based on the fact that P-0641 spoke to Mohammed Moussa about P-1708’s detention, that Mohammed Moussa responded explaining that P-1708 was locked up because he was mentally unstable (P-0641: T-138-FRA, pp. 77-78) and that P-1708 was taken to the BMS, the Chamber concludes that P-1708 was imprisoned by members of Ansar Dine/AQIM.

### m) Case of P-0609

872. Having regard to the nature of the evidence on the case of P-0609,<sup>2859</sup> the Chamber cannot establish the facts related to this incident.

### n) Case of P-0570

873. For the factual findings in this section, the Chamber relies primarily on the evidence of the direct victim herself, P-0570 which, subject to discrete aspects discussed below, it finds particularly reliable.<sup>2860</sup> The Chamber also relies on some aspects of the evidence of D-0512, who knew P-0570<sup>2861</sup> and whose account is based on what she was told by P-0570 herself.<sup>2862</sup>

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<sup>2859</sup> The Chamber notes that the evidence in relation to the case of P-0609 consists of P-0524's statement MLI-OTP-0071-0246-R12, together with a *procès-verbal* taken by a Malian judge MLI-OTP-0037-1571-R01 and civil party complaint MLI-OTP-0024-2814, at 2827-2828. Although P-0524 directly heard what P-0609 said about her victimisation [REDACTED], the Chamber notes that when interviewed by the Prosecution, P-0524 did not remember [REDACTED] (P-0524's statement MLI-OTP-0071-0246-R12, at 0261, para. 90). *See also* P-0524's statement MLI-OTP-0071-0246-R12, at 0255, para. 58. The Chamber recalls that P-0524's statement was introduced into evidence through Rule 68(2)(b) of the Rules and notes that, as a result, P-0524 was not examined in-court on the evidence she provided on the basis of what she heard from others, notably statements related to key aspects of the charged incidents (including the incident related to P-0609 as well as other alleged victims). Significantly, the Chamber also notes that the Prosecution indicated that P-0524's identification of P-0547, one of the victims P-0524 stated that she spoke with, could not be relied upon (*see* P-0547: T-153, pp. 32-33; Prosecution Submissions, ICC-01/12-01/18-2301-Conf, paras 19, 21; P-0524's statement MLI-OTP-0071-0246-R12, at 0264, paras 113-118. *See also* the Chamber's discussion of P-0524's evidence in the case of P-0547), raising doubts about the quality of some of the information P-0524 provided. The Chamber also refers to its general findings on the credibility and reliability of P-0524's evidence (*see* section II.B.2.c)i above).

<sup>2860</sup> The Chamber refers to its findings on the credibility and reliability of P-0570's evidence (*see* section II.B.2.c)ii above).

<sup>2861</sup> The Chamber refers to its findings on the credibility and reliability of D-0512's evidence (*see* section II.B.2.b)ii above). D-0512 testified that she knows P-0570 and that [REDACTED] since they were young (D-0512's statement MLI-D28-0006-2611-R04, at 2617, para. 37; D-0512: T-181, pp. 13-14, 81-83). The Chamber notes the difference in P-0570's name provided by D-0512 as compared to the name in P-0570's testimony. The Chamber notes that the names cited by the witnesses are similar and considers, based on the details provided in D-0512's narrative, that they relate to P-0570 (*see* D-0512's statement MLI-D28-0006-2611-R04, at 2616-2617, paras 38-40; D-0512: T-181, p. 13).

<sup>2862</sup> The Chamber notes that D-0512 confirmed the core facts of what happened to P-0570, namely that she was arrested for not wearing the veil correctly, that she was brought to the BMS and that Mohammed Moussa was in charge at the time. The Chamber however notes that D-0512 presented a different version of the circumstances of P-0570's arrest and the subsequent events that happened to her. D-0512 testified that one day in 2012, P-0570 left for the market at around 10:00 and returned at around noon, and she told D-0512 that she was taken by the 'Islamists' for not wearing the veil correctly (D-0512's statement MLI-D28-0006-2611-R01, at 2617, para. 41). According to D-0512's account, which she says is based on what P-0570 told her that day (D-0512's statement MLI-D28-0006-2611-R01, at 2617, para. 41), P-0570 was taken to the BMS to be questioned but was never detained; the 'Islamists' told her that she should buy a veil and they let her go; and on her way back to the house, P-0570 bought a veil for 2250 FCFA with her own money and then went home immediately (D-0512's statement MLI-D28-0006-2611-R01, at 2617, para. 41; D-0512: T-181, p. 81). D-0512 said that she even told P-0570 that she should have asked them for the money, and that they have these veils everywhere and that P-0570 should have

874. One day around or after September 2012,<sup>2863</sup> P-0570, a civilian inhabitant of Timbuktu,<sup>2864</sup> was cleaning rice in front of her house following her afternoon prayer.<sup>2865</sup> As she was working, she raised her arm, her veil fell and a car that was

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dressed appropriately so they leave her alone (D-0512's statement MLI-D28-0006-2611-R01, at 2617, para. 41). D-0512 stated that this event happened when 'Hamed Moussa' was at the BMS (D-0512's statement MLI-D28-0006-2611-R04, at 2617, para. 42). Regarding the specific circumstances of P-0570's arrest and what happened subsequently to her, the Chamber notes that D-0512 did not testify on the basis of what she saw, but rather on the basis of what she heard from P-0570 herself. Further, regarding what D-0512 could personally observe during that period of time, the Chamber notes that D-0512 testified that she saw and spoke with P-0570 every day in 2012, but that they were not in contact during the period when D-0512 was not in Timbuktu (D-0512's statement MLI-D28-0006-2611-R01, at 2617, para. 41; D-0512: T-181, pp. 14, 74, 78). In this regard, the Chamber recalls that D-0512 was indeed absent from Timbuktu for a period of time, that she broadly estimated between 20 days and two and a half months, likely from August 2012 (*see* paragraph 272 above). The Chamber also considers that it is very common for direct victims of sexual violence to hide or downplay their experiences when speaking about the trauma they went through with others in their close community and that P-0570 understandably might not have discussed her rape with D-0512, despite their relationship. Considering all these elements, the Chamber considers that D-0512 was not in a position to know everything regarding what happened to P-0570, because P-0570 might not have told D-0512 all the details of what happened to her and because D-0512 was also absent from Timbuktu for a certain duration of time during the charged period. In light of the incomplete basis of knowledge of the witness, the Chamber does not consider D-0512's testimony to be reliable on the events that happened to P-0570, in particular after her arrest (*contra* [Defence Final Brief](#), para. 213. *See also* [Prosecution Response Brief](#), paras 69-71; [Defence Response Brief](#), paras 15, 85). The Chamber will therefore assess the reliability of the testimony of D-0512 on individual points as relevant.

<sup>2863</sup> Regarding the date of this event, P-0570's evidence suggests that the incident took place towards the beginning of the control of Timbuktu by the armed groups. She describes the date of the event as being about two months after '[TRANSLATION] they' arrived in town (P-0570's statement MLI-OTP-0049-0047-R05, at 0052, para. 24). From context, the Chamber notes that it is clear that 'they' refers to the 'Islamists' or 'Jihadists' (*see* P-0570's statement MLI-OTP-0049-0047-R05, at 0050-0052, paras 18-23), which the Chamber understands to refer to members of the armed groups present in Timbuktu in 2012-2013. P-0570 also testified to spending a month and a half in hospital after her arrest and that when she left, the 'Islamists' were still in Timbuktu for a long time (P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 39). For her part, D-0512 testified that, based on what she was told by P-0570, P-0570 was taken to the BMS around one month after Tabaski (D-0512's statement MLI-D28-0006-2611-R04, at 2617, para. 41), and that it happened when 'Hamed Moussa' was at the BMS although D-0512 does not know the date exactly (D-0512's statement MLI-D28-0006-2611-R04, at 2617, para. 42). The Chamber notes that according to this timeframe (on the basis that Tabaski was on 24-29 October 2012 (*see* D-0512: T-181, p. 48), the incident would have taken place around November or December 2012. The Chamber however recalls that D-0512 mentioned on several occasions that she had difficulty in estimating or calculating dates (*see* D-0512: T-181, pp. 49, 86). Noting the involvement of Mohammed Moussa at the BMS in the event (*see below*) and the Chamber's finding that Mohammed Moussa took over as emir of the *Hesbah* from around early September 2012 to December 2012 (*see* paragraph 530 above), the Chamber considers that the event took place around or after September 2012. In relation to the Defence's argument that there is no indication that Mohammed Moussa had any role in patrols or enforcing rules until September 2012, and that this inconsistency casts universal doubt on P-0570's reliability as a witness (ICC-01/12-01/18-1547-Red, paras 29, 32), the Chamber recalls that the witness's estimation of two months after the armed groups took control of Timbuktu is an approximation only and that the witness clearly identified 'Hamed Moussa' as the person who arrested her (*see below*). The Chamber accordingly considers that the witness's estimation of the timing of this incident and the related Defence's argument does not detract from the overall credibility of P-0570's account of her arrest.

<sup>2864</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0049, para. 12, 0052, para. 24. Based on this evidence and the circumstances surrounding her arrest and detention, the Chamber is satisfied that the victim was a civilian member of the population of Timbuktu at the time of the charged events.

<sup>2865</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0052, para. 24.

passing by stopped – the type of car in which P-0570 said the ‘Jihadists’ circulated all the time.<sup>2866</sup>

875. Mohammed Moussa got out of the car and P-0570 threw the rice and ran away.<sup>2867</sup>

P-0570 went to hide in her room, but Mohammed Moussa pursued her and told

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<sup>2866</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0052, para. 24. The Chamber notes that P-0570 described the car, explaining that it was a white, covered car called ‘*boulboul*’, of which there were plenty in Timbuktu at the time and in which the ‘Jihadists’ circulated all the time. She testified that the car had a black fabric flag with white writing, supported by a stick. She said it was ‘their’ flag, like the ones on which her children told her was written ‘Jihadist’ (P-0570’s statement MLI-OTP-0049-0047-R05, at 0052, para. 24).

<sup>2867</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0052, para. 24. P-0570 identified this person as ‘Hamed Moussa’ (P-0570’s statement MLI-OTP-0049-0047-R05, at 0052, paras 24-25). Regarding the identification by the witness of Mohammed Moussa, the Chamber notes that P-0570 explained that she recognised ‘Hamed Moussa’ very well (P-0570’s statement MLI-OTP-0049-0047-R05, at 0052, para. 25). P-0570 explained that the whole town knew him and she described him as a Tuareg with a very clear face (P-0570’s statement MLI-OTP-0049-0047-R05, at 0052, para. 25). She stated that before the arrival of the ‘Islamists’, she knew him by sight and by name, he had lived in the neighborhood Hammabangou where he had built a mosque and where people went to pray (P-0570’s statement MLI-OTP-0049-0047-R05, at 0052, 0065, paras 25, 67). She explained that they saw him in town when he was walking and that he had joined those who ‘had fallen’ on the city (P-0570’s statement MLI-OTP-0049-0047-R05, at 0052, 0065, paras 25, 67). P-0570 said that she had heard people say that a certain ‘Hamed Moussa’ ‘fell’ on women but she did not realise that it was the same as the one she knew; one day her friend said that this ‘Hamed Moussa’ they heard about was the one she knew from the Hammabangou neighborhood; P-0570 said that it was when ‘Hamed Moussa’ ‘fell’ on her that she confirmed that he was really that one (P-0570’s statement MLI-OTP-0049-0047-R05, at 0065, para. 67). The Chamber notes that P-0570 also described what ‘Hamed Moussa’ was wearing on the occasion of her arrest, stating that he was dressed like the ‘Islamists’, wearing a ‘*café au lait*’ coloured boubou (P-0570’s statement MLI-OTP-0049-0047-R05, at 0052, para. 26). P-0570 testified that everyone called him ‘Hamed Moussa’ and that she did not know another name for him (P-0570’s statement MLI-OTP-0049-0047-R05, at 0064, para. 66). The Chamber notes that P-0570 did not recognise Mohammed Moussa in photograph MLI-OTP-0043-0034, which other witnesses consistently identified as a photograph of Mohammed Moussa (*see* P-0570 statement MLI-OTP-0049-0047-R05, at 0068, para. 77. *See e.g.* P-0595’s statement MLI-OTP-0058-0196-R02, at 0210, para. 73; P-0603: T-126, p. 16). Notwithstanding, and while having due regard to the Defence’s submission that without cross-examination it was precluded from confronting P-0570 with parts of her testimony where she failed to recognise persons and places (ICC-01/12-01/18-1547-Red, para. 41; [Defence Final Brief](#), para. 214), the Chamber considers that P-0570’s failure to recognise the individual depicted in the photograph as Mohammed Moussa does not impact her narrative or her identification of Mohammed Moussa as the person who arrested her. This is because of the aforementioned detailed description of Mohammed Moussa given by P-0570 as well as the fact that the person in photograph MLI-OTP-0043-0034 is not directly facing the camera (P-0570’s statement MLI-OTP-0049-0047-R05, at 0068, para. 81). The Chamber further notes that P-0570 testified that ‘Hamed Moussa’ was part of the MNLA, as distinct from the ‘Jihadists’ and ‘Islamists’ (P-0570’s statement MLI-OTP-0049-0047-R05, at 0070, para. 92). The Chamber notes that in P-0570’s statement it appears that her conclusion in this regard was based on the fact that Mohammed Moussa is Tamasheq (P-0570’s statement MLI-OTP-0049-0047-R05, at 0070, para. 92). Taking into account that the witness did not have precise knowledge of the different members of the armed groups, the Chamber does not consider this aspect of her testimony to undermine her identification of Mohammed Moussa as the individual who arrested her, also noting her consistent attribution of what was done to her by the ‘Islamists’ (*see e.g.* P-0570’s statement MLI-OTP-0049-0047-R05, at 0053-0054, 0057, paras 28, 41). Based on all of the aforementioned, the Chamber is satisfied that P-0570 was arrested by Mohammed Moussa (*contra* [Defence Final Brief](#), paras 256-257).

her in Tamasheq to go out.<sup>2868</sup> P-0570 refused and they started fighting.<sup>2869</sup> Mohammed Moussa then shouted names and three other members of the *Hesbah* entered, all carrying guns,<sup>2870</sup> which P-0570 said was frightening to her.<sup>2871</sup> When one of the men hit P-0570 with his gun, she hit him too. The men were holding her by the collar of her clothes, and took her out by force.<sup>2872</sup> They asked why she had uncovered her arm, and Mohammed Moussa told her that he said to cover up.<sup>2873</sup>

876. The four men took her to their car and threw her inside.<sup>2874</sup> P-0570 was sitting in the middle in the back with a man sitting on either side of her; Mohammed Moussa, whom P-0570 identified as the leader,<sup>2875</sup> was driving;<sup>2876</sup> and the fourth man was seated next to him in the front.<sup>2877</sup> P-0570's family ran after them.<sup>2878</sup> P-0570 said that she had her head down and put her veil on so that people outside

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<sup>2868</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0052, para. 26. The Chamber notes that P-0570 speaks Tamasheq and Songhai and a little Bambara (P-0570's statement MLI-OTP-0049-0047-R05, at 0049, para. 12).

<sup>2869</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0052-0053, para. 26.

<sup>2870</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0052-0053, para. 26. The Chamber notes that P-0570 explained that she had never seen the men before and cannot remember their names. However, she described the three men as wearing the same outfit and the same turban as 'Hamed Moussa', all of the same colour. She stated that it was an identical outfit that they wore like police officers who all wear the same thing (P-0570's statement MLI-OTP-0049-0047-R05, at 0052-0053, para. 26). P-0570 also said that she recognised that the three men spoke in Peulh, even if this is a language she does not speak herself (P-0570's statement MLI-OTP-0049-0047-R05, at 0052-0053, para. 26). Given that the men were accompanying Mohammed Moussa (a member of the *Hesbah*), that P-0570 was brought to the BMS which was the *Hesbah* headquarters at the time, and that all three of the men were later involved in acts against P-0570 at this location, the Chamber infers that the three men were also members of the *Hesbah*.

<sup>2871</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0052, para. 26.

<sup>2872</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0052, para. 26.

<sup>2873</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0052-0053, para. 26. The Chamber notes that P-0570 explained that she was aware that this was a reason for them to stop women, and testified that, alone against four, what could she do (P-0570's statement MLI-OTP-0049-0047-R05, at 0052-0053, para. 26). P-0570 testified that she felt pain and sadness; her brother was not home and she could not defend herself; she saw her children and her mother crying; one of her children was clinging to her screaming; one of the men stepped on the child and the child became sick (P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27).

<sup>2874</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27. P-0570 testified that there was writing on the back like numbers, but since she cannot read she did not get the details, and also described that the car had red seats (P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27). P-0570 testified that they threw her in there like something to be thrown away (P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27).

<sup>2875</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27. As to how she knew that 'Hamed Moussa' was the leader, the Chamber notes that P-0570 explained that she knew that every group patrolled with its leader and once also heard it said that he was the chief; she also said that he was the first to speak (P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27).

<sup>2876</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27.

<sup>2877</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27.

<sup>2878</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27.

would not recognise her.<sup>2879</sup> In the car, the men did not speak to her but spoke to each other in Tamasheq.<sup>2880</sup>

877. The car eventually stopped and the men got P-0570 out in front of the BMS,<sup>2881</sup> which was the headquarters of the *Hesbah* at that time.<sup>2882</sup> She was led inside by

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<sup>2879</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27. P-0570 further explained that she did so because otherwise people would take an interest in what was happening to her and start to speak (P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27).

<sup>2880</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 27.

<sup>2881</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 28. P-0570 named the building as the 'BDM' but, as explained below, the Chamber infers that this is a reference to the BMS. The Chamber notes the conflicting arguments of the parties in this regard (*see* [Prosecution Final Brief](#), para. 221; [Defence Final Brief](#), para. 212; [Prosecution Response Brief](#), para. 86. *See also* [Prosecution Trial Brief](#), footnote 511; ICC-01/12-01/18-1547-Conf, paras 29-30). The Chamber notes that P-0570 testified that there are many banks in Timbuktu (P-0570's statement MLI-OTP-0049-0047-R05, at 0063, para. 61) and that she provided a detailed description of the place she calls the BDM, including its geographical location, a description of the building, and a description of the room where she was brought in (P-0570's statement MLI-OTP-0049-0047-R05, at 0053, 0063-0064, paras 28, 59-64). The Chamber observes that P-0570 identified the BDM as the place that the 'Islamists' used as a prison and that this was their police office (P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 28). She also testified that when she was brought there she had already heard that women were being brought there (P-0570's statement MLI-OTP-0049-0047-R05, at 0057, para. 42. *See also* at 0053, para. 28). There is also consistency between P-0570's narrative of what happened to her at this location and other accounts of women being raped at the BMS (*see e.g.* the cases of P-0547, P-0636 and Azahara Abdou (finding on Azahara Abdou's rape being made by Majority, Judge Akane dissenting)). The Chamber further notes that the banks BDM and BMS are not proximate to each other (*see* P-0102's report MLI-OTP-0063-0037, at 0049, 0051 (site 5 being the BDM, site 13 being the BMS and site 15 being the *Yoboutao* market). *See also* [Prosecution Final Brief](#) Annex 4, p. 5 (site 2 being BMD, site 1 being BMS and site 10 being the *Yoboutao* market)). While the Defence impugns P-0570's sense of direction and the vagueness and inconsistency of some of her directions, as well as her description of buildings and rooms (*see* [Defence Final Brief](#), para. 212; ICC-01/12-01/18-1547-Conf, paras 29-30), and noting that indeed P-0570 did not recognise the place in photograph MLI-OTP-0048-0729 (P-0570's statement MLI-OTP-0049-0047-R05, at 0069, para. 89) which other witnesses identified as being the BMS or the 'Islamists place' (*see e.g.* P-0603: T-126, p. 14; P-0636: T-072, pp. 56-57), the Chamber notes that key elements of P-0570's description of the location of the place she called the BDM are consistent with other evidence on the record on the location of the BMS. In that regard, P-0570 described the 'BDM' as being near the *Yoboutao* market (P-0570's statement MLI-OTP-0049-0047-R05, at 0064, para. 63) and as being in the Bangoumefarou district (P-0570's statement MLI-OTP-0049-0047-R05, at 0063, para. 61) (*see, similarly*, P-0608: T-153, p. 54). She also described that next to the bank there is a butcher shop (P-0570's statement MLI-OTP-0049-0047-R05, at 0064, para. 63) (*see, similarly*, P-0641: T-137, p. 7). The Chamber also observes that at least two other witnesses conflated the BDM with the BMS, including an insider who himself worked for the Islamic Police (*see* P-0582's statement MLI-OTP-0062-4012-R02, at 4017 '*moi je l'appelais BDM, il se trouve que c'est BMS...*'; P-0610: T-158, pp. 15-16, 54-55). The Chamber also considers that P-0570 identified Mohammed Moussa as the individual who arrested her and raped her at the place where she was taken (*see* below). The Chamber also notes that the alternative inference proposed by the Defence, which is that the BDM bank was occupied or used by other groups as a place of detention (ICC-01/12-01/18-1547-Conf, paras 29-30) is not based on any evidence on the case record. While giving due consideration to the fact that the Defence did not have the opportunity to cross-examine P-0570, the Chamber concludes, taking all these factors into account, that the only reasonable inference to be drawn is that by 'BDM' P-0570 actually refers to the BMS. In the factual findings on the case of P-0570 and the footnotes therein, where the Chamber refers to BMS, this is based on the foregoing inference unless otherwise stated.

<sup>2882</sup> Notwithstanding that P-0570 described this place as the police office of the 'Islamists' (P-0570's statement MLI-OTP-0049-0047-R05, at 0053, para. 28), and although the Chamber relies on her

those who had brought her there.<sup>2883</sup> Inside, on the left hand side behind a fence, P-0570 saw women who had been arrested.<sup>2884</sup>

878. P-0570 was led to a dark room; there was a mattress in the room.<sup>2885</sup> She said that seeing the mattress, she understood what awaited her.<sup>2886</sup> Immediately after she entered, Mohammed Moussa followed.<sup>2887</sup> He carried his gun and addressed P-0570 in Songhai by her first name, telling her that if she did not take off all of her clothes, he would kill her with the gun and throw her in the hole in the back, and that no one would know where she was.<sup>2888</sup> After Mohammed Moussa threatened her with his gun, P-0570 took off all her clothes.<sup>2889</sup> He told her to lie down on

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testimony to find that she was taken to the BMS, the Chamber finds that the BMS was the headquarters of the *Hesbah* at the time, rather than the Islamic Police, recalling that the Islamic Police headquarters relocated from the BMS to the *Gouvernorat* sometime in September 2012 (*see* paragraph 558 above) which was the time that P-0570 was arrested, and noting the involvement of Mohammed Moussa, a member of the *Hesbah*, in P-0570's arrest and detention. The Chamber does not consider this issue to otherwise impact the credibility or reliability of P-0570's narrative, recalling that P-0570 had poor knowledge of the institutions created by the armed groups (*see* section II.B.2.c)ii above).

<sup>2883</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053-0054, para. 28.

<sup>2884</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0053-0054, para. 28. P-0570 testified that at the BMS they did not do the same to everyone. The women they 'loved' they took to a room to use, like the one she herself was put into, whereas the others, the ones they did not want, they kept them locked in places with gates until their families came. P-0570 testified that she saw the room with the gates the same day she was brought in. She described that the gates were long irons. She said that she saw women sitting there. She said that she knew even before arriving there that if they put her where there were no gates, they were going to sleep with her, because to sleep with someone, they had to put the person in a more hidden place than where there were gates (P-0570's statement MLI-OTP-0049-0047-R05, at 0063, para. 59).

<sup>2885</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0054, para. 29. The Chamber notes that P-0570 also described in detail the inside of the room where she was taken. She testified that it was dark there and that there was a mattress and a kettle, and that the walls were white and green like fresh grass. She testified that there were high windows that she could not have reached with her height. She testified that there was no fence (P-0570's statement MLI-OTP-0049-0047-R05, at 0054, para. 29). P-0570 further testified that the place has not really changed since the 'Islamists' left and she can even see the room where she was put. She said that after having passed a large room with upholstered armchairs and tables, you pass three doors, turn and see the room where she was with its door; this is the fourth door (P-0570's statement MLI-OTP-0049-0047-R05, at 0063, para. 60). P-0570 said that now it has a desk with chairs in it (P-0570's statement MLI-OTP-0049-0047-R05, at 0063, para. 60). In relation to the Defence's submission that P-0570's description of the colour of the walls is inconsistent with other descriptions of the BMS (*see* ICC-01/12-01/18-1547-Conf, para. 29(e); *see also* [Defence Final Brief](#), para. 212), the Chamber refers to its inference above that by 'BDM' P-0570 actually refers to the BMS and does not consider this issue to impact its inference.

<sup>2886</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0054, para. 29.

<sup>2887</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0054, para. 30.

<sup>2888</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0054, para. 30. The Chamber notes that P-0570 explained that she saw 'Hamed Moussa' and identified him well. In relation to the use of her first name, P-0570 explained that although they used to meet him before, that did not mean that she and 'Hamed Moussa' knew each other personally, and she thinks that he knew her name because her family shouted it as the men were taking her from her home (P-0570's statement MLI-OTP-0049-0047-R05, at 0054, para. 30).

<sup>2889</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0054, para. 31.



the mattress and P-0570 did.<sup>2890</sup> She testified that if he had not had a gun, she would have fought.<sup>2891</sup> P-0570 screamed but no one heard her.<sup>2892</sup> Mohammed Moussa forced her to have sexual intercourse with him while threatening her.<sup>2893</sup> When he was finished, he got up as P-0570 tried to get up too and get dressed.<sup>2894</sup>

879. As Mohammed Moussa was leaving, another one of the members of the *Hesbah* who had arrested P-0570 at her home entered.<sup>2895</sup> This man also had a gun.<sup>2896</sup> He told P-0570 to undress, and said to her in Tamasheq that they would kill her on the spot, that they were all going to ‘get together’ with her and if she refused, they would kill her for nothing.<sup>2897</sup> He told her that she was good and that if she accepted, he would marry her.<sup>2898</sup> This man did the same thing to her as Mohammed Moussa had done, that is, forcing her to have sexual intercourse with him.<sup>2899</sup> Then he went out and P-0570 could hear Peuhl and Arabic being spoken outside.<sup>2900</sup> She said that she believed that there were men sitting outside the

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<sup>2890</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054, para. 31.

<sup>2891</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054, para. 31.

<sup>2892</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054, para. 31.

<sup>2893</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054, para. 31. P-0570 also testified that Mohammed Moussa ‘[TRANSLATION] used [her] like a woman’ while threatening her (P-0570’s statement MLI-OTP-0049-0047-R05, at 0054, para. 31). The Chamber notes that P-0570 testified that ‘Hamed Moussa’ put the part of a man that they call the ‘zizi’ (understood to be the penis) inside her, that she ‘[TRANSLATION] became wet’ as he had ejaculated (P-0570’s statement MLI-OTP-0049-0047-R05, at 0054, para. 31). P-0570 marked on Annex 2 of her statement MLI-OTP-0049-0076-R03 the place where she said that she was penetrated (P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 35). Based on the foregoing evidence, the Chamber finds that penetration occurred and that Mohammed Moussa forced P-0570 to have sexual intercourse with him.

<sup>2894</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054, para. 31.

<sup>2895</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054-0055, para. 32. In relation to the identity of the man, P-0570 testified that this was one of the four men who had taken her from her home. She said that it was twilight and that those who had entered the room would light up with their phones, and then she would see them and recognise them, and see inside of the room (P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 34).

<sup>2896</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054-0055, para. 32.

<sup>2897</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054-0055, para. 32. From the context, the Chamber understands that by telling P-0570 that they were all going to ‘get together’ with her, this man was threatening P-0570 with further sexual violence.

<sup>2898</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054-0055, para. 32.

<sup>2899</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054-0055, para. 32. The Chamber notes that P-0570 testified that this man put his ‘zizi’ (understood to be the penis) in her (P-0570’s statement MLI-OTP-0049-0047-R05, at 0054-0055, para. 32) and that she marked on Annex 2 of her statement MLI-OTP-0049-0076-R03 the place where she said that she was penetrated (P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 35). Based on the foregoing evidence, the Chamber finds that penetration occurred and that the man forced P-0570 to have sexual intercourse with him.

<sup>2900</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0054, para. 32.

room.<sup>2901</sup> P-0570 said that she prayed that she would be let go.<sup>2902</sup>

880. Following this, a third man entered,<sup>2903</sup> also being one of the members of the *Hesbah* who had taken her from her home.<sup>2904</sup> He did not say a word, forced P-0570 to have sexual intercourse with him and hit her.<sup>2905</sup> P-0570 had blood coming from her vagina.<sup>2906</sup> A fourth man stopped at the door and did not enter, saying in Tamasheq to leave her, and ‘[TRANSLATION] in God’s name’ look what condition she was in.<sup>2907</sup> The men said that they had done this to her because she hit their friend.<sup>2908</sup> P-0570 was in so much pain that she lost consciousness.<sup>2909</sup>

881. P-0570 woke up in the big hospital in Timbuktu.<sup>2910</sup> She said she did not know how she got there.<sup>2911</sup> Members of her family, including her brother, were there, and told her that it was the day after the day that she was taken from her house.<sup>2912</sup> She told them what had been done to her.<sup>2913</sup> She testified that she felt sick and could not even close her legs.<sup>2914</sup>

882. When P-0570’s brother was told the night before that P-0570 had been taken to the BMS, he had gone the next day to the ‘gendarmerie’, begging for P-0570 to

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<sup>2901</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 32.

<sup>2902</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 32.

<sup>2903</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 33.

<sup>2904</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 34.

<sup>2905</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 33 (testifying that the man penetrated her, ejaculated, and then penetrated her again). The Chamber notes that P-0570 testified that this man put his ‘*zizi*’ (understood to be the penis) in her (P-0570’s statement MLI-OTP-0049-0047-R05, at 0054-0055, para. 33) and that she marked on Annex 2 of her statement MLI-OTP-0049-0076-R03 the place where she said that she was penetrated (P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 35). Based on the foregoing evidence, the Chamber finds that penetration occurred and that the man forced P-0570 to have sexual intercourse with him.

<sup>2906</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 33.

<sup>2907</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 34. P-0570 said that she recognised his voice as one of those people who had come to her house (P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 34).

<sup>2908</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 34.

<sup>2909</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 34.

<sup>2910</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 36.

<sup>2911</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 36.

<sup>2912</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 36.

<sup>2913</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 36. P-0570 stated that she told members of her family, including her brother, what happened to her when they visited her at the hospital.

<sup>2914</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 36.

be released.<sup>2915</sup> P-0570's brother told P-0570 that the '[TRANSLATION] second-in-command' tried to find out why P-0570 had been arrested and then ordered that she be released.<sup>2916</sup>

883. The '[TRANSLATION] second-in-command', who had a beard that went down to his chest and a blue turban, came to the hospital and spoke to P-0570 in Tamasheq.<sup>2917</sup> He asked her if that is what they did to her, if it was ok, and who did this.<sup>2918</sup> P-0570 told him that it was Mohammed Moussa.<sup>2919</sup> Then the man left and P-0570 never saw him again.<sup>2920</sup>

884. P-0570 stated that the 'chiefs' were not aware of what happened to her, that they did not accept these acts and that it was the young people who did these things, but 'chiefs' like Mohammed Moussa did them too.<sup>2921</sup> She testified that a man could not remain without a woman, it was obligatory.<sup>2922</sup> She added that they did it in secret; as a leader they could not do it in the eyes of all, it would be frowned upon.<sup>2923</sup>

885. P-0570 spent a month and a half in the hospital.<sup>2924</sup> She was given medicine by

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<sup>2915</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0055-0056, para. 37. P-0570 testified that she was told this by her family members. P-0570 testified that her brother told her that, in the 'gendarmierie', there was a big chief upstairs who never came down, and his second-in-command, but he did not tell P-0570 their names (P-0570's statement MLI-OTP-0049-0047-R05, at 0055-0056, para. 37).

<sup>2916</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0055-0056, para. 37. P-0570 testified that, after she told her family what had been done to her, her brother left. When he returned to the hospital, he told her that he had just seen the second-in-command (P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 38). She said that her brother reported that he told the second-in-command that while they forbade men to approach women, it was their own men who fell on them; her brother had added that if P-0570 was at fault, instead of doing atrocities to P-0570 it would have been better to give her real judgment or advice; her brother reported that the second-in-command was not happy (P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 38).

<sup>2917</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 38.

<sup>2918</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 38.

<sup>2919</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 38.

<sup>2920</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 38.

<sup>2921</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 38.

<sup>2922</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 38.

<sup>2923</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 38.

<sup>2924</sup> The Chamber notes that there is conflicting evidence on this point. P-0570 testified that she spent a month and a half in the hospital, and that when she left, the 'Islamists' were still in Timbuktu for a long time (P-0570's statement MLI-OTP-0049-0047-R05, at 0056, para. 39). On the other hand, D-0512 testified that P-0570 was never at the hospital in 2012 unless she went there just for a consultation and that she would know if P-0570 had spent a week at the hospital in 2012 (D-0512's statement MLI-D28-0006-2611-R04, at 2617-2618, para. 43; D-0512: T-181, pp. 79, 90). The Chamber however recalls its finding above regarding the incomplete basis of knowledge of D-0512 (*contra* [Defence Final Brief](#), para. 213). Accordingly, the Chamber relies on P-0570's evidence that she spent a month and a half in hospital after her arrest and rape.

female doctors, as she said that the ‘Islamists’ forbade male doctors to treat women.<sup>2925</sup>

886. When P-0570 left hospital she said that there was still something wrong: she said that she had pain in her heart and did not want to see people.<sup>2926</sup> She testified that she was worried, she was talking to herself, she had her head elsewhere.<sup>2927</sup> She did not dress herself.<sup>2928</sup> P-0570 saw Mohammed Moussa often afterwards but never saw the other three men again.<sup>2929</sup> She testified that she got sick and stopped going out in the city.<sup>2930</sup>

887. Three months after the incident, P-0570 discovered that she was pregnant, believing that this was a result of her rape,<sup>2931</sup> and had an abortion.<sup>2932</sup> P-0570 testified that because of what happened to her, her husband left her.<sup>2933</sup>

888. P-0570 suffered in her body and her heart because of what happened.<sup>2934</sup> Her family consulted many marabouts until she recovered and became herself as she is today.<sup>2935</sup>

#### **o) Case of Fadimata Mint Lilli (P-0547)**

889. For the factual findings in this section, the Chamber relies primarily on the

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<sup>2925</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0056, para. 39. On the presence of female doctors or nurses in Timbuktu at the time, *see also* P-0557: T-055, p. 23; P-0065: T-047, pp. 48-52.

<sup>2926</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0056-0057, para. 40.

<sup>2927</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0056-0057, para. 40.

<sup>2928</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0056-0057, para. 40.

<sup>2929</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0055, para. 34. *See also* P-0570’s statement MLI-OTP-0049-0047-R05, at 0064-0065, paras 66-67.

<sup>2930</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0056, para. 40.

<sup>2931</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0056-0057, paras 40-41.

<sup>2932</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0056-0057, para. 40. P-0570 testified that she had to have the abortion in secret as the person in charge of the hospital forbade damaging the child. She testified that she paid 50,000 FCFA for the abortion and was given pills and quinine which she took. She testified that she kept documents and prescriptions dating from her visits to the hospital, but that everything was completely soaked one day during heavy rain (P-0570’s statement MLI-OTP-0049-0047-R05, at 0056-0057, para. 40).

<sup>2933</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0050, 0057, paras 14, 16, 41. P-0570 testified that when her husband heard that the ‘Islamists’ had ‘[TRANSLATION] fallen’ on her, he said that he did not care, and that ‘[TRANSLATION] if people had fallen’ on her it was because she had not stayed in her place. P-0570 added that her husband had been informed that the ‘Islamists’ had taken a lot of people like her, but he did not care. She testified that it was over between them and that before the soldiers returned to Timbuktu, her husband sent her divorce papers (P-0570’s statement MLI-OTP-0049-0047-R05, at 0057, para. 41).

<sup>2934</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0050, para. 16.

<sup>2935</sup> P-0570’s statement MLI-OTP-0049-0047-R05, at 0056-0057, para. 40.

evidence of the direct victim herself, Fadimata Mint Lilli (P-0547),<sup>2936</sup> which, subject to discrete aspects discussed below, it finds particularly reliable. The Chamber does not rely on the testimony of P-0524 or other related evidence to

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<sup>2936</sup> Fadimata Mint Lilli (*see* P-0547: T-151 to T-153), a Muslim woman of Songhai ethnicity, lived in Timbuktu when Ansar Dine/AQIM were present in the city (P-0547: T-151, p. 6). The witness was admitted as a participating victim in the proceedings. She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation. While she could not recall certain particulars, the witness spoke vividly about her victimisation, providing numerous details in an expressive way, always putting the events she observed or heard in context (*see* P-0547: T-151, pp. 19-20, 24; T-152, pp. 9-12). She also repeatedly stated that she was providing testimony on what she was aware of and what concerned her as she did not want to lie, noting she believed in the search for the truth (*see* P-0547: T-152, pp. 38-39, 54; T-153, pp. 6-7, 14, 16). The witness appeared to be tired and irritated during parts of her oral testimony (*see* P-0547: T-152, pp. 44-45), an expression of emotion which the Chamber considers to be a further demonstration of her credibility. Regarding her motivation to testify, the witness was forthright in expressing her need and hope for justice (*see* P-0547: T-152, pp. 30-31). She stated that she chose to testify of her own will, in the hope that other people would not be terrorised or suffer by experiencing what she had experienced (P-0547: T-152, pp. 30-31). The Chamber notes that the witness knew the city of Timbuktu and its main locations well (P-0547: T-152, p. 59), including the *Gouvernorat*, even though she had never been there (P-0547: T-152, pp. 58-59). Given the specificity and consistency of her accounts, the Chamber is convinced that the witness testified about her personal experience and considers that there is no credible evidence showing that the witness conflated her experience with others or that her exposure to others' accounts of their own experiences during the relevant period influenced the witness' testimony in these proceedings (*contra* [Defence Final Brief](#), paras 236-240). Similarly, the Chamber finds the argument of the Defence that the witness provided false evidence by recycling information from the files of ML\_0279, to be unsupported by the evidence and speculative (*contra* [Defence Final Brief](#), para. 236; *see also* Prosecution Response, paras 100-103). In relation to the series of Defence arguments regarding the witness' description of the BMS and its submission that they cannot be reconciled with the actual floor plan of the BMS ([Defence Final Brief](#), para. 240), the Chamber observes that, contrary to the Defence's submissions, the witness did not testify that she was taken to another room through an internal corridor, where she was forced to have sexual intercourse. In any event, the Chamber notes that the witness testified that she does not know where she went after entering through the door and emphasised that it is difficult for people to spend time remarking on the premises after being taken there by force (P-0547: T-152, p. 60). The Chamber finds that evidence to be highly compelling. Accordingly, the Chamber considers that minor inconsistencies, if any, between the floor plan of the BMS and the witness' testimony do not affect her credibility. Furthermore, the Chamber dismisses the Defence submissions that there were significant due process violations given the Prosecution's disclosure violations, the decision not to call P-0524 and P-1204 and the decision not to recall Fadimata Mint Lilli ([Defence Final Brief](#), para. 243; *see also* [Defence Response Brief](#), para. 86). In this regard, the Chamber recalls its previous determinations that: (i) while the Prosecution erred in not disclosing certain documents expeditiously, this error was sufficiently mitigated by the fact that the Prosecution disclosed ample information to the Defence prior to Fadimata Mint Lilli's testimony; (ii) the inclusion of Fadimata Mint Lilli's evidence in the record of the case does not violate the accused's fair trial rights nor prejudice his defence, even though P-0524 and P-1204 were not called to testify *viva voce*; and (iii) the decision not to recall Fadimata Mint Lilli does not prejudice the Defence or violate the accused's fair trial rights (*see* [Decision on Defence's Application regarding P-0547](#), paras 20-21, 23-24, 39). The Chamber also considers unfounded the Defence's challenges against Fadimata Mint Lilli's credibility on the basis of D-0514's evidence, in light of its finding on D-0514's credibility (*see* section II.B.2.a)xii above) and their speculative nature (*see* [Defence Final Brief](#), para. 241). For all these reasons and the Chamber's assessment of the reliability of P-0524's evidence concerning Fadimata Mint Lilli as outlined below, the Chamber dismisses the Defence's challenges regarding Fadimata Mint Lilli's credibility. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Fadimata Mint Lilli to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

establish the facts related to this incident as it considers this evidence particularly unclear.<sup>2937</sup> Similarly, the Chamber does not consider D-0514's testimony in relation to this incident reliable in light of his limited basis of knowledge of the events.<sup>2938</sup>

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<sup>2937</sup> The Chamber notes that, in her statement, P-0524 discusses the case of a victim under the code ML\_0279 that she refers to by two names '[REDACTED]' and '[REDACTED] ML\_0279)' (P-0524's statement MLI-OTP-0071-0246-R12, at 0264, paras 113-118). The Chamber also notes that, in civil party complaint MLI-OTP-0024-2814, the case of a victim referred to as 'ML\_0279' is recounted and contains, albeit in a summarised form, a nearly identical account to the one mentioned in the relevant part of P-0524's statement (MLI-OTP-0024-2814, at 2829-2830). During her oral testimony, Fadimata Mint Lilli was asked whether she was also known by the name [REDACTED] to which she clearly answered in the negative (P-0547: T-153, p. 35), stating that her name was [REDACTED], and that her children call her [REDACTED] or [REDACTED] (P-0547: T-153, pp. 31-39). The question arose as to whether the names, code and narrative included in P-0524's statement actually referred to Fadimata Mint Lilli's incident or to another person and/or whether Fadimata Mint Lilli could have been referred to by two different names (see [Defence Final Brief](#), para. 237). To address this question, the Chamber analysed different documentary and testimonial evidence. On the one hand, the Chamber notes that, in addition to P-0524's statement, which refers to the alleged victim as '[REDACTED]', another document seems to imply that Fadimata Mint Lilli might be the same person as [REDACTED] (see communication MLI-OTP-0077-5163-R01, which depicts a series of emails dated November 2021 (after Fadimata Mint Lilli's oral testimony) between the Prosecution and an FIDH member; the latter confirms that [REDACTED] (P-0547) and '[REDACTED]' are the same person and adds that many persons in the region have multiple first and last names). On the other hand, as indicated above, Fadimata Mint Lilli herself clearly stated that she was not [REDACTED] (P-0547: T-153, p. 35). This is also the position of the Prosecution which alleges that Fadimata Mint Lilli and [REDACTED] are two different persons (see [Prosecution Response Brief](#), paras 100-103; P-0547: T-153, p. 32; Prosecution response to "Defence application to exclude the evidence of or recall Witness MLI-OTP-P-0547, 24 August 2022, ICC-01/12-01/18-2301-Conf, notably para. 9. In addition, the Chamber notes that, in the part of P-0524's statement related to the victim she calls '[REDACTED]', P-0524 testified that she did not know what the victim said to the judge in Bamako (P-0524's statement MLI-OTP-0071-0246-R12, at 0264, para. 117) and it is unclear how P-0524 obtained the information reported in this part of her statement. Finally, the Chamber notes the content of the investigative note concerning the identification documents related to [REDACTED] (see MLI-OTP-0077-5166), as well as the lack of clarity as to the use of the code ML\_0279 in the different documents (see MLI-D28-0006-9079 and MLI-OTP-0080-4698). On the basis of all the above-mentioned considerations, the Chamber considers that there is insufficient evidence as to: (i) whether P-0524's statement relates to Fadimata Mint Lilli or another person; and (ii) whether victim ML\_0279 referred to in MLI-OTP-0024-2814 is actually Fadimata Mint Lilli. Consequently, the Chamber concludes that it cannot be satisfied that P-0524's statement or MLI-OTP-0024-2814 are related to the case of Fadimata Mint Lilli. For all these reasons, the Chamber cannot rely on the relevant part of P-0524's evidence to establish the facts related to Fadimata Mint Lilli.

<sup>2938</sup> The Chamber notes that D-0514 testified that he never heard or saw P-0547 having problems with the 'Islamists' (D-0514: T-208, p. 31); that he swore that 'nothing happened to [P-0547]' (D-0514: T-208, p. 37); that P-0547 lied about being raped and it was not something that was actually experienced (D-0514: T-208, pp. 36-38); and that 'everyone was saying', including members of P-0547's family, that P-0547 had included her husband in all her lies (D-0514: T-208, pp. 36-37). D-0514 notably described P-0547 as 'a bit of a teaser', someone who 'likes having fun with everybody' and 'provokes people' (D-0514: T-208, p. 59). The Chamber also notes that D-0514 testified that he frequently spoke with P-0547 and was close to her (see D-0514: T-208, pp. 25-27, 31, 35, 59-61), indicating that their relationship was such that she would have discussed any problem she had with the 'Islamists' with him (D-0514: T-208, p. 35). The Chamber further notes that, questioned as to how he knew that P-0547 was lying about being raped, D-0514 testified that this was not just something he believed, but rather '[t]his was something that was noted throughout the city; namely, that people see all these images on social media, on WhatsApp, on Facebook. Otherwise, it's not something that I just conjured up in my head' (see notably, D-0514: T-

890. When the armed groups arrived in Timbuktu, Fadimata Mint Lilli, a civilian inhabitant of Timbuktu,<sup>2939</sup> was married to her husband and they had three children.<sup>2940</sup> One day, around November or December 2012,<sup>2941</sup> Fadimata Mint Lilli was sweeping in front of her house when she saw some people coming by in a vehicle that had a ‘black flag with white lettering’.<sup>2942</sup> Fadimata Mint Lilli was scared because each time she would see members of these groups in Timbuktu, ‘they would make problems or they would have a whip or they would have weapons’; she therefore quickly ran into the garden without closing the door behind her.<sup>2943</sup>

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208, p. 38). However, from its assessment, the Chamber finds that D-0514’s testimony about the veracity of P-0547’s account of her rape is based on his own opinion, unsupported contentions about what he would have heard and what he would have known, and unverified rumours. The Chamber notably notes that the witness himself acknowledged that he did not know what P-0547 and [REDACTED] talked about or what went on between them (D-0514: T-209, pp. 7-9). The Chamber further notes that P-0547 herself testified that, apart from her husband, she did not tell the people close to her of her experience (P-0547: T-152, pp. 16, 29). The Chamber also observes that it was only during the Prosecution’s examination that D-0514 stated that P-0547 would frequently visit his place of work (D-0514: T-208, p. 61), despite the fact that he was explicitly questioned on how he knew P-0547 as well as the frequency of his interactions with P-0547 in 2012 (D-0514: T-208, pp. 25-26). The Chamber additionally refers to its general assessment of D-0514’s credibility as well as its analysis of the involvement of NGOs in collecting evidence (*see* section II.E above). For all these reasons, while the Chamber finds that it can rely on elements of D-0514’s testimony regarding his general knowledge of P-0547 and her husband, as well as members of their community, the Chamber finds D-0514’s testimony on the incident concerning P-0547 not credible or reliable and does not to rely on it.

<sup>2939</sup> P-0547: T-151, pp. 5-6. Based on this evidence and the circumstances surrounding her arrest and detention, the Chamber is satisfied that the victim was a civilian member of the population of Timbuktu at the time of the charged events.

<sup>2940</sup> P-0547: T-151, p. 6. *See also* D-0514: T-208, pp. 25-27.

<sup>2941</sup> The Chamber’s finding on the timing of the present incident is guided primarily by P-0547’s testimony that the glass of the door in photograph MLI-OTP-0006-1877 was broken by the lady who was taken to the BMS and had a mental breakdown (P-0547: T-151, pp. 28-29, *referring to* photograph MLI-OTP-0006-1877; T-153, p. 4), which the Chamber considers as referring to Azahara Abdou (P-1134) breaking the glass around November 2012 (*see* paragraph 859 above). The Chamber also notes that P-0547 testified that she was taken to the BMS after the march organised by women in Abaradjou against Mohammed Moussa (P-0547: T-153, pp. 3-4), which took place on 6 October 2012 (*see* paragraph 753 above). Further, P-0547 confirmed that she believes she was arrested by members of the *Hesbah* (P-0547: T-153, pp. 39-40), which occupied the BMS after the Islamic Police moved to the *Gouvernorat* in September 2012 (*see* paragraph 519 above). On the basis of the foregoing evidence, and while P-0547 also stated that what happened to her occurred slightly before the month of Ramadan (P-0547: T-151, p. 21), the Chamber concludes that the incident involving P-0547 occurred around November or December 2012, during the control of Timbuktu by Ansar Dine/AQIM. Nevertheless, considering the lapse of time, the traumatising caused to P-0547 by her victimisation and her testimony that she cannot distinguish between the days and has problems with dates (P-0547: T-152, p. 29), the Chamber does not consider this as affecting P-0547’s credibility.

<sup>2942</sup> P-0547: T-151, pp. 19-20, 22.

<sup>2943</sup> P-0547: T-151, pp. 20, 23.

891. Three members of Ansar Dine/AQIM,<sup>2944</sup> who were armed with a weapon and a whip, came out of the vehicle and chased Fadimata Mint Lilli into the garden, telling her that she was going to be taken.<sup>2945</sup> When Fadimata Mint Lilli asked what she had done, one of the men told her that she was not covered up properly.<sup>2946</sup> After a long discussion in Arabic, one of the men took out a whip and flogged her once on the back, which left a scar/mark on her back.<sup>2947</sup>
892. Fadimata Mint Lilli hid behind her husband who was also there and the man told her that he would call for backup if she did not go with him.<sup>2948</sup> Fadimata Mint Lilli thought that it would be just the same if she resisted, judging from a case she had previously observed in her street.<sup>2949</sup> In fact, Fadimata Mint Lilli's husband asked her to go with the men because he did not want another case like what had happened in their street.<sup>2950</sup>

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<sup>2944</sup> The Chamber is satisfied that the men/persons who went to P-0547's home were member of Ansar Dine/AQIM, noting that P-0547 was taken to the BMS during the period of time in 2012 when Timbuktu was under the control of Ansar Dine/AQIM when this location was being used by Ansar Dine/AQIM (see below) for not being properly covered which was one of the rules imposed and enforced by Ansar Dine/AQIM at the time (see paragraphs 694, 697, 699 above) (*contra* [Defence Final Brief](#), paras 256, 260).

<sup>2945</sup> P-0547: T-151, pp. 20, 23-24. P-0547 stated that she could not tell if the men who came after her were 'Arabs or Tamasheqs' but she knew that they were not black-skinned (P-0547: T-151, p. 23). She could only see the eyes of the men and observed that the men had turbans on and were wearing khaki coloured short trousers (P-0547: T-151, p. 23). P-0547 testified that she did not know any of them (P-0547: T-152, p. 56).

<sup>2946</sup> P-0547: T-151, p. 20.

<sup>2947</sup> P-0547: T-151, pp. 20, 24. P-0547 testified that she met with the Court's investigators in 2017 and that they took a photo of her scar during this meeting (P-0547: T-151, p. 24). When shown photograph MLI-OTP-0039-0884, P-0547 confirmed it depicted herself and that the area with a black scale on the left-hand side of her back is where she has the scar (P-0547: T-151, pp. 24-25, *referring to* photograph MLI-OTP-0039-0884). Dr Sommerlad testified that it is impossible to determine whether the marks in photograph MLI-OTP-0039-0884 could have been caused by a single whipping without a physical examination of P-0547 (see Dr Sommerland's report MLI-D28-0006-2778-R01, at 2778-2779). The Chamber does not rely on Dr Sommerland's evidence on this point and considers that P-0547's testimony is sufficient to establish the fact that she was flogged on her back once which left a scar (*contra* [Defence Final Brief](#), para. 242).

<sup>2948</sup> P-0547: T-151, p. 20.

<sup>2949</sup> P-0547: T-151, p. 20. P-0547 explained that one evening when two young people were sitting out, an 'Islamist' came up and said that they were smoking. When they said they were not smoking and hit the 'Islamist', he called for backup and all the people that they found in the street, including old people, men, women, and one old man at the mosque, were taken away in a vehicle (P-0547: T-151, p. 20). This incident happened during the night in P-0547's street and everyone came out when they heard the noise; P-0547 herself could see a little bit of what was going on 'with the lights from their cars' (P-0547: T-152, p. 25). P-0547 was also told by the young man what had happened after he was brought back the next day (P-0547: T-152, p. 25). P-0547 testified that although she could not give the exact time, there was not so much time between her own arrest and this incident involving the smoking man (P-0547: T-151, p. 21).

<sup>2950</sup> P-0547: T-151, p. 20.



893. Fadimata Mint Lilli was then taken to the BMS, the headquarters of the *Hesbah* at that time,<sup>2951</sup> in a vehicle with the three members of Ansar Dine/AQIM and two other men who were sitting in the front.<sup>2952</sup> All men were armed.<sup>2953</sup>
894. Once they arrived at the destination, Fadimata Mint Lilli entered the BMS through a small door on the side of the building located between two streets.<sup>2954</sup> When she entered, she saw members of Ansar Dine/AQIM who were armed, and in the prison itself, she saw some women and others who had come for them.<sup>2955</sup> Fadimata Mint Lilli was taken to a little room<sup>2956</sup> with a mat on the floor.<sup>2957</sup> There, she found three other women, including one that was smaller and younger than the rest and who was crying.<sup>2958</sup> Fadimata Mint Lilli thought that it was a very small space for the number of detained people; there was only one door, which was locked.<sup>2959</sup> The room had no windows but sunlight came in through the window of the broken door.<sup>2960</sup> In addition, everybody relieved themselves on the mat.<sup>2961</sup> The group of detainees were not given anything to eat or drink.<sup>2962</sup> Fadimata Mint Lilli was not able to contact her family or anyone outside.<sup>2963</sup>
895. At one stage, Fadimata Mint Lilli heard footsteps.<sup>2964</sup> Everybody in the room stood up and gathered around the door thinking that the man, who was a tall, black

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<sup>2951</sup> P-0547: T-151, pp. 17-18. On the fact that the BMS was the headquarters of the *Hesbah* at that time, see paragraph 519 above

<sup>2952</sup> P-0547: T-151, p. 26.

<sup>2953</sup> P-0547: T-151, p. 26.

<sup>2954</sup> P-0547: T-151, pp. 27-29, referring to photographs MLI-OTP-0006-1873, MLI-OTP-0006-1877.

<sup>2955</sup> P-0547: T-151, p. 30.

<sup>2956</sup> P-0547 testified that this room and the little door to enter the building were not so far away from each other (P-0547: T-152, pp. 4, 61). P-0547 also testified that it is not possible to tell how many steps she took to get to the room, and stated that she is not even able to describe how many steps she took to get to the courtroom on the day of her testimony before the Chamber, even though no weapons were being pointed at her (P-0547: T-152, p. 62).

<sup>2957</sup> P-0547: T-151, p. 26.

<sup>2958</sup> P-0547: T-151, pp. 26-27; T-152, p. 6; T-153, p. 6. P-0547 testified that she thought they were all Songhai as they were speaking the same language (P-0547: T-152, p. 5). P-0547 did not really ask questions to the other detainees but understood they had all arrived on the same day as her (P-0547: T-152, p. 5).

<sup>2959</sup> P-0547: T-152, p. 5.

<sup>2960</sup> P-0547: T-152, pp. 5-6; T-153, p. 4.

<sup>2961</sup> P-0547: T-151, p. 27.

<sup>2962</sup> P-0547: T-152, p. 5.

<sup>2963</sup> P-0547: T-152, p. 6.

<sup>2964</sup> P-0547: T-152, p. 9. P-0547 testified that this was before people had left for the mosque and she heard the call for prayer after that (P-0547: T-153, p. 5).

skinned member of the *Hesbah*, had come to release them.<sup>2965</sup> The man approached Fadimata Mint Lilli with his weapon and took her away whilst pointing the weapon at her.<sup>2966</sup> Fadimata Mint Lilli testified that she could not react or do anything with the weapon pointing at her.<sup>2967</sup> The man pulled her out, closed the door on the others and blindfolded her.<sup>2968</sup> The man kept the weapon up until she was taken to another room which Fadimata Mint Lilli described as ‘a corner’.<sup>2969</sup>

896. The man started touching her.<sup>2970</sup> He started from her hip and went ‘downwards all the way’.<sup>2971</sup> Fadimata Mint Lilli’s eyes were still blindfolded so that she would not be able to recognise him.<sup>2972</sup> Fadimata Mint Lilli asked him ‘what’s this?’ The man carried on touching her until he reached the traditional pearl that she had around her waist.<sup>2973</sup> The man then cut the pearl saying it was haram and forbidden for a woman to wear it around the waist, and carried on until he pushed her; Fadimata Mint Lilli was laying on her back.<sup>2974</sup> She told him: ‘please don’t do this to me because I’m a married woman’.<sup>2975</sup> The man replied that he knew she had children and that if she did not accept, he would kill her and make orphans of her children; then he laid down on top of Fadimata Mint Lilli and forced her to have sexual intercourse with him.<sup>2976</sup>

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<sup>2965</sup> P-0547: T-152, p. 9. P-0547 knew this man had black skin by looking at his eyes and she knew he was of Bambara origin as he spoke Arabic with a Bambara accent (P-0547: T-152, pp. 10-11). P-0547 testified that the man had khaki clothes and a turban around his face (P-0547: T-152, p. 11). The Chamber infers from the fact that the incident occurred while the women were being detained by Ansar Dine/AQIM at the BMS which was the headquarters of, and under the control of, the *Hesbah* at that time, as well as the fact that the man was armed and was able to open the door of the room in which P-0547 was held, that the man was a member of Ansar Dine/AQIM, specifically the *Hesbah*.

<sup>2966</sup> P-0547: T-152, pp. 11-12.

<sup>2967</sup> P-0547: T-152, p. 12.

<sup>2968</sup> P-0547: T-152, p. 9. When asked whether her eyes were blindfolded in the cell, P-0547 testified that the man put a blindfold over her eyes when she left the cell and the man took her where he wanted to take her (P-0547: T-153, p. 5).

<sup>2969</sup> P-0547: T-152, pp. 9, 12. P-0547 testified that this place where she was taken was not that far away (P-0547: T-152, p. 61).

<sup>2970</sup> P-0547: T-152, p. 9.

<sup>2971</sup> P-0547: T-152, p. 12.

<sup>2972</sup> P-0547: T-152, p. 12; T-153, p. 6.

<sup>2973</sup> P-0547: T-152, pp. 9-10, 14.

<sup>2974</sup> P-0547: T-152, pp. 9-10.

<sup>2975</sup> P-0547: T-152, p. 10.

<sup>2976</sup> P-0547: T-152, p. 10. P-0547 clarified that by saying ‘laid down on her’, she meant that the man ‘made love to her’ (P-0547: T-152, p. 13). The Defence accepted that P-0547 means that there was sexual intercourse (P-0547: T-152, p. 13). Based on the foregoing evidence, the Chamber finds that penetration occurred and that the man forced P-0547 to have sexual intercourse with him.

897. Once the man ‘was done’ with Fadimata Mint Lilli, he took her to the room where she was initially detained.<sup>2977</sup> When the other persons in that room asked her what had happened, Fadimata Mint Lilli told them that she had just been interrogated.<sup>2978</sup> Fadimata Mint Lilli explained that if she had told them what had actually happened, which was considered as ‘truly shameful’, people would have singled her out.<sup>2979</sup>
898. Community leaders<sup>2980</sup> from Fadimata Mint Lilli’s neighbourhood had come to beg for the release of the detained women but they were told that when it would be the time to free them, they would be freed.<sup>2981</sup> The detainees were all kept in the little room from the morning until the evening when the dusk fell; it was only then that Fadimata Mint Lilli was released, together with the other three women.<sup>2982</sup>
899. Upon returning to her house, Fadimata Mint Lilli explained to her husband that she ‘had done something that should not be done’.<sup>2983</sup> She understood from the look on her husband’s face that he was hurt, but that he also understood that what happened was against her will and that ‘there are certain things that you can do nothing about’.<sup>2984</sup> The following day, Fadimata Mint Lilli went to the main big hospital as her belly button was sore.<sup>2985</sup> After doing some tests, it was confirmed that she did not have any illness or disease.<sup>2986</sup>

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<sup>2977</sup> P-0547: T-152, p. 14.

<sup>2978</sup> P-0547: T-152, p. 15.

<sup>2979</sup> P-0547: T-152, pp. 15-17.

<sup>2980</sup> P-0547 testified that Baba Boyba died not too long ago and Hamadou Belle also has died, and while both deaths occurred when she was in Bamako, neither were deceased when she made her statement or when she spoke to the Prosecution (P-0547: T-153, pp. 11-12). *See also* D-0514: T-208, p. 38.

<sup>2981</sup> P-0547: T-152, p. 15. P-0547 knows this as when she got home, the notables (Hamadou Belle and Baba Boyba) came and she found out that they were there at the BMS (P-0547: T-152, pp. 15, 17). P-0547 testified that the community leaders knew about her arrest as there was no other solution than to go see them and it was her husband who went and saw them for that purpose. P-0547 further clarified that she can’t say that they specifically rose to the occasion for her case but they also supported the person with whom she shared the cell with because that is what they do whenever things like this happen. P-0547 does not know if her husband spoke to other people and all that she knows is that she sought people who would go and plead her case, plead in her favour, including community leaders (P-0547: T-153, pp. 9-10).

<sup>2982</sup> P-0547: T-152, pp. 15, 54.

<sup>2983</sup> P-0547: T-152, p. 16.

<sup>2984</sup> P-0547: T-152, p. 32.

<sup>2985</sup> P-0547: T-152, p. 17.

<sup>2986</sup> P-0547: T-152, p. 17.

900. Apart from her husband, Fadimata Mint Lilli did not tell other members of her family of her experience as ‘[i]t is a kind of shame that you can’t tell anyone about’.<sup>2987</sup> Fadimata Mint Lilli also testified that the incident changed her life a great deal because she could see that people look at her differently, ‘as someone who is belittled’ because she had been in prison.<sup>2988</sup> Fadimata Mint Lilli decided to leave Mali after these events.<sup>2989</sup>
901. For Fadimata Mint Lilli, the day of this incident was the most difficult day of her life.<sup>2990</sup> She was helped with some holy water, to ‘forget many things’ that happened, and she felt that otherwise she would have had real pain in her mind.<sup>2991</sup> Nevertheless, she still gets headaches when thinking of certain things.<sup>2992</sup>

**p) Case of Salamata Warnamougrez (P-1710) and Hady Aguisa (P-1711)**

902. For the factual findings in this section, the Chamber relies on the testimony of P-0641, who knew the victims very well and personally witnessed the incident, and which, subject to discrete aspects discussed below, the Chamber finds particularly reliable.<sup>2993</sup>

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<sup>2987</sup> P-0547: T-152, pp. 16, 29.

<sup>2988</sup> P-0547: T-152, pp. 32-33.

<sup>2989</sup> P-0547: T-152, p. 27. P-0547 also testified that since she witnessed the flogging of two young girls and an old man, she understood that she could no longer stay at that place, so she became a refugee in Mauritania (P-0547: T-152, p. 18). P-0547 said that she is not able to tell how much time there was between the incident and departure to Mauritania (P-0547: T-152, p. 26). P-0547 testified that her entire family left Timbuktu on the week when the white person was killed in front of the door of Sahara Passion on a Friday but she herself stayed back with her children and mother-in-law (P-0547: T-152, pp. 26-27). P-0547 stated that the incident where the white person was killed occurred around the time of the Friday prayer but P-0547 does not know what month it was (P-0547: T-152, p. 27). P-0547 testified that she returned to Timbuktu to re-establish herself after becoming a refugee in Mauritania when all the authorities came back and members of Ansar Dine/AQIM were no longer seen (P-0547: T-152, p. 28). P-0547 clarifies that she went to Mauritania twice, the first time not as a refugee and for a funeral and the second time as a refugee, and then returned to Timbuktu from her first visit to Mauritania on the day when they killed a young man who was accused of having killed a fisherman (P-0547: T-152, p. 28). P-0547 also testified that when she realised that she could no longer stay in Timbuktu, she went to Bamako and stayed there (P-0547: T-153, p. 11).

<sup>2990</sup> P-0547: T-151, p. 25.

<sup>2991</sup> P-0547: T-152, p. 30.

<sup>2992</sup> P-0547: T-152, p. 30.

<sup>2993</sup> The Chamber refers to its findings on the credibility and reliability of P-0641’s evidence (*see* section II.B.2.a)vii above). With regard to this incident, the Chamber notes that P-0641 personally witnessed the women imprisoned in the ‘bank’, tried to intervene in their favour and had a personal familiarity with

903. Sometime between early September and late December 2012,<sup>2994</sup> Mohammed Moussa, emir of the *Hesbah* at the time, arrested Salamata Warnamougrez (P-1710) and Hady Aguisa (P-1711), two female civilian inhabitants of Timbuktu, for not being covered ‘enough’.<sup>2995</sup> Mohammed Moussa took them to the BMS,<sup>2996</sup> made them go inside the ATM area, and then locked the room up.<sup>2997</sup>
904. Salamata Warnamougrez’s child was brought to her from Kabara by a relative while she was imprisoned so that she could breastfeed her child.<sup>2998</sup> Salamata Warnamougrez and Hady Aguisa were sweating profusely and were very hot because the ATM was walled with glass and was in the sun.<sup>2999</sup> P-0641 alerted their family.<sup>3000</sup>
905. Hady Aguisa was released the same day she was imprisoned following a relative’s request to Mohammed Moussa; he agreed to release her because he

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the two victims (P-0641: T-138, pp. 69-72). The Chamber also finds that his testimony on this event was straightforward and rich in details (*contra* [Defence Final Brief](#), paras 472-473). In relation to P-1708, P-1710, P-1711, P-1712 and P-1721, the Defence argues that the Prosecution tainted P-0641’s evidence through improperly leading interviews and in-court examinations ([Defence Final Brief](#), para. 469) referring to another part of its Final Brief discussing an incident which does not involve any of the aforementioned victims ([Defence Final Brief](#), para. 396). The Chamber notes that the Defence refers to one instance of an allegedly leading question by the Prosecution and another instance where the Defence’s objection to the Prosecution’s in-court use of P-0641’s prior statement was overruled (P-0641: T-137, pp. 22, 29). With respect to the former, noting that the Prosecution reformulated the question upon being instructed to do so by the Presiding Judge (P-0641: T-137, p. 22), and further that the question posed did not concern any of the aforementioned victims, the Chamber finds unmeritorious the Defence’s contention that P-0641’s evidence has been contaminated. With respect to the latter, the Chamber notes that the Prosecution’s request to refresh P-0641’s memory using his prior statement, in line with the procedure envisaged in the [Directions on the Conduct of Proceedings](#), was granted in court by the Chamber (P-0641: T-137, pp. 29-33). The Chamber considers it inappropriate for the Defence to relitigate the matter in its Final Brief and rejects the Defence’s argument that the use of P-0641’s prior statement was improper. In any event, noting that the objection in question was in the context of a line of questioning involving none of the aforementioned victims, the Chamber considers unfounded the Defence’s argument that P-0641’s evidence was tainted.

<sup>2994</sup> While P-0641 gives no evidence on the timing of this incident, based on the involvement of Mohammed Moussa, who was the emir of the *Hesbah* from early September and the middle or end of December 2012 (*see* paragraphs 530, 543 above) and the fact that the women were detained at the BMS which was the *Hesbah*’s headquarters from September 2012 (*see* paragraph 519 above), the Chamber infers that this incident occurred between early September and late December 2012.

<sup>2995</sup> P-0641: T-138, p. 71. The Chamber considers based on the fact that they were arrested while they were sitting and selling spices for not covering up properly, that P-1710 and P-1711 were civilians.

<sup>2996</sup> The Chamber notes that, during his testimony, P-0641 referred to the place where P-1710 and P-1711 were taken as the ‘bank’, where they were detained inside the ‘ATM area’ (P-0641: T-138, p. 71). On the basis of his testimony viewed as a whole, the Chamber understands that the witness refers to the BMS when he mentions the ‘bank’ in the context of this incident.

<sup>2997</sup> P-0641: T-138, pp. 71-72.

<sup>2998</sup> P-0641: T-138, pp. 69-70, 72.

<sup>2999</sup> P-0641: T-138, p. 72.

<sup>3000</sup> P-0641: T-138, pp. 69-70.

could see that her relative ‘respected Sunnah’ and he had left his beard long.<sup>3001</sup>

906. Salamata Warnamougrez was released only later that day, at dusk; when her brother went to beg for her release, Mohammed Moussa refused to comply with his request as he noted that Salamata Warnamougrez’s brother had shaved his beard and thus waited to release her.<sup>3002</sup>

**q) Case of P-1712**

907. For the factual findings in this section, the Chamber relies on the testimony of P-0641 which, subject to discrete aspects discussed below, the Chamber finds particularly reliable.<sup>3003</sup>

908. At some time during the control of Timbuktu by Ansar Dine/AQIM, P-1712, a civilian inhabitant of Timbuktu, was arrested by members of Ansar Dine/AQIM because she was not properly covered.<sup>3004</sup> She worked for someone in the market beside the ‘justice building’, and was taken by members of Ansar Dine/AQIM to the BMS.<sup>3005</sup>

909. P-1712’s father went to beg them to let her go, but they kept her in detention

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<sup>3001</sup> P-0641: T-138, pp. 70, 72.

<sup>3002</sup> P-0641: T-138, pp. 69-70, 72.

<sup>3003</sup> The Chamber refers to its findings on the credibility and reliability of P-0641’s evidence (*see* section II.B.2.a)vii above). Regarding this particular incident, P-0641 explained his basis of knowledge to the Chamber and the context in which he received the relevant information. P-0641 testified that the father of the victim (P-1713) told him about the circumstances of the event while it was happening, and P-0641 reported in detail what he heard from him (P-0641: T-138, pp. 75-76). P-0641 stated that he himself gave some money for P-1713 to buy breakfast and bring it to P-1712 at the time (P-0641: T-138, pp. 74-77; *see also* P-0641: T-138-FRA, pp. 73-75) and also acknowledged that he did not know exactly how P-1712 was released (P-0641: T-138, p. 76; *see also* P-0641: T-138-FRA, p. 74). In this context, the Chamber finds P-0641 credible and reliable (*see also* footnote 2993 below; *contra* [Defence Final Brief](#), paras 474-476).

<sup>3004</sup> P-0641: T-138, pp. 75-76 (explaining that the daughter of P-1713 was taken in the market beside the justice building to the BMS and she was accused of not being properly covered up). P-1713 told P-0641 himself that they took P-1712 because they said she hadn’t been covered up properly (P-0641: T-138, p. 76). Regarding the timing of the event, the Chamber infers from the entire testimony of P-0641 that this event occurred during the control of Timbuktu by Ansar Dine/AQIM. Based on the fact that P-1712 was taken to the BMS which was being used by Ansar Dine/AQIM during this time, the Chamber infers that she was arrested by members of Ansar Dine/AQIM. Based on the circumstances surrounding her arrest and detention, the Chamber is satisfied that the victim was a civilian member of the population of Timbuktu at the time of the charged events.

<sup>3005</sup> P-0641: T-138, pp. 75-76. As noted above, based on the fact that P-1712 was taken to the BMS which was being used by Ansar Dine/AQIM at the time, the Chamber infers that she was taken there by members of Ansar Dine/AQIM.

overnight.<sup>3006</sup> The next day, they released P-1712.<sup>3007</sup>

#### r) Case of P-1721

910. The Chamber cannot establish the facts and circumstances related to P-1721's alleged incident. The Chamber notes that P-0641 testified about what happened to P-1721 in the context of his description of an incident involving P-0099, who he stated was the neighbour of P-1721's employer. Although the Chamber considers both P-0641 and P-0099 credible on what happened to P-0099 in front of the BMS,<sup>3008</sup> both of them providing first-hand evidence on the matter, the Chamber does not consider that their testimony are reliable enough in relation to what happened to P-1721.<sup>3009</sup>

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<sup>3006</sup> P-0641: T-138, pp. 75-76.

<sup>3007</sup> P-0641: T-138, pp. 75-76. P-1713 bought some food to give to P-1712 (P-0641: T-138, pp. 75-76). P-0641 stated that he himself gave some money for P-1713 to buy breakfast and bring to P-1712 at the time (P-0641: T-138-FRA, pp. 73-75). P-0641 found out from P-1713 that P-1712 was freed, on the same day as her release (P-0641: T-138, p. 76).

<sup>3008</sup> The Chamber notes that P-0641 provided first-hand information about an incident involving P-0099 in front of the BMS. P-0641 testified about directly witnessing an altercation between P-0099 and members of the armed groups, which led to P-0099's arrest (P-0641: T-138, pp. 25, 30-37). The Chamber notes that P-0641 was particularly well placed to observe the scene (P-0641: T-138, p. 35) and that he had a conversation with P-0099 afterwards regarding this incident, although P-0641 could not remember it well (P-0641: T-138, p. 35). The Chamber also notes that P-0099 testified in detail about his arrest and detention by members of the armed groups (*see notably*, P-0099: T-145, pp. 40-43; T-146, pp. 8-10; T-148, p. 14). The Chamber notes that, although the circumstances surrounding P-0099's dispute with members of the armed groups as recounted by P-0099 and P-0641 do not exactly match, there are many common features between the two narratives provided by the witnesses (in particular, the fact that the incident involving P-0099 occurred in public, outside the BMS; that it involved P-0099 getting angry and referred to the role of Talha in P-0099's arrest; that it was notably linked to a disagreement regarding the handling of cases by the *Hesbah*; and that it led to the arrest and detention of P-0099). In light of these elements, the Chamber considers that the testimony of P-0641 and P-0099 with regard to P-0099's arrest by members of the armed groups are credible and reliable.

<sup>3009</sup> The Chamber notes that P-0641 testified that he heard that P-1721 was working as a 'servant' in the home of P-0099's neighbour in Timbuktu when she was arrested by the 'Islamists' and taken to the BMS for not having her head well covered. According to P-0641, the person for whom P-1721 worked and then their neighbour, P-0099, went to the BMS to demand her 'freedom', but they refused; P-0099 then got angry and was arrested following this event (*see* P-0641: T-138, pp. 25, 30-37). In relation to this narrative, the Chamber takes note of the fact that P-0641's basis of knowledge regarding P-1721's arrest and the following events, outside of P-0099's arrest, is not entirely clear and seems to be based only on what he heard from other people ('people who speak about it, like that') (*see* P-0641: T-138, p. 32). The Chamber also notes the fact that P-0641 stated that he could not remember much about his conversations with P-0099 and did not remember the name of P-1721, although he could recall some details of the incident (notably that P-0099 was the neighbour of P-1721's employer and the name of that person, *see* P-0641: T-138, pp. 25, 30-32, 35; *see also* P-0641: T-138-FRA, pp. 30-31). The Chamber further notes that while P-0099 testified at some length about his own arrest and the circumstances surrounding it, he did not provide any details in relation to the case of P-1721 and did not mention intervening for her liberation or it being linked to his arrest, contrary to P-0641's testimony. In this regard, the Chamber notes that P-0099 provided a very different narrative on the reasons for his arrest, testifying notably that he was arrested for confronting Mohammed Moussa in the market about his treatment of women and

### s) Case of P-0520

911. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: the direct victim herself, P-0520;<sup>3010</sup> and

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after ‘insulting’ members of the armed groups in front of the *Hesbah* (see P-0099: T-145, pp. 40-43; T-146, pp. 8-10; T-148, p. 14). Particularly, noting that P-0099 provided only limited evidence about the three women to whom he said that Mohammed Moussa was speaking before he intervened on the day of his arrest, the Chamber does not have sufficient evidence to conclude that one of them was P-1721. While the Chamber considers that the testimony of P-0641 and P-0099 with regard to P-0099’s arrest is credible and reliable, in light of the varying accounts regarding the circumstances of P-0099’s arrest and the lack of further evidence regarding its alleged link to the case of P-1721, the Chamber considers that it does not have sufficient reliable evidence to establish the facts of the case of P-1721 to the requisite standard (see also [Defence Final Brief](#), paras 477-478).

<sup>3010</sup> P-0520 (see P-0520: T-149 to T-150), a Songhai woman who speaks Songhai and some Arabic, and who is illiterate, was born in Timbuktu (P-0520: T-149, pp. 6, 35-37). She lived in Timbuktu when Ansar Dine/AQIM were present in the city, although she was not present when the ‘soldiers’, whom the Chamber considers from context to refer to members of the armed groups, came to Timbuktu (P-0520: T-149, pp. 7-8, 14). She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation. The Chamber observes that the witness was unable to remember certain details such as dates and general facts pertaining to the events that occurred in Timbuktu and to her in 2012 and afterwards (see e.g. P-0520: T-149, pp. 14-16, 39; T-150, pp. 10-11), and her memory needed to be refreshed on occasion (see e.g. P-0520: T-149, pp. 39-42; T-150, pp. 13-14). However, in the Chamber’s view, the fact that P-0520 was unable to remember or confused certain issues is understandable given the passage of time, the traumatic nature of the events she described and the ostracisation to which she was subjected by her community (see P-0520: T-149, pp. 12, 17). As explained further below, the Chamber does not consider this to render her account incoherent or unreliable as a whole (contra [Defence Final Brief](#), para. 246). Although the witness openly admitted to sometimes being confused and not remembering everything, the Chamber observes that she clearly testified as to what she still had in mind (see e.g. P-0520: T-149, pp. 29, 38-39, 62-63; T-150, pp. 29, 58-59) and did not attempt to exaggerate her victimisation throughout her testimony (see e.g. P-0520: T-149, pp. 24, 51, 62-63). While P-0520 acknowledged having been worried before giving her oral testimony, the Chamber draws no adverse conclusions on her credibility from this matter, noting that she clearly and frankly explained that she was motivated to testify and her decision to proceed with her testimony (P-0520: T-150, p. 63; contra [Defence Final Brief](#), para. 248). Regarding prior versions of her account, P-0520 openly acknowledged that the versions of events she told P-0524 and the Prosecution were not the same, but explained that she spoke about the events with the Prosecution more than anyone else (P-0520: T-150, pp. 53, 56, 58-59). P-0520 also admitted that she did not understand everything when she spoke to P-0524 and added that, while the names provided were not correct in the version told to P-0524, the rest accorded with the truth (P-0520: T-150, pp. 56, 58-59). P-0520 further noted that she only spoke to a few people about what happened to her in 2012 and did not remember much about the people she met with or the content or details of such meetings (P-0520: T-150, pp. 4-8, 27-29). She further stated that, although it was possible, she could not remember speaking to a judge in Bamako (P-0520: T-150, pp. 10-11, 32). The Chamber notes that although some of the details surrounding the events may have varied in the different versions P-0520 provided over time, the core narrative provided by the witness remained consistent. The Chamber considers that some divergence in aspects of the witness’s narrative over time is natural and does not affect the Chamber’s view of the general reliability and credibility on the core of her in court testimony on her ‘marriage’ and the sexual violence she experienced (contra [Defence Final Brief](#), paras 244-250, 252). Further, contrary to the Defence general submission that there are indicia that P-0520’s memory was impacted or influenced by her interactions with NGOs and related experiences ([Defence Final Brief](#), para. 246), the Chamber considers the witness’s account to be detailed and contextualised such that it reflects her own personal experiences, and in this context considers that the witness’s openness in not remembering certain details and acknowledging inconsistencies enhances her credibility. Based on the Chamber’s holistic assessment of the evidence,



[REDACTED] Fadimata Mint Lilli (P-0547),<sup>3011</sup> who partly corroborates P-0520's account of her 'marriage' and whose account is based on what she heard from P-0520 herself.

912. One day, around or after July 2012,<sup>3012</sup> P-0520 met a group of persons in a vehicle,<sup>3013</sup> one of whom bought 1000 francs worth of fish from her.<sup>3014</sup>

913. Three days later, members of Ansar Dine/AQIM<sup>3015</sup> approached P-0520 and told

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including the foregoing, the Chamber finds P-0520 to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>3011</sup> The Chamber refers to its findings on the credibility and reliability of P-0547's evidence (*see* footnote 2936 below). P-0547: T-152, pp. 22-24. *See also* D-0514: T-208, pp. 26-27. Although P-0520 stated that she did not know anyone with P-0547's name (P-0520: T-150, p. 67), the Chamber does not consider this to be material in light of the other evidence connecting the witnesses (*see e.g.* P-0547: T-152, pp. 22-23; P-0602: T-085, pp. 37-38), noting that P-0520 was only asked very brief questions on this point (P-0520: T-150, p. 67) and the possibility that P-0547 is known to P-0520 by a different name (noting that many witnesses in the case are known by various different names). In any event, the Chamber notes that the fact that P-0547 refers to P-0520 in her testimony is uncontested (*see* [Prosecution Final Brief](#), para. 415; [Defence Final Brief](#), para. 244).

<sup>3012</sup> The Chamber notes that P-0520 could not remember exactly when this encounter, which is proximate to her 'marriage', took place (P-0520: T-149, pp. 14-15). The Chamber notes that P-0547, who testified about P-0520's 'marriage' (*see* below), could also not remember when P-0520's 'marriage' happened (*see* P-0547: T-152, p. 24). P-0602, who also testified about P-0520's 'marriage' (*see* below), said that P-0520 was 'married' before she herself was 'married' (P-0602: T-085, p. 38), but the Chamber notes that P-0602's evidence on the timing of her own 'marriage' is unclear (*see* footnote 3090 below). The Chamber however notes that D-0514, [REDACTED], testified that P-0520 was 'married' during the month of Ramadan 2012, that the 'marriage' lasted for two or three weeks, and that they were already separated on the 27<sup>th</sup> of the month of Ramadan (D-0514: T-208, pp. 19, 55-56, 58). While the Chamber notes that D-0514 was not present at P-0520's 'marriage' and finds his account in relation to the specific circumstances of this 'marriage' unreliable in light of his limited and unclear basis of knowledge (*see* below), the Chamber considers that it can rely on D-0514's testimony with regard to the approximate date of the 'marriage' as the witness was very clear in situating the 'marriage' in time by reference to other 'weddings' which occurred during the same period. On that basis, the Chamber is satisfied that P-0520's encounter with the group of people described in this paragraph, which is proximate to her 'marriage', took place around or after July 2012.

<sup>3013</sup> P-0520: T-149, p. 15. The Chamber notes that P-0520 could not exactly remember the place where she encountered this vehicle (P-0520: T-149, p. 15). P-0520 testified that she did not know the type of vehicle they were in and could not describe it or say whether there was a flag on it, as she did not see it well (P-0520: T-149, p. 15).

<sup>3014</sup> P-0520: T-149, p. 9. The Chamber notes the evidence that, in 2012, P-0520 was working [REDACTED] (*see* P-0520: T-149, pp. 8-9; *see also* P-0547: T-152, pp. 22-24). P-0520 testified that she did not speak to the people she saw in that place and they did not speak to her either (P-0520: T-149, p. 9). P-0520 also stated that she could not remember much, notably how the people were dressed, as it happened a long time ago (P-0520: T-149, p. 16). P-0520 testified that she heard them speak in Tamasheq, while others were replying in Arabic (P-0520: T-149, pp. 15-16).

<sup>3015</sup> P-0520 explained that she did not know whether it was the same people or the same group that she had previously seen in the 'place' who approached her three days later, as they were always wearing turbans (P-0520: T-149, pp. 9, 17). The Chamber notes that P-0520 was unable to provide much detail about these persons or the groups to which they belonged. For her part, P-0547, who corroborated the fact of P-0520's 'marriage' (*see* below), testified that she did not know who P-0520's 'husband' was

her that their chief said that he ‘loved’ her.<sup>3016</sup> P-0520 responded that ‘that wasn’t [her] thing’.<sup>3017</sup>

914. Later, in the evening of the same day, a group of four or five individuals from Ansar Dine/AQIM came to P-0520’s house in Timbuktu.<sup>3018</sup> They were armed and in a vehicle.<sup>3019</sup> One of them said to her ‘[w]ell, how can you say that you don’t like us whilst it is we who are controlling everything here? We are the boss here, and he is our chief, and he says that he loves you’.<sup>3020</sup> P-0520 replied that ‘even if [she had] to die, [she did not] love him’.<sup>3021</sup> They then said they wanted to marry her.<sup>3022</sup> P-0520 replied that she was not up for a marriage without

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although she noted that he was an ‘Islamist’ (P-0547: T-152, pp. 22-23). P-0547 said that she knew this because when P-0520 returned to her family, P-0547 saw that she was dressed all in black and all covered up (P-0547: T-152, pp. 22-23). On this issue, the Chamber notes the following: (i) the connection in P-0520’s testimony between the people who approached her and told her that their chief had said that he ‘loved’ her and those who visited her later on the same day during the evening (the groups on both occasions referring to the ‘chief’ who was said to be ‘in love’ with P-0520, and P-0520’s ‘husband’ being part of this latter group) (*contra* [Defence Final Brief](#), para. 247); (ii) the fact that P-0520 testified that the group she mentioned were the ones who were ‘controlling everything here’ and being ‘the boss here’ (P-0520: T-149, p. 10), recalling that as at the time of this incident Ansar Dine/AQIM were the armed groups in sole control in Timbuktu and in particular the MNLA had been expelled from the city (*see* paragraphs 451, 453 above); and (iii) the fact that one of the places P-0520 was taken during her ‘marriage’ was the *Gouvernorat* (*see* below), which the Chamber finds was a location used by Ansar Dine/AQIM during the period of the charges (*see* paragraph 558 above). In addition, the Chamber notes that P-0520’s description of her ‘marriage’ and its aftermath follows a similar *modus operandi* to the forced marriages described by other witnesses, notably P-0610, P-0602 and P-0538, who the Chamber finds were forcibly ‘married’ to members of Ansar Dine/AQIM (*see* the Chamber’s findings in the cases of P-0610, P-0602 and P-0538 below). Based on all of the foregoing, the Chamber finds that the individuals who approached P-0520, including P-0520’s ‘husband’, were members of Ansar Dine/AQIM (*contra* [Defence Final Brief](#), paras 247, 252, 255-262).

<sup>3016</sup> P-0520: T-149, p. 9. P-0520 explained that she did not know whether it was the chief who said that to her, as she did not see his face (P-0520: T-149, p. 9). The Chamber dismisses the Defence assertion that no weight can be placed on P-0520’s description of her conversations with her ‘husband’ or his associates given her ‘poor command of Arabic’ and the fact that she speaks no Tamasheq ([Defence Final Brief](#), para. 247), noting that P-0520 confirmed that while she does not speak Arabic fluently, she does speak ‘a bit’ (P-0520: T-149, p. 7).

<sup>3017</sup> P-0520: T-149, p. 9.

<sup>3018</sup> P-0520: T-149, p. 10. P-0520 testified that she did not know the individuals, but managed to recognise one of them as ‘part of the group’ (P-0520: T-149, p. 10). P-0520 testified that she heard the people in this group say who the chief was, but she did not know whether he was the chief or not (P-0520: T-149, p. 17). P-0520 further explained that she heard them say ‘chief, chief’, but she did not know who the chief was in their midst, as he would always cover his face with his turban (P-0520: T-149, p. 21). On the Chamber’s finding that these individuals were members of Ansar Dine/QIM, *see* footnote 3015 above.

<sup>3019</sup> P-0520: T-149, p. 16. P-0520 could not describe the type of vehicle they were in or whether there was a flag on it, or what type of weapon they had (P-0520: T-149, p. 16).

<sup>3020</sup> P-0520: T-149, p. 10. P-0520 testified that she recognised this person as ‘part of the group’ (P-0520: T-149, p. 10).

<sup>3021</sup> P-0520: T-149, p. 10.

<sup>3022</sup> P-0520: T-149, pp. 10, 19.

consent.<sup>3023</sup>

915. The group from Ansar Dine/AQIM came to P-0520's house and insisted<sup>3024</sup> until one of them got his weapon out and pointed it at her, saying that she had to accept what they were saying to her or they would take her away forcibly.<sup>3025</sup> P-0520 felt obliged to follow them and do what they said, as she was frightened that something would happen to her mother.<sup>3026</sup>
916. The group then gathered together, saying that they would conduct a religious marriage ceremony, without P-0520 or her parents; P-0520 did not receive any money from them.<sup>3027</sup> The group left and conducted a religious marriage ceremony without P-0520 or her parents in attendance.<sup>3028</sup> For P-0520, this

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<sup>3023</sup> P-0520: T-149, p. 19.

<sup>3024</sup> P-0520 explained that 'those who insisted' came two or three times to her house (P-0520: T-149, p. 18). P-0520 testified that, when they came to her house, family members including her mother and stepfather were generally at home, although her stepfather would leave when they came (P-0520: T-149, p. 17; *see also* P-0520: T-149-FRA, pp. 17-18). P-0520 added that, when they came, they would generally address her and say 'a lot of things', and would generally not speak to her mother (P-0520: T-149, p. 17).

<sup>3025</sup> P-0520: T-149, p. 10.

<sup>3026</sup> P-0520: T-149, p. 10. P-0520 explained that her mother [REDACTED] (P-0520: T-149, p. 10).

<sup>3027</sup> P-0520: T-149, p. 10. The Chamber notes that D-0514, [REDACTED], testified that P-0520 was 'married' to a man named [REDACTED] (also called [REDACTED]) and that the wedding took place on the same day as the wedding of [REDACTED], during the month of Ramadan 2012 (D-0514: T-208, p. 19). According to D-0514, there was a dowry, the 'marriage' 'went swimmingly according to the rules' and P-0520's mother was in agreement with the 'marriage' (D-0514: T-208, pp. 20-21). The Chamber does not consider D-0514's testimony in relation to the circumstances and specifics of P-0520's 'marriage' reliable in light of his limited and unclear basis of knowledge of the event. In particular, the Chamber notes that he was not present when P-0520 was 'asked [...] to get married' and did not attend P-0520's wedding, and that he seems to partly rely on rumours heard from other people. Here the Chamber notes in particular D-0514's explanation that information regarding P-0520's 'marriage' was circulating in Timbuktu at the time (D-0514: T-208, pp. 20-22, 58, notably testifying that the 'marriage' was 'announced everywhere' and, asked to clarify what he meant, explaining that at that point in time, there was no one around and the people would seek information everywhere, '[t]here were people [...] who went to specific places to get information and you would hear that such-and-such a person had got married to such-and-such a person the day before. And that was how information was being circulated in the city'). The Chamber further notes that, while the witness testified that he learnt that P-0520's 'marriage' had taken place from P-0520's mother and stated that P-0520's mother was in agreement with the 'marriage', his testimony does not specify details of what P-0520's mother told D-0514, and it appears to the Chamber that the witness's assessment of her agreement to the 'marriage' was based on his own opinion and inferences he made from his encounter with her (*see* D-0514: T-208, p. 21). For all these reasons, while the Chamber finds that it can rely on elements of D-0514's testimony regarding his general knowledge of the fact that P-0520 was 'married', as well as of the approximate length of time and timing of the 'marriage', the Chamber finds the rest of D-0514's testimony on the incident concerning P-0520 unpersuasive and does not rely on his statements in this regard. The Chamber therefore does not consider this evidence to impact the credibility or reliability of P-0520's testimony that she was not given any money and that the 'marriage' was done without her consent (*see below; contra* [Defence Final Brief](#), para. 245).

<sup>3028</sup> P-0520: T-149, pp. 10, 19. The Chamber notes that the fact of the 'marriage' taking place is corroborated by P-0547. P-0547 testified that [REDACTED] and that [REDACTED] (P-0547: T-152,

‘marriage’ was done ‘without [her] consent’ and ‘by force’.<sup>3029</sup>

917. After the ‘marriage’, towards dusk, the same people from Ansar Dine/AQIM, including P-0520’s ‘husband’, came back, put P-0520 in their vehicle and ‘took [her] away’.<sup>3030</sup> In the car, they did not speak to her.<sup>3031</sup> They drove to a place that looked like the Sans-fil neighbourhood<sup>3032</sup> and made a stop where P-0520’s ‘husband’, a member of Ansar Dine/AQIM,<sup>3033</sup> got out of the vehicle and bought

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pp. 21-22, 36). P-0547 however clarified that when she said [REDACTED], she meant that there was not a ceremony as such but that she went to see P-0520’s family after P-0520’s sister came to inform P-0547 that her sister was getting ‘married’ (P-0547: T-152, p. 38). P-0547 confirmed that she went to congratulate P-0520 on her ‘marriage’ but specified that she went not to the house but to her family (P-0547: T-152, p. 42). P-0547 also testified that P-0520 was ‘married’ to an ‘Islamist’ (P-0547: T-152, p. 20; *see also* P-0547: T-152, pp. 22-24, 44-45), which she stated that she knew about because people talked to each other and people knew about everything that happened in their neighbourhood (P-0547: T-152, p. 20). P-0547 testified that she and P-0520 [REDACTED] and that is how they were informed of what was going on in one of their houses but the event itself was not published as such (P-0547: T-152, p. 38). Concerning the conduct of the ‘marriage’ ceremony, asked whether P-0520 told the judge in Bamako that her ‘marriage’ was ‘celebrated’ at dusk, P-0520 also explained that the ‘marriage’ was ‘done’ at dusk and that it ‘didn’t commit [her] to anything’ (P-0520: T-150, p. 32, *referring to* MLI-OTP-0032-0222-R02, at 0223). *See also* D-0514: T-208, p. 23 (testifying that when he said that the marriage was celebrated, he meant that the religious ceremony occurred before sundown). The Chamber finds on the basis of the foregoing that some kind of religious marriage ceremony was conducted. In relation to *procès verbal* MLI-OTP-0032-0222-R02, the Chamber notes that in line with its decision recognising the submission of this item into evidence (ICC-01/12-01/18-2147-Conf-Anx1), the Chamber has not assessed the content of the document *per se*, but used it solely to ensure that the questions and answers emanating from the Defence cross-examination in relation to this document could be understood by the Chamber.

<sup>3029</sup> P-0520: T-149, pp. 11-12, 19; T-150, p. 35. P-0520 explained that, when one loves a man, one accepts a dowry and accepts marriage (P-0520: T-149, p. 19; T-150, p. 35). P-0520 added that, as she had never been married before 2012, only the parents would participate in dowry negotiations, but she would still have to consent to the marriage (P-0520: T-150, p. 34).

<sup>3030</sup> P-0520: T-149, pp. 10, 19-20. P-0520 explained that they were all dressed in such a way that she could not recognise them (P-0520: T-149, p. 10). *See also* D-0514: T-208, p. 23 (testifying that the religious ceremony occurred before sundown and each time, the man came and picked up his wife and took them away at night). On the presence of P-0520’s ‘husband’ in this group, *see below*.

<sup>3031</sup> P-0520: T-149, p. 21.

<sup>3032</sup> P-0520: T-149, pp. 10, 19, 21. P-0520 added that she did not remember where they took her as she did not raise her eyes to see where they were going (P-0520: T-149, p. 10).

<sup>3033</sup> P-0520 testified that she did not know the name of the man who said that he was her ‘husband’, but that she had heard him called [REDACTED] and [REDACTED] by others (P-0520: T-149, p. 29), that he was of ‘mixed race’, neither black nor white (P-0520: T-149, p. 29), that he spoke to her in Arabic and a bit of Tamasheq (P-0520: T-149, p. 29), and that he was covering his face so as not to be recognised (P-0520: T-149, pp. 10, 21). She had never seen him before and did not know whether he was from Timbuktu (P-0520: T-149, pp. 29-30). On the Chamber’s finding that P-0520’s ‘husband’ was a member of Ansar Dine/AQIM, *see above*. As noted above, the Chamber dismisses the Defence assertion that no weight can be placed on P-0520’s description of her conversations with her ‘husband’ or his associates ([Defence Final Brief](#), para. 247). The Chamber notes that D-0514 identified P-0520’s ‘husband’ as being called [REDACTED]. In light of the limited basis of knowledge of the witness regarding this incident, noting in particular that his identification of P-0520’s ‘husband’ seems to be based on rumours circulating in Timbuktu at the time (*see above*), the Chamber gives more weight to P-0520’s description of her ‘husband’ and does not rely upon D-0514’s evidence in that regard (*contra* [Defence Final Brief](#), paras 247, 252). Accordingly, the Chamber finds immaterial for the purpose of its findings on P-0520’s

some meat, fish and drink.<sup>3034</sup>

918. After this stop, they went to a large house in the Koiratao neighbourhood.<sup>3035</sup> Two individuals, who were wearing turbans, were at the door of this house.<sup>3036</sup> Once they got in the house,<sup>3037</sup> P-0520 and her ‘husband’ went into a living room, where they sat down together.<sup>3038</sup> P-0520’s ‘husband’ spoke ‘a great deal’ and said that she was his wife.<sup>3039</sup> P-0520 remembered replying ‘[w]ell, how can I be your wife when there was no religious ceremony, as far as I’m aware? There has been no dowry exchanged. I am not your wife’.<sup>3040</sup> Her ‘husband’ asked her to go into the bedroom but she refused, saying ‘[n]o, I’m not going to go into the bedroom. You have forcibly brought me here. I’m not going in there’ and ‘[w]hat am I going to be doing in a bedroom? Because you haven’t married me. And forcing me to do this is not a marriage. I am not going to go into that bedroom’.<sup>3041</sup> P-0520’s ‘husband’ remained seated for quite some time, after which he got to his feet and pushed P-0520 into the bedroom.<sup>3042</sup> At that moment, he was not armed.<sup>3043</sup> P-0520’s ‘husband’, who she was very afraid of,<sup>3044</sup> then forced P-0520 to have sexual intercourse with him.<sup>3045</sup>

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‘husband’ that P-0520 did not recognise a picture of [REDACTED] (P-0520: T-150, pp. 48-49, *referring to* photograph MLI-OTP-0018-2382; [REDACTED]; *contra* [Defence Final Brief](#), para. 247), and notes in any event that the person depicted in this photo has his face partly obscured and is facing away from the camera.

<sup>3034</sup> P-0520: T-149, pp. 10, 21.

<sup>3035</sup> P-0520: T-149, pp. 10-11. P-0520 described the house and its location (P-0520: T-149, pp. 21-22).

<sup>3036</sup> P-0520: T-149, pp. 11, 22. P-0520 explained that she could not recognise these people because of their turbans (P-0520: T-149, p. 11). P-0520 added that she did not see them very well and did not see them carrying any weapons (P-0520: T-149, p. 24).

<sup>3037</sup> P-0520: T-149, pp. 21-22.

<sup>3038</sup> P-0520: T-149, p. 11.

<sup>3039</sup> P-0520: T-149, p. 11.

<sup>3040</sup> P-0520: T-149, p. 11.

<sup>3041</sup> P-0520: T-149, pp. 11, 21-22.

<sup>3042</sup> P-0520: T-149, pp. 11, 22.

<sup>3043</sup> P-0520: T-149, p. 24. The Chamber considers that this fact has no impact on the otherwise threatening nature of the circumstances that P-0520 was in at the time, recalling notably P-0520’s evidence that she was very afraid of her ‘husband’ at this time (P-0520: T-149, p. 11) and that she told him that she had been brought to that place forcibly (P-0520: T-149, pp. 11, 21-22) (*contra* [Defence Final Brief](#), para. 247) and irrespective of whether or not any of the members of Ansar Dine/AQIM present at the *Gouvernorat* had weapons (*contra* [Defence Final Brief](#), para. 250).

<sup>3044</sup> P-0520: T-149, p. 11.

<sup>3045</sup> The Chamber notes that P-0520 did not explicitly testify that the man forced her to have sexual intercourse with him, but rather testified that he did ‘what he wanted to do to [her] without [her] consent because he was strong’ (P-0520: T-149, p. 11). She said that he forced her and ‘lay on top of [her] without [her] consent’ (P-0520: T-149, pp. 22-23). P-0520 testified that she ‘didn’t want him to do it’ (P-0520:

919. They spent three or four days in that house,<sup>3046</sup> during which P-0520's 'husband' forced P-0520 to have sexual intercourse with him several more times.<sup>3047</sup> The man would come and go, and he would come back in the morning.<sup>3048</sup>
920. P-0520 did no activities in the house, and would either be sitting or lying down.<sup>3049</sup> The man would bring water with him, and often come back with some meat or bread.<sup>3050</sup> P-0520 did not see anyone else 'in the same position' as her at

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T-149, p. 11). The witness also said that 'he spoiled everything for [her]. He made a mess of everything for [her]' (P-0520: T-149, pp. 22-23). The Chamber notes that it was agreed among the parties during the hearing that when the witness said that the man 'lay on top of [her] without [her] consent', she was referring to penetration in the sense of the Elements of Crimes for rape as a crime against humanity and war crime (P-0520: T-149, pp. 23-24). Based on the foregoing description by the witness and relevant circumstances described above, the Chamber finds that penetration occurred and that the 'husband' forced P-0520 to have sexual intercourse with him.

<sup>3046</sup> P-0520: T-149, pp. 11, 25.

<sup>3047</sup> P-0520: T-149, pp. 11, 25. The Chamber notes again that P-0520 did not explicitly testify that the man forced her to have sexual intercourse with him on these occasions, rather she testified that during this time her 'husband' 'would come and go. He would come back in the morning. What he would do to [her] at night, whether [she] was consenting or not, he just carried on doing it' (P-0520: T-149, p. 11) and that she could not say anything, he would repeat that she was his wife and P-0520 would deny, telling him that she was 'married' without her and her family's consent (P-0520: T-149, pp. 11-12). Having regard to this description of what occurred, read together with the witness's description of what happened to her on the first night, the Chamber finds that penetration also occurred on these other occasions described by the witness and that the 'husband' forced P-0520 to have sexual intercourse with him on these occasions.

<sup>3048</sup> P-0520: T-149, p. 11.

<sup>3049</sup> P-0520: T-149, p. 25.

<sup>3050</sup> P-0520: T-149, p. 25. P-0520 stated that she never saw her 'husband' smoking cigarettes and was not aware of him smoking (P-0520: T-149, p. 50). Confronted with her prior statement in which she stated that '[her 'husband'] brought something to smoke. I don't know what it was. It might have been drugs', P-0520 stated that she did not look at him closely enough to see whether he was smoking drugs or a cigarette (P-0520: T-149, p. 51). The Chamber considers this discrepancy to be immaterial (*contra* [Defence Final Brief](#), para. 247).

this place.<sup>3051</sup> P-0520's mother, who was concerned,<sup>3052</sup> could get information from P-0520's friends about her situation.<sup>3053</sup> P-0520 had her phone, but she did not call her mother.<sup>3054</sup>

921. P-0520 was not free to leave and she did not try to run away because the door was closed.<sup>3055</sup> She was obliged to stay, but did not want to stay or to eat.<sup>3056</sup> P-0520 explained that if it was up to her, she would not have eaten at all.<sup>3057</sup> P-0520 was afraid because she did not know whether she was going to get out of her 'situation with this man'<sup>3058</sup> and that to her, he spoiled everything for her by doing something to her against her own will.<sup>3059</sup>

922. After three or four days, P-0520's 'husband' picked her up in a vehicle and took her to a second location, the *Gouvernorat*.<sup>3060</sup> Her 'husband' was alone and

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<sup>3051</sup> P-0520: T-149, p. 26. In relation to the issue of visits received by P-0520 while she was 'married', the Chamber notes that P-0602 testified about a woman meeting P-0520's description who was 'married off' to one of the members of the armed groups (P-0602: T-085, pp. 35-38). The Chamber notes that P-0602 testified that she went together with two other friends to this woman's house to speak to her (P-0602: T-085, pp. 37-38), and that this woman was living towards the 'Koyratao' neighbourhood and described the house and its more precise location (P-0602: T-085, pp. 37-38). P-0602 testified that they stayed with her until it was about time for 'the man' to arrive and then they left, as 'they' did not want people to visit their wives (P-0602: T-085, p. 39). Questioned about this testimony of receiving a visit from three women, P-0520 stated that she did not know anything about that and did not know these women (P-0520: T-150, pp. 38, 40). P-0520 further confirmed that she did not receive the visit from her friend that she testified about (*see below*) at a house in Koiratao (P-0520: T-150, p. 37). The Chamber notes the discrepancy between the account of P-0520 and the one of P-0602. On the one hand, P-0520 was very assertive on the fact that she did not know the persons who allegedly came to visit her and maintained her statement despite being cross-examined on this issue in a contextualised way. On the other hand, P-0602 explained that she managed to visit and talk to P-0520 despite the fact that according to P-0602 visits were generally prohibited, which seems to indicate that this visit was of an extraordinary nature. In light of the discrepancies the Chamber cannot make a conclusive finding on whether and to what extent P-0520 received visitors (*contra* [Defence Final Brief](#), para. 245). However, the Chamber considers that confusion over such details is natural in light of P-0520's circumstances at the time of the event and the trauma she suffered and does not consider this issue to affect the credibility of P-0520 on the core of her narrative.

<sup>3052</sup> P-0520: T-149, p. 18.

<sup>3053</sup> P-0520: T-149, p. 18.

<sup>3054</sup> P-0520: T-149, p. 18.

<sup>3055</sup> P-0520: T-149, p. 25.

<sup>3056</sup> P-0520: T-149, pp. 25-26. *See also* P-0520: T-149, pp. 17-18 (testifying that she did not return home after they took her away with them).

<sup>3057</sup> P-0520: T-149, pp. 25-26.

<sup>3058</sup> P-0520: T-149, p. 18.

<sup>3059</sup> P-0520: T-149, p. 23.

<sup>3060</sup> P-0520: T-149, pp. 26-28. P-0520 described this second location as being a white house with two to three floors (P-0520: T-149, p. 27). On the one hand, the Chamber notes that P-0520's description of this place does not contain much detail and the witness acknowledged that she only knew this place as the '*Gouvernorat*' based on what people said and that she did not know this herself (P-0520: T-149, p. 26). Additionally, P-0520 did not recognise the *Gouvernorat* when shown an image of it during her testimony

carrying a weapon.<sup>3061</sup> They stayed there for around 20 days.<sup>3062</sup>

923. In the *Gouvernorat*, there were three to five other women,<sup>3063</sup> notably a little girl who P-0520 knew and who the Chamber finds is P-1162.<sup>3064</sup> P-0520 and the women would sit around with each other and would go back when their ‘husbands’ returned, P-0520 stating notably ‘when you felt that he came back, everybody would return to their place’.<sup>3065</sup> Although there were times when nobody was there, ‘you couldn’t just leave like that’.<sup>3066</sup>

924. In the *Gouvernorat*, P-0520’s ‘husband’ forced her to have sexual intercourse

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(P-0520: T-150, p. 49, referring to video MLI-OTP-0018-0415, at 00:00:11:05). Nevertheless, the Chamber does not consider P-0520’s inability to recognise this image to be decisive, noting that the image she was shown depicted the face of just one building, whereas evidence indicates that the *Gouvernorat* was made up of a collection of buildings within a large compound (see paragraph 562 above) (contra [Defence Final Brief](#), para. 249). Whether the building was white or yellow is also immaterial in the Chamber’s view for the same reasons (contra [Defence Final Brief](#), para. 249). P-0520’s presence at the *Gouvernorat* is corroborated by P-0547, who testified that she did not know where P-0520 went after her ‘marriage’ but she heard that P-0520 was at the *Gouvernorat* (P-0547: T-152, p. 22), although the Chamber does not place significant weight on this evidence noting that the basis of P-0547’s knowledge on this point is not clear. Nevertheless, the Chamber also notes that other evidence corroborates P-0520’s testimony that there were areas at the *Gouvernorat* where members of Ansar Dine/AQIM were living: Mr Al Hassan himself stated that some members of Ansar Dine/AQIM lived with their wives in the Governor’s residence or ‘*la résidence du gouverneur*’ (Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0910-0911), which the Chamber notes is one of the buildings forming part of the *Gouvernorat* (see P-0582’s statement MLI-OTP-0062-3921-R02, at 3942-3949; P-0582’s statement, MLI-OTP-0062-3950-R02, at 3952, referring to sketch of the *Gouvernorat* MLI-OTP-0054-0028, annotated with ‘S’ for living room, ‘C’ for commissioner’s office, ‘P’ for prison, ‘T’ for terrace, ‘G’ for the guards’ house, ‘R’ for Governor’s house or ‘*la résidence du gouverneur*’). P-0582 also explained that upstairs at the *Gouvernorat* there was accommodation where unmarried Police officers slept (P-0582’s statement MLI-OTP-0062-3921-R02, at 3942-3943, 3948-3949). While not necessarily suggesting that P-0520 was held at the *Gouvernorat* at the same time as the individuals mentioned by P-0582 or Mr Al Hassan, the Chamber notes that the evidence from Mr Al Hassan and P-0582 corroborates the general fact that parts of the *Gouvernorat* were used by Ansar Dine/AQIM as living accommodation during the period of their control of Timbuktu. Further, Mr Al Hassan’s statement specifically corroborates P-0520’s testimony that members of Ansar Dine/AQIM lived at the *Gouvernorat* with their wives (see below). In light of all of the foregoing, the Chamber relies on P-0520’s testimony that the place she was taken to was the *Gouvernorat*.

<sup>3061</sup> P-0520: T-149, p. 27. The Chamber notes the Defence assertion that there is no indication that any groups were involved in the aspects of P-0520’s ‘marriage’ taking place at this second location based on the fact that she and her ‘husband’ were alone in the car when he drove her to this second location ([Defence Final Brief](#), para. 250). The Chamber dismisses this argument, noting that the *Gouvernorat* was a location used by Ansar Dine/AQIM at this time and that other women were there with their ‘husbands’ (P-0520: T-149, pp. 34-35), including one young girl that the Chamber finds was also forcibly married to a member of Ansar Dine/AQIM (see the Chamber’s findings in the case of P-1162).

<sup>3062</sup> P-0520: T-149, pp. 30-31. The Chamber notes that P-0520 testified that they stayed there for ‘quite a while’, 20 days (P-0520: T-149, pp. 30-31).

<sup>3063</sup> P-0520: T-149, pp. 34-35. P-0520 explained that she did not know the women or where they came from, with the exception of one of them (P-0520: T-149, p. 35).

<sup>3064</sup> P-0520: T-149, pp. 34-35. See the Chamber’s findings in the case of P-1162.

<sup>3065</sup> P-0520: T-149, pp. 34-35. See also P-0520: T-149-FRA, p. 35.

<sup>3066</sup> P-0520: T-149, p. 34.



with him a number of times.<sup>3067</sup>

925. While at the *Gouvernorat*, P-0520 took contraceptive pills.<sup>3068</sup> Her ‘husband’ saw one or two pills that were left in P-0520’s personal belongings and told her that she was killing his children.<sup>3069</sup> He then took a whip and flogged her,<sup>3070</sup> and told her that ‘[s]omebody who does this sort of thing needs to go to prison and [get] a hundred lashes’.<sup>3071</sup>
926. Although she did not receive the hundred lashes mentioned by her ‘husband’, P-0520 went to prison for one day and one night.<sup>3072</sup> Afterwards, her ‘husband’ took her back to the *Gouvernorat*, where he continued to force her to have sexual intercourse with him.<sup>3073</sup>
927. On one occasion, P-0520’s ‘husband’ pushed her and she fell down.<sup>3074</sup>
928. P-0520’s ‘husband’ would come and go outside the *Gouvernorat*,<sup>3075</sup> and would come with things to eat, but P-0520 would not eat in his presence.<sup>3076</sup> She was locked up in the *Gouvernorat* the whole time and did not do anything during that

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<sup>3067</sup> P-0520: T-149, pp. 28, 30. The Chamber notes that P-0520 did not explicitly testify that the man forced her to have sexual intercourse with him on these occasions, rather she testified that during this time her ‘husband’ continued to do to her the same thing that was done to her in the Koiratao house (P-0520: T-149, pp. 28, 30). She testified that her ‘husband’ ‘just kept falling on [her]’ (P-0520: T-149, pp. 28, 30). In P-0520’s words, ‘[h]e had no other work than falling on me’ (P-0520: T-149, p. 30). She testified that ‘[h]e lay on top of me. He did what he had to do. And if I refused, it became something else. And I couldn’t say no because he would force me to do it. And he didn’t even talk to me’ (P-0520: T-149, pp. 48-49). Based on the foregoing evidence, read together with the witness’s description of what happened to her in the Koiratao house, the Chamber finds that penetration occurred on these occasions and that the ‘husband’ forced P-0520 to have sexual intercourse with him on these occasions.

<sup>3068</sup> P-0520: T-149, pp. 51-52. P-0520 said that she could not remember whether she fell pregnant as a result of the repeated sexual relations (P-0520: T-149, p. 51).

<sup>3069</sup> P-0520: T-149, p. 52.

<sup>3070</sup> P-0520: T-149, p. 52.

<sup>3071</sup> P-0520: T-149, p. 52.

<sup>3072</sup> P-0520: T-149, p. 52. Notwithstanding that P-0520 could not remember the name, location or neighbourhood of the prison (P-0520: T-149, p. 52), the Chamber considers her account credible in this regard recalling its overall assessment of her credibility above (*contra* [Defence Final Brief](#), para. 248).

<sup>3073</sup> P-0520: T-149, pp. 55-56. The Chamber notes that P-0520 did not explicitly testify that the man forced her to have sexual intercourse with him on these occasions, rather she testified that the ‘same thing as happened before’ took place (P-0520: T-149, pp. 55-56). Based on the foregoing evidence, read together with P-0520’s narrative as a whole, the Chamber considers that the witness refers to being forced to have sexual intercourse with her ‘husband’, and finds that penetration occurred on these occasions and that the ‘husband’ continued to force P-0520 to have sexual intercourse with him after she returned from prison.

<sup>3074</sup> P-0520: T-149, p. 51. The Chamber notes that P-0520 testified that she believes that she possibly fell on something and might have gotten scratches on her back as a result (P-0520: T-149, p. 51).

<sup>3075</sup> P-0520: T-149, p. 31.

<sup>3076</sup> P-0520: T-149, p. 34.

time.<sup>3077</sup> P-0520 could not go outside of the *Gouvernorat*, as there was a door with iron bars that did not open,<sup>3078</sup> although one of P-0520's friends came to visit her.<sup>3079</sup> P-0520 wanted to flee and eventually, after around 20 days, while the gate was left open she took advantage of the situation and escaped.<sup>3080</sup>

929. In total, P-0520 and her 'husband' spent around 24 days together in both locations.<sup>3081</sup>

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<sup>3077</sup> P-0520: T-149, p. 31. The Chamber considers the witness's position on this point clear, also in light of her other testimony on whether she could leave this place (P-0520: T-149, pp. 34, 53) and accordingly rejects the Defence submission that P-0520 appears to have testified that she could leave this second location ([Defence Final Brief](#), para. 250).

<sup>3078</sup> P-0520: T-149, p. 53. As noted above, the Chamber considers P-0520's testimony clear on the fact that she was locked up in this location and rejects the Defence submission that no weight can be placed on this evidence ([Defence Final Brief](#), para. 250).

<sup>3079</sup> P-0520: T-149, p. 54. P-0520 explained that her friend came to see her one day when she was seated alone as [REDACTED] was in the same neighbourhood and the friend had heard that P-0520 was there (P-0520: T-149, p. 55).

<sup>3080</sup> P-0520: T-149, p. 56. P-0520 explained that she tried to flee, but she was not able to (P-0520: T-149, p. 54). Regarding how things ended, P-0520 explained that one day they left the gate open, although she did not know why, and she took advantage of that occasion to leave (P-0520: T-149, p. 56). P-0520 explained that she did not know whether people were still inside the location when she left (P-0520: T-149, p. 59). The Chamber notes that according to P-0547, P-0520 was brought back to her house by her 'husband' and P-0520 said that her 'husband' had told her to stay there for three months (P-0547: T-152, p. 43). P-0547 testified that this was the day when P-0520 told P-0547 what had happened to her, and she said that she did not force P-0520 to tell her anything, but they were just chatting (P-0547: T-152, p. 43). P-0547 said that on the same occasion, P-0520 told her that the man who 'divorced' her did not say that he had 'divorced' her or anything (P-0547: T-152, p. 43). When confronted with her prior statement in which P-0547 told the Prosecution that P-0520 told P-0547 that they were having a divorce, P-0547 testified that that was the time when P-0520 herself saw that the man was not sleeping with her in the same bed anymore and she was alone (P-0547: T-152, p. 43), something which P-0520 told P-0547 (P-0547: T-152, p. 43). *See also* D-0514: T-208, pp. 22-24 (testifying that P-0520 and her 'husband' were divorced on the same day as [REDACTED] and the ladies went back to their abode), 55-56, 58 (testifying that the marriage between P-0520 and her 'husband' lasted for two or three weeks and upon divorcing her, the 'husband' 'asked for the tradition to be respected, namely, the Idda. That three months should be respected before she was able to leave the house again'). The Chamber does not consider the discrepancy regarding the specific circumstances of the end of P-0520's 'marriage', particularly whether P-0520 escaped the 'husband' or was brought home by him following a potential 'divorce', to detract from the credibility of P-0520's or P-0547's account of the events, noting that it would be natural for P-0520, as a direct victim of sexual violence, to hide or downplay her experience when speaking about them with others in her community (*contra* [Defence Final Brief](#), para. 245).

<sup>3081</sup> P-0520: T-149, p. 32. Asked how she was able to determine that they spent 24 days together, P-0520 explained that she was not counting the time as such, but there was six days remaining before a month would have passed (P-0520: T-149, p. 32). When confronted with the prior statement of P-0547 suggesting that P-0520 was 'married' on a Friday and divorced by the next Friday, P-0520 stated that she did not know anything that she did not say herself (P-0520: T-150, p. 66). The Chamber notes that in her subsequent in-court testimony, P-0547 testified that she said the 'marriage' lasted for a week because it was a week for her and clarified that she described it as a 'week' in the sense that there was not a lot of time between the time when P-0520 left and when she came back, and that when one speaks about 'marriage' and then it does not last for one or two years, they say that it just lasted a week (P-0547: T-152, p. 43). When asked, referring to MLI-OTP-0039-0861-R02, whether the 'marriage' occurred on a Friday, P-0547 also testified in court that she did not speak of a Friday and does not remember the day

930. The day P-0520 left was the last time she saw her ‘husband’; after that, she never returned to the location and never tried to get any news about him.<sup>3082</sup> P-0520 has tried to find out who the man was but has not managed to identify him.<sup>3083</sup>
931. After fleeing from the *Gouvernorat*, P-0520 was not able to go back home, afraid of being caught again.<sup>3084</sup> Nobody in P-0520’s family would speak to her and her mother and stepfather did not want her to come back, as they were afraid that she would be followed and the ‘same people who came and got [her] out’ would come to their house.<sup>3085</sup> P-0520 explained that, since the events, her stepfather no longer stays at home and cannot bear to be in her presence.<sup>3086</sup>
932. After what happened to her, P-0520 did not go to the hospital.<sup>3087</sup>

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(P-0547: T-152, p. 38). Noting the subsequent clarifications made by P-0547 in court, the Chamber does not consider there to be a discrepancy between the testimony of P-0520 and of P-0547 on the length of P-0520’s marriage. *See also* D-0514: T-208, pp. 55-56, 58 (testifying that the marriage between P-0520 and her ‘husband’ lasted for two or three weeks; that they were already separated on the 27<sup>th</sup> of the month of Ramadan; and that ‘[b]etween the time of their marriage and the time that they were divorced, two weeks had barely gone by’).

<sup>3082</sup> P-0520: T-149, pp. 30-31, 56.

<sup>3083</sup> P-0520: T-149, p. 11. The Chamber notes that there were some discrepancies in P-0520’s evidence on whether she would be able to recognise her ‘husband’: on the one hand, she testified that she would be able to recognise the one who ‘always took [her] for his wife’ if she met him again, although she did not stare at him too much (P-0520: T-149, p. 21), but, on the other, said that she was not able to see his face in a clear way and would not be able to recognise him with certainty today (P-0520: T-149, p. 28). The Chamber does not consider this discrepancy to impact the credibility or reliability of P-0520’s narrative as a whole.

<sup>3084</sup> P-0520: T-149, p. 60.

<sup>3085</sup> P-0520: T-149, pp. 12, 61. *See also* P-0520: T-149-FRA, pp. 12, 62.

<sup>3086</sup> P-0520: T-149, p. 17. *See also* P-0520: T-149-FRA, pp. 17-18.

<sup>3087</sup> P-0520: T-149, p. 59. The Chamber notes that P-0520 testified that to this day she still has a scar from her ‘husband’ and that she got this scar when her ‘husband’ whipped her or pushed her and she fell down on something (P-0520: T-149, p. 60). Questioned about an injury that she suffered in 2018, P-0520 reaffirmed that she injured her hand at that time and that it was not on that occasion that she injured her back (P-0520: T-150, p. 67). P-0520 identified herself and the scar on her back on photographs MLI-OTP-0060-9511 and MLI-OTP-0060-9512 (P-0520: T-149, p. 60). The Chamber takes note of the testimony of Dr Brian Sommerlad (D-0500), who analysed photograph MLI-OTP-0060-9512 and excerpts of transcripts of P-0520’s testimony and, concluded on that basis that the lesion shown on the photograph was not consistent and could not have been caused by the trauma described by the witness (Dr Sommerland’s report MLI-D28-0006-2722-R01, at 2723. *See also* D-0500: T-177, pp. 28-32, *referring to* MLI-D28-0006-2722-R01, regarding the information available to him when he drafted the report). In that report, Dr Sommerland testified that it seems highly unlikely that the scar in the photograph is related to the alleged incident described by the witness if she did not have treatment, as it appears from the photograph that there are stitch marks. According to Dr Sommerland, a more likely explanation of the scar is that there has been some attempt to surgically remove a lesion such as a cyst (Dr Sommerland’s report MLI-D28-0006-2722-R01, at 2723). The Chamber notes, however, that when provided with another photograph showing a more distant view of P-0520’s back (MLI-OTP-0060-9511), Dr Sommerland testified that it slightly changed his opinion and that he would make additions to his report, as the distant view shows ‘some fairly indistinct horizontal, possible scars, lateral outside [...] to

933. Regarding what happened to her, P-0520 notably stated ‘[i]t wasn’t something that I wanted. I didn’t seek it out. I didn’t love him. That’s just how it happened’.<sup>3088</sup>

**t) Case of P-0602**

934. For the factual findings in this section, the Chamber relies primarily on the evidence of the direct victim herself, P-0602,<sup>3089</sup> which, subject to discrete

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that visible scar’, ‘on the outer part of the right side of [P-0520]’s back’, which he had not seen when drafting his report. In the witness’s view, these scars could have several possible explanations, including scratches sufficiently deep to leave a scar: they could possibly be stretch marks, but look more like superficial scars from some incident and could for instance have been caused by superficial lacerations by a sharp whip (D-0500: T-177, pp. 8, 22-23, 33-36, *referring to* MLI-D28-0006-2722-R01). Dr Sommerland added that he would classify these marks as being ‘consistent with’ the trauma described, that is ‘the lesion could have been caused by the trauma described, but it’s non-specific and there are many other possible causes’ (D-0500: T-177, pp. 35-36, *referring to* MLI-D28-0006-2639, at 2681, para. 187). The Chamber further notes that Dr Sommerland testified that the only way these scars could be properly assessed, and the accounts verified, would be by physical examination of the witness, and confirmed that his conclusions were subject to a more thorough, proper assessment in person (Dr Sommerland’s report MLI-D28-0006-2722-R01, at 2723; D-0500: T-177, p. 37, *referring to* MLI-D28-0006-2722-R01). The Chamber makes no determination on whether P-0520’s scar was caused by her ‘husband’ in light of the evidence on this matter but, noting the clarifications given by Dr Sommerland, does not consider this issue to affect the credibility of P-0520’s narrative (*contra* [Defence Final Brief](#), para. 248).

<sup>3088</sup> P-0520: T-149, p. 12.

<sup>3089</sup> P-0602 (*see* P-0602: T-084 to T-086), a Muslim Tamasheq woman who speaks Tamasheq and Songhai, was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the city (P-0602: T-084, pp. 72, 74). She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation. The Chamber considers P-0602 to be a sincere witness who did not attempt to exaggerate the effect of events she experienced and rather described these effects in somewhat muted terms (*see e.g.* P-0602: T-085, pp. 44-45). The witness was careful to specify the source of her knowledge and did not speculate or guess when she did not have first-hand knowledge (*see e.g.* P-0602: T-085, pp. 16-17). P-0602 also properly distinguished the events she witnessed directly from those she learned about by other means (*see e.g.* P-0602: T-084, p. 80). While the witness had difficulty in recalling certain details, such as precise dates or the names of different organisations that assisted victims of the 2012-2013 events, the Chamber considers this fully understandable given the passage of time since the events and does not consider this to detract from the general credibility of P-0602’s evidence. P-0602’s overall narrative was detailed and consistent throughout examination-in-chief and cross-examination. In relation to the Defence’s submission that there are significant and inexplicable discrepancies between P-0602’s evidence before the FIDH and the Bamako proceedings and her evidence before the Court ([Defence Final Brief](#), para. 253), the Chamber first notes that the *grille de recueil de témoignages de victime* MLI-OTP-0071-0501, P-0602’s February 2015 statement to the FIDH, was not submitted into evidence, and P-0602 was only asked about the reference to an association of victims and not about the substantive content of the document (*see* P-0602: T-086, pp. 19-23). The Chamber accordingly dismisses the Defence’s submissions in relation to that item. In relation to the *procès-verbal* MLI-OTP-0038-0210-R03, P-0602’s 2016 statement to a Bamako judge, the Chamber notes that this item was also not submitted into evidence, although P-0602 provided significant details surrounding the taking of this statement and was questioned about it (*see* P-0602: T-086, pp. 41-42). However, as detailed below, the Chamber does not consider there to be major discrepancies with the in-court testimony of the witness. The Chamber also considers the Defence’s argument as to the influence of France 2 journalists on this witness’s evidence to be entirely speculative (*see* [Defence Final Brief](#), para. 171). Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds P-0602 to be a generally credible and reliable witness, and considers truthful the core

aspects discussed below, it finds particularly reliable.

935. One night, between late April 2012 and January 2013,<sup>3090</sup> three members of the Islamic Police<sup>3091</sup> arrived by vehicle at P-0602's home in Timbuktu while she was at a neighbour's house.<sup>3092</sup> At least two of the Islamic policemen were armed.<sup>3093</sup>

936. The Islamic policemen spoke to P-0602's father and said: we '[n]eed a girl who

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aspects of the witness's account, particularly her testimony about being forced to 'marry', being raped, and being 'married' for a number of days. Nevertheless, having regard to the aforementioned considerations, it has assessed the weight to be accorded to the witness's evidence on a case-by-case basis where appropriate.

<sup>3090</sup> The Chamber notes that P-0602's evidence on the timing of this event is unclear. She testified that these individuals came to her house seeking marriage a 'little while' or 'a bit of time' after the armed groups arrived in Timbuktu (P-0602: T-085, p. 10) and also that her 'marriage' (which occurred shortly afterwards) lasted a 'little time' until the 'Islamists' started escaping with the impending arrival of the Malian army (P-0602: T-085, p. 33). The witness was forthcoming in admitting that she could not say precisely how long she spent with her 'husband' (P-0602: T-086, pp. 52-53). Recalling the witness's young age at the time of events, the passage of time, as well as its observations above regarding the credibility and reliability of P-0602's narrative, the Chamber does not consider this issue to impact the overall credibility or reliability of the other aspects of P-0602's narrative. In any case, the Chamber is satisfied based on the details provided by the witness that the events described occurred during the control of the city of Timbuktu by Ansar Dine/AQIM between late April 2012 and January 2013.

<sup>3091</sup> The Chamber notes that P-0602 gave detailed evidence on the identification of these persons. She testified that she had not seen the people before and that they were dressed 'like Arabs', with clothes made of poplin, and that one of the men wore something different, more similar to a 'bazin' (P-0602: T-084, pp. 74-75, 86-87). P-0602 also recognised a vehicle and flag (P-0602: T-085, p. 44, *referring to* video MLI-OTP-0015-0495, at 00:27:17:05; *see also* P-0602: T-084, pp. 75-76). The Chamber notes that when shown a video of two men wearing blue Islamic Police vests with white writing (*see* paragraph 557 above), P-0602 categorised these people as 'Islamists' and indicated that their clothing were the clothes the 'Islamists' who came to her house wore (P-0602: T-085, pp. 42-44, *referring to* video MLI-OTP-0015-0495, at 00:27:26:20; *see also* P-0602: T-086, pp. 8-9). The Chamber further notes that P-0602 was able to distinguish the clothing worn by those who came to her house from others: she clearly indicated that the people who came to her house did not wear the sort of clothing depicted in video MLI-OTP-0009-1749, at 00:07:16:00 to 00:07:36:00, but rather wore clothes like the ones depicted in the video MLI-OTP-0015-0495, which she said she could distinguish based on the fact that the clothes in MLI-OTP-0009-1749 had red on them whereas the ones in MLI-OTP-0015-0495 had only white on them (P-0602: T-086, pp. 9-10). Noting the witness's full evidence on this point and in particular her ability to draw a distinction between the vests shown in the two videos, the Chamber is unconvinced by the Defence's submissions to the effect that P-0602's testimony on video MLI-OTP-0015-0495 should not be relied on for the purpose of identification because, *inter alia*, the video was shown to her in a highly suggestive and leading manner (*see* [Defence Final Brief](#), para. 253; *see also* ICC-01/12-01/18-1624-Conf-AnxVI and related annexes). On the basis of all of the foregoing, including the identification of the Islamic Police vest by the witness and her clear distinction between this and another type of vest shown in video MLI-OTP-0009-1749, the Chamber considers that P-0602 properly and sufficiently indicated that the men who came to her home, including her 'husband', were members of the Islamic Police (*contra* [Defence Final Brief](#), paras 253, 255-262). The Chamber notes that it appears that P-0602 did not mention to the judge in Bamako that her 'husband' was wearing a 'vest' (*see* P-0602: T-086, pp. 57, 59, 61). Nonetheless, as noted, the Chamber considers that the identification by P-0602 of the vest worn by her 'husband' as that of the Islamic Police was well established in her in-court testimony.

<sup>3092</sup> P-0602: T-084, pp. 84, 87; T-085, p. 10. P-0602 testified that on the relevant evening, she was at her next door neighbour's house along with her sister (P-0602: T-084, pp. 84, 87-88; T-084-FRA, p. 80). From that location, she saw the vehicle of the 'Islamists' at her house (P-0602: T-084, pp. 87-88).

<sup>3093</sup> P-0602: T-084, p. 87.

is here'.<sup>3094</sup> P-0602's father suggested that they had made a mistake but they replied that they had come to find P-0602 and one of them wanted to marry her.<sup>3095</sup> The Islamic policemen asked for P-0602 to be called and she was called home from her neighbour's house.<sup>3096</sup> When P-0602 arrived, her father told her that the men said they wanted to marry a woman from the house.<sup>3097</sup> The Islamic policeman P-0602 was being asked to marry had black skin and spoke Songhai.<sup>3098</sup> P-0602's father told the Islamic policemen that he was not in agreement with the marriage and then he asked P-0602 whether she was in agreement or not, and she said she was not.<sup>3099</sup>

937. Three days later,<sup>3100</sup> the same Islamic policemen returned to P-0602's house.<sup>3101</sup> Two of them were armed.<sup>3102</sup> They said to P-0602's father that they wanted to marry P-0602 and that they did not want to harm her in any way.<sup>3103</sup> P-0602's father underlined that he was not in agreement and neither was P-0602; nevertheless, the Islamic policemen continued to return, bearing weapons and harassing P-0602's father and P-0602 and 'absolutely insist[ing]' until they got what they wanted when P-0602's father conceded to the marriage.<sup>3104</sup> P-0602 was

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<sup>3094</sup> P-0602: T-084, p. 84. *See also* P-0602: T-085, p. 7. P-0602 testified that, when they arrived, her father and other members of her family and neighbours were at home (P-0602: T-084, p. 87). P-0602 testified that her father speaks Arabic and Tamasheq (P-0602: T-086, pp. 7-8).

<sup>3095</sup> P-0602: T-084, p. 84. *See also* P-0602: T-085, p. 7. P-0602 testified that her father told her what had happened when she came (T-085, p. 7).

<sup>3096</sup> P-0602: T-085, pp. 7-8.

<sup>3097</sup> P-0602: T-084, p. 87; T-085, p. 7.

<sup>3098</sup> P-0602: T-085, pp. 5, 8, 14. P-0602 testified that the other persons that came with him had light-coloured skin and spoke Arabic and Tamasheq (P-0602: T-085, pp. 5, 8, 14). She further testified that she thought that one of the men may have been the boss, on the basis that he had no weapon and was dressed differently, with a 'bazin'. He also had light-coloured skin and was wearing a turban (P-0602: T-084, p. 84; T-085, p. 6).

<sup>3099</sup> P-0602: T-085, p. 8.

<sup>3100</sup> P-0602: T-085, p. 11. P-0602 testified that on this second occasion she was at home with her father and other members of her family (P-0602: T-085, pp. 12-13).

<sup>3101</sup> P-0602: T-085, p. 11.

<sup>3102</sup> P-0602 testified that two of the men were armed and the other, the one she thought would be their chief, was not armed and was wearing the 'bazin' (P-0602: T-085, p. 11).

<sup>3103</sup> P-0602: T-085, p. 13. P-0602 testified that she heard them saying this to her father (P-0602: T-085, p. 13). P-0602 testified that she could hear them talking in the courtyard, talking about marriage, although she was not really paying attention (P-0602: T-085, p. 13).

<sup>3104</sup> P-0602: T-085, pp. 8-9, 13-15. P-0602 testified that the men bore weapons and harassed her father and her, until they got what they wanted when her father conceded to the marriage (P-0602: T-085, pp. 8-9). P-0602 was clear that the family was obliged to give in because, in that period, Timbuktu was in the 'Islamists'' hands, 'everything and everyone who was living in Timbuktu was theirs' (P-0602: T-085, p. 14). She testified that she was very afraid as the men were capable of anything if she did not give in (P-0602: T-085, p. 15). She stated that everybody in Timbuktu was afraid of the weapons (P-0602: T-085, p. 9).

frightened for herself and her parents, and her parents were equally frightened.<sup>3105</sup> P-0602's father told her that the marriage would take place but for her not to 'take it too much to heart' because it would also come to an end, as the 'Islamists' would eventually leave the city.<sup>3106</sup> P-0602 was not at all in agreement about the marriage and testified that she felt very bad.<sup>3107</sup>

938. Shortly afterwards,<sup>3108</sup> a religious marriage ceremony took place at the mosque.<sup>3109</sup> There was no party.<sup>3110</sup> P-0602 stayed home and did not attend the religious ceremony at the mosque.<sup>3111</sup> A dowry was provided by the members of Ansar Dine/AQIM.<sup>3112</sup>

939. After the 'marriage', P-0602's Islamic policeman 'husband' came with one of his 'friends' and took her to a house near the 'peace flame'.<sup>3113</sup> The men were

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<sup>3105</sup> P-0602: T-085, p. 15.

<sup>3106</sup> P-0602: T-085, pp. 14-15.

<sup>3107</sup> P-0602: T-085, p. 9. P-0602 testified that she felt very bad and isolated herself to cry (P-0602: T-085, p. 9). She said that she felt very bad about the marriage, stating that these 'people come from nowhere and they come to Timbuktu and marry people, they married lots of people' (P-0602: T-085, p. 18). P-0602 underlined that she did not want to marry the man, she did not agree to the marriage and it happened anyway (P-0602: T-085, p. 33). Based on the consistent evidence of P-0602 that she and her father were not in agreement with the marriage and that P-0602's father repeatedly told the Islamic policemen that he was not in agreement with the marriage, the Chamber rejects the Defence suggestions that 'it is impossible for anyone other than the husband to have known that P-0602 did not consent to the marriage or to relations with her husband' ([Defence Final Brief](#), para. 254) and that 'P-0602 agreed to the marriage after the husband told P-0602's father that he just wanted to marry P-0602 and would not harm her' ([Defence Final Brief](#), para. 254).

<sup>3108</sup> P-0602: T-085, pp. 9, 15.

<sup>3109</sup> P-0602: T-085, pp. 11, 15-16. P-0602 testified that before the armed groups arrived in Timbuktu, marriages were celebrated by a religious ceremony and party where the bride was transported in a parade, 'in a *cortège*' (P-0602: T-085, p. 18). Conversely, upon the arrival of the 'Islamists', there were no longer distractions in terms of ceremonies, only religious ceremonies were conducted with no festive types of ceremonies (P-0602: T-085, p. 15). The Chamber notes that P-0602 testified that she did not attend the religious ceremony at the mosque and therefore could not testify about what happened there, but that her father and grandfather came back to the house once it was over (P-0602: T-085, p. 16).

<sup>3110</sup> P-0602: T-085, p. 18.

<sup>3111</sup> P-0602: T-085, pp. 16, 19.

<sup>3112</sup> P-0602: T-085, pp. 16-17. The Chamber notes that P-0602 testified that she did not try to find out how much the dowry was because she believed that it did not concern her (P-0602: T-085, pp. 17-18). However, P-0602 testified that there is no marriage without a dowry and for that reason she knew it was given in her case (P-0602: T-085, p. 17). P-0602 testified that she did not know specifically who gave the dowry but testified that 'they' gave it (P-0602: T-085, pp. 16-17), which the Chamber understands from the context to be a reference to the members of Ansar Dine/AQIM.

<sup>3113</sup> P-0602: T-085, pp. 18-19. P-0602 testified that they were wearing the same clothes they usually wore, referring to her earlier testimony (P-0602: T-085, p. 20). P-0602 also testified that the house she was taken to was located where the houses had been abandoned by people who fled the 'Islamists' (P-0602: T-085, p. 20). P-0602 testified that it was a big house with different rooms; she had never been inside before (P-0602: T-085, p. 21). P-0602 testified that when she arrived there was nobody else in the house (P-0602: T-085, p. 21).

armed<sup>3114</sup> and took her in a yellow cruiser vehicle.<sup>3115</sup> P-0602 did not escape because she was afraid that her parents could be accused of helping her escape.<sup>3116</sup> In this house, P-0602's 'husband' took her into a room,<sup>3117</sup> where there was a double mattress.<sup>3118</sup> The man wanted to get close to her and to touch her,<sup>3119</sup> but she did not accept to have intercourse.<sup>3120</sup> The man did not touch her after she refused but complained 'that if a man and woman get married [...] they should touch and that they should sleep together'.<sup>3121</sup> P-0602 did not answer or otherwise speak to the man.<sup>3122</sup> The man put the rifle next to him in the room.<sup>3123</sup> P-0602 was not able to sleep that night.<sup>3124</sup>

940. The next day, P-0602 was taken to her father's house by her Islamic policeman 'husband' and his friend; her parents were there and they did not talk about what happened during the first night.<sup>3125</sup>

941. The second night, the same thing happened and P-0602 did not accept to sleep with her Islamic policeman 'husband'.<sup>3126</sup> He was very angry and P-0602 was frightened and thought of running away but did not do it because they knew where she came from.<sup>3127</sup> P-0602's 'husband' was shouting and had his weapon in his hand and he frightened P-0602.<sup>3128</sup> That night, she kept waking up.<sup>3129</sup> The next

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<sup>3114</sup> P-0602: T-085, p. 20.

<sup>3115</sup> P-0602: T-085, p. 20. P-0602 described the vehicle as one where three people fit in the front and the back is uncovered (P-0602: T-085, p. 20). P-0602 testified that they knew that if she had the chance she would escape and for that reason she was put between them and so she was not able to escape (P-0602: T-085, p. 20).

<sup>3116</sup> P-0602: T-085, p. 21.

<sup>3117</sup> P-0602: T-085, p. 23. P-0602 testified that there was light in the room (P-0602: T-085, p. 23). When questioned as to whether she had told the Bamako judge that she was constantly in the dark, the Chamber notes that P-0602 testified that there was electricity, but it was always dark (P-0602: T-086, p. 57). Noting in any event that P-0602 was clear that she went in the room with the 'husband' ('[t]he gentleman that the marriage was conducted with, it was he' (P-0602: T-085, p. 23)), the Chamber is satisfied that the person with whom she went in the room was indeed her 'husband'.

<sup>3118</sup> P-0602: T-085, p. 23.

<sup>3119</sup> P-0602: T-085, p. 24.

<sup>3120</sup> P-0602: T-085, p. 24. Asked how she expressed her refusal, P-0602 testified that he understood because she went to sit to one side and he understood that she did not want to (P-0602: T-085, p. 25).

<sup>3121</sup> P-0602: T-085, p. 24.

<sup>3122</sup> P-0602: T-085, p. 25.

<sup>3123</sup> P-0602: T-085, p. 25.

<sup>3124</sup> P-0602: T-085, p. 25.

<sup>3125</sup> P-0602: T-085, p. 26. *See also* P-0602: T-085, pp. 18-19.

<sup>3126</sup> P-0602: T-085, pp. 25, 27.

<sup>3127</sup> P-0602: T-085, p. 28.

<sup>3128</sup> P-0602: T-085, pp. 28-29.

<sup>3129</sup> P-0602: T-085, p. 29.



day, her ‘husband’ took her home to her father’s house.<sup>3130</sup> P-0602 said to her father that she had not slept for two nights and was afraid.<sup>3131</sup>

942. The same men came back a third time and took her to the same house.<sup>3132</sup> On the third night, her Islamic policeman ‘husband’ became forceful.<sup>3133</sup> He frightened P-0602 with his weapon<sup>3134</sup> and forced her to have sexual intercourse with him.<sup>3135</sup> He said that they were married, and she was supposed to know what married persons do.<sup>3136</sup> P-0602 testified it was something that she did not want, it was against her will, and after that she was afraid all night.<sup>3137</sup> Afterwards, P-0602’s ‘husband’ took her home.<sup>3138</sup>

943. P-0602’s Islamic policeman ‘husband’ forced her to have sexual intercourse a few times over several days.<sup>3139</sup>

944. Afterwards, P-0602 went to the hospital where she received medication.<sup>3140</sup> P-

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<sup>3130</sup> P-0602: T-085, p. 29.

<sup>3131</sup> P-0602: T-085, p. 29. In light of this evidence, the Chamber rejects the Defence’s assertion that P-0602 did not complain to anyone of her ‘husband’s’ conduct ([Defence Final Brief](#), para. 254).

<sup>3132</sup> P-0602: T-085, p. 29.

<sup>3133</sup> P-0602: T-085, p. 29.

<sup>3134</sup> P-0602: T-085, pp. 30-32. The Chamber notes that P-0602 was questioned on whether she mentioned to the Bamako judge that she was threatened with a whip and not with a gun (P-0602: T-086, pp. 53-54, 61). P-0602 stated that she could not remember exactly what she said, since it happened a long time ago (P-0602: T-086, pp. 53-54). The Chamber considers this difference to be minor, noting in any event P-0602’s consistent testimony that she was alone with her ‘husband’, after being taken away from her family home, and that he was armed. The Chamber considers on this basis that whether her ‘husband’ threatened her with a gun or a whip at the specific time that he forced her into sexual intercourse is inessential (*contra* [Defence Final Brief](#), para. 253).

<sup>3135</sup> P-0602: T-085, pp. 30-32. The Chamber notes that the witness referred to being forced to ‘sleep with him’ and have ‘relations’ and that the parties agreed that by this, the witness was referring to sexual relations (P-0602: T-085, pp. 30-31). Based on the foregoing evidence, the Chamber finds that penetration occurred and that P-0602’s ‘husband’ forced her to have sexual intercourse with him.

<sup>3136</sup> P-0602: T-085, p. 32.

<sup>3137</sup> P-0602: T-085, p. 32.

<sup>3138</sup> P-0602: T-085, p. 32. P-0602 testified that she would come for the night and the next morning would be taken home (P-0602: T-085, p. 32).

<sup>3139</sup> P-0602: T-085, p. 32. The Chamber notes that, in response to the question of whether P-0602 had sexual relations with her ‘husband’ on the other nights, P-0602 responded ‘[a]fter the time that he frightened me, well, after that we slept together’ (P-0602: T-085, p. 32) and in response to the question of how many days this took place over, P-0602 responded ‘it was quite a few days, with comings and goings, and at a certain time it stopped. There were two nights like that’ (P-0602: T-085, p. 32). The Chamber considers that this evidence establishes that P-0602 had sexual intercourse with the ‘husband’ at least twice. The Chamber infers from her evidence that the circumstances of any additional sexual intercourse were equivalent to the first time P-0602’s ‘husband’ forced her to have sexual intercourse with him, and further that penetration occurred in each instance. The Chamber also infers from P-0602’s evidence and the reference to ‘comings and goings’ that the remainder of her ‘marriage’ continued like the first three days with P-0602 being returned home during the day and taken each night to another house by her ‘husband’.

<sup>3140</sup> P-0602: T-085, p. 34.

0602 was not feeling well in herself although she did not have any marks or injuries on her body.<sup>3141</sup>

945. P-0602's 'marriage' lasted for a limited period of time during Ansar Dine/AQIM's control of Timbuktu.<sup>3142</sup>

946. As a result of what happened to her, P-0602 felt sick and would withdraw from others<sup>3143</sup> and she 'still feel[s] sadness in her heart'.<sup>3144</sup> Her father went to see some marabouts to help her forget it all, they prayed for her and then she was able to speak and talk to people again.<sup>3145</sup> According to P-0602, the events did not change the relationship between her and her family and friends because they knew that nobody could do anything about what happened.<sup>3146</sup>

#### **u) Case of P-0610**

947. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed below, it finds particularly reliable: the direct victim herself, P-0610,<sup>3147</sup> and

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<sup>3141</sup> P-0602: T-085, p. 34.

<sup>3142</sup> P-0602: T-085, p. 33. The Chamber notes that P-0602 testified that she 'didn't see anybody anymore' when people started escaping with the impending arrival of the Malian army and, questioned as to how the marriage ended, reaffirmed that it was the moment when the people started fleeing and the 'aircraft hit [...] from the top' (P-0602: T-085, p. 33). P-0602 further could not specify precisely the length of time she spent with her 'husband' during the events, stating that it was 'some longish time' (P-0602: T-086, p. 52). When confronted with her prior statement suggesting that the marriage lasted 10 days and that when it was over, there were still 'mujahedin' in Timbuktu and that they left Timbuktu 'much later' (P-0602: T-086, p. 53), the Chamber notes that P-0602 was forthcoming in admitting that she could not say precisely how many nights she spent with her 'husband' (P-0602: T-086, p. 53). The Chamber is of the view that this is a natural consequence of the lapse of time since the events and does not impact the credibility or reliability of P-0602's overall account of her 'marriage' and rape. As noted above, while the time period of P-0602's incident is not clear, the Chamber is satisfied that it occurred during the period of the charges.

<sup>3143</sup> P-0602: T-085, p. 35.

<sup>3144</sup> P-0602: T-085, p. 44.

<sup>3145</sup> P-0602: T-085, p. 35.

<sup>3146</sup> P-0602: T-085, pp. 44-45. The Chamber notes that P-0602 testified that the judge in Bamako asked her whether she became pregnant with the sexual intercourse she had had with her 'husband', and P-0602 indicated that she was pregnant before the 'marriage' and that she was not married to the father of that child (P-0602: T-086, pp. 48-51). P-0602 also suggested she wanted to marry the father of her baby, but it did not happen (P-0602: T-086, pp. 49-50). Noting the limited evidence of the witness on this point and the detailed and consistent evidence regarding her and her family's attitude towards her forced marriage, the Chamber finds speculative the Defence's suggestion that it is reasonable to infer that P-0602's family intentionally married her to an outsider who would not know about P-0602's pregnancy ([Defence Final Brief](#), para. 254).

<sup>3147</sup> P-0610 (T-158 to T-159), a Muslim girl of Songhai ethnicity, who was between 13 and 15 years old at the time of events, was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the

[REDACTED] P-0622,<sup>3148</sup> who learned during the events from P-0610's mother

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city (P-0610: T-158, pp. 5-6, 9; T-159, p. 29), apart from around April to August 2012 (P-0610: T-158, pp. 9-11, 21). [REDACTED]. She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation. P-0610 was a cooperative witness overall, who was clearly able to distinguish what she knew based on her direct experience as opposed to what she had learned from others (*see e.g.* P-0610: T-158, pp. 11, 15, 19, 22, 27, 46). She provided a simple narrative, without apparent embellishment, and did not hesitate throughout her testimony to admit if she did not know or remember something (*see e.g.* P-0610: T-158, pp. 15-16, 27, 37, 40-41, 48, 51). However, the Chamber also observes that P-0610's answers were often lacking in detail, especially in relation to her own narrative of being forcibly married and raped (*see, in particular*, P-0610: T-158, pp. 19-43). For example, the witness was unable to physically describe the man to whom she was 'married', or remember whether he was present at the 'marriage' (P-0610: T-158, pp. 37, 40-41). Nevertheless, the Chamber recalls that the witness was particularly young at the time of events, and also takes into account the sensitive nature of this part of her testimony. Further, although noting that the witness is literate and has had some education (P-0610: T-158, p. 9), the Chamber observes that P-0610 did not appear to have a very good command of expression in French, the language in which she testified and confirmed that she could speak and write (P-0610: T-158, p. 6). Indeed, at many points during her testimony, there were some apparent misunderstandings by P-0610 of some of the nuances of the questions asked to her (*see e.g.* P-0610: T-158, pp. 47-48 (where P-0610 testified that she did not personally know of cases of women who had a similar experience to her, and then directly following, testified that she knew of the case of her sister who was also forced to marry); P-0610: T-159, pp. 8-9 ([REDACTED])). With these factors in mind, the Chamber observes that, although simple, and despite the sensitivity of the matter, P-0610 presented a coherent narrative of her own forced marriage, including identifying with precision the time period in which the marriage took place, the three visits by the 'Islamists' to her mother's house which preceded the 'marriage', and also identifying by name the individual to whom she was 'married'. In relation to contradictions between P-0610's account and the testimony of other witnesses, notably D-0512 and D-0516, the Chamber does not consider these contradictions to detract from the credibility or reliability of P-0610's account for the reasons stated below. The Chamber accordingly considers overall that P-0610 testified truthfully and provided an accurate account of what she remembers happened to her, as well as what she heard (*contra* [Defence Final Brief](#), paras 216, 231). As to P-0610's testimony of the forced marriage of her half-sister, the Chamber notes that P-0610's narrative is based exclusively on what she was told by her half-sister (P-0610: T-159, p. 32). The Chamber observes further that the narrative is lacking in key details, including regarding the identity of the 'husband' (apart from him being an Arab from Timbuktu whom P-0610 conceded she never saw (P-0610: T-158, pp. 52-53)), the role of the 'Islamists' in arranging or facilitating the marriage (P-0610: T-158, p. 52), how the marriage was celebrated (P-0610: T-158, pp. 52-53), and what happened to her half-sister after she married this man (P-0610: T-158, p. 53). The Chamber also notes that P-0610 explicitly said that she was not present during any conversation between the Arab man, her half-sister's mother or her half-sister. The Chamber further notes that [REDACTED]. In light of the vagueness of P-0610's narrative on this subject, the Chamber has assigned minimal probative value to P-0610's evidence on this specific matter although does not consider this to affect the credibility or reliability of P-0610's evidence on her own incident, noting the witness's express acknowledgment of the limits of her basis of knowledge on this subject (*contra* [Defence Final Brief](#), para. 232). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0610 to be a generally credible and reliable witness. Nevertheless, having regard to the aforementioned considerations, it has assessed the weight to be accorded to the witness's evidence on a case-by-case basis where appropriate.

<sup>3148</sup> P-0622 (*see* P-0622: T-160; P-0622's statement MLI-OTP-0065-0558-R02 introduced through Rule 68(3) of the Rules), a Muslim man of Songhai ethnicity (P-0622: T-160, p. 7), lived outside of Timbuktu when Ansar Dine/AQIM were present in the city, although he visited the city frequently before this time and occasionally during the period of the charges and was also present on the day the city was taken over (P-0622's statement MLI-OTP-0065-0558-R02, at 0560-0561, paras 14-15, 17-18, 0563, para. 26, 0564, para. 33, 0567-0568, para. 50; P-0622: T-160, pp. 11, 27-28, 32-33, 43-44). [REDACTED]. He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including P-0610's victimisation. Although he had difficulty with details like precise dates (*see e.g.* P-0622's statement MLI-OTP-0065-0558-R02, at 0561, para. 19; P-0622: T-160, p. 11), P-0622 generally explained his basis of knowledge for the statements he made, provided clear answers and was also able

that P-0610 was ‘married’, and whose evidence largely corroborates P-0610’s account of her forced marriage. The Chamber has relied on D-0512’s evidence regarding P-0610 on a case-by-case basis.<sup>3149</sup> Furthermore, the Chamber does not consider D-0516’s testimony in relation to this incident reliable, noting that her account is particularly unclear and lacking in details.<sup>3150</sup>

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to correct or deny certain suggestions put to him with which he disagreed. In addition, P-0622’s testimony was balanced - while testifying extensively about the negative consequences of the actions of Ansar Dine/AQIM on the population of Timbuktu, he noted that some members of the population were happy with the arrival of the ‘Islamists’, and that at the start of the crisis they caused no problems for civilians (P-0622’s statement MLI-OTP-0065-0558-R02, at 0562, paras 22, 25). P-0622 readily admitted to not having a good knowledge of the different armed groups or the different organs of Ansar Dine/AQIM (*see e.g.* P-0622’s statement MLI-OTP-0065-0558-R02, at 0562-0563, para. 25, 0566, paras 42-43, 0569, para. 55; P-0622: T-160, pp. 26-33). In relation to P-0610, the Chamber assesses the evidence of P-0622 bearing in mind the basis of his knowledge (*see* P-0622’s statement MLI-OTP-0065-0558-R02, at 0567-0568, paras 49-50; P-0622: T-160, pp. 43-44; *see also* P-0622: T-160, pp. 16-19), and the fact that [REDACTED], but finds unfounded the overall Defence suggestion that corroboration between the two must be precluded on the basis that [REDACTED]. Based on the Chamber’s holistic assessment of the evidence, including the foregoing, the Chamber finds P-0622 to be a generally credible and reliable witness. Nevertheless, having regard to the aforementioned considerations, it has assessed the weight to be accorded to the witness’s evidence on a case-by-case basis where appropriate.

<sup>3149</sup> The Chamber refers to its findings on the credibility and reliability of D-0512’s evidence (*see* section II.B.2.b)ii above). The Chamber notes that although corroborating that P-0610 married an ‘Islamist’, some discrete aspects of P-0610’s narrative of her marriage are contradicted by D-0512. D-0512 testified that she is [REDACTED], but clarified that the two are not friends and do not sit down to talk, and conceded that she could not say what P-0610 was doing every day during 2012 and could not know what was going on inside P-0610’s house (D-0512’s statement MLI-D28-0006-2611-R04, at 2618-2619, paras 50, 53; D-0512: T-181, pp. 83-84). The Chamber assesses D-0512’s evidence regarding P-0610 on a case-by-case basis, bearing in mind these caveats expressed by the witness regarding her knowledge of P-0610’s activities. Overall, for the reasons set out in the discussion of P-0610’s narrative below, the Chamber does not consider the contradictions between P-0610 and D-0512 to detract from the credibility or reliability of P-0610’s account as a whole.

<sup>3150</sup> D-0516 (*see* D-0516: T-199; D-0516’s statement MLI-D28-0006-2783-R01 introduced through Rule 68(3) of the Rules), a Muslim Tamasheq woman, was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the city (D-0516: T-199, pp. 6-7). [REDACTED] (D-0516: T-199, pp. 7-8). The witness mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including the victimisation of P-0610. The Chamber observes that D-0516’s testimony was overall unclear and difficult to understand, noting that the witness was often confused and did not seem to understand the questions asked to her, which was in part attributed to the witness’s limited abilities, the superficial nature of her knowledge, as well as interpretation issues which may have caused difficulties in her confirming the content of her statement and of propositions put to her in court. The Chamber further notes that a number of inconsistencies with D-0516’s prior recorded testimony, as well as internal contradictions in-court, could not be explained or put in context in the witness’s testimony. Regarding specifically D-0516’s evidence in relation to P-0610’s marriage, the Chamber notes that D-0516 explicitly said that she was not present during any conversation between the ‘Arab man’ and the family or during the marriage, and her account mainly emanated from P-0610’s mother. D-0516 was however unable to elaborate on what exactly she had been told and could not provide many details in relation to the conversation she had. In particular, the Chamber finds D-0516’s evidence in relation to visits to P-0610 and her ‘husband’ in 2012 especially unclear and contradictory. D-0516’s prior recorded testimony records that she saw P-0610 every day in 2012 (D-0516’s statement MLI-D28-0006-2783-R01, at 2785, para. 14) and that she went to P-0610’s house and saw P-0610’s ‘husband’ and P-0610 about twice a week in their neighbourhood (D-0516’s statement MLI-D28-0006-2783-R01, at 2785, para. 20). D-0516 confirmed in court that she saw P-0610 together with her ‘husband’, at P-0610’s home,

948. One day in around September 2012,<sup>3151</sup> while P-0610 was not at home,<sup>3152</sup> three members of Ansar Dine/AQIM<sup>3153</sup> came to P-0610's mother's home and asked

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when P-0610 was married to the 'Arab' in 2012 (D-0516: T-199, p. 16). D-0516 however also testified that she was always at home in 2012 (D-0516: T-199, pp. 24, 48, 69; D-0516's statement MLI-D28-0006-2783-R01, at 2785, para. 10). Asked about seeing P-0610 at 'her' house when P-0610 was married in 2012, D-0516 testified that she was passing by and saw P-0610 sitting down (D-0516: T-199, p. 16). D-0516 later stated that she only saw P-0610 when the latter was at D-0516's house (D-0516: T-199, p. 48). D-0516 then clarified that she once saw the 'Arab man' when she went to her mother's and made a detour to see P-0610 (D-0516: T-199, p. 48). While it seems that D-0516 may have seen P-0610 once in her 'husband's' house in Timbuktu in 2012, the Chamber does not consider established that D-0516 often visited P-0610 and her 'husband' in 2012. Rather, the Chamber finds, as [REDACTED] (*see* D-0516: T-199, pp. 37, 51, 72) and D-0516 repeated several times that she always stayed at home, that D-0516 seemed to have limited contacts with P-0610 in 2012 and that she did not know much about P-0610's marriage or relations with her 'husband'. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber has significant concerns in relation to the credibility of D-0516 and the reliability of the vast majority of her evidence. Whilst the Chamber has undertaken a careful analysis of the credibility and reliability of, and weight to be accorded to, specific aspects of the witness's evidence on a case-by-case basis, the Chamber generally considers that little weight should be accorded to D-0516's evidence, in particular with respect to P-0610.

<sup>3151</sup> P-0610 testified that the 'Islamists' came to her house a month after her return to Timbuktu, which she dated as being in August 2012, during Ramadan (P-0610: T-158, pp. 10-11, 21). P-0610 testified that she left Timbuktu in April 2012 in order to continue with her studies and later returned (P-0610: T-158, pp. 9-10). The Chamber notes that this timeframe is corroborated by P-0622, who testified that P-0610 was back in Timbuktu [TRANSLATION] 'during the holidays' when she was forced to marry the 'Islamist' (P-0622's statement MLI-OTP-0065-0558-R02, at 0567-0568, para. 50). The Chamber notes that D-0512 testified that P-0610 was in Timbuktu throughout 2012 and never left Timbuktu in all of 2012 (D-0512's statement MLI-D28-0006-2611-R01, at 2618, para. 50). However, recalling that the two were not close and that D-0512 conceded that she could not say what P-0610 was doing every day during 2012 (D-0512's statement MLI-D28-0006-2611-R04, at 2618-2619, paras 50, 53; D-0512: T-181, pp. 83-84), the Chamber does not rely on D-0512's evidence on this point, finding more credible the account of P-0610 which is corroborated by P-0622. In any event, the Chamber notes that D-0512 testified that P-0610's 'marriage' took place during Ramadan (D-0512's statement MLI-D28-0006-2611-R01, at 2619, para. 52), which is generally consistent with the timeframe provided by P-0610. Based on the foregoing, the Chamber considers that this incident took place around September 2012.

<sup>3152</sup> P-0610: T-158, p. 19.

<sup>3153</sup> The Chamber notes that P-0610 identified these persons only as 'Islamists' and consistently described the man she was forced to marry (*see* below) as an 'Islamist'. When the Defence attempted to impeach P-0610's ability to distinguish between the various groups present in Timbuktu at the time (P-0610: T-158, pp. 88-90), the witness testified that the groups dressed fairly similarly but rejected the Defence suggestion that she was not able to distinguish different 'Islamist' groups from one another (P-0610: T-158, p. 89). P-0610 described that the 'Islamists' were white and wore white and black clothes, and spoke Arabic (P-0610: T-158, p. 15). She also testified that the 'Islamists' used the 'BDM' for the Islamic Police, and testified that the 'BDM' building, which was a bank, was located at the large market in Timbuktu, *Yaboutao* (P-0610: T-158, pp. 15, 54-55). In light of P-0610's description of the location of the 'BDM', as well as the evidence from other witnesses regarding the 'BDM' (*see e.g.* footnotes 1569, 2881), the Chamber concludes that the 'BDM' mentioned actually refers to the 'BMS'. The Chamber further notes that in her testimony, P-0610 equated the term 'Islamist' with the group Ansar Dine, based on what she heard from others (*see* P-0610: T-158, pp. 14-15). Noting the aforementioned, and also that P-0610 described the 'Islamists' who came to her mother's house as belonging to the group who 'were running the show in Timbuktu' at the time (P-0610: T-158, p. 20), together with the Chamber's finding that Ansar Dine/AQIM were in control of Timbuktu in September 2012, the Chamber finds that the 'Islamists' who came to P-0610's mother's house, including the one to whom P-0610 was 'married', were members of Ansar Dine/AQIM (*contra* [Defence Final Brief](#), paras 233-234, 255-262).

for one of them to marry her daughter.<sup>3154</sup> P-0610 was between 13 and 15 years old at the time of events.<sup>3155</sup> P-0610 did not want to marry one of them,<sup>3156</sup> but her mother told her that it was not possible to refuse, and that if they refused, the ‘Islamists’ would kill or hurt them.<sup>3157</sup> P-0610 was afraid, and felt that she had no choice because ‘they were running the show in Timbuktu’.<sup>3158</sup>

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<sup>3154</sup> P-0610: T-158, pp. 19-20. P-0610 said that she learned from her mother that they had come (P-0610: T-158, pp. 19-20). While P-0610 initially testified that her mother did not tell her what language the ‘Islamists’ spoke (P-0610: T-158, p. 20), she later testified that the ‘Islamists’ and her mother communicated in Arabic. However, she also testified that her mother, not being able to understand Arabic, called a neighbour who understands it (P-0610: T-158, pp. 31-33). The Chamber does not consider this discrepancy to be significant.

<sup>3155</sup> The Chamber notes that the witness’s precise age is unclear. P-0610 confirmed that her birth date was in early 1997 (which would have made her around 15 in 2012), although then testified that she was 13 years old in 2012 (P-0610: T-158, pp. 5, 9). The witness also agreed with the Defence’s proposition that she was 15, not 13, in 2012 (P-0610: T-159, p. 29). The Chamber does not consider this discrepancy to be significant, noting that in either case the witness was very young at the time of events.

<sup>3156</sup> P-0610: T-158, p. 20. The Chamber notes that this evidence is corroborated by P-0622, who testified that P-0610 did not want the wedding, but they came to take her anyway (P-0622’s statement MLI-OTP-0065-0558-R02, at 0567, para. 49). The Chamber has taken into account P-0622’s relationship with P-0610 in affording weight to P-0622’s corroborative evidence on this point, but gives significant weight to P-0610’s direct account, which it considers credible and consistent with her overall evidence about the circumstances of her ‘marriage’. The Chamber also notes that D-0512 testified that P-0610 was in agreement with the marriage, which she learned from P-0610’s mother (D-0512: T-181, pp. 16-17). Noting that D-0512’s account is based on what she heard from P-0610’s mother, who P-0610 testified told her she had to accept the marriage otherwise the ‘Islamists’ would harm them (P-0610: T-158, pp. 23-24), and who may have therefore presented the marriage in a favourable light to friends and neighbours, the Chamber does not rely on this part of D-0512’s evidence. The Chamber considers P-0610’s direct account of the events, which is corroborated by P-0622, credible.

<sup>3157</sup> P-0610: T-158, p. 20. P-0610 testified that she told her mother that she did not want to marry the ‘Islamist’, and testified that her mother reacted badly, since if P-0610 did not marry the ‘Islamist’, it would be worse for P-0610 (P-0610: T-158, pp. 20-21). The Chamber understands that the reference to the ‘Islamists’ in this part of P-0610’s testimony is a reference to the same group as those who came to the house asking to marry her *i.e.* Ansar Dine/AQIM. In relation to D-0516’s testimony that her mother did not say anything to D-0516 about any threats received from the men who came to the house (D-0516: T-199, p. 43; D-0516’s statement MLI-D28-0006-2783-R01, at 2786), the Chamber does not consider this evidence to impact P-0610’s evidence on this point, recalling its conclusions above about the little weight to be afforded to D-0516’s evidence on what happened to P-0610.

<sup>3158</sup> P-0610: T-158, p. 20. The Chamber notes that this evidence is corroborated by P-0622 who, as noted above, testified that P-0610 did not want the wedding, but they came to take her anyway (P-0622’s statement MLI-OTP-0065-0558-R02, at 0567, para. 49). While affording her evidence on this matter little weight, the Chamber nevertheless notes that D-0516 confirmed that people were scared of the ‘Islamists’ who came to Timbuktu and that her mother and P-0610 were scared of them, although P-0610 did not go out (D-0516: T-199, p. 39) and further confirmed that her mother and P-0610 were scared when the ‘Islamists’ came to her mother’s house (D-0516: T-199, p. 39). However, the Chamber notes the unclarity of D-0516’s evidence on this point, noting that D-0516 then stated that ‘the Islamists never came to us [...] I mean, we never went out, so never met them. So we never needed to be scared’ (D-0516: T-199, p. 39), adding that P-0610 did not go out, so did not see the ‘Islamists’ (D-0516: T-199, p. 40), and denying that P-0610 was scared of her ‘husband’ (D-0516: T-199, p. 42). The Chamber does not consider D-0516’s evidence on this point to impact its conclusion based on P-0610’s and P-0622’s evidence, recalling its conclusions above about the little weight to be afforded to D-0516’s evidence on what happened to P-0610.

949. Three days later,<sup>3159</sup> three members of Ansar Dine/AQIM<sup>3160</sup> returned a second time,<sup>3161</sup> with a sum of money as a ‘dowry’ to ‘arrange the marriage’.<sup>3162</sup> P-0610 had gone to the neighbour’s house to protect herself.<sup>3163</sup> P-0610 told her mother again that she did not want to marry the ‘Islamist’ and did not want anything to do with him.<sup>3164</sup> Again, her mother replied that P-0610 had to accept, otherwise the ‘Islamists’ would harm them.<sup>3165</sup> As P-0610’s father was not alive anymore at the time, P-0610’s mother discussed the ‘marriage’ proposal with a male relative.<sup>3166</sup>

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<sup>3159</sup> P-0610: T-158, p. 24.

<sup>3160</sup> While noting that P-0610 described these persons as ‘Islamists’, the Chamber recalls its finding above that the ‘Islamists’ referred to by P-0610 were members of Ansar Dine/AQIM.

<sup>3161</sup> P-0610 said that she learned from her mother that the ‘Islamists’ had returned a second time (P-0610: T-158, p. 22). P-0610 testified that the ‘Islamists’ and her mother communicated in Arabic, but that her mother does not understand Arabic, so she called a neighbour who understands it (P-0610: T-158, pp. 31-33).

<sup>3162</sup> P-0610: T-158, p. 22. P-0610 said that her mother did not tell her how much money was handed over (P-0610, T-158, p. 23). D-0512 testified she did not know how much was given for the dowry (D-0512’s statement MLI-D28-0006-2611-R01, at 2619, para. 52), but that she knew from P-0610’s mother that all the money from the marriage went to the latter (D-0512’s statement MLI-D28-0006-2611-R01, at 2619, para. 56; D-0512: T-181, p. 20). D-0516 testified that her mother told her that a dowry was given to her when the marriage was conducted (D-0516: T-199, p. 47; D-0516’s statement MLI-D28-0006-2783-R01, at 2785, para. 17) and she did not know the amount of the dowry that was given (D-0516: T-199, p. 75; D-0516’s statement MLI-D28-0006-2783-R01, at 2785, para. 17).

<sup>3163</sup> P-0610: T-158, p. 22. P-0610 testified that she had gone to the neighbours because she said she was afraid that the ‘Islamists’ would find her at the house (P-0610: T-158, p. 22).

<sup>3164</sup> P-0610: T-158, p. 23.

<sup>3165</sup> P-0610: T-158, pp. 23-24. P-0610 said that her mother had no choice when it came to the marriage (P-0610: T-158, p. 23). The Chamber understands that the reference to the ‘Islamists’ in this part of P-0610’s testimony is a reference to the same groups as those who came to the house asking to marry her *i.e.* Ansar Dine/AQIM.

<sup>3166</sup> P-0610: T-158, pp. 24-25. P-0610 testified that her mother told her that a male relative had talked to P-0610’s mother about the proposal (P-0610: T-158, pp. 24-25). P-0610 testified that her relative was not in agreement with the marriage because the proposal was from an ‘Islamist’, and that she learned this from her mother (P-0610: T-158, p. 27). On the other hand, D-0512 testified that P-0610’s mother and male relative agreed to the marriage and accepted (D-0512’s statement MLI-D28-0006-2611-R04, at 2618-2619, paras 51-52, 56). D-0512 testified that it was P-0610’s relative who gave his consent for P-0610 to marry since P-0610’s father had died (D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 56). D-0512 added that she knew this because she lives not far from them so when she heard about the marriage, she asked P-0610’s mother (D-0512’s statement MLI-D28-0006-2611-R04, at 2618, para. 51). D-0512 also testified that P-0610’s father died and in 2012 P-0610’s mother had no money; she accepted the marriage as well because she was poor and was happy to receive the money (D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 56). The Chamber notes that the male relative referred to by P-0610 and D-0512 are the same person (*see* P-0610: T-158, pp. 25, 36-37; D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 56). The Chamber notes P-0610’s credible testimony that her mother told her that P-0610 had to accept the marriage for fear that the ‘Islamists’ would otherwise harm them (P-0610: T-158, pp. 23-24). The Chamber further finds D-0512’s suggestion that P-0610’s mother and relative may have been financially motivated to accept the marriage to be speculative and as such does not rely on this supposition. The Chamber further notes P-0610’s consistent evidence that she herself did not accept the marriage.

950. Following this, the members of Ansar Dine/AQIM<sup>3167</sup> returned a third time,<sup>3168</sup> to set a date for the ‘marriage’.<sup>3169</sup> P-0610 was again not at home at the time,<sup>3170</sup> but she said that she reacted badly to the setting of the date.<sup>3171</sup>

951. Thereafter, the members of Ansar Dine/AQIM<sup>3172</sup> returned to P-0610’s mother’s home for the actual ‘marriage’.<sup>3173</sup> P-0610 was in a bedroom but a friend told her that the ‘Islamists’ were there.<sup>3174</sup> They brought a sum of money and gave it to P-0610’s male relative, and the ‘marriage’ took place in his home.<sup>3175</sup> The ‘marriage’ was attended by P-0610, her mother and sisters, her male relative, as well as friends of her mother and a friend of P-0610’s.<sup>3176</sup> P-0610 did not remember if the man she was ‘married’ to was present or not.<sup>3177</sup> There was no celebration, and no ceremony at the mosque,<sup>3178</sup> and according to P-0610, the ‘marriage’ went badly.<sup>3179</sup> She said that she felt bad because she did not love this

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<sup>3167</sup> While noting that P-0610 described these persons as ‘Islamists’, the Chamber recalls its finding above that the ‘Islamists’ referred to by P-0610 were members of Ansar Dine/AQIM.

<sup>3168</sup> P-0610 learned from her mother that the ‘Islamists’ had returned a third time (P-0610: T-158, p. 28). P-0610 was told by her mother that the ‘Islamists’ spoke in Arabic (P-0610: T-158, p. 28). P-0610 testified that her mother does not understand Arabic, so she called a neighbour who understands it (P-0610: T-158, pp. 31-33).

<sup>3169</sup> P-0610: T-158, p. 27.

<sup>3170</sup> P-0610: T-158, pp. 27-28. P-0610 testified that she was with a friend because she said that she did not want the ‘Islamists’ to find her at home (P-0610: T-158, pp. 27-28).

<sup>3171</sup> P-0610: T-158, p. 28.

<sup>3172</sup> While noting that P-0610 described these persons as ‘Islamists’, the Chamber recalls its finding above that the ‘Islamists’ referred to by P-0610 were members of Ansar Dine/AQIM.

<sup>3173</sup> P-0610: T-158, p. 29. The Chamber notes that D-0512 corroborated the fact that P-0610 got married in 2012 to an ‘Islamist’, based on what she heard from P-0610’s mother (D-0512’s statement MLI-D28-0006-2611-R04, at 2618, para. 51). D-0512 testified that she knew this because she lives not far from them so when she heard about the marriage, she asked P-0610’s mother about it (D-0512’s statement MLI-D28-0006-2611-R04, at 2618, para. 51). D-0512 testified that although she never saw or spoke to the ‘husband’, she knew he was an ‘Islamist’ because ‘they like discretion, they carry out marriages discreetly’ (D-0512: T-181, p. 18). She further testified that there are Arabs living in her neighbourhood, although does not know their names (D-0512: T-181, pp. 18-19). D-0512 also testified that P-0610 told her that the ‘husband’ was somebody with light skin (D-0512: T-181, p. 18), and that he spoke Arabic because he is an Arab although she does not know which country he comes from (D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 53).

<sup>3174</sup> P-0610: T-158, pp. 29-33.

<sup>3175</sup> P-0610: T-158, pp. 35-37.

<sup>3176</sup> P-0610: T-158, pp. 36-37. The Chamber notes that this is generally consistent with the evidence of D-0512, who testified that there were two witnesses, a marabout, the mother and a male relative (D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 52). D-0512 said that she did not know who the witnesses and marabout were (D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 52). D-0512 further testified that the male relative was P-0610’s witness in the wedding (D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 56).

<sup>3177</sup> P-0610: T-158, p. 37.

<sup>3178</sup> P-0610: T-158, p. 37. The Chamber notes that this is corroborated by D-0512, who testified that there was no celebration, there was a religious ceremony at the house, not at the mosque (D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 52).

<sup>3179</sup> P-0610: T-158, p. 36.



person.<sup>3180</sup> P-0610 did not receive any document stating that she was married.<sup>3181</sup>

952. After the marriage, P-0610, accompanied by a friend and a friend of her mother's, went to a house 'built of banco', to which she had never been before.<sup>3182</sup> There was no one in the house when they arrived.<sup>3183</sup> P-0610's friend stayed there with her until later in the evening, when two members of Ansar Dine/AQIM arrived, one of whom was P-0610's 'husband'.<sup>3184</sup> The men did not introduce themselves to P-0610,<sup>3185</sup> but P-0610 heard the other man call her 'husband' by the name [REDACTED].<sup>3186</sup> The men spoke to her in Arabic and she did not understand what they were saying.<sup>3187</sup> Later, the other man left and P-0610's 'husband'

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<sup>3180</sup> P-0610: T-158, p. 38. The Chamber notes that this evidence is corroborated by P-0622, who testified that P-0610 said that she never loved the 'Islamist' who married her (P-0622's statement MLI-OTP-0065-0558-R02, at 0567, para. 49). The Chamber notes that P-0622 testified that he learned about P-0610's forced marriage to the 'Islamist' during the crisis from P-0610's mother, about two weeks after the 'Islamist' who had 'married' P-0610 left (P-0622's statement MLI-OTP-0065-0558-R02, at 0567-0568, para. 50; P-0622: T-160, pp. 43-44). [REDACTED]. P-0622 further testified that P-0610 told him about the sufferings she endured with 'those people' (P-0622's statement MLI-OTP-0065-0558-R02, at 0567, para. 49). The Chamber has taken into account P-0622's basis of knowledge and relationship with P-0610 in affording weight to P-0622's corroborative evidence on this point, but gives significant weight to P-0610's direct account, which it considers credible and consistent with her overall evidence about the circumstances of her 'marriage', also noting that P-0610 herself testified that the 'Islamists' 'forced' her to marry an 'Islamist' (P-0610: T-158, p. 19).

<sup>3181</sup> P-0610: T-158, p. 37.

<sup>3182</sup> P-0610: T-158, p. 39. P-0610 testified that she was accompanied by a friend and a friend of her mother's, that the house was close to her home, and that her mother had told her to go to this house (P-0610: T-158, p. 39). The Chamber notes that D-0512 testified that the 'husband' came to the family house at night and did not bring P-0610 to his house (D-0512's statement MLI-D28-0006-2611-R04, at 2619, para. 53). However, noting that D-0512 conceded that she herself never saw the 'husband' (D-0512's statement MLI-D28-0006-2611-R04, at 2619, para. 53), and also acknowledged that she could not say what P-0610 was doing every day during 2012 (D-0512: T-181, p. 84), the Chamber does not rely on this part of D-0512's evidence and considers the direct account of P-0610 more reliable.

<sup>3183</sup> P-0610: T-158, p. 39.

<sup>3184</sup> P-0610: T-158, pp. 39-40. P-0610 testified that she did not think that they had weapons with them (P-0610: T-158, p. 41). While noting that P-0610 described these persons as 'Islamists', the Chamber recalls its finding above that the 'Islamists' referred to by P-0610 were members of Ansar Dine/AQIM.

<sup>3185</sup> P-0610: T-158, p. 40.

<sup>3186</sup> P-0610: T-158, pp. 37-38. P-0610 testified that she did not know either of the men when they arrived (P-0610: T-158, p. 40). P-0610 testified that before the day of the 'marriage' she had never met the man she was 'married' to and did not know his name, but learned it when she heard his friend call him by this name (P-0610: T-158, pp. 37-38). While P-0610 testified that she heard the friend calling him this name 'the following day when he came with his friend' (i.e. the day after the 'marriage') (P-0610: T-158, p. 38), from the context, the Chamber considers that this occurred on the evening of the 'marriage', since P-0610 testified that the morning after the marriage her 'husband' had gone and she did not see him again (P-0610: T-158, pp. 42-44). P-0610 agreed with the Defence proposition that [REDACTED] is an Arabic name, and said that she did not know of other Arabs from Timbuktu called by that name (P-0610: T-159, pp. 28-29). P-0610 testified that she did not know what this person was doing in Timbuktu (P-0610: T-159, p. 29).

<sup>3187</sup> P-0610: T-158, p. 40. The Chamber notes that while P-0610 testified at the start of her testimony that she understood a little Arabic (as well as speaking French, Songhai and Bambara) (P-0610: T-158, p. 6), she said that at this time she did not understand what the men were saying in Arabic (P-0610: T-158,

stayed.<sup>3188</sup> He tried to touch her but she refused to let him.<sup>3189</sup> He slapped her and then forced her to have sexual intercourse with him.<sup>3190</sup> The man then left the room during the night.<sup>3191</sup> P-0610 testified that she felt very bad, mentally and physically.<sup>3192</sup>

953. In the morning, P-0610's 'husband' had gone.<sup>3193</sup> A friend of P-0610's mother came to take P-0610 to her mother's house.<sup>3194</sup> P-0610 could only walk 'bit by bit' and the friend helped her get to her mother's home.<sup>3195</sup> When she arrived, P-0610 did not tell her mother what had happened.<sup>3196</sup> P-0610 slept and her mother made her some traditional medicine.<sup>3197</sup>

954. P-0610 did not see her 'husband' again; he did not come back to her mother's house, and neither she nor any member of her family heard anything about him ever again.<sup>3198</sup> P-0610 never told anyone about what happened to her with

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pp. 40-41. See also T-159, p. 29). D-0512 testified that P-0610 speaks Arabic very well, as well as Songhai and Tamasheq and that she did not need an interpreter to speak to the 'husband' (D-0512's statement MLI-D28-0006-2611-R04, at 2619, para. 53). The Chamber notes that the basis for D-0512's knowledge on this point is not clear. The Chamber accepts P-0610's testimony that at that stage she did not understand what the men were saying in Arabic.

<sup>3188</sup> P-0610: T-158, p. 41. The Chamber notes that the witness testified that the 'Islamist' stayed, which from context the Chamber understands refers to the man to whom P-0610 was 'married'.

<sup>3189</sup> P-0610: T-158, p. 41.

<sup>3190</sup> P-0610: T-158, p. 41. The Chamber notes the witness testified that 'he raped [her] like that' without going into any descriptive detail of what occurred (P-0610: T-158, p. 41). Nevertheless, noting that the witness described that she felt very bad, that it hurt 'inside', and that the next day she could only walk 'bit by bit' and needed assistance to walk to her mother's home (P-0610: T-158, pp. 41-42), the Chamber finds on the basis of the details provided by the witness and her use of the word 'rape' that penetration occurred and that P-0610's 'husband' forced her to have sexual intercourse with him.

<sup>3191</sup> P-0610: T-158, p. 42.

<sup>3192</sup> P-0610: T-158, pp. 41-42.

<sup>3193</sup> P-0610: T-158, pp. 42-43. In relation to D-0516's testimony that the marriage lasted for around one month (D-0516: T-199, p. 19; D-0516's statement MLI-D28-0006-2783-R01, at 2785, para. 23) and that there was nothing bad with P-0610 during the whole month of the marriage (D-0516: T-199, p. 19), the Chamber does not consider D-0516's evidence on this point to impact P-0610's evidence, recalling its conclusions above about the little weight to be afforded to D-0516's evidence on what happened to P-0610.

<sup>3194</sup> P-0610: T-158, p. 42. P-0610 explained that it was tradition that if the woman goes to her husband at night, in the morning an older lady comes to find the woman (P-0610: T-158, p. 42).

<sup>3195</sup> P-0610: T-158, p. 43.

<sup>3196</sup> P-0610: T-158, p. 43.

<sup>3197</sup> P-0610: T-158, pp. 43-44.

<sup>3198</sup> P-0610: T-158, p. 44. The Chamber notes that D-0512 testified that the marriage lasted about two months and then the 'Islamist' divorced P-0610 (D-0512's statement MLI-D28-0006-2611-R04, at 2619, para. 54). The Chamber notes that the basis of D-0512's knowledge for the assertion that the marriage lasted two months is unclear. D-0512 also testified that she continued to see P-0610 all the time during her marriage and that P-0610 stayed at her home (D-0512's statement MLI-D28-0006-2611-R04, at 2619, para. 53). The Chamber notes that this is consistent with P-0610's account that after the first night, she never saw the 'husband' again and therefore would have remained at home. The Chamber also recalls

him.<sup>3199</sup> Nevertheless, neighbours and friends learned what had happened to her, and started ‘whispering about her’, and criticising and laughing at her.<sup>3200</sup>

955. P-0610 suffered a lot from what happened with her Ansar Dine/AQIM ‘husband’ and still suffers today.<sup>3201</sup> When P-0610 tells P-0622 about the sufferings she experienced with these people, he himself suffers inside and wants her to forget everything.<sup>3202</sup>

#### v) Case of P-0538

956. For the factual findings in this section, the Chamber relies primarily on the

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that D-0512 noted that she herself never saw P-0610’s ‘husband’ (D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 53). Accordingly, the Chamber does not rely on D-0512’s assertion that the marriage lasted two months. The Chamber further notes that D-0512 said that the marriage was not celebrated at the town hall so when they were finished, they separated and that was it; she said that when the ‘Islamists’ want to divorce, they call the representative of the woman they married, inform him that they have divorced and also inform the marabout, so that if there is another man who wants to marry the woman, he knows that he is able to do so (D-0512’s statement MLI-D28-0006-2611-R04, at 2619, para. 54). The Chamber further notes the following testimony from D-0516: her mother told her that the Arab came to her house and told her that, although he did not have any problems with P-0610, he wanted to divorce (D-0516: T-199, pp. 47-48; D-0516’s statement MLI-D28-0006-2783-R01, at 2785, para. 23). The Arab left Timbuktu and did not come back (D-0516’s statement MLI-D28-0006-2783-R01, at 2786, para. 24). D-0516 was present when the marriage finished and stated that nothing happened at the end of the marriage; she heard of it from her mother and confirmed that P-0610 did not tell her (D-0516: T-199, pp. 20, 47-48). She did not know why the marriage ended (D-0516: T-199, p. 48). Recalling its conclusions above about the little weight to be afforded to D-0516’s evidence on what happened to P-0610, the Chamber does not consider this evidence to impact P-0610’s evidence on this point.

<sup>3199</sup> P-0610: T-158, p. 45. The Chamber notes that P-0622 testified that P-0610 told him about the suffering she experienced with the ‘Islamist’ (P-0622’s statement MLI-OTP-0065-0558-R02, at 0567, para. 49). The Chamber does not consider these two pieces of evidence incompatible, noting that P-0610 may have been referring specifically to the sexual violence she endured, and that it is not apparent from P-0622’s testimony that he was aware that P-0610 was raped.

<sup>3200</sup> P-0610: T-158, pp. 44-45. The Chamber notes that when questioned as to what would happen to a woman talking about being raped in Timbuktu, whether she might have problems in her family and community, D-0516 repeated that she ‘never heard that’ (D-0516: T-199, p. 34). Recalling its conclusions above about the little weight to be afforded to D-0516’s evidence on what happened to P-0610, the Chamber does not consider this evidence to impact P-0610’s evidence on this point, or P-0610’s evidence of being raped.

<sup>3201</sup> P-0622’s statement MLI-OTP-0065-0558-R02, at 0567, para. 49. The Chamber notes that D-0512 testified that when she saw P-0610 in 2012, she did not seem to have any problems (D-0512’s statement MLI-D28-0006-2611-R04, at 2620, para. 59). She testified that she continued to see P-0610 during her marriage and she seemed to be fine: she did not look sad, although she had to leave school (D-0512’s statement MLI-D28-0006-2611-R04, at 2620, para. 59). Noting that these are D-0512’s observations and that she was not particularly close with P-0610, the Chamber does not consider this evidence to be incompatible with P-0622’s evidence that P-0610 suffered a lot from what happened with the ‘Islamists’ and does not place much weight on D-0512’s account in this respect. While taking into account P-0622’s relationship with P-0610 in affording weight to P-0622’s evidence on this point, the Chamber considers the evidence to be credible and consistent with P-0610’s overall evidence about the circumstances of her ‘marriage’.

<sup>3202</sup> P-0622’s statement MLI-OTP-0065-0558-R02, at 0567, para. 49.

evidence of the direct victim herself, P-0538<sup>3203</sup> which, subject to discrete aspects

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<sup>3203</sup> P-0538 (*see* P-0538: T-161 to T-163), a Muslim Songhai woman who was 18-19 years old at the time of events, was born in Timbuktu and lived there when Ansar Dine/AQIM were present in the city (P-0538: T-161, pp. 6-7, 9). She mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM, including her own victimisation. The Chamber considers P-0538 to be a sincere witness, who testified to the best of her abilities as to what she recalled of the events. She described the effects of the period of Ansar Dine/AQIM's control of Timbuktu and her own victimisation in simple but powerful terms (*see e.g.* P-0538: T-161, pp. 11-13). The Chamber also notes that the witness appeared to be tired at several points during her testimony (*see e.g.* P-0538: T-161, p. 41; T-162, pp. 35, 65-67, 78, 85; T-163, pp. 3-4, 49), but is of the view that this did not compromise the integrity of her testimony. The Chamber, however, notes that her knowledge about Ansar Dine/AQIM and the groups' institutions, notably the Islamic Court, was limited and that she provided a basic description of the details she could observe both as a regular inhabitant of Timbuktu and as a participant in proceedings at the Islamic Court (P-0538: T-161, pp. 9-12, 52-55). The witness was very careful to state when she did not remember an event or fact and attempted not to speculate or make suppositions (*see e.g.* P-0538: T-161, pp. 9, 20-21, 26; T-163, p. 15). Throughout her testimony, the witness specifically noted that she had forgotten many things but indicated that she wished to tell the truth and be careful in answering questions (*see e.g.* P-0538: T-161, pp. 20-21). The Chamber further notes certain points of confusion in the witness's testimony (*see e.g.* her testimony about her previous knowledge of the man who 'married' her. The Chamber considers these aspects of the witness's testimony in its assessment of the evidence below). The Chamber observed that P-0538 at times responded to questions in a non-linear fashion, testifying to events that happened days or even weeks after an event in question within the same answer (*see* P-0538: T-161, pp. 23-50 (regarding the witness's testimony as to the timeline of events, the sequence of her detention and her departures from Timbuktu)). P-0538 also sometimes had difficulties describing the sequences of events in a consistent and logical way. The answers she provided were often formulated in a very simple way and it appeared to the Chamber that, in addition to possible interpretation issues from the Songhai language, the witness at times had difficulties understanding the questions posed to her, which led to frequent reformulations of questions (*see e.g.* P-0538: T-161, pp. 12, 14, 19-21, 26-28, 58; T-162, pp. 4-6, 16, 47-49). For the Chamber, these points of confusion are understandable given P-0538's low level of literacy, her relatively young age at the time of the events and the clear trauma she suffered as a result of her experiences during the events. Although the story was provided in a non-chronological order, at times jumping back and forth in the narration, the Chamber observes that the core of the witness's narrative was consistent. The witness, in addition, was often able to clarify when asked a direct question. Beside these points of confusion, the Chamber further notes some alleged contradictions raised in court between P-0538's testimony and various previous accounts: (i) alleged contradictions in her statements to a judge in Bamako, including in relation to the identity of the man she married (*see* P-0538: T-162, pp. 16-17, 54-56, 58-61, 65-67, 76-80, *referring to* First Bamako *procès-verbal* MLI-OTP-0032-0215-R04 and Second Bamako *procès-verbal* MLI-OTP-0035-0138-R03); (ii) alleged contradictions in an FIDH statement in relation to the identity of the man she married, her knowledge of the man before her marriage and the probability of her detention during the course of her divorce proceedings (*see* P-0538: T-162, pp. 18, 47, 50-51; T-163, pp. 15-18, *referring to* grille de recueil de témoignages de victime MLI-OTP-0071-0406-R02, dated 26 February 2015) (the 'FIDH statement'); (iii) alleged contradictions in a victim application form in relation to the identity of the man she married (*see* P-0538: T-162, pp. 18-20, 24, *referring to* victim application form MLI-OTP-0077-5075-R02, dated 5 July 2018); (iv) alleged contradictions in the witness's statement to the Prosecution, including in relation to the sequence of the events, the witness's detention during the course of her divorce proceedings and her alleged gang rape (*see* P-0538: T-163, pp. 30-31); as well as (v) alleged contradictions in other contemporaneous Islamic Police and Islamic Court documents in relation to the identity of the man P-0538 'married' as well as in relation to whether her father consented to the 'marriage' and whether P-0538 was held in detention during the course of her divorce proceedings (*see* Islamic Police report MLI-OTP-0055-1074, translation MLI-OTP-0054-0310; Islamic Court document MLI-OTP-0001-7390, translation MLI-OTP-0078-6006; Islamic Court documents MLI-OTP-0001-7395 and MLI-OTP-0001-7396, translations MLI-OTP-0077-2783 and MLI-OTP-0077-2786; Islamic Court document MLI-OTP-0024-2814, at 2858, translation MLI-OTP-0067-1015, at 1015-1016 (the '*Khula* divorce agreement'), the latter of which forms part of civil party complaint MLI-OTP-0024-2814. *See* P-0538: T-162, pp. 35-36; T-163, pp. 50-51). To the extent that these items were submitted into evidence and/or discussed in court, the Chamber assesses the

discussed below, it finds particularly reliable.

957. One day, after the arrival of Ansar Dine/AQIM in Timbuktu,<sup>3204</sup> P-0538 was in front of her house in Timbuktu frying sweet potato when members of Ansar Dine/AQIM riding in a vehicle<sup>3205</sup> told her to go inside.<sup>3206</sup> When she refused,

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contradictions when considering the core of P-0538's testimony below but finds overall that these alleged contradictions generally did not go to the core of the evidence she provided, particularly in relation to the victimisation that she suffered. In addition, the Chamber notes that because of P-0538's low level of literacy and her difficulty understanding the questioning at times, the process of confirming the content of her prior statements – essentially an oral confirmation of transcribed and repeatedly translated documents – was particularly complicated for her and potentially led to misunderstanding. The Chamber also notes that the witness proffered the accounts of her experience to various organisations, in addition to the Prosecution, and finds that this process of multiple retellings, coupled with the witness's lack of education and the trauma of her experience, may have resulted in some level of inconsistencies in certain details of her narrative. The Chamber also takes into account these difficulties in assessing the alleged contradictions. The Chamber further notes that while it could not establish the facts of whether P-0538 was temporarily detained and raped by multiple men to the relevant standard of proof, as discussed below it finds that this does not affect the credibility or reliability of the other aspects of P-0538's core narrative. In addition, the Chamber finds that P-0538's account was very personal; her story was clearly based on her actual lived experience. The Chamber notes that P-0538 was consistent on many aspects of her testimony, especially in relation to the core of her testimony; most particularly, she repeatedly testified that that her family did not agree to marry her to the 'Islamist'. Given the details and specificity of the witness's account, the Chamber is satisfied that she spoke of her own experience and did not conflate her experiences with other accounts that she may have heard from other victims (*see* P-0538: T-162, pp. 51-54; *contra* [Defence Final Brief](#), paras 225, 230). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0538 to be a generally credible and reliable witness, and considers truthful her account of her victimisation and experience of forced marriage and rape (*contra* [Defence Final Brief](#) paras 216, 224-230). However, noting the foregoing, the Chamber has assessed her testimony on the key issues raised above on a case-by-case basis.

<sup>3204</sup> The Chamber notes that although the witness did not specifically state the time period of the incident described in this paragraph, P-0538 described this as her first conversation with the 'Islamists', and stated that it led to 'everything that happened after that', referring to her forced marriage (P-0538: T-161, pp. 17, 20). Noting further its finding below that P-0538 and her family were first approached about marriage a few months after the arrival of Ansar Dine/AQIM in Timbuktu (*see* below), the Chamber is satisfied that the incident with the hot oil occurred prior to this, sometime after the arrival of Ansar Dine/AQIM in Timbuktu.

<sup>3205</sup> P-0538: T-161, pp. 16-19. The Chamber recalls its above finding that this incident occurred sometime after the arrival of Ansar Dine/AQIM in Timbuktu. The Chamber also recalls its finding that once Ansar Dine/AQIM arrived in Timbuktu and took control of the city, the city of Timbuktu was under their sole control (*see* paragraph 451 above). The Chamber recalls P-0538's testimony that although the man who 'married her' was not with the men during the incident with the hot oil, he later joined their group, whom she referred to as 'Islamists' (*see* P-0538: T-161, pp. 16-18). The Chamber notes also its below finding that the man who later 'married' P-0538 was a member of Ansar Dine/AQIM. The Chamber notes that while the witness appears to make a distinction between Ansar Dine, MNLA, Azawad and the 'Islamists', her description of the 'Islamists', noted above, and her reference to a vehicle with a black flag with white writing on it is in line with the Chamber's understanding of the appearance of members of Ansar Dine/AQIM. In light of the above, the Chamber infers that the men who accosted P-0538 during this incident were members of Ansar Dine/AQIM.

<sup>3206</sup> P-0538: T-161, pp. 16-18. The Chamber notes that P-0538 described this incident after being asked to describe what happened to her when she was warned about the clothing she wore and, specifically, when members of the armed groups spoke to her about what she was wearing (*see* P-0538: T-161, pp. 15-18). She also stated that the men brought her 'a long boubou called a *hijab* and they told me that I should put it on and that I should wear it constantly' (P-0538: T-161, pp. 16-17).

they took some rocks and threw them in the hot oil until the oil splashed her.<sup>3207</sup>

P-0538 testified that this incident is ‘what led to everything that happened after that’ to her.<sup>3208</sup>

958. Later, one day between May and July 2012,<sup>3209</sup> when P-0538 was at home with her family members – including her father, mother and step-mother,<sup>3210</sup> several armed members of Ansar Dine/AQIM<sup>3211</sup> arrived in a vehicle.<sup>3212</sup> One of them,

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<sup>3207</sup> P-0538: T-161, pp. 16-18. The Chamber notes that when confronted with her prior statement to a judge in Bamako suggesting that she was splashed with hot oil because the man who ‘married’ her kicked the stove, P-0538 insisted that she received the burns when the ‘Islamists’ threw stones in the hot oil (P-0538: T-162, p. 75). P-0538 testified that the *procès-verbal* was not properly interpreted and said ‘[f]rom when I started telling what had happened to me, I remember that I never said that he - or they kicked the stove. I always said that it was stones that was thrown or thrown into the hot oil. That’s all I said’ (P-0538: T-162, p. 75). The Chamber does not consider the apparent contradiction as affecting the substance of P-0538’s testimony on this issue and is satisfied with the explanation given by the witness on this point (*contra* [Defence Final Brief](#), para. 230).

<sup>3208</sup> P-0538: T-161, pp. 17, 20.

<sup>3209</sup> P-0538: T-161, p. 9. The Chamber notes its finding below that P-0538’s divorce was granted on 7 January 2013, six to eight months after the day the dowry money was thrown at her father. As discussed below, the incident in which dowry money was thrown at P-0538’s father occurred early in the marriage process. Noting that six to eight months before 7 January 2013 is May to July 2012, the Chamber considers that the evidence only allows for this approximation of the time in which the armed men arrived at P-0538’s home demanding that she be married to one of the men.

<sup>3210</sup> P-0538: T-161, pp. 21, 30-31. The Chamber notes that witness clarified that the term ‘*marâtre*’ in this context was a reference to her father’s first wife, her step-mother (P-0538: T-161, pp. 30, 41). *See also* P-0538: T-162, p. 10.

<sup>3211</sup> P-0538: T-161, pp. 21, 24-25. The Chamber notes that P-0538 referred to the men who came to her house, which included the man who wanted to marry her and who she calls [REDACTED] (*see* below), as ‘Islamists’ (P-0538: T-161, pp. 21, 24-25). According to the witness, the men were wearing grey clothes, were all armed and came to the house in a vehicle with a rear cabin (P-0538: T-161, pp. 24-25). P-0538 further testified that the vehicle had a flag on it and while she could not recall the colour of the flag, she knew that it had black lettering on it (P-0538: T-161, p. 25). She did not recall the ethnicity of the men who came to the house, but stated that some had white skin and some black skin (P-0538: T-161, pp. 24-26). She also did not recall how many ‘friends’ came with the man who wished to marry her (P-0538: T-161, p. 24). The Chamber notes the discrepancies in P-0538’s testimony about whether the man who wanted to marry her was part of the MNLA or another group (*see* [Defence Final Brief](#), paras 225-226; [Prosecution Response Brief](#), para. 96; *see also* arguments in ICC-01/12-01/18-2552-Conf-Anx1), and in particular the Defence’s submissions that it is not credibly established that P-0538 was married to a member of Ansar Dine/AQIM, that P-0538 lacked the capacity to reliably identify members of the different groups, and that the most reasonable inference is that her husband was a local member of the Berabiche militia or FNLA ([Defence Final Brief](#), para. 226). At the outset, the Chamber notes that P-0538 stated that the groups that took over Timbuktu were Ansar Dine, MNLA, ‘Azawad’ and the ‘Islamists’ (P-0538: T-161, p. 9), and that P-0538 affirmed her prior statement that ‘Timbuktu camp was occupied by AQIM. The zone of Abaradjou where [her] rape took place was under the control of the Ansar Dine and AQIM movements. Another group occupied the Timbuktu *gouvernorat*’ (P-0538: T-162, pp. 83-84). P-0538 also initially testified that the man who wanted to marry her was part of the ‘Islamist group’ (P-0538: T-161, p. 28). The Chamber however notes that in some parts of her testimony, P-0538 confirmed that the man who wanted to marry her was part of the MNLA (*see* P-0538: T-163, pp. 40-41). The Chamber further notes that the Defence identified a [REDACTED] who was a member of the MNLA (*see* investigation report MLI-OTP-0009-0054). However, the Chamber notes that P-0538 did not identify this person as the man who wanted to marry her (*see* P-0538: T-163, pp. 41-48). The Chamber also notes that P-0538 then reaffirmed that the man who wanted to marry her was with the

known to P-0538 as [REDACTED]<sup>3213</sup> and who was already ‘known’ by P-

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‘Islamists’ and denied that he was with the MNLA and, when confronted with her earlier in-court testimony confirming that the man who married her was a member of the MNLA, P-0538 responded that ‘[m]aybe I forgot that for a moment. Ever since yesterday, ever since I’ve started testifying, I’ve always said that he was part of the Islamic group. You can even check the document’ (P-0538: T-163, p. 48). In addition, P-0538 testified that the man who wanted to marry her was in the same group as Houka Houka (*see* P-0538: T-162, p. 36). P-0538 further testified that she did not know whether the man who wanted to marry her was married to anyone else, nor did she know if he had any children and stated that the only information she knew about him was what was written on the divorce paper given by Houka Houka (P-0538: T-163, pp. 39-40, 47). While noting the opacity of P-0538’s testimony as to the affiliation of the man who ‘married’ her, the Chamber is of the view that the evidence clearly shows that the man was affiliated with Ansar Dine/AQIM. The Chamber recalls that P-0538 testified that the men who came to her house were armed (P-0538: T-161, pp. 21, 24-25). The Chamber also notes its finding above that this incident began sometime between May and July 2012 as well as its finding that in that period the city of Timbuktu was under the sole control of Ansar Dine/AQIM (*see* paragraph 451 above). Also of particular significance is P-0538’s testimony that the man who wanted to marry her was in the same group as Houka Houka (*see* P-0538: T-162, p. 36). The Chamber is satisfied that the evidence shows that the man who wanted to marry P-0538 and the men that accompanied him were members of Ansar Dine/AQIM (*contra* [Defence Final Brief](#), paras 255-262). The Chamber also dismisses the Defence’s submission that the ‘husband’ could not have been a member of Ansar Dine/AQIM because Islamic Court records did not refer to him as ‘brother’ ([Defence Final Brief](#), para. 226, *citing* Islamic Police report MLI-OTP-0001-7515, translation MLI-OTP-0052-0019), noting that the term ‘brother’ was not systematically used in this way (*see e.g.* Islamic Court judgment MLI-OTP-0001-7483, translation, MLI-OTP-0034-0159, concerning a member of the Islamic Police, *see* paragraphs 678-680 above).

<sup>3212</sup> P-0538: T-161, pp. 24-25.

<sup>3213</sup> P-0538: T-161, p. 22; T-162, p. 6. The Chamber notes the Defence contention that the fact that P-0538 provided different names for her husband undermines her credibility and the reliability of her accounts (*see* [Defence Final Brief](#), paras 216, 226; *see also* arguments in ICC-01/12-01/18-2552-Conf-Anx1). P-0538 was questioned on the two Bamako *procès-verbaux* MLI-OTP-0032-0215-R04 and MLI-OTP-0035-0138-R03 and the Chamber notes that the witness appears to refer to the man as ‘[REDACTED]’ in these two Bamako *procès-verbaux* (*see* P-0538, T-162, pp. 59-60, 70, 76, 80), and as ‘[REDACTED]’ in the victim application form MLI-OTP-0077-5075-R03. The Chamber also notes that P-0538 referred to the man she married as ‘[REDACTED]’ in the FIDH statement (*see* P-0538: T-163, p. 17). V-0002 was also questioned on the first Bamako *procès-verbal* MLI-OTP-0032-0215-R04 and confirmed that she acted as an interpreter between Songhai and French and confirmed that the *procès-verbal* would have been read back to P-0538 and that P-0538 would have an opportunity to make any corrections via V-0002 (V-0002: T-170, pp. 20-22). V-0002 denied the suggestion that the name ‘[REDACTED]’ was something that V-0002 would have made up, testifying that this was the name P-0538 used and that she did not know the person (V-0002: T-170, p. 22). When shown P-0538’s victim application form, V-0002 confirmed that she acted as an interpreter when P-0538 filled out the form, that she did her best to make sure that what P-0538 told her was faithfully recorded on the form and that the information therein was provided by P-0538, who ultimately signed the form (V-0002: T-170, pp. 24, 26, *referring to* victim application form MLI-OTP-0077-5075-R03). When asked if the name ‘[REDACTED]’ on the form was made up by her or came from the witness, V-0002 explained that when one does not have the person in front of them, there could be spelling mistakes (V-0002: T-170, p. 24, *referring to* victim application form MLI-OTP-0077-5075-R03. *See also* P-0538: T-162, pp. 72, 80-82). While noting the discrepancies in the name of the man who ‘married’ her, the Chamber does not place great weight on this issue, recalling in particular its observation that the process of confirming the content of P-0538’s prior statements was particularly complicated for her and potentially led to misunderstanding (*see* above). Accordingly, the Chamber does not consider this issue to undermine the reliability of P-0538’s testimony about what happened to her and in any event is satisfied that the witness knew the man as [REDACTED]. As to the full name of the man, P-0538 was clear that she did not know it. The Chamber notes that the man appears to be called ‘[REDACTED]’ in contemporaneous Islamic Police report MLI-OTP-0055-1074, translation MLI-OTP-0054-0311, ‘[REDACTED]’ in contemporaneous Islamic Court document the *Khula* divorce agreement MLI-OTP-0024-2814, at 2858, translation MLI-OTP-0067-1015, at 1015-1016, ‘[REDACTED]’ in contemporaneous Islamic Court document MLI-

0538's father before the man joined Ansar Dine/AQIM,<sup>3214</sup> wished to marry P-0538.<sup>3215</sup> The man was light-skinned and spoke Arabic and Songhai.<sup>3216</sup> He was much older than P-0538 and her brother.<sup>3217</sup>

959. P-0538's father refused the marriage, saying that 'he was not giving his daughter to Islamists'.<sup>3218</sup> The man who wished to marry P-0538 said that if her father refused, he would tell his 'other comrades' that her father [REDACTED].<sup>3219</sup> P-0538's father continued to refuse to give his child in marriage.<sup>3220</sup> P-0538 told the men that she was not going to enter the marriage and was not going to marry one of the 'Islamic men, even if they were going to kill [her]'.<sup>3221</sup> P-0538's mother was afraid and the entire family was under threat of weapons and unwillingly

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OTP-0001-7390, translation MLI-OTP-0078-6006, and '[REDACTED]' in contemporaneous Islamic Court document MLI-OTP-0001-7395, translation MLI-OTP-0077-2783. The Chamber notes that when shown the Islamic Police report MLI-OTP-0055-1074, which stated '[REDACTED] has an issue with his in-laws or his wife', P-0538 stated that she had never seen the document before (P-0538: T-162, p. 36, referring to Islamic Police report MLI-OTP-0055-1074, translation MLI-OTP-0054-0310, at 0311), although she further confirmed the man who married her did file a complaint against her and her parents (P-0538: T-162, p. 36). When asked to confirm that the name of the man on this document was the same as the name of the man she divorced in her divorce paper given by Houka Houka, P-0538 confirmed that although she did not know the man's real name, it was possible it was his name because he was one of the 'Islamists' and was with them, so Houka Houka might know him (P-0538: T-162, p. 36). The Chamber is satisfied that the witness did not know the full name of the man who wanted to marry her, a fact the Chamber considers understandable given the context in which P-0538 interacted with the man, and also considering that some members of Ansar Dine/AQIM sometimes used a *nom de guerre*, rather than their own names (see e.g. P-0065: T-050, p. 23). On the authentication of Islamic Police report MLI-OTP-0055-1074 and Islamic Court documents MLI-OTP-0001-7390, MLI-OTP-0001-7395 and MLI-OTP-0001-7396, see also Chamber's findings in section II.D above.

<sup>3214</sup> P-0538: T-161, p. 21. The Chamber notes the Defence submission that contradictions in P-0538's evidence about whether her father knew her 'husband' before 2012 undermine her overall credibility (see [Defence Final Brief](#), para. 230). While there is some apparent discrepancy in the evidence on whether P-0538 and her father 'knew' the man before the taking over of Timbuktu by Ansar Dine/AQIM, the Chamber is satisfied that the evidence shows that the events at issue in these proceedings occurred after the man had joined the 'Islamists'. The Chamber notes also that it is irrelevant to establish whether the man first came to ask to marry P-0538 before the control of Timbuktu by Ansar Dine/AQIM (see P-0538: T-162, p. 71; see also P-0538: T-162-FRA, p. 69). In any case, the Chamber is satisfied with the explanations given by the witness and the distinction she made between her father 'knowing' the man before he joined the 'Islamists' and her personal lack of knowledge about this man (see P-0538: T-161, pp. 28-29, 58; T-162, pp. 24, 70-72. See also P-0538: T-162, pp. 18-20, 81; T-163, p. 31).

<sup>3215</sup> P-0538: T-161, pp. 21-22.

<sup>3216</sup> P-0538: T-161, pp. 27-28.

<sup>3217</sup> P-0538: T-162, p. 6. P-0538 did not recall how old the man who wanted to marry her was at the time but stated that the man was younger than her father, who is more than 60 years old, and 'really older' than her brother, [REDACTED] (see P-0538: T-161, p. 28; T-162, pp. 6-7; T-163, pp. 41-42).

<sup>3218</sup> P-0538: T-161, p. 21.

<sup>3219</sup> P-0538: T-161, pp. 26-27. The Chamber notes that P-0538 gave a similar account in her statement to the FIDH (see P-0538: T-163, pp. 17-18).

<sup>3220</sup> P-0538: T-161, p. 27; T-163, p. 5.

<sup>3221</sup> P-0538: T-161, pp. 21, 31.



accepted the ‘marriage’.<sup>3222</sup>

960. The members of Ansar Dine/AQIM came and went to P-0538’s house several times.<sup>3223</sup> On one of those days, they came with 25,000 francs that they threw at her father, saying it was the dowry.<sup>3224</sup>

961. P-0538 was ‘married’ to the man who wanted to marry her.<sup>3225</sup> This marriage occurred one day between May and July 2012.<sup>3226</sup> P-0538 never consented to the

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<sup>3222</sup> P-0538: T-163, p. 65; T-162, p. 74; T-162-FR, p. 72. *See also* P-0538: T-163, pp. 58-59, *referring to* Islamic Court documents MLI-OTP-0001-7395, MLI-OTP-0001-7396, translations MLI-OTP-0077-2783, MLI-OTP-0077-2786. The Chamber understands from P-0538 that the man who wished to marry her brought out a weapon and threatened the family with it and that P-0538’s mother was afraid. The Chamber also recalls the evidence that the men who came to ask for the witness’s hand in marriage were armed (*see* P-0538: T-161, pp. 21, 24-25). The Chamber considers, from the different declarations of the witness, that the family unwillingly ‘accepted’ the marriage because they were threatened and felt they had to do so. In that regard, the Chamber notes that P-0538’s father’s account of the events is detailed in the record of one of the Islamic Court proceedings (*see* Islamic Court document MLI-OTP-0001-7390, translation MLI-OTP-0078-6006. *See also* P-0538: T-163, p. 65, *referring to* Islamic Court document MLI-OTP-0001-7395, translation MLI-OTP-0077-2783, at 2785; T-163, p. 64, *referring to* Islamic Court documents MLI-OTP-0001-7395, MLI-OTP-0001-7396, translations MLI-OTP-0077-2783, MLI-OTP-0077-2786; T-163, pp. 58-59, *referring to* Islamic Court documents MLI-OTP-0001-7395, MLI-OTP-0001-7396, translations MLI-OTP-0077-2783; MLI-OTP-0077-2786). The Chamber notes the Defence contention that P-0538’s parents gave their consent to the marriage without speaking to P-0538 or obtaining her consent ([Defence Final Brief](#), para. 227). In this regard, the Chamber recalls that the men who came to the house regarding the marriage were armed, and contrary to the Defence submission, considers in particular that P-0538’s father’s account of the events in Islamic Court document MLI-OTP-0001-7390, translation MLI-OTP-0078-6006 is supportive of P-0538’s testimony regarding her family’s lack of willingness for the marriage (*contra* [Defence Final Brief](#), para. 274. *See also* P-0538: T-162, p. 74).

<sup>3223</sup> P-0538: T-161, p. 21. From P-0538’s narrative, the Chamber understands that the armed men were ‘coming and going’ from the witness’s home regarding the marriage (*see* P-0538: T-161, pp. 22, 31). On the Chamber’s finding that these persons were members of Ansar Dine/AQIM, *see* above.

<sup>3224</sup> P-0538: T-161, p. 21.

<sup>3225</sup> The Chamber notes that there is no marriage certificate on record, nor is there any evidence that a marriage ceremony took place. However, the Chamber notes there is some evidence that a marriage certificate was signed by P-0538’s father (*see* P-0538: T-163, p. 55; Islamic Court document MLI-OTP-0001-7390, translation MLI-OTP-0078-6006). In addition, the existence of a divorce document indicates that a marriage did occur (*see* *Khula* divorce agreement MLI-OTP-0024-2814, at 2858, translation MLI-OTP-0067-1015, at 1015-1016). The existence of a complaint from the man claiming interference in his ‘marriage’ is further evidence that a marriage did in fact occur (*see* Islamic Police report MLI-OTP-0055-1074, translation MLI-OTP-0054-0310, at 0311). Considering the evidence, the Chamber is satisfied that P-0538 was indeed ‘married’ to the man in question in some sort of formal sense. The Chamber notes further that it is not disputed by the Defence that P-0538 was married in 2012 ([Defence Final Brief](#), para. 225).

<sup>3226</sup> *See* above. The Chamber notes the totality of the evidence indicating that the marriage occurred, namely, as noted above, the Islamic Court’s reference to a marriage certificate signed by P-0538’s father, the fact of the Islamic Police report about marriage interference, and the fact of the divorce proceedings. Noting also the events discussed below, which took place between May and July 2012 – the throwing of the dowry, P-0538 being taken from her home, and P-0538 being subjected to forced sexual intercourse – the Chamber is satisfied that the evidence shows that the marriage occurred between May and July 2012.

‘marriage’.<sup>3227</sup>

962. Further, on one of the days that the members of Ansar Dine/AQIM came to P-0538’s house, they forced P-0538 into a vehicle and took her away.<sup>3228</sup> When she refused to cooperate, they flogged her with a whip.<sup>3229</sup> They took her to a house close to the Alpha Saloum school and put her in that house;<sup>3230</sup> this house, in the Koiratao neighbourhood, was the house of P-0538’s ‘husband’.<sup>3231</sup>
963. There, P-0538’s ‘husband’ whipped her.<sup>3232</sup> P-0538 felt threatened.<sup>3233</sup> The man threatened to kill her.<sup>3234</sup> That first night in his house, P-0538 waited until he got up to pray and then took advantage of the moment to climb over a tall wall and run away.<sup>3235</sup> She escaped and eventually went back to the family home.<sup>3236</sup>
964. The members of Ansar Dine/AQIM<sup>3237</sup> went to P-0538’s family home and

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<sup>3227</sup> P-0538: T-163, p. 55, *referring to* Islamic Court document MLI-OTP-0001-7390, translation MLI-OTP-0078-6006; T-163, pp. 56, 58-59, 64, 66, 74; Islamic Court documents MLI-OTP-0001-7395, MLI-OTP-0001-7396, translations MLI-OTP-0077-2783, MLI-OTP-0077-2786, at 2787.

<sup>3228</sup> P-0538: T-161, pp. 21, 31-32. The Chamber notes that P-0538 initially indicated that after throwing the money at her father, the ‘Islamists’ left again but returned another day, took her from the courtyard, put her in their vehicle and took her away (P-0538: T-161, p. 21). However, P-0538 subsequently indicated that the day they threw the money at her father, an argument broke out with the man, the argument being that the man and his friends took her by force and threw her in the vehicle; when she refused to cooperate, they whipped her and took her away; it was possible that someone spoke to her when this happened but she did not remember (P-0538: T-161, pp. 31-32). Given the witness’s lack of education, her relatively young age at the time of the events, the trauma of the events and the fact that she told the story of her experience in Timbuktu to multiple interlocutors over the years, the Chamber considers that the contradictions in the sequence of events is of limited importance when considering the core of the witness’s testimony. The Chamber is satisfied that the evidence shows that members of Ansar Dine/AQIM threw money at her father for the dowry and also forcibly took her from her home. P-0538 further testified that the man who ‘married’ her was among the men who put her in the car (*see* P-0538: T-161, p. 21).

<sup>3229</sup> P-0538: T-161, pp. 31-32.

<sup>3230</sup> P-0538: T-161, p. 21; T-162, p. 6.

<sup>3231</sup> P-0538: T-161, p. 21; T-162, p. 6; T-163, pp. 20-21. *See also* P-0538: T-161, pp. 29-30, 33.

<sup>3232</sup> P-0538: T-161, pp. 33, 36.

<sup>3233</sup> P-0538: T-161, p. 33.

<sup>3234</sup> P-0538: T-161, p. 33.

<sup>3235</sup> P-0538: T-161, p. 33, 36.

<sup>3236</sup> P-0538: T-161, pp. 21, 44. The Chamber notes that the evidence is not straightforward as to what P-0538 did after she escaped and before returning to the family home. In court, the witness seemed to testify that she escaped to Sévaré and only came back when she was told that her father had been taken by the ‘Islamists’ (*see* P-0538: T-161, pp. 34, 39-41, 43-44, 46), whereas the Islamic Court documents indicate that P-0538 escaped after the first night and then spent the second night with the man who ‘married’ her (*see* Islamic Court documents MLI-OTP-0001-7395, MLI-OTP-0001-7396, translations MLI-OTP-0077-2783, MLI-OTP-0077-2786; Islamic Court document MLI-OTP-0001-7390, translation MLI-OTP-0078-6006). In any event the Chamber considers that the contradictions in the sequence of events are of limited importance when considering the core of the witness’s testimony.

<sup>3237</sup> On the Chamber’s finding that these persons were members of Ansar Dine/AQIM, *see* above.

brought her back to her ‘husband’.<sup>3238</sup> Her ‘husband’ threatened to kill her and he then ‘did things to her’:<sup>3239</sup> he struck her several times and forced her to have sexual intercourse with him.<sup>3240</sup>

965. After that second night, she stayed at the house of her ‘husband’ before fleeing again.<sup>3241</sup> She fled to a village called Aglal, this time going with her mother, and came back when she was told that her father had been taken.<sup>3242</sup> P-0538 learned that her ‘husband’ and four of his friends had caught and beaten up her father as a group.<sup>3243</sup> The members of Ansar Dine/AQIM<sup>3244</sup> were saying that her father was the one encouraging her to flee.<sup>3245</sup>

966. P-0538’s ‘husband’ complained about P-0538 and her parents to the Islamic Police, claiming that P-0538’s parents were interfering with the ‘marriage’.<sup>3246</sup> Mr Al Hassan signed an Islamic Police report regarding this complaint.<sup>3247</sup> This

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<sup>3238</sup> P-0538: T-161, pp. 36-37, 44-45.

<sup>3239</sup> P-0538: T-161, p. 34.

<sup>3240</sup> P-0538: T-161, pp. 34, 36-37, 45. The Chamber notes that P-0538 stated ‘he took me, he caught me and he slept with me forcibly’ (P-0538: T-161, p. 34), and notes also that the parties agreed to the fact that when the witness said that he ‘slept with [her] forcibly’, she made a reference to ‘sexual penetration without consent’ (*see* P-0538: T-161, pp. 34-36). The Chamber is satisfied on the basis of the foregoing that penetration occurred and that the man forced P-0538 to have sexual intercourse with him.

<sup>3241</sup> P-0538: T-161, p. 37. In this regard, the Chamber also notes the evidence of the Islamic Court documents, which indicate that P-0538 escaped after the first night and then ended up back at the man’s house a second time and spent the second night with him (*see* Islamic Court documents MLI-OTP-0001-7395, MLI-OTP-0001-7396, translations MLI-OTP-0077-2783, MLI-OTP-0077-2786; Islamic Court document MLI-OTP-0001-7390, translation MLI-OTP-0078-6006).

<sup>3242</sup> P-0538: T-161, pp. 37, 38. P-0538 testified that, when she came back, ‘things started all over again’ (P-0538: T-161, p. 37).

<sup>3243</sup> P-0538: T-161, pp. 39-42. The Chamber notes that it appears somewhat inconsistent that the witness first testified that her father was beaten while she was in Aglal, hence her return, and that he was beaten in front of her when she had returned to Timbuktu. However, the Chamber considers that the contradictions in the sequence of events is of limited importance when considering the core of the witness’s testimony.

<sup>3244</sup> On the Chamber’s finding that these persons were members of Ansar Dine/AQIM, *see* above.

<sup>3245</sup> P-0538: T-161, p. 42.

<sup>3246</sup> P-0538: T-162, p. 15; Islamic Police report MLI-OTP-0055-1074, translation MLI-OTP-0054-0310, at 0311. This report refers to ‘an issue with his in-laws or his wife’. P-0538 confirmed that the man who ‘married’ her told the judge that her parents were interfering in the marriage (P-0538: T-163, p. 52). P-0538 further testified that the man who ‘married’ her was the person who made the complaint and who contacted Houka Houka for the first time (P-0538: T-163, p. 52). P-0538 stated that he made the complaint because she refused the marriage and then got the ‘entire family involved’ (P-0538: T-163, p. 52). The witness confirmed that she told the judge she had not consented but stated that the man was the one who lodged a complaint and that while she was not in agreement, she did not lodge a complaint herself (P-0538: T-163, pp. 54-55).

<sup>3247</sup> Islamic Police report MLI-OTP-0055-1074, translation MLI-OTP-0054-0310, at 0311. P-0620 and P-0621 testified that MLI-OTP-0055-1074 is original with no trace of fraudulent manipulation detected, and the signature may have been drawn by Mr Al Hassan (P-0620 and P-0621’s report MLI-OTP-0064-0175, at 0301-0302). The Chamber is satisfied that the report was written and signed by Mr Al Hassan.

Islamic Police report was transmitted to the Islamic Court.<sup>3248</sup> Divorce proceedings subsequently took place before the Islamic Court.<sup>3249</sup>

967. In the course of the divorce proceedings, several meetings took place before the Islamic Court between P-0538, her ‘husband’ and various witnesses.<sup>3250</sup> Houka

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On the authentication of this document, *see also* the Chamber’s findings in section II.D above. The Chamber notes that the document, which is undated, states ‘[REDACTED] has an issue with his in-laws or his wife’ and does not name the in-laws or wife. The Chamber notes that when the translation of the Islamic Police report was read to P-0538 and she was asked whether the ‘man who married [her]’ had made a complaint against her and her parents, she confirmed that he indeed had made a complaint against them (P-0538: T-162, pp. 35-36). Moreover, when asked to confirm that the name of the man on this document was the same as the name of the man she divorced in her divorce paper given by Houka Houka (*see Khula* divorce agreement MLI-OTP-0024-2814, at 2858, translation MLI-OTP-0067-1015, at 1015-1016), P-0538 confirmed that, although she did not know the man’s real name, it was possible that it was his name because he was one of the ‘Islamists’ and was with them, so Houka Houka might know him (P-0538: T-162, p. 36). Given the close similarity between the names in the Islamic Police report and the divorce document (respectively [REDACTED]), the Chamber concludes that the two documents refer to the same person. In light of this finding, and noting P-0538’s testimony on Islamic Police report MLI-OTP-0055-1074, as well as the Chamber’s other findings on the authentication of this document (*see* section II.D above), the Chamber finds that this document relates to P-0538’s marriage and dismisses as speculative the Defence objection to this document on the basis that P-0538 has no personal knowledge of the document itself or of its contents, that the document is not dated, nor are the names of the respondents indicated, and that the Chamber cannot safely rule out that the [REDACTED] who ‘married’ P-0538 was not married before, during, or after his marriage to the witness, nor can it rule out that he did not have complaints against any other wife and in-laws (*see* ICC-01/12-01/182552-Conf-Anx1).

<sup>3248</sup> As divorce proceedings subsequently took place before the Islamic Court, the Chamber infers that the complaint was transmitted to the Islamic Court. The Chamber’s inference is further supported by the fact that Islamic Police report MLI-OTP-0055-1074, translation MLI-OTP-0054-0310 was collected by P-0055 and P-0057 at the *Hôtel La Maison*, namely the seat of the Islamic Court (Islamic Police report MLI-OTP-0055-1074 derives from evidence bag MLI-OTP-0005-0025 collected by P-0055 and P-0057 from the *Hôtel La Maison* (*see also* related evidence bag MLI-OTP-0055-0055) (*see* P-0057: T-021, p. 62, *referring to* P-0057’s report MLI-OTP-0060-1920, at 1978; P-0055’s report MLI-OTP-0056-0026; P-0590’s report MLI-OTP-0069-8559). *See also* section II.D above).

<sup>3249</sup> *See* below.

<sup>3250</sup> The Chamber notes that several Islamic Court documents refer to these proceedings, notably: (i) Islamic Court document MLI-OTP-0001-7390, translation MLI-OTP-0078-6006 (the document, dated Monday ‘8 *Dhu’ LQuida* 1433’, records an Islamic Court proceeding in which P-0538 stated that she was forced to marry the man and had not consented, having only been informed of the marriage after the act was signed. P-0538 appeared to have been accompanied by her mother to the court proceedings. The document states that the man was there and it appears that the judges proposed the dissolution of the marriage and he refused. The document states that parties were dismissed and told to return to the court the next Monday). The Chamber notes that the parties agree that the date on document MLI-OTP-0001-7390 corresponds to 24 September 2012 (P-0538: T-163, p. 50; ICC-01/12/18-2528-Conf-Anx1); (ii) Islamic Court documents MLI-OTP-0001-7395, MLI-OTP-0001-7396, translations MLI-OTP-0077-2783, MLI-OTP-0077-2786 respectively (the documents, dated Monday ‘8 *Dhoul-Qidah* 1433’, record an Islamic Court proceeding and appear to be contiguous records of the same proceedings. The documents record the two litigants returning to the court one week after the last proceeding, accompanied by family. The documents state that P-0538’s step-mother and mother stated that she did not consent and that statements of the various witnesses indicated that she ran away the first night into the city and was returned to the man. The documents provide that statements of the various witnesses also indicated that P-0538 was not informed of the marriage. The documents state that P-0538’s father indicated that he did not inform her of the marriage and stated that if she accepted, he would ‘give her to [the man] now’. The documents state that the parties were again dismissed and told to return to the court the next week). The Chamber notes that the Prosecution submits that the date on documents MLI-OTP-0001-7395 and MLI-

Houka made P-0538 come to the Islamic Court on multiple occasions over the last four months of her ‘marriage’,<sup>3251</sup> as he wanted to understand why she had refused the ‘marriage’.<sup>3252</sup> P-0538 and her mother, father and step-mother were notably taken to a hearing presided by Houka Houka where he questioned them about P-0538’s ‘marriage’.<sup>3253</sup> P-0538 and her parents requested that she be divorced from her ‘husband’.<sup>3254</sup> Houka Houka indicated that he was prepared to grant the divorce if P-0538’s ‘husband’ agreed.<sup>3255</sup> Houka Houka proposed a dissolution of the ‘marriage’ but P-0538’s ‘husband’ refused, wanting a reconciliation.<sup>3256</sup>

968. Regarding the allegation that P-0538 was temporarily detained and raped by multiple men,<sup>3257</sup> the Chamber cannot establish the facts on the matter. First and most significant, regarding the location of her alleged detention and rape, the Chamber considers that P-0538 identified the Islamic Court as the place where

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OTP-0001-7396 corresponded to 24 September 2012 (ICC-01/12/18-2528-Conf-Anx1). Noting that MLI-OTP-0001-7390 and MLI-OTP-0001-7395/MLI-OTP-0001-7396 appear to have been dated the same date and record events taking place one week apart, the Chamber considers that these different events in the proceedings were memorialised on the same day; (iii) *Khula* divorce agreement MLI-OTP-0024-2814, at 2858, translation MLI-OTP-0067-1015, at 1015-1016 (the document, dated 7 January 2013, states that it had been established that the marriage between ‘[REDACTED], and his wife, [REDACTED]’ had ‘irretrievably broken down’ and so a ‘*khula*’, meaning divorce, was initiated between them and she was to return 5,000 CFA riyals to him and to refrain from remarrying until after her next menstrual cycle. The document also records that the fine was paid by P-0538’s guardian). In light of the dates of the documents, the Chamber concludes that the meetings regarding the divorce took place between around 24 September 2012 and 7 January 2013. The Chamber also notes that when shown a video of a location recognised by other witnesses as the Islamic Court, P-0538 stated that the video seemed to be of the place where judgments were given but she did not know if it was or not, and stated that the location resembled the place where judgments were rendered because of the red carpet shown in the video, adding that the day she went up to that floor, she sat on a red carpet for everything that was said (P-0538: T-162, pp. 37-38, referring to video MLI-OTP-0018-0249. See also P-0065: T-042, pp. 51-52; P-0557: T-055, p. 32).

<sup>3251</sup> P-0538: T-161, pp. 52-56; T-163, pp. 22, 52.

<sup>3252</sup> P-0538: T-161, pp. 52, 53-54.

<sup>3253</sup> P-0538: T-162, pp. 9-10. See also P-0538: T-161, p. 57; T-162, pp. 8-9. The Chamber notes that P-0538 did not recognise on a video a person which other witnesses identified as Houka Houka (P-0538: T-162, p. 37, referring to video MLI-OTP-0041-0615 versus P-0654: T-129, p. 24; P-0538: T-162, pp. 37-38, referring to video MLI-OTP-0018-0249 versus P-0065: T-042, p. 52). The Chamber does not consider this non-recognition to affect her testimony on her interactions with Houka Houka, noting the otherwise detailed nature of her testimony, the supporting Islamic Court documents and the passage of time.

<sup>3254</sup> P-0538: T-161, p. 57; T-163, p. 59.

<sup>3255</sup> P-0538: T-163, p. 63.

<sup>3256</sup> P-0538: T-163, p. 60; T-163, pp. 70-72; Islamic Court document MLI-OTP-0001-7395, translation MLI-OTP-0077-2783. The witness did not remember the man saying that he had brought sheikhs for reconciliation, and did not recall her father saying that if she accepted, he would give her to the man now (P-0538: T-163, p. 66, referring to Islamic Court document MLI-OTP-0001-7395, translation MLI-OTP-0077-2783, at 2784).

<sup>3257</sup> [Prosecution Final Brief](#), para. 409. See also [Defence Final Brief](#), paras 228-229.

she was detained<sup>3258</sup> and raped by four men.<sup>3259</sup> The Chamber recalls its findings in relation to the Islamic Court and considers that the evidence does not show that Ansar Dine/AQIM detained persons at the Islamic Court.<sup>3260</sup> In light of this, the Chamber considers it unlikely that the witness was detained at the Islamic Court. Further, the evidence does not support a finding that P-0538 was detained at the *Gouvernorat*, which she insisted she never entered.<sup>3261</sup>

969. In addition, any finding that she was detained elsewhere would be speculative in light of the credible and reliable evidence in this case. Additionally, the Chamber finds that the location of the detention is integral to P-0538's narrative of her detention and subsequent rape by multiple men.<sup>3262</sup> In light of P-0538's testimony, the Chamber cannot separate the sequence of events, context and actions that led to the alleged detention and rape from the location where P-0538 alleged that it occurred. Thus, the Chamber is unable to rely fully on this aspect of her testimony. Concerning the other aspects of her testimony in relation to her alleged detention and rape, the Chamber also notes that the evidence as to whether P-0538 was detained amid her divorce proceedings is unclear.<sup>3263</sup> Nor is the Chamber convinced by P-0538's testimony that her father was detained at the Islamic Court.<sup>3264</sup> Lastly, the Chamber notes contradictions in the evidence as to

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<sup>3258</sup> P-0538: T-161, pp. 45-46, 48-50; T-162, pp. 4-5, 14-15, 38. The Chamber notes P-0520's testimony that Abaradjou and 'Chechecha' is the same neighbourhood and refers to the area surrounding the market (P-0520: T-149, pp. 35-37). Further, P-0557 testified that the 'hotel' where people were judged and tried was in the 'Chechecha' neighbourhood (P-0557: T-055, p. 6; *see also* T-056, pp. 41-42). The Chamber notes the various spellings of the name of the neighbourhood and, given the overwhelming similarity between the testimony, concludes that the witnesses are speaking of the same neighbourhood, which the Chamber refers to as Chechecha. Noting the above, and that P-0538 indicated that Houka Houka was in this building (P-0538: T-163, p. 76), the Chamber finds that P-0538's reference to 'Chachacha' and the place were 'justice is rendered', where she testified that she was detained, is a reference to the Islamic Court. *See also* [Defence Final Brief](#), paras 228-229; Prosecution Closing Statement: T-215, pp. 39-42; Defence Closing Statement: T-125, pp. 42-45. *See also* paragraph 595 above.

<sup>3259</sup> P-0538: T-161, pp. 39, 45-48.

<sup>3260</sup> *See* section C.4.c) above.

<sup>3261</sup> The Chamber notes that P-0538's testimony that she knew the *Gouvernorat* but had never been inside, as well as her identification of the location of her detention as being in Chechecha/Abaradjou and the place were 'justice was rendered', precludes the identification of the *Gouvernorat* as the place where she was detained (*see* P-0538: T-162, p. 38).

<sup>3262</sup> *See above*; P-0538: T-162, pp. 8-10, 14-15. *See also* P-0538: T-163, p. 67.

<sup>3263</sup> P-0538 testified that she was detained after a hearing with Houka Houka (*see* P-0538: T-162, p. 10; T-163, pp. 60-63). However, the Defence noted prior statements which indicated that she went home with her family, stayed there, and was not held at the Islamic Court (*see* P-0538: T-163, p. 23). *See also* P-0538: T-163, pp. 68-69; Islamic Court document MLI-OTP-0001-7395, translation MLI-OTP-0077-2783.

<sup>3264</sup> *See* P-0538: T-162, pp. 5-6, 15; T-163, pp. 23, 60-62.

whether other women witnessed her rape.<sup>3265</sup> However, the Chamber notes that this inability to establish the facts is not a conclusion that the witness was not gang raped. Rather, the Chamber is not able to establish the facts to the relevant standard of proof.<sup>3266</sup>

970. After several meetings with Houka Houka, involving P-0538's 'husband', her step-mother, mother and father, a divorce was granted and P-0538 received a divorce decree.<sup>3267</sup> Houka Houka used the *Quran* and a document that was written

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<sup>3265</sup> P-0538 stated that other girls were in the room when the men forced her to sleep with them and that they too were raped in front of her (see P-0538: T-161, p. 50-51). However, when confronted with her prior statement suggesting that the men would take a girl out of the cell while P-0538 herself was raped and that the witness shared the cell with one girl, P-0538 testified that when she told the Prosecution that another girl was taken out of the cell when she was being raped, she likely meant 'that the third girl was not quite right mentally, so she was often shown out of the cell, and often she was isolated or sitting in her corner. Otherwise, we did everything in front of the others' and that she referred to three women because the fourth was 'somebody who was mentally unstable' (P-0538: T-163, pp. 75-76). The Chamber is not convinced by P-0538's explanation of the contradiction with her prior statement to the Prosecution. The Chamber considers the contradiction between P-0538's in-court testimony and her statement to the Prosecution as to who witnessed the rape significant, as it concerns a core circumstance of her alleged victimisation and further cast doubts as to the reliability of the witness's account of her alleged detention and rape (see [Defence Final Brief](#), para. 230).

<sup>3266</sup> The Chamber does not consider that its inability to establish the facts regarding the alleged gang rape due to uncertainties in the evidence impacts the credibility or reliability of other core parts of P-0538's narrative on her marriage, which the Chamber finds both credible and reliable, for the reasons stated above (see footnote 3203 above).

<sup>3267</sup> P-0538: T-161, pp. 52-53, 56. The Chamber notes that P-0538 identified the divorce document given to her by Houka Houka as being the *Khula* divorce agreement MLI-OTP-0024-2814, at 2858, translation MLI-OTP-0067-1015, at 1015-1016, stating 'it is the document of my marriage. Of my unhappiness [...] I know this document. How can you forget a document of such unhappiness' (P-0538: T-162, pp. 25-26). When the document was read out to her, the witness testified that she did not know the name '[REDACTED]', written in the divorce document as the man she was divorcing. According to the witness, the name she knew was [REDACTED], stating 'I can't lie about something that I don't know about. I only talk about things that I know about' (P-0538: T-162, pp. 25-26; see above). The Chamber further notes that the document dated 7 January 2013 states '[i]t has been established that the marriage has irretrievably broken down between: [REDACTED], and his wife, [REDACTED]. Therefore, we have decided to initiate *khula* between them, in return for the woman giving back 5,000 CFA riyals' (*Khula* divorce agreement MLI-OTP-0024-2814, at 2858, translation MLI-OTP-0067-1015, at 1015-1016). The Chamber notes that P-0538 testified that the name written was a mistranslation of her name (P-0538: T-162, pp. 26-27). Although the Chamber notes that at one point, when asked to confirm that this was the document that had been given to her by Houka Houka, the witness stated 'Houka Houka did not give me that paper. The paper he gave me was the divorce paper' (P-0538: T-162, p. 28), the Chamber considers that this part of the witness's answer was confused and that her testimony overall is that the Islamic Court document contained at page 2858 of civil party complaint MLI-OTP-0024-2814 is the document given to her by Houka Houka for her divorce. Regarding the document's reference to the payment of 5,000 CFA riyals to the 'husband', the witness testified that the man requested a reimbursement of 5,000. According to the witness, the man said he had given 30,000 as the dowry even though he had given 25,000 and the difference of 5,000 had to be paid back (P-0538: T-162, pp. 28-29). P-0538 testified that she took the divorce paper Houka Houka gave her and gave it to the people in the proceedings brought in Bamako (P-0538: T-162, pp. 25-26). On the basis of the foregoing evidence from P-0538 regarding the *Khula* divorce agreement, also noting her testimony that she took the divorce paper Houka Houka gave her and gave it to the people in the proceedings brought in Bamako, which explains the inclusion of the document in civil party complaint MLI-OTP-0024-2814, the Chamber is satisfied that this

in *Quran* writing.<sup>3268</sup> When Houka Houka pronounced their divorce, P-0538's ex-'husband' rose to his feet and said that he was not in agreement and argued with P-0538's father.<sup>3269</sup> The man 'grumbled a lot', they had words and in the end, P-0538's dress was ripped<sup>3270</sup> and then her ex-'husband' beat her.<sup>3271</sup>

971. The divorce was granted on 7 January 2013,<sup>3272</sup> six to eight months after the day the dowry money was thrown at P-0538's father.<sup>3273</sup> P-0538 was pregnant but was not aware of it; she subsequently gave birth by caesarean to a stillborn child.<sup>3274</sup>

972. As a result of her experiences, P-0538 began to have problems sleeping. For her, '[i]t even was the basis for the pain [...] problems I have now. Even now, I sleep inside the house out of fear. I can no longer sleep outside'.<sup>3275</sup> The witness was personally affected by Ansar Dine/AQIM's control of Timbuktu, her 'marriage'

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document emanated from the Islamic Court and is the document given to P-0538 by Houka Houka for her divorce.

<sup>3268</sup> P-0538: T-161, p. 56.

<sup>3269</sup> P-0538: T-161, p. 55.

<sup>3270</sup> P-0538: T-161, p. 55.

<sup>3271</sup> P-0538: T-161, p. 57. P-0538 later stated that she did not know whether the man was angry that the divorce was granted, adding that she got her divorce papers the day Konna was attacked (P-0538: T-163, p. 71). When she was reminded of a statement she gave to the FIDH about the man's anger, P-0538 however confirmed that the man was angry when the divorce was granted (P-0538: T-163, p. 72). The Chamber notes that P-0538 testified that people filmed them and afterwards people told her that they had seen a video of her fighting with the man (P-0538: T-161, p. 55). P-0538 assumed that it was the 'Islamists' that filmed the scene, saying '[i]f it was not them, who else?' (P-0538: T-161, p. 62). P-0538 stated that she did not see them filming her (P-0538: T-161, p. 62). P-0538 clarified that she knew nothing about the video but stated that people told her they had seen her in a video, and that the video had been put on television (P-0538: T-161, p. 61). She stated that she did not know whether they were telling the truth or lying (P-0538: T-161, p. 61). She stated that people called her saying they had seen her in a video wearing a yellow sari; that in the video she was fighting with the 'Islamists' and her dress was torn (P-0538: T-161, p. 62). She noted that she had indeed been wearing a yellow sari that day (P-0538: T-161, p. 62).

<sup>3272</sup> P-0538: T-162, p. 29, referring to *Khula* divorce agreement MLI-OTP-0024-2814, at 2858, translation MLI-OTP-0067-1015, at 1015-1016. The Chamber notes that P-0538 indicated that the Konna attack occurred around the time of her divorce, she was given her divorce papers and the 'Islamists' fled from the city (P-0538: T-161, pp. 58-59). When asked to elaborate on the time between her divorce and the Konna attack, P-0538 stated that she had forgotten but stated that the day after the Konna attack, 'they' drew up documents and gave her the divorce document, and afterwards they fled (P-0538: T-161, pp. 58-59).

<sup>3273</sup> P-0538: T-161, p. 57. The Chamber notes that when questioned on the statement in the FIDH statement that her marriage lasted for six months, the witness indicated that the six months length was correct, stating, '[y]es, it is what you see in the documents. That is the truth, unless I am mistaken' (P-0538: T-163, p. 23). The Chamber does not consider this discrepancy to be significant and finds that the divorce was granted six to eight months after the day the dowry money was thrown at P-0538's father.

<sup>3274</sup> P-0538: T-161, pp. 52, 59; T-162, pp. 42-43 (testifying that after she had the operation, she became so ill that her parents even thought she would not survive. She stated that now when she feels cold, she feels pain).

<sup>3275</sup> P-0538: T-162, p. 43.



and rape, saying ‘[t]hat day I became ill. I was disturbed in my sleep. I would have nightmares. I had the impression that I had lost my mind. I was very disturbed’.<sup>3276</sup> The witness elaborated that ‘[w]hat happened in Timbuktu [...] is indescribable. Many people went mad. Others even disappeared. Even [...] I’m appearing in front of you and it is only by the grace of God. Otherwise, I would have lost my way’.<sup>3277</sup> P-0538 still has scars from the burn caused by hot oil on her right thigh, although she was treated with traditional medicine until she was cured.<sup>3278</sup>

#### w) Case of P-1162

973. For the factual findings in this section, the Majority, Judge Akane dissenting, relies on the testimony of P-0520 which, subject to discrete aspects discussed below, it finds particularly reliable.<sup>3279</sup>

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<sup>3276</sup> P-0538: T-162, p. 43.

<sup>3277</sup> P-0538: T-162, p. 43.

<sup>3278</sup> P-0538: T-162, p. 39; T-162, pp. 40-41, *referring to* photograph MLI-OTP-0039-0095 (identifying herself in the photograph and testifying that the photograph depicts her scar from the burn). The parties agreed that photographs MLI-OTP-0039-0096 to MLI-OTP-0039-0107 depict P-0538 (P-0538: T-162, pp. 40-41). The Chamber takes note of the report of Dr Sommerland, who analysed several photographs and a transcription excerpt from P-0538’s testimony and, on that basis, concluded that it was impossible to give an opinion based on the quality of the photographs and that it was not clear whether they depicted a bruising, the acute effect of a burn, or a scar (Dr Sommerland’s report MLI-D28-0006-2730-R01, at 2731). The Chamber further notes that Dr Sommerland confirmed that the only way these scars could be properly assessed, and the accounts verified, would be by physical examination of the witness (Dr Sommerland’s report MLI-D28-0006-2730-R01, at 2731; D-0500: T-177, p. 37). Noting that Dr Sommerland’s analysis was inconclusive and offers no concrete information about the nature of the scars, the Chamber finds that this testimony does not impact its view of the credibility or reliability of P-0538’s account.

<sup>3279</sup> **The Majority** refers to its findings on the credibility and reliability of P-0520’s evidence (*see* footnote 3010 above). On this specific incident, the Majority notes that although honest, her testimony as to what happened to P-1162 was not straightforward, that P-0520 had difficulties remembering the circumstances of the incident, and it appeared to the Majority that P-0520 was reluctant in testifying on certain issues (*see* P-0520: T-149, pp. 38-39). The Majority nonetheless considers this aspect of P-0520’s evidence reliable and credible, albeit noting that the witness’s memory on this point had to be refreshed with her prior statement (*see* P-0520: T-149, pp. 41-49). P-0520 testified that she got to know P-1162 before the events and explained where P-1162 lived (P-0520: T-149, pp. 35-37). As to what happened to P-1162 during the control of Timbuktu by the armed groups, P-0520 initially testified that she did not see or hear anything and did not ‘know anything about [P-1162’s] situation’, as P-0520 did not ‘hear anything because [she] didn’t talk to anyone’ (P-0520: T-149, p. 38). P-0520 could not say whether P-1162 was in the same situation as her or what happened at night-time, and could no longer recall whether she asked P-1162 about it or whether they said anything to each other (P-0520: T-149, pp. 38-39). P-0520 further initially stated that she could not hear what was going on in the other bedrooms, and she did not notice anyone going in and out of P-1162’s bedroom (P-0520: T-149, pp. 38-39). Nevertheless, P-0520 also described the proximity between herself and P-1162 while they were both in the same house. P-0520 stated that she ‘saw’ P-1162 while P-0520 was carrying on with her business (P-0520: T-149, p. 38), that P-1162 was ‘opposite to her’ and that ‘there was a small distance’ between them (P-0520: T-

974. The Majority finds that at some point around or after July 2012,<sup>3280</sup> P-1162, a young, ‘small black girl’ of about 15 years old,<sup>3281</sup> was at the *Gouvernorat* with P-0520 after having been brought there.<sup>3282</sup> She had ‘married’ a member of Ansar Dine/AQIM.<sup>3283</sup> The Majority is satisfied that this ‘marriage’ occurred in 2012

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149, p. 38). She described that they both were ‘on the storey where there was a living room and the bedrooms were opposite each other’ and stated that ‘it is possible that [they] did exchange some words’ as ‘[P-1162] was in another bedroom opposite’ hers (P-0520: T-149, p. 38). When the Prosecution mentioned the statement that P-0520 provided to it ‘three years ago’, the witness said that ‘[m]aybe you should say some more and things will come flooding back’ (P-0520: T-149, p. 41). The Majority notes that after refreshing her memory with the relevant extract of her statement, P-0520 eventually provided more details regarding the ‘marriage’ of P-1162 and what she heard while she was in the house. While the Majority notes that memory issues are not atypical for someone who was forced to endure the traumatic events P-0520 suffered from, it assesses the reliability of P-0520’s testimony on this incident on a case-by-case basis below depending on the level of details she provided regarding what happened to P-1162 (*contra* [Defence Final Brief](#), para. 251).

**Judge Akane** considers that P-0520’s testimony alone is insufficient to establish the facts related to P-1162’s alleged victimisation. She first notes that while P-0520 described that P-1162 was ‘a small black girl [who is] not even 15 years of age’ and provided a name by which P-1162 was called, P-0520 did not provide further details allowing for the identification of P-1162 and the basis for her believing that P-1162 was ‘not even 15 years of age’ is unclear. Further, Judge Akane considers that P-0520’s testimony does not allow the Chamber to establish facts such as the reasons for P-1162’s presence at the location. In this regard, she notes that when asked about P-1162, P-0520 testified that ‘when I asked [P-1162] why she had been brought there she did not accept [...] to tell me why. She didn’t accept to speak to me’ (P-0520: T-149, p. 37). P-0520 further indicated that she did not witness anything that happened to P-1162, testifying that ‘I didn’t see anything. I don’t know anything about that little girl. I don’t know anything about her situation’ (P-0520: T-149, p. 38). In Judge Akane’s view, these extracts clearly demonstrate that P-0520 has an extremely weak basis of knowledge, at best, concerning P-1162’s experiences. Judge Akane notes that it was only after having her memory refreshed that P-0520 recalled certain details, but even then, P-0520 testified that ‘[REDACTED] was the one who is said to have married [P-1162]. But in reality is his name even [REDACTED]?’ (P-0520: T-149, p. 42) and testified that she had only heard of the marriage (P-0520: T-149, p. 44). This evidence elicited from P-0520 does not shed light on what the circumstances surrounding any marriage that P-1162 may have entered into was, or the timing of said marriage. When asked if she had any knowledge concerning the circumstances of P-1162’s marriage, P-0520 testified that she ‘didn’t hear anything about that’ (P-0520: T-149, p. 45). P-0520’s identification of P-1162’s ‘husband’ also appears to be based purely on hearsay evidence (P-0520: T-150, pp. 48-49). Considering these circumstances as a whole, Judge Akane is of the view that P-0520’s evidence is insufficiently probative to make factual findings concerning P-1162.

<sup>3280</sup> The Majority notes that P-0520 and P-1162 lived at the *Gouvernorat* at the same time (*see* below) and refers to its conclusion that P-0520’s ‘marriage’ took place around or after July 2012.

<sup>3281</sup> P-0520 described this person as ‘a small black girl. [...] not even 15 years of age. [...] really a little girl’ (P-0520: T-149, p. 35).

<sup>3282</sup> P-0520: T-149, pp. 26-28, 34-35, 37. P-0520 stated the following: ‘I was the one who asked her whether she’d been brought there, and she said she had been brought there. And when I asked her why she had been brought there she did not accept [...] to tell me why. She didn’t accept to speak to me’ (P-0520: T-149, p. 37). On the Chamber’s finding that P-0520 was taken to the *Gouvernorat*, *see* paragraph 922 above.

<sup>3283</sup> P-0520: T-149, pp. 41-42, 44-45, 47. The Majority notes that P-0520 testified that she had heard that P-1162 had ‘married’ and that a certain named individual was said to have ‘married’ her. P-0520 explained that she saw this person, a black-skinned man, for the first time at the *Gouvernorat*, at the place where P-1162 was, and only saw him once (P-0520: T-149, pp. 42-43, 46-47). Although P-0520 heard that P-1162 ‘married’ this person, she did not hear anything about the circumstances of the ‘marriage’ or when it took place, although she specified that she had heard about P-1162’s ‘marriage’ before she ‘left’, which the Majority understands to refer to the day P-0520 was ‘married’ and taken from her house (*see* P-0520: T-149, pp. 44-45). As to what she knew about P-1162’s ‘husband’, P-0520

during the control of Timbuktu by Ansar Dine/AQIM.<sup>3284</sup> While P-1162 was at the *Gouvernorat* during the time that P-0520 was also there, there were other women present<sup>3285</sup> and all the women would sit around with each other and would go back when their ‘husbands’ returned.<sup>3286</sup> The place they stayed had a door with iron bars that did not open.<sup>3287</sup>

975. The Majority further finds that whilst at the *Gouvernorat* during the same time as P-0520, P-1162 was subjected to sexual violence<sup>3288</sup> by her ‘husband’.<sup>3289</sup>

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explained that she heard men with whom P-1162’s ‘husband’ worked or who were his friend calling him by a certain name, but she did not know whether that was his real name (P-0520: T-149, pp. 42-43; T-150, p. 44). P-0520 added that she knew that these men worked with the ‘husband’, but did not know what kind of work they were doing and could not remember what he was doing when she saw him (P-0520: T-149, p. 46). P-0520 later stated that she heard people calling the man this name, but had no idea whether it was the local population or other people who gave him that name (P-0520: T-150, p. 42). P-0520 added that she did not see these men carrying any weapons, as they did not keep their weapons when they went to ‘that place’, although they might have had them inside without anyone knowing (P-0520: T-149, p. 47). The Majority notes that P-0520 was unable to provide much detail about P-1162’s ‘husband’ (*see below*), or the groups to which he belonged, but notes that she explained that she saw this man at the *Gouvernorat*, at the place where P-1162 was (P-0520: T-149, pp. 42-43, 46-47). Noting its previous findings that P-0520 was ‘married’ to a member of Ansar Dine/AQIM and was taken during her ‘marriage’ to stay at the *Gouvernorat*, which was a location used by Ansar Dine/AQIM during the period of the charges (*see paragraph 558 above*), and noting that P-1162 was also brought to stay at the *Gouvernorat* at the same time as P-0520 and that P-0520 saw P-1162’s ‘husband’ there, the Majority finds that P-1162’s ‘husband’ was a member of Ansar Dine/AQIM (*contra* [Defence Final Brief](#), paras 251, 255-262). The Majority places no weight for the purpose of this finding on the fact that P-0520 did not recognise a picture of [REDACTED] during her testimony (P-0520: T-150, pp. 48-49, *referring to* photograph MLI-OTP-0018-2382), noting that the person depicted in this photo has his face partly obscured and is facing away from the camera (*contra* [Defence Final Brief](#), para. 247). It notes, however, that P-0520’s description of P-1162’s ‘husband’ as having black skin accords with this photograph. In addition, noting that P-0520 testified to speaking ‘a bit’ of Arabic (P-0520: T-149, p. 7), the Majority also dismisses the Defence argument that no weight can be placed on P-0520’s evidence of hearing the name of P-1162’s ‘husband’ due to her ‘language limitations’ ([Defence Final Brief](#), para. 251).

<sup>3284</sup> The Majority notes that the evidence is not detailed on the circumstances of P-1162’s ‘marriage’ or when it precisely occurred. However, taking into account the fact that P-1162 was ‘brought’ to the *Gouvernorat* during the control of Timbuktu by Ansar Dine/AQIM, that she was staying there with other women, that she was ‘married’ to an Ansar Dine/AQIM member, and in light of the other reliable evidence describing the way ‘marriages’ between the local population and Ansar Dine/AQIM members were generally concluded during the charged period (*see section C.3 above and the Chamber’s findings in cases of P-0520, P-0602, P-0610 and P-0538*), the Majority infers that this ‘marriage’ occurred in 2012 during the control of Timbuktu by Ansar Dine/AQIM (*contra* [Defence Final Brief](#), para. 251).

<sup>3285</sup> P-0520: T-149, pp. 34-35.

<sup>3286</sup> P-0520: T-149, pp. 34-35. *See also* P-0520: T-149-FRA, p. 35.

<sup>3287</sup> P-0520: T-149, p. 53.

<sup>3288</sup> The Majority notes that the use of the expression ‘sexual violence’ within the factual findings is intended to have a purely factual meaning, as it transpires from the evidence before the Chamber, and is not intended to pre-suppose legal findings, which are addressed subsequently.

<sup>3289</sup> **The Majority** notes that P-0520 provided details on what she saw and heard regarding P-1162’s presence in the house. She notably testified that she could hear cries coming from where P-1162 was (P-0520: T-149, pp. 41-42, 46) and that she heard sounds ‘like someone who was crying’, at the time people would come and sleep (P-0520: T-149, p. 45). The Majority also notes that although P-0520 openly acknowledged that she did not know what was happening, whether it was P-1162 crying out, or whether

### x) Case of P-1460

976. The Chamber notes that P-0570 is the sole witness testifying in relation to the case of P-1460.<sup>3290</sup> In light of its assessment of the credibility and reliability of the evidence of P-0570,<sup>3291</sup> the Chamber finds that it cannot rely on the evidence of P-0570 for this case and, in the absence of other evidence, cannot establish the facts related to this incident.

### y) Case of P-0957

977. Having regard to the nature of the evidence on the case of P-0957,<sup>3292</sup> the

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it was a man or a woman crying out, she testified that there was no one else in the place where P-1162 was and where the crying came from except for P-1162 and her 'husband' (P-0520: T-149, pp. 41-42, 45-46. *See also* P-0520: T-149-FRA, p. 46). While noting the limited nature of the direct evidence provided by P-0520, the Chamber consistently heard that in other cases concerning girls and women who were 'married' to members of Ansar Dine/AQIM, that following the 'marriage' the girls and women were taken to houses to spend time with their 'husbands' and were forced to have sexual intercourse with them on one or more occasions (*see* the cases of P-0602, P-0610, P-0520 and P-0538). Taking this evidence together with the direct evidence from P-0520, notably that she heard cries coming from the place where P-1162 was at the time people would sleep and that P-1162 and her 'husband' were the only ones in the room, the Majority concludes that the only reasonable inference is that during her stay at the *Gouvernorat* at the time that P-0520 was also staying there, P-1162 was subjected to sexual violence by her husband.

For reasons mentioned above, **Judge Akane** is unable to join the Majority in the factual findings concerning P-1162. However, even assuming that P-1162 was married during the charged period, Judge Akane disagrees with the Majority's reasoning concerning the alleged sexual violence suffered by P-1162. Judge Akane notes that despite the witness's memory being refreshed, P-0520 was still doubtful about the origin of the cries, the persons involved and the reasons for the cries. In these circumstances, Judge Akane considers that there is not sufficient detail or clarity in P-0520's evidence to infer beyond reasonable doubt that P-1162 was subjected to sexual violence by her 'husband' during her time at the *Gouvernorat*. Notably, P-0520 testified that she did not know what was happening in the room, whether it was P-1162 crying out, or whether it was a man or a woman crying out (P-0520: T-149, pp. 41-42, 45-46. *See also* P-0520: T-149-FRA, p. 46). Even assuming it was P-1162 who P-0520 heard crying, Judge Akane considers that it is not possible to infer beyond reasonable doubt that the reason for the crying was that P-1162 was being subjected to sexual violence by the 'husband'. While this might be a likely conclusion, it is simply not possible to draw such a conclusion beyond reasonable doubt on the basis of P-0520's evidence.

<sup>3290</sup> P-0570's statement MLI-OTP-0049-0047-R05, at 0059, para. 48.

<sup>3291</sup> The Chamber refers to its findings on the credibility and reliability of P-0570's evidence (*see* section II.B.2.c)ii above). *See also* [Defence Final Brief](#), para. 215.

<sup>3292</sup> The Chamber notes that the evidence in relation to the case of P-0957 consists of P-0524's statement MLI-OTP-0071-0246-R12, together with a *procès-verbal* taken by a Malian judge MLI-OTP-0035-0146-R01 and civil party complaint MLI-OTP-0024-2814, at 2826-2827. Although P-0524 directly heard what P-0957 said about her victimisation [REDACTED], the Chamber notes that P-0524 could not remember [REDACTED] (P-0524's statement MLI-OTP-0071-0246-R12, at 0262, para. 102). The Chamber recalls that P-0524's statement was introduced into evidence through Rule 68(2)(b) of the Rules and notes that, as a result, P-0524 was not examined in-court on the evidence she provided on the basis of what she heard from others, notably statements related to key aspects of the charged incidents (including the incident related to P-0957 as well as other alleged victims). Also significantly, as noted, the Chamber has doubts about the quality of some of the information P-0524 provided. The Chamber also refers to its general findings on the credibility and reliability of P-0524's evidence (*see* section II.B.2.c)i above).

Chamber cannot establish the facts related to this incident

**z) Case of P-1674**

978. For the factual findings in this section, the Chamber relies on the testimony of P-0636, which, subject to discrete aspects discussed below, it finds particularly reliable.<sup>3293</sup>
979. Sometime during the control of Timbuktu by Ansar Dine/AQIM in 2012-2013,<sup>3294</sup> members of Ansar Dine/AQIM went to P-1674's house.<sup>3295</sup> P-1674 became pregnant after this event.<sup>3296</sup>
980. Regarding the allegation of sexual violence against P-1674, as P-0636's basis of knowledge of the alleged incident is too far removed for the Chamber to rely on her testimony in this regard, the Chamber finds that it cannot establish that P-1674 was subjected to sexual violence by Ansar Dine/AQIM.<sup>3297</sup>

**2. Judgments**

981. For the factual findings in this section, the Chamber relies primarily on the written reports from the Islamic Police and/or the written judgments from the Islamic

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<sup>3293</sup> The Chamber refers to its findings on the credibility and reliability of P-0636's evidence (*see* footnote 2815 above). With regard to this incident, the Chamber finds P-0636's testimony generally reliable in light of her proximity to P-1674's family (P-0636: T-071, pp. 51, 53), in particular on the presence of the 'Islamists' at P-1674's house and her pregnancy. The witness clearly explained what she saw directly and was forthcoming with what she did not know regarding P-1674's situation. For example, although she knew it in the past, P-0636 acknowledged that she did not recall P-1674's name and only remembered some details about her parents (P-0636: T-071, p. 51). Although she saw the 'Islamists' in the residence of the victim, P-0636 openly stated she did not remember exactly what happened when the 'Islamists' went into the house (P-0636: T-071, pp. 53-54). However, the rest of P-0636's testimony on this incident is mainly based on what she heard from other people 'through conversations' (P-0636: T-071, pp. 53-55) in a very remote way, which makes it difficult for the Chamber to rely on those remaining aspects of her testimony, as stated below (*see also* [Defence Final Brief](#), para. 222).

<sup>3294</sup> The Chamber notes that P-0636 did not specifically state when this incident took place, but infers that this incident took place at some time during the control of Timbuktu by Ansar Dine/AQIM in 2012-2013 from the fact that the witness testified about this case after being asked about 'other cases such as [her] own' of women getting pregnant in Timbuktu, in addition to the fact that she referred to the 'Islamists', who came from the North and wore khaki-coloured clothing, as being involved in the incident (*see below*).

<sup>3295</sup> P-0636: T-071, pp. 53-54. P-0636 described the 'Islamists' she saw in the residence of P-1674 as wearing Khaki-coloured clothing and as coming from the North (P-0636: T-071, p. 54). Based on P-0636's description, and put in context in light of her entire testimony, the Chamber infers that these individuals were members of Ansar Dine/AQIM.

<sup>3296</sup> P-0636: T-071, pp. 51, 52-54.

<sup>3297</sup> P-0636: T-071, p. 55. *See also* [Defence Final Brief](#), para. 222.

Court in relation to each case, which it finds reliable.<sup>3298</sup>

982. The Chamber further finds that, unless otherwise noted, the individuals who are the subject of the sentences in each of the following judgments were civilians taking no active part in the hostilities.<sup>3299</sup>

**a) Judgments issued following an Islamic Police report drafted and/or signed by Mr Al Hassan**

**i. Judgment of Al-Khayr Bin-Sidi, case 23/1433-2012<sup>3300</sup>**

983. On a unknown date, Mr Al Hassan wrote and signed an Islamic Police report on a case ‘relating to magic’ involving an individual called Al-Khayr Bin-Sidi who was found with two jars (which ‘he said had *Quran* in it’) and a piece of paper

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<sup>3298</sup> The Chamber notes that many of the cases in this section are evidenced not only by Islamic Police reports and/or Islamic Court judgments but also testimony from witnesses who had specific knowledge of the cases, and in some instances also other documentary evidence. In relation to the Defence suggestion that there is a reliability issue affecting the Islamic Court records on the basis that D-0202 testified that there were errors in the records ([Defence Final Brief](#), para. 311), the Chamber notes that D-0202 was referring to a mistake regarding the notation of a specific date on a specific document, whereas elsewhere in his testimony the witness highlighted the rigorous process for judgment drafting (*see e.g.*, D-0202, T-203, p. 18). The Chamber considers that the evidence does not support the general proposition that the judgments were prone to error and dismisses the Defence argument. The Chamber also recalls its detailed findings that each of the Islamic Police reports and Islamic Court documents or related documents referred to in this section are authentic (*see* section II.D above), as well as its detailed findings on certain documents having been written and signed by Mr Al Hassan (*see* section II.D above). In addition, for those cases which are evidenced only by a written Islamic Court judgment, **the Majority**, Judge Akane dissenting, considers these documents to be sufficiently reliable to draw conclusions about those cases. This conclusion by the Majority is based, in addition to the Chamber’s findings on the authenticity of the relevant judgments (*see* section II.D above), on the Chamber’s detailed findings on the way in which the Islamic Court proceedings were conducted, the manner in which Islamic Police reports were used by the Islamic Court and the manner in which the Islamic Court’s written judgments were produced (*see* section C.4.c)iii above) (*contra* [Defence Final Brief](#), paras 308-318. *See also* Defence Closing Statement, T-215, pp. 13-14; [Prosecution Response Brief](#), paras 121-124).

**Judge Akane** dissents, considering the written Islamic Court judgments to be insufficient evidence on which to base findings of fact about what transpired in a given case, in the absence of other corroborative evidence.

<sup>3299</sup> The Chamber infers this from the facts and circumstances of each case described in the Islamic Court judgments and (where relevant) Islamic Police reports, which demonstrate that the cases in question relate to civilian matters and the fact that, in principle, there was a separate parallel judicial organ which was meant to deal with, *inter alia*, matters relating only to members of Ansar Dine/AQIM and not the local population (*see* paragraph 599 above). The Chamber further notes that it is the Defence’s own submission that these incidents are solely related to civilians and civilian matters (*see* [Defence Final Brief](#), para. 328).

<sup>3300</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Al-Khayr Bin-Sidi (a.k.a. El-Kheir Ag Sidi and El-Kheir Bin-Sidi). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

containing a ‘magic text’.<sup>3301</sup> The report was received by the Islamic Court.<sup>3302</sup>

984. Following this report, on 1 October 2012, the Islamic Court issued a judgment in case 23/1433-2012 involving the same individual, concerning the possession of a polytheistic amulet and two phials on which he alleged to have recited the *Quran*.<sup>3303</sup> The judgment, states that the items were found in the individual’s car, that he appeared before the Islamic Court, and that the Islamic Court told him that polytheism was intolerable. The judgment further states that the individual pledged to repent and that he was sentenced to one night in prison by way of *ta’zir* and that he was then set free.<sup>3304</sup>

**ii. Judgment of Moussa Ben Mohamed el-Joumaa or Muhammad Musa Muhammad al-Jam’at, ‘Abdu, ‘Ali al-Jaw and Adulahi, case 43/1433-2012<sup>3305</sup>**

985. On 19 November 2012, Mr Al Hassan wrote and signed an Islamic Police report

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<sup>3301</sup> Islamic Police report MLI-OTP-0055-1072 (handwritten, signed and stamped), translation MLI-OTP-0054-0306. P-0150 identified this document as emanating from the Islamic Police (P-0150: T-102, p. 32, referring to MLI-OTP-0055-1072). P-0150 testified that MLI-OTP-0055-1072 contained Mr Al Hassan’s signature (P-0150: T-102, p. 32). P-0620 and P-0621 also testified that MLI-OTP-0055-1072 is original with no trace of fraudulent manipulation detected, and the signature may have been drawn by Mr Al Hassan (P-0620 and P-0621’s report MLI-OTP-0064-0175, at 0301-0302).

<sup>3302</sup> The Chamber infers that this report was received by the Islamic Court, noting that it was collected by P-0055 and P-0057 from the seat of the Islamic Court, namely the *Hôtel La Maison* (see P-0590’s reports MLI-OTP-0069-8559, at 8617 (listing items in evidence bag MLI-OTP-0055-0055) and MLI-OTP-0073-1193; P-0055’s report MLI-OTP-0056-0026, at 0034 (noting that evidence bag MLI-OTP-0055-0055 contains items originally contained in evidence bag MLI-OTP-0005-0025)). On the seizure of items from the *Hôtel La Maison* into evidence bag MLI-OTP-0005-0025, see section II.D above.

<sup>3303</sup> Islamic Court judgment MLI-OTP-0001-7468 (signed and stamped), translation MLI-OTP-0077-2433, at 2434. See also different versions of the same document MLI-OTP-0053-0334 (signed and stamped); MLI-OTP-0053-0336 (signed and stamped), translation MLI-OTP-0078-0037; and MLI-OTP-0002-0082 (signed and stamped), translation MLI-OTP-0078-0238. P-0150 identified MLI-OTP-0053-0336 as an Islamic Court judgment relating to the case of El-Kheir Ag Sidi (P-0150: T-102, p. 33).

<sup>3304</sup> Islamic Court judgment MLI-OTP-0001-7468 (signed and stamped), translation MLI-OTP-0077-2433, at 2434. Concerning the sentence, P-0150 explained that the accused was not given a harsher sentence because he was not accused of engaging in sorcery himself – as a sorcerer – but merely used objects that were found with him, objects which the Islamic Court said contained sorcery, and which El-Kheir Bin-Sidi said contained *Quran* (P-0150: T-102, p. 33, referring to Islamic Court judgment MLI-OTP-0053-0336, translation MLI-OTP-0078-0037).

<sup>3305</sup> The Chamber notes that different spellings of the victims’ names appear in the [Confirmation Decision](#), the relevant evidentiary documents and the [Prosecution Final Brief](#): Moussa Ben Mohamed el-Joumaa or Muhammad Musa Muhammad al-Jam’at, ‘Abdu (a.k.a. Abdou), ‘Ali al-Jaw (a.k.a. Ali al-Jaw) and Adulahi. Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals. The Chamber additionally notes that in the [Confirmation Decision](#), only Moussa Ben Mohamed el-Joumaa is mentioned by name and two other people are referred to as ‘anonymous’. The Pre-Trial Chamber explained that, despite the evidence referring to three other people and mentioning elements with regard to their names, it referred to the charges as defined by the Prosecution and used the expression

on the arrest of an individual, Muhammad Musa Muhammad al-Jam'at, who confessed that he stole from a shop together with his friends, 'Abdu, 'Ali al-Jaw and Adulahi.<sup>3306</sup> The report states that the three friends were also arrested and made similar confessions. The report was formally addressed to and received by the Islamic Court.<sup>3307</sup>

986. Following this report, on the same day, 19 November 2012, the Islamic Court issued a judgment in case 43/1433-2012 concerning Muhammad Musa Muhammad al-Jam'at, who was arrested in connection with the robbery of a shop.<sup>3308</sup> The judgment, signed by Houka Houka,<sup>3309</sup> states that the individual was arrested in the act of robbing the shop and admitted having stolen from the same shop previously, prior to the arrival of the 'Mujahidin' in Timbuktu. The judgment also records that he was with three younger boys who watched his back. It provides that the man appeared before the Islamic Court and that the Islamic Court took into consideration the uncertainty as to whether the man had reached adolescence, the value of the booty for the recent robbery, and the fact that he had committed the first robbery at a time when he was aware of neither the provisions relating to theft nor of the theft *hadd*, and when *Sharia* was not enforced in the country. The judgment states that the Islamic Court therefore dropped the *hadd* in this case and substituted it with *ta'zir*, sentencing the man to pay back the stolen

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'anonymous' to refer to the two other alleged accused ([Confirmation Decision](#), para. 453). In its Final Brief, the Prosecution referred to all these people by name instead of 'anonymous' ([Prosecution Final Brief](#), paras 345-347). The Chamber therefore uses their names here for the sake of clarity.

<sup>3306</sup> Islamic Police report MLI-OTP-0001-7552 (handwritten, signed and stamped), translation MLI-OTP-0034-0179. Mr Al Hassan stated that he wrote the document and recognised his signature on MLI-OTP-0001-7552 (Mr Al Hassan's statement MLI-OTP-0060-1605, at 1617; *see also* MLI-OTP-0062-0988, at 0991).

<sup>3307</sup> MLI-OTP-0001-7553 (left hand side), translation MLI-OTP-0052-0105. The Chamber notes that this document appears to be the other side of MLI-OTP-0001-7552. *See similarly* P-0150: T-098, p. 27 (testifying that the notation '[t]o the Islamic Court' on the left hand side of MLI-OTP-0001-7560 means that the report MLI-OTP-0001-7561 is addressed to the Islamic Court). The Chamber infers that Islamic Police report MLI-OTP-0001-7552 was received by the Islamic Court, on the basis that it was addressed to the Islamic Court and additionally that it was found by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24). *See also* section II.D above.

<sup>3308</sup> Islamic Court judgment MLI-OTP-0001-7437 (signed and stamped), translation MLI-OTP-0078-0212, at 0213. *See also* different version of the same document MLI-OTP-0055-1092 (unsigned and unstamped), translation MLI-OTP-0078-1688. P-0150 identified MLI-OTP-0001-7437 as the '*Sharia* court judgment', signed by Houka Houka in the case of Mohamed Moussa Bin-Mohamed el-Joumma who was accused of robbery (P-0150: T-102, p. 47).

<sup>3309</sup> P-0150: T-102, p. 47, *referring to* MLI-OTP-0001-7437 (identifying that document as the '*Sharia* court judgment', signed by Houka Houka in the case of Mohamed Moussa Bin-Mohamed el-Joumma who was accused of robbery).



sums and to 40 lashes, and the younger accomplices to 20 lashes each.<sup>3310</sup>

**iii. Judgment of Abdelkarim Ascofare or ‘Abd-al-Karim Iskufari, case 45/1433-2012**

987. On 19 November 2012, Mr Al Hassan wrote and signed an Islamic Police report regarding the sale of forbidden items, namely tobacco.<sup>3311</sup> The report, formally addressed to and received by the Islamic Court,<sup>3312</sup> records that a man was arrested for smoking in the street and, following an investigation, he did not confess as to where he bought the tobacco but confessed after being in prison. The report states that the trader was arrested and after he was questioned and imprisoned, he confessed that he bought the tobacco from a larger salesman in the market, Abdelkarim Ascofare. The report records that he was arrested and confessed that he had been a wholesale supplier of tobacco, but did not confess where he got the tobacco from.<sup>3313</sup>
988. Following this report, on 19 November 2012, the Islamic Court issued a judgment in case 45/1433-2012 concerning Abdelkarim Ascofare.<sup>3314</sup> The judgment states that the Islamic Court sentenced the vendor, who had been selling tobacco and was caught in possession of ‘8 dozen’ that he was trying to dispose of through a minor merchant, to a financial *ta’zir* of 30,000 CFA francs for seeking profit in an act forbidden by Allah. The judgment provides that the offence was notably proven by evidence and corroborated by the man’s own admission. The Islamic Court ordered that the penalty be paid at the ‘Islamic Police Department’ without

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<sup>3310</sup> Islamic Court judgment MLI-OTP-0001-7437 (signed and stamped), translation MLI-OTP-0078-0212, at 0213.

<sup>3311</sup> Islamic Police report MLI-OTP-0001-7555 (right hand side) (handwritten, signed and stamped), translation MLI-OTP-0077-2798. Mr Al Hassan stated that he wrote the document and recognised his handwriting and signature on MLI-OTP-0001-7555 (Mr Al Hassan’s statement MLI-OTP-0060-1453, at 1471-1473, *referring to* MLI-OTP-0001-7555).

<sup>3312</sup> MLI-OTP-0001-7559 (left hand side), translation MLI-OTP-0077-2804. The Chamber notes that this document appears to be the other side of MLI-OTP-0001-7555. *See similarly* P-0150: T-098, p. 27 (testifying that the notation ‘[t]o the Islamic Court’ on the left hand side of MLI-OTP-0001-7560 means that the report MLI-OTP-0001-7561 is addressed to the Islamic Court). The Chamber infers that Islamic Police report MLI-OTP-0001-7555, translation MLI-OTP-0077-2798 was received by the Islamic Court, on the basis that it was addressed to the Islamic Court and additionally that it was found by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24). *See also* section II.D above.

<sup>3313</sup> Islamic Police report MLI-OTP-0001-7555, translation MLI-OTP-0077-2798, at 2799.

<sup>3314</sup> Islamic Court judgment MLI-OTP-0001-7434 (signed and stamped), translation MLI-OTP-0078-1626. *See also* different version of the same document MLI-OTP-0001-7435, translation, MLI-OTP-0078-0209, at 0210.

delay.<sup>3315</sup>

**iv. Judgment of Nuh bin Muhammad, ‘Isa Bin Jadu, Muhammad Shaka, Ali Bin Barakah and Abdallah Bin Muhammad al-Jum’at, case 04/1433-2012<sup>3316</sup>**

989. On 23 July 2012, Mr Al Hassan wrote and signed an Islamic Police report on a case involving the robbery of the house of the IFAD director as well as a warehouse.<sup>3317</sup> The report, received by the Islamic Court,<sup>3318</sup> names, among others,<sup>3319</sup> Abdallah Bin Muhammad al-Jum’at, Nuh bin Muhammad and a ‘jihadist’ called Ali Bin Barakah<sup>3320</sup> as persons involved.

990. Following this report,<sup>3321</sup> the Islamic Court issued a judgment in case 04/1433-

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<sup>3315</sup> Islamic Court judgment MLI-OTP-0001-7434 (signed and stamped), translation MLI-OTP-0078-1626, at 1627.

<sup>3316</sup> The Chamber notes that different spellings of the victims’ names appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Nuh bin Muhammad (a.k.a. Mohamed Nouh and Nouh Bin-Mohamed), ‘Isa Bin Jadu (a.k.a. Eissa Bin-Jiddou), Muhammad Shaka (a.k.a. Mohamed Shaka), Ali Bin Barakah (a.k.a. Koulli Barakah and Ily Bin-Baraka), Abdallah Bin Muhammad al-Jum’at (a.k.a. Taballa and Abdalla Bin-Mohamed el-Jamaat). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals. For the sake of clarity, the Chamber uses the spellings which appear in the charges.

<sup>3317</sup> Islamic Police report MLI-OTP-0001-7513 (right hand side is the first page of the report; handwritten) and MLI-OTP-0001-7514 (left hand side is the second page of the report; handwritten, signed and stamped), translations MLI-OTP-0069-5680 and MLI-OTP-0034-0169. P-0150 identified that these documents comprise the first and second pages of the report (P-0150: T-095, pp. 30-31, *referring to* MLI-OTP-0001-7513 and MLI-OTP-0001-7514). P-0150 identified these documents as emanating from the Islamic Police (P-0150: T-095, pp. 30-31 (testifying that he recognised the stamp of the Islamic Police on MLI-OTP-0001-7514)). P-0150 testified that MLI-OTP-0001-7514 on the left contained Mr Al Hassan’s signature (P-0150: T-095, p. 31). The Chamber notes that Mr Al Hassan also recognised his signature on the left hand side of MLI-OTP-0001-7514 and confirmed that he wrote this document (Mr Al Hassan’s statement MLI-OTP-0060-1511, at 1522-1523). Notwithstanding that Mr Al Hassan identified this document as relating to a car theft, the Chamber is satisfied that he was referring to the left hand side of MLI-OTP-0001-7514, notably as he himself referred to the left hand side of the document and correctly identified the date on the document (MLI-OTP-0060-1511, at 1523).

<sup>3318</sup> The Chamber infers that this report was received by the Islamic Court, noting that it was found by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24). The Chamber also notes that P-0150 recognised the carpet of the Islamic Court of Timbuktu in the background of the photograph of Islamic Police report MLI-OTP-0001-7513 (P-0150: T-095, p. 30).

<sup>3319</sup> The Chamber notes that in the translation of the Islamic Police report, it is noted that two of six names are illegible (MLI-OTP-0069-5680). It is noted that the Islamic Police report also names ‘Ousman Akhmid’ (MLI-OTP-0001-7513 (right hand side), translation MLI-OTP-0069-5680), and records that he (referring to ‘‘Uthman’’) was the owner of the car used in the robbery and did not know anything about the operation (MLI-OTP-0001-7513 (right hand side), translation MLI-OTP-0069-5680; MLI-OTP-0001-7514 (left hand side), translation MLI-OTP-0034-0169).

<sup>3320</sup> Based on the Islamic Court’s description of this individual as a ‘jihadist’, the Chamber cannot establish that this person was a civilian taking no active part in hostilities.

<sup>3321</sup> The Chamber notes that there are two dates referred to in Islamic Court judgment MLI-OTP-0001-7487, translation MLI-OTP-0077-2322, one being to a date from the Gregorian calendar of 30 June 2012, and one being to a date from the Islamic calendar 11 Ramadan 1433, which P-0150 testified corresponds

2012 involving these three men, as well as ‘Isa Bin Jadu and Muhammad Shaka, concerning the burglary of the house.<sup>3322</sup> The judgment, signed by Houka Houka,<sup>3323</sup> states that the Islamic Court questioned the guard of the house who confirmed it had been unlocked. After considering that the conditions for the *hadd* of theft and banditry were not met, the Islamic Court ordered in the judgment that the ‘individuals [...] be imprisoned by way of *ta’zir*’ leaving the duration undetermined. It further ordered in the judgment that the individuals complete a *Sharia* course during their imprisonment to ‘learn the requirements of their religion and improve their morals’. Finally, the Islamic Court held that it would reconsider the imprisonment term based on their commitment to the *Sharia* course.<sup>3324</sup>

**v. Judgment of Muhammad Bin Musa, case 25/1433-2012<sup>3325</sup>**

991. On 8 October 2012, Mr Al Hassan wrote and signed an Islamic Police report on

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to 30 July 2012 in the Gregorian calendar (P-0150: T-095, pp. 31-32, *referring to* MLI-OTP-0068-4736. *See also* [Prosecution Final Brief](#), footnote 1365). The Chamber is satisfied that the reference to 30 June 2012 is an error and that the Islamic Court judgment was actually issued on 30 July 2012 (after the Islamic Police report), for the following reasons: (i) the Chamber is satisfied that both documents concern the same case in light of the details contained in the report and the judgment, noting that both documents refer to a burglary committed by several men on a house owned by the director of a humanitarian organisation, and also noting the similarity between the names mentioned in the report and in the judgment; (ii) commenting on the judgment, P-0150 testified that it followed the Islamic Police report (P-0150: T-095, p. 31, *referring to* MLI-OTP-0068-4736); and (iii) other credible evidence on the record shows that the Islamic Police report on a case always preceded the Islamic Court judgment on the same case, and not the contrary.

<sup>3322</sup> Islamic Court judgment MLI-OTP-0001-7487 (signed and stamped), translation MLI-OTP-0077-2322, at 2323. *See also* different versions of the same document MLI-OTP-0053-0196 (signed and stamped); MLI-OTP-0053-0198 (signed and stamped), translations MLI-OTP-0077-2349 and MLI-OTP-0069-5694; MLI-OTP-0002-0058 (signed and stamped), translation MLI-OTP-0078-0290; and MLI-OTP-0068-4736 (unsigned and unstamped), translation MLI-OTP-0078-1745. P-0150 identified this last document as a judgment of the Islamic Court relating to the robbery case (P-0150: T-095, pp. 31-32, *referring to* MLI-OTP-0068-4736). P-0150 stated that MLI-OTP-0053-0198 was the official version of the judgment, contained the stamp of the Islamic Court with the signature of ‘Mohamed Bin-el-Houssein, nicknamed Houka Houka’ (P-0150: T-095, p. 33). Noting the submission of the stamped and signed version of the judgment into the record, the Chamber dismisses the Defence objection to MLI-OTP-0068-4736 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). Further, noting P-0150’s basis of knowledge regarding the activities of the Islamic Court, the Chamber dismisses the Defence objection to MLI-OTP-0053-0198 that the Prosecution failed to establish a foundation as concerns whether P-0150 possessed any personal knowledge as concerns the circumstances of the case and reliability of this document (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes).

<sup>3323</sup> P-0150: T-095, pp. 31-33, *referring to* MLI-OTP-0068-4736; MLI-OTP-0053-0198. *See also* the Chamber’s findings in section II.D above.

<sup>3324</sup> Islamic Court judgment MLI-OTP-0001-7487 (signed and stamped), translation MLI-OTP-0077-2322, at 2323.

<sup>3325</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Muhammad Bin Musa (a.k.a. Mohamed Moussa and Mohamed

a case involving suspicious pieces of paper relating to magic.<sup>3326</sup> The report, formally addressed to and received by the Islamic Court,<sup>3327</sup> names Muhammad Bin Musa as a person involved and provides that he was arrested at the airport.<sup>3328</sup>

992. Following this report, two days later, on 10 October 2012, the Islamic Court issued a judgment in case 25/1433-2012 involving the same individual, concerning the practice of magic.<sup>3329</sup> The judgment, signed by Houka Houka,<sup>3330</sup> states that the individual was found in the possession of incriminating material, that he appeared before the Islamic Court, and that he confessed to having used certain items before the Islamic Court. The judgment also states that the Islamic Court requested him to repent, which he did, and that he pledged to glorify the

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Bin-Moussa). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents and on the basis of P-0150's testimony (P-0150: T-098, p. 28 (testifying that the 'bin' is an Arab concept followed by those who studied for example in Libya or Saudi Arabia, so that Mohamed Moussa could as well be Mohamed Bin-Moussa)) that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3326</sup> Islamic Police report MLI-OTP-0001-7560 (handwritten, signed and stamped), translation MLI-OTP-0052-0031. P-0150 identified that the document on the right-hand side of MLI-OTP-0001-7560 as emanating from the Islamic Police (P-0150: T-098, p. 27 (testifying that he recognised the stamp of the Islamic Police)). P-0150 further testified that MLI-OTP-0001-7560 contained Mr Al Hassan's signature (P-0150: T-098, p. 27). The Chamber notes that Mr Al Hassan confirmed that he 'made' report MLI-OTP-0001-7560 and testified, in relation to this report, that 'we drafted' that the individual was arrested in possession of books on magic (Mr Al Hassan's statement MLI-OTP-0060-1605, at 1606-1608).

<sup>3327</sup> P-0150: T-098, p. 27, *referring to* MLI-OTP-0001-7561 (testifying that the left hand side of MLI-OTP-0001-7561 contained Mr Al Hassan's signature and the notation of '[t]o the Islamic Court' which P-0150 said indicates that the report is addressed to the Islamic Court). The Chamber notes that MLI-OTP-0001-7561 appears to be the other side of MLI-OTP-0001-7560. The Chamber infers that Islamic Police report MLI-OTP-0001-7560 was received by the Islamic Court, on the basis that it was addressed to the Islamic Court and additionally that it was found by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24).

<sup>3328</sup> Islamic Police report MLI-OTP-0001-7560 (handwritten, signed and stamped), translation MLI-OTP-0052-0031; P-0150: T-098, p. 27, *referring to* Islamic Police report MLI-OTP-0001-7560.

<sup>3329</sup> Islamic Court judgment MLI-OTP-0001-7465 (signed and stamped), translation MLI-OTP-0077-2239. *See also* different versions of the same document MLI-OTP-0053-0160 (signed and stamped); and MLI-OTP-0053-0162 (signed and stamped), translations MLI-OTP-0077-2227, MLI-OTP-0069-5688; MLI-OTP-0002-0052 (signed and stamped), translation, MLI-OTP-0078-0278; MLI-OTP-0068-4712 (unsigned and unstamped), translation MLI-OTP-0078-1724. P-0150 identified MLI-OTP-0068-4712 as a judgment of the Islamic Court relating to the case of Mohamed Moussa (P-0150: T-098, p. 27). P-0150 also identified MLI-OTP-0053-0162 as a stamped version of the Islamic Court judgment, with a signature of Houka Houka (P-0150: T-098, p. 29). Noting the submission of the stamped and signed version of the judgment into the record, the Chamber dismisses the Defence objection to MLI-OTP-0068-4712 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). Further, noting P-0150's basis of knowledge regarding the activities of the Islamic Court, the Chamber dismisses the Defence objection to MLI-OTP-0068-4712 that P-0150 did not possess any personal knowledge as concerns the circumstances of the case and reliability of this document (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes).

<sup>3330</sup> P-0150: T-098, p. 29, *referring to* MLI-OTP-0053-0162 (identifying MLI-OTP-0053-0162 as a stamped version of the Islamic Court judgment, with the signature of Houka Houka). *See also* the Chamber's findings in section II.D above.

*Quran*. The judgment states that the Islamic Court then spared him from the death penalty,<sup>3331</sup> and sentenced him to three days in prison by way of *ta'zir*, and that the penalty was to serve as a deterrent to others.<sup>3332</sup>

**vi. Judgment of Muhammad Walad, Aghli Asudh and Arjili Bin Aman, case 55/1433-2012<sup>3333</sup>**

993. On 3 December 2012, Mr Al Hassan wrote and signed an Islamic Police report on a case involving smugglers arrested with stolen tobacco.<sup>3334</sup> The report, formally addressed to and received by the Islamic Court,<sup>3335</sup> names, among others, Muhammad Walad, his assistant Aghli Asudh and the owner of one of the cars loaded with tobacco, Arjili Bin Aman, as persons involved.<sup>3336</sup>
994. Following this report, on the same day, the Islamic Court issued a judgment in case 55/1433-2012 involving these three individuals concerning the theft of

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<sup>3331</sup> Islamic Court judgment MLI-OTP-0001-7465 (signed and stamped), translation MLI-OTP-0077-2239 ('[t]hus, we spared him from the death penalty'). P-0150 testified that if the individual did not repent or if he declared that he wholeheartedly embraced the practices, he would be executed (P-0150: T-098, p. 28). However, according to P-0150, Mohamed Moussa was treated as a non-believer and was asked to make a 'declaration of faith' to spare him from execution (P-0150: T-098, p. 28).

<sup>3332</sup> Islamic Court judgment MLI-OTP-0001-7465 (signed and stamped), translation MLI-OTP-0077-2239. P-0150 agreed with the proposition that one could say the individual was given 'time served' (P-0150: T-111, pp. 22-23).

<sup>3333</sup> The Chamber notes that different spellings of the victims' names appear in the [Confirmation Decision](#) and relevant evidentiary documents: Muhammad Walad (a.k.a. Muhammad Walad Buna and Mohamed Ould-Boun), Aghli Asudh (a.k.a. Aghaly Asyuti and Aghli Assioudh) and Arjili Bin Aman (a.k.a. Arjili Walad Aman and Arjili Bin-Aman). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals. For the sake of clarity, the Chamber uses the spellings which appear in the charges.

<sup>3334</sup> Islamic Police report MLI-OTP-0001-7542 (handwritten, signed and stamped), translation MLI-OTP-0034-0175. P-0150 identified this document as emanating from the Islamic Police (P-0150: T-102, pp. 40-41). P-0150 also testified that MLI-OTP-0001-7542 contained Mr Al Hassan's signature (P-0150: T-102, p. 41). The Chamber notes that Mr Al Hassan stated that he wrote the document and recognised his signature on MLI-OTP-0001-7542 (Mr Al Hassan's statement MLI-OTP-0060-1453, at 1468-1471).

<sup>3335</sup> P-0150: T-102, p. 41, *referring to* MLI-OTP-0001-7543, translation MLI-OTP-0052-0029. The Chamber notes that MLI-OTP-0001-7543 appears to be the other side of MLI-OTP-0001-7542. The Chamber infers that Islamic Police report MLI-OTP-0001-7542 was received by the Islamic Court, on the basis that it was addressed to the Islamic Court and additionally that it was found by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24).

<sup>3336</sup> Islamic Police report MLI-OTP-0001-7542 (handwritten, signed and stamped), translation MLI-OTP-0034-0175, at 0176.

tobacco.<sup>3337</sup> The judgment, signed by Houka Houka,<sup>3338</sup> states that having examined the case, and following the destruction of the tobacco and the imprisonment of the men for one week, the Islamic Court decided to release the men after they pledged not to commit this act again and ordered that their belongings and weapons be returned to them.<sup>3339</sup>

**vii. Judgment of Yahya Bin-Muhammad or his companion, case 67/1434-2013<sup>3340</sup>**

995. On 3 December 2012, Mr Al Hassan wrote and signed an Islamic Police report regarding the burglary of a shop.<sup>3341</sup> The report, formally addressed to and received by the Islamic Court,<sup>3342</sup> notes that one of the burglars was arrested and confessed that three men had committed the robbery. The report also records that tyre repair tools were used to break the door of the shop, and that these tools had been hired from an individual, who confirmed that they took the tools from him claiming that they needed to fix a tyre. One of them was arrested and said he was not with the others when they committed the burglary, but only accompanied

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<sup>3337</sup> Islamic Court judgment MLI-OTP-0001-7424 (signed and stamped), translation MLI-OTP-0078-1623. *See also* different version of the same document MLI-OTP-0001-7425 (signed and stamped), translation MLI-OTP-0078-0185, at 0187. Both P-0150 and P-0626 identified this as a judgment of the Islamic Court (P-0150: T-102, p. 41-42, *referring to* MLI-OTP-0001-7424; P-0626: T-142, pp. 59-60, *referring to* MLI-OTP-0001-7424). [REDACTED] (P-0626: T-142, pp. 59-60, *referring to* MLI-OTP-0001-7424).

<sup>3338</sup> P-0150: T-102, pp. 41-42, *referring to* MLI-OTP-0001-7424; P-0626: T-142, p. 60, *referring to* MLI-OTP-0001-7524 (identifying the signature of Houka Houka on this judgment). *See also* the Chamber's findings in section II.D above.

<sup>3339</sup> Islamic Court judgment MLI-OTP-0001-7424 (signed and stamped), translation MLI-OTP-0078-1623, at 1624. *See also* P-0626: T-142, pp. 59-60.

<sup>3340</sup> The Chamber notes that different spellings of one of the victim's names appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Yahya Bin-Muhammad (a.k.a. Yahya Bin-Mohamed). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3341</sup> Islamic Police report MLI-OTP-0001-7538 (handwritten, signed and stamped), translation MLI-OTP-0034-0173. P-0150 identified the Islamic Police stamp and Mr Al Hassan's signature on MLI-OTP-0001-7538 (P-0150: T-095, pp. 20, 22-23). *See also* P-0150: T-111, pp. 43-44. The Chamber notes that Mr Al Hassan stated that he wrote the document and recognised his signature on MLI-OTP-0001-7538 (Mr Al Hassan's statement MLI-OTP-0060-1484, at 1507-1508).

<sup>3342</sup> MLI-OTP-0001-7539 (right hand side), translation MLI-OTP-0052-0091. The Chamber notes that this document appears to be the other side of MLI-OTP-0001-7538. *See similarly* P-0150: T-098, p. 27 (testifying that the notation '[t]o the Islamic Court' on the left hand side of MLI-OTP-0001-7561 means that the report MLI-OTP-0001-7560 is addressed to the Islamic Court). The Chamber infers that Islamic Police report MLI-OTP-0001-7538 was received by the Islamic Court, on the basis that it was addressed to the Islamic Court and additionally that it was found by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24).

them until they reached the village where the shop was located.<sup>3343</sup>

996. Following this report, on 1 January 2013, the Islamic Court issued a judgment in case 67/1434-2013 concerning this robbery.<sup>3344</sup> The judgment, signed by Houka Houka, provides that Yahya Bin-Muhammad appeared before the Islamic Court and that his charge was substantiated solely on the basis of the discovery of two metal instruments for repairing tyres, which his two companions had borrowed and which were found in a shop that had been broken into and some of its contents stolen. The judgment further states that one of his unidentified companions was arrested and confessed that three men had committed the robbery, including the accused. The judgment provides that the accused<sup>3345</sup> first denied his participation in the robbery but then was ‘made to confess’ through ‘torture’.<sup>3346</sup> The Islamic

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<sup>3343</sup> Islamic Police report MLI-OTP-0001-7538 (handwritten, signed and stamped), translation MLI-OTP-0034-0173, at 0174.

<sup>3344</sup> Islamic Court judgment MLI-OTP-0001-7413 (signed and stamped), translation MLI-OTP-0077-2378, at 2380. *See also* different versions of the same document MLI-OTP-0001-7412 (signed and stamped), translation MLI-OTP-0077-2375; MLI-OTP-0068-4781 (unsigned and unstamped), translation MLI-OTP-0078-1770. P-0150 identified MLI-OTP-0068-4781 as the judgment on the same burglary case as in Islamic Police report MLI-OTP-0001-7538 (P-0150: T-095, p. 23). P-0150 also confirmed that MLI-OTP-0068-4781 was dated 1 January 2013 and ‘Judge Sheikh Mohamed Bin-el-Houssein, nicknamed Houka Houka’ was written at the bottom of the page and ‘Ansar Dine group, Timbuktu, *Sharia* court’ was marked at the top on the right-hand side (P-0150: T-095, pp. 23-24). P-0150 also identified MLI-OTP-0001-7412 as the judgment on the burglary case and testified that the signature on the stamp at the bottom right of the page belonged to Houka Houka (P-0150: T-095, p. 28). P-0150 also testified that MLI-OTP-0001-7412 bore the new and last stamp of the Islamic Court (P-0150: T-095, pp. 25-26). P-0150 stated that the writing on the stamp in the document was not clear but he knew that the phrase ‘the group of Ansar Dine’ appeared (P-0150: T-095, p. 26). [REDACTED]. Notwithstanding, noting his testimony on the judgment and his basis of knowledge regarding the activities of the Islamic Court, the Chamber finds credible and reliable his evidence regarding this judgment and relies on it. Noting the submission of the stamped and signed version of the judgment into the record, the Chamber dismisses the Defence objection to MLI-OTP-0068-4781 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes).

<sup>3345</sup> The Chamber notes that it is unclear whether the accused is a reference to Yahya Bin-Mohamed or his associate (*see* Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378, at 2380) but notes that the charges refer to both possibilities (*see* [Confirmation Decision](#), paras 466-467).

<sup>3346</sup> In relation to the mention of ‘torture’ in this Islamic Court judgment, P-0150 testified that it was not correct that the defendant was made to confess *after* the case was sent to the Islamic Court because the document says that he confessed under ‘torture’, and certainly this could not have happened within the Islamic Court, and that there was no ‘torture’ at the hands of the Islamic Court (P-0150: T-111, p. 44, *referring to* Islamic Court judgment MLI-OTP-0068-4781). He further testified that confession under ‘torture’ prevented the implementation of a *hadd*, but ‘torture’, in their view, was permissible when the accusation was very compelling in which case the concerned person was trying to swindle the justice system by avoiding confession (P-0150: T-111, pp. 44-45, *referring to* Islamic Court judgment MLI-OTP-0068-4781). P-0150 confirmed that referring to a confession obtained through torture meant that the Islamic Court could not impose a *hadd* punishment (P-0150: T-111, p. 44). He added that the fact that the man confessed under duress was a reason of uncertainty towards the *hadd*, in which case the judge would be satisfied only with a *ta’zir* verdict (P-0150: T-111, p. 44). P-0150 confirmed that by including a reference to the confession being obtained by torture, the Islamic Court had a justification for not imposing the *haad* (P-0150: T-111, p. 44).

Court stated in the judgment that ‘[n]o sentence could be based on such a confession’, and therefore that they dropped the *hadd* of amputation. The judgment provides that due to ‘his consistent denial, not to mention the fact that he was tortured and the lack of witnesses against him’, the Islamic Court ordered him to pay 40,000 CFA riyals (taking into consideration his share of the stolen items from the shop), ‘in lieu of amputation’.<sup>3347</sup>

### viii. Judgment of El-Khamis Bin-el-Sabt<sup>3348</sup>

997. On 23 May 2012, Mr Al Hassan wrote and signed an Islamic Police report regarding the arrest of a man, El-Khamis Bin-el-Sabt, for stealing three rolls of mosquito nets from the public pharmaceutical warehouse he was assigned to guard.<sup>3349</sup> The report includes an account of the accused person, including his confession to having taken the mosquito nets and lying about the fact that ‘Dr. Maiga’ gave them to him. It states that ‘[t]hey called [Dr Maiga] and he said it was a lie. So they brought me here’.<sup>3350</sup> Mr Al Hassan’s signature appears below the word ‘Investigator’ on the report. This report was received by the Islamic Court.<sup>3351</sup>

998. Following this report, on the same day, 23 May 2012, the Islamic Court issued a judgment against El-Khamis Bin-el-Sabt, who admitted to having stolen three rolls of mosquito nets in his care from the pharmaceuticals warehouse and to

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<sup>3347</sup> Islamic Court judgment MLI-OTP-0001-7413, translation MLI-OTP-0077-2378, at 2380.

<sup>3348</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: El-Khamis Bin-el-Sabt (a.k.a. El-Khamis el-Sabt). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3349</sup> Islamic Police report MLI-OTP-0001-7527 (handwritten, signed and unstamped), translation MLI-OTP-0052-0089. *See also* different photograph of the same document MLI-OTP-0001-7528 (left hand side), translation MLI-OTP-0077-2795. P-0150 identified MLI-OTP-0001-7527 as relating to the case of theft with the defendant ‘el-Khamis’ and testified that it bore Mr Al Hassan’s signature and had the phrase ‘the investigator’ written in Arabic above the signature (P-0150: T-095, pp. 58-59). Although unable to identify the main characteristics of MLI-OTP-0001-7527, P-0620 and P-0621 concluded that the signature may have been drawn by Mr Al Hassan (P-0620 and P-0621’s report MLI-OTP-0064-0175, at 0301-0302). The Chamber notes that Mr Al Hassan also recognised his handwriting and signature (the latter below the word ‘investigator’) on MLI-OTP-0001-7528 (left hand side) (Mr Al Hassan’s statement MLI-OTP-0060-1511, at 1512-1513. *See also* MLI-OTP-0060-1511, at 1513-1518; MLI-OTP-0060-1662, at 1667-1669).

<sup>3350</sup> Islamic Police report MLI-OTP-0001-7527 (handwritten, signed and unstamped), translation MLI-OTP-0052-0089, at 0090.

<sup>3351</sup> The Chamber infers that this report was received by the Islamic Court, noting that it was found by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24).



having falsely claimed that Dr Maiga had given him the stolen items.<sup>3352</sup> The Islamic Court sentenced him to the *ta'zir* of 10 lashes and to his dismissal from guarding the warehouse.<sup>3353</sup> Dr Maiga was reserved the right to decide whether or not to pardon El-Khamis Bin-el-Sabt and, in the latter case, El-Khamis Bin-el-Sabt was to be punished for what he did.<sup>3354</sup>

## b) Other judgments issued by the Islamic Court

### i. Judgment of Yusfi 'Uthman and Bili Arbi, case 09/1433-2012<sup>3355</sup>

999. On 27 August 2012, the Islamic Court issued a judgment in case 09/1433-2012 involving Yusfi 'Uthman and Bili Arbi concerning an attempted robbery.<sup>3356</sup> The judgment, signed by Houka Houka,<sup>3357</sup> sentenced the two individuals who were heard by the Islamic Court directly<sup>3358</sup> to imprisonment for 15 days 'because their

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<sup>3352</sup> Islamic Court judgment MLI-OTP-0001-7373 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2371, at 2372. *See also* similar document MLI-OTP-0055-0259 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2416. The Chamber notes that the content of MLI-OTP-0055-0259 differs slightly from MLI-OTP-0001-7373 but also reflects El-Khamis Bin-el-Sabt being sentenced to a *ta'zir* punishment of ten lashes and dismissal from his job as the warehouse guard for stealing mosquito nets. P-0150 testified that MLI-OTP-0055-0259 constitutes the judgment in the case of 'el-Khamis' and that the date of the judgment was 'Wednesday, 23<sup>rd</sup> of the fifth month of 2012' (P-0150: T-095, pp. 59-60). [REDACTED]. Based on P-0150's testimony and authentication of this document, and P-0150's basis of knowledge regarding the activities of the Islamic Court, the Chamber dismisses the Defence objection to MLI-OTP-0055-0259 on the basis that the document is not signed or stamped and does not have sufficient integrity to be relied upon as an accurate reflection of any verdict or allegations concerning a particular case and that P-0150 was unable to recall the details of the case itself (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes).

<sup>3353</sup> *See also* [Defence Final Brief](#), para. 372.

<sup>3354</sup> Islamic Court judgment MLI-OTP-0001-7373 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2371, at 2372.

<sup>3355</sup> The Chamber notes that different spellings of the victims' names appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Yusfi 'Uthman (a.k.a. Yousfi Ousmane) and Bili Arbi. Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals. For the sake of clarity, the Chamber uses the spellings which appear in the charges.

<sup>3356</sup> Islamic Court judgment MLI-OTP-0001-7482 (signed and stamped), translation MLI-OTP-0077-2251. *See also* different versions of the same document MLI-OTP-0053-0172 (signed and stamped); MLI-OTP-0053-0174 (signed and stamped), translation MLI-OTP-0077-2231; MLI-OTP-0002-0054 (signed and stamped), translation MLI-OTP-0078-0282; MLI-OTP-0068-4789 (unsigned and unstamped), translation MLI-OTP-0078-1778. P-0150 identified MLI-OTP-0068-4789 as a judgment of the Islamic Court (P-0150: T-098, p. 16) and MLI-OTP-0053-0174 as the stamped and signed version of it (P-0150: T-098, p. 20). P-0150 also identified the rug in the background of photograph MLI-OTP-0001-7482 as belonging to the Islamic Court (P-0150: T-098, p. 20). Noting the submission of the stamped and signed version of the judgment into the record, the Chamber dismisses the Defence objection to MLI-OTP-0068-4789 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes).

<sup>3357</sup> P-0150: T-098, p. 20, *referring to* MLI-OTP-0053-0174 (identifying the signature of Houka Houka). *See also* the Chamber's findings in section II.D above.

<sup>3358</sup> P-0150 testified in relation to the sentence '[h]aving examined the case of the two prisoners' and the reference to their arguments as being 'weak' and 'conflicting', that these arguments were heard by the Islamic Court directly (P-0150: T-111, p. 16, *referring to* MLI-OTP-0053-0174).

arguments were weak, conflicting and insufficient to dispel the suspicion'.<sup>3359</sup>

1000. The Islamic Police had arrested the individuals as they were destroying a house and gathering various items, and had sent a report to the Islamic Court.<sup>3360</sup> The individuals were sentenced as they were not able to defend themselves against the 'statement' from the Islamic Police, who had witnessed the case.<sup>3361</sup>

**ii. Judgment of Halimah Samak and Braym Mik, case 11/1433-2012<sup>3362</sup>**

1001. On 28 August 2012, a report was written on a case involving a matrimonial issue between Ablo Qarbaa/Abdallah Qarba and his wife Halimah Samak.<sup>3363</sup>

1002. Following this report, on the same day, the Islamic Court issued a judgment in case 11/1433-2012 against Halimah Samak and an individual named Braym

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<sup>3359</sup> Islamic Court judgment MLI-OTP-0001-7482, translation MLI-OTP-0077-2251, at 2252. P-0150 testified that the two defendants were sentenced to a *ta'zir* and not a *hadd* punishment (P-0150: T-098, p. 18, *referring to* MLI-OTP-0068-4789; T-111, p. 16).

<sup>3360</sup> P-0150: T-098, p. 18; T-111, pp. 16-17. P-0150 confirmed that the individuals were found with the stolen property (T-111, p. 17). The Chamber observes that P-0150 provided these details which are not found in the Islamic Court judgment (P-0150: T-111, p. 17) and accordingly notes that P-0150 testified on this matter on the basis of his knowledge of the case.

<sup>3361</sup> P-0150: T-098, p. 18; T-111, pp. 16-17. P-0150 testified that the case was 'clear-cut' and explained that, since the judges imposed a *ta'zir*, they could have relied on situational evidence as the basis for the suspicion, but the case of these two people went beyond that, notably because the Islamic Police arrested them and witnessed the conduct (P-0150: T-111, pp. 16-17).

<sup>3362</sup> The Chamber notes that different spellings of the victims' names appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Halimah Samak (a.k.a. Halima Samaké, Halimah Samaki and Halima Samak) and Braym Mik (a.k.a. Baryamik). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals. For the sake of clarity, the Chamber uses the spellings which appear in the charges.

<sup>3363</sup> Report MLI-OTP-0053-0114 (handwritten, unsigned, unstamped), translation MLI-OTP-0069-5682, at 5683. *See also* different versions of the same document MLI-OTP-0053-0112 (handwritten, unsigned, unstamped); MLI-OTP-0002-0042 (handwritten, unsigned, unstamped), translation MLI-OTP-0077-2831. P-0150 testified that MLI-OTP-0053-0114 was a report on a matrimonial issue (P-0150: T-098, pp. 20-21). P-0150 also testified that he did not recognise the handwriting on the document (P-0150: T-098, p. 21). The Chamber notes that the Prosecution alleges that Mr Al Hassan drafted and/or signed this report ([Prosecution Final Brief](#), para. 362). However, in the absence of any evidence on the matter, the Chamber considers that it cannot establish to the relevant standard that Mr Al Hassan wrote or signed this report.

Mik.<sup>3364</sup> The judgment, signed by Houka Houka,<sup>3365</sup> states that the case was ‘brought by Abdalla Qarb’ and that Halimah Samak had claimed that she had been divorced but that there was no evidence to support this claim. The Islamic Court sentenced Halimah Samak to 40 lashes for insubordination and for ‘associating with a marriageable man’,<sup>3366</sup> and Braym Mik to a *ta’zir* of one week imprisonment for having ‘accompanied a marriageable woman’.<sup>3367</sup>

### iii. Judgment of al-Hasan Bin Irzaq and Halimah Bint Sali, case 13/1433-2012<sup>3368</sup>

1003. On 26 August 2012, al-Hasan Bin Irzaq was detained.<sup>3369</sup>

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<sup>3364</sup> Islamic Court judgment MLI-OTP-0001-7480 (signed and stamped), translation, MLI-OTP-0077-2248. *See also* different versions of the same document MLI-OTP-0053-0130 (signed and stamped); MLI-OTP-0053-0132 (signed and stamped), translations MLI-OTP-0078-0298 and MLI-OTP-0069-5685; MLI-OTP-0002-0047 (signed and stamped), translation MLI-OTP-0077-2193; MLI-OTP-0068-4698 (unsigned and unstamped), translation MLI-OTP-0078-1698. P-0150 identified this document as a judgment of the Islamic Court relating to the matrimonial issue (P-0150: T-098, p. 21, *referring to* MLI-OTP-0068-4698). P-0150 stated that MLI-OTP-0053-0132 was a version of the judgment that contained the stamp of the Islamic Court with the signature of ‘Judge Houka Houka’ (P-0150: T-098, p. 23). P-0150 confirmed that the ‘tribunal’ was obliged to hear this case brought by Abdalla Qarb (P-0150: T-111, p. 32). Noting the submission of the stamped and signed version of the judgment, the Chamber dismisses the Defence objection to MLI-OTP-0068-4698 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). Further, noting P-0150’s basis of knowledge regarding the activities of the Islamic Court, the Chamber dismisses the Defence objection to MLI-OTP-0068-4698 that P-0150 did not possess any personal knowledge as concerns the circumstances of the case and reliability of this document (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes).

<sup>3365</sup> P-0150: T-098, p. 23, *referring to* MLI-OTP-0053-0132. *See also* the Chamber’s findings in section II.D above.

<sup>3366</sup> Islamic Court judgment MLI-OTP-0001-7480, translation, MLI-OTP-0077-2248, at 2249. *See also* P-0150: T-098, p. 21. P-0150 further testified that ‘associating’ was the lightest punishable form of sexual relationship and meant that there was no proven sexual intercourse between the two people (P-0150: T-098, p. 22). According to P-0150, the term covered situations where a man is with a woman in a location without another person present (P-0150: T-098, p. 22).

<sup>3367</sup> Islamic Court judgment MLI-OTP-0001-7480, translation, MLI-OTP-0077-2248, at 2249.

<sup>3368</sup> The Chamber notes that different spellings of the victims’ names appear in the [Confirmation Decision](#) and the relevant evidentiary documents: al-Hasan Bin Irzaq (a.k.a. el-Hassan Bin-Erzaq and Al-Hasan Agh Irza’) and Halimah Bint Sali (a.k.a. Halima Bint-Sali). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals. For the sake of clarity, the Chamber uses the spellings which appear in the charges.

<sup>3369</sup> List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063. The Chamber notes that List of prisoners MLI-OTP-0001-7361, at 0064 refers at number 2 to ‘Al-Hasan Agh Irza’’, with the date of imprisonment 26 August 2012. The Chamber also notes that P-0150 testified that the individual mentioned as number 2 on the list of prisoners MLI-OTP-0001-7361 was the same person as the one mentioned in the Islamic Court judgment MLI-OTP-0053-0270 (P-0150: T-097, pp. 10-11, 20). The Defence argues that this ‘unsigned, unstamped, and unauthenticated list of detainees’ cannot support this case nor can it be used as corroborative evidence ([Defence Final Brief](#), para. 317). The Chamber considers that, contrary to the Defence’s contention, these documents in their relevant parts refer to the same individual, noting the date of arrest, the name of the individual, and the fact that the Islamic Court judgment records that this individual was to remain in prison. P-0150 further testified that, on MLI-OTP-

1004. On 4 September 2012, the Islamic Court issued a judgment in case 13/1433-2012 involving al-Hasan Bin Irzaq and Halimah Bint Sali concerning extra-marital sexual intercourse.<sup>3370</sup> The judgment, signed by Houka Houka,<sup>3371</sup> states that the individuals, after being questioned, ‘voluntarily and wilfully confessed’ and, given their confession, the Islamic Court sentenced each of them to 100 lashes since neither of them was married when they committed the act. The judgment further states that the ‘banishment matter’ was subject of inquiry and consideration at the time, and ordered that the man was to remain in prison until this matter was decided upon.<sup>3372</sup>

#### iv. Judgment of Muhammad, case 15/1433-2012<sup>3373</sup>

1005. On 10 September 2012, a man, Muhammad, was detained.<sup>3374</sup>

1006. On the same day, the Islamic Court issued a judgment in case 15/1433-2012

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0001-7361, the ‘village of Kourimi’ in relation to ‘number 2, Al-Hasan Agh Irza’ likely referred to the village of Korioumé, which was by the river to the south of Timbuktu near Kabara (P-0150: T-097, pp. 10-11). Noting P-0150’s authentication of the list of prisoners MLI-OTP-0001-7361 and that the document was found by Harald Doornbos (P-0007) at the *Hôtel La Maison* (P-0007: T-019, p. 24), the Chamber is satisfied of the item’s authenticity (*see also* section II.D above).

<sup>3370</sup> Islamic Court judgment MLI-OTP-0001-7478 (signed and stamped), translation MLI-OTP-0077-2310, at 2311. *See also* different versions of the same document MLI-OTP-0053-0268 (signed and stamped); MLI-OTP-0053-0270 (signed and stamped), translation MLI-OTP-0078-0015; and MLI-OTP-0002-0071 (signed and stamped), translation MLI-OTP-0077-2465. P-0150 identified MLI-OTP-0053-0270 as a judgment of the Islamic Court relating to the case of ‘el-Hassan Bin-Erzaq’ (P-0150: T-097, pp. 20-21, *referring to* MLI-OTP-0053-0270). *See also* P-0150: T-097, p. 20, *referring to* MLI-OTP-0053-0270).

<sup>3371</sup> P-0150: T-097, pp. 20-21, *referring to* MLI-OTP-0053-0270 (identifying Houka Houka’s signature at the bottom of the page, above the term ‘Islamic Justice’). *See also* the Chamber’s findings in section II.D above.

<sup>3372</sup> Islamic Court judgment MLI-OTP-0001-7478 (signed and stamped), translation MLI-OTP-0077-2310, at 2311. P-0150 confirmed that the punishment in this case was postponed (P-0150: T-111, pp. 33-34, *referring to* MLI-OTP-0053-0270). P-0150 added that generally speaking, it was the issue of banishment that was being looked at because the Islamic Court was not sure about the meaning of banishment, *taqrib*, or how to explain that (P-0150: T-111, pp. 33-34, *referring to* MLI-OTP-0053-0270).

<sup>3373</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Muhammad (a.k.a. Muhammad Agh Intisbidar and Mohamed Ag Intsbidar). Notwithstanding the differences in spelling of the names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3374</sup> List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063. The Chamber notes that List of prisoners MLI-OTP-0001-7361 refers at number 15 to ‘Muhammad Agh Intisbidar’, with the date of imprisonment 10 September 2012. The Chamber also notes that P-0150 testified about Muhammad Agh Intisbidar being number 15 on the list of prisoners, that he ‘knew’ him, and that the individual mentioned on the list of prisoners was also the individual mentioned in the Islamic Court judgment MLI-OTP-0053-0276 (P-0150: T-097, pp. 12-13, *referring to* MLI-OTP-0001-7361; T-097, p. 14, *referring to* MLI-OTP-0053-0276). The Chamber considers that these documents in their relevant parts refer to the same individual, noting the date of arrest and the name of the individual.

involving the same individual concerning the possession of pieces of paper containing talismans and tables.<sup>3375</sup> The judgment, signed by Houka Houka,<sup>3376</sup> states that the individual appeared before the Islamic Court. The judgment provides that he was arrested in possession of these pieces of paper and claimed that he did not know their significance or the religious rule relating to possessing them. The Islamic Court sentenced the individual to 40 lashes and to be admonished and set free afterwards.<sup>3377</sup>

1007. The individual did not receive a death sentence for performing magic but instead received a *ta'zir* punishment of 40 lashes because the Islamic Court could not prove that he was a 'sorcerer'.<sup>3378</sup>

#### v. Judgment of Sha'ban Bin Sidi, case 16/1433-2012<sup>3379</sup>

1008. On 23 August 2012, Sha'ban Bin Sidi was detained.<sup>3380</sup>

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<sup>3375</sup> Islamic Court judgment MLI-OTP-0001-7476 (signed and stamped), translation MLI-OTP-0077-2438, at 2439. *See also* different versions of the same document MLI-OTP-0053-0274 (signed and stamped); MLI-OTP-0053-0276 (signed and stamped), translation MLI-OTP-0078-0017; MLI-OTP-0002-0072 (signed and stamped), translation MLI-OTP-0077-2341. *See also* MLI-OTP-0001-7404 (handwritten, unsigned and unstamped), translation MLI-OTP-0078-1609 which bears substantially the same text as MLI-OTP-0001-7476. P-0150 identified MLI-OTP-0053-0276 as a judgment of the Islamic Court (P-0150: T-097, p. 14). P-0150 confirmed that the document is dated 10 September 2012 (P-0150: T-097, p. 14). P-0150 further testified that he recalled the case of Muhammad Agh Intisbidar [REDACTED].

<sup>3376</sup> P-0150: T-097, p. 14, *referring to* MLI-OTP-0053-0276 (identifying the signature of Houka Houka on the judgment). *See also* the Chamber's findings in section II.D above.

<sup>3377</sup> Islamic Court judgment MLI-OTP-0001-7476 (signed and stamped), translation MLI-OTP-0077-2438, at 2439

<sup>3378</sup> P-0150: T-097, pp. 14-15, *referring to* Islamic Court judgment MLI-OTP-0053-0276, translation MLI-OTP-0078-0017. P-0150 testified that the proper punishment for a person convicted of performing magic is death (P-0150: T-097, p. 15).

<sup>3379</sup> The Chamber notes that different spellings of the victim's name appear in the [Confirmation Decision](#) and relevant evidentiary documents: Sha'ban Bin Sidi (a.k.a. Shabin Sidi). The Chamber notes that List of prisoners MLI-OTP-0001-7361 (translation MLI-OTP-0034-0063) refers at number 23 to 'Shabin Sidi', with the date of imprisonment 23 August 2012, whereas the relevant Islamic Court judgment refers to 'Sha'ban Bin Sidi'. Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3380</sup> List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063. The Chamber also notes that P-0150 testified that he could not confirm whether the name 'Sha'ban Bin Sidi' in this judgment was the same person as 'Shabin Sidi', number 23 on the list of prisoners, but that they are likely the same person using logic and noting the similarity between the names and the fact that some Arabic pronunciations are not present in other languages (P-0150: T-097, p. 35, *referring to* Islamic Court judgment MLI-OTP-0053-0150, translation MLI-OTP-0077-2223; List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063). The Chamber is satisfied that these documents in their relevant parts refer to the same individual, noting the similarity in the names as well as the facts described in the documents, notably the reason for the imprisonment and for the judgment (theft) and the fact that the

1009. On 11 September 2012, the Islamic Court issued a judgment in case 16/1433-2012 involving Sha'ban Bin Sidi concerning a theft.<sup>3381</sup> The judgment states that the individual appeared before the Islamic Court and that after an investigation into the case the Islamic Court sentenced him by way of *ta'zir* to imprisonment and reprimand for accompanying an individual accused of theft and helping him transport a stolen door on a motorbike. The judgment further states that the Islamic Court considered the two weeks that the individual had spent in prison an adequate punishment.<sup>3382</sup>

**vi. Judgment of Umar Anjami, case 18/1433-2012<sup>3383</sup>**

1010. On 23 August 2012, Umar Anjami was detained.<sup>3384</sup>

1011. On 18 September 2012, the Islamic Court issued a judgment in case 18/1433-2012 involving the same individual concerning the theft of a door from a deserted

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Islamic Court judgment states that the individual spent two weeks in prison, which corresponds approximately to the date of imprisonment mentioned on the list of prisoners MLI-OTP-0001-7361.

<sup>3381</sup> Islamic Court judgment MLI-OTP-0001-7475 (signed and stamped), translation MLI-OTP-0077-2245. *See also* different versions of the same document MLI-OTP-0053-0148 (signed and stamped); MLI-OTP-0053-0150 (signed and stamped), translation MLI-OTP-0077-2223; MLI-OTP-0002-0050 (signed and stamped), translation MLI-OTP-0078-0274. P-0150 identified document MLI-OTP-0053-0150 as a judgment of the Islamic Court relating to the case of Sha'ban Bin Sidi who was accused of theft or of helping people accused of theft (P-0150: T-097, pp. 34-35).

<sup>3382</sup> Islamic Court judgment MLI-OTP-0001-7475 (signed and stamped), translation MLI-OTP-0077-2245, at 2246.

<sup>3383</sup> The Chamber notes that different spellings of the victim's name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Umar Anjami (a.k.a. 'Umar Inji and Oumar Anjay). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3384</sup> List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063. The Chamber notes that List of prisoners MLI-OTP-0001-7361 refers at number 24 to 'Umar Inji', with the date of imprisonment 23 August 2012. The Chamber also notes that P-0150 testified that two documents shown to him were two versions of the judgment on the case of 'Oumar Anjay', who was also number 24 of the list of imprisoned persons and was accused of theft (P-0150: T-097, pp. 35-36, *referring to* Islamic Court judgment MLI-OTP-0053-0366 and MLI-OTP-0068-4705). The Chamber considers that these documents in their relevant parts refer to the same individual.

house.<sup>3385</sup> The judgment, signed by Houka Houka,<sup>3386</sup> states that the individual appeared before the Islamic Court and that when the investigation into his case was carried out there was insufficient evidence against him and he denied the theft. The judgment states that the statutory conditions for the *hadd* punishment of cutting of the hand<sup>3387</sup> had not been fulfilled and that it was established that the man was genuinely in need.<sup>3388</sup> According to P-0150, the Islamic Court's finding on the individual's need was indeed one of the reasons that rendered inapplicable the *hadd* punishment.<sup>3389</sup>

1012. The judgment also states that, given that the individual was accused of a major crime, the Islamic Court sentenced him to 27 days in prison by way of *ta'zir*,<sup>3390</sup> and that he was reprimanded, warned and given advice so as not to reoffend, and that he was subsequently released.<sup>3391</sup>

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<sup>3385</sup> Islamic Court judgment MLI-OTP-0001-7473 (signed and stamped), translation MLI-OTP-0078-0374, at 0375. *See also* different versions of the same document MLI-OTP-0053-0364 (signed and stamped); MLI-OTP-0053-0366 (signed and stamped), translation MLI-OTP-0078-0047; MLI-OTP-0002-0087 (signed and stamped), translation MLI-OTP-0078-1648; MLI-OTP-0068-4705 (unsigned and unstamped), translation MLI-OTP-0078-0248. P-0150 identified MLI-OTP-0053-0366 as the stamped version of a judgment of the Islamic Court (P-0150: T-098, p. 24). Concerning other versions of the document, P-0150 identified the right page of the image in MLI-OTP-0001-7473 as the same signed and stamped version of the judgment (P-0150: T-098, pp. 24-25), and MLI-OTP-0068-4705 (translation MLI-OTP-0078-0248) as the unstamped version of the same judgment (P-0150: T-098, p. 24, *referring to* MLI-OTP-0068-4705, translation MLI-OTP-0078-0248; T-097, pp. 35-36, *referring to* translation MLI-OTP-0078-0248). Noting the submission of the stamped and signed version of the judgment into the record, the Chamber dismisses the Defence objections to MLI-OTP-0068-4705 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). Further, noting P-0150's basis of knowledge regarding the activities of the Islamic Court, the Chamber dismisses the Defence objection to MLI-OTP-0068-4705 that P-0150 did not possess any personal knowledge as concerns the circumstances of the case and reliability of this document (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes).

<sup>3386</sup> P-0150: T-098, p. 24, *referring to* MLI-OTP-0053-0366 (identifying the signature of Houka Houka on this judgment). *See also* the Chamber's findings in section II.D above.

<sup>3387</sup> The Chamber notes that the Islamic Court judgment itself does not refer to the cutting of the hand as a '*hadd* punishment', but that this is clear from the testimony of P-0150 (P-0150: T-111, p. 17, *referring to* MLI-OTP-0068-4705).

<sup>3388</sup> Islamic Court judgment MLI-OTP-0001-7473 (signed and stamped), translation MLI-OTP-0078-0374, at 0375.

<sup>3389</sup> P-0150: T-111, p. 17, *referring to* MLI-OTP-0068-4705; T-097, p. 35.

<sup>3390</sup> Islamic Court judgment MLI-OTP-0001-7473 (signed and stamped), translation MLI-OTP-0078-0374, at 0375. P-0150 testified that, despite not being sentenced to a *hadd* punishment, the individual however received a prison sentence because it was sufficient to have witnesses prove that he stole or attempted to steal (P-0150: T-098, p. 24).

<sup>3391</sup> Islamic Court judgment MLI-OTP-0001-7473 (signed and stamped), translation MLI-OTP-0078-0374, at 0375; P-0150: T-097, p. 35.

**vii. Judgment of Infa Muhammad ‘Ali, case 19/1433-2012<sup>3392</sup>**

1013. On 17 September 2012, the Islamic Court issued a judgment in case 19/1433-2012 involving Infa Muhammad ‘Ali concerning the repayment of two million CFA riyals.<sup>3393</sup> The judgment states that this individual appeared before the Islamic Court. The judgment also states that the individual had failed to repay any of the money within the two months deadline that had been set for him and, therefore, the Islamic Court decided that he be imprisoned.<sup>3394</sup>

1014. On the same day, he was detained for ‘[p]rocrastinat[ing] paying back his debt’.<sup>3395</sup>

**viii. Judgment of Halle Bin Hanay, case 21/1433-2012<sup>3396</sup>**

1015. On 10 September 2012, Halle Bin Hanay was detained.<sup>3397</sup>

1016. On 24 September 2012, the Islamic Court issued a judgment in case 21/1433-

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<sup>3392</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and relevant evidentiary documents: Infa Muhammad ‘Ali (a.k.a. Infa Bin Muhammad ‘Ali and Infa Agh Sidi ‘Ali). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3393</sup> Islamic Court judgment MLI-OTP-0001-7472 (signed and stamped), translation MLI-OTP-0078-0372, at 0373. *See also* different versions of the same document MLI-OTP-0053-0358 (signed and stamped); MLI-OTP-0053-0360 (signed and stamped), translation MLI-OTP-0078-0045; MLI-OTP-0002-0086 (signed and stamped), translation MLI-OTP-0078-0242. P-0150 identified MLI-OTP-0053-0360 as a judgment of the Islamic Court relating to the case of Infa Bin Muhammad ‘Ali (P-0150: T-097, p. 36). *See also* P-0150: T-097, p. 36; [Defence Final Brief](#), para. 375.

<sup>3394</sup> Islamic Court judgment MLI-OTP-0001-7472 (signed and stamped), translation MLI-OTP-0078-0372, at 0373. The Chamber notes that the duration of the prison sentence is not indicated in the judgment. In that regard, P-0150 explained that people could be sent to prison until they or their relatives repaid a debt (P-0150: T-097, p. 36).

<sup>3395</sup> List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063, at 0064. The Chamber notes that List of prisoners MLI-OTP-0001-7361 (translation MLI-OTP-0034-0063, at 0064) refers at number 25 to ‘Infa Agh Sidi ‘Ali’, with the date of imprisonment 17 September 2012, whereas the relevant Islamic Court judgment refers to ‘Infa Bin Muhammad ‘Ali’. The Chamber is satisfied that these documents in their relevant parts refer to the same individual.

<sup>3396</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and relevant evidentiary documents: Halle Bin Hanay (a.k.a. Hla Agh Hannay). The Chamber notes that List of prisoners MLI-OTP-0001-7361 (translation MLI-OTP-0034-0063, at 0064) refers at number 16 to ‘Hla Agh Hannay’, with the date of imprisonment 10 September 2012, whereas the relevant Islamic Court judgment refers to ‘Halle Bin Hanay’. Notwithstanding the differences in spelling of the names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3397</sup> List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063, at 0064. The Chamber notes that this individual appears at number 16 on the list.



2012 involving the same individual concerning the practice of magic.<sup>3398</sup> The judgment, signed by Houka Houka,<sup>3399</sup> states that the individual was seized in possession of incriminating material and appeared before the Islamic Court, where he confessed that he practiced magic (love spells). The judgment further states that the Islamic Court asked the individual to repent before a gathering of his relatives and that, after he repented, the Islamic Court decided ‘to spare him from capital punishment’. The judgment provides that the individual was committed to prison for one week during which he had to study the book ‘*The Three Fundamental Principles*’.<sup>3400</sup>

#### ix. Judgment of Mahmud Bin al-Mustafa, case 28/1433-2012<sup>3401</sup>

1017. The Majority, Judge Akane dissenting,<sup>3402</sup> finds that on 13 October 2012, the Islamic Court issued a judgment in case 28/1433-2012 concerning a man, Mahmud Bin al-Mustafa, for theft.<sup>3403</sup> The judgment, signed by Houka

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<sup>3398</sup> Islamic Court judgment MLI-OTP-0001-7470 (signed and stamped), translation MLI-OTP-0078-0224, at 0025. *See also* different versions of the same document MLI-OTP-0053-0346 (signed and stamped), and MLI-OTP-0053-0348 (signed and stamped), translation MLI-OTP-0078-0041; MLI-OTP-0002-0084 (signed and stamped), translation MLI-OTP-0077-2472; MLI-OTP-0068-4708 (unsigned and unstamped), translation MLI-OTP-0078-1716. *See also* similar document MLI-OTP-0001-7394 (handwritten, unsigned and unstamped), translation MLI-OTP-0078-1607. P-0150 identified MLI-OTP-0053-0348 as the stamped and signed version of a judgment of the Islamic Court relating to the case of Halle Bin Hanay, who was accused of practising magic (P-0150: T-097, pp. 34, 60). Concerning other versions of the document, P-0150 identified MLI-OTP-0068-4708 as the typed version of the same judgment (P-0150: T-097, p. 60), MLI-OTP-0001-7470 as a photograph of the same judgment (P-0150: T-097, p. 61), and MLI-OTP-0001-7394 as a handwritten version of the judgment (P-0150: T-097, p. 60). Regarding the handwritten version, P-0150 testified that he did not recognise the handwriting and that the handwriting did not belong to just one person (P-0150: T-097, p. 60, *referring to* MLI-OTP-0001-7394). Noting the submission of the stamped and signed version of the judgment, the Chamber dismisses the Defence objection to MLI-OTP-0068-4708 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). Further, noting P-0150’s basis of knowledge regarding the activities of the Islamic Court, the Chamber dismisses the Defence objection to MLI-OTP-0068-4708 that P-0150 did not possess any personal knowledge as concerns the circumstances of the case and reliability of this document (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes).

<sup>3399</sup> P-0150: T-097, pp. 34, 60-61, *referring to* MLI-OTP-0053-0348 (identifying the signature of Houka Houka on this judgment). *See also* the Chamber’s findings in section II.D above.

<sup>3400</sup> Islamic Court judgment MLI-OTP-0001-7470 (signed and stamped), translation MLI-OTP-0078-0224, at 0025 (emphasis added in original).

<sup>3401</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Mahmud Bin al-Mustafa (a.k.a. Mahmoud Bin-el-Moustafa). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3402</sup> Judge Akane dissents on the basis that the only evidence on this case is the Islamic Court judgment.

<sup>3403</sup> Islamic Court judgment MLI-OTP-0001-7461 (signed and stamped), translation MLI-OTP-0077-2426, at 2427. *See also* different versions of the same document MLI-OTP-0053-0310 and MLI-OTP-0053-0312 (both signed and stamped), translation MLI-OTP-0078-0029; MLI-OTP-0002-0078 (signed

Houka,<sup>3404</sup> states that the individual confessed to committing theft and the Islamic Court sentenced him to the *ta'zir* penalty of 10 lashes and a fine of 50,000 CFA francs. The judgment provides that the man's associate, a 14 year-old boy,<sup>3405</sup> received a fine and the *ta'zir* was retracted because of his young age. The Islamic Court ordered that they were both to remain in prison until they paid the fines and then they would be released.<sup>3406</sup>

#### x. Judgment of Asya Bint 'Umar, case 29/1433-2012<sup>3407</sup>

1018. On 15 October 2012, the Islamic Court issued a judgment in case 29/1433-2012 sentencing Asya Bint 'Umar to the *ta'zir* of 60 lashes 'for mingling with men and

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and stamped), translation MLI-OTP-0078-0232; MLI-OTP-0068-4716 (unsigned and unstamped), translation MLI-OTP-0078-1730. P-0150 identified MLI-OTP-0068-4716 as the *Sharia* court of Timbuktu's judgment on Mahmoud Bin-el-Moustafa (P-0150: T-098, p. 29). P-0150 further identified MLI-OTP-0053-0312 as the stamped version of the judgment, signed by Houka Houka (P-0150: T-098, p. 29). Noting the submission of the stamped and signed version of the judgment into the record, the Chamber dismisses the Defence objection to MLI-OTP-0068-4716 (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes). Although P-0150 did not have specific knowledge of this case outside of what was written in the Islamic Court judgment, the Majority, Judge Akane dissenting, recalls its finding above that it considers the Islamic Court judgment itself sufficiently reliable to draw conclusions about what transpired in the case. Further, noting P-0150's basis of knowledge regarding the activities of the Islamic Court, the Chamber dismisses the Defence objection to MLI-OTP-0068-4716 that P-0150 did not possess any personal knowledge as concerns the circumstances of the case and reliability of this document (*see* ICC-01/12-01/18-1866-Conf-Anx5 and related annexes).

<sup>3404</sup> P-0150: T-098, p. 29, *referring to* MLI-OTP-0053-0312 (identifying this document as the stamped version of the judgment, signed by Houka Houka). *See also* the Chamber's findings in section II.D above.

<sup>3405</sup> P-0150 testified, in relation to the young age of the boy, that there was no specialised juvenile judge in the Islamic Court and the judge 'takes care of everything', issuing judgments involving the young, old, man and woman (P-0150: T-098, pp. 29-30). When asked why a child of 14 years would be imprisoned for an indefinite period in relation to a fine, P-0150 explained that in the Islamic viewpoint, children can be punished starting from the age of 10 (P-0150: T-098, pp. 29-30). P-0150 elaborated that children can be sentenced to a *ta'zir* and can be beaten; children can also be punished if they abstain from prayer (P-0150: T-098, pp. 29-30). P-0150 stated that in the case, the judge could punish the child and rely on Islamic concepts to reach such a conclusion (P-0150: T-098, pp. 29-30). P-0150 clarified that while Islamic jurisprudence states that a child is not fit to be judged until they reach the age of 18, this only applies to judgment on the day of resurrection, meaning that if a child under the age of 18 commits a 'wrong in life', he would not be judged on the day of resurrection (P-0150: T-098, pp. 29-30). However, P-0150 said that this does not spare a child under the age of 18 from other rules, if he destroys others' assets, or kills someone or sheds their blood, along with other criminal acts, then there are judgments that can be reached in this regard under *Sharia* (P-0150: T-098, pp. 29-30). Asked how a 14 year old imprisoned person could pay the required fine, P-0150 raised the male agnation principle, and explained that the determination of a fine did not necessarily mean that the accused would pay it, as his family, relatives or anyone else could volunteer to pay the fine on his behalf (P-0150: T-098, pp. 29-30).

<sup>3406</sup> Islamic Court judgment MLI-OTP-0001-7461 (signed and stamped), translation MLI-OTP-0077-2426, at 2427.

<sup>3407</sup> The Chamber notes that different spellings of the victim's name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Asya Bint 'Umar (a.k.a. Asya Bint-Oumar). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual and for the sake of clarity, uses the spelling which appears in the charges.

for her obscene language’.<sup>3408</sup> The judgment, signed by Houka Houka,<sup>3409</sup> states that the individual appeared before the Islamic Court and denied that she had done anything warranting the application of *hadd*.<sup>3410</sup>

**xi. Judgment of Muhammad Bin Musa, Muhammad Bin Ban and Qurba Mika, case 33/1433-2012<sup>3411</sup>**

1019. On 9 September 2012, Muhammad Bin Musa, Muhammad Bin Ban and Qurba Mika were detained.<sup>3412</sup>

1020. On 17 October 2012, the Islamic Court issued a judgment in case 33/1433-2012 concerning these three individuals for embezzling fuel from the company Energie.<sup>3413</sup> The judgment provides that the individuals were caught ‘red-handed’ and arrested, and they confessed to participating in this operation. The judgment records that the Islamic Court carried out an investigation into the case and

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<sup>3408</sup> Islamic Court judgment MLI-OTP-0001-7460 (signed and stamped), translation MLI-OTP-0078-0221, at 0222. P-0150 identified MLI-OTP-0001-7460 as the Islamic Court of Timbuktu’s judgment in the case of a woman called Asya Bint-Oumar (P-0150: T-102, p. 16). P-0626 also identified MLI-OTP-0001-7460 as bearing the stamp of the Islamic Court and the signature of Houka Houka (P-0626: T-142, pp. 62-63). P-0150 testified that he did not know exactly what words the woman used when speaking to the soldiers who arrested her, but the reference to obscene language is to the exchange she had with the soldiers who arrested her (P-0150: T-102, p. 16). The Chamber observes that these details provided by P-0150 are not found in the Islamic Court judgment and accordingly notes that P-0150 testified on this matter on the basis of his knowledge of the case.

<sup>3409</sup> P-0626: T-142, pp. 62-63, *referring to* MLI-OTP-0001-7460 (identifying this document as bearing the stamp of the Islamic Court and the signature of Houka Houka). *See also* the Chamber’s findings in section II.D above.

<sup>3410</sup> Islamic Court judgment MLI-OTP-0001-7460 (signed and stamped), translation MLI-OTP-0078-0221, at 0222.

<sup>3411</sup> The Chamber notes that different spellings of the victims’ names appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Muhammad Bin Musa (a.k.a. Mohamed Bin-Moussa and Mam Muhammad), Muhammad Bin Ban (a.k.a. Mohamed Bin-Ban and Muhammad Bab) and Qurba Mika (a.k.a. Qarba Maika and Qirba Miqa). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals and for the sake of clarity, uses the spelling which appears in the charges.

<sup>3412</sup> List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063. The Chamber notes that List of prisoners MLI-OTP-0001-7361 (translation MLI-OTP-0034-0063, at 0064) refers at number 5 to ‘Mam Muhammad’, at number 6 to ‘Muhammad Bab’ and at number 7 to ‘Qirba Miqa’, with the date of imprisonment 9 September 2012, whereas the relevant Islamic Court judgment refers to ‘Mohamed Bin-Moussa’, ‘Mohamed Bin-Ban’ and ‘Qarba Maika’. The Chamber also notes that P-0150 testified that the individuals mentioned in the Islamic Court judgment MLI-OTP-0053-0288 were also number 5, 6, and 7 on the List of prisoners MLI-OTP-0001-7361, translation MLI-OTP-0034-0063 (P-0150: T-097, pp. 10, 21). The Chamber is satisfied that these documents in their relevant parts refer to the same individuals.

<sup>3413</sup> Islamic Court judgment MLI-OTP-0001-7456 (signed and stamped), translation MLI-OTP-0077-2307, at 2308. *See also* different versions of the same document MLI-OTP-0053-0286 and MLI-OTP-0053-0288 (both signed and stamped), translation MLI-OTP-0078-0021; MLI-OTP-0002-0074 (signed and stamped), translation MLI-OTP-0077-2467. P-0150 identified MLI-OTP-0053-0288 as the *Sharia* court’s judgment on three people who were accused of embezzling fuel from the company energy in Timbuktu (P-0150: T-097, p. 21).

sentenced each individual to pay ‘100,000 francs (twenty thousand)’.<sup>3414</sup> The Islamic Court ordered that they were to remain in prison until they paid the fines. The judgment provides that the Islamic Court further sentenced the guard Muhammad Bin Musa to 20 lashes.<sup>3415</sup>

### **xii. Judgment of Boune Ould Hassan, case 44/1433-2012<sup>3416</sup>**

1021. The Majority, Judge Akane dissenting,<sup>3417</sup> finds that on 19 November 2012, the Islamic Court issued a judgment in case 44/1433-2012 concerning a man, Boune Ould Hassan, for accidentally firing a shot at another man, scrapping some skin off his testicles and penis.<sup>3418</sup> The judgment, provides that the two men appeared before the Islamic Court accompanied by their fathers. The judgment also states that the Islamic Court took into account the attestation of a doctor who treated the wounded man that he had fully recovered.<sup>3419</sup> As the two sides failed to achieve conciliation, the Islamic Court sentenced Boune Ould Hassan to 20 days imprisonment for playing with a weapon while aiming it at another man, as well as to pay one fifth of the established ‘blood money’, being a camel or its equivalent value,<sup>3420</sup> after deducting the money for the medicine which the perpetrator’s guardian paid.<sup>3421</sup>

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<sup>3414</sup> The Chamber notes that there is unclarity as to the exact amount of the fine but finds that this detail is not material in the context.

<sup>3415</sup> Islamic Court judgment MLI-OTP-0001-7456 (signed and stamped), translation MLI-OTP-0077-2307, at 2308.

<sup>3416</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Boune Ould Hassan (a.k.a. Boun Ould-Hassan). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual and for the sake of clarity, uses the spelling which appears in the charges.

<sup>3417</sup> **Judge Akane** dissents on the basis that the only evidence on this case is the Islamic Court judgment.

<sup>3418</sup> Islamic Court judgment MLI-OTP-0001-7437 (signed and stamped), translation MLI-OTP-0078-0212, at 0214. *See also* different version of the same document MLI-OTP-0001-7436, translation MLI-OTP-0078-1629, at 1630. Although no witness with specific knowledge of this case testified about it, **the Majority**, Judge Akane dissenting, recalls its finding above that it considers the Islamic Court judgment itself sufficiently reliable to draw conclusions about the case.

<sup>3419</sup> Islamic Court judgment MLI-OTP-0001-7437, translation MLI-OTP-0078-0212, at 0214. The judgment records that the doctor attested that the man had fully recovered and said that it was unlikely there had been damage to the male organs preventing the man’s future ability to procreate (Islamic Court judgment MLI-OTP-0001-7437, translation MLI-OTP-0078-0212, at 0214).

<sup>3420</sup> Islamic Court judgment MLI-OTP-0001-7437, translation MLI-OTP-0078-0212, at 0214.

<sup>3421</sup> Islamic Court judgment MLI-OTP-0001-7437, translation MLI-OTP-0078-0212, at 0214.

**xiii. Judgment of Moukhtar Ould-M'barakou or Moukhtar Ould-Ambarkoua, case 46/1433-2012<sup>3422</sup>**

1022. On an unknown date, an Islamic Police report was written on a complaint lodged against a man, Moukhtar Ould-M'barakou, who was accused of and confessed to selling items while guarding another man's house.<sup>3423</sup> The report was formally addressed to and received by the Islamic Court.<sup>3424</sup>

1023. Following this report, on 20 November 2012, the Islamic Court issued a judgment in case 46/1433-2012 concerning the same individual, who had been entrusted

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<sup>3422</sup> The Prosecution submits that, while the [Confirmation Decision](#) names the victim in this case as Ahmad Walad Muhammad, the victim (defendant) in this case was Moukhtar Ould-Ambarkoua ([Prosecution Final Brief](#), footnote 1446, referring to ICC-01/12-01/18-568-Conf, paras 6-9). On this issue, the Chamber recalls the parties and participants' submissions with regard to the name of the individual sentenced in case 46/1433-2012 and its finding that these issues may be raised again and would be adjudicated during the course of the trial, in light of the evidence submitted before it (ICC-01/12-01/18-923, paras 17-20). In this context, the Chamber notes that the name mentioned in the [Confirmation Decision](#) appears to be based on a draft translation of the relevant Islamic Court judgment which was not submitted into evidence (MLI-OTP-0034-0128), and which the Prosecution submits wrongly stated that the defendant was named Ahmad Walad Muhammad (ICC-01/12-01/18-568-Conf, para. 8). Having considered the documents submitted into evidence before it, *i.e.* the final translations of the Islamic Police report and the Islamic Court judgment in this case, the Chamber notes that the name of the defendant in this case is Moukhtar Ould-M'barakou or Moukhtar Ould-Ambarkoua (*see* Islamic Police report MLI-OTP-0001-7554, translation MLI-OTP-0052-0107 and Islamic Court judgment MLI-OTP-0001-7434, translation MLI-OTP-0078-1626). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual. The Chamber notes that the Defence initially submitted that any correction to the name of an alleged victim contained within the confirmed charges is *ultra vires*, not permitted by the Court's legal regime and constitutes an 'impermissible blurring of the distinction' between facts and circumstances of the case on one side and evidence on the other (ICC-01/12-01/18-882-Conf, paras 15-16, 18-22). The Chamber however does not agree with the Defence arguments that correcting the name of the alleged victim, which appears to be based on an error made in the draft translation of the relevant Islamic Court judgment, would amount to amending the facts and circumstances of the case. Contrary to the Defence contention, the Chamber considers that the facts and circumstances relevant to this incident remain the same ([Confirmation Decision](#), paras 457-458). Whether there is a confusion on the names of the defendant and the plaintiff in the [Confirmation Decision](#) because of the use of a draft translation is, in the context of this case, mainly an evidentiary issue. In light of the aforementioned elements, the Chamber finds that the name of the alleged victim sentenced by the Islamic Court in case 46/1433-2012 is Moukhtar Ould-M'barakou or Moukhtar Ould-Ambarkoua.

<sup>3423</sup> Islamic Police report MLI-OTP-0001-7554 (handwritten, signed and stamped), translation MLI-OTP-0052-0107. The Chamber notes the Prosecution's allegation that Mr Al Hassan authored and signed this report ([Prosecution Final Brief](#), para. 351). However, noting that P-0620 and P-0621 concluded in their report that they could not establish whether or not the signature on the report may have been drawn by Mr Al Hassan (P-0620 and P-0621's report MLI-OTP-0064-0175, at 0302), and in the absence of any other evidence on the matter, the Chamber considers that it cannot establish to the relevant standard that Mr Al Hassan wrote and signed this report.

<sup>3424</sup> MLI-OTP-0001-7555 (left hand side), translation MLI-OTP-0077-2798. The Chamber notes that this document appears to be the other side of MLI-OTP-0001-7554. *See similarly* P-0150: T-098, p. 27 (testifying that the notation '[t]o the Islamic Court' on the left hand side of MLI-OTP-0001-7560 means that the report MLI-OTP-0001-7561 is addressed to the Islamic Court). The Chamber infers that Islamic Police report MLI-OTP-0001-7554 was received by the Islamic Court, on the basis that it was addressed to the Islamic Court and additionally that it was found by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24).

with another man's house and sold a solar power system and two batteries from the house without the owner's consent, to which he confessed.<sup>3425</sup> The judgment, signed by Houka Houka,<sup>3426</sup> provides that Moukhtar Ould-M'barakou appeared before the Islamic Court, which ordered him to return the power system and the two batteries or to compensate the owner for the two batteries, and further sentenced him to one week imprisonment as 'punishment for his betrayal'.<sup>3427</sup>

**xiv. Judgment of Ali al-Haji and 'Ali Shayban, case 60/1433-2012<sup>3428</sup>**

1024. The Majority, Judge Akane dissenting,<sup>3429</sup> finds that on 25 December 2012, the Islamic Court issued a judgment in case 60/1433-2012 concerning two individuals, Ali al-Haji and 'Ali Shayban, who were arrested for collaborating to turn another man's wife against him.<sup>3430</sup> The judgment, signed by Houka Houka,<sup>3431</sup> provides that the first man was accused of setting up a rendezvous with the woman, as he was having an affair with her based on her confession, and the second was accused of taking the woman to the first man for the rendezvous. The judgment records that the men appeared before the Islamic Court. As there was conclusive evidence against them, including their own confessions to many

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<sup>3425</sup> Islamic Court judgment MLI-OTP-0001-7434 (signed and stamped), translation MLI-OTP-0078-1626. *See also* different version of the same document MLI-OTP-0001-7433, translation MLI-OTP-0078-0369. P-0150 identified MLI-OTP-0001-7437 as the '*Sharia* court in Timbuktu's judgment', signed by Houka Houka, in the case of someone who was accused of theft (P-0150: T-102, pp. 47-48).

<sup>3426</sup> P-0150: T-102, pp. 47-48, *referring to* MLI-OTP-0001-7437 (identifying the document as the '*Sharia* court in Timbuktu's judgment', signed by Houka Houka, in the case of someone who was accused of theft). *See also* the Chamber's findings in section II.D above.

<sup>3427</sup> Islamic Court judgment MLI-OTP-0001-7434 (signed and stamped), translation MLI-OTP-0078-1626, at 1628.

<sup>3428</sup> The Chamber notes that different spellings of the victims' names appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Ali al-Haji (a.k.a. Alli el-Haji) and 'Ali Shayban (a.k.a. Ali Shayban). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals and for the sake of clarity, uses the spelling which appears in the charges.

<sup>3429</sup> **Judge Akane** dissents on the basis that the only evidence on this case is the Islamic Court judgment.

<sup>3430</sup> Islamic Court judgment MLI-OTP-0001-7419, translation MLI-OTP-0077-2395, at 2396. P-0150 identified MLI-OTP-0001-7419 as the Islamic Court judgment in the case of Alli Bin el-Haji and his accomplice, who were arrested for carrying out *takhib*, attempting to seduce a married woman (P-0150: T-102, pp. 17-18). P-0150 testified, on the basis of the Islamic Court judgment, that the accused was sentenced to 40 lashes and a fine of 75,000 CFA, while his accomplice, who aided and abetted him, was sentenced to 30 lashes and a fine of 50,000 CFA francs (P-0150: T-102, pp. 17-18). Although P-0150 did not have specific knowledge of this case outside of what was written in the Islamic Court judgment, **the Majority**, Judge Akane dissenting, recalls its finding above that it considers the Islamic Court judgment itself sufficiently reliable to draw conclusions about the case.

<sup>3431</sup> P-0150: T-102, pp. 17-18, *referring to* MLI-OTP-0001-7419 (identifying the signature of Houka Houka on the document). *See also* the Chamber's findings in section II.D above.

of the facts, the judgment provides that the Islamic Court sentenced the first man to 40 lashes and a fine (75 000 CFA francs) by way of *ta'zir* and the second man to 30 lashes and a fine (50 000 CFA francs) by way of *ta'zir*.<sup>3432</sup>

**xv. Judgment of ‘Abdullah Kuni, case 61/1433-2012**<sup>3433</sup>

1025. The Majority, Judge Akane dissenting,<sup>3434</sup> finds that on 25 December 2012, the Islamic Court issued a judgment in case 61/1433-2012 concerning a man, ‘Abdullah Kuni, for practising magic and occultism.<sup>3435</sup> The judgment provides that the man was found with paper, notebooks and a book related to magic and occultism, which he admitted belonged to him. The judgment also records that the man appeared before the Islamic Court and that, after investigation, he was found to be completely unaware of what of the items constituted ‘infidelity’ and what did not. After examining the content of the books, the Islamic Court sentenced him to the *ta'zir* of 40 lashes. He was also given advice, requested to repent before the Islamic Court, and made to pledge not to read these books or similar books again.<sup>3436</sup>

**xvi. Judgment of Abou-Bakr Soumboulou**<sup>3437</sup>

1026. The Majority, Judge Akane dissenting,<sup>3438</sup> finds that after a ‘long period’ of

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<sup>3432</sup> Islamic Court judgment MLI-OTP-0001-7419, translation MLI-OTP-0077-2395, at 2396.

<sup>3433</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: ‘Abdullah Kuni (a.k.a. Abdalla Kouni). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual and for the sake of clarity, uses the spelling which appears in the charges.

<sup>3434</sup> **Judge Akane** dissents on the basis that the only evidence on this case is the Islamic Court judgment.

<sup>3435</sup> Islamic Court judgment MLI-OTP-0001-7419, translation MLI-OTP-0077-2395, at 2397. *See also* different versions of the same document MLI-OTP-0001-7418, translation MLI-OTP-0078-1611. Although no witness with specific knowledge of this case testified about it, **the Majority**, Judge Akane dissenting, recalls its finding above that it considers the Islamic Court judgment itself sufficiently reliable to draw conclusions about the case.

<sup>3436</sup> Islamic Court judgment MLI-OTP-0001-7419, translation MLI-OTP-0077-2395, at 2397. The judgment also records that the Islamic Court advised him to seek sound knowledge and to be guided by the scholars specialised in the Prophet’s tradition and to avoid heretics (Islamic Court judgment MLI-OTP-0001-7419, translation MLI-OTP-0077-2395, at 2397).

<sup>3437</sup> The Chamber notes that different spellings of the victim’s name appear in the [Confirmation Decision](#) and the relevant evidentiary documents: Abou-Bakr Soumboulou (a.k.a. Bou-Bakr Soumeylou). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individual and for the sake of clarity, uses the spelling which appears in the charges.

<sup>3438</sup> **Judge Akane** dissents on the basis that the only evidence on this case is the Islamic Court judgment.

detention,<sup>3439</sup> the Islamic Court issued a judgment bearing the date 23 May 2012 concerning a man, Abou-Bakr Soumboulou, for burgling a house.<sup>3440</sup> The judgment provides that the man denied the burglary and that there was no evidence of the act of burglary, despite showing that he was in the burgled house. The judgment provides that the Islamic Court sentenced him to the *ta'zir* of having his head shaved and painted with degrading material such as tar, but decided that the sentence should not be carried out because he remained in prison pending investigation for a long period of time.<sup>3441</sup>

### xvii. Judgment of Dawoud Oulale

1027. The Majority, Judge Akane dissenting,<sup>3442</sup> finds that after a 'long period' of detention,<sup>3443</sup> the Islamic Court issued a judgment bearing the date 23 May 2012 concerning a man, Dawoud Oulale, for burgling a house.<sup>3444</sup> The judgment provides that the man admitted to the burglary, emphasising that he was driven by need. The judgment provides that the Islamic Court found that the burglary took place 'at a time when no just ruler was in power', and sentenced the individual to the *ta'zir* of 10 lashes which was not to be carried out because he had remained in prison pending investigation for a long period of time.<sup>3445</sup>

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<sup>3439</sup> Islamic Court judgment MLI-OTP-0001-7373 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2371, at 2372.

<sup>3440</sup> Islamic Court judgment MLI-OTP-0001-7373 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2371, at 2372. Although no witness with specific knowledge of this case testified about it, **the Majority**, Judge Akane dissenting, recalls its finding above that it considers the Islamic Court judgment itself sufficiently reliable to draw conclusions about the case.

<sup>3441</sup> Islamic Court judgment MLI-OTP-0001-7373 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2371, at 2372.

<sup>3442</sup> **Judge Akane** dissents on the basis that the only evidence on this case is the Islamic Court judgment.

<sup>3443</sup> Islamic Court judgment MLI-OTP-0001-7373 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2371, at 2372.

<sup>3444</sup> Islamic Court judgment MLI-OTP-0001-7373 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2371, at 2372. Although no witness with specific knowledge of this case testified about it, **the Majority**, Judge Akane dissenting, recalls its finding above that it considers the Islamic Court judgment itself sufficiently reliable to draw conclusions about the case.

<sup>3445</sup> Islamic Court judgment MLI-OTP-0001-7373 (handwritten, unsigned and unstamped), translation MLI-OTP-0077-2371, at 2372.



**xviii. Judgment of Mohamed Ben el-Gaw and el-Goumaa<sup>3446</sup>**

1028. Between late May 2012 and early June 2012,<sup>3447</sup> an Islamic Police report was written concerning two men, Mohamed Ben el-Gaw and el-Goumaa, who were arrested while carrying a window and confessed to stealing it.<sup>3448</sup> The report was received by the Islamic Court.<sup>3449</sup>

1029. Following this report, the Islamic Court issued a judgment concerning the same two men, who admitted to having stolen the old window of a house that had been rented to the governor.<sup>3450</sup> The judgment states that the conditions for the *hadd* were not met since the relevant threshold for value had not been reached and the stolen object was not in a closed and safe place. The judgment provides that the judge sentenced them to a discretionary *ta'zir* of 25 lashes each, as well as a moral punishment of making them carry the stolen window among the population.<sup>3451</sup>

**3. The factual findings concerning the demolition of the mausoleums**

1030. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses which, subject to discrete aspects discussed

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<sup>3446</sup> The Chamber notes that different spellings of the victims' names appear in the [Confirmation Decision](#) and relevant evidentiary documents: Mohamed Ben el-Gaw (a.k.a. Mohamed el-Jaou and Mohamed ben el-Gaw) and el-Goumaa (a.k.a. El-Joumaat el-Moustafa and el-Joumaa). Notwithstanding the differences in spelling of the various names, the Chamber is satisfied on the basis of the facts described in the documents that the names mentioned refer to the same individuals. For the sake of clarity, the Chamber uses the spelling which appears in the charges.

<sup>3447</sup> The Chamber notes that the handwritten judgment in this case is found in the middle of a notebook, between cases decided on 23 May 2012 (MLI-OTP-0001-7373 (right hand side), translation MLI-OTP-0077-2371, at 2372) and another case that was decided on 11 June 2012 (MLI-OTP-0001-7377 (left hand side), translation MLI-OTP-0077-2773, at 2274). It therefore infers from this that the Islamic Police report was written between late May 2012 and early June 2012.

<sup>3448</sup> Islamic Police report MLI-OTP-0001-7525, translation MLI-OTP-0077-2793, at 2794. The Chamber notes the Prosecution's allegation that Mr Al Hassan authored and signed this report ([Prosecution Final Brief](#), para. 323). However, noting that P-0620 and P-0621 excluded the examination of the signature on this document because the quality of the visual was insufficient to carry out an examination or because of a duplicate image (P-0620 and P-0621's report MLI-OTP-0064-0175, at 0302), and in the absence of any other evidence on the matter, the Chamber considers that it cannot establish to the relevant standard that Mr Al Hassan wrote and signed this report. *See also* MLI-OTP-0001-7375 (handwritten, undated and not signed or stamped), translation MLI-OTP-0078-5994, purportedly a statement from Mohamed Ben el-Gaw noting that Adama carried out the arrest.

<sup>3449</sup> The Chamber infers that this report was received by the Islamic Court, noting that it was found by Harald Doornbos (P-0007) at the seat of the Islamic Court, namely the *Hôtel La Maison* (P-0007: T-019, p. 24).

<sup>3450</sup> Islamic Court judgment MLI-OTP-0001-7376 (right hand side) (handwritten, unsigned and unstamped), translation MLI-OTP-0078-5997.

<sup>3451</sup> Islamic Court judgment MLI-OTP-0001-7376 (right hand side) (handwritten, unsigned and unstamped), translation MLI-OTP-0078-5997, at 5998.

below, it finds particularly reliable: P-0150,<sup>3452</sup> a member of Ansar Dine/AQIM who was involved in the planning and execution of the demolition of the monuments; P-0065,<sup>3453</sup> who was present during the demolition of the monuments; P-0125,<sup>3454</sup> an inhabitant of Timbuktu who witnessed the demolition

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<sup>3452</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (*see* section II.B.2.a)iii above).

<sup>3453</sup> The Chamber refers to its findings on the credibility and reliability of P-0065's evidence (*see* section II.B.2.a)i above).

<sup>3454</sup> P-0125 (*see* P-0125's statement MLI-OTP-0023-0004-R03 introduced through Rule 68(2)(c) of the Rules), a Muslim man belonging to the [REDACTED], who speaks Arabic, Tuareg, Songhai, Peul and Bambara, was born in Timbuktu and lived there while Ansar Dine/AQIM were in the city (P-0125's statement MLI-OTP-0023-0004-R03, at 0008, paras 16-17). [REDACTED] (P-0125's statement MLI-OTP-0023-0004-R03, at 0008, paras 16-17). The witness mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM. At the outset, the Chamber notes that it takes into account the absence of cross-examination by the Defence in its assessment of the probative value and weight to be accorded to P-0125's testimony. The Chamber observes that the witness provided a significant level of detail about the events he witnessed and the effect of the 'occupation' by Ansar Dine/AQIM on the population of Timbuktu. The Chamber notes that P-0125 stated that he stood ready to be called as a witness before the Court so as to help with the determination of the truth of what happened in Mali, and that he considered it his moral obligation to tell the truth (P-0125's statement MLI-OTP-0023-0004-R03, at 0006, para. 7). The Chamber observes that P-0125 was generally very specific about his basis of knowledge, distinguishing between what he himself observed and what he was told by other people (*see e.g.* P-0125's statement MLI-OTP-0023-0004-R03, at 0011, paras 31-32). The witness contextualised his statements and provided many details in relation to the meetings he personally attended and the events he witnessed (*see e.g.* P-0125's statement MLI-OTP-0023-0004-R03, at 0012, paras 34, 36, 0018, para. 63). However, the Chamber observes that, as a local who was not close to the armed groups, P-0125 had a poor knowledge of the armed groups and their leaders. In this regard, the Chamber particularly notes P-0125's statement that no one in Timbuktu could tell the difference between the members of Ansar Dine and AQIM and that, to him, all the armed groups involved in the Northern Mali crisis were the 'MUJAO' and they were all the same (P-0125's statement MLI-OTP-0023-0004-R03, at 0008, para. 18, 0010, para. 28). The Chamber further notes that P-0125 clarified that when he talked about the 'MUJAO', he referred to all the armed groups involved in the crisis of Northern Mali, and did not distinguish between the armed groups present in Timbuktu in 2012-2013 (P-0125's statement MLI-OTP-0023-0004-R03, at 0008, para. 19). The Chamber has therefore understood the references to the 'MUJAO' in P-0125's statement to encompass all the armed groups present in Timbuktu generally during that period. The Chamber further observes that, for the same reasons, P-0125 did not demonstrate a clear understanding of the internal structures of the armed groups and the institutions they created, notably the Islamic Police, which seems to be referred to by the witness as the '*Gendarmerie*' (*see e.g.* P-0125's statement MLI-OTP-0023-0004-R03, at 0015, paras 51-53, 0029, para. 121), and the *Hesbah*, often designated by the witness as the 'Islamic police' (*see e.g.* P-0125's statement MLI-OTP-0023-0004-R03, at 0014-0015, paras 47-50, 0044, para. 174). The Chamber also notes that P-0125 himself acknowledged that he could not distinguish between members of the Islamic Police and the *Hesbah* (P-0125's statement MLI-OTP-0023-0004-R03, at 0015, para. 51). Although creating some confusion at times, the Chamber finds that this does not affect the general reliability of P-0125's statement when considering his evidence in context of other evidence on the record. In any event, the Chamber considers that the references the witness makes to the different institutions created by Ansar Dine/AQIM must be assessed with caution. The Chamber further notes that the witness provides some evidence that goes to proof of the accused's acts and conduct that, as noted above, could not be challenged in court by the Defence. The Chamber takes this into account on a case-by-case basis where appropriate. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0125 to be a generally credible and reliable witness, subject to the caveats mentioned above. The Chamber notes that this is a general assessment of the witness's testimony and reiterates that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

of some of the monuments and the immediate aftermath thereof; Éric Baccard (P-0055) and P-0057,<sup>3455</sup> who conducted a technical reconnaissance mission in Timbuktu to study the damage sustained by some monuments; and P-0114,<sup>3456</sup> who provided historical and cultural context in relation to the monuments. The Chamber also relies on Mr Al Hassan's own statements, which it finds generally credible and reliable.<sup>3457</sup>

1031. The Chamber also relies on the evidence of the following experts, which it finds generally reliable, as well as on video evidence of the demolition of the monuments:<sup>3458</sup> Lars Bromley (P-0064),<sup>3459</sup> a satellite imagery and geospatial

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<sup>3455</sup> The Chamber refers to its findings on the credibility and reliability of Eric Baccard's and P-0057's evidence (*see* footnotes 745-746 above). P-0057 carried out with Eric Baccard and P-0963 a technical reconnaissance mission for the Prosecution in Timbuktu in June 2013 with a view to studying the damage that occurred to some monuments and examining other sites, including two mosques and six mausoleums (*see* P-0055 and P-0057's report MLI-OTP-0029-1138; P-0057: T-021, pp. 47, 50). P-0057 and Eric Baccard notably took photographs at different stages of the site visits and seized some objects (a negative, found near the Arsène Klobb museum; a metallic tip or chisel found near the Alpha Moya mausoleum; and a metal cylinder found near the northern wall of the Alpha Moya mausoleum). The Chamber notes that in their report Eric Baccard and P-0057 indicate that each site was subjected to technical findings, but specify that these are not to be considered expert reports (P-0055 and P-0057's report MLI-OTP-0029-1138, at 1146).

<sup>3456</sup> The Chamber refers to its findings on the credibility and reliability of P-0114's evidence (*see* footnote 892 above). Regarding the probative value of photographs commented on by P-0114 in his statement, *inter alia*, MLI-OTP-0009-1476, MLI-OTP-0009-1478, MLI-OTP-0009-1483, MLI-OTP-0009-1494, MLI-OTP-0009-1495, MLI-OTP-0009-1498, MLI-OTP-0009-1508, MLI-OTP-0009-1511, MLI-OTP-0009-1522 and MLI-OTP-0009-1523, noting that P-0114 identified the mausoleums from the photographs (P-0114's statement MLI-OTP-0023-0344-R02, at 0355-0363), and that P-0431 confirmed that he provided these photographs to the Prosecution, that they relate to Timbuktu's heritage sites generally speaking, and that he recognised many of them that were taken [REDACTED] (P-0431: T-062, pp. 36-39), the Chamber considers that these photographs are reliable to the extent that they provide a forum for the identification of the monuments prior to their demolition, and for the provision of further context and information in relation thereto.

<sup>3457</sup> The Chamber refers to its findings on the credibility and reliability of Mr Al Hassan's statements (*see* section II.C above).

<sup>3458</sup> The Chamber notes that not all videos were shown to or authenticated [REDACTED] during the proceedings ([REDACTED]). However, the Chamber also notes: (i) the evidence of P-0150, [REDACTED] – identified the locations at which some of the videos were filmed; (ii) the geolocation analysis of expert P-0193, who independently identified the likely locations at which the videos were filmed; (iii) the metadata analysis of expert P-0075, who provided an indication of, *inter alia*, the 'File modification date/time' of the videos; and (iv) other authenticated videos depicting similar scenes. Taking into account this evidence together, the Chamber finds the following videos to be reliable and dismisses the Defence's objections challenging the authenticity and integrity of these videos. Regarding the Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit and Sheikh Mohamed Mahmoud Al Arawani mausoleums: for video MLI-OTP-0018-0356, *see* P-0150: T-103, pp. 34-35; P-0065: T-043, pp. 26-27; P-0193's report MLI-OTP-0030-0629, at 0668-0703; P-0075's report MLI-OTP-0033-0140, at 0166; for videos MLI-OTP-0018-0360 and MLI-OTP-0018-0361, *see* P-0150: T-103, pp. 31-40; P-0193's report MLI-OTP-0030-0629, at 0668-0703; P-0075's report MLI-OTP-0033-0140, at 0166-0167; on video MLI-OTP-0018-0375, *see* P-0150: T-103, pp. 11-21; P-0065: T-043, pp. 22-23; P-0075's report MLI-OTP-0033-0140, at 0157; for videos MLI-OTP-0018-0359, and MLI-OTP-0018-0363, *see* P-0193's report MLI-OTP-0030-0629, at 0673-0681, 0727; P-0075's report MLI-OTP-0033-0140, at 0167-0168.

data analyst, who analysed satellite imagery of the monuments before and after the demolition; P-0104,<sup>3460</sup> who prepared a report on the external and internal

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Regarding the Sheikh Alpha Moya mausoleum: for videos MLI-OTP-0012-1787, MLI-OTP-0012-1789, at 00:45:15:16 to 00:45:25:12, MLI-OTP-0012-1792, MLI-OTP-0012-1793, at 00:00:05:01, *see* P-0150: T-103, pp. 31-32, 48-50, 53; P-0654: T-131, pp. 63-66; P-0193's report MLI-OTP-0030-0629, at 0755-0760, 0769-0778, 0780-0781; P-0075's report MLI-OTP-0033-0140, at 0185. Regarding the Sheikh Mouhamad El Micky, Sheikh Abdoul Kassim Attouaty and Sheikh Sidi Ahmed Ben Amar Arragadi mausoleums: video MLI-OTP-0001-7037, at 00:45:15:14 to 00:45:25:10 and 00:44:27:00 to 00:44:36:15, *see* P-0150: T-103, pp. 38, 46-47, 54-55; P-0193's report MLI-OTP-0030-0629, at 0838-0850; for videos MLI-OTP-0012-1800-R01, MLI-OTP-0012-1803, MLI-OTP-0012-1805, MLI-OTP-0012-1806, MLI-OTP-0012-1809, MLI-OTP-0018-0366, MLI-OTP-0018-0368, MLI-OTP-0018-0374; MLI-OTP-0012-1801, *see* P-0193's report MLI-OTP-0030-0629, at 0805, 0814-0818, 0820, 0826-0829; P-0075's report MLI-OTP-0033-0140, at 0168-0170, 0187-0190. *See also* P-0125's statement MLI-OTP-0023-0004-R03, at 0035-0036, 0040, paras 141-143, 162. Regarding the door of the Sidi Yahia mosque: for video MLI-OTP-0018-0149, at 00:03:19:21 to 00:04:17:18, *see* P-0150: T-103, pp. 77-79; P-0125's statement MLI-OTP-0023-0004-R03, at 0032, para. 134; for videos MLI-OTP-0012-1918, MLI-OTP-0012-1919, *see* P-0075's report MLI-OTP-0033-0140, at 0190-0193; P-0654: T-131, pp. 77-78. Regarding Sheikh Bahaber Babadié and Sheikh Ahamed Fulan mausoleums: for video MLI-OTP-0018-0148, *see* P-0150: T-104, pp. 7-9; P-0193's report MLI-OTP-0030-0629, at 0910-0928; P-0065: T-043, pp. 45-46; T-048, pp. 47-48.

<sup>3459</sup> Lars Bromley (*see* P-0064: T-031; P-0064's reports MLI-OTP-0017-0029 and MLI-OTP-0021-0006 introduced through Rule 68(3) of the Rules), a specialist in satellite imagery and geospatial data analysis, conducted a satellite imagery analysis of locations of interest – namely mausoleums and monuments – in Timbuktu and drafted reports thereon (P-0064: T-031, pp. 6-7, 21-22; P-0064's reports MLI-OTP-0017-0029; MLI-OTP-0021-0006). He appeared before the Chamber as an expert and testified about the expert reports he prepared. The Chamber observes that the witness's testimony and reports clearly and precisely detail the sources of the data and methodology used, notably how the images used for the analysis were obtained and processed, as well as the conclusions reached, within the scope of the instructions from the Prosecution (*see e.g.* P-0064: T-031, pp. 6-21, 32-34, 36-41, 64-65). The Chamber further notes that the witness acknowledged the limitations of satellite imagery analysis and stated that he was not asked to examine the possible cause of the alleged destruction of the monuments and did not look into possible factors that could affect the structures, such as weather patterns (*see e.g.* P-0064: T-031, pp. 40-48, 65-66). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds Lars Bromley to be a generally credible and reliable witness and relies on his expert reports.

<sup>3460</sup> P-0104 (*see* P-0104: T-024; P-0104's reports MLI-OTP-0028-0586 and MLI-OTP-0033-0867 introduced through Rule 68(3) of the Rules), an architect, [REDACTED] (P-0104: T-024, pp. 7, 34). He appeared before the Chamber as an expert and testified about the expert report he prepared on the external and internal conditions of mausoleums, mosques and other monuments in Timbuktu and its region (P-0104: T-024, pp. 14-15, *referring to* MLI-OTP-0028-0586). The Chamber considers that P-0104 demonstrated an extensive basis of knowledge on the mausoleums in Timbuktu. He clearly explained the methodology he used to draft the report and the reasons for the amendments thereto and was open about the preparatory assistance provided to him by a junior colleague (P-0104: T-024, pp. 16, 36-37; MLI-OTP-0028-0586, at 0588, 0592-0594; original MLI-OTP-0024-0537). He testified that the report is based on personal observations he made during missions in Timbuktu before and after the events, the abundant documentation that was produced before and after the 'liberation' of Timbuktu, and information provided by a historian with respect to the traditions surrounding the mausoleums (P-0104: T-024, pp. 8-9, 15-16, 26, 46-47, 49; MLI-OTP-0028-0586, at 0592-0594). The Chamber considers that the witness's consultation with a multidisciplinary team of experts in complementary fields and reference to other materials where necessary (*see e.g.* P-0104: T-024, pp. 9-15, 34-35) does not reduce the reliability of his evidence but rather demonstrates his efforts in researching and generating his report. The Chamber observes that P-0104 sometimes went beyond the scope of his expertise in architecture, but notes that this was predicated on his personal observations, for example in relation to the trauma suffered by the people of Timbuktu as a result of the destructions (*see e.g.* P-0104: T-024, pp. 30, 36). Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds P-0104 to be a generally credible and reliable witness and relies on his expert reports.

conditions of the monuments before and after the demolition; and Francesco Bandarin (P-0151),<sup>3461</sup> who is an expert on UNESCO World Heritage.

**a) Planning the demolitions**

1032. For the Ansar Dine/AQIM leadership, the enforcement of *Sharia* in full meant required putting an end to all anti-monotheistic manifestations.<sup>3462</sup> Abdallah Al Chinguetti said that in the first months of Ansar Dine/AQIM's control of Timbuktu, the shrines should not be demolished because that would antagonise the local population against Ansar Dine/AQIM and thus more people would not join their ranks.<sup>3463</sup> He preferred to follow a 'gradual modus operandi to obtain the objective'.<sup>3464</sup> Abdallah Al Chinguetti initially ordered a campaign aimed at preventing the inhabitants of Timbuktu from practising their religion around the shrines in the cemeteries.<sup>3465</sup> Al Mahdi was in charge of the implementation of this campaign;<sup>3466</sup> as a result, Al Mahdi and the *Hesbah* spent some time to convince the population, including Imam Essayouti,<sup>3467</sup> that these practices were wrong.<sup>3468</sup>

1033. For two months, Al Mahdi deployed armed *Hesbah* members on the sites to prevent the population from engaging in customary practices.<sup>3469</sup> Al Mahdi, together with armed *Hesbah* members, would force those who engaged in such practices to leave the cemeteries.<sup>3470</sup>

1034. In the meantime, in or around May 2012, Ansar Dine/AQIM members removed and burned the door and a window frame of the Sheikh Sidi Mahmoud Ben Omar

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<sup>3461</sup> The Chamber refers to its findings on the credibility and reliability of Francesco Bandarin's evidence (see footnote 893 above).

<sup>3462</sup> See paragraph 711 above.

<sup>3463</sup> P-0150: T-100, pp. 20-21; T-104, pp. 12-13. *Contra* [Defence Final Brief](#), para. 547 (wherein the Defence asserts with reference to the same transcript that they 'kept the plan secret to deter locals from joining the groups').

<sup>3464</sup> P-0150: T-100, pp. 20-21.

<sup>3465</sup> P-0150: T-100, pp. 20-21. *See also* P-0150: T-089, p. 53; Mr Al Hassan's statement MLI-OTP-0060-1327, at 1340-1342.

<sup>3466</sup> P-0150: T-090, pp. 16-17. *See also* P-0150: T-089, p. 53; T-100, p. 21.

<sup>3467</sup> P-0150: T-104, pp. 11-13, referring to video MLI-OTP-0018-0148, transcript MLI-OTP-0025-0337, at 0341.

<sup>3468</sup> P-0150: T-100, p. 21; T-090, p. 17. *See also* P-0150: T-089, p. 53; letter MLI-OTP-0002-0757, translation MLI-OTP-0034-1363, at 1364.

<sup>3469</sup> P-0150: T-100, p. 21; T-103, p. 32. *See* paragraph 718 above.

<sup>3470</sup> P-0150: T-090, p. 17. *See* paragraph 718 above.

Mohamed Aquit mausoleum.<sup>3471</sup> In addition, at or around this time, the head of the Al Farouk monument<sup>3472</sup> – a sacred and historical symbol for the people of Timbuktu – was removed and, in or around November 2012, the monument was completely destroyed.<sup>3473</sup> The *Monument des Martyrs* – built to honour the memory of the Malians who died during the March 1991 demonstrations – was also damaged.<sup>3474</sup> Sanda Ould Boumama explained that Ansar Dine/AQIM destroyed the Al Farouk monument because the residents of Timbuktu believed that Al Farouk governed the city and this went against their religion; Ansar Dine/AQIM indeed believed that attachments should be with God only, not with any other symbols.<sup>3475</sup>

1035. By mid-June 2012,<sup>3476</sup> people were no longer performing customary practices, such as stroking shrines, and Abdallah Al Chinguetti told the emirs it was ‘time to change course’.<sup>3477</sup> A common *Shura* council<sup>3478</sup> was held to discuss the demolition of the shrines and the emirs Abou Zeid and Abou Al Hammam were

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<sup>3471</sup> Notebook MLI-OTP-0003-0062-R02, at 0103, transcript MLI-OTP-0064-0608-R02, at 0650; P-0114’s statement MLI-OTP-0023-0344-R02, at 0374, paras 132, 134; Media reports MLI-OTP-0006-3280; MLI-OTP-0001-3670; MLI-OTP-0012-1069. To the extent that the foregoing media reports provide – by their date of publication – a contemporaneous timeframe for the desecration of the mausoleum, the Chamber finds them to be reliable. In addition, based on the evidence and the context in which the desecrations of the mausoleums occurred, the Chamber considers that the authors of these desecrations were Ansar Dine/AQIM members.

<sup>3472</sup> The Chamber notes that the Al Farouk monument is called the El Farouk monument in P-0104’s report MLI-OTP-0028-0586. The Chamber considers that these references concern the same site.

<sup>3473</sup> P-0104’s report MLI-OTP-0028-0586, at 0785-0788; video MLI-OTP-0011-0402, at 00:00:51:00 to 00:01:06:00, transcript MLI-OTP-0020-0612, at 0613; P-0150: T-092, pp. 54-55, referring to video MLI-OTP-0018-0111, at 00:00:33:19; P-0654: T-132, pp. 9-10; T-038, p. 53, referring to video MLI-OTP-0018-0111, at 00:00:35:01. The entire Al Farouk monument was subsequently pulled down with a bulldozer and metal cables in or around November 2012 (see P-0104’s report MLI-OTP-0028-0586, at 0787; P-0065: T-037, p. 25; see also P-0114’s statement MLI-OTP-0023-0344-R02, at 0374, para. 134).

<sup>3474</sup> P-0654: T-132, pp. 10-11, referring to video MLI-OTP-0012-1519; Media report MLI-OTP-0001-3813; P-0104’s report MLI-OTP-0028-0586, at 0792-0794.

<sup>3475</sup> P-0150: T-103, p. 19, referring to video MLI-OTP-0011-0402, transcript MLI-OTP-0020-0612.

<sup>3476</sup> P-0150: T-093, p. 46; P-0065: T-043, p. 22.

<sup>3477</sup> P-0150: T-100, pp. 20-22.

<sup>3478</sup> P-0150 explained that ‘*Shura*’ means to give opinion and seek advice or to deliberate matters among Muslims (P-0150: T-100, p. 23). Each battalion had its own *Shura* council before entering Timbuktu (see paragraph 431 above). Common *Shura* council meetings, bringing together available members of the *Shura* councils of the Al Fourqane and Tariq Ibn Ziyad battalions, were convened to deliberate on matters that concerned Timbuktu, or which were of public interest to the armed groups. The emirs Abou Zeid and Abou Al Hammam were always present at the common *Shura* council (P-0150: T-100, pp. 5-7, 11). Meetings of the *Shura* council required the attendance of three people from the *Sharia* Committee (P-0150: T-100, p. 5).

involved in the decision to demolish them,<sup>3479</sup> as per Iyad Ag Ghaly's order.<sup>3480</sup> Members of Ansar Dine/AQIM began to destroy the mausoleums one or two days after the decision to do so was taken.<sup>3481</sup> The *Sharia* Committee subsequently deliberated over the demolition of other things that were considered 'instruments of polytheism' which would have the same approximate impact as the demolition of the mausoleums, and Abdallah Al Chinguetti took the decision to destroy the door of the Sidi Yahia mosque.<sup>3482</sup>

1036. Al Mahdi was responsible for the operations of demolition<sup>3483</sup> and made the preparations to that effect.<sup>3484</sup> He informed the members of the *Hesbah* that they would start demolishing the mausoleums located in the north and then move on to those located in the south of Timbuktu.<sup>3485</sup> The plan was to always respect the people buried in these places by demolishing the 'first line of the building' and then taking it brick by brick away from the grave.<sup>3486</sup> The armed groups' members started demolishing the first mausoleum following that guideline; however, after some time they started demolishing the mausoleums in a random way.<sup>3487</sup>

#### **b) Demolition of the mausoleums and the door of a mosque**

1037. Between 30 June and 12 July 2012,<sup>3488</sup> Ansar Dine/AQIM members progressively demolished monuments across Timbuktu,<sup>3489</sup> moving from the north to the south of the city.<sup>3490</sup> Using pickaxes, axes, hammers, wooden poles

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<sup>3479</sup> P-0150: T-100, pp. 7, 20-21, 23; Mr Al Hassan's statement MLI-OTP-0060-1327, at 1340, 1346-1347. The Chamber considers that the emirs in this context are to be understood as Abou Zeid and Abou Al Hamman.

<sup>3480</sup> P-0150: T-100, p. 22; T-096, p. 32. [REDACTED].

<sup>3481</sup> P-0150: T-103, p. 25.

<sup>3482</sup> P-0150: T-104, p. 6.

<sup>3483</sup> P-0150: T-103, pp. 23, 29; Mr Al Hassan's statements MLI-OTP-0060-1374, at 1385; MLI-OTP-0060-1327, at 1348.

<sup>3484</sup> P-0150: T-103, pp. 24-26. *See also* P-0150: T-093, pp. 45-46.

<sup>3485</sup> P-0150: T-103, p. 26.

<sup>3486</sup> P-0150: T-103, p. 26.

<sup>3487</sup> P-0150: T-103, p. 26.

<sup>3488</sup> Notebook MLI-OTP-0003-0062-R02, at 0119, 0121, 0133, 0135, transcript MLI-OTP-0064-0608-R02, at 0666, 0668, 0670, 0680, 0082; P-0114's statement MLI-OTP-0023-0344-R02, at 0374, para. 133; UNESCO media report MLI-OTP-0001-1944; *Bulletin de renseignement* MLI-OTP-0012-0462, at 0463-0464; *Bulletin de renseignement* MLI-OTP-0012-0260; *Message porté* MLI-OTP-0012-0259.

<sup>3489</sup> *See generally* P-0150: T-103, p. 26; P-0057: T-021, pp. 48-49, 53.

<sup>3490</sup> P-0150: T-103, pp. 26, 31; P-0065: T-043, pp. 33-34.

and iron bars,<sup>3491</sup> the demolishers razed to the ground<sup>3492</sup> multiple mausoleums, and the door of a mosque.<sup>3493</sup>

**i. Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit<sup>3494</sup> and Sheikh Mohamed Mahmoud Al Arawani mausoleums**

1038. On 30 June 2012,<sup>3495</sup> at around 8:00 am,<sup>3496</sup> Ansar Dine/AQIM members began demolishing the Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit mausoleum,<sup>3497</sup> located in the Sidi Mahmoud cemetery, in the north of Timbuktu.<sup>3498</sup> The demolishers razed the mausoleum<sup>3499</sup> – a

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<sup>3491</sup> See e.g. P-0125's statement MLI-OTP-0023-0004-R03, at 0019, para. 69; P-0055 and P-0057's report MLI-OTP-0029-1138, at 1146, referring to metal chisel MLI-OTP-0005-0022 (which was found in the vicinity of the Alpha Moya mausoleum); P-0102's report MLI-OTP-0029-0503, at 0576-0577; videos MLI-OTP-0018-0359; MLI-OTP-0018-0360; MLI-OTP-0018-0361; MLI-OTP-0012-1787; MLI-OTP-0012-1789, at 00:45:15:16 to 00:45:25:12; MLI-OTP-0012-1793, at 00:00:05:01; MLI-OTP-0012-1801; P-0193's report MLI-OTP-0030-0629, at 0673-0703, 0755-0760, 0769-0778, 0780, 0805. See P-0151: T-103, pp. 43-44.

<sup>3492</sup> P-0057: T-021, pp. 48-49, 64-65; P-0102: T-023, pp. 68-69. See also P-0150: T-103, pp. 44-45, referring to video MLI-OTP-0018-0358, transcript MLI-OTP-0025-0360, translation MLI-OTP-0025-0330.

<sup>3493</sup> See P-0150: T-103, p. 27. The Defence does not contest that the charged shrines were 'levelled', or that the door of the Sidi Yahia mosque was removed. See Defence Final Defence Brief, paras 533, 540, 542-543, 547, 552, 555, 604.

<sup>3494</sup> The Chamber notes that Mausoleum Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit is called 'Sidi Mahmoudou Ben Omar Mohamed Aquit' in the UNESCO nomination dossier MLI-OTP-0004-0321; List of mausoleums as known by the Timbuktu community MLI-OTP-0029-1126, and in P-0055 and P-0057's report MLI-OTP-0029-1138. It is also called 'Cheikh Sidi Mahmoud Ben Omar Ben Mohamed Aquit' and 'Sidi Mahmoud Ben Omar Mohamed Aquit' in P-0055 and P-0057's report MLI-OTP-0029-1138. The Chamber considers that these references concern the same site as the one charged.

<sup>3495</sup> Notebook MLI-OTP-0003-0062-R02, at 0119, 0121; UNESCO media report MLI-OTP-0001-1944; P-0075's report MLI-OTP-0033-0140, at 0166-0168, referring to videos MLI-OTP-0018-0356, MLI-OTP-0018-0359, MLI-OTP-0018-0360, MLI-OTP-0018-0361, MLI-OTP-0018-0363. See also P-0193's report MLI-OTP-0030-0629, at 0668-0703, referring to videos MLI-OTP-0018-0356, MLI-OTP-0018-0359, MLI-OTP-0018-0360, MLI-OTP-0018-0361, MLI-OTP-0018-0363; *Bulletin de renseignement* MLI-OTP-0012-0462, at 0463-0464; P-0065: T-034, p. 24.

<sup>3496</sup> P-0150: T-103, p. 50.

<sup>3497</sup> P-0150: T-103, pp. 31-40, referring to videos MLI-OTP-0018-0375, MLI-OTP-0018-0356, transcript 0025-0057, translation 0025-0043, MLI-OTP-0018-0360, MLI-OTP-0018-0361; P-0065: T-043, pp. 26-27, referring to video MLI-OTP-0018-0356; P-0065: T-043, pp. 22-23, referring to video MLI-OTP-0018-0375; P-0193's report MLI-OTP-0030-0629, at 0668-0703, referring to videos MLI-OTP-0018-0356, MLI-OTP-0018-0359, MLI-OTP-0018-0360, MLI-OTP-0018-0361.

<sup>3498</sup> P-0104's report MLI-OTP-0028-0586, at 0702; P-0114's statement MLI-OTP-0023-0344-R02, at 0352, para. 41, 0360, 0363, para. 62; P-0125's statement MLI-OTP-0023-0004-R03, at 0017, para. 62; P-0654: T-131, p. 57. See also P-0150: T-103 p. 31.

<sup>3499</sup> Notebook MLI-OTP-0003-0062-R02, at 0119, 0121, transcript MLI-OTP-0064-0608-R02, at 0666, 0668; P-0104's report MLI-OTP-0028-0586, at 0599, 0707; P-0064's report MLI-OTP-0017-0029, at 0034, 0036; P-0055 and P-0057's report MLI-OTP-0029-1138, at 1200-1205; P-0057: T-021, pp. 48-49, 53, 64-65. See also P-0125's statement MLI-OTP-0023-0004-R03, at 0017-0018, paras 61-63.



UNESCO-inscribed<sup>3500</sup> historical building and place of worship<sup>3501</sup> – until the fallen debris filled the space.<sup>3502</sup> The Sheikh Mohamed Mahmoud Al Arawani mausoleum,<sup>3503</sup> situated in the Sidi Mahmoud cemetery next to the Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit mausoleum,<sup>3504</sup> was also completely demolished that day.<sup>3505</sup> Ansar Dine/AQIM members were stationed around the periphery of the cemetery, securing the area to protect those demolishing the mausoleums.<sup>3506</sup>

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<sup>3500</sup> P-0151's statement MLI-OTP-0029-0843-R03, at 0858, 0861, paras 84-85, 99; P-0151: T-034, p. 8; UNESCO nomination dossier MLI-OTP-0004-0321, at 0347; UNESCO information dossier MLI-OTP-0004-0423, at 0434.

<sup>3501</sup> P-0104's report MLI-OTP-0028-0586, at 0702; P-0125's statement MLI-OTP-0023-0004-R03, at 0018, paras 63-65; P-0114's statement MLI-OTP-0023-0344-R02, at 0363, para. 65-66; P-0654: T-131, p. 57.

<sup>3502</sup> The walls, roof, gargoyle, door and furniture of the mausoleum were all destroyed (P-0104's report MLI-OTP-0028-0586, at 0707).

<sup>3503</sup> The Al Arawani mausoleum is very recent and is not part of the World Heritage sites (P-0104's report, MLI-OTP-0028-0586, at 0761).

<sup>3504</sup> P-0104's report MLI-OTP-0028-0586, at 0761; P-0055 and P-0057's report MLI-OTP-0029-1138, at 1144.

<sup>3505</sup> P-0104's report MLI-OTP-0028-0586, at 0599, 0761-0767; P-0102's report MLI-OTP-0029-0503, at 0644-0654, 0692-0694, 0696, 0709. The Chamber notes that P-0102 identified two demolition sites as the Sheikh Mohamed Mahmoud Al Arawani mausoleum as they were relatively close together – a few dozen meters apart - with 'site 10' ('number 1') being higher in altitude than 'site 15' ('number 2'). Since both mausoleums had been demolished, and he could not exclude the possibility of an error in the GPS coordinates, he examined both sites (*see* P-0102's report MLI-OTP-0029-0503, at 0614-0623, 0644-0654, 0680-0682, 0692-0694, 0696; P-0102: T-023, pp. 99-100). Having regard to P-0102's report, and other evidence on the record, including P-0104's report, the Chamber is satisfied that 'site 15' is the Sheikh Mohamed Mahmoud Al Arawani mausoleum; P-0064's report MLI-OTP-0021-0006, at 0012, 0017. *See also* P-0150: T-103, p. 40.

<sup>3506</sup> P-0065: T-043, pp. 22-23, *referring to* video MLI-OTP-0018-0375; P-0150: T-103, p. 32, *referring to* video MLI-OTP-0018-0375; T-117, p. 27.

**ii. Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti mausoleum<sup>3507</sup>**

1039. On 30 June 2012,<sup>3508</sup> Ansar Dine/AQIM members also demolished the Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti mausoleum,<sup>3509</sup> located in the Sidi El Mokhtar cemetery, in the north east of Timbuktu.<sup>3510</sup> The UNESCO-inscribed<sup>3511</sup> mausoleum, of historical and religious importance,<sup>3512</sup> was levelled until the rubble filled the space.<sup>3513</sup>

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<sup>3507</sup> The Chamber notes that Mausoleum Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti is called ‘Cheikh Sidi El Mokhtar Ben Sidi Mouhammad Ben Cheikh Al Kabir’ in the UNESCO nomination dossier MLI-OTP-0004-0321; List of mausoleums as known by the Timbuktu community MLI-OTP-0029-1126. It is also called ‘Cheikh Sidi Mokhtar Ben Sidi Mohamed Ben Cheikh Al Kabir Al Kounti’ in P-0055 and P-0057’s report MLI-OTP-0029-1138 and ‘Sidi Mokhtar Ben Sidi Mouhammad Ben Cheikh Al Kabir Al Kounti’ in P-0055 and P-0057’s report MLI-OTP-0029-1138, as well as ‘Cheikh Sidi El Mokhtar Ben Mouammed Ben Cheikh Sidi Elmokhtar Al Kabir el Kounti’ and ‘Sidi el Mokhtar el Kounti’ in P-0104’s report MLI-OTP-0028-0586. The Chamber considers that these references concern the same site as the one charged. The Chamber further notes that there are two monuments known by the name of Sidi el Moctar: the mausoleum of Sidi El Moctar El Seghir, which is located in a cemetery in the eastern part of Timbuktu, and the mausoleum of his grandfather, Sheikh Sidi El Moctar Al Kabir, which is located 400 kilometres north-east of Timbuktu. El Seghir means ‘the young’, whereas Al Kabir means ‘the senior’. Noting the location of the mausoleums, the Chamber considers that it was the mausoleum of Sidi El Moctar El Seghir which was destroyed on 30 June 2012 (*see* P-0114’s statement MLI-OTP-0023-0344-R02, at 0364, paras 68-72, *referring to* MLI-OTP-0009-1476).

<sup>3508</sup> UNESCO media report MLI-OTP-0001-1944 (UNESCO media/press report, dated 30 June 2012, in which the UNESCO Director General expresses distress over reports that the mausoleums of Sidi Mahmoud, Sidi Moctar and Alpha Moya have been destroyed); Notebook MLI-OTP-0003-0062-R02, at 0119, 0121, transcript MLI-OTP-0064-0608-R02, at 0666, 0668. *See also Bulletin de renseignement* MLI-OTP-0012-0462, at 0463-0464.

<sup>3509</sup> P-0104’s report MLI-OTP-0028-0586, at 0599, 0676-0683; Notebook MLI-OTP-0003-0062-R02, at 0119, 0121, transcript MLI-OTP-0064-0608-R02, at 0666, 0668; P-0064’s report MLI-OTP-0017-0029, at 0034, 0040; P-0057: T-021, pp. 48-49, 53.

<sup>3510</sup> P-0104’s report MLI-OTP-0028-0586, at 0676; P-0114’s statement MLI-OTP-0023-0344-R02, at 0355-0356, 0360-0361, *referring to* photographs MLI-OTP-0009-1476, MLI-OTP-0009-1522, MLI-OTP-0009-1523; P-0125’s statement MLI-OTP-0023-0004-R03, at 0018, para. 68.

<sup>3511</sup> P-0151’s statement MLI-OTP-0029-0843-R03, at 0858, 0861, paras 84-85, 99; UNESCO nomination dossier MLI-OTP-0004-0321, at 0348; UNESCO information dossier MLI-OTP-0004-0423, at 0436.

<sup>3512</sup> P-0104’s report MLI-OTP-0028-0586, at 0676; P-0114’s statement MLI-OTP-0023-0344-R02, at 0364, para. 71; P-0125’s statement MLI-OTP-0023-0004-R03, at 0019, para. 70.

<sup>3513</sup> The walls, roof, furniture, gargoyle and door of the mausoleum were completely demolished (P-0104’s report MLI-OTP-0028-0586, at 0681; P-0057: T-021, pp. 48-49, 64-65).

### iii. Sheikh Alpha Moya mausoleum<sup>3514</sup>

1040. On 30 June 2012,<sup>3515</sup> following the demolition of the Sheikh Sidi El Mokhtar mausoleum,<sup>3516</sup> Ansar Dine/AQIM members demolished the Sheikh Alpha Moya mausoleum,<sup>3517</sup> located in the Alpha Moya cemetery, in the east of Timbuktu.<sup>3518</sup> The walls of the UNESCO-inscribed<sup>3519</sup> 16<sup>th</sup> century religious building<sup>3520</sup> were so thick that the demolishers abandoned its demolition approximately mid-height, which was sufficient for the fallen debris to fill the interior of the mausoleum.<sup>3521</sup>

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<sup>3514</sup> The Chamber notes that the Sheikh Alpha Moya mausoleum is called ‘Sidi Khiyar’ in the UNESCO nomination dossier MLI-OTP-0004-0321, at 0348; List of mausoleums as known by the Timbuktu community MLI-OTP-0029-1126 (see also P-0151’s statement MLI-OTP-0029-0843-R03, at 0861, para. 100; P-0151: T-034, p. 9). It is also called ‘Alpha Moya’ and ‘Cheick Alpha Moya’ in P-0055 and P-0057’s report MLI-OTP-0029-1138. The Chamber considers that these references concerns the same site as the one charged.

<sup>3515</sup> Notebook MLI-OTP-0003-0062-R02, at 0119, 0121, transcript MLI-OTP-0064-0608-R02, at 0666, 0668; UNESCO media report MLI-OTP-0001-1944. See also *Bulletin de renseignement* MLI-OTP-0012-0462, at 0463-0464; P-0150: T-103, pp. 49-51; P-0075’s report MLI-OTP-0033-0140, at 0185, referring to videos MLI-OTP-0012-1792, MLI-OTP-0012-1793; P-0193’s report MLI-OTP-0030-0629, at 0755-0760, 0780-0781, referring to videos MLI-OTP-0012-1787, MLI-OTP-0012-1792, MLI-OTP-0012-1793.

<sup>3516</sup> P-0150: T-103 pp. 48-50, referring to video MLI-OTP-0012-1789, at 00:45:15:16 to 00:45:25:12, transcript MLI-OTP-0033-5266; P-0654: T-131, pp. 60-61, 66, 76, 81, referring to videos MLI-OTP-0012-1792, MLI-OTP-0012-1793, MLI-OTP-0012-1787, MLI-OTP-0012-1789; P-0193’s report MLI-OTP-0030-0629, at 0769-0778, referring to video MLI-OTP-0012-1789.

<sup>3517</sup> P-0150: T-103, pp. 31-32, 48-50, 53, referring to videos MLI-OTP-0012-1787, MLI-OTP-0012-1789, at 00:45:15:16 to 00:45:25:12, MLI-OTP-0012-1793, at 00:00:05:01; P-0193’s report, at MLI-OTP-0030-0629, at 0769-0778; P-0104’s report MLI-OTP-0028-0586, at 0599, 0684-1694; P-0064’s report MLI-OTP-0017-0029, at 0034, 0041; P-0055 and P-0057’s report MLI-OTP-0029-1138, at 1187-1195; P-0057: T-021, pp. 48-49, 53.

<sup>3518</sup> P-0104’s report MLI-OTP-0028-0586, at 0685; P-0114’s statement MLI-OTP-0023-0344-R02, at 0352, para. 41, 0359-0360, 0364, para. 74, referring to photographs MLI-OTP-0009-1508, MLI-OTP-0009-1511.

<sup>3519</sup> P-0151’s statement MLI-OTP-0029-0843-R03, at 0858, 0861, paras 84-85, 99-100; P-0151: T-034, pp. 8-9; UNESCO nomination dossier MLI-OTP-0004-0321, at 0348; UNESCO information dossier MLI-OTP-0004-0423, at 0436.

<sup>3520</sup> P-0104’s report MLI-OTP-0028-0586, at 0685; P-0114’s statement MLI-OTP-0023-0344-R02, at 0364-0365, paras 74-76. See also P-0125’s statement MLI-OTP-0023-0004-R03, at 0044, paras 171-172.

<sup>3521</sup> P-0104’s report MLI-OTP-0028-0586, at 0691; P-0150: T-103, pp. 26, 50, referring to MLI-OTP-0012-1787.

**iv. Sheikh Mouhamad El Micky,<sup>3522</sup> Sheikh Abdoul Kassim Attouaty<sup>3523</sup> and Sheikh Sidi Ahmed Ben Amar Arragadi<sup>3524</sup> mausoleums**

1041. On 1 July 2012,<sup>3525</sup> Ansar Dine/AQIM members demolished<sup>3526</sup> the Sheikh Mouhamad El Micky,<sup>3527</sup> Sheikh Abdoul Kassim Attouaty<sup>3528</sup> and Sheikh Sidi

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<sup>3522</sup> The Chamber notes that mausoleum Sheikh Mouhamad El Micky (as described in the UNESCO nomination dossier MLI-OTP-0004-0321, at 0348) is also called ‘Cheickh Sidi Mohamed El-Mikki’ by the communities in Timbuktu (List of mausoleums as known by the Timbuktu community MLI-OTP-0029-1126. It is also called ‘Mausoleum Sidi Mohamed El Micky’ and ‘Sidi Mohamed el Miky’ in P-0104’s report MLI-OTP-0028-0586. It is also called ‘Cheick Sidi Mohamed Al Miky’, ‘Sidi Mohamed El Micky’ and ‘Cheikh Sidi Mouhamad El Micky’ in P-0055 and P-0057’s report MLI-OTP-0029-1138. *See also* P-0104: T-034, p. 26, wherein the witness corrected the reference in his report to Sheikh Sidi Ahmed Ben Amar Arragadi. The Chamber considers that these references concern the same site as the one charged.

<sup>3523</sup> The Chamber notes that mausoleum Sheikh Abdoul Kassim Attouaty is also called ‘Cheickh Aboul Kassim Attaouaty’ in the UNESCO nomination dossier MLI-OTP-0004-0321, at 0347 and ‘Cheickh Sidi Boukassoum Attawaty’ by the communities in Timbuktu in list of mausoleums as known by the Timbuktu community MLI-OTP-0029-1126, at 1127, number 4. It is also called ‘Sidi Aboul Qâsem El Touâti’ or ‘Aboul Kassim el Tuwati’ in P-0104’s report MLI-OTP-0028-0586, as well as ‘Cheikh Aboul Kassim Attouaty’ in P-0055 and P-0057’s report MLI-OTP-0029-1138, and in P-0102’s report MLI-OTP-0029-0503. It is also called ‘Cheikh Abul Kassim Attawati’ and ‘Cheikh Aboul Kassim Attawaty’ in P-0055 and P-0057’s report MLI-OTP-0029-1138. The Chamber considers that these references concern the same site as the one charged.

<sup>3524</sup> The Chamber notes that mausoleum Sheikh Sidi Ahmed Ben Amar Arragadi is also called ‘Cheickh Sidi Ahmed Ben Amar Arragadi’ by the communities in Timbuktu (List of mausoleums as known by the Timbuktu community MLI-OTP-0029-1126), ‘Cheikh Sidi Ahmed Ben Amar Ragadi’ in P-0104’s report MLI-OTP-0028-0586, as well as ‘Cheikh Ahmed Ben Amar Arragadi’ in P-0055 and P-0057’s report MLI-OTP-0029-1138 and in P-0102’s report MLI-OTP-0029-0503. The Chamber considers that these references concern the same site as the one charged.

<sup>3525</sup> Notebook MLI-OTP-0003-0062-R02, at 0121, transcript MLI-OTP-0064-0608-R02, at 0668; P-0075’s report MLI-OTP-0033-0140, at 0168-0170, *referring to* videos MLI-OTP-0018-0366, MLI-OTP-0018-0368, MLI-OTP-0018-0374; MLI-OTP-0012-1800-R01, MLI-OTP-0012-1801, MLI-OTP-0012-1803, MLI-OTP-0012-1805, MLI-OTP-0012-1806, MLI-OTP-0012-1809; P-0125’s statement MLI-OTP-0023-0004-R03, at 0035-0036, 0040, paras 141-143, 162, *referring to* MLI-OTP-0012-1800-R01, MLI-OTP-0018-0366, MLI-OTP-0018-0374. *See also* P-0193’s report MLI-OTP-0030-0629, at 0814-0818, *referring to* videos MLI-OTP-0012-1803, MLI-OTP-0012-1805, MLI-OTP-0012-1806, at 0820, *referring to* video MLI-OTP-0012-1809, at 0826-0829, *referring to* videos MLI-OTP-0018-0366, MLI-OTP-0018-0368, MLI-OTP-0018-0374; *Bulletin de renseignement* MLI-OTP-0012-0462, at 0463-0464; P-0150: T-103 p. 50.

<sup>3526</sup> *See generally* P-0150: T-103, pp. 38, 46-47, *referring to* video MLI-OTP-0001-7037, at 00:45:15:14 to 00:45:25:10, 54-55, *referring to* video MLI-OTP-0001-7037, at 00:44:27:00 to 00:44:36:15, 73; video MLI-OTP-0012-1801-R01; P-0193’s report MLI-OTP-0030-0629, at 0805, 0829-0850.

<sup>3527</sup> P-0104’s report MLI-OTP-0028-0586, at 0599, 0657-0666; P-0102’s report MLI-OTP-0029-0503, at 0589-0598; Notebook MLI-OTP-0003-0062-R02, at 0121, transcript MLI-OTP-0064-0608-R02, at 0668; P-0125’s statement MLI-OTP-0023-0004-R03, at 0020, para. 76; P-0064’s report MLI-OTP-0017-0029, at 0034, 0038; P-0055 and P-0057’s report MLI-OTP-0029-1138, at 1165-1167; P-0057: T-021, pp. 48-49, 52.

<sup>3528</sup> P-0104’s report MLI-OTP-0028-0586, at 0599, 0651-0656; P-0102’s report MLI-OTP-0029-0503, at 0580-0588; Notebook MLI-OTP-0003-0062-R02, at 0121, transcript MLI-OTP-0064-0608-R02, at 0668; P-0125’s statement MLI-OTP-0023-0004-R03, at 0021, para. 76; P-0064’s report MLI-OTP-0017-0029, at 0034, 0038; P-0055 and P-0057’s report MLI-OTP-0029-1138, at 1169-1172; P-0057: T-021, pp. 48-49 53.

Ahmed Ben Amar Arragadi<sup>3529</sup> mausoleums, located in the Three Saints cemetery, in the western part of Timbuktu.<sup>3530</sup> The UNESCO-inscribed mausoleums,<sup>3531</sup> all of which were of historical and religious significance,<sup>3532</sup> were razed until fallen debris filled the rooms and their surrounds.<sup>3533</sup>

#### v. Door of the Sidi Yahia mosque<sup>3534</sup>

1042. On 2 July 2012,<sup>3535</sup> Ansar Dine/AQIM members demolished<sup>3536</sup> the sacred door of the Sidi Yahia mosque.<sup>3537</sup> During this demolition, Al Mahdi explained to journalists:

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<sup>3529</sup> P-0125's statement MLI-OTP-0023-0004-R03, at 0020, paras 75-76; P-0104's report MLI-OTP-0028-0586, at 0599, 0643-0645; P-0102's report MLI-OTP-0029-0503, at 0564-0579; Notebook MLI-OTP-0003-0062-R02, at 0121, transcript MLI-OTP-0064-0608-R02, at 0668; P-0064's report MLI-OTP-0017-0029, at 0034, 0037; P-0055 and P-0057's report MLI-OTP-0029-1138, at 1173-1178; P-0057: T-021, pp. 48-49, 52.

<sup>3530</sup> P-0104's report MLI-OTP-0028-0586, at 0637, 0647, 0657; Notebook MLI-OTP-0003-0062-R02, at 0121, transcript MLI-OTP-0064-0608-R02, at 0668; P-0114' statement MLI-OTP-0023-0344-R02, at 0358, referring to photographs MLI-OTP-0009-1494, MLI-OTP-0009-1495, 0365-0366, referring to photograph MLI-OTP-0009-1498, paras 78, 82. See also P-0150: T-103, p. 38.

<sup>3531</sup> P-0151's statement MLI-OTP-0029-0843-R03, at 0858, 0861, paras 84-85, 99; P-0151: T-034, pp. 8-9; UNESCO nomination dossier MLI-OTP-0004-0321, at 0347-0348; UNESCO information dossier MLI-OTP-0004-0423, at 0435.

<sup>3532</sup> Regarding Sheikh Mouhamad El Micky: P-0104's report MLI-OTP-0028-0586, at 0637-0638, 0647, 0657; P-0104's report MLI-OTP-0028-0586, at 0657; P-0114' statement MLI-OTP-0023-0344-R02, at 0365-0366, para. 80. Regarding Sheikh Abdoul Kassim Attouaty: P-0104's report MLI-OTP-0028-0586, at 0647; P-0114' statement MLI-OTP-0023-0344-R02, at 0366, paras 82-85. Regarding Sheikh Sidi Ahmed Ben Amar Arragadi: P-0104's report MLI-OTP-0028-0586, at 0637-0638; P-0114's statement MLI-OTP-0023-0344-R02, at 0366, paras 86-87; P-0125's statement MLI-OTP-0023-0004-R03, at 0021, paras 79-80.

<sup>3533</sup> The walls, roofs, furniture, gargoyles and doors of the mausoleums were all destroyed (P-0104's report MLI-OTP-0028-0586, at 0643, 0651, 0662).

<sup>3534</sup> The Chamber notes that the Sidi Yahia mosque is also called 'Sidi Yahiya' in P-0104's report MLI-OTP-0028-0586, 'Sidi Yehia' in P-0102's report MLI-OTP-0029-0503, and 'Sidi Yehiya' or 'Sidi Yaya' in P-0055 and P-0057's report MLI-OTP-0029-1138. The Chamber considers that these references concern the same site as the one charged.

<sup>3535</sup> Notebook MLI-OTP-0003-0062-R02, at 0121, transcript MLI-OTP-0064-0608-R02, at 0668; *Bulletin de renseignement* MLI-OTP-0012-0260; *Message porté* MLI-OTP-0012-0259; P-0654: T-131, pp. 77-78, referring to videos MLI-OTP-0012-1918, MLI-OTP-0012-1919. See also P-0150: T-103, p. 74.

<sup>3536</sup> P-0150: T-103, pp. 77-79, referring to MLI-OTP-0018-0149, at 00:03:19:21 to 00:04:17:18; P-0104's report MLI-OTP-0028-0586, at 0607-0614; P-0654: T-131, pp. 77-78, referring to videos MLI-OTP-0012-1918, MLI-OTP-0012-1919; P-0125's statement MLI-OTP-0023-0004-R03, at 0021, 0032-0033, paras 86, 134, referring to MLI-OTP-0018-0149, at 00:02:56:21 to 00:04:40:00; Notebook MLI-OTP-0003-0062-R02, at 0121, transcript MLI-OTP-0064-0608-R02, at 0668; P-0114's statement MLI-OTP-0023-0344-R02, at 0367, para. 93; P-0055 and P-0057's report MLI-OTP-0029-1138, at 1173-1175; P-0102's report MLI-OTP-0029-0503, at 0548-0556.

<sup>3537</sup> UNESCO information dossier MLI-OTP-0004-0423, at 0424. Legend had it that opening the door of the mosque would lead to the end of the world. See P-0150: T-103, pp. 75-76; T-104, p. 46; P-0125's statement MLI-OTP-0023-0004-R03, at 0021, paras 84, 87; P-0104's report MLI-OTP-0028-0586, at 0596, 0608-0610; P-0104: T-024, pp. 64-65; P-0114's statement MLI-OTP-0023-0344-R02, at 0367, para. 92.

[w]hat you can see here is one of the ways of eradicating superstition, heresy and any other things or subterfuges that can lead to association. [...] [W]e have heard speak of an old door associated with the Sidi Yahia mosque. If it is open, the day of resurrection shall commence. After having investigated, we discovered that it was a condemned door or closed-off door situated in the courtyard of the old mosque. [...] Then, with time, a myth had come into existence according to which the day of resurrection would commence if the door were to be opened. We are fearful that these myths will invade the beliefs of people and those who are ignorant, and because of their ignorance, they will distance themselves from religion and think that this is the truth. We have, therefore, decided to open this door and to repair it.<sup>3538</sup>

1043. Part of the wall behind the door was also damaged during the demolition.<sup>3539</sup> As a component of the 15<sup>th</sup> century<sup>3540</sup> UNESCO-inscribed Sidi Yahia mosque, the door was protected as World Heritage.<sup>3541</sup> Following the demolition of the door, Ansar Dine/AQIM offered money to one of the imams of the mosque because they did not intend the demolition of the actual door, but the demolition of the idea and association of this door in people's hearts.<sup>3542</sup> The money was rejected, but the wall which was damaged behind the door was subsequently rebuilt at the request of the armed groups.<sup>3543</sup>

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<sup>3538</sup> P-0150: T-104, pp. 5-7, *referring to* video MLI-OTP-0018-0149, at 00:09:13:22 to 00:10:10:13, transcript, MLI-OTP-0033-5439, at 5441; P-0065: T-043, pp. 44-45, *referring to* MLI-OTP-0018-0149, at 00:09:31:12.

<sup>3539</sup> P-0104's report MLI-OTP-0028-0586, at 0611; P-0125's statement MLI-OTP-0023-0004-R03, at 0034, paras 137-138, *referring to* video MLI-OTP-0018-0149, at 00:07:34:12 to 00:08:01:20.

<sup>3540</sup> P-0104's report MLI-OTP-0028-0586, at 0607-0608; P-0114's statement MLI-OTP-0023-0344-R02, at 0353, paras 45-46; P-0125's statement MLI-OTP-0023-0004-R03, at 0023, para. 88.

<sup>3541</sup> P-0151: T-034, pp. 8-9; P-0151's statement MLI-OTP-0029-0843-R03, at 0858, 0861, paras 84-85, 99-100; UNESCO nomination dossier MLI-OTP-0004-0321, at 0321, 0346; UNESCO information dossier MLI-OTP-0004-0423, at 0424; P-0104's report MLI-OTP-0028-0586, at 0607.

<sup>3542</sup> P-0150 testified that one of the scholars and teachers in that mosque was very angry and refused to take money that Ansar Dine/AQIM members offered as compensation for the door they took out. P-0150 added that the practice of handing over money was habitual whenever someone complained – as the compensation system exists in 'Islamic *Sharia*', and also within the Islamic Court. For example, 'the demolition of the doomsday gate was mental in purpose. But when it comes to the physical aspect, the jihadist hard-line group was ready to pay all necessary material compensations because they did not intend [...] the demolition of the actual door [...] but the destruction of the idea and association with this door in people's hearts' (P-0150: T-104, pp. 7, 42-43). P-0125 explained that Al Mahdi asked imam Abdoullahi how much it would cost to repair the broken wall and Al Mahdi gave P-0125 the money, which he gave to the imam (P-0125's statement MLI-OTP-0023-0004, at 0022, para. 86).

<sup>3543</sup> According to P-0125, Yahia Tandina and others told them that they did not need their money and that what they had destroyed belonged to everyone, and the imam Abdoullahi returned the money (P-0125's statement MLI-OTP-0023-0004, at 0022, para. 86); P-0150: T-104, pp. 7, 42-43; P-0104's report MLI-OTP-0028-0586, at 0611.

**vi. Sheikh Bahaber Babadié<sup>3544</sup> and Sheikh Ahamed Fulan<sup>3545</sup>  
mausoleums**

1044. On 10 July 2012,<sup>3546</sup> Ansar Dine/AQIM members completely razed the Sheikh Bahaber Babadié and Sheikh Ahamed Fulan mausoleums,<sup>3547</sup> which were annexed to the Djingareyber mosque.<sup>3548</sup> Bulldozers were used to demolish the mausoleums,<sup>3549</sup> while a security cordon around the mosque prevented people from coming to the area where the mausoleums were being demolished.<sup>3550</sup> The mausoleums – which were of cultural, historic and religious significance<sup>3551</sup> – benefitted from the UNESCO World Heritage status of the Djingareyber mosque.<sup>3552</sup> During the demolition, Mr Al Hassan was passing by the site on the road and notably greeted Al Mahdi and Talha.<sup>3553</sup>

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<sup>3544</sup> The Chamber notes that mausoleum Sheikh Bahaber Babadié is called ‘Cheikh Baber Babaïdié’ in the UNESCO nomination dossier MLI-OTP-0004-0321; List of mausoleums as known by the Timbuktu community MLI-OTP-0029-1126, at 1128, as well as ‘Cheikh Sidi Baber Baba Idjé’ in P-0104’s report MLI-OTP-0028-0586. The Chamber considers that these references concern the same site as the one charged.

<sup>3545</sup> The Chamber notes that mausoleum Sheikh Ahamed Fulane is called ‘Cheikh Sidi Ahmed Al Fulani’ in the UNESCO nomination dossier MLI-OTP-0004-0321; List of mausoleums as known by the Timbuktu community MLI-OTP-0029-1126, as well as ‘Cheikh Sidi Mahamane al Foullani’ or ‘Al Fullani’ in P-0104’s report MLI-OTP-0028-0586. The Chamber considers that these references concern the same site as the one charged.

<sup>3546</sup> Notebook MLI-OTP-0003-0062-R02, at 0133, 0135, transcript MLI-OTP-0064-0608-R02, at 0680, 0682; P-0065: T-043, p. 45; T-048, pp. 47-48, *referring to* video MLI-OTP-0018-0148.

<sup>3547</sup> P-0150: T-103, p. 74; T-104, p. 8, *referring to* video MLI-OTP-0018-0148; P-0193’s report MLI-OTP-0030-0629, at 0910-0928 *referring to* video MLI-OTP-0018-0148; P-0104’s report MLI-OTP-0028-0586, at 0599, 0729-0736; Notebook MLI-OTP-0003-0062-R02, at 0133, 0135, transcript MLI-OTP-0064-0608-R02, at 0680, 0682; P-0064’s report MLI-OTP-0017-0029, at 0034-0035; P-0065: T-043, p. 45, *referring to* video MLI-OTP-0018-0148; P-0055 and P-0057’s report MLI-OTP-0029-1138, at 1158-1164.

<sup>3548</sup> The Chamber notes that P-0057 and P-0055 refer to the Mosque Djingareyber as ‘Djingarei-Ber’, ‘Djingareiber’ or ‘Kankan Moussa’ in their report (*see* P-0055 and P-0057’s report MLI-OTP-0029-1138). The Chamber considers that these references concern the same site. *See also* P-0104’s report MLI-OTP-0028-0586, at 0729; P-0114’s statement MLI-OTP-0023-0344-R02, at 0356-0357, 0361, 0368, *referring to* photographs MLI-OTP-0009-1478, MLI-OTP-0009-1483, MLI-OTP-0009-1537, MLI-OTP-0009-1538; P-0151’s statement MLI-OTP-0029-0843-R03, at 0861, para. 99; P-0151: T-034, p. 9; P-0065: T-039, pp. 18-19, *referring to* MLI-OTP-0040-0406.

<sup>3549</sup> P-0150: T-103, pp. 43-44.

<sup>3550</sup> P-0065: T-039, pp. 53-54; P-0150: T-104, p. 13.

<sup>3551</sup> P-0104’s report MLI-OTP-0028-0586, at 0729-0730; P-0150: T-104, p. 13; P-0065: T-039, pp. 53-54; P-0125’s statement MLI-OTP-0023-0004-R03, at 0024, para. 94; P-0114’s statement MLI-OTP-0023-0344-R02, at 0368, paras 95-99.

<sup>3552</sup> P-0151’s statement MLI-OTP-0029-0843-R03, at 0858, 0861, paras 84-85, 99-100; P-0151: T-034, pp. 8-9; Dossier MLI-OTP-0004-0321, at 0349; UNESCO information dossier MLI-OTP-0004-0423, at 0433; P-0114’s statement MLI-OTP-0023-0344-R02, at 0368, para. 95.

<sup>3553</sup> Mr Al Hassan’s statement MLI-OTP-0060-1374, at 1388-1389, wherein Mr Al Hassan indicated not remembering if there were Police members on the site.

### c) The impact of the demolitions

1045. The local population of Timbuktu condemned the demolition of the mausoleums and the door of the mosque and took to the streets in protest.<sup>3554</sup> They felt that the demolition of these monuments was a serious attack on the identity of Timbuktu,<sup>3555</sup> which would take away the respect and the augustness of the people and the city.<sup>3556</sup> For the people of Timbuktu, the demolition of these monuments was an act of aggression against their faith,<sup>3557</sup> and a crime against their cultural and traditional symbols.<sup>3558</sup> As expressed by P-0638, during Ansar Dine/AQIM's control of Timbuktu, there was 'no longer any dignity'.<sup>3559</sup> He explained that 'people liked them at the beginning, but as soon as they started smashing up the mausolea, people didn't want anything more from them. They weren't with them anymore'.<sup>3560</sup>

1046. The demolition of the monuments was traumatic for the people of Timbuktu,<sup>3561</sup> and had an emotional impact on them.<sup>3562</sup> Following the demolition, the local population was demoralised.<sup>3563</sup> Members of the population felt hurt,<sup>3564</sup> and expressed fear,<sup>3565</sup> sadness,<sup>3566</sup> frustration<sup>3567</sup> and anger.<sup>3568</sup> At a national level, Malians felt that their national heritage was lost.<sup>3569</sup>

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<sup>3554</sup> P-0150: T-104, pp. 13, 41.

<sup>3555</sup> D-0551: T-201, p. 7; P-0431: T-062, p. 46.

<sup>3556</sup> P-0151: T-104, p. 41.

<sup>3557</sup> P-0114's statement MLI-OTP-0023-0344-R02, at 0375, para. 137.

<sup>3558</sup> P-0150: T-104, pp. 11, 13, *referring to* MLI-OTP-0025-0354, transcript 0025-0354, translation 0025-0337, at 0341.

<sup>3559</sup> P-0638: T-057, p. 48.

<sup>3560</sup> P-0638: T-058, pp. 27-30; T-059, p. 24.

<sup>3561</sup> P-0623: T-029, p. 63; T-030, p. 9; P-0114: T-060, pp. 23, 29; P-0104: T-024, p. 30. P-0104 acknowledged that he was not an expert in assessing trauma, and that what he said was predicated on what he saw when he was *in situ* (P-0104: T-024, p. 36). P-0431 explained that, while they were not on site in Timbuktu, they were working with resource people and people within government bodies, who testified to the trauma experienced (P-0431: T-062, p. 46).

<sup>3562</sup> P-0150: T-104, p. 41; P-0125's statement MLI-OTP-0023-0004-R03, at 0024, para. 95. *See also* D-0093: T-211, p. 45.

<sup>3563</sup> P-0150: T-104, pp. 13, 41; P-0114's statement MLI-OTP-0023-0344-R02, at 0375, para. 135.

<sup>3564</sup> P-0125's statement MLI-OTP-0023-0004-R03, at 0019, 0021-0024, 0030-0031, paras 70-71, 79-80, 87-88, 94-95, 129-130; P-0638: T-058, pp. 27-28, 30; P-0114: T-060, pp. 23, 29. *See also* P-0151: T-034, pp. 21-22.

<sup>3565</sup> P-0654: T-132, p. 62.

<sup>3566</sup> P-0125's statement MLI-OTP-0023-0004-R03, at 0018, para. 63; P-0638: T-058, p. 27.

<sup>3567</sup> P-0654: T-132, p. 63.

<sup>3568</sup> P-0150: T-104, p. 7; P-0125's statement MLI-OTP-0023-0004-R03, at 0031, para. 130, *referring to* MLI-OTP-0018-0372.

<sup>3569</sup> P-0114's statement MLI-OTP-0023-0344-R02, at 0375, para. 136; P-0638: T-058, pp. 27-28, 30.



#### d) The roles of the different institutions

1047. It took two days to destroy some eleven mausoleums.<sup>3570</sup> Given the effort required, it had to be ‘team work’.<sup>3571</sup> Al Mahdi, the then head of the *Hesbah*, made the preparations for the demolition of the monuments and notified the training centres and Islamic Police to provide the manpower and vehicles needed.<sup>3572</sup> *Hesbah* members – who were responsible for ensuring that nothing was done which could be interpreted as humiliation to the buried people – carried out the demolitions,<sup>3573</sup> assisted by other members of Ansar Dine/AQIM, including members of the Security Battalion and the Islamic Police, which notably provided human resources and vehicles.<sup>3574</sup> In addition, members of Ansar Dine/AQIM secured some of the demolition sites to protect those demolishing the mausoleums.<sup>3575</sup> Some journalists were afforded access to the sites.<sup>3576</sup> The security deployment conducted by Talha was particularly heavy at the first cemetery.<sup>3577</sup> At other sites, those who carried out the demolitions were armed.<sup>3578</sup>

1048. Around 10 Islamic Police members participated in the demolition operations.<sup>3579</sup>

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<sup>3570</sup> P-0150: T-103, p. 27.

<sup>3571</sup> Mr Al Hassan’s statements MLI-OTP-0060-1374, at 1386; MLI-OTP-0060-1327, at 1338, 1350.

<sup>3572</sup> P-0150: T-103, pp. 25-26, 83.

<sup>3573</sup> P-0150: T-103, pp. 26, 28-29; D-0605: T-195, p. 16.

<sup>3574</sup> P-0150: T-103, pp. 25-26; D-0605: T-195, p. 16; Mr Al Hassan’s statements MLI-OTP-0060-1327, at 1338; MLI-OTP-0060-1374, at 1381. *See also* P-0150: T-104, p. 13.

<sup>3575</sup> P-0065: T-043, pp. 22-23, *referring to* video MLI-OTP-0018-0375; P-0150: T-103, p. 32, *referring to* video MLI-OTP-0018-0375, at 00:00:04:18, 34, *referring to* video MLI-OTP-0018-0363; P-0150: T-117, p. 27.

<sup>3576</sup> *See e.g.* P-0150: T-103, p. 34, *referring to* video MLI-OTP-0018-0363; p. 63, *referring to* video MLI-OTP-0018-0366.

<sup>3577</sup> P-0150: T-117, p. 27.

<sup>3578</sup> P-0150: T-117, p. 27. *See also e.g.* video MLI-OTP-0018-0148, at 00:01:59:08 to 00:02:04:00, 00:08:29:00 to 00:08:36:00).

<sup>3579</sup> P-0150 stated that he did not remember if Al Mahdi was asked to request soldiers or maybe cars, but Abou Zeid told him to go to Khaled who would provide Al Mahdi with anything that he needed at the time. P-0150 stated that Al Mahdi went to the centre many times to request equipment at the police station. P-0150 stated that he did not recall the exact details, but he believed that Al Mahdi’s visit to Khaled was in regards to the mausoleums as they needed a number of soldiers from the Police and also soldiers from the training centres. P-0150 stated that he had ‘doubts’ about the occasion but believed it was most likely related to the mausoleums and the destruction of the mausoleums, which he believed occurred in mid-June 2012 (P-0150: T-093, pp. 45-46). Mr Al Hassan stated that on the first day of the destructions, there were around 10 members of the Police participating in the destructions (Mr Al Hassan’s statement MLI-OTP-0060-1374, at 1382). Mr Al Hassan thought that on this first day, Talha came to the Police to borrow a few men (Mr Al Hassan’s statement MLI-OTP-0060-1374, at 1382). He thought that there were less than 10 men in total participating in the first destruction (Mr Al Hassan’s statement MLI-OTP-0060-1374, at 1383). During the next days, there were around 10 men in total as

Upon receiving a request for assistance, the emir of the Islamic Police gave men to Talha<sup>3580</sup> who came to pick some of them up directly at the police station.<sup>3581</sup> Al Mahdi was in charge of everyone who assumed their duties concerning the levelling of the structures of the graves: he gave instructions and provided the logistics and supplies needed to everyone, including members of the Islamic Police.<sup>3582</sup>

1049. The population of Timbuktu condemned the actions of the armed groups and took to the streets as they thought that they were destroying one of their cultural and traditional symbols and they considered that a crime. However, the Islamic Police and the Security Battalion put barricades, which stopped people from coming to the area where the mausoleums were being demolished.<sup>3583</sup>

1050. Mr Al Hassan knew the historical importance of the mausoleums for the population of Timbuktu,<sup>3584</sup> and that they were a place of worship.<sup>3585</sup> He knew of the planned demolition of the monuments before it was executed,<sup>3586</sup> and he understood why the monuments were demolished.<sup>3587</sup> Reflecting on the demolition of the monuments with Al Mahdi several months later, Mr Al Hassan ‘encouraged this and considered this an achievement’.<sup>3588</sup>

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well (Mr Al Hassan’s statement MLI-OTP-0060-1374, at 1383). *See* D-0605: T-195, p. 17. *See also* evidence mentioning members of the Islamic Police present at the sites, *e.g.* Mr Al Hassan’s statements MLI-OTP-0060-1352, at 1365-1366, *referring to* video MLI-OTP-0018-0361, at 00:00:04:16, 1366-1367, *referring to* video MLI-OTP-0012-1787; MLI-OTP-0060-1374, at 1396-1397, *referring to* MLI-OTP-0018-0359, at 00:00:13:12; P-0150: T-103, pp. 33-34, *referring to* video MLI-OTP-0018-0363, 37, *referring to* video MLI-OTP-0018-0356, at 00:00:02:16, 40, *referring to* video MLI-OTP-0018-0361, at 00:00:11:08 to 00:00:18:10; P-0065: T-043, p. 46, *referring to* video MLI-OTP-0018-0148, at 00:03:49:01.

<sup>3580</sup> Mr Al Hassan’s statement MLI-OTP-0060-1327, at 1345.

<sup>3581</sup> Mr Al Hassan’s statements MLI-OTP-0060-1374, at 1385-1386; MLI-OTP-0060-1327, at 1345-1346.

<sup>3582</sup> P-0150: T-117, p. 27.

<sup>3583</sup> P-0150: T-104, p. 13; P0065: T-039, pp. 53-54.

<sup>3584</sup> Mr Al Hassan’s statements MLI-OTP-0060-1352, at 1354, 1368-1369; MLI-OTP-0062-0969, at 0976.

<sup>3585</sup> Mr Al Hassan’s statements MLI-OTP-0060-1327, at 1337; MLI-OTP-0062-0969, at 0974.

<sup>3586</sup> Mr Al Hassan’s statement MLI-OTP-0062-0969, at 0975. *See also* Mr Al Hassan’s statement MLI-OTP-0060-1327, at 1340.

<sup>3587</sup> Mr Al Hassan’s statements MLI-OTP-0062-0969, at 0974-0975; MLI-OTP-0060-1352, at 1369; MLI-OTP-0060-1327, at 1337; P-0623: T-029, p. 34. *See also* P-0150: T-094, p. 9.

<sup>3588</sup> P-0150: T-120, p. 76; Mr Al Hassan’s statement MLI-OTP-0062-0969, at 0973-0975.

1051. There were phone contacts between Mr Al Hassan's number<sup>3589</sup> and Al Mahdi's number<sup>3590</sup> prior to and at the time of the demolitions.<sup>3591</sup> Although discussions between Mr Al Hassan and Al Mahdi concerning the demolitions may have occurred at this time,<sup>3592</sup> absent further evidence, the Chamber cannot conclude that this is the only reasonable inference to be drawn from the phone contacts. Further, considering that Mr Al Hassan did not have exclusive use of his phone, which became a Police phone,<sup>3593</sup> the Chamber cannot conclude that Mr Al Hassan was the interlocutor of all of the contacts during this period. For these reasons, the Chamber is unpersuaded that any decisive conclusion regarding Mr Al Hassan's involvement in the demolition of the mausoleums can be drawn from the increase in the frequency of phone contacts during June and July 2012.<sup>3594</sup>

1052. Regarding the precise role of Mr Al Hassan in relation to the demolitions, the Chamber notes that when asked which person from the Police came to set up the barricades, P-0150 testified that '[Mr] Al Hassan [was] the one who manages all the activities, but [he] would like to confirm that the commissioner of the police during that time was Khaled Al Sahraoui'.<sup>3595</sup> Considering this equivocation, and

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<sup>3589</sup> Mr Al Hassan owned the cell phone with the number 79262392 (see footnote 3664 below), but his personal number became a Police number, which was broadcast on the radio and Internet. Mr Al Hassan used the phone the majority of the time, but the 'police phone' was in the Police office, shared by Khaled and Mr Al Hassan, and could be answered by anyone (Handwritten note MLI-OTP-0001-7323, translation MLI-OTP-0034-0053; Mr Al Hassan's statement MLI-OTP-0051-0571, at 0593-0594; MLI-OTP-0060-1403, at 1411-1412, 1416-418; P-0582's statement MLI-OTP-0062-3773-R01, at 3782-3783).

<sup>3590</sup> Al Mahdi used the cell phone with the number 75482011 (P-0150: T-100, pp. 29-30; Handwritten note MLI-OTP-0001-7323, translation MLI-OTP-0034-0053).

<sup>3591</sup> In the period between 1 June and 4 November 2012, there were 28 contacts between Mr Al Hassan's 'police phone' number 79262392, and the number 75482011, used by Al Mahdi. Specifically, in the period between 1 June and 9 July 2012, immediately before and during the destructions of the mausoleums, there were 13 phone contacts between the two numbers. Seven of these contacts were made between 29 June (after the decision to destroy the mausoleums was made, one day before the destructions commenced) and 9 July (the day before the final destructions at the Djingareyber mosque). Call data records MLI-OTP-0061-1933, tab "Connections In and Out", at lines 2023, 2712, 2713 (duplicate), 3064, 3065 (duplicate), 3066, 4023, 4027, 4028 (duplicate), 5197, 5348, 5740, 5741, 6167, 6167, 6175, 6928, 7336, 8249, 8250, 8271, 8272, 8755, 11101, 11102, 11103, 11104, 12332, 14365, 14266, 15138; Call data records MLI-OTP-0031-0818, at lines 13, 360, 583, 584, 1056, 1060, 1165, 1744, 1940, 2166, 2167, 4421, 4591.

<sup>3592</sup> The Chamber takes note of Mr Al Hassan's statement that it is possible that he had Al Mahdi over the phone at the time of the destructions and that it is possible that it was about the destruction (Mr Al Hassan's statement MLI-OTP-0060-1327, at 1350).

<sup>3593</sup> Mr Al Hassan's statement MLI-OTP-0051-0571, at 0593-0594; MLI-OTP-0060-1403, at 1411-1412, 1416-418; P-0582's statement MLI-OTP-0062-3773-R01, at 3782-3783; P-0150: T-092, pp. 52-53, referring to video MLI-OTP-0025-0010, at 00:08:09:00 to 00:08:21:16, 00:08:22:06; P-0654: T-128, pp. 46-47; T-132, p. 23, referring to photograph MLI-OTP-0012-1914.

<sup>3594</sup> See [Prosecution Final Brief](#), para. 462; [Defence Final Brief](#), para. 553.

<sup>3595</sup> P-0150: T-104, p. 13.

noting that Al Mahdi was told that Khaled would provide him with anything he needed at the time;<sup>3596</sup> that it was the Police emir who gave policemen to Talha;<sup>3597</sup> that the Security Battalion was also partly responsible for the erection of the barricades,<sup>3598</sup> and that – with the exception of his passing presence at the Djingareyber mosque<sup>3599</sup> – Mr Al Hassan was not present on the sites during the demolitions,<sup>3600</sup> the Chamber considers that there is insufficient evidence to establish the role and actions of Mr Al Hassan in connection with the barricades.<sup>3601</sup>

1053. Having regard to the aforementioned considerations and further noting that the heavy security deployment applied only to the first cemetery at which demolitions occurred and that it was Talha and the Security Battalion which undertook these measures,<sup>3602</sup> the Chamber cannot infer from Mr Al Hassan general role in relation to the security of the city, the patrols, and the assignment of Police members for these tasks, that he managed the security in relation to the demolition of the mausoleums.<sup>3603</sup> Taking all of the foregoing factors into account, the Chamber also cannot infer that Mr Al Hassan ‘would have been responsible’ for tasking specific members of the Police to participate in the demolition operations.<sup>3604</sup>

1054. Finally, the Chamber considers that Mr Al Hassan’s passing ‘salutation’ to Al Mahdi and Talha at the final demolition site near the Djingareyber mosque<sup>3605</sup> confirms Mr Al Hassan’s knowledge of the demolitions. However, in the context of the considerations detailed above, and further noting Mr Al Hassan’s lack of authority over these individuals, the Chamber cannot conclude, on the available evidence before it, that this amounted to an endorsement of their work and moral

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<sup>3596</sup> P-0150: T-093, p. 46.

<sup>3597</sup> Mr Al Hassan’s statement MLI-OTP-0060-1327, at 1345. *See also* P-0150: T-093, p. 46.

<sup>3598</sup> P-0150: T-104, p. 13.

<sup>3599</sup> Mr Al Hassan’s statement MLI-OTP-0060-1374, at 1388-1389.

<sup>3600</sup> Mr Al Hassan’s statement MLI-OTP-0060-1374, at 1381.

<sup>3601</sup> *See* [Prosecution Final Brief](#), para. 460.

<sup>3602</sup> P-0151: T-103, p. 32, *referring to* video MLI-OTP-0018-037; T-117, p. 27.

<sup>3603</sup> In this regard, the Chamber further notes that Mr Al Hassan’s ‘assignment made him unconcerned with what happened around the graves because other people were responsible for that’ (P-0150: T-094, p. 9). *See also* [Prosecution Final Brief](#), para. 460.

<sup>3604</sup> *See* [Prosecution Final Brief](#), para. 461. The Chamber further recalls that Al Mahdi was in charge of everyone who assumed their duties on the day of the destruction (P-0151: T-117, p. 27).

<sup>3605</sup> Mr Al Hassan’s statement MLI-OTP-0060-1374, at 1388-1389.

encouragement to continue the demolition.<sup>3606</sup>

1055. In light of the foregoing, the Chamber finds that there is insufficient evidence to establish that Mr Al Hassan took any particular action or had a specific role in relation to the demolition of the mausoleums. Therefore, in the absence of any factual findings on Mr Al Hassan's involvement, the Chamber considers it unnecessary to undertake any legal characterisation of the charged crime under Count 7 or the related criminal responsibility of Mr Al Hassan under Article 25(3)(d) of the Statute.

#### **F. MR AL HASSAN'S ROLE AND FUNCTIONS WITHIN ANSAR DINE/AQIM**

1056. For the factual findings in this section, the Chamber relies primarily on the evidence of the following witnesses, which, subject to discrete aspects discussed below, it finds particularly reliable: P-0150,<sup>3607</sup> a member of Ansar Dine/AQIM with in-depth knowledge of the groups, their institutions and members, including about the police force and Mr Al Hassan's role in Ansar Dine/AQIM; P-0582,<sup>3608</sup> a member of Ansar Dine/AQIM who worked for the Islamic Police and with Mr Al Hassan and was in a position to know the inner workings of the Islamic Police and Mr Al Hassan's role within it; P-0065,<sup>3609</sup> who had a direct and close professional relationship with Ansar Dine/AQIM, had interactions with Mr Al Hassan, and observed the work of Ansar Dine/AQIM, its Islamic Police and Mr Al Hassan; P-0626,<sup>3610</sup> a member of Ansar Dine/AQIM, who, although he was not aware of all aspects of Mr Al Hassan's role within the Islamic Police, had personal knowledge of Ansar Dine/AQIM and Mr Al Hassan's interactions with

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<sup>3606</sup> Mr Al Hassan's statement MLI-OTP-0060-1374, at 1388-1389. *See also* [Defence Final Brief](#), para. 558; [Prosecution Final Brief](#), para. 466; [Prosecution Response Brief](#), para. 166.

<sup>3607</sup> The Chamber refers to its findings on the credibility and reliability of P-0150's evidence (*see* section II.B.2.a)iii above).

<sup>3608</sup> The Chamber refers to its findings on the credibility and reliability of P-0582's evidence (*see* section II.B.2.c)iii above).

<sup>3609</sup> The Chamber refers to its findings on the credibility and reliability of P-0065's evidence (*see* section II.B.2.a)i above).

<sup>3610</sup> The Chamber refers to its findings on the credibility and reliability of P-0626's evidence (*see* section II.B.2.a)v above).

the Islamic Court; and D-0544,<sup>3611</sup> D-0551,<sup>3612</sup> P-0004,<sup>3613</sup> P-0638,<sup>3614</sup> and P-0641,<sup>3615</sup> local inhabitants of Timbuktu who had personal knowledge of Mr Al Hassan and interacted with him during the relevant period of the charges. The Chamber also relies on written reports from the Islamic Police, which it finds reliable,<sup>3616</sup> and on Mr Al Hassan's own statements on his own role and functions, which it finds generally credible and reliable.<sup>3617</sup>

1057. Where it is corroborated by other credible and reliable evidence, the Chamber relies as well on the evidence provided by D-0605, an insider who worked for the Islamic Police at various points during the relevant period of the charges and observed Mr Al Hassan in his capacity as a member of the Islamic Police.<sup>3618</sup>

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<sup>3611</sup> D-0544 (*see* D-0544: T-196; D-0544's statement MLI-D28-0006-3342-R01 introduced through Rule 68(3) of the Rules), a Muslim Tuareg man from [REDACTED], has lived in Timbuktu his whole life, including when Ansar Dine/AQIM were present in the city (D-0544: T-196, pp. 5-6, 42). While D-0554 has no direct family relationship with Mr Al Hassan, he stated that [REDACTED], and he considers Mr Al Hassan a cousin or brother (D-0544: T-196, pp. 6, 15, 18, 41-42, 56). D-0544 was [REDACTED] with Mr Al Hassan before 2012. He also previously worked as [REDACTED] (D-0544: T-196, pp. 41-42; D-0544's statement MLI-D28-0006-3342-R01, at 0344, para. 13). He mainly testified about events in Timbuktu during the period of its control by Ansar Dine/AQIM and his knowledge of and interactions with Mr Al Hassan. The Chamber considers the witness to have been straightforward concerning his experiences, providing details which were in line with what the Chamber would expect from a witness with his relationships and experiences. The Chamber notes that despite his relationship with Mr Al Hassan, he testified that he did not know Mr Al Hassan was a member of the Islamic Police and he did not have Mr Al Hassan's phone number before 2012, although he conceded he knew that Mr Al Hassan had authority and a certain degree of power and told him in 2012 that he could call him if he ever had any problems (D-0544: T-196, pp. 43-44, 46-47; D-0544's statement MLI-D28-0006-3342-R01, at 3344, paras 15-17). Nevertheless, despite his personal relationship with the accused, the Chamber observes that D-0544 appeared unbiased, forthright and dispassionate in his description of events and his interactions with Mr Al Hassan. Based on the Chamber's holistic assessment of the evidence, including the foregoing, the Chamber finds D-0544 to be a generally credible and reliable witness. The Chamber notes that this is a general assessment of the witness's testimony and reiterates that it has also carefully assessed the credibility, reliability and weight of the witness's evidence on specific issues on a case-by-case basis, as appropriate.

<sup>3612</sup> The Chamber refers to its findings on the credibility and reliability of D-0551's evidence (*see* footnote 2233 below).

<sup>3613</sup> The Chamber refers to its findings on the credibility and reliability of P-0004's evidence (*see* footnote 2231 above).

<sup>3614</sup> The Chamber refers to its findings on the credibility and reliability of P-0638's evidence (*see* section II.B.2.a)vi above).

<sup>3615</sup> The Chamber refers to its findings on the credibility and reliability of P-0641's evidence (*see* section II.B.2.a)vii above).

<sup>3616</sup> For the Chamber's findings that the relevant reports cited in this section emanate from the Islamic Police and were written and signed by Mr Al Hassan, *see* section II.D.3 above.

<sup>3617</sup> The Chamber refers to its findings on the credibility and reliability of Mr Al Hassan's statements (*see* section II.C above).

<sup>3618</sup> The Chamber refers to its findings on the credibility and reliability of D-0605's evidence (*see* section II.B.2.a)xiii above). Considering his insufficient basis of knowledge, the Chamber considers that his testimony as to the role of Mr Al Hassan may only be relied upon in so far as it is corroborated by other reliable evidence.

1058. The Chamber places little weight on D-0202's evidence concerning Mr Al Hassan's role and functions within Ansar Dine/AQIM.<sup>3619</sup>

### 1. Recruitment into Ansar Dine/AQIM and the Islamic Police

1059. Mr Al Hassan<sup>3620</sup> was recruited into Ansar Dine/AQIM by senior leaders of AQIM.<sup>3621</sup> Specifically, after the groups arrived, Mr Al Hassan met an acquaintance who was part of the Belmoktar group of jihadists.<sup>3622</sup> This person took him to the Timbuktu military camp to meet Iyad Ag Ghaly and Abdallah Al Chinguetti.<sup>3623</sup> They met the sheikhs there, notably Sheikhs Abdallah Al Chinguetti and Abou Al Baraa; the sheikhs told them about the *jihad* doctrine, the obligation of *jihad* and its necessity.<sup>3624</sup> They encouraged Mr Al Hassan to join them, noting that he was a young man from Timbuktu and they would give him a position working with them.<sup>3625</sup> As a result of the discussion, Mr Al Hassan was convinced to work with them.<sup>3626</sup>

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<sup>3619</sup> The Chamber refers to its findings on the credibility and reliability of D-0202's evidence and its general view that apart from discrete aspects of his testimony about the Islamic Court, little weight should be afforded to D-0202's evidence (*see* section II.B.2.a)ix above). The Chamber notes that D-0202 did not have a solid basis of knowledge of the Islamic Police, its internal process and the role that Mr Al Hassan exercised within the Islamic Police. In addition, the Chamber considers that D-0202 had a tendency to minimise the roles and functions of key players in Ansar Dine/AQIM, including Mr Al Hassan, and in this context significantly contradicted his prior statement about Mr Al Hassan's position. Accordingly, the Chamber places little weight on D-0202's evidence concerning Mr Al Hassan's roles and functions.

<sup>3620</sup> Prior to his recruitment into the armed groups, Mr Al Hassan used to work in a pharmacy in Zorho, which closed in 2012 because no medication was being delivered and there was no work (D-0627's statement MLI-D28-0006-5699-R01, at 5702, para. 21). After the arrival of Ansar Dine/AQIM in Timbuktu in April 2012, Mr Al Hassan [REDACTED] (Mr Al Hassan's statement MLI-OTP-0051-1257, at 1281-1282).

<sup>3621</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1275-1285, 1289.

<sup>3622</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1282, 1285.

<sup>3623</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1285. While noting that Mr Al Hassan specifically referred to 'Abdallah or 'Sheikh Abdallah', in light of the context of the meeting and the Chamber's findings regarding the leadership of Ansar Dine/AQIM, the Chamber considers that Mr Al Hassan refers to Sheikh Abdallah Al Chinguetti. Similarly, the Chamber considers that Mr Al Hassan's reference to 'Iyad' is a reference to Iyad Ag Ghaly. *See* also Mr Al Hassan's statement MLI-OTP-0051-0557, at 0560-0561.

<sup>3624</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1285.

<sup>3625</sup> Mr Al Hassan's statement MLI-OTP-0051-1257, at 1285.

<sup>3626</sup> Mr Al Hassan stated that he spoke with Sheikh Abdallah and Sheikh Abou Al Baraa; Abou Zeid and Iyad Ag Ghaly were also present as were other more junior soldiers, with whom he only exchanged greetings (Mr Al Hassan's statement MLI-OTP-0051-1257, at 1285, 1289). *See* paragraphs 452, 475-460, 462, 487 above. Recalling P-0065's testimony that in his opinion, Mr Al Hassan, like other young people answered the call of the tribal leaders to join the non-Qaeda section of Ansar Dine to protect themselves, protect the community and develop control of the organisation from the inside (P-0065: T-50, pp. 18-19) and D-0211's testimony that Mr Al Hassan told him that he joined the movement because

1060. At the end of April 2012, Mr Al Hassan was working with Ansar Dine/AQIM.<sup>3627</sup>

Initially, Mr Al Hassan worked under Talha in Ansar Dine/AQIM's Security Battalion.<sup>3628</sup> At this time, one of Mr Al Hassan's tasks was to help to differentiate

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Ansar Dine was the most powerful force present and that the local population needed to join the group to defend their community (D-0211: T-190, pp. 59-66, 94-95), the Chamber notes that P-0065's evidence in this regard was speculative and his personal opinion and that P-0065 and D-0211's testimony does not contradict Mr Al Hassan's own explanation of how and why he came to join Ansar Dine/AQIM. The Chamber further notes that D-0211's testimony demonstrates that Mr Al Hassan joined Ansar Dine willingly. *Contra* [Defence Final Brief](#), paras 66-67.

<sup>3627</sup> P-0150: T-092, pp. 40-42. D-0544 testified that about two weeks or just around the time of the arrival of Ansar Dine/AQIM in Timbuktu, he saw Mr Al Hassan intervening to disperse armed elements, young people, who were trying to take property and in a second incident also intervened to prevent people from breaking into of other homes, informing D-0544 to call him if he had other problems (D-0544's statement MLI-D28-0006-3342-R01, at 3345, paras 16-17; T-196, pp. 31, 34-41, 43, 48-51). The Chamber notes that while D-0544 did not specify an exact date when the armed groups arrived in Timbuktu, other evidence cited in this judgment established this fact. Read together with P-0150's description of Mr Al Hassan's role at the time (*see* footnote below), the Chamber is satisfied that D-0544's evidence is consistent with the finding that Mr Al Hassan was active with Ansar Dine/AQIM early in their control of Timbuktu (*contra* [Defence Response Brief](#), paras 11-12). In making its finding, the Chamber does not rely on P-1086's testimony. The Chamber notes P-1086's testimony that he encountered Mr Al Hassan in April and June 2012 interacted with him in Mr Al Hassan's capacity as a member of Ansar Dine/AQIM (P-1086: T-121, pp. 39-41, 48-60; T-122, pp. 36-38). However, noting that when confronted with evidence that the incident may have taken place in June 2012, P-1086 testified that when talking about dates, he was merely giving estimates and when he stated that the events took place toward the end of April, it could also have occurred in early July (P-1086: T-122, pp. 38-42; *see also* T-122, pp. 4-5; [Defence Response Brief](#), para. 10). In light of the witness's difficulty with dates the Chamber cannot rely on P-1086's testimony that his interaction with Mr Al Hassan was in April 2012. Similarly, in making this finding, the Chamber places little weight on D-0211's testimony. The Chamber notes that D-0211 testified that he arrived in Timbuktu about one month after Ansar Dine's arrival and at that time, Mr Al Hassan had not yet joined Ansar Dine (*see* D-0211: T-190, pp. 75-76, 81, 83). D-0211 testified that he did not remember how long after their first meeting in 2012 he and Mr Al Hassan met again, but he remembered that the meeting was held at the medina in Timbuktu and that by that time Mr Al Hassan was already a member of Ansar Dine (D-0211: T-190, p. 59). Noting that D-0211 was only in Timbuktu for a short period of time, had only limited interactions with Mr Al Hassan, and also that D-0211 could not situate the time of subsequent meetings, the Chamber places greater weight on the testimony of P-0150, who had intimate knowledge about the functioning of Ansar Dine/AQIM, and D-0544, who also observed Mr Al Hassan interacting with armed elements during the relevant period. The Chamber also notes Mr Al Hassan's statement that he went to Timbuktu one and a half to two months after he saw the groups passing in Zorho on their way to Timbuktu; he stated that he then [REDACTED] (*see* Mr Al Hassan's statement MLI-OTP-0051-1257, at 1275-1285). Noting Mr Al Hassan's professed difficulty with dates (*see* Mr Al Hassan's statements MLI-OTP-0051-1124, at 1136; MLI-OTP-0051-0483, at 0487), the Chamber puts little weight on this aspect of his evidence.

<sup>3628</sup> The Chamber is convinced by P-0150's account that in the early days of Ansar Dine/AQIM's control of Timbuktu, Mr Al Hassan worked for Talha in the security office and also helped to differentiate between public items belonging to the Malian government and private goods belonging to locals, and subsequently joined the Police after its creation (*see* P-0150: T-089, p. 56; T-092, pp. 40-41, 44; T-093, p. 14; T-107, pp. 58-60). D-0544's testimony about his encounters with Mr Al Hassan in the early days of Ansar Dine/AQIM's control of Timbuktu (referenced in the footnote above), is also consistent with aspects of P-0150's account of Mr Al Hassan's functions during this period (D-0544's statement MLI-D28-0006-3342-R01, at 3345, paras 16-17; D-0544: T-196, pp. 31, 34-41, 43, 48-51). While Mr Al Hassan indicated that he was recruited directly into the Islamic Police as an interpreter (Mr Al Hassan's statement MLI-OTP-0051-1257, at 1285-1287; MLI-OTP-0051-1032, at 1035) and made no mention of working with Talha, the Chamber does not consider this surprising given the short time Mr Al Hassan would have worked with Talha and the involvement of the Security Battalion in the creation of the Islamic Police (*see* paragraphs 548-549). The Chamber also notes the Defence's argument that the



between public items belonging to the Malian government and private goods belonging to locals, which was, at that time, an important task.<sup>3629</sup>

1061. After the creation of the Islamic Police in April/early May 2012,<sup>3630</sup> Mr Al Hassan was assigned to a larger task<sup>3631</sup> and was working with the Islamic Police by early May 2012.<sup>3632</sup> Mr Al Hassan was signing Police reports on behalf of the Islamic Police from at least 23 May 2012.<sup>3633</sup> Mr Al Hassan remained a member of the Islamic Police until Ansar Dine/AQIM left Timbuktu on 29 January 2013.<sup>3634</sup>

1062. Mr Al Hassan had an office, which he shared with leaders of the Islamic Police in the first Police location, the BMS, and subsequently at the second location, the *Gouvernorat*,<sup>3635</sup> each respectively a headquarters of the Police.<sup>3636</sup>

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number attributed to Mr Al Hassan had no contact with the number attributed to Talha (*see* Defence Closing statements T-214, p. 28) but considers that this has no bearing on its finding.

<sup>3629</sup> P-0150: T-092, pp. 40-41, 44.

<sup>3630</sup> *See* paragraph 518 above.

<sup>3631</sup> P-0150: T-093, p. 14.

<sup>3632</sup> The Chamber notes that the Defence indicates that it does not contest that Mr Al Hassan was active in the Police from May 2012 to January 2013 (*see* [Defence Final Brief](#), paras 65, 68). On this point, the Chamber notes Mr Al Hassan's statement with respect to the timing of the start of his work with the Police. However, the Chamber considers that the evidence is not reliable on this point in that Mr Al Hassan states that he worked for the Police two to three months before he began to write reports to the Islamic Court (Mr Al Hassan's statement MLI-OTP-0051-1257, at 1287). Given that there is a report written by Mr Al Hassan on 23 May, this would place him working for the Police before Ansar Dine/AQIM took over Timbuktu. In not relying on this aspect of Mr Al Hassan's statement, the Chamber further recalls Mr Al Hassan's self-professed difficulty with dates (*see* Mr Al Hassan's statements MLI-OTP-0051-1124, at 1136; MLI-OTP-0051-0483, at 0487). At the same time however, the Chamber is satisfied that Mr Al Hassan's statement that he worked for the Islamic Police at least some time before he wrote reports to the Islamic Court is a reliable statement. Given that the Chamber establishes that Mr Al Hassan wrote and signed an official Police report on 23 May 2012 and Mr Al Hassan's own testimony that he was active in the Police beforehand, the Chamber is satisfied that the evidence shows that Mr Al Hassan began working at the Islamic Police by at least early May 2012.

<sup>3633</sup> The Chamber notes the evidence that Mr Al Hassan wrote and signed a Police report dated 23 May 2012, Police report MLI-OTP-0001-7527 (handwritten, signed and unstamped), translation MLI-OTP-0052-0089, at 0090, *see* section E.2.a)viii above.

<sup>3634</sup> *See* the below discussion of Mr Al Hassan's activities with the Islamic Police and his departure from Timbuktu.

<sup>3635</sup> Mr Al Hassan's statements MLI-OTP-0051-1032, at 1042; MLI-OTP-0060-1453, at 1459-1461; P-0065: T-039, p. 38; P-0582's statement MLI-OTP-0062-4089-R02, at 4096; P-0150: T-093, pp. 50-51; T-093, pp. 54-57, *annotating* MLI-REG-0001-0064 (P-0150's drawing of Mr Al Hassan's office); T-093, pp. 58-59, *referring to* video MLI-OTP-0041-0605, at 00:00:00:23; T-093, pp. 76-77, *referring to* video MLI-OTP-0069-3710, at 00:00:03:11 to 00:00:32:21, transcript MLI-OTP-0078-4564, translation MLI-OTP-0078-4629. The Chamber notes that contrary to the Defence's argument objecting to the submission of the video as it was not shown to P-0065, the video was shown to P-0065, who recognised Mr Al Hassan (P-0065: T-043, p. 53). The Chamber is satisfied that this video is an authentic video of Mr Al Hassan in the Police's second location.

<sup>3636</sup> *See* section C.4.b)iv above.

## 2. Position within the Islamic Police

1063. As discussed above, the emir of the Police was the head of the police force, reporting to the leadership of Ansar Dine/AQIM.<sup>3637</sup> Initially, Mr Al Hassan worked under Adama,<sup>3638</sup> who was the first emir of the Police;<sup>3639</sup> having proved himself dynamic and skilled, he worked closely with Adama.<sup>3640</sup> Subsequently, once Khaled became the emir of the Police, Mr Al Hassan worked closely with him as well.<sup>3641</sup> While subordinate to Adama or Khaled, Mr Al Hassan had a leadership role in the police operations.<sup>3642</sup>

1064. Towards the very end of Ansar Dine/AQIM's control of Timbuktu, Khaled was sent on mission outside of the city and Yahia Abou Al Hamman, Talha and the entire *Shura* council elected to appoint Mr Al Hassan, for a short period in January 2013,<sup>3643</sup> to replace Khaled as commissioner<sup>3644</sup> of the Police.<sup>3645</sup> During

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<sup>3637</sup> See paragraph 550 above.

<sup>3638</sup> Mr Al Hassan's statements MLI-OTP-0051-1257, at 1285-1287; MLI-OTP-0051-1032, at 1035; P-0150: T-093, p. 14. See paragraph 552 above.

<sup>3639</sup> See paragraph 552 above.

<sup>3640</sup> P-0150: T-093, p. 14.

<sup>3641</sup> P-0150: T-093, p. 14. See P-0582's statements MLI-OTP-0062-4012-R02, at 4034-4035; MLI-OTP-0062-3641-R02, at 3655; MLI-OTP-0062-3710-R02, at 3730-3731, 3733; MLI-OTP-0062-3788-R02, at 3801; MLI-OTP-0062-3820-R02, at 3841-3842.

<sup>3642</sup> P-0150: T-093, p. 14; T-094, pp. 58, 65-66, 71; T-116, pp. 39-47; P-0065: T-040, p. 55; P-0582's statements MLI-OTP-0062-3773-R02, at 3781; MLI-OTP-0062-3773-R02, at 3785; MLI-OTP-0062-3845-R02, at 3847; MLI-OTP-0062-3820-R02, at 3830-3835; 3841-3842. The Chamber notes that P-0582's description of his observations of Mr Al Hassan's work with Khaled describes Mr Al Hassan as being more subservient to Khaled than described by P-0150, who emphasised the leadership role that Mr Al Hassan played. However, the Chamber notes that both testimony describe Mr Al Hassan as being in a position of leadership within the police force. See also D-0551: T-200, p. 85; T-201, pp. 11-12, 19-20.

<sup>3643</sup> See the Chamber's discussion of the battle of Diabaly (paragraph 454 above).

<sup>3644</sup> In his testimony on this matter, P-0150 specifically referred to 'Commissioner' or 'head' of the Police. Here, the Chamber also uses this designation and understands P-0150's testimony to mean that in this period, Mr Al Hassan was the leader in charge of police activities.

<sup>3645</sup> P-0150: T-090, pp. 53-56, 58-59; T-093, p. 14; T-116, pp. 32-38. See also P-0099: T-146, pp. 35-36 (testifying that Khaled was in Diabaly); T-147, pp. 27-29 (stating that he was certain that before going to Diabaly, Khaled was the head of the Police); P-0582's statement MLI-OTP-0062-3820-R02, at 3833-3836 (stating that during the attack on Konna, Mr Al Hassan remained in the town and that P-0582 learnt after returning from Konna that Khalid had left for Diabaly; P-0582 however also states that Khaled returned to Timbuktu and to the Police after the battle of Diabaly). The Chamber notes that the attack on Diabaly happened in on 14 January 2013 (see paragraph 454 above). The Chamber notes that apart from P-0150, witnesses referred only to Adama and Khaled as the heads of the Police (see, for example, P-0065: T-040, pp. 55-56; the Chamber's discussion of the leadership of the Islamic Police; see also the following paragraph and discussion of the evidentiary material relating to Mr Al Hassan's role). Notably, P-0582, who was part of the Islamic Police, did not place Mr Al Hassan as ever being the head of the Police. The Chamber notes that P-0582 participated in the Konna battle and was absent from Timbuktu during the same period as Khaled (P-0582's statement MLI-OTP-0062-3820-R02, at 3834-3835). Given his absence, P-0582 may not have had knowledge of Mr Al Hassan's function in Khaled's absence. The Chamber further notes that, during his interviews with the Prosecution, Mr Al Hassan himself did not

his appointment, Mr Al Hassan could speak with people like Yahia Abou Al Hamman directly without a middle man and ask for provisions and funding.<sup>3646</sup>

1065. During the control of Timbuktu by Ansar Dine/AQIM, people perceived Mr Al Hassan's position in various terms, referring to him as

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say that he ever was the head of the Police. Instead, as did other witnesses with the exception of P-0150, he referred to Adama and Khaled as 'the only two' emirs of the Police (*see e.g.* MLI-OTP-0051-1155, at 1169; *see also* MLI-OTP-0051-0422, at 0426-0428). The Chamber is however convinced by the evidence provided by P-0150, who as an insider with access to the decision-making process of Ansar Dine/AQIM, was in a position to know what exact position Mr Al Hassan was assigned. The Chamber notes that the Defence makes arguments that P-0150 confused Khaled the Mauritanian, also a member of the Police, with Khaled the head of the Police and thus may have assumed that the wrong Khaled was absent during the referenced period (*see* [Defence Response Brief](#), para. 46). The Chamber considers that P-0150's evidence makes clear that he did not confuse the roles of the two men in his testimony before the Chamber. Further, the Chamber notes P-0582's evidence that he learnt from Khaled that the man had fought in Diabaly (P-0582's statement MLI-OTP-0062-3820-R02, at 3834-3835). It is clear from P-0582's evidence that he is discussing Khaled, the head of the Islamic Police; thus, P-0582's testimony supports P-0150's testimony that Khaled did indeed leave to go fight outside of Timbuktu. The Chamber also considers the Defence arguments regarding P-0150's basis of knowledge of Mr Al Hassan's promotion inapposite (*see* [Defence Response Brief](#), para. 52) and a clear misrepresentation of P-0150's evidence in relation to the decision-making bodies of Ansar Dine/AQIM. Finally, the Chamber has reviewed and considered Mr Al Hassan's statement as a whole in reaching the fact findings in the present section. The Chambers considers that the core of Mr Al Hassan's evidence is compatible with its conclusion that he effectively replaced Khaled as commissioner of the Police. In addition, the Chamber observes that Mr Al Hassan's interview was a wide ranging one, of an investigative nature, the direction of which, in terms of subjects for discussion and questions posed, was dependent on the choices of the Prosecution investigators during the various sessions. In this context, given that Mr Al Hassan was not confronted with this specific proposal during the interviews and was accordingly never given an opportunity to confirm or deny it, the fact that he did not of its own accord provide this detail to the investigators does not negatively impact the Chamber's overall assessment of Mr Al Hassan's credibility (*see* section II.C above) nor does the absence of comment on the issue detract from the evidence provided by P-0150.

<sup>3646</sup> P-0150: T-090, pp. 53-59.

‘*commissaire*’/‘commissioner’,<sup>3647</sup> *de facto* commissioner,<sup>3648</sup> ‘*commissaire adjoint*’/‘deputy commissioner’,<sup>3649</sup> and/or second person in the Islamic Police.<sup>3650</sup> In any case, starting from his time as a subordinate to Adama, and continuing throughout his participation in the work of the Islamic Police, Mr Al Hassan was perceived by the local population and by members of the Police to be a key player within the police force.

1066. Mr Al Hassan was diligent in his duties and praised by his superiors and other leaders of Ansar Dine/AQIM, including Abou Zeid.<sup>3651</sup> Members of the armed groups also praised Mr Al Hassan for being tough on enforcing prohibitions.<sup>3652</sup> Mr Al Hassan was considered to be ‘more effective in putting an end [to]

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<sup>3647</sup> P-0638 stated that Mr Al Hassan was called the ‘Islamic Commissioner’ and that everyone in Timbuktu was saying that Mr Al Hassan replaced a person named Adama. P-0638 also stated that his friend told him that Mr Al Hassan was the commissioner (P-0638: T-058, p. 18); D-0605 stated that Mr Al Hassan was closer to the locals than the other directors of the Islamic Police and this could have led to the erroneous conclusion that he was the commissioner to the Police (D-0605: T-193, pp. 17, 20, 26-27; T-195, pp. 19-20). P-0582 who referred to Mr Al Hassan as the ‘*commissaire*’, placed this position as below the ‘*directeur*’ of the Police, to whom he stated that Mr Al Hassan was subordinate (P-0582’s statement MLI-OTP-0062-3641-R02, at 3654-3655). *See also* P-0582’s repeated reference to Mr Al Hassan as a *commissaire* (P-0582’s statements MLI-OTP-0062-3679-R02, at 3681, 3686; MLI-OTP-0062-3773-R02, at 3784-3785; MLI-OTP-0062-3820-R02, at 3840; MLI-OTP-0062-4012-R02, at 4035). The Chamber understands ‘*commissaire*’ to mean commissioner. In placing the ‘*commissaire*’ as a lower level than the ‘*directeur*’ and noting that P-0582 places Mr Al Hassan as subordinate to Khaled, the Chamber considers that the position P-0582 describes is similar what other witnesses refer to as deputy commissioner (*see* footnote 3649 below). Similarly, P-0605 testified that several years after the event Mr Al Hassan told P-0605 that he had been ‘*commissaire de Police Islamique*’ in Timbuktu during the ‘occupation’; however, when describing the role of this ‘*commissaire*’, P-0605 described a position subordinate to others (*see* P-0605’s statement MLI-OTP-0062-2888-R02, at 2898-2904; MLI-OTP-0062-2910-R02, at 2913-2914). Considering P-0605’s basis of knowledge and the lack of relevant details, the Chamber did not find it appropriate to rely further on his evidence to establish Mr Al Hassan’s role and functions.

<sup>3648</sup> P-0150: T-090, pp. 55-57.

<sup>3649</sup> P-0004, a noted Timbuktu local and member of the Crisis Committee during the relevant period, referred to Mr Al Hassan as ‘*commissaire adjoint*’ (P-0004: T-165, pp. 45-46-47, 50-51, 77-79). The minutes of a 9 September 2012 Crisis Committee meeting also refer to ‘*commiss. + adjoint*’ (minutes MLI-OTP-0030-1177, at 1249). The Chamber understands ‘*le commissaire adjoint*’ to mean deputy commissioner or assistant commissioner. A diary, written contemporaneously, also refers to Mr Al Hassan as Adama’s deputy (notebook MLI-OTP-0003-0062-R02, at 0135-0139, transcript MLI-OTP-0064-0608-R02, at 0682-0636), again denoting the positioning of Mr Al Hassan in relation to the head of the Police. Other witnesses also corroborate the above description of Mr Al Hassan’s designation (P-0150: T-090, pp. 53, 55-58 (describing Mr Al Hassan’s role for part of the relevant period); P-0654: T-128, p. 37).

<sup>3650</sup> P-0065: T-040, p. 54; P-0099: T-147, pp. 27-29. The Chamber notes D-0605’s testimony that it was widely known that Mr Al Hassan was third in rank, subordinate to Abou Zhar, and that he was only sometimes responsible for police activities (D-0605: T-195, p. 19). This evidence about the superior position of Abou Zhar is contrary to other credible evidence discussed in the Chamber’s analysis of the structure of the Islamic Police, which shows that at some point in the relevant period, Mr Al Hassan was superior to Abou Zhar in the hierarchy of the Islamic Police (*see* paragraph 553 above).

<sup>3651</sup> P-0150: T-091, p. 24; T-093, p. 14.

<sup>3652</sup> P-0150: T-091, pp. 24-25.

wrongdoing’ than Al Mahdi, the then head of the *Hesbah*, who was seen by some other members of the armed groups as too lenient when addressing ‘wrongdoing’.<sup>3653</sup>

### 3. Functions within the Islamic Police

1067. Mr Al Hassan was an active member of the Police, after starting as an interpreter within the Police, within a short period of time, he had started to draft reports, exercise administrative functions and to organise the police work.<sup>3654</sup> Mr Al Hassan described himself as ‘very busy’.<sup>3655</sup> His functions are discussed below.

#### a) Work as interpreter

1068. Among his roles and responsibilities, in the early days of his work, Mr Al Hassan functioned particularly as an interpreter for the Police, given his understanding of multiple languages, notably Arabic, Songhai and French.<sup>3656</sup>

#### b) Supervision of Islamic Police members

1069. Mr Al Hassan was in charge of registering new members of the Police.<sup>3657</sup> He told other members of the Police what their roles would be.<sup>3658</sup> He organised

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<sup>3653</sup> P-0150: T-091, p. 25. In the context of P-0150’s testimony ‘wrongdoing’ refers to ‘prohibitions’.

<sup>3654</sup> Mr Al Hassan’s statements MLI-OTP-0051-1032, at 1035-1042; MLI-OTP-0051-1257, at 1286-1288. The Chamber notes that, while it is Mr Al Hassan himself who clearly explained the chronology and the evolution of his work within the Islamic Police on this specific matter, a wide body of documentary and testimonial evidence, discussed in detail below, also supports this finding and corroborates his statement on his increased responsibility within the Islamic Police. *See also* P-0150: T-093, p. 14; T-116, pp. 65, 68-77. Additionally, the Chamber recalls its findings on the establishment of the Police (*see* section C.4.b)i above). The Chamber also recalls its above findings that Mr Al Hassan was signing already Police reports in May 2012 (*see* paragraph 1061 above).

<sup>3655</sup> Mr Al Hassan’s statement MLI-OTP-0051-0571, at 0580. *See also* Mr Al Hassan’s statements MLI-OTP-0051-0631, at 0638; MLI-OTP-0051-1067, at 1097; MLI-OTP-0051-1155, at 1173; MLI-OTP-0060-1662, at 1673; MLI-OTP-0062-0969, at 0987.

<sup>3656</sup> P-0004: T-166, p. 67; P-0638: T-059, p. 19; D-0006: T-205, pp. 29-33. Mr Al Hassan provided evidence which supports these witnesses’ testimony about his work as an interpreter. Mr Al Hassan stated that he worked as an interpreter of the Police, particularly in the early days of his work in the Police (Mr Al Hassan’s statement MLI-OTP-0051-1032, at 1035); Mr Al Hassan stated that when he initially met the senior leaders of the groups, he told them that he knew local languages and they stated that they had a need, so Sheikh Abdallah brought Mr Al Hassan to the police centre and asked him to work there as an interpreter for the emir of the Police, Adama (Mr Al Hassan’s statement MLI-OTP-0051-1257, at 1286-1287). *See* P-0065: T-040, p. 55; T-046, p. 60; P-0150: T-091, pp. 27-28.

<sup>3657</sup> P-0582’s statements MLI-OTP-0062-3710-R02, at 3719-3720; MLI-OTP-0062-3679-R02, at 3681-3683, 3696 (stating that Mr Al Hassan screened him for recruitment and informed him that he was assigned to the Police). *See also* MLI-OTP-0062-3788-R02, at 3789.

<sup>3658</sup> P-0582’s statement MLI-OTP-0062-3679-R02, at 3694-3696. While noting that Mr Al Hassan informed him that he and two others had been assigned to what their roles would be, P-0582 did not see

patrols of Police officers, following the instructions of the emir of the Police and telling officers where to patrol<sup>3659</sup> and, although he was at the office most of the time, he sometimes participated in patrols himself.<sup>3660</sup> Mr Al Hassan could give some orders<sup>3661</sup> and, where he did so, Police officers would follow his instructions, including, for example, to bring in a Police officer who had fired a shot in the city.<sup>3662</sup>

### c) Interactions with the local population

1070. Mr Al Hassan's linguistic abilities resulted in people seeking him out when they came to the Police station.<sup>3663</sup> Also, Mr Al Hassan's phone number<sup>3664</sup> was listed

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Mr Al Hassan give such information to other people (*see* MLI-OTP-0065-0577-R02, at 0584). The Chamber notes that this evidence does not preclude that Mr Al Hassan served this role with other officers. The Chamber is satisfied, on the basis of P-0582's evidence, that Mr Al Hassan held a position where he could serve this function. *See* Mr Al Hassan's statement MLI-OTP-0051-1257, at 1288.

<sup>3659</sup> P-0582's statements MLI-OTP-0062-3736-R02, at 3749; MLI-OTP-0062-3820-R02, at 3836-3837. Contrary to the Defence's objections upon submission, the Chamber considers that the Prosecution properly questioned the witness and P-0582's response to this line of questioning can be relied upon. Mr Al Hassan's own statements supports the conclusion that part of his duty was to organise patrols (Mr Al Hassan's statements MLI-OTP-0051-1032, at 1036; MLI-OTP-0060-1374, at 1387). Mr Al Hassan also stated that the emir chose people for patrols, and they wrote the names into the computer and Mr Al Hassan transmitted the messages to the individuals (Mr Al Hassan's statement MLI-OTP-0051-1257, at 1287-1288; Explanatory note to the [Prosecution Final Brief](#), ICC-01/12-01/18-2475-Conf-Corr2-Anx, pages 2-3). Mr Al Hassan explained that after the emir of the Police decided to send patrols and informed him of the persons available, Mr Al Hassan would call the persons and tell them where to patrol (Mr Al Hassan's statement MLI-OTP-0051-0457, at 0466-0467; *see* Explanatory note to the [Prosecution Final Brief](#), ICC-01/12-01/18-2475-Conf-Corr2-Anx, pages 2-3). *See also* P-0150: T-090, p. 56; T-094, pp. 65-66.

<sup>3660</sup> Mr Al Hassan acknowledged that he took part in patrols from time to time (Mr Al Hassan's statements MLI-OTP-0051-0422, at 0428; MLI-OTP-0051-0457, at 0469).

<sup>3661</sup> D-0605: T-193, p. 13; P-0582's statement MLI-OTP-0062-3788-R02, at 3802-3803, 3806. *See also* P-0582's statements MLI-OTP-0062-3641-R02, at 3654-3655; MLI-OTP-0062-3710-R02, at 3733.

<sup>3662</sup> P-0582's statement MLI-OTP-0062-3788-R02, at 3802-3810.

<sup>3663</sup> P-0582's statement MLI-OTP-0062-3773-R02, at 3784-3785; D-0605: T-195, p. 19. In Timbuktu, Mr Al Hassan was known to be easy to approach and have good inter-personal skills: he was described as someone polite, nice with the population, and keen to help (D-0315: T-185, p. 54; P-0150: T-108, p. 27; P-0608: T-154, pp. 56-59; P-1086: T-122, p. 48; D-0544's statement MLI-D28-0006-3342-R01, at 3345, paras 16-20; D-0272's statement MLI-D28-0006-4181-R01, at 4183-4184, para. 16; D-0544's statement MLI-D28-0006-3342-R01, at 3345, paras 16-20).

<sup>3664</sup> P-0004 testified that Mr Al Hassan once gave him his phone number in relation to an incident involving a vehicle which had been taken by the Police (P-0004: T-165, pp. 72-73; *see also* notebook MLI-OTP-0003-0062-R02, at 0137; transcript MLI-OTP-0064-0608-R02, at 0684, and relevant discussion at T-165, p. 76). Further corroborating that [REDACTED] was Mr Al Hassan's number during the events, a note, found by Harald Doornbos (P-0007) at the BMS in February 2013 along with other documents related to Ansar Dine/AQIM (*see* section II.D.1 above), lists the number [REDACTED] with an arrow pointing from the name 'Al Hassan' written next to the number (note MLI-OTP-0001-7323, translation MLI-OTP-0034-0053). *See also* P-0150: T-100, pp. 28-29, *referring to* note MLI-OTP-0001-7323, translation MLI-OTP-0034-0053. The Chamber also recalls that Mr Al Hassan identified the numbers '[REDACTED]' as the first three digits of his personal phone number, one that he bought years before the 'Islamists' entered Timbuktu (Mr Al Hassan's statements MLI-OTP-0051-0571, at 0593-0594;

at the bottom of a signboard on the BMS building at some point when it served as an Ansar Dine/AQIM's police station.<sup>3665</sup> As a consequence, Mr Al Hassan often interacted with the local population on behalf of the Police, interfacing with the population, speaking to victims, mediating disputes and issuing permits.<sup>3666</sup> He was generally well liked by the population, notably because he was considered by many as someone who would (try to) help the people who sought him out.<sup>3667</sup> Locals who knew Mr Al Hassan, or had connections to him, sought him out when they had a problem and he would intervene on their behalf.<sup>3668</sup>

#### **d) Mediation and settlement of disputes and issuance of permits**

1071. Mr Al Hassan heard and settled disputes between locals at both the BMS and the *Gouvernorat*.<sup>3669</sup> In one dispute, which Mr Al Hassan mediated, involving an

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MLI-OTP-0060-1403, at 1411-1417). The Chamber notes that Mr Al Hassan stated that other Police officers also used this phone, however, he also stated that he used the phone most of the time and was going around with it, and that he threw the phone away during the withdrawal from Timbuktu (Mr Al Hassan's statements MLI-OTP-0051-0571, at 0593-0594; MLI-OTP-0060-1403, at 1417-1418). Considering the above, the Chamber is satisfied that the evidence shows that [REDACTED] was Mr Al Hassan's phone number.

<sup>3665</sup> P-0150: T-092, pp. 52-53, *referring to* video MLI-OTP-0025-0010, at 00:08:09:00 to 00:08:21:16, 00:08:22:06; P-0654: T-128, pp. 46-47; T-132, p. 23, *referring to* photograph MLI-OTP-0012-1914.

<sup>3666</sup> *See* below the Chamber's discussion of Mr Al Hassan's role mediating disputes and issuing permits; D-0605: T-193, pp. 26-28, 41; D-0605: T-195, p. 19.

<sup>3667</sup> D-0006: T-205, p. 36; P-0065: T-050, pp. 18-19; P-0150: T-092, p. 42; D-0315: T-185, pp. 53-54; T-186, pp. 18, 21-22; D-0605: T-195, p. 20; P-0608: T-154, pp. 56-59, *referring to* Facebook post MLI-D28-0005-7606; P-1086: T-122, p. 48. *See also* D-0534's statement MLI-D28-0006-4188-R01, at 4198; D-0627's statement MLI-D28-0006-5699-R01, para. 22.

<sup>3668</sup> D-0272's statement MLI-D28-0006-4181-R01, at 4184, para. 22; D-0312's statement MLI-D28-0006-5584-R01, at 5591-5592; D-0514: T-209, pp. 17-18; D-0544: T-196, pp. 12-18. D-0544, in discussing incidents where Mr Al Hassan intervened to stop armed men from looting property, stated that in his view 'if [Mr Al Hassan] did not have a certain amount of power, he couldn't have done what he did' (D-0544: T-196, pp. 49-50). D-0544 testified that he called Mr Al Hassan after his wife was arrested by Mohammed Moussa and shortly thereafter Mr Al Hassan told him to go and collect her and she was released (D-0544: T-196, p. 51). Mr Al Hassan confirmed this story (Mr Al Hassan's statement MLI-OTP-0051-1124, at 1150-1152); D-0093's statement MLI-D28-0006-4212-R01, at 4216, paras 25-26 (stating that three days after the end of Ramadan, 'Hamed' Moussa stopped D-0093 because he smelled smoke on him and wanted to lock him up; Mr Al Hassan saw the event and asked Adama to intercede; Adama then spoke to Abou Zeid who then ordered Mohammed Moussa to leave D-0093 alone; Mr Al Hassan and Adama already knew that D-0093 smoked but 'did not do anything' to him). *See also* P-0582's statement MLI-OTP-0062-3820-R02, at 3831.

<sup>3669</sup> D-0006: T-207, p. 38; D-0551: T-200, pp. 85-87; P-0641: T-137, pp. 40-42; T-139, p. 61; P-0582's statement MLI-OTP-0062-3679-R02, at 3684-3685; MLI-OTP-0062-3736-R02, at 3739-3741; MLI-OTP-0062-3760-R02, at 3769-3772. Regarding the incident related to the two women, discussed by P-0582 in his testimony, contrary to the Defence's contention, and as noted above, the Chamber considers that in his testimony about this incident, P-0582 does not confuse the term commissioner and director, the witness makes clear that Mr Al Hassan is the commissioner and Khaled the director, placing the commissioner as the subordinate to the director. While the evidence indicates that Mr Al Hassan and Khaled were involved in conversation during the dispute, the Chamber considers that P-0582's testimony is evidence of Mr Al Hassan's participation in the settling of disputes (*contra* [Defence Response Brief](#), para. 2). *See also* P-0150: T-094, p. 9.

alleged theft, Mr Al Hassan listened to both sides of the issue and instructed the person identified as the thief to bring back the stolen goods.<sup>3670</sup> In settling another dispute, mediated by Khaled and Mr Al Hassan, Mr Al Hassan explained *Sharia* to the complainant and convinced her to resolve the conflict.<sup>3671</sup> Mr Al Hassan notably appears on a video recording showing him hearing a dispute at the police station as early as June 2012.<sup>3672</sup> Mr Al Hassan also worked to disperse crowds and demonstrations, in the context of disputes and fights which occurred in the streets of Timbuktu.<sup>3673</sup>

1072. Mr Al Hassan approved media activity on behalf of the Police, authorising reporters to make news reports.<sup>3674</sup> Mr Al Hassan also issued permits to residents and journalists.<sup>3675</sup>

#### e) Summons, arrests, investigations and interrogations

1073. In the course of his work, Mr Al Hassan could receive complaints from locals.<sup>3676</sup>

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<sup>3670</sup> D-0551: T-200, pp. 85-87.

<sup>3671</sup> P-0582's statements MLI-OTP-0062-3679-R02, at 3684-3685; MLI-OTP-0062-3736-R02, at 3739-3741; MLI-OTP-0062-3760-R02, at 3769-3772.

<sup>3672</sup> Video MLI-OTP-0041-0605. The Chamber notes that in the video, Mr Al Hassan is shown having a discussion with two men and there are two weapons on a lower table in front of Mr Al Hassan's desk (video MLI-OTP-0041-0605, transcript MLI-OTP-0069-1674, at 1675). The video was filmed on 11 June 2012 (*see* P-0075's report MLI-OTP-0062-0625-R01, at 0642). The Chamber further notes that Mr Al Hassan himself, and P-0065, also identified Mr Al Hassan in the video (Mr Al Hassan's statement MLI-OTP-0060-1453, at 1462-1464; P-0065: T-039, pp. 47-48). Mr Al Hassan stated that the video shows him hearing a dispute at the BMS between the two men about the sale of two weapons, although he also noted that he did not remember the case (Mr Al Hassan's statement MLI-OTP-0060-1453, at 1464-1465). *See also* P-0150: T-107, pp. 72-76, *referring to* video MLI-OTP-0041-0605. The Defence submits that there is no sufficient evidence of integrity as to the time, date, location and author of the footage and that the video is wholly unreliable for a factual finding and that with no transcript, it is unclear what is being said, further making the video unreliable. The Chamber notes that P-0065 was able to comment on the video and identify that it was an image of Mr Al Hassan as did P-0150 and most importantly Mr Al Hassan, who identified himself in the video and stated that it depicted him hearing a dispute. Given Mr Al Hassan's statement, as well as the evidence of P-0150 and P-0065, the Chamber is satisfied that the video depicts Mr Al Hassan hearing a dispute during the relevant period and finds it appropriate to rely on this evidence.

<sup>3673</sup> P-0150: T-092, pp. 40-45; T-093, pp. 9-10. *See also* P-0150: T-102, pp. 52-53. With respect to the date of this last incident discussed by P-0150, the Chamber refers to its finding above that Mr Al Hassan already worked under Talha at the end of April 2012.

<sup>3674</sup> P-0654: T-128, pp. 22-25, 38; T-128, pp. 44-46. The Chamber considers P-0654's testimony about the process of obtaining a media authorisation credible, given the level of detail provided, the specificity of the evidence, and the fact that the information was such that the witness was uniquely placed to know. P-0065: T-039, pp. 26-28, 38; T-049, p. 71.

<sup>3675</sup> *See e.g.*, for the digging of wells, footnote 1606 above; for travel permits, *see* D-0551: T-200, p. 85; for media, *see* footnote 1608 above.

<sup>3676</sup> P-0150: T-118, p. 44; D-0551: T-200, pp. 85-86. Mr Al Hassan himself stated that he received complaints, although he claimed that the emir of the Police received the majority of complaints; that,



Mr Al Hassan received documents and carried out investigations in the office of the Islamic Police.<sup>3677</sup> Mr Al Hassan issued summons for locals to appear in front of the Police; for example, his signature was on a summons for a woman to appear before the Islamic Police urgently in relation to a divorce case.<sup>3678</sup> He also participated in the arrest of people accused of crimes by the armed groups,<sup>3679</sup> including the arrest of Dédéou Maiga, whose hand was later amputated.<sup>3680</sup> Mr Al Hassan participated in investigations and in interrogations of persons, questioning the person and other witnesses in the office of the Police.<sup>3681</sup> Mr Al

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when the emir was not available, Abou Zhar received the complaints; and that, if neither was available, then Mr Al Hassan received the complaints (Mr Al Hassan's statement MLI-OTP-0051-0457, at 0473-0476). According to Mr Al Hassan, no one apart from the emir, Abou Zhar or Mr Al Hassan could receive complaints (Mr Al Hassan's statement MLI-OTP-0051-0457, at 0475-1476). Mr Al Hassan's statements MLI-OTP-0060-1423, at 1424-1425; MLI-OTP-0060-1446, at 1447-1449, 1452, *referring to* Police report MLI-OTP-0001-7509, translation MLI-OTP-0034-0167; MLI-OTP-0060-1605, at 1622-1626, *referring to* Police report MLI-OTP-0001-7515, translation MLI-OTP-0052-0019, at 0020; MLI-OTP-0060-1631, at 1632-1634; MLI-OTP-0062-1037, at 1045-1048. *See also* P-0582's statement MLI-OTP-0062-3845-R02, at 3847.

<sup>3677</sup> P-0150: T-108, p. 4.

<sup>3678</sup> Summons MLI-OTP-0001-7585, translation MLI-OTP-0052-0125 (summons ordering a woman to appear before the Islamic Police urgently). Mr Al Hassan recognised his signature on the summons (Mr Al Hassan's statement MLI-OTP-0060-1423, at 1434-1435). P-0150 also testified that MLI-OTP-0001-7585 was a summons issued by the Police and identified the stamp of the Police and Mr Al Hassan's signature (P-0150: T-095, p. 58). *See* section II.D.3 above. P-0641: T-137, pp. 37-42. The Chamber notes that P-0641's testimony here also supports the Chamber's above finding that Mr Al Hassan settled disputes between residents (*see* section III.F.3.d) above).

<sup>3679</sup> P-0641: T-137, pp. 20-29; D-0605: T-193, pp. 18-19, 37, 40-41, 44 (testifying that he saw Mr Al Hassan doing an investigation and arrest but did not witness an interrogation). *See also* P-0125's statement MLI-OTP-0023-0004, at 0015-0016, paras 53-54 (testifying that he heard about Mr Al Hassan's role in the arrest and detention of a man for smoking). The Chamber refers to its findings on the credibility and reliability of P-0125's evidence (*see* footnote 3454 above). The Chamber notes that P-0125 provided a detailed account of this incident. In particular, P-0125 explained that he heard this from the victim's brother on the evening of the arrest and he also had a clear recollection of what happened the next day. In the view of the Chamber, P-0125's statement on this matter can be relied upon as corroborative of other evidence regarding Mr Al Hassan's participation in the arrest of people accused of crimes by the armed groups.

<sup>3680</sup> *See* section E.1.g) above.

<sup>3681</sup> Mr Al Hassan's statement MLI-OTP-0060-1423, at 1426-1427. Mr Al Hassan acknowledged he had drafted and signed a 23 May 2012 Police Report, which he signed in his capacity as investigator ('*enquêteur*') (Mr Al Hassan's statements MLI-OTP-0060-1511, at 1512-1518, *referring to* Police report MLI-OTP-0001-7528, translation MLI-OTP-0077-2795, at 2797; MLI-OTP-0060-1662, at 1667-1668, *referring to* Police report MLI-OTP-0001-7528, translation MLI-OTP-0077-2795, at 2797). In relation to report MLI-OTP-0001-7528, Mr Al Hassan stated that the emir had asked him to investigate the case and that he had proceeded to question the accused, who was eventually released (Mr Al Hassan's statement MLI-OTP-0060-1511, at 1512-1518). Mr Al Hassan stated that the emir of the Police also asked Mr Al Hassan to conduct investigations on other occasions (Mr Al Hassan's statement MLI-OTP-0060-1511, at 1516). Mr Al Hassan's statement MLI-OTP-0060-1446, at 1447-1449 *referring to* Police report MLI-OTP-0001-7509, translation MLI-OTP-0034-0167 (stating that he wrote and signed the report related to an adultery case; Mr Al Hassan stated that the woman spoke to him and that he wrote the report, which was transferred to the court). D-0605 describes a case similar to this Police report and the Chamber considers that D-0605 likely refers to the same case. D-0605 indicated that the woman complained that she had been impregnated and abandoned and Mr Al Hassan investigated the case and

Hassan acknowledged that in interrogations, related to matters of public property, if a person did not tell the truth after the evidence is presented to the person, then one needed the ‘threat’ and if the person did not admit after receiving the threat, then torture was used.<sup>3682</sup> If the person did not confess after torture, then the person would be released.<sup>3683</sup> On one occasion, Mr Al Hassan used threats during his interrogation of a suspect, by getting out a knife, telling the suspect to put his hand on the table, and threatening to cut off the man’s hand if he did not tell the truth; ultimately the individual was able to clear his name such that the threat was never implemented.<sup>3684</sup> Mr Al Hassan questioned people in his office.<sup>3685</sup> Most of the time the emir of the Police was present with Mr Al Hassan for interrogations, but there were cases that Mr Al Hassan conducted alone.<sup>3686</sup>

#### **f) Drafting, signing and transmission of Islamic Police reports**

1074. Mr Al Hassan was authorised to sign Police reports and he wrote and signed

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confirmed that the man was classified as being of a slave class, which resulted in his receiving a *ta'zir* punishment as opposed to the *hadd* of being stoned to death (D-0605: T-193, pp. 37, 40-41, 44-45, 59-60; T-194, pp. 3-10; T-195, pp. 106-107); T-192, pp. 90-92; T-194, pp. 6-7, 21; P-0582’s statements MLI-OTP-0065-0602-R02, at 0616-0617; MLI-OTP-0065-0637-R02, at 0638; P-0150: T-090, p. 56; T-092, pp. 59-62; T-118, p. 44; Police report MLI-OTP-0034-0167, at 0168; D-0006: T-207, pp. 37-42 (referring to a case of an Arab man and a young Black woman who were taken to the Police). According to D-0006, there had been complaints about this from the local population who had seen the young girl with the man and there was an accusation that the man had raped the woman. The woman denied it and claimed that she was just working at his house. The man also confirmed this. Mr Al Hassan was able to explain the local customs that often young women worked for others in their homes and resolve the situation to the satisfaction of the victims and the population (*see* Mr Al Hassan’s statement MLI-OTP-0060-1484, at 1491-1494); *see* the Chamber’s below discussion of Mr Al Hassan’s writing and signing reports.

<sup>3682</sup> Mr Al Hassan’s statement MLI-OTP-0060-1662, at 1670-1672. The Chamber notes that, while Mr Al Hassan stated that torture was used during interrogations if a person did not confess, Mr Al Hassan did not admit to using torture as an interrogation practice personally, saying that it was not in his duties.

<sup>3683</sup> Mr Al Hassan’s statement MLI-OTP-0060-1662, at 1670-1672.

<sup>3684</sup> P-0641: T-137, pp. 19-29, 34-37. Contrary to the Defence’s contention (*see* [Defence Final Brief](#), para. 396), the Chamber considers that the Prosecution properly questioned P-0641 about this incident and the Chamber finds P-0641 to have been a credible and reliable witness. The Defence asserts that D-0312’s account of a similar incident contradicts P-0641’s testimony; however, considering D-0312’s testimony, if he is indeed speaking of the same incident, the Chamber considers that he corroborates P-0641’s account in large part (D-0312’s statement MLI-D28-0006-5584-R01, at 5590-5591). While the Chamber notes that D-0312 stated that this incident occurred the first week of the ‘occupation’, the Chamber notes that he also testified that at the time of the incident, the Police was already set up at the BMS and his mention of Adama indicated that the time Adama was already the head of the Police (*see* D-0312’s statement MLI-D28-0006-5584-R01, at 5591). Further, given that the witness erroneously stated that the Islamic Court was only set up three months after the Police was set up (*see* D-0312’s statement MLI-D28-0006-5584-R01, at 5591), the Chamber considers that D-0312’s testimony cannot be relied upon regarding the precise time of events.

<sup>3685</sup> P-0150: T-093, p. 51.

<sup>3686</sup> Mr Al Hassan’s statement MLI-OTP-0060-1484, at 1491-1494.

numerous Police reports.<sup>3687</sup> In many cases referred to the Islamic Court, the Police reports, written and signed by Mr Al Hassan, were sent to the Islamic Court.<sup>3688</sup> When the Islamic Police apprehended someone, they would start an investigation with the person about what they did, write down what they learned and when the person was brought by the Police to the Islamic Court, they were accompanied by the statement, which showed why they were apprehended.<sup>3689</sup>

1075. The Police reports, written and signed by Mr Al Hassan,<sup>3690</sup> related to various criminal and civil matters.<sup>3691</sup> For example, Mr Al Hassan wrote and signed a Police report related to a man killed by a car dated 16 July 2012.<sup>3692</sup> Mr Al Hassan wrote and signed Police reports related to theft and robbery cases, dated 6 August 2012 as well as several undated reports.<sup>3693</sup> Mr Al Hassan wrote and signed Police

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<sup>3687</sup> See below discussion of the Police reports; Mr Al Hassan's statements MLI-OTP-0060-1484, at 1491-1494; MLI-OTP-0060-1453, at 1456-1458, 1473-1475; MLI-OTP-0060-1511, at 1512-1528; MLI-OTP-0060-1539, at 1550-1552, 1554-1556.

<sup>3688</sup> See, for example, Mr Al Hassan signed a Police report, dated 16 July 2012, which he wrote, regarding Ibrahim bin Al-Husayn's arrest, writing that Ibrahim bin Al-Husayn had been 'interrogated and tortured, but to no avail'. The report was received by the Islamic Court, which rendered a judgment sentencing Ibrahim bin Al-Husayn to, *inter alia*, 40 lashes (see section E.1.b). Similarly, Mr Al Hassan signed a Police report, dated 26 November 2012, which he also wrote, regarding a sexual relationship between El-Hussein Bin-Oumar and his half-sister Halima Bint-Mohamed. The report was formally addressed to the Islamic Court (see paragraphs 816-817). See also section E.2. Mr Al Hassan stated that he wrote reports and sent them to the Islamic Court (Mr Al Hassan's statement MLI-OTP-0051-1257, at 1287; MLI-OTP-0051-1032, at 1035-1036). He stated that his work with the Islamic Court was to write reports on the accused and pass them on to the Islamic Court, stating that [REDACTED] (Mr Al Hassan's statement MLI-OTP-0051-1032, at 1039). The Chamber notes that many of the Police reports discussed in this judgment bore the mention, 'to the Islamic Court' or were collected at *Hôtel La Maison*, the seat of the Islamic Court. The Chamber infers that such Police reports were sent to the Islamic Court.

<sup>3689</sup> Mr Al Hassan's statement MLI-OTP-0060-1423, at 1426-1427; P-0626: T-142, pp. 30-32. See also Mr Al Hassan's statement MLI-OTP-0060-1484, at 1491-1494.

<sup>3690</sup> See section II.D.3 above.

<sup>3691</sup> Some of these Police reports relate to incidents charged in these proceedings.

<sup>3692</sup> Mr Al Hassan wrote and signed a Police report, dated 16 July 2012, referring to the Islamic Court the case of a man killed by a car to the Islamic Court (Police report MLI-OTP-0001-7522, translation MLI-OTP-0052-0083). See Referral to the Islamic Court MLI-OTP-0001-7523, translation MLI-OTP-0052-0085. The report contains details of the accident and notes that the 'Emirate instructed that the case be referred to you'. P-0150 identified the stamp of the Islamic Police and Mr Al Hassan's signature on the report (P-0150: T-098, p. 8). Mr Al Hassan also recognised his handwriting and signature on it (Mr Al Hassan's statement MLI-OTP-0060-1631, at 1640-1641). P-0150 explained that the emirate had asked the armed groups to make this referral to the court (P-0150: T-098, p. 8). On 16 July 2012, the Islamic Court rendered a judgment on the case, compelling the man who ran the deceased over to pay 'blood money, which is one hundred camels' to the heirs of the deceased (Islamic Court judgment MLI-OTP-0053-0204, translation MLI-OTP-0077-2351).

<sup>3693</sup> Mr Al Hassan wrote and signed a Police report, dated 6 August 2012, relating to the theft and sabotaging of water pipes (Police report MLI-OTP-0002-0034, translation MLI-OTP-0078-0266). See also MLI-OTP-0053-0076 and MLI-OTP-0053-0078, other versions of the same document. Mr Al Hassan also wrote and signed an undated Police report regarding the arrest and interrogation of a 'mujahid' in Goundam for stealing chairs (Police report MLI-OTP-0055-1179, translation MLI-OTP-

reports relating to divorce cases and other marital disputes dated 16 July 2012, 27 August 2012, 24 September 2012 and 4 December 2012 along with several undated reports.<sup>3694</sup> He wrote and signed several undated Police reports in

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0054-0318). *See* Referral to Islamic Court MLI-OTP-0055-1180, translation MLI-OTP-0078-6264. Mr Al Hassan wrote and signed a Police report concerning a complaint submitted by a man, Idyah Ould-Hamma, against a man who had sold him a car (Police report MLI-OTP-0001-7547, translation MLI-OTP-0052-0097). *See* Referral to Islamic Court MLI-OTP-0001-7548, translation MLI-OTP-0052-0099. On 21 November 2012, the Islamic Court rendered a judgment in case 47/1433-2012 concerning the same dispute; after considering the case, the Islamic Court ruled in favour of the purchaser (Islamic Court judgment MLI-OTP-0001-7432 (stamped and signed), translation MLI-OTP-0078-0206). Mr Al Hassan wrote and signed a Police report relating to the theft of an electric generator by a new 'mujahidin' (Police report MLI-OTP-0053-0054, translation MLI-OTP-0077-2283). *See also* MLI-OTP-0053-0052; MLI-OTP-0002-0027, translation MLI-OTP-0078-1642, other versions of the same document. Mr Al Hassan recognised his handwriting on MLI-OTP-0002-0027 (Mr Al Hassan's statement MLI-OTP-0060-1484, at 1501-1502) *See* Referral to Islamic Court (Police report MLI-OTP-0053-0054, translation MLI-OTP-0077-2283, at 2285). On 7 August 2012, the Islamic Court rendered a judgment sentencing the accused to a *ta'zir*, which consisted of: (1) a fine; (2) repayment of the debt; (3) 30 lashes and (4) imprisonment until repayment of the debt (Islamic Court judgment MLI-OTP-0068-4784, translation MLI-OTP-0078-1774); P-0150: T-095, pp. 28-30, *referring to* Islamic Court judgment MLI-OTP-0068-4784, translation MLI-OTP-0078-1774 (testifying that this was the judgment in the theft case, which involved the theft of an electric generator and that the man was not sentenced to an amputation because what he stole was public property).

<sup>3694</sup> Mr Al Hassan wrote and signed a Police report, dated 16 July 2012, concerning a complaint submitted by a man, Sidi Mohamed Ould-Hatil, wanting his wife to return to him; the man reported that he only stayed with his wife for one week, after which her parents told him she was sick and he has not seen her in a year (Police report MLI-OTP-0001-7511 (right hand side), translation MLI-OTP-0052-0075. *See* Referral to Islamic Court MLI-OTP-0001-7512, translation MLI-OTP-0077-2791. The Islamic Court rendered a judgment in a case concerning Sidi Mohamed ben Hatil, which records that the wife hated the husband and no longer wanted to see him, and that the judge ultimately asked that the husband see the wife, take her home away from her family and that he provide for her needs, and that if they could not reconcile, they should return (Islamic Court judgment MLI-OTP-0001-7410 (handwritten, unsigned and unstamped), translation, MLI-OTP-0078-6033). Given the similarities between the name written in the Police report and the name written in the Islamic Court judgment, the Chamber considers that these two documents refer to the same man. Mr Al Hassan wrote and signed a Police report, dated 27 August 2012, concerning a matrimonial dispute between a husband Aba-el-Jaou and his wife in which the wife reported notably that the husband was cruel to her and had divorced her (Police report MLI-OTP-0002-0021, translation MLI-OTP-0077-2259). *See also* other version of the same document MLI-OTP-0053-0036, translation MLI-OTP-0077-2197. Mr Al Hassan acknowledged his handwriting and signature on MLI-OTP-0002-0021 (Mr Al Hassan's statement MLI-OTP-0060-1423, at 1439-1440). The next day, the Islamic Court rendered a judgment in the case 10/1433-2012 concerning the same individuals, in which the Islamic Court found that Aba Ag el-Jaou had revoked the divorce of his wife and therefore ruled that she obey him and give him his marital rights, and that he consort with her in kindness (Islamic Court judgment MLI-OTP-0001-7481 (stamped and signed), translation MLI-OTP-0078-0258). *See also* MLI-OTP-0053-0124 and MLI-OTP-0053-0126 (signed and stamped), translation MLI-OTP-0077-2217, other version of the same document. Mr Al Hassan wrote and signed a Police report, dated 25 September 2012, regarding a complaint lodged by a wife that her husband did not support her financially (Police report MLI-OTP-0055-1082 (left hand side), translation MLI-OTP-0054-0312. *See* Referral to Islamic Court MLI-OTP-0055-1082 (right hand side), translation MLI-OTP-0054-0312. Mr Al Hassan wrote and signed a Police report, dated 4 December 2012, regarding a 'social case' where a woman, Oumbarakah Bint-Mohamed, complained about someone called Hamad Ould-Mahdi, who had married her daughter (Police report MLI-OTP-0001-7539 (right hand side), translation MLI-OTP-0052-0091). *See* Referral to Islamic Court MLI-OTP-0001-7540 (left hand side), translation MLI-OTP-0052-0093. The report notes that the mother filed a complaint seeking a divorce for her daughter on the basis that the man had married the daughter a year ago, the marriage was not consummated because of the girl's young age at the time, after a while the man had left and he had not returned or sent them anything in a year and

relation to adultery cases,<sup>3695</sup> as well as Police reports in relation to disputes about debt and goods, dated 19 June 2012 and 1 July 2012 as well as an undated Police report.<sup>3696</sup> Mr Al Hassan wrote and signed a Police report in relation to a fight case, dated 19 June 2012,<sup>3697</sup> as well as in relation to disputes about land and farm animals, dated 23 July 2012 as well as several undated Police reports.<sup>3698</sup> Mr Al Hassan also wrote and signed a Police report, dated 26 November 2012, in

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they did not know whether or not he was still alive. P-0150 was questioned about this report and testified that the document, which he stated was dated 4 December 2012, bore the stamp of the Police as well as Mr Al Hassan's signature (P-0150: T-093, pp. 30-31, *referring to* Police report MLI-OTP-0001-7539, translation MLI-OTP-0052-0091). Mr Al Hassan also wrote and signed an undated report on a complaint lodged by a husband against his father-in-law for refusing to let his wife go back to him (Police report MLI-OTP-0002-0029, translation MLI-OTP-0077-2189). *See* Referral to Islamic Court MLI-OTP-0002-0030, translation MLI-OTP-0078-0262. *See also* MLI-OTP-0053-0058 and MLI-OTP-0053-0060, other versions of the same document. Mr Al Hassan wrote and signed an undated report regarding a complaint lodged by a man against his brother-in-law for marrying his sister and returning her to her family's home (Police report MLI-OTP-0001-7541, translation MLI-OTP-0052-0027). *See* Referral to Islamic Court MLI-OTP-0001-7542 (left hand side, translation MLI-OTP-0034-0175).

<sup>3695</sup> Mr Al Hassan wrote and signed an undated Police report related to an adultery complaint (Police report MLI-OTP-0001-7509, translation MLI-OTP-0034-0167). *See* Referral to Islamic Court MLI-OTP-0001-7510, translation MLI-OTP-0052-0017. Mr Al Hassan recognised his handwriting and signature on MLI-OTP-0001-7509 (Mr Al Hassan's statement MLI-OTP-0060-1446, at 1447-1450). Mr Al Hassan wrote and signed an undated Police report relating to the arrest of a man for being in the company of a woman who was not his wife and having a child with her (Police report MLI-OTP-0002-0040, translation MLI-OTP-0077-2405). The Chamber notes that MLI-OTP-0053-0102, translation MLI-OTP-0077-2206 is the original version of the document.

<sup>3696</sup> Mr Al Hassan wrote and signed a Police report, dated 19 June 2012, regarding a debt issue; the report recommended that the Islamic Court be harsh with the debtor (Police report MLI-OTP-0001-7546, translation MLI-OTP-0054-0014, at 0015). Mr Al Hassan stated that he wrote and signed the document (Mr Al Hassan's statement MLI-OTP-0060-1423, at 1435-1437). He stated that he wrote the notation to be harsh with the debtor but on the emir's order. Mr Al Hassan wrote and signed a Police report, dated 1 July 2012, in relation to a debt dispute (Police report MLI-OTP-0002-0020, translation MLI-OTP-0078-0260). *See also* MLI-OTP-0053-0030, other version of the same document. Mr Al Hassan wrote and signed an undated Police report regarding an allegation on unpaid funds (Police report MLI-OTP-0055-1173, translation MLI-OTP-0054-0314). *See* Referral to Islamic Court MLI-OTP-0055-1173 (right hand side), translation MLI-OTP-0054-0314.

<sup>3697</sup> Mr Al Hassan wrote and signed a Police report, dated 19 June 2012, regarding a fight (MLI-OTP-0002-0038, translation MLI-OTP-0077-2401). *See* Referral to Islamic Court MLI-OTP-0002-0039, translation MLI-OTP-0077-2403. *See also* MLI-OTP-0053-0094 and MLI-OTP-0053-0096, other versions of the same document.

<sup>3698</sup> Mr Al Hassan wrote and signed a Police report, dated 23 July 2012, related to a land dispute (Police report MLI-OTP-0001-7510, translation MLI-OTP-0052-0017). *See* referral to Islamic Court MLI-OTP-0001-7511 (left hand side), translation MLI-OTP-0052-0075. Mr Al Hassan recognised his handwriting and signature on MLI-OTP-0001-7510 (Mr Al Hassan's statement MLI-OTP-0060-1453, at 1456-1458). Mr Al Hassan wrote and signed a Police report, dated 24 September, regarding a conflict between neighbours over farm animals (Police report MLI-OTP-0055-1070 (left hand side), translation MLI-OTP-0054-0304). *See* Referral to Islamic Court MLI-OTP-0055-1070 (right hand side). Mr Al Hassan wrote and signed an undated Police report regarding a conflict over a piece of land (Police report MLI-OTP-0002-0032, translation MLI-OTP-0078-1644). *See* Referral to Islamic Court MLI-OTP-0002-0033, translation MLI-OTP-0078-0264. *See also* MLI-OTP-0053-0070, and MLI-OTP-0053-0072, other versions of the same document. Mr Al Hassan also wrote and signed an undated Police report regarding a dispute over a house (Police report MLI-OTP-0002-0023, translation MLI-OTP-0078-1640). *See* Referral to Islamic Court MLI-OTP-0002-0024, translation MLI-OTP-0077-2263. *See also* MLI-OTP-0053-0040 and MLI-OTP-0053-0042, other versions of the same document.

relation to disputes regarding the digging of wells;<sup>3699</sup> as well as Police reports in relation to other matters, including the possession of items related of magic, dated 8 October 2012 and 3 December 2012 as well as several undated reports.<sup>3700</sup> The Chamber notes that the Police reports in the case record that were handwritten and signed by Mr Al Hassan date from 23 May 2012<sup>3701</sup> to 4 December 2012,<sup>3702</sup> indicating that Mr Al Hassan continued to write and sign Police reports through his time with the Police.

**g) Bringing accused persons to and from the Islamic Court**

1076. At the beginning of events, Adama and Mr Al Hassan would come to the Islamic Court together, subsequently, under Khaled, Mr Al Hassan took care of matters, including the supervision of the people who were arrested and going through proceedings.<sup>3703</sup> When the judges of the Islamic Court summoned accused persons to the Islamic Court, Mr Al Hassan brought the persons in and out of the courtroom.<sup>3704</sup> When Adama was still the emir of the Police, he would come to the Islamic Court with Mr Al Hassan; subsequently subordinate soldiers also accompanied Mr Al Hassan to bring and to take defendants from the

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<sup>3699</sup> Mr Al Hassan wrote and signed a Police report, dated 26 November 2012, regarding the drilling of a well (Police report MLI-OTP-0001-7548 (right hand side), translation MLI-OTP-0052-0099). See Referral to the Islamic Court MLI-OTP-0001-7549 (left hand side), translation MLI-OTP-0034-0177.

<sup>3700</sup> Mr Al Hassan wrote and signed a Police report, dated 8 October 2012, on the possession of suspicious items relating to magic and the like (Islamic Police Report MLI-OTP-0001-7560 (right hand side), translation MLI-OTP-0052-0031) and the Islamic Court rendered a judgment on the case (see section E.2.a)v above). Mr Al Hassan wrote and signed a Police report, dated 3 December 2012, related to a case of cigarette smuggling (Islamic Police report MLI-OTP-0001-7542 (right hand side), translation MLI-OTP-0034-0175) (see section E.2.a)vi above). Mr Al Hassan wrote and signed an undated Police report in relation to a case of ill-treatment of villagers by a former member of the Azawad movement in the village Banjal (Islamic Police report MLI-OTP-0002-0037, translation MLI-OTP-0078-0272). See also MLI-OTP-0053-0088 and MLI-OTP-0053-0090, other versions of the same document. Mr Al Hassan wrote and signed an undated Police report, addressed to the Islamic Court, concerning a complaint submitted by a man against his brother for letting the police inside his house at midnight without permission while he was sleeping and his wife was awake (Police report MLI-OTP-0001-7515, translation MLI-OTP-0052-0019). P-0150 identified the stamp of the Police and Mr Al Hassan's signature on MLI-OTP-0001-7515. P-0150 stated that 'to the Court' was written above Mr Al Hassan's signature and that this notation meant that this document or report was addressing the Islamic Court (P-0150: T-095, pp. 14-15, referring to Islamic Police report MLI-OTP-0001-7515).

<sup>3701</sup> See paragraphs 1061 above.

<sup>3702</sup> See paragraphs 1075 above.

<sup>3703</sup> P-0150: T-094, pp. 70-71.

<sup>3704</sup> P-0150: T-097, p. 55; P-0626: T-142, pp. 29, 34; T-144, pp. 81-83, 85. Mr Al Hassan acknowledged that he went to the Islamic Court to submit the 'dossier', which the Chamber understands to be the case file, consisting of the Police report (Mr Al Hassan's statement MLI-OTP-0051-0422, at 0428). See [Defence Response Brief](#), para. 76.

courtroom<sup>3705</sup> and at times, Mr Al Hassan sent other Police officers with the accused.<sup>3706</sup> Along with the accused persons, Mr Al Hassan, or other members of the Islamic Police, brought the Police report as well.<sup>3707</sup> The Police report would be given to Houka Houka, along with the person.<sup>3708</sup> Houka Houka would read the Police report and put questions to the accused discussed in the Police report.<sup>3709</sup> Mr Al Hassan would not sit with the judges during the Islamic Court's investigations.<sup>3710</sup> Mr Al Hassan provided evidence, at least once, during a hearing, clarifying a report and providing additional information.<sup>3711</sup>

1077. At the end of the day, or if called by the judges of the Islamic Court, Mr Al Hassan or another Police officer would return to take the accused.<sup>3712</sup> Mr Al Hassan also sometimes visited the Central Prison to check on the prisoners' conditions.<sup>3713</sup>

#### **h) Execution of punishments**

1078. Mr Al Hassan brought sentenced persons to the punishment site, including Mohamed Moussa, a member of Ansar Dine/AQIM, who was executed by the groups for killing a civilian.<sup>3714</sup> He was also present during several public punishments.<sup>3715</sup> Mr Al Hassan carried a weapon for some of his duties, notably

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<sup>3705</sup> P-0150: T-117, pp. 41-42; P-0626: T-144, pp. 82-83.

<sup>3706</sup> P-0626: T-142, pp. 29, 34-35.

<sup>3707</sup> P-0150: T-117, pp. 42-43.

<sup>3708</sup> P-0626: T-142, pp. 34-35.

<sup>3709</sup> P-0626: T-142, pp. 34-35.

<sup>3710</sup> P-0150: T-097, p. 55.

<sup>3711</sup> Mr Al Hassan stated that he attended a hearing only once and he had been asked to attend the hearing along with the emir of the Police to explain a file relating to a debt case (Mr Al Hassan's statement MLI-OTP-0051-0631, at 0638, 0644-0645). *See also* P-0150: T-097, p. 55; T-117, pp. 40-44.

<sup>3712</sup> P-0150: T-095, pp. 5-6; T-117, pp. 40-44; P-0626: T-142, pp. 37-38; T-144, pp. 81-83. *See* [Defence Response Brief](#), para. 76.

<sup>3713</sup> Mr Al Hassan's statement MLI-OTP-0051-1032, at 1041-1042.

<sup>3714</sup> P-0150: T-099, p. 14, *referring to* video MLI-OTP-0018-0658, transcript MLI-OTP-0069-0486; P-0626: T-142, p. 30; P-0065: T-041, pp. 23-26; T-041, pp. 41-43, *referring to* videos MLI-OTP-0018-0658, transcript MLI-OTP-0069-0486; and MLI-OTP-0009-1749, transcript MLI-OTP-0028-0839, from 00:13:35:09 to 00:13:47:02. *See* paragraph 615 above.

<sup>3715</sup> Mr Al Hassan's statement MLI-OTP-0051-0741, at 0749-0759, *referring to* videos MLI-OTP-0018-0146, transcript MLI-OTP-0069-1389, translation MLI-OTP-0078-1871; and MLI-OTP-0018-0147, transcript MLI-OTP-0033-5737, translation MLI-OTP-0033-5429; P-0065: T-041, pp. 9-13, *referring to* videos MLI-OTP-0018-0146, transcript MLI-OTP-0069-1389, translation MLI-OTP-0078-1871; and MLI-OTP-0018-0147, transcript MLI-OTP-0033-5737, translation MLI-OTP-0033-5429. *See also* the Chamber's findings above on the presence of Mr Al Hassan at the floggings of victims (*see* paragraphs 763, 787, 818 below).

when he participated in the execution of punishments.<sup>3716</sup>

1079. In addition to participating in punishments inflicted against persons sentenced by the Islamic Court, Mr Al Hassan was amongst the leaders of the Police present during punishments against persons who had not been subject to any judgment by the Islamic Court and who were flogged directly at the police station in *ta'zir* punishments.<sup>3717</sup>

#### **i) Communications on behalf of Ansar Dine/AQIM**

1080. Mr Al Hassan was one of the persons tasked with communicating on behalf of Ansar Dine/AQIM,<sup>3718</sup> speaking in support of Ansar Dine/AQIM's mission and objectives and clearly indicating his support of and enthusiastic participation in

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<sup>3716</sup> P-0150: T-093, pp. 46-47, *referring to* video MLI-OTP-0018-0649. The Chamber observes that Mr Al Hassan was carrying a weapon in video MLI-OTP-0018-0649. P-0102: T-023, pp. 14-16, *referring to* report MLI-OTP-0074-0575, at 0606-0607. The Chamber notes that videos MLI-OTP-0018-0649 and MLI-OTP-0018-0650 appear to depict the same events as video MLI-OTP-0018-0658 which depicts the execution of Mohamed Moussa. Xavier Laroche (P-0102) testified that the findings in his reports MLI-OTP-0025-0365 and MLI-OTP-0074-0575 are consistent with bibliographical material he used to help his observations, according to which Kalashnikov assault rifles (AKM and AKMS from Russia; AR-M from Bulgaria; M70 from Romania; types 56, 56.1 and 56.2 from China) were documented to have been seen in Timbuktu, Gao and the 'Adrar the Ifopghas' mountain range in the northern regions of Mali between April 2012 and March 2013 (P-0102's reports MLI-OTP-0025-0365, at 0404; MLI-OTP-0074-0575, at 0605; P-0102: T-023, pp. 15-16). P-0102: T-023, p. 14, *referring to* P-0102's report MLI-OTP-0074-0575, at 0584-0585 and 0607; T-023, p. 15, *referring to* P-0102's report MLI-OTP-0074-0575, at 0607. Regarding P-0102's report MLI-OTP-0074-0575, the Chamber notes that the report mentions 'the person of interest' without giving a specific name. Nevertheless, given P-0150's testimony and its own identification of Mr Al Hassan in MLI-OTP-0018-0649, the Chamber understands that the report provides an analysis of videos depicting Mr Al Hassan carrying weapons. The Defence contends that Mr Al Hassan did not carry weapons when he was working (*see* [Defence Final Brief](#), para. 35). While several witnesses testified that they did not see Mr Al Hassan carrying a weapon when they saw him (*see e.g.* D-0006: T-205, p. 33; P-0654: T-133, p. 90; P-0004: T-165, para. 73; P-0638: T-058, p. 59), the Chamber is satisfied that the evidence shows that Mr Al Hassan carried a weapon at times, for example, while carrying out the execution of sentences. The Chamber is convinced that the evidence shows that for at least some of his tasks, Mr Al Hassan carried a weapon as a member of Ansar Dine/AQIM.

<sup>3717</sup> P-0582's statements MLI-OTP-0062-3845-R02, at 3848-3850; MLI-OTP-0062-3872-R02, at 3878-3883; MLI-OTP-0062-3788-R02, at 3809-3810; MLI-OTP-0062-3872-R02, at 3880-3881; MLI-OTP-0062-3962-R02, at 3967-3969.

<sup>3718</sup> P-0150 testified that he was present during high-level discussions between the emirs concerning the broadcasting of statements and videos made by locals. According to P-0150, it was important that any declaration be made by people who are known in Timbuktu. He elaborated that as part of the policy agreed between Ansar Dine and *Al-Qaeda* that all decisions and actions taken by the 'Islamic group' must be announced as the acts of Ansar Dine, it was decided that public statements in Timbuktu must be made by 'important local people', such as Sanda, Mr Al Hassan, Mohammed Moussa, and Al Mahdi (P-0150: T-090, pp. 52-53). P-0150 testified that in that context these statements were made by Mr Al Hassan because he was a highly regarded person in Timbuktu and he was appointed to a high position in the Police (P-0150: T-090, pp. 52-53). P-0150 also testified that Mr Al Hassan was asked about the Police in various videos because he was a well-respected person within the ranks of the Police, he was a local and a well-known dignitary and he came from the famous Kel Ansar tribe, thus 'he had the characteristics necessary to speak to the Azawadis or to the police who were running things in the Azawadi area' (P-0150: T-094, p. 40). *See also* P-0065: T-039, pp. 49-50.



Ansar Dine/AQIM's activities in Timbuktu.<sup>3719</sup>

1081. A video recording,<sup>3720</sup> created in October 2012,<sup>3721</sup> shows Mr Al Hassan being interviewed at the *Gouvernorat* police station.<sup>3722</sup> In the video recording, Mr Al Hassan, wearing the Police vest, discussed the work of Ansar Dine/AQIM's police force, describing the types of cases they handled and speaking positively of the effectiveness and deterrent effect of Ansar Dine/AQIM's methods on the crime rates in the city.<sup>3723</sup>

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<sup>3719</sup> The Defence contends that the video recordings where Mr Al Hassan spoke in support of the groups were never broadcast and thus had no impact in the course of events in Timbuktu, did not indicate that Mr Al Hassan was in an elevated role, and had no relevance to the execution of the charged criminal incidents ([Defence Final Brief](#), para. 84). The Chamber considers that argument inapposite. The evidence is clear that the leadership of Ansar Dine/AQIM selected well-known locals who were working for the groups in leadership roles to participate in media projects, hence the selection of persons such as Al Mahdi. That the videos may not have been broadcast, does not negate the implication of Mr Al Hassan having participated in such projects, nor does it make what he says in these videos irrelevant.

<sup>3720</sup> Video MLI-OTP-0069-3710, transcript MLI-OTP-0078-4564, translation MLI-OTP-0078-4629.

<sup>3721</sup> P-0075's report MLI-OTP-0069-5868, at 6178-6179 (P-0075's report states that the metadata on the video indicates that it was created on '05-10-2012' at 11:42:49).

<sup>3722</sup> P-0150: T-093, pp. 76-77; T-094, pp. 3-7, referring to video MLI-OTP-0069-3710, transcript MLI-OTP-0078-4564, translation MLI-OTP-0078-4629; P-0065: T-043, p. 53. See also P-0653's report MLI-OTP-0066-2198, at 2210, 2231-2236, 2252.

<sup>3723</sup> Video MLI-OTP-0069-3710, transcript MLI-OTP-0078-4564, translation MLI-OTP-0078-4629, at 4631-4632. In the video, while a document is placed in front of Mr Al Hassan at the beginning, he does not review the document and once he begins to respond to questions at 00:01:45, Mr Al Hassan speaks extemporaneously, without notes, responding to the unknown interviewer naturally and in a self-assured, authoritative and confident manner. The Chamber is convinced that Mr Al Hassan was representing his own view of the work of the Police and considers the argument by the Defence that Mr Al Hassan was instructed to answer in a particular way is purely speculative and unsupported by the evidence (*contra* [Defence Final Brief](#), para. 86). In the video, in response to questions, Mr Al Hassan said that in the first days, 'we were only sleeping for one or two hours every evening because we were already empty. There were all sorts of crimes, robbery and exactions [...] but thank God now we are working'. According to Mr Al Hassan in the video, at that time they saw only one or two cases a day, typically disputes between neighbours about 'unimportant' things and social cases between couples, for example a woman who wanted to get divorced or a man who wanted to get his wife back. Mr Al Hassan also discussed dealing with conflicts about land and private problems between farmers. Mr Al Hassan states in the video that social problems were sent to the 'tribunal' and that the Police did not deal with them but rather dealt with minor problems such as resolving debts. Mr Al Hassan states in the video that if a debt case drags on for several months then it is sent to the 'tribunal'. Mr Al Hassan states that for most thefts, it is the people who report the case to the Police. He discussed one thief who had his hand cut off. Mr Al Hassan said that the vast majority, between 90 and 100 per cent of thieves, admit their crime because they knew that 'we apply the law of Islam in the most parts of cases, and so the person admits straightaway that they needed to steal, that they have no work, for example, and they do what they need so that we let them go'. Mr Al Hassan stated in the video that cases of traditional healers and charlatan, thieves, fornicators, major sins, people who drink alcohol are all sent to the 'tribunal'. In the video, Mr Al Hassan noted that the numbers of such crimes had reduced. P-0150 stated that a reference to 'major sins' by Mr Al Hassan in the video is likely a reference to prohibitions described as 'high prohibitions', meaning fornication, alcohol drinking, highway thuggery with the use of weapons, in addition to a certain level of theft', as well as certain activities around graves which are considered non-monotheistic. P-0150 stated that he knew Mr Al Hassan's stance on the non-conformist visits and the non-monotheistic acts. The witness indicated that Mr Al Hassan agreed that these acts were prohibited. However, the witness also explained

1082. Another video recording,<sup>3724</sup> filmed the same day as the previous video recording MLI-OTP-0069-3710 and in the same place,<sup>3725</sup> depicts Mr Al Hassan managing a case of theft in Ber, which is located to the east of Timbuktu.<sup>3726</sup> In the video recording,<sup>3727</sup> Mr Al Hassan said that since arriving, Ansar Dine/AQIM had applied the rules on adultery, women not being veiled, those who drink alcohol, and on thieves by cutting their hand, and on criminals, killers, explaining that the groups had cooperated with the imams of Timbuktu and Muslim scholars, and were applying the laws of Islam as opposed to the laws of ‘miscreants’ imposed by the French since their arrival 120 years before.<sup>3728</sup> Mr Al Hassan stated that a part of the population fled to Bamako, but the ‘true’ Muslims stayed.<sup>3729</sup>

1083. Another video recording,<sup>3730</sup> created on 7 November 2012,<sup>3731</sup> shows Mr Al Hassan at the *Gouvernorat* police station, answering questions from Abdallah Al

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that Mr Al Hassan’s assignment made him unconcerned with what happened around the graves because other people were responsible for that issue. P-0150 stated that Mr Al Hassan ‘supported and was delighted with these things [REDACTED]’ (see P-0150: T-093, pp. 76-77; T-094, pp. 3-9, referring to video MLI-OTP-0069-3710 from 00:01:53:00, transcript MLI-OTP-0078-4564, translation MLI-OTP-0078-4629, at 4631-4632).

<sup>3724</sup> Video MLI-OTP-0069-3712, transcript MLI-OTP-0078-4567, translation MLI-OTP-0078-4633.

<sup>3725</sup> P-0150: T-094, p. 35. While the metadata on video MLI-OTP-0069-3712 indicates that it was filmed on ‘06-10-2012’ at 11:50:06 (P-0075’s report MLI-OTP-0069-5868, at 6181), it is clear to the Chamber from the indicia in the video that video MLI-OTP-0069-3712 is a continuation of video MLI-OTP-0069-3710 and was filmed on the same day.

<sup>3726</sup> P-0065: T-039, p. 49, referring to video MLI-OTP-0069-3712, from 00:00:17:18; transcript MLI-OTP-0078-4567, translation MLI-OTP-0078-4633. The Chamber notes the Defence’s objection to the submission and use of the video; however, as P-0065 was able to comment on the video, place Mr Al Hassan and recognise the location, the Chamber considers that the video may be relied upon. In this context, the Chamber notes that P-0150 was also shown this same video and identified Mr Al Hassan, explaining that the video showed Mr Al Hassan in his office in the Police’s second office (P-0150: T-094, pp. 35, 41, referring to annotated map MLI-REG-0001-0066).

<sup>3727</sup> Mr Al Hassan is seen talking on a walkie-talkie and then responding to a person off-screen. Again, he speaks extemporaneously, with confidence, authority and apparent conviction. At points in the video, he is smiling, obviously at ease and speaking in an explanatory tone. The Chamber is convinced that in the video, Mr Al Hassan is expressing himself freely. *Contra* [Defence Final Brief](#), para. 84.

<sup>3728</sup> Video MLI-OTP-0069-3712, transcript MLI-OTP-0078-4567, translation MLI-OTP-0078-4633. See also P-0150: T-094, pp. 36-39.

<sup>3729</sup> Video MLI-OTP-0069-3712, transcript MLI-OTP-0078-4567, translation MLI-OTP-0078-4633, at 4636.

<sup>3730</sup> Video MLI-OTP-0018-0379, transcript MLI-OTP-0069-7535, translation MLI-OTP-0069-7539. The Chamber notes the Defence’s objection to the submission and use of this video but considers that it may be relied upon as several witnesses (discussed further below) commented meaningfully on the video, it bears indicia of authenticity and appears to be an unmanipulated video of Mr Al Hassan speaking to an interviewer. The Chamber also notes that Mr Al Hassan recognised himself in the video and identified Sheik Abdallah as the person interviewing him about the nature of the Islamic Police’s work in the city (Mr Al Hassan’s statement MLI-OTP-0051-0422, at 0430-0434), further supporting the Chamber’s view of the authenticity and reliability of the video. *Contra* [Defence Final Brief](#), para. 86.

<sup>3731</sup> P-0075’s report MLI-OTP-0062-2399, at 2428-2429.

Chinguetti.<sup>3732</sup> In the video recording, Mr Al Hassan described the role of the Police, explaining that their mission was to patrol within the town and correct objectionable acts, including ‘any type of reprehensible act which has been forbidden by Allah [...] such as drinking alcohol, smoking, and a woman adorning herself, [...]! It involve[d] running the town’s affairs, particularly with respect to traffic, the market, and elsewhere, and ensuring the whole town’s security, day and night’.<sup>3733</sup>

1084. In another video recording,<sup>3734</sup> created on 11 December 2012,<sup>3735</sup> Mr Al Hassan was filmed at the media office in Timbuktu and spoke in support of the Azawadi cause.<sup>3736</sup> In the video recording, Mr Al Hassan advocated for the rights of the

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<sup>3732</sup> P-0065: T-039, pp. 28-35, 39-42, *referring to* video MLI-OTP-0018-0379, at 00:00:00:00, at 00:00:16:01, at 00:03:32:1 and 0:04:14:02. At 00:00:00:00, P-0065 identified Mr Al Hassan wearing what ‘seems’ to be a military vest (P-0065: T-039, p. 45). P-0065 stated that he knew the voice of Abdallah Al Chinguetti quite well (P-0065: T-048, p. 19). *See also* P-0150: T-093, pp. 60-61, *referring to* video MLI-OTP-0018-0379, transcript MLI-OTP-0069-7535, translation MLI-OTP-0069-7539. Mr Al Hassan stated that the video was filmed by a journalist who was with Sheik Abdallah, who asked the questions; he also stated that Abou Zhar was the person sitting next to him (Mr Al Hassan’s statement MLI-OTP-0051-0422, at 0430-0434). While Mr Al Hassan indicated that the video was taken at the BMS, the Chamber notes that given the timing of the video and also the indicia of the room, it is clear that the office depicted on the video was at the second location of the Police, at the *Gouvernorat*. Mr Al Hassan implied that he was asked to film this video by Sheik Abdallah who told Mr Al Hassan that he had to do it (Mr Al Hassan’s statement MLI-OTP-0051-0422, at 0439-0440). Mr Al Hassan stated that he was selected because he spoke Arabic and he was from Timbuktu (Mr Al Hassan’s statement MLI-OTP-0051-0422, at 0437-0438). *See* P-0653’s statement MLI-OTP-0066-2198, at 2208, 2228-2230; P-0655’s statement MLI-OTP-0069-9833, at 9842-9843, 9848, 9865. While Mr Al Hassan does look down frequently, his downwards gazes appear to reflect natural eye movement and are not the kind of sustained downward gazes the Chamber would expect of someone reading a text. He appeared to be speaking extemporaneously and to be independently responding to the questions posed to him. The Chamber considers that the recording does not support the Defence contention that Mr Al Hassan may have been looking at a script during the interview. *Contra* [Defence Final Brief](#), para. 85. The Chamber also considers the Defence’s arguments as the alleged scripting and purpose of the video and speculative and unsupported by the evidence (*contra* [Defence Final Brief](#), para. 607).

<sup>3733</sup> Video MLI-OTP-0018-0379, transcript MLI-OTP-0069-7535, translation MLI-OTP-0069-7539. *See also* P-0065: T-039, pp. 29-30, *referring to* video MLI-OTP-0018-0379, at 00:00:00:00, at 00:00:16:01, at 00:03:32:12 and 00:04:14:02.

<sup>3734</sup> Video MLI-OTP-0018-0091, transcript MLI-OTP-0052-0053, translation MLI-OTP-0052-0055.

<sup>3735</sup> P-0075’s report MLI-OTP-0062-2399, at 2420-2421.

<sup>3736</sup> Video MLI-OTP-0018-0091, transcript MLI-OTP-0052-0053; translation MLI-OTP-0052-0055. P-0065: T-039, pp. 44-47; T-048, pp. 14-15, 23, 28, 32-34, *referring to* video MLI-OTP-0018-0091, transcript MLI-OTP-0052-0053, translation MLI-OTP-0052-0055. P-0065 identified Mr Al Hassan, who was wearing a military vest in the video. In the video, Mr Al Hassan addressed issues concerning the rights of people in Azawad. According to P-0065, the purpose of the video was to show the stance of the groups in the ongoing negotiations in Burkina Faso. *See also* P-0150: T-090, pp. 45, 51-53. Although he did not initially recall the video, Mr Al Hassan recognised himself in the video and stated that the video was taken in the media office (Mr Al Hassan’s statement MLI-OTP-0051-0422, at 0435-0439). Mr Al Hassan stated that he was asked by Sanda Ould Bouamama to speak as an Azawadi and was given a paper of what he was to read; the media office wrote what he read (Mr Al Hassan’s statement MLI-OTP-0051-0422, at 0437). Mr Al Hassan stated that he was consulted and told to volunteer to give the speech,

Azawadi people, including against the Malian government's intervention in Azawad.<sup>3737</sup>

#### **j) Other support of Ansar Dine/AQIM**

1085. Mr Al Hassan played a role in getting people to join the armed groups.<sup>3738</sup> Mr Al Hassan was also part of the group that drove the MNLA from the airport.<sup>3739</sup> Mr Al Hassan drove his car at the front of the group, which was how the group discovered that there were no landmines placed at the airport.<sup>3740</sup>

1086. When Ansar Dine/AQIM left Timbuktu,<sup>3741</sup> Mr Al Hassan [REDACTED]; there, Mr Al Hassan [REDACTED].<sup>3742</sup> Around January or February 2014, Mr Al Hassan [REDACTED].<sup>3743</sup>

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and he agreed and did not have a problem giving the speech, unlike the majority of others who did not want their image exposed to the media (Mr Al Hassan's statement MLI-OTP-0051-0422, at 0438). Mr Al Hassan stated that he was known by the population of Timbuktu and had already met the press who had taken his picture long before (Mr Al Hassan's statement MLI-OTP-0051-0422, at 0438-0439). *See* P-0065: T-048, pp. 23, 34-35; P-0150: T-108, p. 40; [Defence Final Brief](#), paras 85-86. Noting Mr Al Hassan's statement and description of events, the Chamber considers that Mr Al Hassan may indeed have been reading from a script. Nonetheless, Mr Al Hassan's description of events, that he participated in the video, espousing the views of the Ansar Dine/AQIM, is further evidence of his participation in their mission and the respected position that he held (*contra* [Defence Final Brief](#), paras 84-87). *See* P-0653's report MLI-OTP-0066-2198, at 2206, 2221-2227; P-0655's report MLI-OTP-0069-9833, at 9842-9843, 9847-9848, 9865. The Chamber notes that video MLI-OTP-0018-0092 appears to have been of the same communication shown in video MLI-OTP-0018-0091 (video MLI-OTP-0018-0092, transcript MLI-OTP-0052-0058, translation MLI-OTP-0052-0060).

<sup>3737</sup> P-0150: T-090, pp. 48, 60; T-108, pp. 39-40, *referring to* video MLI-OTP-0018-0091, transcript MLI-OTP-0052-0053, translation MLI-OTP-0052-0055. Noting P-0150's testimony about the reason for such a video as well as the content of the speech, the Chamber considers that Mr Al Hassan, despite speaking as a local dignitary about an issue relevant to the Azawadi and not as a member of the Police, was still speaking on behalf of the groups in the video.

<sup>3738</sup> P-0150: T-100, pp. 37-39; P-0582's statements MLI-OTP-0062-3641-R02, at 3645-3646, 3653; MLI-OTP-0062-3679-R02, at 3680-3687.

<sup>3739</sup> P-0150: T-092, pp. 6-7; T-093, pp. 7-8; T-113, pp. 70-75. The Chamber finds P-0150's account of these events reliable. Notably, his descriptions are detailed, and he recounted the events acknowledging what he did not know and/or was unsure of. Regarding the Defence's arguments that P-0150's memory of Mr Al Hassan's role at the airport is a result of memory contamination ([Defence Response Brief](#), para. 43), *see* the Chamber's discussion of P-0150's credibility at section II.B.2.a)iii.b(i)(d)(iii) above. The Chamber also finds other arguments raised by the Defence on this matter unsupported and otherwise unconvincing ([Defence Response Brief](#), para. 54), including the suggestion that P-0150 confused Talha for Mr Al Hassan. Accordingly, the Chamber finds it appropriate to rely on P-0150's evidence regarding Mr Al Hassan's role in the MNLA's withdrawal to make the above finding.

<sup>3740</sup> P-0150: T-092, pp. 6-7; T-093, pp. 7-8; T-113, pp. 70-75.

<sup>3741</sup> *See* paragraph 454 above.

<sup>3742</sup> Mr Al Hassan's statement MLI-OTP-0051-1032, at 1048-1060. *See also* P-0150: T-090, pp. 68-73.

<sup>3743</sup> P-0150: T-091, pp. 36-39; T-117, pp. 71-72. *See also* T-120, pp. 24-26, 82-83. *Contra* [Defence Response Brief](#), para. 53. The Defence contends that Mr Al Hassan's involvement in the High Council for Unity of Azawad ('HCUA') and in the Congress for Justice in Azawad ('CJA') is irreconcilable with the notion that he was still involved with Ansar Dine/AQIM in 2014 (*see* [Defence Response Brief](#), para.

1087. The Chamber notes that the President of the High Islamic Council of Timbuktu (*Haut Conseil Islamique*), Abderahman Ben Essayouti, on behalf of the Muslim community of Timbuktu, granted forgiveness to Mr Al Hassan and communicated their hope that Mr Al Hassan be back to the community.<sup>3744</sup>

### **G. MR AL HASSAN'S PERSONAL VIEWS**

1088. The Chamber notes the parties' submissions as to Mr Al Hassan's personal views on religion and social norms prior to 2012. In this context, the Chamber notes that it is chiefly concerned with what the evidence shows about Mr Al Hassan's views during the relevant period and what these views demonstrates about Mr Al Hassan's conduct during the period when the charged events occurred.

1089. It is not clear to the Chamber whether Mr Al Hassan swore allegiance to Ansar Dine/AQIM; however, the Chamber notes P-0150's testimony that according to the rules of the groups, Mr Al Hassan's position 'can only be occupied by an individual who had pledged allegiance, whether it be written or orally'.<sup>3745</sup>

1090. The Chamber, Judge Mindua making further observations on this issue in his opinion, notes that further accounts of witnesses who knew Mr Al Hassan during and after the period of Ansar Dine/AQIM's control of Timbuktu elucidate the beliefs at the root of his participation in Ansar Dine/AQIM and the extent to which Mr Al Hassan shared the views of the groups.

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53). The Chamber notes that D-0246 testified that at his urging Mr Al Hassan returned to Mali and joined HCUA, however D-0246 specified that although he was not sure and did not know the exact date, he thought this occurred around 2014 (D-0246's statement MLI-D28-0006-9124, at 9130, paras 33-35). The Chamber further notes that P-1086 testified of Mr Al Hassan's involvement in these groups in 2015 and 2016 (P-1086: T-122, pp. 50-51, 55-56); D-0534 stated that Mr Al Hassan left the HCUA to join the CJA in 2016 (D-0534's statement MLI-D28-0006-4188-R01, at 4197; *see also* HCUA document MLI-D28-0005-2589, dated 31 March 2016, giving the responsibility to Mr Al Hassan to be the chief of a security zone of Erintedjeft-Zhoro); D-0627 discussed Mr Al Hassan's involvement in CJA in 2017 (D-0627's statement, MLI-D28-0006-5699-R01, at 5703, para. 28) and D-0628 testified that the CJA was created in 2016 (D-0628's statement, MLI-D28-0003-2049-R01, at 2050, paras 5-9). The Chamber considers that the evidence concerning Mr Al Hassan's involvement in HCUA and CJA does not contradict P-0150's credible evidence that Mr Al Hassan was still involved with Ansar Dine/AQIM in early to mid-2014.

<sup>3744</sup> Undated handwritten letter of Imam Essayouti MLI-D28-0005-8901 (stating '*Nous attestons par cette note, au nom de toute la communauté musulmane de Tombouctou, notre sincère pardon à l'endroit de notre fils et frère en Islam Al Hassan Ag Abdoul Aziz, et nous espérons son retour parmi nous, ses parents et coreligionnaires pour le reste de sa vie. Car nous savons que notre prophète pronne [sic] le pardon et le vivre ensemble*'). *See* [Defence Trial Brief](#), para. 47, footnote 101.

<sup>3745</sup> *See* P-0150: T-120, pp. 69, 88. *See also* P-0150: T-120, pp. 80-82.

1091. P-0065 once spoke to Mr Al Hassan regarding the Police.<sup>3746</sup> Mr Al Hassan told him that there was a big difference between them and the Malian police, as they were there for everybody's security and safety, without any distinction or discrimination, or any kind of racism, or whether the person was rich or poor.<sup>3747</sup> He further explained that whoever would come to the Police would find justice through them, whereas the Malian police would not accept anybody's complaint without them paying a sum.<sup>3748</sup>

1092. P-0065 thought that Mr Al Hassan had a 'national project' and believed Mr Al Hassan was 'caught up'<sup>3749</sup> in an internal revolution.<sup>3750</sup> Mr Al Hassan did not ever express any 'extremist' opinions to D-0211 during their interactions.<sup>3751</sup>

1093. [REDACTED] with Ansar Dine/AQIM in 2013,<sup>3752</sup> P-0150 and Mr Al Hassan spoke about what had happened, including the things they did [REDACTED] Timbuktu in 2012-2013.<sup>3753</sup> P-0150 could not recount everything Mr Al Hassan told him, but P-0150 learned about Mr Al Hassan's ideas, which he deemed 'fully consistent' with the ideas held by the 'radical groups'.<sup>3754</sup> Mr Al Hassan 'bragged about what he did, the prohibitions he enforced, and how he made sure things were corrected in line with Islamic *Sharia* – *Sharia*, as we define it'.<sup>3755</sup> P-0150 and Mr Al Hassan spoke about the confiscation of tobacco from merchants, the burning of tobacco, the prohibition of shops from selling or showing merchandise that was either prohibited or ethically inappropriate.<sup>3756</sup> Mr Al Hassan recounted,

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<sup>3746</sup> P-0065: T-039, p. 25. P-0065 did not remember if this was for [REDACTED].

<sup>3747</sup> P-0065: T-039, pp. 25-26.

<sup>3748</sup> P-0065: T-039, p. 26.

<sup>3749</sup> P-0065: T-050, p. 42.

<sup>3750</sup> P-0065: T-046, pp. 63-64; T-050, p. 42. As to his basis of knowledge, P-0065 explained that he met Mr Al Hassan several times and had conversations with him (P-0065: T-046, p. 64). P-0065 had the impression that Mr Al Hassan was pushed by his tribe and his ambition to be a non-extremist stakeholder and to join the non-Qaeda section of Ansar Dine (P-0065: T-050, p. 18). P-0065 further explained that '[...] keep saying that Al Hassan was just a regular person, like everyone who was in MNLA and later joined the Azawad Islamist movement, and later on the supreme council for the unity of Azawad, who are known to everyone to have no terrorist or extremist ideologies' (P-0065: T-050, p. 19). P-0065 further explained that he shared this on the basis of his conviction, his expert knowledge and his interest in being fair (P-0065: T-050, p. 23).

<sup>3751</sup> D-0211: T-190, pp. 21, 65-66. *See also* D-0627's statement MLI-D28-0006-5699, at 5703, para. 22.

<sup>3752</sup> Mr Al Hassan's statement MLI-OTP-0051-1032, at 1048-1058; P-0150: T-090, pp. 68-69. *See also* section II.B.2.a)iii.b(i)(d)(ii) above.

<sup>3753</sup> P-0150: T-091, pp. 5-6, 22, 28-29.

<sup>3754</sup> P-0150: T-091, p. 7.

<sup>3755</sup> P-0150: T-091, p. 22.

<sup>3756</sup> P-0150: T-091, p. 22.

according to P-0150 boastfully, that he imposed a fine on Nabil Abou Alqama, the head of AQIM, for committing a traffic offence.<sup>3757</sup> Mr Al Hassan also ‘bragged about enforcing *Sharia* without discrimination’.<sup>3758</sup>

#### IV. APPLICABLE LAW

1094. In the following section, the Chamber will set forth the relevant applicable law regarding the contextual elements of the war crimes and crimes against humanity, the elements of the individual crimes and the modes of criminal responsibility with which Mr Al Hassan has been charged.

##### A. CRIMES AGAINST HUMANITY AND WAR CRIMES

###### 1. Contextual elements

###### a) War crimes

###### i. Armed conflict not of an international character

1095. The war crimes charged in this case exclusively concern an armed conflict not of an international character. Pursuant to Article 8(2)(f) of the Statute, an armed conflict of this character exists when there is protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.<sup>3759</sup> According to paragraphs (d) and (f) of Article 8(2), an armed conflict of this character excludes situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of similar nature.<sup>3760</sup>

1096. With respect to the assessment of whether any of the armed groups involved qualifies as an ‘*organised* armed group’, the Chamber observes that Article 8(2)(f) of the Statute only requires that the armed group be ‘organized’, implying that some degree of organisation suffices to satisfy the required threshold.<sup>3761</sup> The

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<sup>3757</sup> P-0150: T-091, pp. 22-23.

<sup>3758</sup> P-0150: T-091, p. 23. P-0150 described this conversation as being in the context of the two bragging to each other about the things they did (P-0150: T-091, p. 23).

<sup>3759</sup> [Ongwen Trial Judgment](#), para. 2683; [Ntaganda Trial Judgment](#), para. 701, referring to [Tadić Jurisdiction Decision](#), para. 70. See also [Lubanga Trial Judgment](#), paras 534-536; [Katanga Trial Judgment](#), paras 1183-1184.

<sup>3760</sup> [Ongwen Trial Judgment](#), para. 2683.

<sup>3761</sup> See [Katanga Trial Judgment](#), para. 1186, referring to [Limaj et al. Trial Judgment](#), para. 89; [Lubanga Trial Judgment](#), para. 537.

Chamber notes that the following factors have been considered when assessing this element: (i) the existence of a command structure, the existence of headquarters, the issuing of political statements, the use of official spokespersons, and the group's internal hierarchy; (ii) the military (operational) capacity of the armed group;<sup>3762</sup> (iii) the logistical capacity of the armed group;<sup>3763</sup> (iv) the existence of an internal disciplinary system and the ability to implement international humanitarian law; and (v) the group's ability to speak with one voice.<sup>3764</sup> Importantly, none of these factors are individually determinative and a group may be considered to be sufficiently organised if only some of them are present.<sup>3765</sup>

1097. Turning to the assessment of the intensity of the conflict, chambers of this Court have considered the following factors to determine its 'protracted' character: (i) the seriousness and frequency of attacks and armed clashes; (ii) the spread of clashes over territory and the group's ability to control territory over a period of time; (iii) whether any ceasefire orders had been issued or agreed to; (iv) the type and number of armed forces deployed, including any involvement of the government; (v) the type of weapons used; (vi) whether the situation had attracted the attention of the UN Security Council, or involvement of other international organisations; (vii) whether those fighting considered themselves bound by international humanitarian law; and (viii) the effects of the violence on the civilian population, including the extent to which civilians left the relevant area, the extent of destruction, and the number of persons killed.<sup>3766</sup> While the factor of exercise of control over a part of the territory is not required, it may be

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<sup>3762</sup> For example, this is indicated by the ability to define a unified military strategy, the use of military tactics, the ability to carry out large scale or coordinated operations, the control of territory, and having a territorial division into zones of responsibility. *See also* [Ongwen Trial Judgment](#), para. 2685; [Ntaganda Trial Judgment](#), para. 704.

<sup>3763</sup> For example, this is shown by the existence of a supply chain for military equipment or the group's ability to move troops around and to recruit and train personnel. *See also* [Ongwen Trial Judgment](#), para. 2685; [Ntaganda Trial Judgment](#), para. 704.

<sup>3764</sup> For example, this is demonstrated by the capacity of the leadership to act on behalf of its members in political negotiations and to conclude agreements, such as cease-fire or peace agreements. *See also* [Ongwen Trial Judgment](#), para. 2685; [Ntaganda Trial Judgment](#), para. 704; [Katanga Trial Judgment](#), para. 1186; [Lubanga Trial Judgment](#), para. 537.

<sup>3765</sup> [Ntaganda Trial Judgment](#), para. 704. *See also* [Katanga Trial Judgment](#), para. 1186; [Lubanga Trial Judgment](#), para. 537.

<sup>3766</sup> [Ongwen Trial Judgment](#), para. 2684; [Ntaganda Trial Judgment](#), para. 716; [Katanga Trial Judgment](#), para. 1187; [Lubanga Trial Judgment](#), para. 538.



determinative, in the absence of active hostilities, when assessing whether the intensity threshold is fulfilled.<sup>3767</sup> The Chamber also considers that the intensity and ‘protracted armed conflict’ criteria do not require fighting to take place continuously and be entirely uninterrupted; it is sufficient for the Chamber to find that violence goes beyond isolated or sporadic acts.<sup>3768</sup>

## ii. Nexus requirement and perpetrator’s awareness

1098. If the Chamber determines that an armed conflict existed at the relevant time, a nexus must be established between the crimes and the armed conflict in question. In that regard, the Elements of Crimes require that the conduct constituting each war crime took place ‘in the context of’ and is ‘associated with’ an armed conflict not of an international character.<sup>3769</sup>

1099. Regarding the perpetrator’s conduct, it need not take place as part of hostilities,<sup>3770</sup> meaning that the nexus requirement may still be satisfied for crimes temporally or geographically remote from the actual fighting.<sup>3771</sup> What is required is that the perpetrator’s conduct must have a sufficiently close link to the hostilities taking place in any part of the territories controlled by the parties to the conflict.<sup>3772</sup> The armed conflict alone need not be considered to be the root of the conduct of the perpetrator and the conduct need not have taken place in the midst of the battle.<sup>3773</sup> Nonetheless, the armed conflict must play a major part in the perpetrator’s decision, in their ability to commit the crime or the manner in which the crime was ultimately committed.<sup>3774</sup>

1100. In determining whether the nexus is established, the Chamber may consider, amongst other factors: (i) the status of the perpetrator and the victim (*i.e.* whether

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<sup>3767</sup> [Ongwen Trial Judgment](#), para. 2684; [Ntaganda Trial Judgment](#), para. 717.

<sup>3768</sup> See [Ongwen Trial Judgment](#), para. 2684, referring to [Bemba Trial Judgment](#), para. 140.

<sup>3769</sup> [Elements of Crimes](#), penultimate element of the individual war crimes under Article 8(2). See also [Katanga Trial Judgment](#), para. 1176.

<sup>3770</sup> The Chamber notes, in particular, that this does not apply to Articles 8(2)(e)(i) to 8(2)(e)(iv) of the Statute as the crimes in these provisions require that they are perpetrated ‘during an attack’ where the perpetrator either ‘attacked’ or ‘directed an attack’.

<sup>3771</sup> [Ongwen Trial Judgment](#), para. 2689, referring to [Ntaganda Trial Judgment](#), para. 731; [Al Mahdi Trial Judgment](#), paras 18, 49; [Katanga Trial Judgment](#), para. 1176; [Lubanga Trial Judgment](#), para. 571; [Kunarac et al. Appeal Judgment](#), para. 57.

<sup>3772</sup> [Ongwen Trial Judgment](#), para. 2689.

<sup>3773</sup> [Katanga Trial Judgment](#), para. 1176; [Kunarac et al. Appeal Judgment](#), para. 58.

<sup>3774</sup> [Katanga Trial Judgment](#), para. 1176.

they had a role in the fighting); (ii) whether the act may be said to serve the ultimate goal of a military campaign; and (iii) whether the crime is committed as part of, or in the context of, the perpetrator's official duties.<sup>3775</sup>

1101. Finally, the perpetrator must have been aware of the factual circumstances that established the existence of an armed conflict.<sup>3776</sup>

## **b) Crimes against humanity**

1102. The *chapeau* of Article 7(1) of the Statute, which sets out the contextual elements of crimes against humanity, reads: '[f]or the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'. Article 7(2)(a) of the Statute stipulates that for the purpose of Article 7(1):

"Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.<sup>3777</sup>

1103. Article 7(1) of the Statute further sets out the required mental element of crimes against humanity, namely, that for each enumerated act under this provision, it is required that the perpetrator 'knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population'.<sup>3778</sup>

### **i. Attack directed against any civilian population**

1104. Paragraph 3 of the Introduction to Article 7 of the Elements of Crimes states, in

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<sup>3775</sup> See [Ongwen Trial Judgment](#), para. 2689; [Ntaganda Trial Judgment](#), para. 732; [Kunarac et al. Appeal Judgment](#), para. 59; [Rutaganda Appeal Judgment](#), para. 569.

<sup>3776</sup> [Elements of Crimes](#), Introduction to Article 8, para. 3. See also last element in the [Elements of Crimes](#) of the individual war crimes.

<sup>3777</sup> See also [Elements of Crimes](#), Introduction to Article 7, para. 3

<sup>3778</sup> [Elements of Crimes](#), Introduction to Article 7, para. 2: 'The last two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack'.

relevant part, that an attack directed against a civilian population refers to: (i) a course of conduct involving the multiple commission of acts referred to in Article 7(1) of the Statute; (ii) ‘against any civilian population’; and (iii) ‘pursuant to or in furtherance of a State or organizational policy to commit such attack’. The threshold set by these contextual elements ‘exclude “isolated and random acts, and ordinary crimes under national law, from the ambit of the Court’s jurisdiction over crimes against humanity”’.<sup>3779</sup>

1105. In the context of Article 7 of the Statute, an attack need not be military in nature and must involve the commission of any of the acts listed in Article 7(1) of the Statute.<sup>3780</sup> By requiring that the acts form part of a ‘course of conduct’, Article 7 of the Statute is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts.<sup>3781</sup> As such, the ‘multiple commission of acts’ sets a quantitative threshold involving a certain number of acts falling within the course of conduct.<sup>3782</sup> In that regard, the Appeals Chamber has found that ‘a single incident or operation in which multiple crimes are committed could amount to a crime against humanity provided that the relevant contextual elements are met’.<sup>3783</sup>

#### a. Any civilian population

1106. With respect to the term ‘civilian population’, it refers to a collective, as opposed to individual civilians.<sup>3784</sup> By using the term ‘any’ civilian population, Article 7(1) of the Statute is not limited to populations defined by a common nationality, ethnicity, or other similar distinguishing features.<sup>3785</sup> The presence within a civilian population of individuals who do not qualify as ‘civilians’ does not deprive the population of its civilian character.<sup>3786</sup> Further, while the Statute

<sup>3779</sup> [Ntaganda Appeal Judgment](#), para. 416.

<sup>3780</sup> [Elements of Crimes](#), Introduction to Article 7, para. 3.

<sup>3781</sup> [Ntaganda Appeal Judgment](#), para. 430; [Ongwen Trial Judgment](#), para. 2674; [Ntaganda Trial Judgment](#), para. 662; [Katanga Trial Judgment](#), paras 1101, 1024.

<sup>3782</sup> [Ongwen Trial Judgment](#), para. 2674, referring to [Ntaganda Trial Judgment](#), para. 663.

<sup>3783</sup> [Ntaganda Appeal Judgment](#), paras 381, 431. See also [Katanga Trial Judgment](#), para. 1101.

<sup>3784</sup> [Ntaganda Trial Judgment](#), para. 667.

<sup>3785</sup> [Ntaganda Trial Judgment](#), para. 667; [Katanga Trial Judgment](#), para. 1103.

<sup>3786</sup> [Ongwen Trial Judgment](#), para. 2675, referring to [Ntaganda Trial Judgment](#), para. 668; [Katanga Trial Judgment](#), para. 1105. See also [Šešelj Appeal Judgment](#), para. 69; [Popović et al. Appeal Judgment](#), para. 567; [Šainović et al. Appeal Judgment](#), para. 549; [Mrkšić and Šljivančanin Appeal Judgment](#), para. 31, referring to [Kordić and Čerkez Appeal Judgment](#), para. 50.

mentions that the attack must be directed against any civilian population, it is not necessary to prove that all individual victims were civilians within the meaning of international humanitarian law.<sup>3787</sup>

1107. Article 7(1) of the Statute requires a finding from the Chamber that the attack was ‘directed against any civilian population’; there is no legal requirement that the ‘*main aim* or object of the relevant acts was to attack civilians’.<sup>3788</sup> Rather, the ‘question of whether the attack was directed at a civilian population’ is a factual issue that may be assessed by the Chamber.<sup>3789</sup>

### **b. Organisational policy**

1108. The ‘course of conduct involving the multiple commission of acts’ must take place ‘pursuant to or in furtherance of a State or organizational policy to commit such an attack’ within the meaning of Article 7(2)(a) of the Statute. For the purposes of this judgment, only the ‘organisational policy’ prong is relevant. Paragraph 3 of the Introduction to Article 7 in the Elements of Crimes specifies that the “‘policy to commit such attack” requires that the [...] organization actively promote[s] or encourage[s] such an attack against a civilian population’.<sup>3790</sup> To establish a ‘policy’, what needs to be demonstrated is that the organisation meant to commit an attack against a civilian population.<sup>3791</sup>

1109. As regards the concept of ‘organisation’ under Article 7(2)(a) of the Statute, the Chamber endorses the definition established in the *Katanga* Trial Judgment:

[...] the connection of the term “organisation” to the very existence of the attack and not to its systematic or widespread nature presupposes that the organisation has sufficient resources, means and capacity to bring about the course of conduct or the operation involving the multiple commission of acts referred to in article 7(2)(a) of the Statute. It therefore suffices that the

<sup>3787</sup> See [Ongwen Trial Judgment](#), para. 2675; [Ntaganda Trial Judgment](#), para. 669.

<sup>3788</sup> [Ntaganda Appeal Judgment](#), paras 7, 424 (emphasis added in original). The Appeals Chamber has also noted that ‘[a]n attack directed against a civilian population may also serve other objectives or motives’ ([Ntaganda Appeal Judgment](#), para. 424).

<sup>3789</sup> See [Ntaganda Appeal Judgment](#), para. 424.

<sup>3790</sup> See also [Elements of Crimes](#), footnote 6: ‘A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action’.

<sup>3791</sup> [Katanga Trial Judgment](#), para. 1113.

organisation [has] a set of structures or mechanisms, whatever those may be, that are sufficiently efficient to ensure the coordination necessary to carry out an attack directed against a civilian population.<sup>3792</sup>

1110. The Chamber also considers that although a policy under Article 7(2)(a) of the Statute may include a pre-established design or plan, it may also crystallise and develop only as actions are undertaken by the perpetrators.<sup>3793</sup> In inferring the existence of a policy, the Chamber may consider the following factors: (i) a recurrent pattern of violence; (ii) the existence of preparations or collective mobilisation orchestrated and coordinated by the organisation; (iii) the use of public or private resources to further the policy; (iv) the involvement of organisational forces in the commission of crimes; (v) statements, instructions or documentation attributable to the organisation condoning or encouraging the commission of crimes; and (vi) an underlying motivation.<sup>3794</sup> In principle, an organisation committing a systematic attack against a civilian population will satisfy the policy requirement.<sup>3795</sup> However, the Chamber notes that the terms ‘systematic’ and ‘policy’ should not be understood as synonymous since, as explained below, the analysis of the systematic nature of the attack goes beyond the existence of a policy.<sup>3796</sup>

1111. With respect to the phrase ‘pursuant to or in furtherance of’, the Chamber considers that the policy requirement ensures that the multiple acts forming the course of conduct are linked.<sup>3797</sup> The requisite nexus is one that exists between the course of conduct and the policy.<sup>3798</sup> This ensures that acts which are unrelated or perpetrated by individuals acting randomly on their own are excluded.<sup>3799</sup>

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<sup>3792</sup> [Katanga Trial Judgment](#), para. 1119. See also [Ongwen Trial Judgment](#), para. 2677.

<sup>3793</sup> See [Ongwen Trial Judgment](#), para. 2679; [Ntaganda Trial Judgment](#), para. 674; [Katanga Trial Judgment](#), para. 1110.

<sup>3794</sup> See [Ongwen Trial Judgment](#), para. 2679, referring to [Ntaganda Trial Judgment](#), para. 674; [Katanga Trial Judgment](#), paras 1108-1110.

<sup>3795</sup> [Ongwen Trial Judgment](#), para. 2679, referring to [Katanga Trial Judgment](#), paras 1111-1113.

<sup>3796</sup> See [Katanga Trial Judgment](#), paras 1111-1113.

<sup>3797</sup> See [Ongwen Trial Judgment](#), para. 2678.

<sup>3798</sup> [Katanga Trial Judgment](#), para. 1116.

<sup>3799</sup> [Ongwen Trial Judgment](#), para. 2678, referring to [Bemba Trial Judgment](#), para. 161.

### c. Widespread or systematic attack

1112. To satisfy the contextual elements of a crime against humanity, the attack under Article 7(1) of the Statute should be either ‘widespread’ or ‘systematic’.

1113. The term ‘widespread’ connotes the large-scale nature of the attack and the number of targeted persons.<sup>3800</sup> The assessment of whether the attack is widespread is neither exclusively quantitative nor geographical, but must be carried out on the basis of all the relevant facts and circumstances of the case.<sup>3801</sup>

1114. The term ‘systematic’ reflects the organised nature of the violent acts, referring often to the existence of ‘patterns of crimes’ and the improbability of their random or accidental occurrence.<sup>3802</sup> In examining whether an attack was systematic, the Chamber shall assess if a series of repeated actions seeking to always produce the same effects on a civilian population were undertaken, and consequently, it may consider whether: (i) identical or similar criminal practices can be identified; (ii) the same *modus operandi* was used; or (iii) victims were treated in a similar manner across a wide geographic area.<sup>3803</sup>

#### ii. Nexus requirement and perpetrator’s awareness

1115. As stipulated in the *chapeau* of Article 7(1) of the Statute, the individual act must be committed *as part of* a widespread or systematic attack directed against a civilian population.<sup>3804</sup> The Chamber must determine the existence of the requisite nexus between the widespread or systematic attack and the act within the ambit of Article 7(1) of the Statute, and then, knowledge of that nexus by the perpetrator of the act.<sup>3805</sup>

1116. In that regard, the Chamber must, with due regard to the nature of the act at issue, the aims it pursues and the consequences it occasions, examine as to whether this

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<sup>3800</sup> [Ongwen Trial Judgment](#), para. 2681, referring to [Ntaganda Trial Judgment](#), para. 691; [Katanga Trial Judgment](#), para. 1123.

<sup>3801</sup> [Ongwen Trial Judgment](#), para. 2681, referring to [Ntaganda Trial Judgment](#), para. 691.

<sup>3802</sup> [Ongwen Trial Judgment](#), para. 2682, referring to [Ntaganda Trial Judgment](#), para. 692; [Katanga Trial Judgment](#), para. 1123.

<sup>3803</sup> See [Ntaganda Trial Judgment](#), para. 693, referring to [Katanga Trial Judgment](#), para. 1113.

<sup>3804</sup> See also [Elements of Crimes](#), penultimate element of the individual crimes against humanity; Introduction to Article 7, para. 2

<sup>3805</sup> See [Katanga Trial Judgment](#), para. 1099. See also [Katanga Trial Judgment](#), para. 1124.

act is part of the widespread or systematic attack, considered as a whole, and in respect of the various components of the attack (including the policy, the patterns of crimes, or the type of victims).<sup>3806</sup>

1117. Lastly, the nexus requirement finds its subjective equivalent in the requisite knowledge or awareness of the perpetrator.<sup>3807</sup> In accordance with the *chapeau* of Article 7(1) of the Statute, the perpetrator must know that the conduct was part of or intended to be part of a widespread or systematic attack directed against a civilian population. However, it is not necessary that the perpetrator be aware of the precise details of the plan or policy of the State or organisation.<sup>3808</sup>

## 2. The crimes

1118. As stated above, the Chamber will lay out the relevant applicable law of the individual crimes with which Mr Al Hassan has been charged.<sup>3809</sup>

1119. Unless otherwise provided in the Statute, the material elements of the crimes must have been committed with ‘intent’ and ‘knowledge’ within the meaning of Article 30 of the Statute. Article 30(2) provides that ‘a person has intent where’:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

1120. Knowledge under Article 30(3) of the Statute ‘means awareness that a circumstance exists or a consequence will occur in the ordinary course of events’; “[k]now” and “knowingly” shall be construed accordingly’.

1121. Regarding the phrase ‘will occur in the ordinary course of events’ in Article 30(2)(b) and (3) of the Statute, the ‘foreseeability of events’ requires ‘virtual

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<sup>3806</sup> See [Katanga Trial Judgment](#), para. 1124. See also [Ongwen Trial Judgment](#), para. 2688; [Ntaganda Trial Judgment](#), para. 696.

<sup>3807</sup> [Ongwen Trial Judgment](#), para. 2690.

<sup>3808</sup> [Elements of Crimes](#), Introduction to Article 7, para. 2; last element of the individual crimes against humanity.

<sup>3809</sup> The Chamber notes that as the contextual elements have been addressed in the previous section, whenever the elements of the individual crimes are set out in the present section, the relevant contextual elements are not included.

certainty' that the consequence in question would occur.<sup>3810</sup>

1122. To the extent that any further discussion beyond the terms set out in Article 30 is necessary, the Chamber will discuss the required mental elements below in relation to the individual crimes.

**a) Torture (Article 7(1)(f) and Article 8(2)(c)(i) of the Statute (Counts 1 and 3))**

1123. Pursuant to Article 7(2)(e) of the Statute, torture as a crime against humanity is defined as 'the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions'.

1124. The Elements of Crimes require the following elements for the crime of torture under Article 7(1)(f) of the Statute:<sup>3811</sup>

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were in the custody or under the control of the perpetrator.
3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.

1125. Regarding the war crime of torture under Article 8(2)(c)(i)-4 of the Statute,<sup>3812</sup> the Elements of Crimes require the following elements:

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

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<sup>3810</sup> [Ongwen Trial Judgment](#), para. 2695, referring to [Lubanga Appeal Judgment](#), para. 447.

<sup>3811</sup> Article 7(1)(f) reads: (1) For the purpose of this Statute, "crimes against humanity" means [...]: [...] (f) Torture.

<sup>3812</sup> Article 8(2)(c)(i) of the Statute reads: (2) For the purpose of this Statute, "war crimes" means: (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: (i) [...] torture.



2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

4. The perpetrator was aware of the factual circumstances that established this status.

1126. As set forth above, the crimes of torture as a crime against humanity and as a war crime share the first element that relates to the severity of the pain inflicted, namely that '[t]he perpetrator inflicted severe physical or mental pain or suffering upon one or more persons' but also require distinct elements particular to each crime. Accordingly, the Chamber will first analyse the element common to each crime and will then address the distinct elements of each crime in turn.

1127. The Defence submits that the severity element 'conveys the idea that only acts of substantial gravity may be torture' and that 'interrogation by itself, [or] minor contempt for the physical integrity of the victim' cannot satisfy this requirement.<sup>3813</sup>

1128. The Chamber is not convinced by the Defence's argument. It notes that the first element does not refer to 'substantial gravity' but rather to *severe* physical or mental pain or suffering. The reference to 'severe' implies an important degree of pain and suffering.<sup>3814</sup> It may be met by a single act or by a combination of acts viewed as a whole.<sup>3815</sup> It must therefore be assessed on a case-by-case basis in the light of all the circumstances of the case.<sup>3816</sup> Indeed, a violation to a person's physical and psychological integrity has several gradations and may encompass actions with physical and psychological effects that vary in intensity depending on endogenous and exogenous factors (such as manner, method used

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<sup>3813</sup> [Defence Final Brief](#), para. 508.

<sup>3814</sup> [Ongwen Trial Judgment](#), para. 2701; [Confirmation Decision](#), para. 230; [Bemba Confirmation Decision](#), para. 193. *See also* [Krnojelac Trial Judgment](#), para. 181; [El-Masri Judgment](#), para. 197; [Gäfgen Judgment](#), para. 90; [Selmouni Judgment](#), para. 100.

<sup>3815</sup> [Ongwen Trial Judgment](#), para. 2701; [Confirmation Decision](#), para. 230; [Krnojelac Trial Judgment](#), para. 182; [Selmouni Judgment](#), para. 105.

<sup>3816</sup> [Ongwen Trial Judgment](#), para. 2701; [Duch Trial Judgment](#), para. 355; [Brđanin Appeal Judgment](#), para. 251; [Naletilić and Martinović Appeal Judgment](#), para. 299; [Kvočka et al. Trial Judgment](#), para. 143. On this issue, and the importance of the socio-cultural context, *see* Opinion individuelle et partiellement dissidente du Juge Antoine Mindua.

and length of the mistreatment, age, sex, health, context and vulnerability of the victim).<sup>3817</sup> The pain and suffering may be either physical or mental. It is not necessary to prove that the pain or suffering involved specific physical injury (such as organ failure), impairment of a bodily function or death.<sup>3818</sup> The consequences of torture do not have to be visible, nor must the injury be permanent.<sup>3819</sup> Likewise, it is not necessary to prove that the perpetrator completed a value judgment as to the severity of the pain inflicted.<sup>3820</sup>

1129. The second element of torture as a crime against humanity requires that ‘[s]uch person or persons were in the custody or under the control of the perpetrator’. The Statute does not require the perpetrator to have acted in an official capacity. The Chamber considers that the use of the terms ‘custody’ and ‘under control of the perpetrator’ in this element should not be equated with ‘imprisonment or other severe deprivation of liberty’; rather it should be interpreted broadly<sup>3821</sup> in the sense that a person need not be in actual custody and some form of control is sufficient to establish this element.

1130. With respect to torture as a crime against humanity, there is a third element which is exclusionary in nature. It provides that the pain and suffering cannot arise only from, or be inherent or incidental to, lawful sanctions. This phrase is not included in the elements of the war crime.

1131. The Defence submits that since the ‘lawful sanctions exception applies to both

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<sup>3817</sup> See [Espinoza González v. Peru Judgment](#), para. 142; [Lysias Fleury et al v. Haiti Judgment](#), para. 73; [Kvočka et al. Trial Judgment](#), para. 143; [Torres Millacura et al. v. Argentina Judgment](#), para. 86; [Ireland Judgment](#), para. 162.

<sup>3818</sup> [Ongwen Trial Judgment](#), para. 2701; [Duch Trial Judgment](#), para. 355; [Brdanin Appeal Judgment](#), paras 244-251.

<sup>3819</sup> [Ongwen Trial Judgment](#), para. 2701; [Duch Trial Judgment](#), para. 355; [Kunarac et al. Appeal Judgment](#), para. 150; [Kvočka et al. Trial Judgment](#), para. 148.

<sup>3820</sup> [Elements of Crimes](#), General Introduction, para. 4: ‘[w]ith respect to mental elements associated with elements involving value judgement, such as those using the terms “inhumane” or “severe”, it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated’.

<sup>3821</sup> C. Stahn, ‘Article 7: Crimes against humanity’ in K. Ambos (ed.) *Rome Statute of the International Criminal Court* (2022), p. 238 where it is stated that the ‘terms ‘custody’ and ‘under the control of the accused’ are not synonymous with the term ‘imprisonment or other severe deprivation of liberty’. The term ‘custody’ would include any form of detention or imprisonment, including arrest by security forces, other restrictions on liberty such as those used in crowd control by security forces or enforced disappearance. The terms ‘under the control of the accused’ is broader and would include any other form of restraint by another, including enslavement’; R. Cryer *et al.*, *An introduction to International Criminal Law and Procedure* (2019), p. 248.

the [Convention against Torture] definition [of torture] and the war crimes of torture and cruel treatment under [international humanitarian law], it necessarily applies to the offences prescribed by Article 8' of the Statute.<sup>3822</sup>

1132. The Chamber notes that in support of its submission, the Defence refers, *inter alia*, to paragraph 6 of the General Introduction to the Elements of Crimes.<sup>3823</sup> The Chamber fails to see how this paragraph supports the Defence's contention. It also finds no merit in the Defence's claim that the 'lawful sanctions exception' should apply to the 'charges of other inhuman acts and lesser offences' and the 'war crimes of torture and cruel treatment'.<sup>3824</sup> The Court's legal framework expressly refers to 'lawful sanctions' only in relation to torture as a crime against humanity under Article 7(2)(e) of the Statute; hence, any other interpretation would require an amendment of the Statute, which chambers of this Court are not authorised to do.<sup>3825</sup>

1133. The Defence argues that Article 21(3) of the Statute provides that the Statute must be interpreted in a manner that does not violate human rights; however, this provision 'does not require or even allow the Court to transpose interpretations formulated at the international human rights level to individual criminal responsibility'.<sup>3826</sup> The Defence adds that the right to cultural integrity mandates that 'the cultural group concerned should be accorded a certain deference for its own interpretive and decision-making processes in the application of universal human rights norms'.<sup>3827</sup>

1134. The Chamber is not persuaded by the Defence's submission. In its view, Article

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<sup>3822</sup> [Defence Final Brief](#), para. 493.

<sup>3823</sup> [Elements of Crimes](#), General Introduction, para. 6: '[t]he requirement of "unlawfulness" found in the Statute or in other parts of international law, in particular international humanitarian law, is generally not specified in the elements of crimes'.

<sup>3824</sup> [Defence Final Brief](#), para. 493.

<sup>3825</sup> In that regard, Article 9 of the Statute stipulates that the chambers shall be assisted by the Elements of Crimes in the interpretation and application of the Article 5 crimes. In addition, the 'provisions of the Statute, including article 21 and the general principles set out in Part 3 [of the Statute] are applicable to the Elements of Crimes'. [Elements of Crimes](#), General Introduction, para. 1.

<sup>3826</sup> [Defence Final Brief](#), para. 502. The Defence also argues that the '*ad hoc* international criminal tribunals have adopted a cautious approach towards importing from human rights law, including, in particular, with respect to the definition of "torture"'. [Defence Final Brief](#), para. 502, referring to [Kupreškić et al. Trial Judgment](#), para. 589; [Kunarac et al. Trial Judgment](#), paras 470-471; [Krnjelac Trial Judgment](#), para. 181.

<sup>3827</sup> [Defence Final Brief](#), para. 504. On this issue, see Opinion individuelle et partiellement dissidente du Juge Antoine Mindua.

21(3) of the Statute applies to the entire Court’s legal framework and accordingly, the Chamber should consider the consistency of its interpretation of the term ‘lawful sanctions’, which is part of the elements of the crime against humanity of torture, in reaching its determination. This assessment of the applicable law is separate and apart from the subsequent determination on individual criminal responsibility.

1135. The Defence further avers that Article 7 of the Statute ‘only prohibits “conduct which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world”’.<sup>3828</sup> According to the Defence, this ‘language was inserted to ease concerns of Asian and Arab states regarding cultural relativism and potential penalisation of acceptable country-specific practices’ and by including the terms ‘international law’, this ‘underscores the compromise, *i.e.* that a mere breach of human rights law does not trigger the operation’ of Article 7.<sup>3829</sup> It adds that there is no uniformised legal practice that prohibits corporal punishment as it is legal in many States’ penal systems that derive from *Sharia*.<sup>3830</sup> Consequently, the Defence argues that the legality of corporal punishment is still considered as ‘a “grey area” in international law’ and any ambiguity in this matter ‘must be resolved in favour of Mr Al Hassan’.<sup>3831</sup>

1136. The Chamber notes that contrary to the Defence’s submission, the reference to conduct ‘impermissible under generally applicable international law’ in paragraph 1 of the General Introduction of Article 7 in the Elements of Crimes should not be interpreted as requiring any additional element that need to be proven. The Chamber agrees with the Prosecution that the drafters endorsed the fact that the ‘crimes expressly enumerated in article 7 are themselves already generally recognised to be impermissible’.<sup>3832</sup> The Chamber also notes that the

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<sup>3828</sup> [Defence Final Brief](#), para. 498.

<sup>3829</sup> [Defence Final Brief](#), para. 498.

<sup>3830</sup> [Defence Final Brief](#), paras 499-501.

<sup>3831</sup> [Defence Final Brief](#), para. 499. Judge Mindua agrees and considers that the legality of corporal punishment is still considered a ‘grey area’ in international law in deference to many Member States of the United Nations applying *Sharia*. On this issue and the related question of a defence of mistake of law, *see* Opinion individuelle et partiellement dissidente du Juge Antoine Mindua.

<sup>3832</sup> *See* [Prosecution Response Brief](#), para. 150.

references cited by the Defence<sup>3833</sup> are general in nature and do not support its contention that ‘a mere breach of human rights law does not trigger the operation’ of Article 7 of the Statute.

1137. Moreover, the Chamber observes that the issue of ‘cultural relativism versus a common standard of humanity’ was discussed during the negotiations in Rome on the drafting of the provisions on crimes against humanity in the Statute.<sup>3834</sup> However, proposals to include language on cultural relativism were rejected.<sup>3835</sup> As a result, the Chamber notes that language adopted for crimes against humanity in the Statute does not include cultural exceptions, and accordingly these provisions apply in the same manner, irrespective of any cultural particularities.

1138. The below discussion of the interpretation of the term lawful sanctions as applicable to torture as a crime against humanity reflects the views of the Majority, Judge Akane dissenting and Judge Mindua making additional observations as set out below.<sup>3836</sup>

1139. Turning to the interpretation of the term lawful sanctions as applicable to torture as a crime against humanity, the Defence argues in favour of a broad interpretation which includes sanctions applied by armed groups which meet a defined criteria. The Defence argues that the ‘plain meaning’ of the term ‘lawful’ is ‘to be in accordance with the law’; hence, absent ‘any express qualification to the term, its scope encompasses laws adopted and promulgated by the [non-state armed groups] where they have established judicial processes’.<sup>3837</sup> In the Defence’s view, sanctions ‘deriving from laws’ will be lawful if they are (i)

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<sup>3833</sup> [Defence Final Brief](#), para. 498, fns 1812-1813.

<sup>3834</sup> See D. Robinson, ‘Article 7(1)(f)’ in R. S. Lee (ed), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (2001), pp. 65-67, 93, referring to [Proposal submitted by Bahrain, Iraq, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Oman, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic and United Arab Emirates concerning the elements of crimes against humanity](#), 3 December 1999, PCNICC/1999/WGEC/DP.39.

<sup>3835</sup> See D. Robinson, ‘Article 7(1)(f)’ in R. S. Lee (ed), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (2001), pp. 65-67, 93, See also A. Karapetyan, ‘A recurring phenomenon: the lawful sanctions clause in the definition of torture and the question of judicial corporal punishment under international human rights law’ in 36 *Polish Yearbook of International Law* 137 (2016), p. 157, in which it is stated that ‘cultural relativism cannot be used as a justification for corporal punishment based on the argument that human dignity can be tied to various cultural, philosophical, or religious conceptions’.

<sup>3836</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>3837</sup> [Defence Final Brief](#), para. 495.

‘accessible’; (ii) precise enough to allow ‘sufficient predictability and foreseeability of a potential restriction of a right’; and (iii) providing ‘a general “adequate and effective protection against arbitrariness”’.<sup>3838</sup> It argues that the ‘*Haad* and the *Ta’zir* sanctions issued by the Islamic Court of Timbuktu, *Hesbah*, and the Islamic Police complied with these criteria’ and that witnesses considered the punishments imposed to be lawfully mandated by the *Quran*.<sup>3839</sup>

1140. The Majority notes that to the extent it could consider the criteria proposed above by the Defence in the assessment of the lawfulness of a given sanction, they are not encompassed within the Court’s Statutory framework. Therefore, these criteria cannot inform the Chamber in its legal interpretation of the notion of lawful sanctions and the applicable law of the crime of torture under Article 7(2)(e) of the Statute in the present case.

1141. In that regard, the Majority notes that neither the Statute nor the Elements of Crimes define ‘lawful sanctions’. The drafting history of Article 7(2)(e) of the Statute reveals that the drafters chose not to incorporate a definition, thus leaving it for the chambers of the Court to adopt their own interpretation of this term.<sup>3840</sup> The Majority considers that pursuant to Article 21(3) of the Statute, the interpretation of the term ‘lawful sanctions’ ‘must be consistent with internationally recognized human rights’.

1142. The Majority observes that international human rights bodies have consistently maintained that corporal punishment, including flogging/lashing and amputation of limbs, are inconsistent with international law, irrespective of whether such punishments are permissible under domestic law.<sup>3841</sup> Likewise, regional human

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<sup>3838</sup> [Defence Final Brief](#), para. 496.

<sup>3839</sup> [Defence Final Brief](#), para. 496. While forming part of the Majority, Judge Mindua considers that although not encompassed within the Court’s statutory framework, such criteria may nevertheless be considered relevant on a case-by-case basis. Judge Mindua also makes related comments in the context of his application of the defence of mistake of law (*see* Opinion individuelle et partiellement dissidente du Juge Mindua).

<sup>3840</sup> D. Robinson, ‘Article 7(1)(f)’ in R. S. Lee (ed), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (2001), p. 92.

<sup>3841</sup> [UN Committee against Torture Report under Article 19](#), paras 4(a), 4(b); [UN Committee against Torture Concluding Observations on Second Periodic Report of Saudi Arabia](#), paras 10-11; [UN Special Rapporteur N. Rodley 1997 Report](#), para. 6; [Osbourne v. Jamaica](#), paras 2.1, 3.1, 9.1; [Higginson v. Jamaica](#), paras 2.1, 4.6; [Pryce v. Jamaica](#), paras 2.2, 2.4, 6.2. *See also* Article 4(a) of the ICTR Statute and Article 3(1)(a) of the SCSL Statute, which both provisions provide that the ICTR and the SCSL are

rights bodies such as the IACtHR, the ACHPR or the ECtHR have considered that corporal punishment imposed by judicial and administrative authorities, such as ‘whipping’, or ‘floggings’ insofar as they caused either ‘serious’ or ‘severe’ physical or psychological suffering, amount to torture, cruel, inhumane, degrading treatment or punishment in contravention of international human rights law.<sup>3842</sup>

1143. The Majority notes that the Defence refers to Case T-523/97 of the Constitutional Court of Colombia to highlight the importance of considering the ‘goals of traditional’ sentences that include corporal punishments within a pluralistic society.<sup>3843</sup> The Majority finds that this case does not contradict its finding that corporal punishments such as floggings can constitute torture that violate international human rights law. This is because the punishment described in this case did not involve the severe infliction of physical or mental pain or suffering as required under the Statute.

1144. In light of the above, the Majority considers that corporal punishments, that satisfy all the elements of the crime of torture under Article 7(1)(f) of the Statute, particularly the severe physical or mental pain or suffering element, cannot constitute ‘lawful sanctions’.

1145. Turning to the mental elements, in addition to the mental elements required pursuant to Article 30 of the Statute, the Chamber notes that the war crime of torture under Article 8(2)(c)(i)-4 of the Statute further requires that ‘the perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind’. This specific purpose must be part of the motivation behind the conduct but it need not be the ‘predominant or sole

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competent to prosecute violations of common Article 3 of the Geneva Conventions and of Additional Protocol II, which include ‘any form of corporal punishment’. Moreover, Article 87 of the Third Geneva Convention, Article 32 of the Fourth Geneva Convention, Article 75(2)(a)(iii) of Additional Protocol I and Article 4(2)(a) of Additional Protocol II prohibit any form of corporal punishment, whether as a penal or disciplinary sanction, in international or non-international armed conflicts. *See also* [Prosecution Response Brief](#), para. 154.

<sup>3842</sup> *See* [Doebbler v. Sudan Judgment](#), paras 1-2, 5, 29-31, 35-38, 41-42, disposition; [Caesar Judgment](#), paras 3, 49(3), 49(6), 49(8), 49(26), 48(28), 71-73; [Tyrrer Judgment](#), paras 9, 29-35.

<sup>3843</sup> [Defence Final Brief](#), para. 484, *referring to* Case T-523/97, Constitutional Court of Colombia.

purpose'.<sup>3844</sup>

1146. The perpetrator must also have been aware of the factual circumstances that established the status of the victim under international humanitarian law.<sup>3845</sup> These elements relating to specific purpose and status of the victims are not required for the crime of torture as a crime against humanity.

#### **b) Cruel treatment (Article 8(2)(c)(i) of the Statute (Count 4))**

1147. The Elements of Crimes require the following elements for the crime of cruel treatment:<sup>3846</sup>

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.

1148. The first and second elements of the war crime of cruel treatment are identical to the first<sup>3847</sup> and third<sup>3848</sup> elements of the war crime of torture.

1149. As stipulated in the first element, 'severe physical or mental pain or suffering' is required to establish the war crime of cruel treatment. The Statute and the Elements of Crimes make no distinction as to the degree of suffering and pain required for torture as a crime against humanity and war crime or cruel treatment

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<sup>3844</sup> [Ongwen Trial Judgment](#), para. 2706; [Confirmation Decision](#), para. 235. See also [Duch Trial Judgment](#), para. 356; [Karadžić Trial Judgment](#), para. 508; [Kunarac et al. Appeal Judgment](#), para. 155; [Kvočka et al. Trial Judgment](#), para. 153.

<sup>3845</sup> [Elements of Crimes](#), Article 8(2)(c)(i)-4, para. 4. See also [Elements of Crimes](#), Article 8(2)(c)(i)-4, para. 3 which reads: 'Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities'.

<sup>3846</sup> Article 8(2)(c)(i) of the Statute reads: (2) For the purpose of this Statute, "war crimes" means: (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: (i) [...] cruel treatment [...].

<sup>3847</sup> [Elements of Crimes](#), Article 8(2)(c)(i)-4, para. 1 which reads: 'The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons'.

<sup>3848</sup> [Elements of Crimes](#), Article 8(2)(c)(i)-4, para. 3 which reads: 'Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities'.



as a war crime. As stated above for the crimes of torture, the level of intensity must be determined on a case-by-case basis, bearing in mind all the circumstances of the case<sup>3849</sup> (*i.e.* duration of the treatment, physical and mental effects, age, sex, health, context, vulnerability and other particular circumstances of the victim).<sup>3850</sup> The personal characteristics of the victim must also be taken into account when determining whether their personal integrity was violated, because these characteristics may change the individual's perception of the reality and, consequently, increase the suffering and feeling of humiliation experienced by the victim.<sup>3851</sup>

1150. Finally, the purposive element of the war crime of torture<sup>3852</sup> is the sole element distinguishing this crime from the war crime of cruel treatment. Hence, when an act that does not meet the purpose element of the war crime of torture but satisfies the other elements, it would then constitute the war crime of cruel treatment.<sup>3853</sup>

### **c) Outrages upon personal dignity (Article 8(2)(c)(ii) of the Statute (Count 5))**

1151. The Elements of Crimes require the following elements for this crime:<sup>3854</sup>

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.<sup>3855</sup>

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<sup>3849</sup> [Ongwen Trial Judgment](#), para. 2701; [Duch Trial Judgment](#), para. 355; [Brđanin Appeal Judgment](#), para. 251; [Naletilić and Martinović Appeal Judgment](#), para. 299; [Kvočka et al. Trial Judgment](#), para. 143.

<sup>3850</sup> [Espinoza González v. Peru Judgment](#), para. 142; [Lysias Fleury et al v. Haiti Judgment](#), para. 73; [Kvočka et al. Trial Judgment](#), para. 143; [Torres Millacura et al. v. Argentina Judgment](#), para. 86; [Ireland Judgment](#), para. 162.

<sup>3851</sup> [Espinoza González v. Peru Judgment](#), para. 142; [Torres Millacura et al. v. Argentina Judgment](#), para. 86.

<sup>3852</sup> [Elements of Crimes](#), Article 8(2)(c)(i)-4, para. 2 which reads: 'The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind'.

<sup>3853</sup> See Zimmerman and R. Geiß, 'Article 8: War Crimes', in K. Ambos (ed.) *Rome Statute of the International Criminal Court* (2022), para. 908.

<sup>3854</sup> Article 8(2)(c)(i) of the Statute reads: (2) For the purpose of this Statute, "war crimes" means: (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: [...] (ii) Committing outrage upon personal dignity, in particular humiliating and degrading treatment.

<sup>3855</sup> [Elements of Crimes](#), Article 8(2)(c)(ii), footnote 57 which reads: 'For this crime, "persons" can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim'.

2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.

1152. The question of whether the ‘severity’ of the humiliation, degradation or violation is ‘generally recognized’ as an outrage upon personal dignity involves a reasonable person’s objective assessment and must be assessed on a case-by-case basis.<sup>3856</sup> This objective component has been defined as requiring that the ‘humiliation to the victim must be so intense that the reasonable person would be outraged’.<sup>3857</sup> It is not necessary to prove that the suffering or injury must have long term effects.<sup>3858</sup>

1153. The Chamber notes that the Court’s legal framework does not provide a definition of a conduct that humiliates, degrades or otherwise violates someone’s dignity or an ‘inhumane treatment’. The jurisprudence of this Court and international judicial institutions<sup>3859</sup> has established that the following acts constitute outrages upon personal dignity: rape,<sup>3860</sup> hanging naked female prisoners from handcuffs or forcing them to maintain a certain position for a long time,<sup>3861</sup> young women being forced to dance naked on a table while the accused watched,<sup>3862</sup> a female student being undressed and forced to do gymnastics in a public courtyard,<sup>3863</sup> the use of detainees as human shields or making them dig trenches,<sup>3864</sup> and forcing detainees to, *inter alia*, relieve themselves in their clothing.<sup>3865</sup>

1154. As regards the mental elements, in addition to the mental elements required

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<sup>3856</sup> [Ongwen Trial Judgment](#), para. 2756.

<sup>3857</sup> [Confirmation Decision](#), para. 262, citing [Aleksovski Trial Judgment](#), para. 56.

<sup>3858</sup> [Ongwen Trial Judgment](#), para. 2756; [Katanga and Ngudjolo Confirmation Decision](#), para. 369; [Kvočka et al. Trial Judgment](#), para. 168; [Kunarac et al. Trial Judgment](#), paras 501, 503.

<sup>3859</sup> See Article 21(1)(b) of the Statute.

<sup>3860</sup> [Bagosora et al. Trial Judgment](#), paras 2252, 2254; [Brima et al. Trial Judgment](#), para. 718, referring to [Akayesu Trial Judgment](#), para. 597.

<sup>3861</sup> [Katanga and Ngudjolo Confirmation Decision](#), para. 370.

<sup>3862</sup> [Kunarac et al. Trial Judgment](#), paras 746, 766-774, 782.

<sup>3863</sup> [Akayesu Trial Judgment](#), para. 688.

<sup>3864</sup> [Aleksovski Trial Judgment](#), para. 229.

<sup>3865</sup> [Kvočka et al. Trial Judgment](#), paras 173-174.

pursuant to Article 30 of the Statute, the perpetrator must have been aware of the factual circumstances that established the status of the victim.<sup>3866</sup> The perpetrator need not have completed a value judgment as to the severity of the humiliation, degradation or violation inflicted.<sup>3867</sup> There is also no additional requirement that the perpetrator had a discriminatory intent or motive.<sup>3868</sup>

**d) Passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable (Article 8(2)(c)(iv) of the Statute (Count 6))**

1155. Article 8(2)(c)(iv) of the Statute reads:

(2) For the purposes of this Statute, “war crimes” reads:

(c) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

[...]

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

1156. The Elements of Crimes require the following elements for the war crime of sentencing without due process:<sup>3869</sup>

1. The perpetrator passed sentence or executed one or more persons.<sup>3870</sup>

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<sup>3866</sup> [Elements of Crimes](#), Article 8(2)(c)(ii)-4, para. 4.

<sup>3867</sup> [Elements of Crimes](#), General Introduction, para. 4 which reads: ‘With respect to mental elements associated with elements involving value judgement, such as those using the terms “inhumane” or “severe”, it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated’. See also [Ongwen Trial Judgment](#), para. 2757.

<sup>3868</sup> [Ongwen Trial Judgment](#), para. 2757, referring to [Sesay et al. Trial Judgment](#), para. 177; [Aleksovski Appeal Judgment](#), para. 28.

<sup>3869</sup> This short form for the war crime of ‘the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable’ comes from the title used in the Elements of Crimes.

<sup>3870</sup> [Elements of Crimes](#), footnote 58, which reads: ‘The elements laid down in [the Elements of Crimes] do not address the different forms of individual criminal responsibility as enunciated in articles 25 and 28 of the Statute’.

2. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

3. The perpetrator was aware of the factual circumstances that established this status.

4. There was no previous judgement pronounced by a court, or the court that rendered judgement was not “regularly constituted”, that is, it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law.<sup>3871</sup>

5. The perpetrator was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial

1157. The Chamber notes the use of the conjunction ‘or’ for the three types of conduct provided in the fourth element cited above, and considers that the war crime under Article 8(2)(c)(iv) of the Statute can arise in any of the following three ways:<sup>3872</sup>

- i. A sentence was passed without a ‘previous judgement pronounced by a court’;
- ii. A sentence was passed by way of a judgment rendered by a court that was not ‘regularly constituted’, meaning that the court lacked the essential guarantees of independence and impartiality; or
- iii. A sentence was passed by way of a judgment rendered by a court which ‘did not afford all other judicial guarantees recognised as indispensable under international law’.

1158. The Chamber is satisfied that any of the above conduct is sufficient by itself to find that the fourth element of the Elements of Crimes is fulfilled, if proven to the requisite standard.

1159. The Chamber will now expand upon each of these three types of conduct.

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<sup>3871</sup> [Elements of Crimes](#), footnote 59 which reads: ‘With respect to elements 4 and 5 [of this war crime], the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial’.

<sup>3872</sup> For the purpose of this case, the Chamber will focus only on the ‘passing of sentence’ aspect of this war crime, without regard to the ‘execution’ aspect of this war crime. This is because Count 6 does not include any charged incidents involving executions.

**i. Passing of sentences without previous judgment pronounced by a court**

1160. Article 8(2)(c)(iv) of the Statute derives from Common Article 3(1)(d) of the Four Geneva Conventions. This provision provides that:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed “hors de combat” by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

[...]

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

1161. The Chamber will therefore refer to relevant rules on international humanitarian law in that regard.

1162. The Chamber first considers what constitutes a ‘sentence’, for the purposes of this war crime. The Chamber relies on the definition of sentence provided in the ICRC Commentary on the Third Geneva Convention: ‘[t]he judgement that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer’.<sup>3873</sup> The Chamber notes that the Defence uses the same definition<sup>3874</sup> and that this definition of ‘sentence’ encompasses both the formal pronouncement of a judgment by a court and the punishment imposed on an individual.

1163. The passing of sentences without previous judgment entails that a punishment was carried out without any written or oral judgment by a court. This implies that

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<sup>3873</sup> [ICRC Commentary on the Third Geneva Convention](#), para. 712.

<sup>3874</sup> [Defence Final Brief](#), para. 330.

the passing of sentences need not take place in a court setting, but rather can be meted out elsewhere, such as on the streets. The Defence argues that ‘[t]he use of physical force, outside the framework of a criminal process and sentence, also falls outside the scope of this provision’.<sup>3875</sup>

1164. While the Chamber agrees that the use of force applied entirely *outside* the framework of a criminal process and sentence would not satisfy the elements of Article 8(2)(c)(iv) of the Statute, a punitive process and the passing of sentences *can* take place outside of a courtroom and the use of physical force as a punishment imposed on a wrongdoer *may* suffice to fulfil the elements of this provision. In fact, the criminal modality within the Elements of Crimes of ‘passing of sentences without a previous judgement’ would be rendered meaningless if the concept of ‘passing of sentences’ did not include ‘punishments’ imposed without the formal rite of a court procedure. Therefore, this war crime prohibits “summary” justice or trial by any tribunal that fails to qualify as fair and regular’.<sup>3876</sup>

1165. Contrary to the Defence’s argument that this crime only applies to very severe penalties such as the death penalty,<sup>3877</sup> the Chamber considers that this provision applies to sentences of varying severity, as it focuses on the lack of due process. The Defence further submits that ‘Article 8(2)(c)(iv) imports a specific nexus requirement’.<sup>3878</sup> In its view, this ‘provision was not intended to capture every execution or sentence that takes place contemporaneously to a [non international armed group], but only those concerning crimes related to or arising from the [non international armed conflict]’.<sup>3879</sup> According to the Defence, this ‘imports a distinction between proceedings where the person is charged with “war crimes” (“criminal offences related to the conflict”) as opposed to “war-time crimes” (crimes that were committed at the same time as a conflict)’.<sup>3880</sup> In that regard, the Defence argues that ‘war-time crimes’ include, for example, ‘shooting a wife

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<sup>3875</sup> [Defence Final Brief](#), para. 329.

<sup>3876</sup> [ICRC Commentary on the Third Geneva Convention](#), para. 711.

<sup>3877</sup> [Defence Final Brief](#), para. 332.

<sup>3878</sup> [Defence Final Brief](#), para. 321.

<sup>3879</sup> [Defence Final Brief](#), para. 321.

<sup>3880</sup> [Defence Final Brief](#), para. 322.

suspected of adultery, stealing goods from a local shop, or stealing cattle’.<sup>3881</sup> It adds that international humanitarian law ‘does not regulate steps taken by an [non-state actor] to protect the local population against criminal acts unrelated to the conflict’.<sup>3882</sup>

1166. The Chamber finds no merit in the Defence’s argument. The Defence’s interpretation of Article 8(2)(c)(iv) of the Statute is misguided because this provision does not concern the conduct of the person or persons on whom a sentence is passed; rather it pertains to the conduct of the perpetrator who passes the sentence. It is the latter that must be associated with an armed conflict. Moreover, the Defence’s interpretation of Article 8(2)(c)(iv) is unsupported by the Court’s statutory framework and would render this provision meaningless.

1167. The Chamber notes that not everyone can pass sentences and not all acts against persons who are not taking an active part in hostilities qualify as the passing of sentences, in accordance with Article 8(2)(c)(iv) of the Statute. As this provision is a serious violation of international humanitarian law, for someone to commit this war crime, Common Article 3 of the Four Geneva Conventions must have been applicable to his or her conduct, at the relevant time, for example by way of the perpetrator being a member of a party to the conflict. For the conduct to qualify as ‘passing a sentence’, as opposed to other crimes such as mistreatment, the perpetrator who passes a sentence without previous judgment must have some form of authority, derived from his or her position<sup>3883</sup> or as a result of having taken (military) control over the area where the victim is located.

1168. In addition, what sets this war crime apart from cruel treatment, and torture of or the commission of outrages upon personal dignity against persons taking no active part in the hostilities<sup>3884</sup> is that the perpetrator’s conduct serves as a form of punishment. For a punishment to fall under the prohibited conduct, the perpetrator passing the sentence, may on his or her own initiative have intended

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<sup>3881</sup> [Defence Final Brief](#), para. 322.

<sup>3882</sup> [Defence Final Brief](#), para. 322. On these steps and related challenges faced, *see* Opinion individuelle et partiellement dissidente du Juge Mindua.

<sup>3883</sup> [Confirmation Decision](#), para. 363, *referring to Duch Trial Judgment*, para. 462.

<sup>3884</sup> These crimes are also prohibited under Common Article 3 of the Four Geneva Conventions and separately criminalised under Article 8(2)(c)(i) and (ii) of the Statute.

that the victim be punished. However, if it was not at the initiative of the perpetrator, someone else (*i.e.* usually a commander, another superior, or a person in charge) must have decided that the victim ought to be subjected to punishment for an alleged wrongdoing.

**ii. Passing of sentences pursuant to a judgment pronounced by a court lacking the essential guarantees of independence and impartiality**

1169. With regard to the second alternative, the Chamber notes that the Elements of Crime specify that the phrase ‘without previous judgement pronounced by a regularly constituted court’ refers to a court that was not ‘regularly constituted’, in the sense that it did not provide the ‘essential guarantees of independence and impartiality’. The Chamber considers that the formulation ‘regularly constituted’ in the Elements of Crimes implies that the focus is broader than a consideration of the manner in which the court was set up and should involve a broader assessment as to the overall ability of the court to conduct a fair trial. The notions of independence and impartiality are viewed as the requisite attributes for a court to be regarded as ‘regularly constituted’ within the meaning of the Court’s statutory framework. Thus, the Chamber will need to determine, taking into account its establishment and practice, whether a court or tribunal functioned in both an independent and impartial manner.

1170. As noted above, the passing of sentences pursuant to a judgment pronounced by a court<sup>3885</sup> lacking the ‘essential guarantees of independence and impartiality’ is sufficient in itself to constitute a violation under Article 8(2)(c)(iv) of the Statute. The lack of independence and impartiality must be seen as rendering any judgment by the court invalid, resulting in a situation comparable to there having been no judgment at all.

1171. Neither the Statute nor the Elements of Crimes define the notions of independence and impartiality. The Chamber recalls that pursuant to Article 21 of the Statute a chamber can refer to ‘customary and conventional international law regardless of whether any lacuna exists, to ensure an interpretation of Article 8 of the Statute

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<sup>3885</sup> Within the context of this war crime, the Chamber understands a ‘judgment’ to be a decision or order of a court.



that is fully consistent with international law’.<sup>3886</sup>

1172. With respect to independence, noting the ICRC Commentary on the Third Geneva Convention and the UN Human Rights Committee General Comment on Article 14(1) of the ICCPR<sup>3887</sup> on the notion of independence, the Chamber defines it as the ability of the judiciary to be shielded from outside interference by ‘other branches of the government, especially the executive’, or other undue influence such as ‘political interference by the executive branch and legislature’.<sup>3888</sup> ‘A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal’.<sup>3889</sup>

1173. The Chamber is mindful that a court established by a non-state actor may not be able to successfully comply with the same level of independence required of a State court. The Chamber notes the Defence’s arguments that ‘the requirement of “independence” should also consider how [non-state actors] have a more “fluid” and “integrated” structure’.<sup>3890</sup> The Chamber considers that reasonable flexibility should be applied in assessing non-state armed groups’ capacity to adhere to these standards. In line with this approach, the Chamber considers that the independence requirement does not necessarily preclude a court from having executive branch members on the bench, as long as the ‘procedures in place ensure’ that the judges ‘perform their functions independently and impartially’.<sup>3891</sup>

1174. Article 8(2)(c)(iv) of the Statute also mandates that a court be ‘impartial’. Impartiality has subjective and objective requirements.<sup>3892</sup> Subjectively, a judge

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<sup>3886</sup> See [Ntaganda OA5 Judgment](#), para. 53.

<sup>3887</sup> Article 14 of the [ICCPR](#) reads: ‘All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’.

<sup>3888</sup> See [ICRC Commentary on the Third Geneva Convention](#), para. 716. See also [UN Human Rights Committee General Comment No. 32 on Article 14](#), para. 19.

<sup>3889</sup> [UN Human Rights Committee General Comment No. 32 on Article 14](#), para. 19.

<sup>3890</sup> [Defence Final Brief](#), para. 349.

<sup>3891</sup> [ICRC Commentary on the Third Geneva Convention](#), para. 716.

<sup>3892</sup> [ICRC Commentary on the Third Geneva Convention](#), para. 717.

must be impartial, harbouring no personal prejudice or bias, and not presuming the guilt of the accused, nor favouring one party's interests or improperly promoting the interests of one side.<sup>3893</sup> It follows that 'a judge [is] bound only by his [or her] conscience and the law'.<sup>3894</sup> Objectively, the court must also 'appear to a reasonable observer to be impartial'.<sup>3895</sup> For example, there is an unacceptable appearance of bias if a judge's decision will lead to the promotion of a cause in which he or she is involved.<sup>3896</sup>

1175. As noted above to be 'regularly constituted' a court must be independent and impartial. Thus, a sentence passed by a court which does not satisfy the guarantees of either independence or impartiality cannot be regarded as consistent with the requirements set out in the Court's legal framework. If a breach of either of those guarantees is established, the inquiry need not, in principle, go further, even if a violation of other judicial guarantees is alleged.<sup>3897</sup>

**iii. Passing of sentences pursuant to a judgement pronounced by a court which did not afford all other indispensable judicial guarantees**

1176. With regard to a judgment pronounced by a court that did not afford judicial guarantees recognised as indispensable under international law, the Chamber refers to Common Article 3(1)(d) of the Four Geneva Conventions and Article 6(2) of Additional Protocol II, which apply to cases of armed conflict not of an international character, to identify these guarantees. Article 6(2) of Additional

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<sup>3893</sup> [UN Human Rights Committee General Comment No. 32 on Article 14](#), para. 21; [ICRC Commentary on the Third Geneva Convention](#), para. 717.

<sup>3894</sup> [Kayishema and Ruzindana Appeal Judgment](#), para. 55.

<sup>3895</sup> [UN Human Rights Committee General Comment No. 32 on Article 14](#), para. 21; [ICRC Commentary on the Third Geneva Convention](#), para. 717.

<sup>3896</sup> [Furundžija Appeal Judgment](#), para. 189. See also [Rutaganda Appeal Judgment](#), para. 39.

<sup>3897</sup> The Chamber considers that this construction is evident from a plain reading of the Elements of Crime and the requirement for independence and impartiality. In its analysis, the Chamber has had regard to footnote 59 in the Elements of Crime which reads '[w]ith respect to elements 4 and 5 [of this war crime], the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial'. The Chamber considers that this footnote must be construed in accordance with the plain reading and structure of the Elements of Crimes. Thus despite the general application of the footnote to the fourth and fifth elements, the Chamber considers that the footnote is applicable to other judicial guarantees and not to the essential requirements of independence and impartiality. Moreover, this interpretation is consistent with the intent of the drafters. See E. La Haye, 'Other Serious Violations in Internal Armed Conflicts' in R. S. Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (2001), p. 213.

Protocol II ‘supplements and develops’ Common Article 3(1)(d) of the Four Geneva Conventions and ‘provide[s] valuable indications to help explain the terms of Article 3 on guarantees’.<sup>3898</sup>

1177. Article 6(2) of Additional Protocol II lays out in a non-exhaustive manner certain due process guarantees indispensable under international law. These are cumulative and require a holistic assessment: if an isolated procedural requirement has been ignored this does not automatically mean that the right to a fair trial has been violated.<sup>3899</sup> These due process guarantees are as follows:

- a) The procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him [or her] and shall afford the accused before and during his [or her] trial all necessary rights and means of defence;<sup>3900</sup>
- b) No one shall be convicted of an offence except on the basis of individual penal responsibility;
- c) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
- d) Anyone charged with an offence is presumed innocent until proved guilty according to law;
- e) Anyone charged with an offence shall have the right to be tried in his [or her] presence;
- f) No one shall be compelled to testify against himself [/herself] or to confess guilt.

1178. The Chamber notes that the Defence and the Prosecution mainly agree that these guarantees are ‘indispensable’.<sup>3901</sup> While the Prosecution refers to three other

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<sup>3898</sup> [ICRC Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August, 1949](#), at para. 3084.

<sup>3899</sup> See in this regard [Elements of Crimes](#), Article 8(2)(c)(iv), footnote 59.

<sup>3900</sup> [ICRC Commentary on the Third Geneva Convention](#), para. 722.

<sup>3901</sup> [Defence Final Brief](#), para. 358; [Prosecution Response Brief](#), para. 133.

guarantees,<sup>3902</sup> the Chamber does not find it necessary for the purpose of the present case to include them as they are not listed in Additional Protocol II, but rather derive from regional legal instruments. The Chamber considers that the guarantees listed in Additional Protocol II constitute the minimal indispensable guarantees that fall within the meaning of Article 8(2)(c)(iv) of the Statute.

#### iv. Mens rea

1179. As regards the *mens rea* for the war crime of sentencing without due process, in addition to the requirements of Article 30 of the Statute, the Elements of Crimes require that the perpetrator was aware of (i) the factual circumstances that established that such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities; and (ii) the absence of a previous judgment or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.<sup>3903</sup>

1180. The Chamber also notes that paragraph 4 of the General Introduction of the Elements of Crimes provides that regarding the ‘mental elements associated with elements involving value judgement, such as those using the terms “inhumane” or “severe”, it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated’. It follows from this provision that the perpetrator does not need to have personally made a value judgment as to the essential or indispensable nature of the guarantees to a fair trial referred to in Article 8(2)(c)(iv) of the Statute.<sup>3904</sup>

**e) Intentionally directing attacks against building dedicated to religion, education, art, science or charitable purposes, historical monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives (Article 8(2)(e)(iv) (Count 7))**

1181. In light of the Chamber’s factual findings made above in which it found that the link between Mr Al Hassan’s conduct and the demolition of the mausoleums has not been established to the required standard, the Chamber will not set out the

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<sup>3902</sup> [Prosecution Response Brief](#), para. 133: (i) the right to speak in defence; (ii) the right to assistance and advice; and (iii) the right to call evidence.

<sup>3903</sup> [Elements of Crimes](#), Article 8(2)(c)(iv), paras 2, 5.

<sup>3904</sup> *See also* [Confirmation Decision](#), para. 389.

applicable law for the war crime of attacking protected objects<sup>3905</sup> under Article 8(2)(e)(iv) of the Statute.

**f) Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health, including forced marriage (Article 7(1)(k) of the Statute (Counts 2 and 8))**

1182. The Elements of Crimes require the following elements for this crime:<sup>3906</sup>

1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.
2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.
3. The perpetrator was aware of the factual circumstances that established the character of the act.

1183. The Chamber notes that the category of ‘other inhumane acts’ under Article 7(1)(k) of the Statute ‘serves as a “residual category” of crimes against humanity, designed to criminalise an act that does not specifically qualify as any of the other crimes under article 7(1) of the Statute, based on the understanding that an exhaustive enumeration of inhumane acts is impossible’.<sup>3907</sup>

1184. If the act element is the same as one of the enumerated acts referred in Article 7(1) of the Statute, with an identical ‘character’ in terms of its nature, harm suffered and protected interests involved, then the second element is not satisfied.<sup>3908</sup> In this scenario, a conviction may be entered for a crime under Article 7(1)(a)-(j) of the Statute, but not for the crime of ‘other inhumane act’ under Article 7(1)(k) of the Statute.<sup>3909</sup>

1185. Nonetheless, this does not mean that a conviction under Article 7(1)(k) of the Statute can be entered only when the conduct in question, assessed in its entirety,

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<sup>3905</sup> The short form for this war crimes comes from the Elements of Crimes.

<sup>3906</sup> Article 7(1)(k) reads: (1) For the purpose of this Statute, “crimes against humanity” means [...]: [...]  
(k) Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

<sup>3907</sup> [Ongwen Appeal Judgment](#), para. 1017, referring to [Muthaura et al. Confirmation Decision](#), para. 269. See also [Ongwen Trial Judgment](#), para. 2745.

<sup>3908</sup> [Ongwen Trial Judgment](#), para. 2746.

<sup>3909</sup> [Ongwen Trial Judgment](#), para. 2746.

falls completely outside any act under Article 7(1)(a)-(j).<sup>3910</sup> A conviction can be entered also under Article 7(1)(k) when the full scope of the culpable conduct is not reflected by its qualification under the enumerated crime(s) alone.<sup>3911</sup> The Chamber notes that the term ‘character’ in the second element of Article 7(1)(k) refers to the ‘nature and gravity of the act’.<sup>3912</sup> A conviction can be entered under Article 7(1)(k) if the perpetrator inflicts great suffering, or serious injury to body or to mental or physical health, by means of a course of conduct which, despite comprising also acts falling under one or more of the enumerated crimes, is, in its entirety, not identical but is nonetheless ‘similar’ in character as to its nature and gravity, to those enumerated crimes.<sup>3913</sup>

1186. Chambers of this Court and international tribunals and courts have considered the following to constitute inhumane acts: forced marriage,<sup>3914</sup> forcible circumcision and penile amputation, mental suffering caused by brutal killings and mutilations committed in front of family members, striking people with a machete and injuring protesters by mortar fire,<sup>3915</sup> enforced disappearance of persons,<sup>3916</sup> deportation or forcible transfer of population,<sup>3917</sup> enforced prostitution,<sup>3918</sup> serious beatings, subjection to deplorable conditions of detention and requiring persons to witness the beatings or killings of others.<sup>3919</sup>

1187. Article 7(1)(k) of the Statute is ‘an open provision – meaning that different types of conduct may amount to other inhuman acts as long as they satisfy the elements of article 7(1)(k) of the Statute’.<sup>3920</sup> As such, forced marriage constitutes an inhumane act under Article 7(1)(k) of the Statute.<sup>3921</sup> Pursuant to internationally

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<sup>3910</sup> [Ongwen Trial Judgment](#), para. 2747.

<sup>3911</sup> [Ongwen Trial Judgment](#), para. 2747.

<sup>3912</sup> [Elements of Crimes](#), footnote 30.

<sup>3913</sup> [Ongwen Trial Judgment](#), para. 2747.

<sup>3914</sup> [Ongwen Appeal Judgment](#), para. 1024; [Ongwen Trial Judgment](#), paras 2744, 2751, referring to [Chea and Samphan Trial Judgment](#), paras 740-749; [Brima et al. Appeal Judgment](#), paras 197-201.

<sup>3915</sup> [Muthaura et al. Confirmation Decision](#), paras 270, 277, 280; [Gbagbo Arrest Warrant Decision](#), para. 61.

<sup>3916</sup> [Kupreškić et al. Trial Judgment](#), para. 566.

<sup>3917</sup> [Krajišnik Trial Judgment](#), paras 722-726.

<sup>3918</sup> [Kupreškić et al. Trial Judgment](#), para. 566.

<sup>3919</sup> [Ongwen Trial Judgment](#), para. 2744, referring to [Tadić Trial Judgment](#), paras 726, 730; [Duch Trial Judgment](#), paras 260-277, 372; [Chea and Samphan Trial Judgment](#), paras 733-739; [Kvočka et al. Trial Judgment](#), para. 209; [Bagilishema Trial Judgment](#), paras 490-494; [Kupreškić et al. Trial Judgment](#), para. 819; [Muthaura et al. Confirmation Decision](#), paras 274-280.

<sup>3920</sup> [Ongwen Appeal Judgment](#), para. 1021.

<sup>3921</sup> [Ongwen Appeal Judgment](#), para. 1024; [Ongwen Trial Judgment](#), para. 2751.

recognised human rights law, every person enjoys the fundamental right to enter a marriage with free and full consent.<sup>3922</sup> Marriage creates a status based on a consensual and contractual relationship – it is an institution and also an act or rite.<sup>3923</sup>

1188. The ‘central element and underlying act of “forced marriage”’ is ‘the imposition of [marital] status on the victim, *i.e.* the imposition, regardless of the will of the victim, of duties that are associated with marriage – including in terms of exclusivity of the forced conjugal union imposed on the victim – as well as the consequent social stigma’.<sup>3924</sup> In that sense, the ‘notion of “conjugal union” is [...] associated with the imposition of duties and expectations generally associated with “marriage”, which ‘may not only have a sexual component, but are related to the entire social and domestic dimension of a marital relationship’.<sup>3925</sup> In that regard, it ‘entails a “gendered harm”, which is essentially the imposition on the victim of socially constructed gendered expectations and roles attached to “wife” or “husband”’.<sup>3926</sup> Beyond its illegality, this ‘marital state’, involves social, ethical and religious effects which can seriously impact the victim’s physical and psychological well-being.<sup>3927</sup> To the extent that forced marriage results in the birth of children, this creates even more complex emotional and psychological effects on the victim and their children beyond the obvious physical effects of pregnancy and child-bearing.<sup>3928</sup>

1189. Consequently, the harm suffered from forced marriage can consist of being ostracised from the community, mental trauma, serious attack on the victim’s dignity, and the deprivation of the victim’s fundamental rights to choose their spouse.<sup>3929</sup>

1190. Hence, ‘forced marriage describes a situation in which a person is compelled to enter into a conjugal union with another person by the use of physical or

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<sup>3922</sup> [Ongwen Trial Judgment](#), para. 2748 and references cited in footnote 7210.

<sup>3923</sup> [Ongwen Trial Judgment](#), para. 2748.

<sup>3924</sup> [Ongwen Appeal Judgment](#), paras 1022-1023; [Ongwen Trial Judgment](#), para. 2748.

<sup>3925</sup> [Ongwen Appeal Judgment](#), paras 1023, 1682.

<sup>3926</sup> [Ongwen Appeal Judgment](#), para. 1024; [Brima et al. Appeal Judgment](#), para. 195.

<sup>3927</sup> [Ongwen Trial Judgment](#), para. 2748.

<sup>3928</sup> [Ongwen Trial Judgment](#), para. 2748.

<sup>3929</sup> [Ongwen Trial Judgment](#), para. 2749.

psychological force, or threat of force, or by taking advantage of a coercive environment'.<sup>3930</sup> Such act does not fall under any of the acts enumerated in Article 7(1)(a)-(j) of the Statute, but is similar in character to them.<sup>3931</sup>

1191. As to the mental elements, in addition to the requirements of Article 30 of the Statute, the perpetrator need not make a value judgment as to the 'inhumane' character of the act.<sup>3932</sup> It is only necessary to establish that the perpetrator was aware of the factual circumstances that established the character of the inhumane act.<sup>3933</sup>

**g) Sexual slavery (Article 7(1)(g) and Article 8(2)(e)(vi) of the Statute (Counts 9 and 10))**

1192. The Elements of Crimes require the following elements for the crime of sexual slavery as a crime against humanity under Article 7(1)(g) of the Statute or as a war crime under Article 8(2)(e)(vi)<sup>3934</sup> of the Statute:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.<sup>3935</sup>
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

1193. The Chamber notes that the examples enumerated in the first element should not be considered exhaustive.<sup>3936</sup> Powers attaching to the right of ownership must be construed as the use, enjoyment and disposal of a person who is regarded as

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<sup>3930</sup> [Ongwen Appeal Judgment](#), para. 1024, referring to [Brima et al. Appeal Judgment](#), para. 196; [Sesay et al. Appeal Judgment](#), para. 735; [Confirmation Decision](#), para. 559. See also [Ongwen Trial Judgment](#), para. 2751.

<sup>3931</sup> [Ongwen Trial Judgment](#), para. 2751. See also [Brima et al. Appeal Judgment](#), para. 195.

<sup>3932</sup> [Elements of Crimes](#), General Introduction, Article 7, para. 4.

<sup>3933</sup> [Elements of Crimes](#), Article 7(1)(k), para. 3.

<sup>3934</sup> Article 8(2)(e)(vi) of the Statute reads: (2) For the purpose of this Statute, "war crimes" means: (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, the following acts: [...] (vi) Committing [...] sexual slavery.

<sup>3935</sup> The Chamber notes that this element is identical to the first element of the crime against humanity of enslavement under Article 7(1)(c). [Elements of Crimes](#), Article 7(1)(c), para. 1 which reads: 'The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty'.

<sup>3936</sup> [Katanga Trial Judgment](#), para. 975.



property, by placing that person in a situation of dependence which entails deprivation of any form of autonomy of that person.<sup>3937</sup>

1194. In order to establish whether the perpetrator exercised such power, the Chamber will examine the specific nature of the relationship between the perpetrator and the victim by considering various factors, such as: (i) control of the victim's movement in any form; (ii) nature of the physical environment; (iii) detention or captivity and its respective duration; (iv) psychological pressure and control; (v) any measure taken to deter or prevent any attempt to escape; (vi) use of force, threats or other form of physical or mental coercion; (vii) assertion of exclusivity; (viii) exaction of forced labour; (ix) subjection to cruel treatment and abuse; (x) control of sexuality; and (xi) victim's vulnerability.<sup>3938</sup> The exercise of the right of ownership over someone does not entail a commercial transaction.<sup>3939</sup> Moreover, the imposition of 'similar deprivation of liberty' may take various forms,<sup>3940</sup> such as situation where the victim may not have been physically confined, but were otherwise unable to leave as they would have nowhere else to go and fear for their lives.<sup>3941</sup> The Chamber will, in that regard, take into account the subjective nature of such deprivation, in particular the person's perception of their situation and their reasonable fear.<sup>3942</sup>

1195. Turning to the second element, it concerns the victims' capacity to decide the conditions in which they engage in sexual activity.<sup>3943</sup> These acts of a sexual nature may include acts of rape, but are not limited to them.<sup>3944</sup> In that regard, these acts need not involve penetration or even physical contact.<sup>3945</sup> The term

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<sup>3937</sup> [Katanga Trial Judgment](#), para. 975.

<sup>3938</sup> See [Ntaganda Trial Judgment](#), para. 952; [Katanga Trial Judgment](#), para. 976; [Kunarac et al. Trial Judgment](#), paras 542-543.

<sup>3939</sup> [Ntaganda Trial Judgment](#), para. 952; [Katanga Trial Judgment](#), para. 976.

<sup>3940</sup> See [Elements of Crimes](#), footnotes 18, 66 which read: It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 195'. See also [Ntaganda Trial Judgment](#), para. 952; [Katanga Trial Judgment](#), para. 977; [Taylor Trial Judgment](#), para. 420; [Brima et al. Trial Judgment](#), para. 709.

<sup>3941</sup> [Ntaganda Trial Judgment](#), para. 952; [Katanga Trial Judgment](#), para. 977; [Taylor Trial Judgment](#), para. 420.

<sup>3942</sup> See [Katanga Trial Judgment](#), para. 977. *Contra* [Defence Final Brief](#), para. 275.

<sup>3943</sup> [Katanga Trial Judgment](#), para. 978.

<sup>3944</sup> [Ongwen Trial Judgment](#), para. 2716; [Ntaganda Trial Judgment](#), para. 955.

<sup>3945</sup> [Ongwen Trial Judgment](#), para. 2716, referring to [Milutinović et al. Trial Judgment](#), para. 199; [Akayesu Trial Judgment](#), para. 688.

‘sexual’ may also refer to acts carried out through sexual means or by targeting sexuality.<sup>3946</sup> The determination of whether an act is sexual in nature must be determined on a case-by-case basis, depending on the specific facts and circumstances of a given case.<sup>3947</sup>

**h) Rape (Article 7(1)(g) and Article 8(2)(e)(vi) of the Statute (Counts 11 and 12))**

1196. The Elements of Crimes require the following elements for the crime of rape as a crime against humanity under Article 7(1)(g) of the Statute or as a war crime under Article 8(2)(e)(vi)<sup>3948</sup> of the Statute:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

1197. The concept of ‘invasion’ is intended to be broad enough to be gender-neutral.<sup>3949</sup> Save for the specific situation of a person whose ‘incapacity’ to give consent was ‘tak[en] advantage of’,<sup>3950</sup> as the Elements of Crimes do not refer to the victim’s lack of consent, it is not necessary to prove such lack of consent and there is no requirement of resistance on the part of the victim.<sup>3951</sup>

1198. The establishment of at least one of the coercive circumstances or conditions set out in the second element is sufficient for penetration (in the first element) to

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<sup>3946</sup> [Ongwen Trial Judgment](#), para. 2716. *See also* Special Rapporteur Report on Forms of Slavery, para. 21.

<sup>3947</sup> [Ongwen Trial Judgment](#), para. 2716.

<sup>3948</sup> Article 8(2)(e)(vi) of the Statute reads: (2) For the purpose of this Statute, “war crimes” means: (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, the following acts: [...] (vi) Committing rape.

<sup>3949</sup> *See* [Elements of Crimes](#), Article 7(1)(g)-1, footnote 15; Article 8(2)(e)(vi)-1, footnote 63.

<sup>3950</sup> [Elements of Crimes](#), fns 16 and 64 which read: ‘It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity’.

<sup>3951</sup> [Ongwen Trial Judgment](#), para. 2709; [Ntaganda Trial Judgment](#), para. 934; [Katanga Trial Judgment](#), para. 965; [Duch Trial Judgment](#), para. 363; [Taylor Trial Judgment](#), para. 416. *See also* Rules 70-71 of the Rules.

amount to rape.<sup>3952</sup> Coercive circumstances need not be evidenced by a show of physical force – threats, intimidation, extortion, and other forms of duress which prey on fear or desperation may constitute coercion.<sup>3953</sup> Coercion may be inherent in certain circumstances, such as armed conflict or the military presence of hostile forces amongst the civilian population.<sup>3954</sup> Several factors may contribute to creating a coercive environment, such as: (i) the number of people involved in the commission of the crime; (ii) whether the rape is committed during or immediately following a combat situation, or is committed together with other crimes; (iii) the detention of the victim; (iv) the psychological pressure; or (v) the abuse of power.<sup>3955</sup> Moreover, regarding the requirement of the existence of a ‘coercive environment’, it must be proven that the perpetrator’s conduct involved ‘taking advantage’ of such a coercive environment.<sup>3956</sup>

**i) Persecution (Article 7(1)(h) of the Statute (Count 13))**

1199. Pursuant to Article 7(2)(g) of the Statute, persecution ‘means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity’.

1200. The Elements of Crimes require the following elements for the crime of persecution as a crime against humanity:<sup>3957</sup>

1. The perpetrator severely deprived, contrary to international law,<sup>3958</sup> one or more persons of fundamental rights.

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<sup>3952</sup> [Ongwen Trial Judgment](#), para. 2709, referring to [Ntaganda Trial Judgment](#), para. 934; [Katanga Trial Judgment](#), para. 965.

<sup>3953</sup> [Ongwen Trial Judgment](#), para. 2710; [Ntaganda Trial Judgment](#), para. 935.

<sup>3954</sup> [Ongwen Trial Judgment](#), para. 2710; [Ntaganda Trial Judgment](#), para. 935; [Akayesu Trial Judgment](#), para. 688.

<sup>3955</sup> [Ongwen Trial Judgment](#), para. 2710; [Ntaganda Trial Judgment](#), para. 935; [Katanga Trial Judgment](#), para. 965.

<sup>3956</sup> [Ntaganda Trial Judgment](#), para. 935.

<sup>3957</sup> Article 7(1)(h) reads: (1) For the purpose of this Statute, “crimes against humanity” means [...]: [...]  
(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.

<sup>3958</sup> [Elements of Crimes](#), footnote 21, which reads: ‘This requirement is without prejudice to paragraph 6 of the General Introduction to the Elements of Crimes’. Paragraph 6 of the General Introduction reads: ‘The requirement of “unlawfulness” found in the Statute or in other parts of international law, in particular international humanitarian law, is generally not specified in the elements of crimes’.

2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.

3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.

4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

1201. As regards the first element, it must be established that the perpetrators severely deprived a person or persons of their fundamental rights. There are a variety of ‘fundamental rights’ the infringement of which may meet this requirement such as the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment, the right not to be subjected to arbitrary detention, the right to freedom of expression, the right to freedom of assembly and association, freedom of movement, the right to private property, the right not to be held in slavery or servitude, and the right to education.<sup>3959</sup>

1202. The Chamber observes that, from the range of rights implicated, it is evident that the conduct underlying an act of persecution may constitute an act listed in paragraph 1 of Article 7 of the Statute, but it need not be the case. By example, a broad range of acts such as restrictions on movement to certain places and times, exclusion from professions, denial of access to public services and restrictions on family life have been found to constitute acts of persecution. In this context, the deprivation, whether by act or omission, or a combination thereof, can be of varying severity ranging from ‘killing to a limitation on the type of professions open to the targeted group’.<sup>3960</sup> The act of persecution also need not be physical. Thus discriminatory orders, policies, decisions or other regulations, provided they infringe on basic rights and reach the necessary level of gravity, can form underlying acts of persecution.<sup>3961</sup>

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<sup>3959</sup> [Ongwen Trial Judgment](#), para. 2733; [Burundi Investigation Decision](#), para. 132; [Ntaganda Trial Judgment](#), para. 991, referring to UDHR; ICCPR and ICESCR. See also [Kupreškić et al. Trial Judgment](#), para. 621; [Kordić and Čerkez Trial Judgment](#), para. 195; [CEDAW Gender-based Violence Recommendation](#), para. 15.

<sup>3960</sup> [Tadić Trial Judgment](#), para. 707.

<sup>3961</sup> [Simić et al. Trial Judgment](#), para. 58.

1203. However, the plain language of the statutory provision ensures that not every violation of fundamental rights will amount to persecution. Rather only those acts which constitute a severe deprivation will meet the threshold for persecution.

1204. Persecution can be committed either in one act or in a series of acts.<sup>3962</sup> If the conduct relied upon is, in and of itself, one of the other acts listed in Article 7 of the Statute which can constitute a crime against humanity, it will in principle result in a deprivation of fundamental rights of one or more individuals and the deprivation will meet the minimum level of severity required.<sup>3963</sup> For instance, acts of murder, torture, rape or sexual slavery will satisfy the first element of the crime of persecution.<sup>3964</sup>

1205. With respect to other types of underlying acts, the Chamber will need to assess these acts on a case-by-case basis ‘in their context and with consideration of their cumulative effect’ in order to determine whether, taken alone or in combination with other acts, they have resulted in the ‘severe’ deprivation of one or more individuals’ fundamental rights.<sup>3965</sup> In assessing whether a series of violations amount to a severe deprivation of fundamental rights, the number of fundamental rights implicated and the nature of the deprivation are also relevant considerations.

1206. The second element requires that the perpetrator targeted the person or persons by reason of the identity of a group or collectivity or that they targeted the group or collectivity as such. Contrary to the arguments of the Defence,<sup>3966</sup> under this element, the group need only be identifiable and this can be on the basis of neutral criteria such as geography or residence and need not be premised on a discriminatory ground such as racial or ethnic composition.<sup>3967</sup> Specifically, it is not necessary for the identifiable targeted group to be defined by the

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<sup>3962</sup> [Confirmation Decision](#), para. 663; [Burundi Investigation Decision](#), para. 130; [Kupreškić et al. Trial Judgment](#), para. 624. See also [Duch Appeal Judgment](#), para. 258.

<sup>3963</sup> [Ntaganda Trial Judgment](#), para. 994.

<sup>3964</sup> [Ntaganda Trial Judgment](#), para. 994.

<sup>3965</sup> [Ntaganda Trial Judgment](#), para. 992; [Kupreškić et al. Trial Judgment](#), paras 615, 622; [Kvočka et al. Appeal Judgment](#), para. 325.

<sup>3966</sup> [Defence Final Brief](#), paras 573-574.

<sup>3967</sup> See J. Powderly and N. Hayes, ‘Article 7: Crimes against humanity’ in K. Ambos (ed.) *Rome Statute of the International Criminal Court* (2022), p. 225.

discriminatory grounds listed in Article 7(1)(h) of the Statute, but rather these grounds enumerate the prohibited reasons for targeting the group.<sup>3968</sup> Further, the group may be defined in a positive or a negative manner, in the sense that the perpetrator targeted the members of a certain group or collectivity or that the perpetrator targeted individuals for not belonging to a certain group or collectivity.<sup>3969</sup> Thus, it is not required that the members of the targeted group hold common views or consider themselves as an identifiable group.<sup>3970</sup>

1207. The third element requires that the person or persons within the group or collectivity are targeted on specified discriminatory grounds as listed or any other ground universally recognised as impermissible under international law. One such ground will suffice, although a combination of more than one may equally form the basis for the discrimination.<sup>3971</sup>

1208. The fourth element requires that the conduct amounting to persecution must be in connection with any act referred to in Article 7(1) of the Statute or any crime within the Court's jurisdiction. The Chamber notes that while 'connection' requirements were included in some previous instruments,<sup>3972</sup> the requirement is uniquely framed in Article 7(1)(h) of the Statute. Notably, while the connection requirement in previous instruments called for connection to another crime, under the Statute it is extended to connection with a crime or one of the acts listed in Article 7(1). With respect to the latter, the Majority, Judge Akane dissenting, is of the view with respect to the connection requirement that it is not necessary to demonstrate that the Article 7(1) acts meet the contextual elements for crime against humanity; it is sufficient that there is a connection between the persecution and any instance of murder, torture, rape or other inhumane act.

1209. In interpreting this requirement, the Majority has considered the drafting history

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<sup>3968</sup> See J. Powderly and N. Hayes, 'Article 7: Crimes against humanity' in K. Ambos (ed.) *Rome Statute of the International Criminal Court* (2022), p. 226.

<sup>3969</sup> See [Ongwen Trial Judgment](#), para. 2735; [Ntaganda Trial Judgment](#), para. 1009.

<sup>3970</sup> [Ongwen Trial Judgment](#), para. 2736, referring to [Ntaganda Trial Judgment](#), para. 1011.

<sup>3971</sup> [Ntaganda Trial Judgment](#), para. 1009.

<sup>3972</sup> Under the Nuremberg Charter, a connection was required between persecution and other crimes in the instrument. This connection was also required in the Tokyo Charter but not in the Control Council Law No. 10, the ICTY or ICTR Statutes. See D. Robinson, 'Defining "Crimes against Humanity" at the Rome Conference', in 93 *American Journal of International Law* 43 (1999), p. 54.

of Article 7(1)(h) of the Statute. It evidences that while the crime of persecution is recognised in major precedents, this was the first occasion where it was defined. In the course of negotiating this, many delegations were concerned about the scope of the provision and the fact that any discriminatory practice would be characterised as crimes against humanity. They considered that, in addition to the requirements for severity and intentional discrimination on prohibited grounds, it was essential to have some form of connection with other enumerated acts to ensure a criminal focus. Other delegations were concerned that such a requirement would result in the crime of persecution being reduced to merely an auxiliary offence to be used as an additional charge or aggravating factor as opposed to a crime in itself. The compromise achieved was the inclusion of a connection requirement but one which was broadly framed to include a connection to crimes or Article 7(1) acts. The Majority notes that the inclusion of both possibilities was intended to ensure that persecution would retain its character as a separate crime and ensure it would not be merely an auxiliary offence or aggravating factor.<sup>3973</sup>

1210. As noted above by the Majority, there is no requirement that the act of persecution equates to an act under Article 7(1) of the Statute or any other crime under the jurisdiction of the Court. By the plain language of the Statute, there need only be a ‘connection’ in the sense of link to, or interrelated with.<sup>3974</sup> Further, it is the persecution which must be connected with a crime – not the individual acts underlying the same.

1211. Moreover, the Elements of Crimes stipulate that: ‘[i]t is understood that no additional mental element is necessary for this element other than that inherent in element 6’. This latter element provides that: ‘[t]he perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population’.<sup>3975</sup>

1212. In addition, the Chamber notes that the act must be carried out with the requisite

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<sup>3973</sup> See D. Robinson, ‘Defining “Crimes against Humanity” at the Rome Conference’, in 93 *American Journal of International Law* 43 (1999), p. 55.

<sup>3974</sup> [Confirmation Decision](#), paras 668-669; [Burundi Investigation Decision](#), paras 131-132.

<sup>3975</sup> [Elements of Crimes](#), Article 7(1)(h), footnote 22.

discriminatory intent, that is, intent to discriminate against the targeted persons on any of the grounds enumerated in Article 7(1)(h) of the Statute.<sup>3976</sup> This specific intent may be inferred from the general behaviour of the perpetrator as well as the circumstances surrounding the commission of the crime.<sup>3977</sup>

**j) Mutilation (Article 8(2)(c)(i) of the Statute (Count 14))**

1213. The Elements of Crimes require the following elements for the war crime of mutilation:<sup>3978</sup>

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interests.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

1214. The Chamber notes that the jurisprudence of this Court and other international courts have considered that the following acts constitute mutilations: eyes pierced by bayonets,<sup>3979</sup> the cutting off of limbs,<sup>3980</sup> and hand amputation.<sup>3981</sup>

1215. Regarding the mental elements, in addition to those required pursuant to Article 30 of the Statute, the perpetrator must have been aware of the factual circumstances that established the status of the victim under international humanitarian law.<sup>3982</sup>

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<sup>3976</sup> See [Ongwen Trial Judgment](#), para. 2739.

<sup>3977</sup> See [Ongwen Trial Judgment](#), para. 2739.

<sup>3978</sup> Article 8(2)(c)(i) of the Statute reads: (2) For the purpose of this Statute, "war crimes" means: (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: (i) [...] mutilation [...].

<sup>3979</sup> [Mudacumura Article 58 Decision](#), para. 43.

<sup>3980</sup> [Brima et al. Trial Judgment](#), paras 1213, 1218, 1243.

<sup>3981</sup> [Sesay et al. Trial Judgment](#), para. 1316.

<sup>3982</sup> [Elements of Crimes](#), Article 8(2)(c)(i)-4, para. 4. See also [Elements of Crimes](#), Article 8(2)(c)(i)-4, para. 3.



## B. MODES OF LIABILITY

1216. In this section, the Chamber will set out the applicable law for the modes of liability with which Mr Al Hassan has been charged.

### 1. Commission ‘as an individual’ (direct perpetration) (Article 25(3)(a) of the Statute)

1217. Article 25(3)(a) of the Statute provides that ‘a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: [c]ommits such a crime, [...] as an individual’.

1218. Direct perpetrators must personally carry out the elements of the crime with the requisite intent and knowledge pursuant to Article 30 of the Statute as well as any further specific provision.<sup>3983</sup>

### 2. Aiding, abetting or otherwise assisting (Article 25(3)(c) of the Statute)

1219. Pursuant to Article 25(3)(c) of the Statute,

[...] a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(c) [f]or the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.

1220. The Chamber notes that Article 25(3)(c) of the Statute is a ‘single mode of liability’ whereby a person aids, abets or otherwise assists in the commission or attempted commission of a crime.<sup>3984</sup> This provision establishes accessorial liability by holding a person who assists the principal perpetrator of an offence responsible.<sup>3985</sup> The Chamber notes from the plain wording of the provision that criminal responsibility under Article 25(3)(c) of the Statute is dependent on the commission or at least the attempted commission of a crime by the principal perpetrator.<sup>3986</sup> Nonetheless, establishing accessorial responsibility is

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<sup>3983</sup> [Ongwen Appeal Judgment](#), para. 685; [Ongwen Trial Judgment](#), para. 2782, referring to [Ntaganda Trial Judgment](#), para. 735; [Bemba et al. Trial Judgment](#), para. 58.

<sup>3984</sup> See [Bemba et al. Appeal Judgment](#), paras 1324-1325. See also [Confirmation Decision](#), para. 901.

<sup>3985</sup> See [Bemba et al. Trial Judgment](#), para. 84; [Lubanga Trial Judgment](#), paras 997, 999.

<sup>3986</sup> See [Bemba et al. Trial Judgment](#), para. 84.

independent of whether the principal is identified, charged or convicted.<sup>3987</sup>

1221. The term ‘aids’, when read in context of the other two forms of liability set out in Article 25(3)(c) of the Statute, entails the giving of practical or material assistance.<sup>3988</sup>

1222. The term ‘abets’ refers to moral or psychological assistance which the accessory gives to the principal by encouraging, or being sympathetic to, the commission of the particular offence.<sup>3989</sup> The encouragement or support demonstrated need not be explicit: in some circumstances, even the mere presence at the crime scene (or in its vicinity) as a ‘silent spectator’ may be construed as tacit approval or encouragement of the crime.<sup>3990</sup>

1223. With respect to contribution to the commission or attempted commission of a crime, the Defence submits, in relation to the individual criminal liability under paragraphs (c) and (d) of Article 25(3) of the Statute, that such liability will not be engaged by the mere execution of ‘pre-determined tasks in a fungible manner’ and by ‘contributions that are not intentionally directed to a specific crime or purpose entailing the commission of a specific crime’.<sup>3991</sup> It adds that ‘concrete impact’ needs to be proven, and as such a significant contribution is required.<sup>3992</sup>

1224. The Chamber rejects the Defence’s arguments for the following reasons. Referring to the plain wording of Article 25(3)(c) of the Statute, the Chamber notes that this provision does not require the accessory’s contribution to reach a specific threshold.<sup>3993</sup> The Chamber observes that this provision ‘only requires that the assistance in the commission (or attempted commission) of the crime be provided for the purposes of facilitating such commission without indicating whether the conduct must have also had an effect on the commission of the

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<sup>3987</sup> See [Bemba et al. Trial Judgment](#), para. 84.

<sup>3988</sup> See [Bemba et al. Trial Judgment](#), para. 88.

<sup>3989</sup> See [Bemba et al. Appeal Judgment](#), para. 1330; [Bemba et al. Trial Judgment](#), para. 88.

<sup>3990</sup> See [Bemba et al. Trial Judgment](#), para. 89. See also e.g. [Ngirabatware Appeal Judgment](#), para. 150; [Brdanin Appeal Judgment](#), para. 277.

<sup>3991</sup> [Defence Final Brief](#), para. 62.

<sup>3992</sup> [Defence Response Brief](#), para. 70.

<sup>3993</sup> See [Bemba et al. Trial Judgment](#), para. 93.

offence’.<sup>3994</sup>

1225. The material element under Article 25(3)(c) of the Statute is ‘certainly fulfilled when the person’s assistance in the commission of the crime facilitates or furthers the commission of the crime, as the showing of such an effect indicates that the person indeed assisted in its commission’.<sup>3995</sup> Nonetheless, while the effect of facilitating or furthering the commission of the crime is indicative of the person’s assistance in its commission, ‘it is not a necessary requirement’.<sup>3996</sup> Indeed, whether ‘a certain conduct amounts to “assistance in the commission of the crime”’ within the meaning of this provision, even in the absence of such an effect being shown, can only be determined based on the facts of the case.<sup>3997</sup>

1226. The Chamber notes the Defence’s submission that the ‘accused must know that his or her conduct will contribute to the commission of specific crimes’ and that the *mens rea* ‘requires proof that the accused had actual knowledge that his conduct could aid and abet the commission of the crime in question and intended to engage in such conduct in the knowledge that his conduct would result in certain consequences, namely the commission of the charged crimes’.<sup>3998</sup> The Chamber finds that the Defence misreads the applicable law as set out in the Statute.

1227. Turning to the *mens rea*, Article 25(3)(c) of the Statute expressly sets forth a purpose requirement according to which the accessory must act ‘for the purpose of facilitating the commission of such crime’.<sup>3999</sup> This wording introduces a ‘higher subjective mental elements’ than that provided for in Article 30 of the Statute and means that the accessory must have lent his or her assistance with the aim of facilitating the crime.<sup>4000</sup> It is not sufficient that the accessory merely knows that his or her conduct will assist the principal in the commission of the crime.<sup>4001</sup> Bearing in mind the twofold intent of the accessory – firstly the

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<sup>3994</sup> See [Bemba et al. Appeal Judgment](#), para. 1327.

<sup>3995</sup> See [Bemba et al. Appeal Judgment](#), para. 1327.

<sup>3996</sup> See [Bemba et al. Appeal Judgment](#), para. 1327.

<sup>3997</sup> See [Bemba et al. Appeal Judgment](#), para. 1327.

<sup>3998</sup> [Defence Final Brief](#), para. 23.

<sup>3999</sup> [Bemba et al. Trial Judgment](#), para. 97.

<sup>4000</sup> [Bemba et al. Trial Judgment](#), para. 97.

<sup>4001</sup> [Bemba et al. Trial Judgment](#), para. 97.

principal crime and, secondly, the accessory's own conduct –, this 'elevated subjective standard' relates to the accessory's facilitation, not the principal crime.<sup>4002</sup>

1228. Moreover, responsibility under Article 25(3)(c) of the Statute requires proof that the accessory also had intent with regard to the principal crime pursuant to Article 30 of the Statute, which applies by default.<sup>4003</sup> The accessory must at least be aware that the crime will occur in the ordinary course of events.<sup>4004</sup> Additionally, the accessory need only be aware of essential elements of the crime and does not need to know all the details of the crime in which he or she assists.<sup>4005</sup> In that sense, '[a] person may be said to be acting for the purpose of facilitating the commission of a crime, even if he or she does not know all the factual circumstances in which it is committed'.<sup>4006</sup>

### **3. Contributing in any other way (Article 25(3)(d) of the Statute)**

1229. Pursuant to Article 25(3)(d) of the Statute, 'a person shall be criminally responsible and liable for punishment for a crime if that person':

[i]n any other way contributes to the commission or attempted commission of such crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court, or

(ii) Be made in the knowledge of the intention of the group to commit the crime.

1230. In interpreting this Article, the Chamber has taken into account the drafting history of Article 25(3)(d) of the Statute, notably that the provision is an innovation of the Statute, which did not appear in previous international criminal law instruments. Therefore, the Chamber considers that the jurisprudence of other international criminal tribunals dealing with different statutory frameworks is of

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<sup>4002</sup> [Bemba et al. Trial Judgment](#), para. 97.

<sup>4003</sup> [Bemba et al. Trial Judgment](#), para. 98.

<sup>4004</sup> [Bemba et al. Trial Judgment](#), para. 98.

<sup>4005</sup> [Bemba et al. Appeal Judgment](#), para. 1400; [Bemba et al. Trial Judgment](#), para. 98.

<sup>4006</sup> [Bemba et al. Appeal Judgment](#), para. 1400.

minimal, if any, relevance to the interpretation of Article 25(3)(d) of the Statute.

1231. In particular, the language of Article 25(3)(d) of the Statute was drawn from ancillary offences added to expand the scope of international instruments elaborated in the context of counter-terrorism efforts.<sup>4007</sup> Article 25(3)(d) of the Statute imports language from Article 2(3)(c) of the Terrorist Bombing Convention and the negotiation history of both instruments reveals that the language ultimately agreed was a carefully crafted compromise.<sup>4008</sup> Therefore, in light of this drafting history, the Majority, Judge Akane dissenting,<sup>4009</sup> considers it particularly important that Article 25(3)(d) of the Statute be interpreted using the ordinary meaning of the language employed by the drafters and that no additional criteria should be read in or otherwise introduced.<sup>4010</sup>

1232. In light of the plain reading of this provision, and consistent with the jurisprudence of the Court, Article 25(3)(d) of the Statute requires that the following be established:

- a crime within the jurisdiction of the Court was committed;
- the persons who committed the crime belonged to a group acting with a common purpose that involves the commission of a crime;
- the accused contributed in any other way to the commission of the crime;
- the accused's contribution was intentional; and

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<sup>4007</sup> Article 2(3)(c) of the Convention for the Suppression of Terrorist Bombings. *See notably* S. Witten, 'The International Convention for the Suppression of Terrorist Bombings' in *92 American Journal of international Law* 774 (1998) pp. 774-781.

<sup>4008</sup> A. Aust, 'Counter-Terrorism – A new approach' in *5 Max Planck Yearbook of United Nations Law* 285 (2001), pp. 300-301. Subsequent to its inclusion in the *Terrorist Bombing Convention*, Article 2(3)(c) was criticised by some states with a Romano Germanic legal tradition as reflecting the common law concept of conspiracy which is unknown in other legal traditions. In the Rome Statute, improvements were made to the text of Article 25(3)(d) to clarify that the provision reflects both conspiracy and the civil law concept of *association malfaiteur*. Namely, through the creation of distinct sub-paragraphs, it was made clear that there are two options as to the requirements that need to be met to establish this mode of liability, reflecting the different, but analogous, concepts in the two legal traditions, thereby setting a careful balance.

<sup>4009</sup> *See* Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>4010</sup> *See in general* [Judge Silvia Fernández de Gurmendi Separate Opinion in Mbarushimana OA4 Judgment](#).

- the accused's contribution was made with the aim of furthering the criminal activity or criminal purpose of the group, or was made in the knowledge of the intention of the group to commit the crime.<sup>4011</sup>

1233. Regarding the first element, it must be proven that the crimes charged were committed or attempted.<sup>4012</sup>

1234. Regarding the second element, on a plain reading, Article 25(3)(d) of the Statute requires that the existence of a group of persons acting with a common purpose be established. It follows that the persons who committed the crime must belong to the group, in that they shared this common purpose, whether they form all or part of it.<sup>4013</sup>

1235. The Chamber places emphasis on the use of the specific term 'common purpose' which defines the group. The interpretation of this term is aided by contrasting it with the distinct requirement underpinning co-perpetration liability under Article 25(3)(a) of the Statute. As held by the Appeals Chamber, in order to prove that an accused person committed a crime jointly with another person under Article 25(3)(a), it must be established that there was an 'agreement' between the perpetrators which led to the commission of the crime. Evidence of this agreement is essential in order to tie the co-perpetrators together and justify the 'reciprocal imputation of their respective acts. This agreement may take the form of a common plan'.<sup>4014</sup>

1236. The Chamber notes that, in contrast, criminal responsibility under Article 25(3)(d) does not result in a reciprocal imputation of the acts of the members of the group. Thus, a high threshold such as the establishment of an agreement or common plan of action within the meaning of Article 25(3)(a) of the Statute is not required. Under the statutory language of Article 25(3)(d), for this form of lesser accessory liability, the members of the group only need to be linked by a common purpose, which by the ordinary meaning of this expression, is a shared

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<sup>4011</sup> See [Katanga Trial Judgment](#), para. 1620.

<sup>4012</sup> See [Katanga Trial Judgment](#), para. 1622.

<sup>4013</sup> [Katanga Trial Judgment](#), para. 1624.

<sup>4014</sup> [Lubanga Appeal Judgment](#), para. 445.

aim, goal or objective.<sup>4015</sup>

1237. The common purpose under Article 25(3)(d) of the Statute must either be to commit a crime within the jurisdiction of the Court or involve the commission of such a crime.<sup>4016</sup> In the latter instance, what must be established is that the crime or crimes committed were part of the common purpose. Crimes ensuing solely from opportunistic acts by members of the group and which fall outside the common purpose cannot be attributed to the group's concerted action.<sup>4017</sup>

1238. In addition, the jurisprudence of the Court establishes that the liability under Article 25(3)(a) of the Statute may cover situations where the exact contours of all the crimes or offences in implementation of the common plan are not yet known at the time the plan is conceived.<sup>4018</sup> It follows that when it comes to the lesser form of liability under 25(3)(d) of the Statute there is also no need for the group to agree on the exact manner in which the crimes will be committed.

1239. Turning to the element of contribution, by referring to a contribution 'in any other way' to the commission of the crime, Article 25(3)(d) of the Statute provides for a residual form of accessorial liability.<sup>4019</sup> The person making the contribution can be a member of the group with the common purpose but need not be. In essence that is not a relevant consideration for assessing liability under Article 25(3)(d).<sup>4020</sup>

1240. Criminal liability will attach only when it is established that the person made a contribution to the commission or attempted commission of a crime.<sup>4021</sup> Thus the analysis must first identify the crimes included in the common purpose and then consider the contribution, if any, of the accused to the crimes. As such, a person will not incur individual criminal liability under Article 25(3)(d) of the Statute

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<sup>4015</sup> In that regard, the Chamber rejects the Defence's argument that the Prosecution must show that the 'charged crimes were physically perpetrated by Mr Al Hassan a member of the group', as it misstates the applicable law (*contra* [Defence Final Brief](#), para. 18, referring to [Katanga Trial Judgment](#), para. 1628).

<sup>4016</sup> [Confirmation Decision](#), para. 940; [Katanga Trial Judgment](#), para. 1627.

<sup>4017</sup> [Katanga Trial Judgment](#), para. 1630.

<sup>4018</sup> [Bemba et al. Appeal Judgment](#), para. 16.

<sup>4019</sup> [Confirmation Decision](#), para. 937; [Katanga Trial Judgment](#), para. 1618.

<sup>4020</sup> [Katanga Trial Judgment](#), para. 1631.

<sup>4021</sup> [Confirmation Decision](#), para. 943; [Katanga Trial Judgment](#), para. 1619.

for all the crime(s) which form part of the common purpose.<sup>4022</sup>

1241. With respect to the level of contribution required under Article 25(3)(d) of the Statute, the Defence argues that ‘concrete impact’ needs to be proven, and as such a substantial contribution is required.<sup>4023</sup>

1242. The Chamber notes that different approaches have been adopted on the level of contribution with some chambers defining a necessary level or threshold of contribution and others rejecting any such requirement.<sup>4024</sup>

1243. The Chamber observes that the Statute does not define a specific level for the contribution or require that it reach a certain minimum threshold. The Chamber recalls the drafting history which shows that this provision was carefully crafted to reflect a balance between the approaches in different legal tradition.<sup>4025</sup> As stated above, by referring to a contribution ‘in any other way’ to the commission

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<sup>4022</sup> The Chamber rejects the Defence’s argument that the Prosecution must establish that the commission of crimes must have been a ‘virtually certain’ consequence of the common purpose ([Defence Final Brief](#), paras 44-46, 57, 265, 277, 513, 515, 524, 546-547, 593). The Defence misreads the applicable law for the mode of liability under Article 25(3)(d) by referring to the law applicable to co-perpetration liability under Article 25(3)(a) of the Statute.

<sup>4023</sup> [Defence Response Brief](#), para. 70.

<sup>4024</sup> Some chambers of the Court have considered that the contribution under Article 25(3)(d) of the Statute needs to be ‘significant’. See [Mbarushimana Confirmation Decision](#), paras 277 (‘such a threshold is necessary to exclude contributions which, because of their level or nature, were clearly not intended by the drafters of the Statute to give rise to individual criminal responsibility. For instance, many members of a community may provide contributions to a criminal organisation in the knowledge of the group’s criminality, especially where such criminality is public knowledge. Without some threshold level of assistance, every landlord, every grocer, every utility provider, every secretary, every janitor or even every taxpayer who does anything which contributes to a group committing international crimes could satisfy the elements of 25(3)(d) liability for their infinitesimal contribution to the crimes committed. For these reasons, the Chamber considers that 25(3)(d) liability would become overextended if any contribution were sufficient’), 283 (‘the Chamber finds that the contribution to the commission of a crime under article 25(3)(d) of the Statute cannot be just any contribution and that there is a threshold of significance below which responsibility under this provision does not arise. On the other hand, given the “residual” nature of article 25(3)(d) and its focus on group criminality, the Chamber finds that a contribution to the commission of a crime by a group acting with a common purpose be at least significant’); [Katanga Trial Judgment](#), paras 1632 (‘For the Chamber, it is paramount that the accused’s contribution be connected to the commission of the crime and not solely to the activities of the group in a general sense. Indeed, a significant contribution, analysed in relation to each crime, must be proven beyond reasonable doubt. By significant contribution, the Chamber wishes to lay stress on a contribution which may influence the commission of the crime. Conduct inconsequential and immaterial to the commission of the crime cannot, therefore, be considered sufficient and constitute a contribution within the meaning of article 25(3)(d) of the Statute’), 1633 (‘The contribution will be considered significant where it had a bearing on the occurrence of the crime and/or the manner of its commission’).

Other chambers, including the Pre-Trial Chamber in the present case, considered that the Statute does not define a specific level for the contribution or require that it reach a certain minimum threshold. See [Confirmation Decision](#), para. 948, referring to [Ongwen Confirmation Decision](#), para. 44; [Al Mahdi Confirmation Decision](#), para. 27. See also [Prosecution Response Brief](#), para. 17.

<sup>4025</sup> See above.



of the crime, the Chamber is satisfied that Article 25(3)(d) of the Statute provides for a residual form of accessorial liability.<sup>4026</sup> The Chamber therefore considers that no additional requirement for a certain level of contribution or threshold to be attained should be ‘read in’ to the statutory provision. Applying an ordinary meaning to the text and consistent with the intent of the drafters, it need only be established that the accused made a contribution.<sup>4027</sup>

1244. However, this does not mean that every contribution – no matter its nature – will fall within the parameters of Article 25(3)(d) of the Statute. The language of this provision limits the scope of this mode of responsibility, including its objective requirements. Indeed, the facts must evidence that the accused’s contribution is not solely to the activities of the group in a general sense but to *the commission of the crime*.<sup>4028</sup> Thus to determine if liability is established there will need to be in each instance a case-by-case analysis in light of the specific context of the case as to the links between the contribution and the commission of the crime.<sup>4029</sup>

1245. With respect to the *mens rea*, Article 25(3)(d) of the Statute contains a specific provision defining the requisite intent. It requires that the accused’s contribution was intentional and (i) was made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court or (ii) was made in the knowledge of the intention of the group to commit the crime.<sup>4030</sup>

1246. Regarding the first element that the accused’s contribution was intentional, it must be restricted to the conduct which constitutes the contribution and not extended to the purpose, activity or criminal intent specified in the subparagraphs. Accordingly, the accused must have intended to engage in the conduct such that his or her acts were deliberate and made with awareness. In

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<sup>4026</sup> See [Katanga Trial Judgment](#), para. 1618.

<sup>4027</sup> [Katanga Trial Judgment](#), para. 1634. The Chamber is of the view that it will effectively apply the same requirement as that applied by Trial Chamber II in the *Katanga Trial Judgment* with respect to the contribution ‘in any other way’, but without reading into Article 25(3)(d) unnecessary qualifying word, such as ‘significant’.

<sup>4028</sup> [Katanga Trial Judgment](#), para. 1619.

<sup>4029</sup> See also [Judge Silvia Fernández de Gurmendi Separate Opinion in Mbarushimana OA4 Judgment](#), para. 12.

<sup>4030</sup> [Katanga Trial Judgment](#), para. 1640 in which it is stated that the second element relating to the contribution contains two alternatives.

addition, the accused must be aware that the conduct contributed to the activities of the group.<sup>4031</sup>

1247. With respect to the second element, under the first alternative, the accused must have made the contribution with the aim of furthering the criminal activity or criminal purpose of the group.

1248. Under the second alternative, the accused's contribution is made 'in the knowledge of the intention of the group to commit the crime'. By a plain reading of the provision, it is not sufficient to establish that the accused had knowledge of the group's general criminal intention but rather he must be aware of the group's intention to commit the specific crime or crimes to which he is contributing. Interpreting the knowledge requirement in accordance with Article 30(3) of the Statute, the Chamber must be satisfied that the accused was aware of the intention of the group to commit the crime or knew that the crime would occur in the ordinary course of events.

## **V. LEGAL CHARACTERISATION OF FACTS**

1249. Above, the Chamber presented its analysis of the evidence and its findings of the facts of the case as well as introduced the law applicable to the case. In this section of the judgment, the Chamber lays out its legal findings, which consists of the legal characterisation of the facts, *i.e.* applying the law, as set out above, to the factual findings and the analysis of each element of the crimes and modes of liability charged.

1250. First, the Chamber addresses the contextual elements of crimes against humanity and war crimes as they are relevant to all the subsequent analysis and conclusions. Second, the Chamber discusses the specific elements of the crimes for which Mr Al Hassan is charged, addressing each of the charges in turn: torture as a crime against humanity and as a war crime (Counts 1 and 3); other inhumane acts as a crime against humanity (Count 2); cruel treatment as a war crime (Count 4); outrages upon personal dignity as a war crime (Count 5); mutilation as a war crime (Count 14); other inhumane acts in the form of forced marriage as a crime

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<sup>4031</sup> [Katanga Trial Judgment](#), paras 1638-1639.

against humanity (Count 8); sexual slavery as a crime against humanity and as a war crime (Counts 9 and 10); rape as a crime against humanity and as a war crime (Counts 11 and 12); sentencing without due process as a war crime (Count 6); and persecution as a crime against humanity (Count 13). Third, the Chamber will address the individual criminal responsibility of the accused and grounds for excluding criminal responsibility.

1251. As also indicated in the present section, the Chamber has not retained some legal qualifications of facts proposed in the charges on account of impermissible concurrence of crimes.<sup>4032</sup> Concurrence of crimes is a situation where the same facts satisfy the legal definition of multiple crimes. In this regard, the Chamber notes that there is no provision in the Statute explicitly requiring it to exclude some legal qualifications of facts on the ground that they are in impermissible concurrence with other legal qualifications of the same facts; also, the provisions on sentencing may be considered in themselves adequate to address, in the context of the determination of the sentence to be imposed, those instances in which a person is convicted of more than one crime on the basis of the same conduct. Nonetheless, the Chamber agrees with the consistent stance of trial chambers of the Court that there are certain limitations on the permissibility of concurrence of crimes and consequential cumulative convictions. In particular, it has consistently been held that convictions may be entered cumulatively if the conduct in question violates two distinct provisions of the Statute, each having a ‘materially distinct’ element not contained in the other, *i.e.* an element which requires proof of a fact not required by the other.<sup>4033</sup> In relation to the crimes charged both as crimes against humanity under Article 7 of the Statute and as war crimes under Article 8 of the Statute, namely torture under Counts 1 and 3, sexual slavery under Counts 9 and 10 and rape under Counts 11-12, the Chamber finds that concurrence of analogous crimes against humanity and war crimes is permissible at minimum in light of the different contextual elements of these crimes.<sup>4034</sup> Other concrete questions of concurrence of crimes are discussed in

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<sup>4032</sup> See sections B.2.a) and B.3.a) below.

<sup>4033</sup> See [Ongwen Appeal Judgment](#), para. 1635; [Ongwen Trial Judgment](#), para. 2792; [Ntaganda Trial Judgment](#), para. 1202; [Bemba et al. Trial Judgment](#), para. 951; [Bemba Trial Judgment](#), paras 747-748; [Katanga Trial Judgment](#), para. 1695.

<sup>4034</sup> See also [Ongwen Trial Judgment](#), paras 2820-2821; [Ntaganda Trial Judgment](#), paras 1202-1203.

their immediate context in the legal analysis below.<sup>4035</sup>

## A. CONTEXTUAL ELEMENTS

### 1. War crimes

1252. The Chamber recalls that the war crimes charges in the present case only concern Article 8(2)(c) and (e) of the Statute. In other words, the Prosecution has charged the alleged conduct as being serious violations of the law applicable during armed conflict not of an international character (or ‘non-international armed conflict’). The Chamber must therefore consider whether a non-international armed conflict<sup>4036</sup> existed at the time of the charges, or whether international humanitarian law was otherwise applicable to the alleged conduct. As war crimes are serious violations of international humanitarian law, this body of law must have been applicable for it to be violated.

1253. An armed conflict not of an international character exists when there is protracted armed violence between governmental authorities and organised armed groups or between such groups in the territory of a State. In order to distinguish situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, or other acts of a similar nature from a non-international armed conflict, (i) at least two organised armed groups need to have been involved (organisation requirement); and (ii) there must have been armed violence of a certain intensity (intensity requirement).<sup>4037</sup> These two cumulative requirements will be considered in turn.

1254. Concerning the alleged crimes, there must be a nexus between the armed conflict and the alleged conduct. The contextual elements of war crimes under Article 8 of the Statute require that the conduct took place in the context of and was associated with an armed conflict (nexus requirement). What the Chamber effectively must assess for the nexus requirement to be established is whether the alleged conduct was governed by the relevant rules of international humanitarian

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<sup>4035</sup> See sections B.2.a) and B.3.a) below.

<sup>4036</sup> The Chamber notes that it did not receive any indication that there was any intervention of another State on the side of the non-state armed groups.

<sup>4037</sup> See Article 8(2)(f) of the Statute. See also [Ongwen Trial Judgment](#), para. 2683; [Ntaganda Trial Judgment](#), para. 701, referring to [Tadić Jurisdiction Decision](#), para. 70. See further [Lubanga Trial Judgment](#), paras 534-536; [Katanga Trial Judgment](#), paras 1183-1184.

law that are alleged to have been violated.

**a) The organisation requirement<sup>4038</sup>**

1255. The Defence argues that the Prosecution failed to adduce sufficient evidence to establish the required level of organisation of the governmental authorities and the armed groups,<sup>4039</sup> and that ‘the five factors necessary to determine organization include a command structure, unified military strategy, recruitment of new members and facilitation of military trainings, implementation of obligations of Common Article 3, and the ability to speak with one voice’.<sup>4040</sup>

1256. The Chamber recalls that there is no exhaustive list of mandatory criteria that should be fulfilled in order for a chamber to find that the organisation requirement is met.<sup>4041</sup> What the jurisprudence provides for is a list of several factors or indicators that chambers have found relevant in assessing this criteria.<sup>4042</sup> The Chamber considers that it is necessary to undertake this assessment in a holistic manner, on a case-by-case basis, taking into account the specific context of the case and all the facts established based on credible and reliable evidence. Therefore, if one criteria (or more) is not met, this does not necessarily mean that an armed group did not possess the required level of organisation.<sup>4043</sup>

1257. The Chamber is satisfied that in the present case, Ansar Dine, AQIM, the MNLA and the MUJAO each possessed a sufficient degree of organisation and qualified as ‘organised armed groups’ within the meaning of Article 8(2)(f) of the

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<sup>4038</sup> See paragraph 1096 above.

<sup>4039</sup> [Defence Final Brief](#), para. 94. See also [Prosecution Final Brief](#), para. 535; [Prosecution Response Brief](#), para. 34.

<sup>4040</sup> [Defence Final Brief](#), para. 95, referring to [Boškoski and Tarčulovski Trial Judgment](#), paras 199-203; [Haradinaj et al. Trial Judgment](#), para. 60; [Lubanga Trial Judgment](#), para. 537; [Katanga Trial Judgment](#), para. 1186.

<sup>4041</sup> *Contra* [Defence Final Brief](#), para. 95. In the [Ntaganda Trial Judgment](#), for example, the Chamber stated that in analysing whether the parties involved qualify as organised armed groups, it would ‘consider the characteristics of the groups concerned, *including, inter alia*’ (emphasis added) the five factors listed by the Defence and that ‘[t]hese factors and indicators are not individually determinative’ ([Ntaganda Trial Judgment](#), para. 704). The *Ongwen* Trial Judgment similarly indicates that the five groups of factors are not limitative, as shown by its use of ‘such as’ ([Ongwen Trial Judgment](#), para. 2685). See also [Lubanga Trial Judgment](#), para. 537 (‘When deciding if a body was an organised armed group (for the purpose of determining whether an armed conflict was not of an international character), the following *non-exhaustive* list of factors is *potentially* relevant: [...]. None of these factors are individually determinative’ (emphasis added)). See also paragraph 1096 above. See also [Prosecution Response Brief](#), para. 34.

<sup>4042</sup> See paragraph 1096 above.

<sup>4043</sup> [Ntaganda Trial Judgment](#), para. 704. *Contra* [Defence Final Brief](#), paras 96-102.

Statute.<sup>4044</sup>

1258. To reach this conclusion, the Chamber has had particular regard to the following features of the groups.

1259. The Chamber found that AQIM possessed a system of allegiance and obedience and a command structure, was structured and hierarchically organised into *katibats*, was recognisable by the use of its own flag, that its fighters were using uniforms in Timbuktu and that they were equipped with heavy weaponry.<sup>4045</sup>

1260. The Chamber found that the MNLA was comprised of a high number of fighters, who received training, were using heavy weaponry and wore uniforms; that it possessed an identifiable flag; and that its military wing was organised according to a hierarchical system of military ranks, discipline, and obedience.<sup>4046</sup> This group had spokespersons and envoys to diplomatic missions, who spoke with one voice on behalf of the MNLA; it published press releases, and made public statements, including on its stated ability to implement international humanitarian law.<sup>4047</sup>

1261. The Chamber found that Ansar Dine was organised according to a system of allegiance, and that it possessed a high number of fighters equipped with heavy weaponry, and who received military training in Timbuktu. The group had spokespersons and envoys to diplomatic missions speaking with one voice, and possessed a media office.<sup>4048</sup>

1262. The Chamber found that the MUJAO had financial means capable of attracting new recruits, and that it managed to maintain control over the city of Gao for seven months.<sup>4049</sup>

1263. The Chamber also found that the MNLA, AQIM and Ansar Dine managed to

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<sup>4044</sup> As regards the degree of organisation of the Malian authorities, the Chamber recalls that States' governmental authorities are presumed to dispose of armed forces that satisfy this criterion, and that there is no need for the Chamber to assess their degree of organisation. See [Ntaganda Trial Judgment](#), para. 711, referring to [Haradinaj et al. Trial Judgment](#), para. 60. *Contra* [Defence Final Brief](#), paras 101-102.

<sup>4045</sup> See paragraphs 430-431 above. *Contra* [Defence Final Brief](#), para. 96.

<sup>4046</sup> See paragraph 434 above; *contra* [Defence Final Brief](#), para. 97.

<sup>4047</sup> See paragraph 435 above; *contra* [Defence Final Brief](#), para. 97.

<sup>4048</sup> See paragraphs 438-441 above; *contra* [Defence Final Brief](#), paras 98-99.

<sup>4049</sup> See paragraph 442 above; *contra* [Defence Final Brief](#), para. 100.

defeat a State army (the Malian army)<sup>4050</sup> and to take control, over several months, of large parts of the territory of Northern Mali.<sup>4051</sup> In addition to headquarters, the MUJAO, AQIM and Ansar Dine established new institutions in the territories they controlled.<sup>4052</sup> The Chamber found that these four groups were able to enter into alliances.<sup>4053</sup>

**b) The intensity requirement<sup>4054</sup>**

1264. The Defence argues that the Prosecution failed to provide ‘sufficient probative evidence’ to establish the existence of a protracted armed conflict.<sup>4055</sup> It cites P-0646’s assertion that between January 2012 to April 2012, the ‘violence’ amounted to ‘terrorism’ rather than ‘hostilities’,<sup>4056</sup> and after April 2012, ‘there was no fighting in or around Timbuktu during the next ten months’, apart from some ‘issues of banditry’.<sup>4057</sup> In this context, according to the Defence, the application of international humanitarian law ceased in April 2012 because neither the Malian army, nor the armed groups, could maintain the requisite organisation or intensity criteria, and ‘there was no measurable armed conflict’.<sup>4058</sup>

1265. The Chamber finds that the intensity criterion is satisfied in this case, for the period between April 2012 and January 2013. The Chamber has had regard to the

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<sup>4050</sup> See paragraphs 444-451 above. In this regard, the Chamber finds that the evidence cited by the Defence does not support its assertion that Ansar Dine lacked sufficient strength to face a conventional army. See [Defence Final Brief](#), para. 97, footnote 305, referring to D-0540: T-184, pp. 25-26.

<sup>4051</sup> See paragraphs 450, 452, 454 above. In this respect, the Chamber rejects the argument of the Defence that there is no evidence AQIM controlled territories in Mali prior to their entry in Timbuktu ([Defence Final Brief](#), para. 96). The Chamber is of the view that the control of a territory at some point in the conflict is enough to show some degree of organisation, and it is unnecessary that this control lasted for the whole duration of the conflict, let alone preceded the period of the charges.

<sup>4052</sup> See paragraph 442 and section III.C.4 above.

<sup>4053</sup> See paragraphs 430, 441, 443, 452 above. In this regard, the Chamber rejects the assertion of the Defence that the armed groups were not operating as an alliance or a coalition ([Defence Final Brief](#), para. 104). See paragraphs 445, 449, 451, 454, 464-465 above.

<sup>4054</sup> See paragraph 1097 above.

<sup>4055</sup> See [Defence Final Brief](#), para. 94. See also [Prosecution Final Brief](#), paras 545, 547, 552.

<sup>4056</sup> [Defence Final Brief](#), para. 106.

<sup>4057</sup> [Defence Final Brief](#), para. 107.

<sup>4058</sup> [Defence Final Brief](#), paras 109, 111. The Defence also avers that this constituted a ‘general close of military operations’, a ‘lasting cessation of armed confrontations without real risk of resumption’, and also a ‘peaceful settlement among the formerly warring parties’, which each constitute a valid basis to constitute the end of a non-international armed conflict. See [Defence Final Brief](#), paras 110-113. See also [Prosecution Response Brief](#), para. 36, referring to [Tadić Jurisdiction Decision](#), para. 70; [Lubanga Trial Judgment](#), para. 533.

fact that: the hostilities involved the use of heavy weaponry,<sup>4059</sup> the parties militarily confronted each other on numerous occasions through the year of 2012 until January 2013, which caused the death and injuries of many fighters and soldiers, and this occurred in a large geographical area (Northern Mali);<sup>4060</sup> the UN Security Council promulgated several resolutions under chapter VII of the Charter;<sup>4061</sup> and a high number of persons were displaced as a result of the fighting.<sup>4062</sup>

1266. Therefore, the Chamber rejects the Defence's argument that as of April 2012, there were only issues of 'banditry' or 'terrorism' that required a security response.<sup>4063</sup> Given the holistic nature of the assessment of the facts that is required, the Chamber also finds unpersuasive the Defence's arguments relating to individual confrontations taken in isolation, to show that they were not 'intense' enough by themselves.<sup>4064</sup>

1267. In addition to the fact that armed confrontations took place throughout the year 2012 and in January 2013,<sup>4065</sup> the Chamber considers relevant that the intensity and 'protracted armed conflict' criteria do not require fighting to take place continuously and be entirely uninterrupted.<sup>4066</sup> It also recalls that in accordance

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<sup>4059</sup> See paragraphs 431, 434, 438 and footnote 1153 above.

<sup>4060</sup> See paragraphs 444, 448, 450, 452, 454 above.

<sup>4061</sup> See paragraph 456 above.

<sup>4062</sup> See paragraph 456 above.

<sup>4063</sup> See [Defence Final Brief](#), paras 105-107, 111.

<sup>4064</sup> See [Defence Final Brief](#), para. 106. The Chamber also finds unconvincing the Defence's argument that it is necessary in the present case to assess each bilateral situation on its own (the intensity between each non-state armed group and the Malian army). *Contra* [Defence Final Brief](#), para. 102 and reference cited therein. In this regard, the Chamber observes that the reference cited by the Defence envisages an assessment of the aggregated military actions carried out between all the non-state armed groups fighting together and their common enemy, 'rather than requiring that each bilateral relationship of violence meets the criterion on its own'. See also [Defence Final Brief](#), paras 103-104; Defence Closing Statement, T-214, pp. 73-74. In any case, the evidence makes it clear in the present case that Ansar Dine, AQIM, the MUJAO (and the MNLA to a certain extent and at a certain point in time) undertook military actions in a coordinated manner. See paragraphs 445-451, 454 above.

<sup>4065</sup> See paragraphs 444-451, 454 above.

<sup>4066</sup> [Confirmation Decision](#), para. 198, referring to [Bemba Trial Judgment](#), para. 140. See also [Ongwen Trial Judgment](#), para. 2684. The Chamber notes that the fact that some battles occurred far away from Timbuktu, and not in Timbuktu itself, at the time when the alleged crimes were committed is also not persuasive. *Contra* [Defence Final Brief](#), paras 107, 120 ('during the charged period, Ansar Dine and AQIM were not engaged in hostilities'). In this respect, the Chamber recalls that international humanitarian law applies 'in the whole territory under the control of a party to the conflict'. See [Tadić Jurisdiction Decision](#), para. 70. Those battles outside of Timbuktu show the existence of an armed conflict in the territory of Mali at the time of the charges, and crimes do not have to be committed on the battlefield or even close to it in order to qualify as war crimes, so long as they otherwise have the required



with the jurisprudence of the Court, in the absence of direct clashes during certain periods, control over a territory by a non-State party to the conflict can be an indicator of the intensity of the conflict, since it evidences that the opposing party was either unable or unwilling to challenge this territorial control.<sup>4067</sup> In the present case, the events of January 2013<sup>4068</sup> show that until this date, the Malian army was actually preparing its counter offensive in order to regain control over the territory of Northern Mali. In this respect, the Chamber also recalls that from April 2012 to January 2013, it found that Ansar Dine/AQIM controlled the cities of Timbuktu and Kidal, the MUJAO controlled the city of Gao (the main cities of Northern Mali),<sup>4069</sup> and that Ansar Dine/AQIM created institutions in those cities (for example the Islamic Police) while submitting the population to the groups' own rules and prohibitions.<sup>4070</sup>

1268. Regarding the temporal scope, as mentioned above, the Chamber finds that this conflict lasted from at least April 2012 to at least January 2013.<sup>4071</sup> The Chamber emphasises that the fact that the territory of Northern Mali was 'reconquered' by the Malian army, supported by France and Chad, in January 2013,<sup>4072</sup> shows, *de facto*, that contrary to the Defence's assertion, it cannot be said that before this date there was a 'general close of military operations', or that there was 'no reasonable risk of a resumption of hostilities'.<sup>4073</sup>

1269. Based on the foregoing, the Chamber finds that from at least April 2012 until at least January 2013, a non-international armed conflict<sup>4074</sup> was taking place in the territory of Mali, since the fighting between the organised non-state armed groups

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nexus with the armed conflict. See [Afghanistan OA4 Judgment](#), para. 76; [Kunarac et al. Appeal Judgment](#), para. 57; [Tadić Jurisdiction Decision](#), para. 70; [Kunarac et al. Trial Judgment](#), para. 568; [Vasiljević Trial Judgment](#), para. 25. See also paragraph 1116 above. See also [Confirmation Decision](#), paras 221-226.

<sup>4067</sup> [Ntaganda Trial Judgment](#), paras 717, 721.

<sup>4068</sup> See paragraph 454 above.

<sup>4069</sup> See paragraphs 442, 450, 454 above.

<sup>4070</sup> See paragraph 442 and section III.C.4 above.

<sup>4071</sup> The Chamber notes in this respect that, contrary to what is asserted by the Defence, the jurisprudence of the Court does not define a minimum duration for hostilities to be qualified as a non-international armed conflict. See [Defence Final Brief](#), para. 105, footnote 334. The assessment of the protracted nature of an armed conflict must be done on a case-by-case basis and result from a holistic analysis of the facts.

<sup>4072</sup> See paragraph 454 above.

<sup>4073</sup> See [Defence Final Brief](#), paras 110, 112, 113. The Chamber additionally notes that a peace agreement was only signed on 15 May 2015. See paragraph 455 above.

<sup>4074</sup> The Chamber notes that it did not receive any indication that there was any intervention of another State on the side of the non-state armed groups.

Ansar Dine/AQIM (sometimes together with the MNLA) and the Malian army, as well as the fighting between Ansar Dine/AQIM/MUJAO and the opposing organised non-state armed group (the MNLA), was protracted armed violence meeting the relevant intensity requirement. Accordingly, the Chamber finds that Ansar Dine/AQIM was, at all times during the above-mentioned period, involved in at least one non-international armed conflict with an opposing party.

**c) The nexus requirement**

1270. The Defence argues that the Prosecution has not shown that Ansar Dine and AQIM were engaged in hostilities during the charged period; that the physical perpetrators were members of Ansar Dine/AQIM; that alleged victims were military opponents or associated with military opponents; or that they were arrested, detained, or punished for reasons associated with an armed conflict.<sup>4075</sup> The Defence asserts that the framework of international humanitarian law expressly specifies that during an occupation, policing activities and everyday life, including interactions between civilians, are ‘neutral’ and not linked to the armed conflict, and therefore governed by international human rights law and not international humanitarian law.<sup>4076</sup> The Prosecution responds that the fact that Ansar Dine/AQIM were not actively engaged in hostilities in the immediate vicinity of the alleged crimes is not dispositive in determining the nexus between the charged war crimes and the armed conflict.<sup>4077</sup>

1271. First, regarding the argument raised by the Defence on the applicability of international human rights law, the Chamber recalls that it found that a non-international armed conflict existed in Mali at least from April 2012 to January 2013, with Ansar Dine/AQIM as one of the parties. International humanitarian law therefore formally applied throughout this entire period of time on the territory under control of the parties to the conflict, including the city of

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<sup>4075</sup> [Defence Final Brief](#), para. 120. See also [Prosecution Final Brief](#), paras 555-557, referring to [Ntaganda Trial Judgment](#), para. 731.

<sup>4076</sup> [Defence Final Brief](#), paras 120-125; Defence Closing Statement, T-214, pp. 75-76; Defence Response Brief, footnote 75-76; [Defence Response Brief](#), fn. 378.

<sup>4077</sup> [Prosecution Response Brief](#), para. 37. The Prosecution asserts that the ICRC has long argued that situations where a non-state armed group establishes control over territory, and then seeks to impose its own rules upon the civilian population, are precisely those in which international humanitarian law should apply. See [Prosecution Response Brief](#), para. 38.

Timbuktu, taken over by Ansar Dine/AQIM.<sup>4078</sup> Moreover, following the taking over of the relevant part of the territory by armed means, Ansar Dine/AQIM effectively displaced the Malian government and started exercising control over Timbuktu and those living there, allowing them to carry out government-like functions *vis-à-vis* the population. The relationship between members of Ansar Dine/AQIM and the population of Timbuktu was therefore governed by international humanitarian law.<sup>4079</sup> The Chamber will accordingly proceed to assess whether the legal elements are met with respect to war crimes regardless of any concurring applicability of international human rights law to the related conduct.

1272. Having found that international humanitarian law applied generally to the conduct of Ansar Dine/AQIM in the relevant area and time, the Chamber must also carry out an analysis of the particular circumstances of the case, and the specific context in which each crime was committed.<sup>4080</sup>

1273. In light of the type of war crimes charged, namely alleged conduct against persons or objects under the control of the alleged perpetrators party to the conflict, it is unnecessary to show that there were hostilities in the immediate vicinity of the alleged crimes, as such a geographical and temporal link is not required to establish the required nexus.<sup>4081</sup> Instead, the Chamber's analysis focuses on whether the armed conflict played a major part in Ansar Dine/AQIM's ability to commit the crimes or the manner in which the crimes were ultimately committed.

1274. The Chamber notes that the victims of the crimes charged under Counts 3, 4, 5, 6, 10, 12 and 14 were civilians, that the perpetrators were members of Ansar Dine/AQIM, and that international humanitarian law applied to their conduct.

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<sup>4078</sup> See paragraph 451 above. See also [Tadić Jurisdiction Decision](#), para. 70; [Vasiljević Trial Judgment](#), para. 25.

<sup>4079</sup> Accordingly, the Chamber rejects the Defence's blanket statement that any action undertaken by a member of a police force, during a conflict, must be considered as 'neutral' and pertaining to the 'civilian domain' and falls automatically under international human rights law *only* ([Defence Final Brief](#), paras 121-125). Leaving aside whether non-state armed groups such as Ansar Dine/AQIM can be bound by international human rights law, the Defence's argument misrepresents the relationship between international human rights law and international humanitarian law in times of armed conflict. Given that the alleged conducts do not concern situations of actual conduct of hostilities, there is no reason why international humanitarian law and international human rights law cannot apply at the same time.

<sup>4080</sup> [Afghanistan OA4 Judgment](#), para. 76.

<sup>4081</sup> See paragraph 1099 above.

The Chamber therefore finds that any act committed by those perpetrators against persons or objects under Ansar Dine/AQIM's control, meeting the other elements of a crime as defined under the Statute, qualifies as a war crime under the same Statute.

1275. The Chamber considers that the following aspects, taken together, are relevant to demonstrate that there was a nexus between the crimes and the armed conflict: (i) the status of the perpetrators (as members of Ansar Dine/AQIM) and the victims (as civilians); (ii) the fact that the acts were serving the ultimate goal of the military campaign; (iii) the fact that the crimes were committed as part of, or in the context of, the perpetrator's official duties;<sup>4082</sup> and (iv) the fact that the perpetrators took advantage of the situation created by the fighting or the circumstances of the armed conflict, namely that the crime was facilitated by the context of Ansar Dine/AQIM's military presence and control over the territory, resulting from the armed conflict.<sup>4083</sup>

1276. In the present case, the Chamber considers that the armed conflict taking place in Mali at the time, and the takeover of the city of Timbuktu by Ansar Dine/AQIM, allowed Ansar Dine/AQIM to create a coercive environment in Timbuktu, which played a major part in the ability of the perpetrators (who were all members of Ansar Dine/AQIM) to commit the charged crimes. In this regard, the Chamber notes that Ansar Dine/AQIM submitted the population of Timbuktu to their rules and prohibitions, by force, and that this was made possible by the fact that they were the only ones controlling the territory militarily, and that they had the adequate military capacity to do so (in terms of equipment and human resources). Indeed, the city of Timbuktu was under Ansar Dine/AQIM's sole control<sup>4084</sup> and they were using their power and violence to punish contraventions of the rules they established. On this point, in establishing the nexus, the Prosecution is not required, contrary to what the Defence asserts,<sup>4085</sup> to show that the individual members of Ansar Dine/AQIM who perpetrated the crimes while working for the

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<sup>4082</sup> See [Ongwen Trial Judgment](#), para. 2689; [Ntaganda Trial Judgment](#), para. 732; [Kunarac et al. Appeal Judgment](#), para. 59; [Rutaganda Appeal Judgment](#), para. 569.

<sup>4083</sup> See [Kunarac et al. Trial Judgment](#), para. 568.

<sup>4084</sup> See paragraph 451 above.

<sup>4085</sup> [Defence Final Brief](#), para. 120.

armed groups in Timbuktu also participated in the hostilities.

1277. The Chamber further notes that the above findings concern the acts and conduct of members of Ansar Dine/AQIM in the exercise of their duties. Indeed, acts of flogging, other corporal punishments, the amputation and passing of sentences without due process (characterised under Counts 3, 4, 5, 6 and 14) were performed by members of Ansar Dine/AQIM in the context of their assigned roles and functions, in accordance with the groups' policy to regulate the life of the population of Timbuktu.<sup>4086</sup> Some of the acts were executed following sentences pronounced by judicial officials carrying out their functions in that capacity. Mistreatments in detentions, including sexual violence, also happened while victims were detained in facilities under the control of the groups acting in their capacity as members of Ansar Dine/AQIM. The Majority, Judge Akane dissenting, considers that this *modus operandi* was in line with Ansar Dine/AQIM's ultimate goal to establish in the entire territory of Mali an Islamic State governed by their interpretation of *Sharia*. Ansar Dine/AQIM's successful military campaign, *i.e.* the taking over of Timbuktu, placed the material perpetrators in a position of power, which allowed them to commit the crimes under consideration. Indeed, the abovementioned acts were made possible by the groups' lasting control and status as the sole governing authority in Timbuktu during the relevant period.<sup>4087</sup> Material perpetrators relied on or displayed weapons prior to and/or during many instances of commission of crimes.<sup>4088</sup> The civilian population of Timbuktu was in a vulnerable and defenceless state in that they had to submit themselves to the groups' control and violence. This is especially the case for crimes committed against detained individuals.

1278. In relation to the acts of rapes and sexual slavery in the context of forced marriages, which are charged as war crimes (characterised under Counts 10 and 12), the Chamber is of the view that this conduct was facilitated by, and made possible through the military takeover of Timbuktu and the resulting groups' position as sole rulers of the city of Timbuktu, with evident military presence. As

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<sup>4086</sup> *Contra* [Defence Final Brief](#), para. 120; [Defence Response Brief](#), para. 89.

<sup>4087</sup> *See* paragraph 451 above.

<sup>4088</sup> *See* section III.E.1 above.

previously detailed, victims clearly described the coercive circumstances which existed for each such incident of forced marriage and related sexual violence. On this basis, the Chamber finds that the crimes committed during Ansar Dine/AQIM's control over the city were closely linked to the armed conflict which was unfolding in Mali at the time.

1279. Having considered all underlying conduct and relevant circumstances, the Chamber is of the view that a nexus is established for all facts under Counts 3, 4, 5, 6, 10, 12 and 14, that all conduct related to the crimes charged under those counts took place in the context of and were associated with an armed conflict not of an international character.<sup>4089</sup>

1280. Finally, the Chamber also finds that the perpetrators must have been aware of the factual circumstances establishing the existence of the armed conflict. Perpetrators were all members of Ansar Dine/AQIM, armed groups which, as found by the Chamber, were involved in battles still taking place in Northern Mali between April 2012 and January 2013. Those who committed the crimes also knew that Ansar Dine/AQIM controlled the city of Timbuktu since the takeover of April 2012, which everyone in Timbuktu was aware of, as it had drastic consequences for the entire population. Therefore, the Chamber finds that the direct perpetrators of the crimes charged under Counts 3, 4, 5, 6, 10, 12 and 14 were aware of factual circumstances that established the existence of an armed conflict in Mali between at least April 2012 and at least January 2013.

## **2. Crimes against humanity**

1281. Under the Statute, crimes against humanity are acts listed in Article 7(1) of the Statute, 'when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'. According to the Elements of Crimes, the 'attack directed against any civilian population' means a course of conduct involving the multiple commission of acts listed in Article 7(1), pursuant to or in furtherance of a State or organisational policy to commit such attack. For each of the crimes against humanity, as indicated in the Elements of

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<sup>4089</sup> The Chamber accordingly dismisses all the Defence remaining arguments that the Prosecution has established no nexus between an armed conflict and the charged war crimes (*see* [Defence Final Brief](#), paras 114-126, 263, 509-510).

Crimes, the conduct must have been ‘committed as part of a widespread or systematic attack directed against a civilian population’, while the perpetrator knew that this conduct was part of such an attack.<sup>4090</sup>

**a) The existence of an attack directed against a civilian population**

**i. The existence of a ‘course of conduct’**

1282. Members of the population of Timbuktu were the victims of multiple acts referred to in Article 7(1) of the Statute between April 2012 and January 2013. Specifically, the Chamber finds that members of Ansar Dine/AQIM subjected members of the civilian population to acts of torture under Article 7(1)(f), other inhumane acts under Article 7(1)(k),<sup>4091</sup> sexual slavery under Article 7(1)(g), rapes under Article 7(1)(g), and persecution under Article 7(1)(h) of the Statute.<sup>4092</sup> In particular, the Chamber is satisfied that persecutory acts were committed by members of Ansar Dine/AQIM which resulted in the severe deprivation of the inhabitants’ fundamental rights.<sup>4093</sup> The Chamber also finds that in view of the quantity of the acts perpetrated, they cannot be considered as ‘a mere aggregate of random or isolated acts’.<sup>4094</sup> The multiple acts committed by Ansar Dine/AQIM against the civilian population of Timbuktu were perpetrated to enforce new rules and prohibitions, were violently imposed on the population and/or impacted many aspects of the population’s public and private life from April 2012 to January 2013.

1283. The Chamber<sup>4095</sup> finds that the existence of a course of conduct involving the multiple commission of acts referred to in Article 7(1) of the Statute is

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<sup>4090</sup> See paragraphs 1102-1117 above.

<sup>4091</sup> In this respect, the Chamber strongly rejects the Defence’s argument that ‘individual punishments must also be assessed against the overall positive consequences for the local population in terms of deterring acts of criminality and violence and ensuring security and stability’ ([Defence Final Brief](#), para. 132). The Chamber finds that the existence of ‘positive effects’ (and what ‘would have happened’ in the absence of said punishments) is speculative. Moreover, the Chamber has found that all the elements of these crimes have been established on the evidence adduced. It is a spurious argument for the Defence to suggest that the existence of alleged positive effects from the commission the crimes are of any relevance or value to the legal analysis.

<sup>4092</sup> See sections B.1, B.2, B.6, B.7, B.8, B.10 below. See also [LRVs Final Brief](#), para. 80. *Contra* [Defence Final Brief](#), paras 131, 134, 135, 139.

<sup>4093</sup> See section B.10 below.

<sup>4094</sup> See paragraph 1105 above.

<sup>4095</sup> While **Judge Akane** agrees with the Chamber’s conclusion, she disagrees with the Majority’s reasoning (*see* Separate and partly dissenting opinion of Judge Tomoko Akane).

established.<sup>4096</sup>

## ii. Directed against a civilian population

1284. Ansar Dine/AQIM's objective was to impose and implement their interpretation of 'Sharia' and to control Timbuktu and its residents for this purpose.<sup>4097</sup> The new rules and prohibitions imposed by Ansar Dine/AQIM targeted the entire population and were broadcasted in the public space, relying on the radio, speakers in the streets and posters and flyers, in order to reach the largest possible audience because the rules were meant to apply to everyone.<sup>4098</sup> The Chamber also found that many of the punishments inflicted for contravening these new rules were executed in public to send a clear message to the entire population of Timbuktu that the same punishment could be imposed should they not respect the new rules.<sup>4099</sup>

1285. Considering the nature of the rules and prohibitions and how they were enforced, and the civilian status of the victims, the Chamber concludes that the civilian population was the primary target of the course of conduct involving the commission of crimes referred to in Article 7(1) of the Statute.

## iii. Pursuant to or in furtherance of a State or organisational policy<sup>4100</sup>

1286. The Chamber finds that Ansar Dine/AQIM qualifies as an 'organisation' within the meaning of Article 7 of the Statute. In this context, the Chamber notes that in

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<sup>4096</sup> The Chamber recalls that, as per the Court's jurisprudence, the quantitative threshold required by the 'multiple commission of acts' for the establishment of a 'course of conduct' within the meaning of Article 7 of the Statute is 'more than a few', 'several' or 'many' acts. *See Bemba Trial Judgment*, para. 150 ('The number of the individual types of acts referred to in Article 7(1) is, however, irrelevant provided that each of the acts fall within the course of conduct and *cumulatively* satisfy the required quantitative threshold').

<sup>4097</sup> *See* paragraphs 1618-1619 below.

<sup>4098</sup> *See* sections III.C.2.b) and III.D above.

<sup>4099</sup> *See* paragraph 661 above.

<sup>4100</sup> The Chamber rejects the Defence's argument that Ansar Dine could not have had an organisational policy to attack the civilian population since their main objectives were to offer protection and restore justice (*Defence Final Brief*, paras 128-130). The Chamber notes that the existence of an attack is established on the basis of facts, and the Chamber has established that several crimes listed in Article 7 of the Statute were committed and finds that they were the result of the implementation of a policy to impose and implement new rules on the population according to Ansar Dine/AQIM's interpretation of 'Sharia' (*see below*). The fact that Ansar Dine/AQIM ensured the functioning of the hospital, energy or water supply, that they put in place a 'green number', or consulted the local population on specific topics, is not incompatible with this objective and does not show otherwise.



accordance with the jurisprudence of the Court, the determination of whether Ansar Dine/AQIM is an ‘organisation’ within the meaning of Article 7 of the Statute requires an assessment of its structures and mechanisms and the sufficiency of the same to carry out the attack against the population. On this point, the Chamber notes its findings that Ansar Dine/AQIM were structured and hierarchically organised, possessed a high number of fighters and weapons, had a command structure, employed systems for allegiance and obedience, and disseminated internal instructions to their members.<sup>4101</sup>

1287. Once in control of Timbuktu, Ansar Dine/AQIM created several institutions: the Islamic Court, the *Hesbah*, the Security Battalion, the Islamic Police and the media office. Some of those institutions, in particular the Security Battalion, the *Hesbah* and the Islamic Police, had coercive authority with the power to carry arms, to arrest, detain and punish civilians. The Chamber also found that Ansar Dine/AQIM organised military, religious and ideological training for their members before dispatching them in those different institutions.<sup>4102</sup> During the relevant period, these institutions all worked in a coordinated manner in order to ensure the implementation of the groups’ objectives.<sup>4103</sup> On the basis of these facts, the Chamber finds that Ansar Dine/AQIM had a set of structures and mechanisms which were sufficiently organised and efficient to ensure the coordination necessary to carry out<sup>4104</sup> the attack against the civilian population of Timbuktu and thereby constituted an organisation within the meaning of Article 7 of the Statute.

1288. The Chamber also finds that the course of conduct involving the multiple commission of acts referred to in Article 7 of the Statute by Ansar Dine/AQIM against the civilian population of Timbuktu took place pursuant to the groups’ policy to commit an attack in the meaning of Article 7 of the Statute. The Chamber notes that the course of conduct that unfolded in Timbuktu between April 2012 and January 2013 was planned and coordinated as part of Ansar

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<sup>4101</sup> See paragraphs 654, 1259, 1261 above.

<sup>4102</sup> See paragraph 439 above.

<sup>4103</sup> See section III.C.4.d)i above.

<sup>4104</sup> [Katanga Trial Judgment](#), para. 1119. See also [Ongwen Trial Judgment](#), para. 2677. See paragraph 1109 above.

Dine/AQIM's ultimate goal to establish an Islamic State governed by their own interpretation of *Sharia* on the entire territory of Mali.<sup>4105</sup> As such, the control of the city of Timbuktu in order to impose and enforce new rules and prohibitions on the population of Timbuktu was in close alignment with this broader goal.<sup>4106</sup>

1289. The leadership of Ansar Dine/AQIM considered the population of Timbuktu as people who were 'ignorant of their religion', who had 'forgotten' their religion, 'disbelievers', who needed to be 'enlightened' and taught the 'true faith'.<sup>4107</sup> Once Ansar Dine/AQIM took control of Timbuktu, their project to impose rules and prohibitions was explicitly communicated to the population of Timbuktu.<sup>4108</sup> Members of Ansar Dine/AQIM, including Iyad Ag Ghaly, Al Mahdi, Radwan, Mohammed Moussa and Abdallah Al Chinguetti, made announcements on radio channels such as Radio Bouctou and Radio Farouk, in different languages, concerning the prohibitions and punishments.<sup>4109</sup>

1290. The repression of alleged contraventions to the rules and the organised nature of this repression through different institutions created for this purpose – all being responsible for the arrest, detention and/or punishment of the people not obeying the rules – was an inherent and explicit part of the project of Ansar Dine/AQIM and shows the existence of an organisational policy.<sup>4110</sup> Instructions to punish contraventions to the new rules proceeded from the top (the leadership) to the ground (members of Ansar Dine/AQIM), and were detailed, diffused in writing and orally, and adapted over time as necessary.<sup>4111</sup> The leadership of Ansar Dine/AQIM made it publicly clear that the implementation of their interpretation of *Sharia* in Timbuktu would involve the cutting of hands and floggings.<sup>4112</sup> In the present case, there was therefore an active promotion of the acts committed against the civilian population from April 2012 until January 2013.

1291. The Chamber finds that the commission of acts referred to in Article 7 of the

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<sup>4105</sup> See paragraphs 430, 436 above. See also paragraph 596 above.

<sup>4106</sup> See paragraphs 430, 436 and section III.C.2.b) above.

<sup>4107</sup> See paragraphs 481-489 above.

<sup>4108</sup> See section III.C.2 above.

<sup>4109</sup> See paragraph 479 above.

<sup>4110</sup> Contra [Defence Final Brief](#), paras 134-135.

<sup>4111</sup> See section III.C.4.d)ii.c above.

<sup>4112</sup> See paragraphs 482-484, 488, 661 above. Contra [Defence Final Brief](#), paras 50, 131.

Statute committed against the civilian population of Timbuktu was, in this case, a clear and intended outcome of the implementation of a policy which was actively promoted by Ansar Dine/AQIM. That course of conduct occurred pursuant to a preconceived strategy, in the clear execution of which the population of Timbuktu was specifically targeted. Therefore, the Chamber finds that there was an organisational policy to attack the civilian population of Timbuktu between April 2012 and January 2013.

1292. Considering the above, the Chamber concludes that there was an attack directed against the civilian population of Timbuktu from April 2012 to January 2013.

**b) The systematic nature of the attack**

1293. The Chamber, Judge Akane appending a separate concurring opinion, finds that the attack perpetrated on the population of Timbuktu was systematic in nature and involved a clear pattern of crimes repeated throughout the period from April 2012 to January 2013.

1294. The evidence demonstrates that the crimes were the result of the same *modus operandi*. Firstly, the new rules and prohibitions imposed on the population, which constituted several underlying acts of persecution, were applied to the entire population in a systematic way. Secondly, as already mentioned, Ansar Dine/AQIM put in place a well organised system of repression, involving several institutions, with the aim of ensuring that *any* alleged contravention to the new rules was punished in a similar fashion. Members of the *Hesbah* and the Islamic Police undertook patrols in the streets in order to arrest members of the population and repress perceived disobedience of the new rules.<sup>4113</sup> People identified as having contravened the rules were either warned, punished in the streets, brought to the *Hesbah* or Islamic Police headquarters, and/or taken to the Islamic Court, through which punishments were also imposed.<sup>4114</sup> The Chamber has established that the Islamic Court rendered a series of judgments against members of the civilian population.<sup>4115</sup>

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<sup>4113</sup> See e.g. section III.C.4.b)v.c above.

<sup>4114</sup> See e.g. section III.C.4.d) above. *Contra* [Defence Final Brief](#), para. 139.

<sup>4115</sup> See e.g. paragraph 597 above.

1295. This pattern of actions occurred repeatedly in Timbuktu between April 2012 and January 2013<sup>4116</sup> and systematically followed the same purpose: applying Ansar Dine/AQIM's interpretation of *Sharia*. The 'jihadi marriages', in the context of which forced marriages occurred, were also considered as a means to gain influence amongst the population of Timbuktu and to disseminate the ideology of Ansar Dine/AQIM in the entire society.

1296. Therefore, the Chamber finds that the attack directed against the civilian population of Timbuktu was systematic.<sup>4117</sup>

**c) The existence of a nexus between the crimes and the attack directed against any civilian population**

1297. The Chamber recalls that the direct perpetrators of the crimes of torture, inhumane acts and persecution mentioned above and charged under Counts 1, 2 and 13, were all members of Ansar Dine/AQIM. They committed those crimes in the exercise of their duties and following the groups' policy to regulate the life of the population of Timbuktu in line with the groups' interpretation of *Sharia*. These acts served the ultimate goal of Ansar Dine/AQIM. Therefore, the Chamber finds that there is a clear nexus between each of the criminal acts and the attack.<sup>4118</sup>

1298. As regards to the crimes of rape, forced marriage and sexual slavery mentioned above and charged under Counts 8, 9, 11 and 13, the Majority, Judge Akane dissenting,<sup>4119</sup> finds that as participants in the attack against the population of Timbuktu, the direct perpetrators were in a position of power that enabled them to perpetrate those crimes. These acts also served the ultimate goal of Ansar Dine/AQIM. The Chamber found that emirs of Ansar Dine/AQIM themselves married to locals, encouraged members of Ansar Dine/AQIM to get married, and generally provided assistance to them.<sup>4120</sup> The 'jihadi marriages' also served as

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<sup>4116</sup> *Contra* [Defence Final Brief](#), para. 139.

<sup>4117</sup> *Contra* [Defence Final Brief](#), para. 137.

<sup>4118</sup> *Contra* [Defence Final Brief](#), paras 134-135, 263.

<sup>4119</sup> *See* Separate and partly dissenting opinion of Judge Tomoko Akane. Notwithstanding Judge Akane's view that the contextual elements for crimes against humanity are not satisfied with respect to the crimes of forced marriage, sexual slavery and rape, Judge Akane nevertheless engages in the legal analysis set out below in section V.B on the remaining elements of these crimes under Counts 8, 9 and 11.

<sup>4120</sup> *See* paragraphs 493-496 above.

an incentive to attract more people towards the groups and recruit them and, as already stated, were seen as a means to gain influence amongst the population of Timbuktu and to disseminate the ideology of Ansar Dine/AQIM in the entire society.<sup>4121</sup>

1299. The Chamber also finds that the perpetrators were fully aware of the existence of the attack and of the fact that their acts formed part of the same. They received relevant orders and instructions from their superiors, could witness the effect and consequences of the unfolding of the attack every day in Timbuktu, and – importantly – each contributed in the exercise of their respective functions to the targeting of the population in the implementation of the new rules.<sup>4122</sup> On this basis, the Majority, Judge Akane dissenting in part,<sup>4123</sup> also finds that the direct perpetrators knew that their conduct in relation to the crimes charged under Counts 1, 2, 8, 9, 11 and 13 was part of a systematic attack directed against the civilian population of Timbuktu.

## B. SPECIFIC CRIMES

1300. The Chamber recalls that it could not make relevant key findings of fact in relation to a number of incidents, namely in relation to: (i) Ibrahim bin Al-Husayn (except for the purpose of Count 6);<sup>4124</sup> (ii) Mohamed Oye Ag Inhinane (P-0580);<sup>4125</sup> (iii) Azahara (the daughter of Mohamed Oye Ag Inhinane (P-0580))

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<sup>4121</sup> See paragraph 493 above. *Contra* [Defence Final Brief](#), para. 136.

<sup>4122</sup> *Contra* [Defence Final Brief](#), paras 141-142. The Chamber recalls that as per the Elements of Crimes, Article 7(2), the element of knowledge of the perpetrator ‘should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the [...] organization’. See also paragraph 1117 above.

<sup>4123</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>4124</sup> Although the Chamber found that the victim was ‘tortured’ in the sense that he was subject to a form of physical violence prior to the drafting of the Islamic Police report, the exact degree of suffering inflicted is unknown (see paragraph 767 above). Further, the Chamber was not satisfied beyond reasonable doubt that Ibrahim bin Al-Husayn was flogged or subsequently taken to the hospital as a result of an injury suffered during the flogging (see paragraph 768 above). Accordingly, the Chamber considers that there is insufficient evidence to draw any conclusions under the elements of Counts 1 to 5.

<sup>4125</sup> While the Chamber found that members of Ansar Dine/AQIM whipped Mohamed Oye Ag Inhinane (P-0580), the Chamber found that there was insufficient evidence to link the physical and mental injuries experienced by the victim to this whipping (see paragraph 806 above). Accordingly, the Chamber considers that the exact degree of suffering inflicted upon the victim during this whipping is unknown and that there is insufficient evidence to draw any conclusions under the elements of Counts 1 to 5.

and Gaichatane Mohamed (P-0642));<sup>4126</sup> (iv) P-0609;<sup>4127</sup> (v) P-1721;<sup>4128</sup> (vi) P-1460;<sup>4129</sup> (vii) P-0957;<sup>4130</sup> and (viii) P-1674.<sup>4131</sup> As a result it is not necessary to address these victims further in the legal findings for the counts noted.

**1. Torture (Article 7(1)(f) and Article 8(2)(c)(i) of the Statute (Counts 1 and 3))**

1301. Under Counts 1 and 3, Mr Al Hassan is respectively charged with torture as a crime against humanity, pursuant to Article 7(1)(f) of the Statute, and as a war crime, pursuant to Article 8(2)(c)(i) of the Statute, in relation to the following victims:

- a. the two men;
- b. P-0565 and P-0557;
- c. Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad;
- d. Dédéou Maiga;
- e. Sallaka Bent Al-Khair (P-0554); and
- f. Madou Traoré.

1302. The Chamber also recalls that it previously provided notice pursuant to Regulation 55(2) of the Regulations that the legal characterisation of the facts and

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<sup>4126</sup> The Chamber found that the victim was hit on the head with a stone around the time of her father’s arrest, however, the Chamber found that there was insufficient evidence to make a finding on the identity of the perpetrators of this act (*see* paragraph 808 above). Accordingly, as there is insufficient evidence to attribute this act to Ansar Dine/AQIM, the elements under Counts 1 to 6 need not be addressed.

<sup>4127</sup> The Chamber could not establish the facts related to the case of P-0609 (*see* paragraph 872 above). There is therefore insufficient evidence to draw conclusions under the elements of Counts 2, 4, 5 or 8 to 12. As a result, it is also unnecessary for the Chamber to address the recharacterisation of the facts and circumstances of the case of P-0609 pursuant to Regulation 55 of the Regulations under Counts 1, 3 and 6.

<sup>4128</sup> The Chamber could not establish the facts related to P-1721 (*see* paragraph 910 above). There is therefore insufficient evidence to draw conclusions under the elements of Count 6.

<sup>4129</sup> The Chamber could not establish the facts related to P-1460 (*see* paragraph 976 above). There is therefore insufficient evidence to draw conclusions under the elements of Counts 8 to 12.

<sup>4130</sup> The Chamber could not establish the facts related to P-0957 (*see* paragraph 977 above). There is therefore insufficient evidence to draw conclusions under the elements of Counts 8 to 12.

<sup>4131</sup> While the Chamber found that members of Ansar Dine/AQIM went to P-1674’s house and that P-1674 became pregnant after this event (*see* paragraph 979 above), the Chamber could not establish that P-1674 was subjected to sexual violence by Ansar Dine/AQIM members (*see* paragraph 980 above). There is therefore insufficient evidence to draw conclusions under the elements of Counts 11 to 12.

circumstances relating to Azahara Abdou (P-1134) may be considered as torture as a crime against humanity and as a war crime under Counts 1 and 3.<sup>4132</sup> In light of the totality of the evidence submitted, the Chamber considers that the legal characterisation of the facts and circumstances relating to Azahara Abdou as other inhumane acts under Article 7(1)(k) of the Statute (Count 2), cruel treatment under Article 8(2)(c)(i) of the Statute (Count 4), outrages upon personal dignity under Article 8(2)(c)(ii) of the Statute (Count 5) and rape under Articles 7(1)(g) and 8(2)(e)(vi) of the Statute (Counts 11-12), is the most appropriate legal characterisation and declines to change that characterisation.

1303. Before turning to the specific incidents, the Chamber will first address the issue of ‘lawful sanctions’ under Article 7(2)(e) of the Statute, the third element of torture as a crime against humanity, which is relevant to all incidents charged under Count 1.

**a) ‘Lawful sanctions’**

1304. The Chamber recalls that the third element of torture as a crime against humanity requires that the relevant pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions. The question arises as to what constitutes a ‘lawful sanction’.

1305. At the outset, the Chamber notes its finding below that the Islamic Court did not afford the essential guarantee of independence and impartiality required by Article 8(2)(c)(iv) of the Statute.<sup>4133</sup> The Chamber considers that any sanction imposed by the Islamic Court cannot be considered ‘lawful’ for the purpose of Article 7(2)(e) of the Statute, since the institution of the Islamic Court itself was not regularly constituted because of lack of independence and impartiality. Accordingly, for the cases charged under Count 1 for torture as a crime against humanity where the relevant punishment was imposed by the Islamic Court, namely: (i) the two men;<sup>4134</sup> (ii) P-0565 and P-0557; (iii) Khudi Bint Ibrahim,

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<sup>4132</sup> [First Regulation 55 Decision](#), para. 86. *See also* paras 18-26.

<sup>4133</sup> *See* paragraph 1515 below. On this issue and the functioning of the Islamic Court in particular, *see* Opinion individuelle et partiellement dissidente du Juge Mindua.

<sup>4134</sup> With regard to the case of the two men, **Judge Akane** considered that the floggings of the two men were *ta'zirs* imposed directly by the Islamic Police without an Islamic Court judgment (*see* footnote 2333

‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad; (iv) Dédéou Maiga; (v) Sallaka Bent Al-Khair; and (vi) Madou Traoré, the Chamber,<sup>4135</sup> finds that the pain or suffering in each of these incidents did not arise only from, and was not inherent in or incidental to, a lawful sanction.

1306. Furthermore, the Majority, Judge Akane dissenting,<sup>4136</sup> recalls its conclusion that corporal punishments that satisfy all the elements of the crime of torture under Article 7(1)(f) of the Statute, particularly the severe physical or mental pain or suffering element, cannot constitute ‘lawful sanctions’.<sup>4137</sup> Noting the Chamber’s findings below that the punishments of: (i) the two men; (ii) P-0565 and P-0557; (iii) Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad; (iv) Dédéou Maiga; (v) Sallaka Bent Al-Khair; and (vi) Madou Traoré, satisfy all the elements of the crime of torture as defined in Article 7(1)(f) of the Statute, it follows for the Majority that these abovementioned punishments cannot be considered a ‘lawful sanction’ within the meaning of Article 7(2)(e) of the Statute for this additional reason.

1307. Accordingly, the Chamber finds that the third element of torture as a crime against humanity is satisfied in relation to each relevant victim, *i.e.* that the pain and suffering inflicted on: (i) the two men; (ii) P-0565 and P-0557; (iii) Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad; (iv) Dédéou Maiga; (v) Sallaka Bent Al-Khair; and (vi) Madou Traoré, did not arise only from, and was

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above). Therefore, Judge Akane agrees with the Majority below that the two men were sentenced without due process for the purpose of Count 6, although considers that the case should be categorised under Count 6 as one in which a sentence was passed without prior judgment of a court, as opposed to a case with a sentence passed pursuant to a judgment pronounced by a court that was not regularly constituted (*see* footnote 4642 below). In any event, since Judge Akane agrees that the two men were sentenced without due process for the purpose of Count 6, for present purposes she also considers that this sanction cannot be considered ‘lawful’ for the purpose of Article 7(2)(e) of the Statute and therefore concurs with the Majority that the pain or suffering in the case of the two men did not arise only from, and was not inherent in or incidental to, a lawful sanction.

<sup>4135</sup> While **Judge Akane** agrees with the Chamber’s conclusion, she disagrees with the Majority’s reasoning (*see* Separate and partly dissenting opinion of Judge Tomoko Akane).

<sup>4136</sup> *See* Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>4137</sup> *See* paragraph 1144 above.



not inherent in or incidental to, lawful sanctions.<sup>4138</sup>

**b) Severity of pain and suffering**

1308. The Chamber turns to the first element of torture as a crime against humanity and as a war crime, *i.e.* that the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

1309. In relation to all the victims under consideration, the Chamber notes that, as elaborated further below, they were subjected to a violent and public punishment by members of Ansar Dine/AQIM for violation of the groups' rules. Some were also arrested, imprisoned and sentenced by the Islamic Court beforehand.

1310. Specifically, in relation to the two men, the Chamber found that Ansar Dine/AQIM<sup>4139</sup> sentenced the two men for consuming alcohol.<sup>4140</sup> It also found that members of the Islamic Police took the two men to the square near the BMS, handcuffing the men together.<sup>4141</sup> The Chamber found that Mr Al Hassan, with other members of Ansar Dine/AQIM, publicly flogged the two men for a total of around 80 lashes each, in the presence of the Islamic Police and other members of Ansar Dine/AQIM.<sup>4142</sup> More specifically, the Chamber found that Mr Al Hassan and Abou Zhar were both overseeing the execution of this punishment in particular;<sup>4143</sup> and Mr Al Hassan himself meted out at least 34 and 37 lashes

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<sup>4138</sup> *Contra* [Defence Final Brief](#), paras 494-495. The Chamber refers in particular to the Defence's argument that the 'application of [*Sharia*] in Timbuktu in 2012 falls squarely within' the 'lawful sanctions' exception ([Defence Final Brief](#), para. 494. *See also, generally,* [Defence Final Brief](#), paras 485, 493-506), and the Defence's argument that 'authorised punishments' were lawful sanctions, including that 'any sanctions ordered and imposed by [non-state actor]-conducted proceedings are "lawful" unless specific grounds exist to find otherwise' ([Defence Final Brief](#), para. 495. *See also, generally,* [Defence Final Brief](#), paras 485, 493-506).

The Chamber notes that in finding below that Ansar Dine/AQIM inflicted severe pain or suffering on the victims, it takes into account only pain and suffering arising from the sentence imposed (*i.e.* flogging or amputation) but also in some cases the pain and suffering arising from other circumstances surrounding the punishment *e.g.* arrest, detention, and aftermath. However, the Chamber considers that in these cases, the arrest, detention, and aftermath of the punishment are ancillary to the punishment (*i.e.* flogging or amputation) itself. Therefore, for the purpose of the present conclusion, it suffices to consider the 'lawfulness' of the sentence imposed (*i.e.* flogging or amputation).

<sup>4139</sup> **The Majority**, Judge Akane dissenting, found that the men were sentenced by the Islamic Court, whereas **Judge Akane** considered that the floggings of the two men was a *ta'zir* imposed directly by the Islamic Police without an Islamic Court judgment (*see* footnote 2333 above).

<sup>4140</sup> *See* paragraph 762 above.

<sup>4141</sup> *See* paragraph 762 above.

<sup>4142</sup> *See* paragraphs 762-764 above.

<sup>4143</sup> *See* paragraph 763 above.

respectively to each victim.<sup>4144</sup> The Chamber finds that Mr Al Hassan and the other Ansar Dine/AQIM members inflicted severe physical pain and suffering on the two men through the floggings, considering the total number of lashes administered to each victim, namely 80, which the Chamber considers to be extremely high, the number of lashes meted out by Mr Al Hassan personally on the two men being at least 34 and 37 respectively, and the visible signs of the victims being in pain.<sup>4145</sup> The Chamber moreover finds that Mr Al Hassan and the other Ansar Dine/AQIM members inflicted a severe degree of mental pain and suffering through the floggings, considering that the Islamic Police brought the two men before the public in handcuffs and that the floggings were carried out in front of a crowd of people, including children,<sup>4146</sup> which served to humiliate and disgrace the two men.

1311. In relation to P-0565 and P-0557, the Chamber found that Islamic Police officers arrested P-0565 and P-0557 for having a child out of wedlock,<sup>4147</sup> and detained them at the Islamic Police headquarters<sup>4148</sup> following their arrests.<sup>4149</sup> It also found that the Islamic Police detained P-0565 and P-0557 for three<sup>4150</sup> and two days,<sup>4151</sup> respectively. Although P-0565's detention was temporary in the sense that she was sent back home in the evening to care for her child,<sup>4152</sup> while detained during the day at the Islamic Police headquarters, she was held in a small room that had no ventilation and no toilet.<sup>4153</sup> P-0565 had to relieve herself in the room.<sup>4154</sup> While water was available, the Islamic Police members detaining her did not give her any food.<sup>4155</sup> P-0557, who was held continually throughout his period of detention, was detained in a small room at the Islamic Police headquarters, with another person, and had to relieve himself in a pot in the same

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<sup>4144</sup> See paragraph 764 above.

<sup>4145</sup> See paragraph 764 above.

<sup>4146</sup> See paragraph 762 above.

<sup>4147</sup> See paragraphs 771, 773, 779, 782, 789 above.

<sup>4148</sup> See paragraph 558 above.

<sup>4149</sup> See paragraphs 771, 773 above.

<sup>4150</sup> See paragraph 774 above.

<sup>4151</sup> See paragraph 776 above.

<sup>4152</sup> See paragraph 776 above.

<sup>4153</sup> See paragraph 777 above.

<sup>4154</sup> See paragraph 777 above.

<sup>4155</sup> See paragraph 777 above.

room.<sup>4156</sup> Neither P-0565 nor P-0557 was given an explanation as to why they had been apprehended<sup>4157</sup> and additionally, members of Ansar Dine/AQIM interrogated P-0557 while he was detained.<sup>4158</sup> The Chamber finds that in these circumstances, Ansar Dine/AQIM members inflicted severe mental pain and suffering on P-0565 and P-0557.<sup>4159</sup> The Chamber also takes into account that P-0565 was of a young age at the time,<sup>4160</sup> which it considers made her more vulnerable and more susceptible to the mental suffering.

1312. In addition, the same day that their judgments by the Islamic Court were rendered, P-0565 and P-0557 were taken to the Sankoré square where they were violently flogged on their backs by different members of Ansar Dine/AQIM.<sup>4161</sup> The Chamber finds that the Ansar Dine/AQIM members inflicted severe physical pain and suffering on P-0565 and P-0557 through the floggings, considering: (i) the number of lashes administered to each victim, namely 100,<sup>4162</sup> which the Chamber considers to be extremely high; (ii) the level of force used, recalling in particular that one of the members of Ansar Dine/AQIM flogged P-0565 and P-0557 with such violence that he earned notoriety because of it<sup>4163</sup> and that P-0557 was flogged with a rope usually used for beating camels;<sup>4164</sup> and (iii) the physical injuries incurred by both victims: P-0557 had marks all over his shoulders, back and thighs following the flogging, and has scars as a result of his injuries,<sup>4165</sup> and P-0565 felt physical pain while being flogged and had pain, inflammation and bruising afterwards such that she had to sleep on her chest.<sup>4166</sup> On the latter point, the Chamber notes that while P-0565 had no lasting scars of the flogging,<sup>4167</sup> injuries from torture need not be permanent.<sup>4168</sup>

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<sup>4156</sup> See paragraph 775 above.

<sup>4157</sup> See paragraphs 775, 777 above.

<sup>4158</sup> See paragraph 774 above.

<sup>4159</sup> *Contra* [Defence Final Brief](#), para. 491.

<sup>4160</sup> See paragraph 799 above.

<sup>4161</sup> See paragraphs 784, 790-791 above.

<sup>4162</sup> See paragraphs 790-791 above.

<sup>4163</sup> See paragraphs 790-791 above.

<sup>4164</sup> See paragraph 791 above.

<sup>4165</sup> See paragraph 798 above. The Chamber considers it irrelevant that some of the scars may have been caused by the traditional treatment given to P-0557 after the flogging, noting that such treatment was necessitated by the injuries which resulted from the flogging.

<sup>4166</sup> See paragraph 799 above.

<sup>4167</sup> See paragraph 799 above.

<sup>4168</sup> See paragraph 1128 above.

1313. The Chamber moreover finds that Ansar Dine/AQIM members inflicted severe mental pain and suffering through the floggings. P-0557 and P-0565 experienced fear and shame during and after the floggings.<sup>4169</sup> Further, the floggings were proclaimed to the public in advance and carried out in front of a large crowd of people, including children.<sup>4170</sup> As with the two men, the Chamber considers that the very public nature of the floggings intensified the associated humiliation and disgrace inflicted upon the victims by members of Ansar Dine/AQIM.<sup>4171</sup> The public shame and degradation associated with the floggings was also corroborated by others present at the event, one for example who found P-0565's flogging unbearable to watch.<sup>4172</sup>

1314. In relation to that case, the Chamber further recalls that Ansar Dine/AQIM members threatened both victims by saying to them that they would be sentenced with two years' imprisonment if they did not marry<sup>4173</sup> and Ansar Dine/AQIM members forced them to marry on the same day as their floggings.<sup>4174</sup> Notwithstanding that P-0565 and P-0557 had expressed their desire to get married to one another before the events took place,<sup>4175</sup> Ansar Dine/AQIM imposed marriage on the victims on the same day as the violent spectacle of their floggings, and the ceremony initiated by Ansar Dine/AQIM was not in keeping with the relevant customs and had to be held again later.<sup>4176</sup> The Chamber also takes account of the enduring social stigma and embarrassment associated with the floggings, considering that both victims became the object of public speculation about the circumstances surrounding their marriage following the events.<sup>4177</sup> The imposition of the marriage is accordingly taken into account by the Chamber when assessing the series of acts Ansar Dine/AQIM perpetrated against P-0565 and P-0557 for the purpose of the first element of the crime of torture.

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<sup>4169</sup> See paragraphs 786, 790, 798 above.

<sup>4170</sup> See paragraph 786 above.

<sup>4171</sup> See paragraphs 786, 790, 798 above.

<sup>4172</sup> See paragraph 790 above.

<sup>4173</sup> See paragraphs 782, 794 above.

<sup>4174</sup> See paragraph 794 above.

<sup>4175</sup> See paragraph 770 above.

<sup>4176</sup> See paragraphs 795-796 above.

<sup>4177</sup> See paragraph 798 above.

1315. Considering the above acts perpetrated by Ansar Dine/AQIM against P-0565 and P-0557 as a whole, including the detentions, public floggings, and their aftermath, the Chamber finds that Ansar Dine/AQIM members inflicted severe physical and mental pain and suffering upon P-0565 and P-0557.

1316. In relation to Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad, the Chamber found that the Islamic Court sentenced Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim and Ikhmad Bin Muhammad to 100 lashes each and Al-Husayn Bin ‘Umar and Halimah Bint Muhammad to 200 lashes each for committing extra-marital sexual intercourse.<sup>4178</sup> Khudi Bint Ibrahim and ‘Abdallah Bin Mukha were also detained at the public prison before being sent to the Islamic Court.<sup>4179</sup> It also found that all six individuals were taken to the Sankoré square and were publicly flogged on or around 29 November 2012 by members of Ansar Dine/AQIM, including Abou Zhar,<sup>4180</sup> in the presence of other members of the Islamic Police and members of the population, including children.<sup>4181</sup> The Chamber finds that the Ansar Dine/AQIM members inflicted severe physical pain and suffering on all six individuals through the floggings, considering the number of lashes administered to each victim, namely at least 100, which the Chamber considers to be extremely high. In relation to Khudi Bint Ibrahim and ‘Abdallah Bin Mukha, the Chamber has also taken into account that the victims were detained prior to their appearance before the Islamic Court. As with the other victims mentioned above, the Chamber moreover finds that Ansar Dine/AQIM members inflicted severe mental pain and suffering through the floggings, considering the very public nature of the floggings which served to humiliate and degrade the victims.<sup>4182</sup>

1317. In relation to Dédéou Maiga, the Chamber found that Islamic Police officers, in particular Adama and Mr Al Hassan, arrested Dédéou Maiga for alleged theft, and detained him first at the headquarters of the Islamic Police, for around three

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<sup>4178</sup> See paragraphs 814, 815, 817 above.

<sup>4179</sup> See paragraph 813 above.

<sup>4180</sup> **Judge Prost** in the minority, for the reasons set out in paragraph 818 above, considered there to be sufficient evidence to find in addition that Mr Al Hassan personally flogged Al-Husayn Bin ‘Umar.

<sup>4181</sup> See paragraph 818 above.

<sup>4182</sup> See paragraph 818 above.

days and then at the Central Prison for between two to five weeks.<sup>4183</sup> Following his detention, members of Ansar Dine/AQIM amputated Dédéou Maiga's hand in public in a large square near the *Hôtel Azalai*, in front of many people, including young and old members of the population of Timbuktu.<sup>4184</sup> During the amputation, members of Ansar Dine/AQIM tied Dédéou Maiga to a chair, chained his ankles and covered his head.<sup>4185</sup> The pain suffered by Dédéou Maiga was corroborated by Dr Ludes who testified that the amputation cut would have caused significant suffering, notably during amputation, but also during the 'secondary therapeutic treatment'.<sup>4186</sup> In this regard, the Chamber recalls that Dédéou Maiga received medical treatment both immediately following the amputation and after moving to Bamako to receive care towards the end of September 2012, where he also received a prosthesis.<sup>4187</sup>

1318. The Chamber recalls that it made no finding on the exact substance, if any, administered to Dédéou Maiga prior to the amputation.<sup>4188</sup> However, the Chamber emphasises that the possibility of a certain substance being given to Dédéou Maiga prior to the amputation does not affect the present finding, and notes in particular Dr Ludes' testimony that, even assuming that Dédéou Maiga had been drugged, the amputation would have caused him significant pain.<sup>4189</sup> In this regard, the Chamber recalls that, following the amputation, Dédéou Maiga was socially rejected and suffered mentally and his mental state deteriorated towards the end of 2016, whilst he was unable to work with just one hand.<sup>4190</sup> Indeed, assessing the totality of the injury suffered by Dédéou Maiga, including the mental suffering incurred in the subsequent years, the Chamber considers that the provision of any *post factum* medical care would have been unable to alleviate the suffering caused to Dédéou Maiga by Ansar Dine/AQIM's amputation of his hand.<sup>4191</sup> Considering the suffering arising from the act of amputation itself, Dédéou Maiga's continued physical and mental suffering following the event, as

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<sup>4183</sup> See paragraph 820 above.

<sup>4184</sup> See paragraphs 824-826 above.

<sup>4185</sup> See paragraph 826 above.

<sup>4186</sup> See paragraph 837 above.

<sup>4187</sup> See paragraphs 827, 832-833 above.

<sup>4188</sup> See paragraph 826 above.

<sup>4189</sup> See paragraph 837 above. *Contra* [Defence Final Brief](#), para. 489.

<sup>4190</sup> See paragraphs 833, 835 above.

<sup>4191</sup> *Contra* [Defence Final Brief](#), para. 489.

well as the public nature of his amputation, the Chamber finds that the Ansar Dine/AQIM members inflicted severe physical and mental pain and suffering on Dédéou Maiga through his amputation.

1319. In relation to Sallaka Bent Al-Khair, the Chamber found that armed members of Ansar Dine/AQIM arrested the victim at her partner's house late at night.<sup>4192</sup> This arrest was violent: the victim was injured when she jumped from the first floor in an attempt to escape, and hurt her hip, elbows and neck;<sup>4193</sup> and members of Ansar Dine/AQIM also pushed and beat her during the arrest such that her clothes and underclothes came open.<sup>4194</sup> The Chamber also found that members of Ansar Dine/AQIM detained the victim at the *Hesbah* headquarters for a couple of days,<sup>4195</sup> before taking her to the Islamic Court. While detained at the *Hesbah* headquarters, members of Ansar Dine/AQIM put the victim in the ATM room which was an extremely small, barred cell which smelled dreadful and in which she found it difficult to breathe.<sup>4196</sup> There was no toilet and the victim had to relieve herself on the floor.<sup>4197</sup> She was not given anything to eat although she was given some milk, which she refused to take.<sup>4198</sup> She felt ashamed and scared for her safety while in detention.<sup>4199</sup> After members of Ansar Dine/AQIM took her to the Islamic Court, they further detained Sallaka Bent Al-Khair for a period of between two and five days in a different prison.<sup>4200</sup> The Chamber finds that in these circumstances, Ansar Dine/AQIM members inflicted severe mental pain and suffering on the victim.<sup>4201</sup>

1320. In addition, following the issuance of her judgment, Ansar Dine/AQIM members took the victim to *Yoboutao* where she was violently flogged by different members of Ansar Dine/AQIM.<sup>4202</sup> The Chamber finds that the Ansar Dine/AQIM members, including members of the Islamic Police, inflicted severe

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<sup>4192</sup> See paragraphs 839, 840 above.

<sup>4193</sup> See paragraph 840 above.

<sup>4194</sup> See paragraph 840 above.

<sup>4195</sup> See paragraphs 841-842 above.

<sup>4196</sup> See paragraph 841 above.

<sup>4197</sup> See paragraph 841 above.

<sup>4198</sup> See paragraph 841 above.

<sup>4199</sup> See paragraph 841 above.

<sup>4200</sup> See paragraph 844 above.

<sup>4201</sup> *Contra* [Defence Final Brief](#), para. 491.

<sup>4202</sup> See paragraphs 846, 851 above.

physical pain and suffering on Sallaka Bent Al-Khair through the flogging, considering: (i) that the victim was visibly in significant pain during her flogging, writhing around and crying out and collapsing on the ground;<sup>4203</sup> (ii) the number of lashes administered to the victim, namely at least 50,<sup>4204</sup> which the Chamber considers to be high; and (iii) the physical injuries incurred by the victim: she suffered injuries and has lasting painful scars on her back and shoulders from the flogging.<sup>4205</sup>

1321. The Chamber moreover finds that Ansar Dine/AQIM members, including members of the Islamic Police, inflicted severe mental pain and suffering during and through the flogging. Similar to the punishments already described above, this flogging was carried out in front of a large crowd of people including children.<sup>4206</sup> The victim felt ashamed due to the flogging, and endured social ostracism following the event.<sup>4207</sup> Notably the victim's breasts became uncovered at one stage during her flogging and were exposed to the public until a member of Ansar Dine/AQIM covered her with a jacket and her flogging continued,<sup>4208</sup> which amplified the victim's shame and mortification during the event. The Chamber considers that the very public nature of the flogging intensified the humiliation and disgrace inflicted upon the victim by members of Ansar Dine/AQIM, including members of the Islamic Police. The public shame and degradation associated with this flogging was also corroborated by others present at the event, one describing that the flogging disgusted everyone and 'really broke his heart',<sup>4209</sup> and another noting that to be partially nude like that in public in the circumstances was a scandal by all measures.<sup>4210</sup>

1322. In relation to Madou Traoré, following his sentence by the Islamic Court to a *ta'zir* of 50 lashes and a fine,<sup>4211</sup> different members of Ansar Dine/AQIM, including members of the Islamic Police, violently flogged the victim at the same

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<sup>4203</sup> See paragraph 851 above.

<sup>4204</sup> See paragraph 851 above.

<sup>4205</sup> See paragraph 852 above.

<sup>4206</sup> See paragraphs 848-851 above.

<sup>4207</sup> See paragraph 852 above.

<sup>4208</sup> See paragraph 851 above.

<sup>4209</sup> See paragraph 851 above.

<sup>4210</sup> See paragraph 851 and footnote 2766 above.

<sup>4211</sup> See paragraph 845 above.



flogging event as Sallaka Bent Al-Khair,<sup>4212</sup> in front of a crowd of people, including children.<sup>4213</sup> The Chamber finds that the Ansar Dine/AQIM members, including members of the Islamic Police, inflicted severe physical pain and suffering on Madou Traoré through the flogging, considering: (i) that despite evidently attempting to maintain his composure, Madou Traoré showed visible signs of being in pain as he was flogged;<sup>4214</sup> (ii) the number of lashes administered to the victim, namely at least 39,<sup>4215</sup> which the Chamber considers to be high; and (iii) the physical injuries incurred by the victim, recalling that he was bleeding following the flogging.<sup>4216</sup> The Chamber moreover finds that Ansar Dine/AQIM members, including members of the Islamic Police, inflicted severe mental pain and suffering through the flogging, considering that the flogging was carried out in front of a crowd.<sup>4217</sup> As noted above, the very public nature of the flogging intensified the associated humiliation and disgrace inflicted upon the victim by members of Ansar Dine/AQIM.

1323. Considering the above acts perpetrated by Ansar Dine/AQIM against Sallaka Bent Al-Khair and Madou Traoré respectively, including, in relation to Sallaka Bent Al-Khair, her violent arrest, her detention at two separate locations and her flogging, the Chamber finds that Ansar Dine/AQIM members, including members of the Islamic Police, inflicted severe physical and mental pain and suffering upon Sallaka Bent Al-Khair and Madou Traoré.

1324. Considering the above, namely the physical and mental suffering inflicted upon each of the abovementioned victims respectively, the Chamber finds that the severity threshold for the first material element of the crime of torture is satisfied in relation to each victim.

### **c) Custody or control**

1325. Turning to the second element of torture as a crime against humanity, the Chamber is satisfied that all victims mentioned above were in the custody or

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<sup>4212</sup> See paragraph 849 above.

<sup>4213</sup> See paragraph 848 above.

<sup>4214</sup> See paragraph 849 above.

<sup>4215</sup> See paragraph 849 above.

<sup>4216</sup> See paragraph 849 above.

<sup>4217</sup> See paragraph 848 above.

under the control of Ansar Dine/AQIM members (including Mr Al Hassan, in relation to the two men), considering: (i) in relation to the two men, that the Islamic Police handcuffed both victims and brought them to the site of the floggings,<sup>4218</sup> Mr Al Hassan gave the key to Abou Zhar to unlock the handcuffs chaining the two individuals, so that the punishment could be executed,<sup>4219</sup> and that the floggings were carried out by and in the presence of several members of Ansar Dine/AQIM who secured the site of the floggings such that the victims could not leave the site;<sup>4220</sup> (ii) in relation to P-0565 and P-0557, the fact that both victims were detained in the headquarters of Ansar Dine/AQIM's Islamic Police immediately prior to their flogging,<sup>4221</sup> that they were transported to the Islamic Court<sup>4222</sup> and the site of the floggings by members of Ansar Dine/AQIM<sup>4223</sup> and that the floggings were carried out by and in the presence of members of Ansar Dine/AQIM,<sup>4224</sup> who secured the site of the floggings, including by closing off the exits and entrances and creating a security cordon around the location;<sup>4225</sup> (iii) in relation to Khudi Bint Ibrahim, 'Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin 'Umar and Halimah Bint Muhammad, that all victims were brought before the Islamic Court by the *Hesbah* or the Islamic Police<sup>4226</sup> and that the floggings were carried out by and in the presence of several members of Ansar Dine/AQIM, who secured the site of the floggings such that the victims could not leave the site;<sup>4227</sup> (iv) in relation to Dédéou Maiga, the fact that the victim was detained by the Islamic Police prior to his amputation,<sup>4228</sup> that the site of the amputation was secured by members of Ansar Dine/AQIM<sup>4229</sup> and that the victim was tied up and had his head covered during the amputation;<sup>4230</sup> and (v) in relation to Sallaka Bent Al-Khair and Madou Traoré, the fact that Sallaka Bent Al-Khair was detained by

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<sup>4218</sup> See paragraphs 762-763 above.

<sup>4219</sup> See paragraph 763 above.

<sup>4220</sup> See paragraph 763 above.

<sup>4221</sup> See paragraphs 774, 777 above.

<sup>4222</sup> See paragraph 778 above.

<sup>4223</sup> See paragraph 784 above.

<sup>4224</sup> See paragraphs 787-791 above.

<sup>4225</sup> See paragraph 785 above.

<sup>4226</sup> See paragraphs 813, 815-816 above.

<sup>4227</sup> See paragraph 818 above.

<sup>4228</sup> See paragraph 820 above.

<sup>4229</sup> See paragraph 826 above.

<sup>4230</sup> See paragraph 826 above.

members of Ansar Dine/AQIM immediately prior to her flogging,<sup>4231</sup> and that Madou Traoré was brought to *Yoboutao* in the same car as Sallaka Bent Al-Khair.<sup>4232</sup> In addition, each of the floggings of the last two victims was carried out by and in the presence of members of Ansar Dine/AQIM, including members of the Islamic Police, who secured the site of the floggings such that the victims could not leave the site.<sup>4233</sup>

#### **d) Status of the victims**

1326. Regarding the third element of torture as a war crime, *i.e.* that the person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities, the Chamber finds that the two men,<sup>4234</sup> P-0565 and P-0557,<sup>4235</sup> Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad,<sup>4236</sup> Dédéou Maiga,<sup>4237</sup> Sallaka Bent Al-Khair<sup>4238</sup> and Madou Traoré<sup>4239</sup> were all civilian inhabitants of Timbuktu taking no active part in the hostilities. The Chamber accordingly finds that the third element of torture as a war crime is satisfied in relation to each victim.

#### **e) Mental elements**

1327. Turning to the mental elements of torture as a war crime and a crime against humanity, the Chamber found that Ansar Dine/AQIM imposed rules and prohibitions on the population of Timbuktu as part of their program to implement their conception of *Sharia*.<sup>4240</sup> In this context, the Chamber particularly highlights that Ansar Dine/AQIM penalised violations violently and publicly.<sup>4241</sup> This was done intentionally, in order to punish the individual offenders, to deter the population of Timbuktu from violating the new rules and prohibitions, and also

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<sup>4231</sup> See paragraphs 841, 844, 846 above.

<sup>4232</sup> See paragraph 846 above.

<sup>4233</sup> See paragraph 847 above.

<sup>4234</sup> See paragraph 762 above.

<sup>4235</sup> See paragraph 770 above.

<sup>4236</sup> See paragraph 812 above.

<sup>4237</sup> See paragraph 820 above.

<sup>4238</sup> See paragraph 839 above.

<sup>4239</sup> See paragraph 845 above.

<sup>4240</sup> See paragraphs 436, 469-471, 475-489, 653-670 above. See also paragraphs 1618-1621 below.

<sup>4241</sup> See paragraphs 657-664 above.

to broadcast Ansar Dine/AQIM's conception of an ideal society.<sup>4242</sup>

1328. The Chamber considers that the aforementioned *modus operandi* was reflected in Ansar Dine/AQIM's punishment of the victims under consideration. The two men were flogged in public as an example for the punishment of the consumption of alcohol<sup>4243</sup> and both victims were in pain whilst they were flogged by Abou Zhar and Mr Al Hassan.<sup>4244</sup> P-0565 and P-0557 were arrested and detained for having a child out of wedlock,<sup>4245</sup> were sentenced by Ansar Dine/AQIM's Islamic Court<sup>4246</sup> and were flogged violently in a public spectacle.<sup>4247</sup> P-0565 and P-0557 were the first persons publicly flogged following the arrival of Ansar Dine/AQIM in Timbuktu.<sup>4248</sup> Their flogging, which was attended by many members of Ansar Dine/AQIM,<sup>4249</sup> was proclaimed to the public in advance and carried out in front of a large crowd to serve as an example and deterrent against violations of Ansar Dine/AQIM's rules.<sup>4250</sup> The punishment of P-0565 and P-0557 was announced to the crowd via megaphone by a member of Ansar Dine/AQIM's *Hesbah*, who gave a long introduction referring to the lack of enforcement of Islamic rule for many years in the country saying that the time had come for Islamic rule to come back.<sup>4251</sup> In the case of Khudi Bint Ibrahim, 'Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin 'Umar and Halimah Bint Muhammad, the victims received an extremely high number of lashes in public as an example for the punishment of extra-marital sexual intercourse.<sup>4252</sup>

1329. In the case of Dédéou Maiga, Sanda Ould Boumama made a statement following the amputation that the punishment was in the groups' 'programme of applying *Sharia*'.<sup>4253</sup> The victim was arrested for theft, detained by the Islamic Police and sentenced by the Islamic Court.<sup>4254</sup> He had his hand amputated, also in a public

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<sup>4242</sup> See paragraphs 657-664 above. See also paragraphs 469-471, 475-489, 665-670 above.

<sup>4243</sup> See paragraph 762 above.

<sup>4244</sup> See paragraph 764 above.

<sup>4245</sup> See paragraphs 779, 782 above.

<sup>4246</sup> See paragraphs 778-783 above.

<sup>4247</sup> See paragraph 784-792 above.

<sup>4248</sup> See paragraph 786 above.

<sup>4249</sup> See paragraphs 787-788 above.

<sup>4250</sup> See paragraphs 786 above.

<sup>4251</sup> See paragraph 789 above.

<sup>4252</sup> See paragraph 818 above.

<sup>4253</sup> See paragraph 830 above.

<sup>4254</sup> See paragraphs 820-822 above.

spectacle.<sup>4255</sup> The amputation, being the first case of such a punishment in Timbuktu, was attended by members of Ansar Dine/AQIM, as well as members of the civilian population, following public announcements inviting the public to the amputation. The wide publicisation of the amputation amongst the civilian population by Ansar Dine/AQIM was similarly aimed at deterring the civilian population from breaching its rules and discouraging any opposition against the realisation of what Ansar Dine/AQIM considered as being their ideal society, by showing the severe consequence of breaching its rules.<sup>4256</sup> Further, both Sallaka Bent Al-Khair and Madou Traoré were arrested for extra-marital sexual intercourse,<sup>4257</sup> sentenced by Ansar Dine/AQIM's Islamic Court,<sup>4258</sup> and flogged in a similarly public spectacle.<sup>4259</sup> Like the other victims, Sallaka Bent Al-Khair and Madou Traoré's violent floggings were attended by multiple members of Ansar Dine/AQIM<sup>4260</sup> and carried out in front of a large crowd to serve as an example and deterrent against violations of Ansar Dine/AQIM's rules.<sup>4261</sup> Members of Ansar Dine/AQIM made Madou Traoré remove a jumper he was wearing before he was flogged,<sup>4262</sup> which the Chamber considers would have otherwise somewhat cushioned the blows of the flogging and diminished the level of pain inflicted.

1330. Based on the foregoing, the Chamber finds that the members of Ansar Dine/AQIM who engaged in the relevant conduct (including, in relation to the two men, Mr Al Hassan), meant to engage in the conduct that inflicted severe physical and mental pain and suffering upon, respectively, the two men, P-0565 and P-0557, Khudi Bint Ibrahim, 'Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin 'Umar and Halimah Bint Muhammad, Dédéou Maiga, Sallaka Bent Al-Khair and Madou Traoré, and meant to cause each of these victims severe physical and mental pain and suffering, or were at least aware that the severe physical and mental pain and suffering would occur in

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<sup>4255</sup> See paragraphs 825-826 above.

<sup>4256</sup> See paragraphs 661, 824-826, 830 above.

<sup>4257</sup> See paragraphs 840, 845 above.

<sup>4258</sup> See paragraph 844-845 above.

<sup>4259</sup> See paragraph 848-851 above.

<sup>4260</sup> See paragraph 847 above.

<sup>4261</sup> See paragraph 848 above.

<sup>4262</sup> See paragraph 849 above.

the ordinary course of events.

1331. In this respect, the Chamber does not consider the fact that some victims were provided with medical attention immediately after their punishments to diminish the Ansar Dine/AQIM members' intentions to cause those victims severe pain and suffering.<sup>4263</sup> Notably, the Chamber considers the fact that members of Ansar Dine/AQIM pre-arranged an ambulance on standby at the site of P-0565 and P-0557's flogging<sup>4264</sup> and a doctor's presence at the site of Dédéou Maiga's amputation<sup>4265</sup> is indeed indicative of their awareness that severe pain and suffering would occur in the ordinary course of events.<sup>4266</sup> The Chamber also does not consider the fact that Sallaka Bent Al-Khair was covered with a jacket after her breasts were exposed to demonstrate an absence of intention for the punishment to be painful or humiliating, recalling that the victim was visibly in significant pain during her flogging, writhing around and crying out and collapsing on the ground, and her breasts became exposed at one stage during her flogging and were exposed to the public until a member of Ansar Dine/AQIM covered her with a jacket and her flogging continued.<sup>4267</sup>

1332. In connection with the above, the Chamber notes that the Defence generally alleges that '[*Sharia*] was applied in Timbuktu in 2012 to further justice, security, and community well-being'.<sup>4268</sup> In support of its contention that 'Islamic Law was not applied with the intent to cause severe pain and suffering or disproportionate humiliation', the Defence raises several arguments as to the goals of the implementation of '[*Sharia*] punishments' by Ansar Dine/AQIM in Timbuktu in 2012-2013 and the way these punishments were actually executed

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<sup>4263</sup> *Contra* [Defence Final Brief](#), paras 486, 489. The Chamber further recalls that it rejected the Defence's assertion that P-0557 and P-0565 'accepted' the application of *Sharia* 'to avoid societal stigma or to be purified' ([Defence Final Brief](#), paras 431, 485; *see* footnote 2390 above), and the Defence's suggestion that P-0565 and P-0557 were not beaten in a severe way ([Defence Final Brief](#), para. 486; *see* footnotes 2500, 2509 above) The Chamber also recalls it considered P-0565's face being covered to have little, if any, effect in mitigating the humiliation she experienced ([Defence Final Brief](#), para. 485; *see* footnote 2493 above).

<sup>4264</sup> *See* paragraph 793 above.

<sup>4265</sup> *See* paragraph 827 above.

<sup>4266</sup> *Contra* [Defence Final Brief](#), paras 486, 489. Further, the Chamber recalls that it has made no finding on what substance, if any, was administered to Dédéou Maiga prior to his amputation (*see* paragraph 826 above).

<sup>4267</sup> *Contra* [Defence Final Brief](#), para. 487.

<sup>4268</sup> [Defence Final Brief](#), para. 485.

by Ansar Dine/AQIM in light of the *Sharia*. The Defence refers notably to the application of specific rules and the taking of steps by Ansar Dine/AQIM in relation to the execution of *hudud* punishments, in particular floggings.<sup>4269</sup> The Chamber considers that arguments regarding the compliance (or not) of punishments executed by Ansar Dine/AQIM with *Sharia* are irrelevant for the purpose of this judgment. First, the Chamber is seized of charged conduct which must be assessed within the framework of the Statute only. Second, contrary to what the Defence alleges, the credible and reliable evidence shows that the execution of punishments, far from reflecting ‘centuries of Islamic law and scholarship’,<sup>4270</sup> only reflected the practice developed by Ansar Dine/AQIM in Timbuktu in 2012-2013 according to *their vision* of *Sharia* at the time. Although the groups’ leaders and members claimed that Ansar Dine/AQIM’s rules and prohibitions as well as the measures sanctioning them were all imposed by *Sharia* or Islamic law,<sup>4271</sup> and despite some people believing that it was indeed the case,<sup>4272</sup> in reality, most of those rules and punishments as well as the way they

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<sup>4269</sup> See [Defence Final Brief](#), paras 483-489.

<sup>4270</sup> The Defence specifically alleges that the ‘rules [on how flogging were conducted] were passed down through centuries of Islamic law and scholarship’ and recalls that P-0150 testified that he ‘did not see anything in violation with the rules as prescribed in terms of how to carry out the beating’ ([Defence Final Brief](#), para. 485, *referring to* P-0150: T-095, p. 51). On these points, the Chamber notes the following. First, in the excerpt referred to by the Defence, P-0150 testified in relation to one specific video recording, depicting one particular flogging, which he described in the above-mentioned terms. P-0150 did not make a general statement in relation to the way all punishments were executed during the control of Timbuktu by Ansar Dine/AQIM. Second, commenting on another video recording regarding the manner in which a man was beaten, P-0150 testified that ‘[t]here were no rules followed. That was surprising for me. I don’t know, or maybe because my views have changed. There were a lot of things that were surprising for me. So, for example, the tool used for beating, we use this tool for beating camels, it’s a rope folded in two. And also about the people who are carrying out the beating. This person is huge. And also we saw another person at the beginning who has got a black belt in Taekwondo and he is beating very strongly with his arm raised quite high. These are all unimaginable things’ (P-0150: T-098, p. 58, *referring to* video MLI-OTP-0018-0286, transcript MLI-OTP-0069-1399). Third, the Chamber notes that P-0150’s testimony on the application of the rules regarding floggings is more nuanced than what the Defence alleges. When asked whether the emir of the *Hesbah* present at a flogging would stop someone using excessive force when flogging a person, P-0150 stated that there was ‘chaos reigning’ in Timbuktu and ‘the *Sharia* was not being applied as it should have been’ (P-0150: T-108, pp. 60-61). Invited to comment again in relation to videos that were shown to him and depict a particular incident, P-0150 further testified in general terms that at the time, the aim was ‘not necessarily to apply the rules. There was a little bit of chaos going on. I wouldn’t say that the *Sharia* rules were applied in a theoretical manner’ (P-0150: T-108, p. 58).

<sup>4271</sup> See section III.C.2 above.

<sup>4272</sup> D-0202: T-204, p. 34; D-0605: T-192, p. 26; T-194, pp. 74-75; T-195, pp. 32, 82; P-0150: T-093, p. 71; T-108, p. 47; D-0240: T-191, p. 47; D-0213: T-197, p. 10. The Defence alleged that multiple witnesses from Timbuktu testified that they considered the punishments imposed by the Islamic Court to be lawfully mandated by the *Quran* and incapable of being contradicted by devout Muslims, even if they were not personally in favour of them ([Defence Final Brief](#), para. 496 *in fine*). In light of the credible and

were applied and executed only reflected Ansar Dine/AQIM's own understanding and subjective interpretation of *Sharia* sources, in the pursuit of their goals.<sup>4273</sup> The Chamber accordingly rejects the Defence's arguments.

1333. Considering the above, the Chamber finds that the general mental elements under Article 30 of the Statute in respect of torture as a crime against humanity and as a war crime are satisfied in relation to each victim.

1334. The Chamber turns to the second element of torture as a war crime – namely that the perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind. The Chamber considers this element to be satisfied in relation to each victim, respectively noting that: (i) in relation to the two men, Mr Al Hassan and the other members of Ansar Dine/AQIM inflicted the floggings as a punishment for drinking alcohol;<sup>4274</sup> (ii) in relation to P-0565 and P-0557, members of Ansar Dine/AQIM inflicted each victim's detention and flogging as a punishment for the victims having a child out of wedlock;<sup>4275</sup> (iii) in relation to Khudi Bint Ibrahim, 'Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin 'Umar and Halimah Bint Muhammad, the floggings were inflicted as a punishment for extra-marital sexual intercourse;<sup>4276</sup> (iv) in relation to Dédéou Maiga, members of Ansar Dine/AQIM amputated the victim's hand as a punishment for alleged theft;<sup>4277</sup> and (v) in relation to Sallaka Bent Al-Khair and Madou Traoré, members of Ansar Dine/AQIM inflicted each victim's arrest, detention and flogging as a punishment for extra-marital sexual intercourse.<sup>4278</sup> Recalling its conclusion above in the 'lawful sanctions' sub-section, the Chamber rejects the Defence argument that

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reliable evidence, the Chamber concludes that some people *believed* that the rules and prohibitions adopted by Ansar Dine/AQIM, as well as the measures sanctioning them, represented *Sharia*.

<sup>4273</sup> P-0150: T-117, pp. 38-40; P-0065: T-046, p. 18 ('They came with arguments from the [*Quran*] and no imam would say no to something [*Quranically*] justified. But everyone has their own interpretation of a [*Quranic*] verse and that time was the time of enforcing something. Not the context for a religious debate or dialogue'); D-0272: T-182, pp. 25-26; P-0160: T-066, p. 16.

<sup>4274</sup> See paragraph 762 above.

<sup>4275</sup> See paragraph 779, 782, 789 above.

<sup>4276</sup> See paragraph 818 above.

<sup>4277</sup> See paragraphs 820, 826 above.

<sup>4278</sup> See paragraphs 840, 844-845 above. Recalling its conclusion in section a) above on the issue of lawful sanctions, the Chamber rejects the Defence argument that this element is not fulfilled on the basis that the punishments were lawful ([Defence Final Brief](#), para. 507).



this element is not fulfilled on the basis that the punishments were lawful.<sup>4279</sup>

1335. Finally, the Chamber turns to the fourth requirement of torture as a war crime that the perpetrator be aware of the victims being either *hors de combat*, or civilians, medical personnel or religious personnel taking no active part in the hostilities. The Chamber considers that members of Ansar Dine/AQIM who engaged in the relevant conduct (including, in relation to the two men, Mr Al Hassan) were aware of the factual circumstances establishing the two men, P-0565 and P-0557, Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad, Dédéou Maiga, Sallaka Bent Al-Khair and Madou Traoré’s respective status as civilians and their non participation in the hostilities in light of the circumstances of the victims’ arrest and/or referral to the Islamic Court, and/or punishment as recited at paragraphs 1309-1322 above. The Chamber accordingly finds the fourth element of torture as a war crime to be satisfied, in relation to each victim.

#### **f) Conclusion**

1336. The Chamber, Judge Mindua appending a separate opinion, accordingly finds the elements of torture as a crime against humanity, pursuant to Article 7(1)(f) of the Statute (Count 1), and as a war crime, pursuant to Article 8(2)(c)(i) of the Statute (Count 3), fulfilled in relation to the following victims:

- a. the two men;
- b. P-0565 and P-0557;
- c. Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad;
- d. Dédéou Maiga;
- e. Sallaka Bent Al-Khair (P-0554); and
- f. Madou Traoré.

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<sup>4279</sup> [Defence Final Brief](#), para. 507.

## 2. Other inhumane acts (Article 7(1)(k) of the Statute (Count 2))

1337. Under Count 2, Mr Al Hassan is charged with other inhumane acts as a crime against humanity, pursuant to Article 7(1)(k) of the Statute, in relation to the following victims:

- a. the two men;
- b. P-0565 and P-0557;
- c. Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad;
- d. Dédéou Maiga;
- e. Sallaka Bent Al-Khair (P-0554);
- f. Madou Traoré;
- g. Foma;
- h. Azahara Abdou (P-1134);
- i. P-0636; and
- j. Matalla Arbi (P-1708).

1338. The Chamber also recalls that it previously provided notice pursuant to Regulation 55(2) of the Regulations that the legal characterisation of the facts and circumstances relating to P-0570<sup>4280</sup> and Fadimata Mint Lilli (P-0547)<sup>4281</sup> may be considered as the crime against humanity of other inhumane acts under Count 2. Pursuant to Regulation 55(1) of the Regulations and in light of the totality of the evidence submitted, the Chamber hereby modifies the legal characterisation of the facts and circumstances relating to P-0570 and Fadimata Mint Lilli, in accordance with its previous notices.

1339. Before turning to the specific incidents, the Chamber will first address an issue relevant to the incidents charged under both Counts 1 and 2.

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<sup>4280</sup> [Second Regulation 55 Decision](#), para. 26.

<sup>4281</sup> [Third Regulation 55 Decision](#), para. 15.

**a) Incidents charged under Counts 1 and 2**

1340. The Chamber refers to the second element of other inhumane acts as a crime against humanity, *i.e.* that ‘such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute’.

1341. The Chamber notes that in relation to: (i) the two men; (ii) P-0565 and P-0557; (iii) Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad; (iv) Dédéou Maiga; (v) Sallaka Bent Al-Khair; and (vi) Madou Traoré, the facts underlying the charge of other inhumane acts as a crime against humanity under Count 2 are identical to those underlying the charge of torture as a crime against humanity under Count 1. In light of the established facts in relation to these victims, the Chamber observes that there is no act underlying the charge under Count 2 which may be considered as different but of similar character - in terms of harm and protected interests involved - compared to those already qualified as a crime against humanity of torture under Count 1. In these circumstances, due to the residual nature of Article 7(1)(k) of the Statute,<sup>4282</sup> concurrent legal qualification under this provision is not permissible. For this reason, the charge of other inhumane acts under Count 2 will not be further considered by the Chamber in relation to these victims.

**b) Great suffering or serious injury by means of an inhumane act**

1342. In relation to the remainder of the incidents, the Chamber turns to the first element of other inhumane acts as a crime against humanity, namely, that the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.

1343. In relation to Foma, the Chamber found that Aboubacar Al Chinguetti approached the victim in public on a street in Timbuktu for smoking a cigarette and tried to take him away by force.<sup>4283</sup> When Foma refused, he fell to the ground and Aboubacar Al Chinguetti flogged him with ten lashes on the spot, in the market,

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<sup>4282</sup> See paragraph 1183 above.

<sup>4283</sup> See paragraph 854 above.

in front of others.<sup>4284</sup> The victim was an elderly man, thin and short in stature,<sup>4285</sup> factors which the Chamber finds increased his vulnerability. The Chamber finds the spontaneous imposition of ten lashes to constitute an inhumane act, considering that the ten lashes were inflicted upon a vulnerable victim, in a violent act, for the purpose of punishing the victim in a public manner for violation of Ansar Dine/AQIM's rules. Considering the circumstances of the act as described above, particularly the vulnerability of the elderly victim, and the fact that he was crying in the middle of the market right after the event and was unwell and uneasy following the incident,<sup>4286</sup> as well as the public nature of the flogging and the attendant humiliation and public shame, the Chamber finds that Aboubacar Al Chinguetti inflicted great suffering on the victim through the abovementioned acts, which were inhumane.

1344. In relation to Matalla Arbi, the Chamber found that the victim was imprisoned in the ATM room of the BMS by members of Ansar Dine/AQIM for being mentally unstable so that he would calm down.<sup>4287</sup> However, given that the duration of the detention or the exact conditions of the victim's imprisonment are unknown,<sup>4288</sup> the Chamber finds that there is insufficient evidence for it to assess the severity of Matalla Arbi's suffering for the purpose of the first element of other inhumane acts as a crime against humanity.

1345. In relation to the other victims under consideration, the Chamber notes that as elaborated further below, they were all female victims, arrested and imprisoned by members of Ansar Dine/AQIM for a violation of the groups' dress code rules.

1346. Specifically in relation to Azahara Abdou, the Chamber found that the victim was arrested from her home by members of Ansar Dine/AQIM for not wearing a veil.<sup>4289</sup> Two armed members of Ansar Dine/AQIM pursued the victim into her house, grabbed her by the hand and when she resisted, hit her, in front of members of her family.<sup>4290</sup> Members of Ansar Dine/AQIM detained the victim at

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<sup>4284</sup> See paragraph 854 above.

<sup>4285</sup> See paragraph 854 above.

<sup>4286</sup> See paragraph 855 above.

<sup>4287</sup> See paragraph 871 above.

<sup>4288</sup> See paragraph 871 above.

<sup>4289</sup> See paragraph 858 above.

<sup>4290</sup> See paragraph 858 above.

headquarters of the *Hesbah* for around three days.<sup>4291</sup> While in detention, the victim had a fit and hit a glass window and injured herself.<sup>4292</sup> Notwithstanding the fact that members of Ansar Dine/AQIM temporarily released the victim from detention to go to the hospital after her fit,<sup>4293</sup> the Chamber considers that the abovementioned acts, which were inhumane, taken as a whole caused great suffering to the victim. In support of the Chamber's conclusion are the further facts that that the victim remained in a distressed state following the events<sup>4294</sup> and was of a young age at the time,<sup>4295</sup> which the Chamber considers made her more vulnerable and more susceptible to suffering.<sup>4296</sup> The Majority, Judge Akane dissenting, additionally takes into account the additional severe suffering arising from the fact that during her detention, five members of the *Hesbah* took turns raping the victim, putting a gun to her head and threatening to kill her unless she stayed quiet.<sup>4297</sup>

1347. In relation to P-0636, the Chamber found that the victim was arrested in the street by members of Ansar Dine/AQIM because she was not wearing a veil.<sup>4298</sup> Members of Ansar Dine/AQIM detained her at the headquarters of the *Hesbah*<sup>4299</sup> for between one and three days.<sup>4300</sup> While detained, the victim was held in the ATM room, which smelled of urine and had just a mat on the floor.<sup>4301</sup> Those members of Ansar Dine/AQIM detaining her gave her nothing to eat and refused to give her the food her family had brought for her.<sup>4302</sup> On the first night of her detention, three armed members of the *Hesbah* raped P-0636 one after the other, at gunpoint.<sup>4303</sup> The Chamber considers that these acts, which were inhumane, taken as a whole caused great suffering to P-0636. This is additionally the case in

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<sup>4291</sup> See paragraphs 858, 861 above

<sup>4292</sup> See paragraph 859 above.

<sup>4293</sup> See paragraph 859 above.

<sup>4294</sup> See paragraph 861 above.

<sup>4295</sup> See paragraph 858 above.

<sup>4296</sup> *Contra* [Defence Final Brief](#), para. 491.

<sup>4297</sup> See paragraph 860 above. For the legal qualification of these facts as rape, *see* paragraph 1473 below.

**Judge Akane** does not take into account the rape of Azahara Abdou in reaching the conclusion that the acts mentioned caused great suffering to Azahara Abdou but agrees nevertheless that the other acts mentioned, excluding the rape, caused great suffering to Azahara Abdou.

<sup>4298</sup> See paragraph 863 above.

<sup>4299</sup> See paragraph 863 above.

<sup>4300</sup> See paragraph 867 above.

<sup>4301</sup> See paragraph 864 above.

<sup>4302</sup> See paragraph 864 above.

<sup>4303</sup> See paragraph 865 above. For the legal qualification of these facts as rape, *see* paragraph 1472 below.

light of the fact that the experience left P-0636 feeling ashamed and as if her life was over, and socially ostracised by her family members,<sup>4304</sup> and the fact that P-0636 was of a very young age at the time,<sup>4305</sup> which the Chamber considers made her more vulnerable and more susceptible to suffering.<sup>4306</sup>

1348. In relation to P-0570, the Chamber found that Mohammed Moussa and three other armed members of the *Hesbah* arrested the victim for not being properly covered.<sup>4307</sup> Mohammed Moussa and the other men pursued P-0570 into her home, fought with her and one of the men hit P-0570 with his gun.<sup>4308</sup> The men threw P-0570 inside their car and drove away while her family ran after them.<sup>4309</sup> Mohammed Moussa and other men detained P-0570 at headquarters of the *Hesbah*<sup>4310</sup> in a dark room with a mattress on the floor.<sup>4311</sup> Shortly thereafter, Mohammed Moussa and two other members of the *Hesbah* who had arrested P-0570 took turns entering the room and raping her.<sup>4312</sup> In the course of this, Mohammed Moussa and the second man threatened to kill P-0570,<sup>4313</sup> the second man threatened her with further sexual violence<sup>4314</sup> and the third man hit her.<sup>4315</sup> The Chamber considers that these acts, which were inhumane, taken as a whole, caused great suffering to P-0570.<sup>4316</sup> This is additionally the case in light of the fact that after the rapes, P-0570 had blood coming from her vagina and was in so much pain that she lost consciousness.<sup>4317</sup> She woke up the next day in hospital in Timbuktu<sup>4318</sup> where she then spent a month and a half.<sup>4319</sup> Even after leaving hospital she felt that something was wrong and did not want to see people, she was worried, stopped going out, and stopped dressing herself.<sup>4320</sup> In addition,

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<sup>4304</sup> See paragraphs 867-868 above.

<sup>4305</sup> See paragraph 863 above.

<sup>4306</sup> *Contra* [Defence Final Brief](#), para. 491.

<sup>4307</sup> See paragraphs 874-876 above.

<sup>4308</sup> See paragraph 875 above.

<sup>4309</sup> See paragraph 876 above.

<sup>4310</sup> See paragraph 877 above.

<sup>4311</sup> See paragraph 878 above.

<sup>4312</sup> See paragraphs 878-880 above. For the legal qualification of these facts as rape, see paragraph 1472 below.

<sup>4313</sup> See paragraphs 878-879 above.

<sup>4314</sup> See paragraph 879 above.

<sup>4315</sup> See paragraph 880 above.

<sup>4316</sup> *Contra* [Defence Final Brief](#), para. 491.

<sup>4317</sup> See paragraph 880 above.

<sup>4318</sup> See paragraph 881 above.

<sup>4319</sup> See paragraph 885 above.

<sup>4320</sup> See paragraph 886 above.

three months after the incident P-0570 discovered that she was pregnant, believing that this was a result of her rape, and had an abortion.<sup>4321</sup> Her husband also left her because of what happened to her.<sup>4322</sup> P-0570 suffered ‘in her body and her heart’ because of what happened.<sup>4323</sup>

1349. In relation to Fadimata Mint Lilli, the Chamber found that members of Ansar Dine/AQIM flogged the victim once on the back<sup>4324</sup> and detained her at the headquarters of the *Hesbah* in a small windowless room for one day along with three other women; that she was not given anything to eat or drink and the women had to relieve themselves on a mat.<sup>4325</sup> Whilst in detention, the victim was held at gunpoint, blindfolded, taken to a separate room and raped by a member of the *Hesbah*.<sup>4326</sup> The Chamber considers that these acts, which were inhumane, taken as a whole caused great suffering to Fadimata Mint Lilli.<sup>4327</sup> This is additionally the case in light of threats made against the victim by the man who raped her, namely that she would be killed and her children orphaned.<sup>4328</sup> The Chamber also takes into account the longstanding effects of the experience which included stigmatisation of the victim within the community as ‘someone who is belittled’ and that the victim continues to have headaches.<sup>4329</sup>

1350. Considering the above, the Chamber finds that the first element of the crime of other inhumane acts is satisfied in relation to Foma, Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli, but not in relation to Matalla Arbi (P-1708). Accordingly, the remaining elements of this crime need not be addressed further in relation to Matalla Arbi.

### **c) Character of the act**

1351. The Chamber turns to the second element of other inhumane acts as a crime against humanity, namely, that such act was of a character similar to any other

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<sup>4321</sup> See paragraph 887 above.

<sup>4322</sup> See paragraph 887 above.

<sup>4323</sup> See paragraph 888 above.

<sup>4324</sup> See paragraph 891 above.

<sup>4325</sup> See paragraphs 894, 898 above.

<sup>4326</sup> See paragraphs 895-896 above. For the legal qualification of these facts as rape, see paragraph 1472 below.

<sup>4327</sup> *Contra* [Defence Final Brief](#), para. 491.

<sup>4328</sup> See paragraph 896 above.

<sup>4329</sup> See paragraphs 900-901 above.

act referred to in Article 7, paragraph 1, of the Statute. The Chamber recalls that this element may be satisfied where the relevant act is, in its entirety, not identical but is nonetheless ‘similar’ in character as to its nature and gravity, to the crimes enumerated in Article 7(1) of the Statute<sup>4330</sup> (e.g. torture, rape or imprisonment).

1352. In relation to Foma, the Chamber notes that in comparison to the other public floggings which the Chamber found above to constitute torture under Article 7 of the Statute, it found that the number of lashes was ten, as opposed to between 39 and 100 and that the lashes were administered on the spot, in a public space in front of others, rather than to a crowd who had been specifically gathered for the purpose of witnessing a flogging. Thus, while Aboubacar Al Chinguetti’s flogging of Foma was violent, public and induced great suffering on the victim, its character was of a lesser severity and not identical to the other floggings which have been characterised by the Chamber as torture under Article 7 of the Statute. However, the Chamber nevertheless considers Foma’s flogging to be similar in nature and gravity to those other floggings, noting in particular the heightened vulnerability of the victim.

1353. In relation to Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli, recalling the facts related to these victims recited at paragraphs 1345-1349 above, the Chamber is satisfied that the victims’ treatment during their arrest and detention is similar in nature and gravity to acts under Article 7(1) of the Statute (*e.g.* rape or imprisonment), but not identical.<sup>4331</sup>

1354. The Chamber accordingly finds that the second element of the crime of other inhumane acts is satisfied in relation to each victim.

#### **d) Mental elements**

1355. Turning to the mental elements of other inhumane acts as a crime against humanity, in relation to Foma, the Chamber recalls that punishments for

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<sup>4330</sup> See paragraph 1185 above.

<sup>4331</sup> **The Majority** takes into account Azahara Abdou’s rape as part of its consideration of her treatment in detention.

**Judge Akane** does not take Azahara Abdou’s rape into account in this consideration, but agrees nevertheless that the victim’s treatment during her arrest and detention, excluding the rape, is similar in nature and gravity to acts under Article 7(1) of the Statute, but not identical.



violations for Ansar Dine/AQIM's rules were carried out violently and publicly, in order to punish the individual offenders, to deter the population of Timbuktu from violating the new rules and prohibitions, and also to broadcast Ansar Dine/AQIM's conception of an ideal society.<sup>4332</sup> The Chamber also recalls that the direct perpetrator in this instance, Aboubacar Al Chinguetti, was a member of Ansar Dine/AQIM which imposed rules and prohibitions, including on smoking,<sup>4333</sup> approached Foma on the street because he was smoking and proceeded to publicly flog him.<sup>4334</sup> In these circumstances, the Chamber finds that Aboubacar Al Chinguetti meant to engage in the conduct that inflicted great suffering upon Foma by means of the flogging and meant to cause him great suffering, or was aware that great suffering would occur in the ordinary course of events.

1356. In relation to Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli, the Chamber recalls that Ansar Dine/AQIM enforced rules, including those on women's clothing, and imprisoned those who were considered to be in breach of the rule as a punitive act.<sup>4335</sup> More specifically, Azahara Abdou<sup>4336</sup> and P-0636<sup>4337</sup> were arrested and imprisoned for not wearing a veil. P-0570 was arrested and imprisoned for not covering up properly<sup>4338</sup> and Fadimata Mint Lilli was beaten and imprisoned for not covering up properly.<sup>4339</sup>

1357. In relation to Azahara Abdou, while members of Ansar Dine/AQIM temporarily released her from detention to attend hospital after she injured herself,<sup>4340</sup> which the Chamber considers to mitigate, to some extent, their intention to cause her great suffering through her detention, the victim, a vulnerable young woman, was nevertheless kept in detention for three days.<sup>4341</sup> The Majority, Judge Akane dissenting, additionally takes into account the fact that the members of Ansar Dine/AQIM who raped her held a gun to her head and threatened to kill her unless

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<sup>4332</sup> See paragraph 1327 above.

<sup>4333</sup> See section III.D.1.d) above.

<sup>4334</sup> See paragraph 854 above.

<sup>4335</sup> See paragraphs 690-701 above.

<sup>4336</sup> See paragraph 858 above.

<sup>4337</sup> See paragraph 863 above.

<sup>4338</sup> See paragraphs 874-875 above.

<sup>4339</sup> See paragraph 891 above.

<sup>4340</sup> See paragraph 859 above.

<sup>4341</sup> See paragraph 861 above.

she stayed quiet.<sup>4342</sup> P-0636 was kept in detention for one to three days, those detaining her gave her nothing to eat and refused to give her food brought by her family,<sup>4343</sup> and the three members of Ansar Dine/AQIM who raped P-0636 held her at gunpoint.<sup>4344</sup> Two of the members of the *Hesbah* who raped P-0570 also threatened to kill her,<sup>4345</sup> one of them threatened her with further sexual violence<sup>4346</sup> and one of them hit her.<sup>4347</sup> The member of Ansar Dine/AQIM who raped Fadimata Mint Lilli threatened to kill her and make her children orphans.<sup>4348</sup>

1358. Considering the above, the Chamber finds that the members of Ansar Dine/AQIM who engaged in the relevant conduct meant to engage in the conduct that respectively caused Azahara Abdou,<sup>4349</sup> P-0636, P-0570 and Fadimata Mint Lilli great suffering and meant to cause the respective victims great suffering, or were aware that great suffering would occur in the ordinary course of events. Accordingly, the general mental elements under Article 30 of the Statute in respect of the crime of other inhumane acts are satisfied in relation to Foma, Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli.

1359. For the same reasons, the Chamber also finds that the members of Ansar Dine/AQIM who engaged in the relevant conduct were aware of the factual circumstances that established the character of the act in each respective case. Accordingly, the third element of the other inhumane acts as a crime against humanity is also satisfied in relation to Foma, Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli.

### e) Conclusion

1360. The Chamber accordingly finds the elements of other inhumane acts as a crime

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<sup>4342</sup> See paragraph 860 above.

<sup>4343</sup> See paragraph 864, 867 above.

<sup>4344</sup> See paragraph 865 above. For the legal qualification of these facts as rape, see paragraph 1472 below.

<sup>4345</sup> See paragraphs 878-879 above. For the legal qualification of these facts as rape, see paragraph 1472 below.

<sup>4346</sup> See paragraph 879 above.

<sup>4347</sup> See paragraph 880 above.

<sup>4348</sup> See paragraph 896 above. For the legal qualification of the relevant facts as rape, see paragraph 1472 below.

<sup>4349</sup> **Judge Akane** does not take into account the rape of Azahara Abdou in reaching this conclusion but agrees nevertheless, taking into account the other factors mentioned, that the members of Ansar Dine/AQIM meant to engage in conduct that caused Azahara Abdou great suffering and meant to cause her great suffering, or were aware that great suffering would occur in the ordinary course of events.

against humanity, pursuant to Article 7(1)(k) of the Statute (Count 2), fulfilled in relation to the following victims:

- a. Foma;
- b. Azahara Abdou (P-1134);
- c. P-0636;
- d. P-0570; and
- e. Fadimata Mint Lilli (P-0547).

### **3. Cruel treatment (Article 8(2)(c)(i) of the Statute (Count 4))**

1361. Under Count 4, Mr Al Hassan is charged with cruel treatment as a war crime, pursuant to Article 8(2)(c)(i) of the Statute, in relation to the following victims:

- a. the two men;
- b. P-0565 and P-0557;
- c. Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad;
- d. Dédéou Maiga;
- e. Sallaka Bent Al-Khair (P-0554);
- f. Madou Traoré;
- g. Foma;
- h. Azahara Abdou (P-1134);
- i. P-0636; and
- j. Matalla Arbi (P-1708).

1362. The Chamber also recalls that it previously provided notice pursuant to Regulation 55(2) of the Regulations that the legal characterisation of the facts and circumstances relating to P-0570<sup>4350</sup> and Fadimata Mint Lilli (P-0547)<sup>4351</sup> may be considered as the war crime of cruel treatment under Count 4. Pursuant to

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<sup>4350</sup> [Second Regulation 55 Decision](#), para. 26.

<sup>4351</sup> [Third Regulation 55 Decision](#), para. 15.

Regulation 55(1) of the Regulations and in light of the totality of the evidence submitted, the Chamber hereby modifies the legal characterisation of the facts and circumstances relating to P-0570 and Fadimata Mint Lilli, in accordance with its previous notices.

1363. Before turning to the specific incidents, the Chamber will first address an issue relevant to all incidents charged under both Counts 3 and 4.

**a) Incidents charged under Counts 3 and 4**

1364. The Chamber notes that in relation to: (i) the two men; (ii) P-0565 and P-0557; (iii) Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad; (iv) Dédéou Maiga; (v) Sallaka Bent Al-Khair; and (vi) Madou Traoré, the facts underlying the charge of torture as a war crime under Count 3 are identical to those underlying the charge of cruel treatment as a war crime under Count 4. In addition, as already noted by the Chamber, the legal elements of the war crime of cruel treatment are entirely encompassed within the legal elements of the war crime of torture, with the latter containing an additional mental element.<sup>4352</sup> In these circumstances, and as explained above,<sup>4353</sup> while the same facts under consideration indeed fulfil the legal elements of both crimes, concurrence of crimes (and consequent cumulative conviction) are not permissible. For this reason, the charge of cruel treatment under Count 4 will not be further considered in relation to these victims.

**b) Severe pain or suffering**

1365. In relation to the remainder of the incidents, the Chamber turns to the first element of cruel treatment as a war crime, namely, that the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

1366. In relation to Foma, the Chamber recalls its restatement of the relevant facts at paragraph 1343 above. Notwithstanding the lesser number of lashes in this case as compared to other incidents of public flogging assessed above by the Chamber,

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<sup>4352</sup> See paragraphs 1147-1150 above.

<sup>4353</sup> See paragraph 1251 above.

the Chamber considers that the circumstances of Aboubacar Al Chinguetti's violent and public flogging of Foma, taken as a whole, caused the victim severe pain and suffering. The Chamber highlights in particular the fact that the victim was an elderly man of frail stature, which the Chamber considers increased his vulnerability, the fact that the lashes were administered on the spot, in a public space in front of others, and the fact that the victim was left crying on the street and was unwell and uneasy following the incident.

1367. In relation to Matalla Arbi (P-1708), the Chamber recalls its restatement of the relevant facts at paragraph 1344 above. The Chamber found that the victim was imprisoned in the ATM room of the BMS by members of Ansar Dine/AQIM for being mentally unstable so that he would calm down. However, given that the duration of the detention or the exact conditions of the victim's imprisonment are unknown, the Chamber finds that there is insufficient evidence for it to assess the severity of the victim's suffering for the purpose of the first element of cruel treatment as a war crime.

1368. In relation to the other victims under consideration, as noted above and as elaborated below, they were all female victims, arrested and imprisoned by members of Ansar Dine/AQIM for a violation of the groups' dress code rules.

1369. Specifically in relation to Azahara Abdou, the Chamber recalls its restatement of the relevant facts at paragraph 1346 above. The Chamber considers in particular that, notwithstanding the fact that members of Ansar Dine/AQIM temporarily released Azahara Abdou from detention to go to the hospital after she had a fit and injured herself on the glass window, her violent arrest by Ansar Dine/AQIM, her detention at the BMS over a period of three days, taken as a whole, caused Azahara Abdou severe pain and suffering. This conclusion is further supported by the fact that Azahara Abdou remained in a distressed state following the events and was also of a young age at the time of the crime, which the Chamber considers made her more vulnerable and more susceptible to suffering. In reaching the conclusion that the acts caused severe pain and suffering, the Majority, Judge Akane dissenting, additionally takes into account the fact of Azahara Abdou's

violent rape<sup>4354</sup> at gunpoint by five members of the *Hesbah*.

1370. In relation to P-0636, the Chamber recalls its restatement of the relevant facts at paragraph 1347 above. The Chamber considers in particular that P-0636's arrest by Ansar Dine/AQIM, her detention at the BMS, the then headquarters of the *Hesbah*, over a period of between one to three days in a one room cell smelling of urine, where she was deprived of food, and her violent rape at gunpoint by three members of the *Hesbah* on the first night of her detention,<sup>4355</sup> taken as a whole, caused P-0636 severe pain and suffering. This is additionally the case in light of the fact that this experience left P-0636 feeling ashamed and as if her life was over, and socially ostracised by her family members. Further, the Chamber considers that P-0636's very young age at the time made her more vulnerable and more susceptible to suffering.

1371. In relation to P-0570, the Chamber recalls its restatement of the relevant facts at paragraph 1348 above. The Chamber considers in particular that, although members of the *Hesbah* only imprisoned P-0570 over the course of one day, the violent circumstances of her arrest, together with her rape by three members of the *Hesbah* whilst threats were made against her and while she was subjected to physical violence,<sup>4356</sup> taken as a whole, caused P-0570 severe pain and suffering. This is additionally the case in light of the fact that P-0570 suffered physical, psychological and social consequences as a result of her experience, including having an abortion.

1372. In relation to Fadimata Mint Lilli, the Chamber recalls its restatement of the relevant facts at paragraph 1349 above. The Chamber considers in particular that, although the victim was only imprisoned for one day, her beating, arrest, detention and rape whilst threats were made against her life and her children,<sup>4357</sup> taken as a whole, caused Fadimata Mint Lilli severe pain and suffering. This is additionally the case in light of the fact that the victim has been ostracised and

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<sup>4354</sup> **Judge Akane** does not take into account the rape of Azahara Abdou under Counts 11 and 12 in reaching the conclusion that the acts mentioned caused Azahara Abdou severe pain and suffering but agrees nevertheless that the other acts mentioned, excluding the rape, caused her severe pain and suffering. For **the Majority's** legal qualification of the relevant facts as rape, *see* paragraph 1473 below.

<sup>4355</sup> For the legal qualification of the relevant facts as rape, *see* paragraph 1472 below.

<sup>4356</sup> For the legal qualification of the relevant facts as rape, *see* paragraph 1472 below.

<sup>4357</sup> For the legal qualification of the relevant facts as rape, *see* paragraph 1472 below.

seen as ‘someone who is belittled’ due to her detention and continues to have headaches.

1373. Considering the above, the Chamber finds that the first element of the crime of cruel treatment is satisfied in relation to Foma, Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli, but not in relation to Matalla Arbi (P-1708). Accordingly, the remaining elements of this crime need not be addressed further in relation to Matalla Arbi.

**c) Status of the victims**

1374. Regarding the second element of cruel treatment as a war crime, *i.e.* that the person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities, the Chamber finds that Foma,<sup>4358</sup> Azahara Abdou,<sup>4359</sup> P-0636,<sup>4360</sup> P-0570<sup>4361</sup> and Fadimata Mint Lilli<sup>4362</sup> were all civilian inhabitants of Timbuktu taking no active part in the hostilities. The Chamber accordingly finds that the second element of cruel treatment as a war crime is satisfied in relation to each victim.

**d) Mental elements**

1375. Turning to the mental elements of cruel treatment as a war crime, in relation to Foma, the Chamber refers to its findings at paragraph 1355 above. Recalling in particular the violent and public nature of Aboubacar Al Chinguetti’s flogging of Foma, and the victim’s increased vulnerability being an elderly of frail stature, the Chamber finds that Aboubacar Al Chinguetti meant to engage in the conduct that caused severe physical or mental pain or suffering on Foma and meant to inflict severe physical or mental pain or suffering upon Foma, or was aware that severe physical or mental pain or suffering would occur in the ordinary course of events.

1376. In relation to Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli, the Chamber refers to its findings at paragraph 1356-1357 above. The Chamber

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<sup>4358</sup> See paragraph 854 above.

<sup>4359</sup> See paragraph 858 above.

<sup>4360</sup> See paragraph 863 above.

<sup>4361</sup> See paragraph 874 above.

<sup>4362</sup> See paragraph 890 above.

recalls in particular that Ansar Dine/AQIM enforced rules, including those on women's clothing, and imprisoned those who were considered to be in breach of said rule as a punitive act. In relation to Azahara Abdou, members of Ansar Dine/AQIM temporarily released Azahara Abdou from detention to go to the hospital after she injured herself on a glass window at the BMS, which the Chamber considers to mitigate, to some extent, the intention of members of Ansar Dine/AQIM to cause Azahara Abdou severe pain or suffering through her detention. Nevertheless, the Chamber recalls that Azahara Abdou, a vulnerable young woman, was kept in detention for three days. The Majority additionally takes into account the fact that the members of the *Hesbah* who raped Azahara Abdou held a gun to her head and threatened to kill her unless she stayed quiet. In relation to P-0636, the Chamber found that P-0636 was arrested and detained for not wearing a veil. P-0636 was kept in detention for one to three days, those detaining her gave her nothing to eat and refused to give her food brought by her family, and the three members of the *Hesbah* who raped P-0636 held her at gunpoint. In relation to P-0570, the Chamber found that P-0570 was imprisoned for not covering up properly. The Chamber also recalls that two of the members of the *Hesbah* who raped P-0570 also threatened to kill her, one of them also threatened her with further sexual violence, and one of them hit her. In relation to Fadimata Mint Lilli, the Chamber found that the victim was imprisoned for not covering up properly. The Chamber also recalls that the member of the *Hesbah* who raped the victim threatened to kill her and make her children orphans.

1377. Considering the above, the Chamber finds that the members of Ansar Dine/AQIM who engaged in the relevant conduct meant to engage in the conduct that respectively caused severe physical or mental pain or suffering to Azahara Abdou,<sup>4363</sup> P-0636, P-0570 and Fadimata Mint Lilli and meant to inflict severe physical or mental pain or suffering upon the respective victims, or were aware that severe physical or mental pain or suffering would occur in the ordinary course of events. Accordingly, the general mental elements under Article 30 of

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<sup>4363</sup> **Judge Akane** does not take into account the rape of Azahara Abdou in reaching this conclusion but agrees nevertheless, taking into account the other factors mentioned, that the members of Ansar Dine/AQIM meant to engage in conduct that caused severe physical or mental pain or suffering on Azahara Abdou and meant to inflict severe physical or mental pain or suffering upon Azahara Abdou, or were aware that severe physical or mental pain or suffering would occur in the ordinary course of events.



the Statute in respect of the war crime of cruel treatment are satisfied in relation to Foma, Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli.

1378. Finally, the Chamber turns to the requirement that the perpetrator be aware of the victims being either *hors de combat*, or civilians, medical personnel or religious personnel taking no active part in the hostilities. The Chamber considers that members of Ansar Dine/AQIM who engaged in the relevant conduct were aware of the factual circumstances establishing Foma, Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli's respective status as civilians and their non participation in the hostilities, noting: in relation to Foma, the victim's advanced age and the circumstances of his flogging; and in relation to Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli, the circumstances of their arrest and detention, in particular that members of Ansar Dine/AQIM imprisoned them for breaching the group's rule on women's clothing and further that Azahara Abdou,<sup>4364</sup> P-0570<sup>4365</sup> and Fadimata Mint Lilli,<sup>4366</sup> were arrested from their homes. The Chamber accordingly finds the third element of cruel treatment as a war crime to be satisfied in relation to each victim.

#### **e) Conclusion**

1379. The Chamber accordingly finds the elements of cruel treatment as a war crime, pursuant to Article 8(2)(c)(i) of the Statute (Count 4), fulfilled in relation to the following victims:

- a. Foma;
- b. Azahara Abdou (P-1134);
- c. P-0636;
- d. P-0570; and
- e. Fadimata Mint Lilli (P-0547).

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<sup>4364</sup> See paragraph 858 above.

<sup>4365</sup> See paragraphs 874-875 above.

<sup>4366</sup> See paragraphs 890-891 above.

#### 4. Outrages upon personal dignity (Article 8(2)(c)(ii) of the Statute (Count 5))

1380. Under Count 5, Mr Al Hassan is charged with outrages upon personal dignity as a war crime, pursuant to Article 8(2)(c)(ii) of the Statute, in relation to the following victims:

- a. the two men;
- b. P-0565 and P-0557;
- c. Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad;
- d. Dédéou Maiga;
- e. Sallaka Bent Al-Khair (P-0554);
- f. Madou Traoré;
- g. Foma;
- h. Azahara Abdou (P-1134);
- i. P-0636;
- j. P-0570; and
- k. Fadimata Mint Lilli (P-0547).

1381. The Chamber also recalls that it previously provided notice pursuant to Regulation 55(2) of the Regulations that the legal characterisation of the facts and circumstances relating to P-0570<sup>4367</sup> and Fadimata Mint Lilli (P-0547)<sup>4368</sup> may be subject to change to include acts of sexual violence committed against P-0570 and Fadimata Mint Lilli under Count 5. Pursuant to Regulation 55(1) of the Regulations and in light of the totality of the evidence submitted, the Chamber hereby modifies the legal characterisation of the facts and circumstances relating to P-0570 and Fadimata Mint Lilli, in accordance with its previous notices.

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<sup>4367</sup> [Second Regulation 55 Decision](#), para. 19.

<sup>4368</sup> [Second Regulation 55 Decision](#), para. 19.

**a) Humiliation, degradation or violation of dignity**

1382. The Chamber turns to the first material element of outrages upon personal dignity as a war crime, namely, that the perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.

1383. In relation to the two men, P-0565, P-0557, Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar Halimah Bint Muhammad, Dédéou Maiga, Sallaka Bent Al-Khair, Madou Traoré and Foma, as already determined and as elaborated below, they were subjected to a violent and public punishment by members of Ansar Dine/AQIM for a violation of the groups’ rules. Some were also arrested, imprisoned and sentenced by the Islamic Court beforehand.

1384. Specifically in relation to the two men, the Chamber recalls its restatement of the relevant facts at paragraph 1310 above. The Chamber considers in particular that the floggings of the two men were humiliating and degrading in light of their very public nature and the level of violence employed. The Chamber finds, in these circumstances, that through the floggings members of Ansar Dine/AQIM humiliated, degraded and otherwise violated the dignity of the two men.

1385. In relation to P-0565 and P-0557, the Chamber recalls its restatement of the relevant facts at paragraphs 1311-1314 above. The Chamber notes in particular that P-0565 and P-0557 were detained by the Islamic Police at the Islamic Police headquarters during which time they were held in small rooms in which they had to relieve themselves. Although, as noted above, P-0565’s detention was temporary in the sense that she was sent back home in the evening, while detained during the day at the Islamic Police headquarters, the room in which she was held had no ventilation and Islamic Police members detaining her did not give her any food (although water was available). The Chamber finds that these conditions of detention imposed by the Islamic Police degraded P-0565 and P-0557. In relation to the floggings of the two victims, the Chamber considers in particular that the floggings were humiliating and degrading in light of their very public nature and the significant level of violence employed, and further recalling that P-0557 was flogged with a tool normally used on animals. The Chamber finds, in these circumstances, that through the floggings members of Ansar Dine/AQIM

humiliated, degraded and otherwise violated the dignity of P-0565 and P-0557. Further, recalling that Ansar Dine/AQIM imposed marriage on the victims on the same day as the violent spectacle of their floggings, through a ceremony not in keeping with the relevant customs and which had to be re-done, the Chamber considers that by this act, the members of Ansar Dine/AQIM also violated the dignity of P-0565 and P-0557.

1386. In relation to Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad, the Chamber recalls its restatement of the relevant facts at paragraph 1316 above. The Chamber considers in particular that Ansar Dine/AQIM’s floggings of the six victims were humiliating and degrading in light of their very public nature and the significant level of violence employed. In these circumstances, the Chamber finds that members of Ansar Dine/AQIM humiliated, degraded and otherwise violated the dignity of these six individuals.

1387. In relation to Dédéou Maiga, the Chamber recalls its restatement of the relevant facts at paragraphs 1317-1318 above. The Chamber considers in particular that the amputation of Dédéou Maiga by members of Ansar Dine/AQIM was particularly humiliating and degrading in light of its public nature. In particular, the very public nature of the amputation, following public announcements and several weeks of his detention, intensified the associated humiliation and disgrace inflicted upon Dédéou Maiga by members of Ansar Dine/AQIM and intensified the subsequent sense of ostracisation felt by the victim. The public shame and degradation associated with the amputation is also reflected in the testimony of several witnesses who illustrated the sense of shock felt by the civilian population and the effect on their morale.<sup>4369</sup> In these circumstances, the Chamber finds that members of Ansar Dine/AQIM humiliated, degraded and otherwise violated the dignity of Dédéou Maiga.

1388. In relation to Sallaka Bent Al-Khair and Madou Traoré, the Chamber recalls its restatement of the relevant facts at paragraphs 1319-1322 above. In relation to Sallaka Bent Al-Khair’s arrest, the Chamber notes in particular that members of

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<sup>4369</sup> See paragraph 828 above.

Ansar Dine/AQIM violently arrested the victim, including to push and beat her such that her clothes and underclothes came open. In relation to her detention, members of Ansar Dine/AQIM detained the victim at the then headquarters of the *Hesbah* for a couple of days in poor conditions: she was held in the ATM room which was an extremely small, barred cell which smelled dreadful and in which she found it difficult to breathe; there was no toilet and the victim had to relieve herself on the floor; and the victim was not given anything to eat although she was given some milk, which she refused to take. She felt ashamed and scared for her safety while in detention. The Chamber finds that these circumstances of Sallaka Bent Al-Khair's arrest and detention humiliated and degraded the victim. In relation to the floggings of Sallaka Bent Al-Khair and Madou Traoré, the Chamber considers in particular that the floggings were humiliating and degrading in light of their very public nature and the significant level of violence employed, and further recalling, in relation to Sallaka Bent Al-Khair that her breasts became uncovered at one stage during her flogging and were exposed to the public. The Chamber further notes in particular that Sallaka Bent Al-Khair felt ashamed after the flogging, and endured social ostracism following the event. In these circumstances, the Chamber finds that members of Ansar Dine/AQIM humiliated, degraded and otherwise violated the dignity of Sallaka Bent Al-Khair and Madou Traoré.

1389. In relation to Foma, the Chamber recalls its restatement of the relevant facts at paragraph 1343 above. The Chamber considers in particular that Aboubacar Al Chinguetti's flogging of Foma was humiliating and degrading in light of the fact that it was carried out in a public street, in front of others. Further, the victim was especially vulnerable, being an elderly man of thin and short stature. In these circumstances, the Chamber finds that Aboubacar Al Chinguetti humiliated, degraded and otherwise violated the dignity of Foma.

1390. In relation to the rest of the victims under consideration, as already noted and as elaborated further below, they were all female victims, arrested and imprisoned by members of Ansar Dine/AQIM for a violation of the groups' dress code rules.

1391. In relation to Azahara Abdou, the Chamber recalls its restatement of the relevant facts at paragraph 1346 above. The Chamber considers in particular that the

circumstances of the victim's violent arrest by Ansar Dine/AQIM and detention were particularly humiliating and degrading in light of: (i) the fact that the victim was violently arrested from her home in front of family members; (ii) the physical violence used against the victim during her arrest, recalling that two members of Ansar Dine/AQIM pursued Azahara Abdou into her home, grabbed her by the hand and hit her when she resisted; (iii) the length of her detention of three days (notwithstanding her temporary release to attend hospital after she had a fit and injured herself); (iv) the fact that the place in which Azahara Abdou was detained had a glass window such that persons could see her while she was detained and could see what was happening in that place;<sup>4370</sup> (v) the impact of the experience on the victim, recalling that she remained in a distressed state following the events, and (vi) the fact that the victim was of a young age at the time, which the Chamber considers made her more vulnerable and more susceptible to suffering. In reaching this conclusion, the Majority, Judge Akane dissenting, additionally takes into account the threats made against Azahara Abdou during her rape, recalling that the men held a gun to her head and threatened to kill her unless she stayed quiet.<sup>4371</sup> In these circumstances, the Chamber finds that members of Ansar Dine/AQIM humiliated, degraded and otherwise violated the dignity of Azahara Abdou.

1392. In relation to P-0636, the Chamber recalls its restatement of the relevant facts at paragraph 1347 above. The Chamber considers in particular that the circumstances of P-0636's arrest, detention and subsequent rape<sup>4372</sup> by three members of the *Hesbah* were particularly humiliating and degrading in light of: (i) the fact that P-0636 was detained in the ATM room which smelled of urine and had just a mat on the floor, and was given nothing to eat; (ii) the fact that the place in which P-0636 was detained had a glass door such that persons outside could see her while she was detained and could see what was happening in that

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<sup>4370</sup> See paragraph 859 above.

<sup>4371</sup> **Judge Akane** does not take into account the rape of Azahara Abdou in reaching the conclusion that the circumstances of Azahara Abdou's violent arrest by Ansar Dine/AQIM and detention were particularly humiliating and degrading but agrees nevertheless that the other circumstances mentioned, excluding the rape, were particularly humiliating and degrading. For **the Majority's** legal qualification of the relevant facts as rape, see paragraph 1473 below.

<sup>4372</sup> For the legal qualification of the relevant facts as rape, see paragraph 1472 below.

place;<sup>4373</sup> (iii) the fact that P-0636 was held at gunpoint during the rape; (iv) the impact of the experience on P-0636, recalling that the events left P-0636 feeling ashamed and as if her life was over, and socially ostracised by her family members and (v) the fact that P-0636 was of a very young age at the time, which the Chamber considers made her more vulnerable and more susceptible to suffering. In these circumstances, the Chamber finds that members of Ansar Dine/AQIM humiliated, degraded and otherwise violated the dignity of P-0636.

1393. In relation to P-0570, the Chamber recalls its restatement of the relevant facts at paragraph 1348 above. The Chamber considers in particular that the circumstances of P-0570's violent arrest and subsequent rape<sup>4374</sup> by three members of the *Hesbah* were particularly humiliating and degrading in light of: (i) the fact that P-0570 was arrested from her home and was driven away by members of the *Hesbah* while her family ran after the car, recalling that P-0570 put her head down and her veil on so she would not be recognised by people outside the car;<sup>4375</sup> (ii) the physical violence the three members of the *Hesbah* used against P-0570 during her arrest, recalling that they took her from her house holding her by her collar;<sup>4376</sup> (iii) the threats made against P-0570 during the rape, recalling that Mohammed Moussa threatened to kill her with his gun and throw her in the hole if she did not undress,<sup>4377</sup> and that the second man similarly told her to undress, threatened her with further sexual violence and said that if she refused, they would kill her on the spot;<sup>4378</sup> (iv) the physical violence used during the rape, recalling that the third man hit her and that after the rape, P-0570 had blood coming from her vagina and was in so much pain that she lost consciousness; as well as (v) the physical, psychological and social consequences of her experience, including her husband leaving her, and having an abortion. In these circumstances, the Chamber finds that members of Ansar Dine/AQIM humiliated, degraded and otherwise violated the dignity of P-0570.

1394. In relation to Fadimata Mint Lilli, the Chamber recalls its restatement of the

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<sup>4373</sup> See paragraph 864 above.

<sup>4374</sup> For the legal qualification of the relevant facts as rape, see paragraph 1472 below.

<sup>4375</sup> See paragraphs 874-876 above.

<sup>4376</sup> See paragraphs 875-876 above.

<sup>4377</sup> See paragraph 878 above.

<sup>4378</sup> See paragraph 879 above.

relevant facts at paragraph 1349 above. The Chamber considers in particular that the members of Ansar Dine/AQIM's detention of the victim in a deplorable condition and the rape<sup>4379</sup> committed whilst in detention was particularly humiliating and degrading in light of the threats made against the victim's life and her children as well as the ostracisation she faced as a result of her detention. In these circumstances, the Chamber finds that members of Ansar Dine/AQIM humiliated, degraded and otherwise violated the dignity of Fadimata Mint Lilli.

1395. Considering the above, in light of the acts perpetrated against these victims, the Chamber finds that the first element of outrages upon personal dignity as a war crime, *i.e.* that the perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons, is satisfied in relation to each victim.

**b) Severity of the humiliation, degradation or other violation**

1396. The Chamber turns to the second element of outrages upon personal dignity as a war crime, namely that the severity of the humiliation, degradation or other violation was of such degree as to be generally recognised as an outrage upon personal dignity.

1397. In relation to the two men, P-0565 and P-0557, Khudi Bint Ibrahim, 'Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin 'Umar and Halimah Bint Muhammad, Dédéou Maiga, Sallaka Bent Al-Khair, Madou Traoré and Foma, the Chamber takes into account the violent and public nature of the punishments they endured. In this regard, the Chamber recalls in particular that the degradation and humiliation associated with the floggings was experienced respectively by P-0565, P-0557<sup>4380</sup> and Sallaka Bent Al-Khair<sup>4381</sup> themselves and corroborated by others present at the events.<sup>4382</sup> The public shame and degradation associated with Dédéou Maiga's amputation is reflected in the testimony of several witnesses who illustrated the sense of shock felt by the civilian population and the effect on their morale.<sup>4383</sup> Sallaka Bent Al-Khair

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<sup>4379</sup> For the legal qualification of the relevant facts as rape, *see* paragraph 1472 below.

<sup>4380</sup> *See* paragraphs 786, 790, 798, 799 above.

<sup>4381</sup> *See* paragraph 852 above.

<sup>4382</sup> *See* paragraphs 790-791, 851 above.

<sup>4383</sup> *See* paragraph 828 above.



endured the added humiliation of having her breasts exposed during her flogging.<sup>4384</sup> Foma was especially vulnerable due to his advanced age and frail stature, and the fact that he was crying in the middle of the market right after the public flogging and was unwell and uneasy following the incident.

1398. The Chamber additionally takes into account in relation to P-0565 and P-0557 the degrading nature of the conditions of detention in which they were held at the Islamic Police headquarters, and the indignity the victims suffered of having a marriage imposed on them the same day as the violent exhibition of their floggings, which also made them the object of public speculation about the circumstances surrounding their arrests and their marriage. In relation to Dédéou Maiga, the Chamber also takes account of the subsequent effect of the act of amputation on Dédéou Maiga's private life, notably the ostracisation he suffered and difficulty arising from having only one hand and losing the use of his dominant hand. In relation to Sallaka Bent Al-Khair, the Chamber additionally takes into account the degrading nature of the circumstances of her arrest and the conditions of detention in which she was held by members of Ansar Dine/AQIM.

1399. In relation to Azahara Abdou, the Chamber takes into account the violent circumstances of the victim's arrest, the length of her detention of three days (notwithstanding her temporary release to attend hospital after she had a fit and injured herself) as well as the consequences of that experience for the victim as recited above, and her young age at the time of events. The Majority additionally takes into account the violent and degrading rape Azahara Abdou was subjected to by five members of the *Hesbah* whilst in detention. In relation to P-0636, the Chamber takes into account the circumstances of her arrest and detention, as well as the violent and degrading rape she was subjected to by three members of the *Hesbah* whilst in detention, the consequences of that experience for the victim as recited above, and her very young age at the time of events. In relation to P-0570, the Chamber takes into account the violent circumstances of the victim's arrest, as well as her rape by three members of the *Hesbah* whilst in detention and the consequences of that experience for the victim as discussed above. In relation to Fadimata Mint Lilli, the Chamber takes into account the deplorable conditions of

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<sup>4384</sup> See paragraph 851 above.

her detention as well as rape committed whilst in detention.

1400. Considering the above, the Chamber finds that the humiliation, degradation and other violations of dignity each victim suffered was of such a severe degree as to constitute an outrage upon personal dignity. The Chamber accordingly finds that the second element of outrages upon personal dignity as a war crime is satisfied in relation to each victim.

**c) Status of the victims**

1401. Regarding the third element of outrages upon personal dignity as a war crime, *i.e.* that the person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities, the Chamber refers to its findings at paragraphs 1326 and 1374 above that the two men, P-0565 and P-0557, Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad, Dédéou Maiga, Sallaka Bent Al-Khair, Madou Traoré, Foma, Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli were all civilian inhabitants of Timbuktu taking no active part in the hostilities. The Chamber accordingly finds that the third element of outrages upon personal dignity as a war crime is satisfied in relation to each victim.

**d) Mental elements**

1402. In relation to the two men, P-0565 and P-0557, Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad, Dédéou Maiga, Sallaka Bent Al-Khair and Madou Traoré and Foma, the Chamber refers to its findings at paragraphs 1327-1329, 1355 above and specifically recalls the violent and public nature of the punishments inflicted on each victim. In addition, the Chamber recalls that Ansar Dine/AQIM’s violent punishments of P-0565 and P-0557, Dédéou Maiga, Sallaka Bent Al-Khair and Madou Traoré were proclaimed in advance and carried out in front of large assembled crowds.

1403. In relation to Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli, the Chamber refers to its findings at paragraphs 1356-1357 above and specifically recalls that Ansar Dine/AQIM enforced rules, including those on women’s

clothing, and imprisoned those who were considered to be in breach of the rule as a punitive act and that each victim was imprisoned for not covering up properly. In relation to Azahara Abdou, members of Ansar Dine/AQIM temporarily released Azahara Abdou from detention to attend hospital after she injured herself on a glass window at the BMS, which the Chamber considers to mitigate, to some extent, the intention of members of Ansar Dine/AQIM to humiliate, degrade or otherwise violate the dignity of Azahara Abdou through her detention. Nevertheless, the Chamber recalls that the victim was kept in detention for three days. The Majority, Judge Akane dissenting, additionally takes into account the fact that the members of the *Hesbah* who raped Azahara Abdou held a gun to her head and threatened to kill her unless she stayed quiet. In relation to P-0636, the victim was kept in detention for one to three days, those detaining her gave her nothing to eat and refused to give her food brought by her family, and the three members of the *Hesbah* who raped P-0636 held her at gunpoint. In relation to P-0570, the Chamber also recalls that two of the members of the *Hesbah* who raped P-0570 threatened to kill her, one of them also threatened her with further sexual violence, and one of them hit her. In relation to Fadimata Mint Lilli, the Chamber also recalls that the member of the *Hesbah* who raped the victim threatened to kill her and make her children orphans.

1404. Based on the foregoing, the Chamber finds that the members of Ansar Dine/AQIM who engaged in the relevant conduct (including, in relation to the two men, Mr Al Hassan), meant to engage in the conduct that humiliated, degraded and otherwise violated the dignity of, respectively, the two men, P-0565 and P-0557, Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad, Dédéou Maiga, Sallaka Bent Al-Khair and Madou Traoré, Foma, Azahara Abdou,<sup>4385</sup> P-0636, P-0570 and Fadimata Mint Lilli and meant to cause the humiliation, degradation and violation of their dignity, or were at least aware that

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<sup>4385</sup> **Judge Akane** does not take into account the rape of Azahara Abdou in reaching this conclusion but agrees nevertheless, taking into account the other factors mentioned, that the perpetrators meant to engage in the conduct which caused Azahara Abdou’s humiliation, degradation or violation of dignity and meant to humiliate, degrade or otherwise violate the dignity of Azahara Abdou, or were aware that the humiliation, degradation or violation of the dignity of Azahara Abdou would occur in the ordinary course of events.

the humiliation, degradation and violation of dignity would occur in the ordinary course of events. Considering the above, the Chamber finds that the general mental elements under Article 30 of the Statute in respect of outrages upon personal dignity as a war crime are satisfied in relation to each victim.

1405. Finally, the Chamber turns to the requirement that the perpetrator be aware of the victims being either *hors de combat*, or civilians, medical personnel or religious personnel taking no active part in the hostilities. Referring to its findings at paragraphs 1335, 1378 above, the Chamber considers that members of Ansar Dine/AQIM who engaged in the relevant conduct (including, in relation to the two men, Mr Al Hassan) were aware of the factual circumstances establishing the respective victims' status as civilians and their non participation in the hostilities. The Chamber accordingly finds the fourth element of outrages upon personal dignity as a war crime to be satisfied, in relation to each victim.

**e) Conclusion**

1406. The Chamber accordingly finds the elements of outrages upon personal dignity as a war crime, pursuant to Article 8(2)(c)(ii) of the Statute (Count 5), fulfilled in relation to the following victims:

- a. the two men;
- b. P-0565 and P-0557;
- c. Khudi Bint Ibrahim, 'Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin 'Umar and Halimah Bint Muhammad;
- d. Dédéou Maiga;
- e. Sallaka Bent Al-Khair (P-0554);
- f. Madou Traoré;
- g. Foma;
- h. Azahara Abdou (P-1134);
- i. P-0636;
- j. P-0570; and
- k. Fadimata Mint Lilli (P-0547).

**5. Mutilation (Article 8(2)(c)(i) of the Statute (Reclassification pursuant to Regulation 55(1) of the Regulations) (Count 14))**

1407. The Chamber recalls that it previously provided notice pursuant to Regulation 55(2) of the Regulations that the legal characterisation of the facts and circumstances relating to Dédéou Maiga may be considered as the war crime of mutilation under Article 8(2)(c)(i) of the Statute.<sup>4386</sup> Pursuant to Regulation 55(1) of the Regulations and in light of the totality of the evidence submitted, the Chamber hereby modifies the legal characterisation of the facts and circumstances relating to Dédéou Maiga, in accordance with its previous notice. The Chamber refers to this additional crime of mutilation as a war crime as Count 14.

**a) Mutilation without justification**

1408. The Chamber turns to the first and second elements of mutilation as a war crime, namely, that the perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage and that the conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interests.

1409. The Chamber found that Dédéou Maiga's hand was publicly amputated by members of Ansar Dine/AQIM as a sentence for the act of theft,<sup>4387</sup> which caused him to be partially and permanently incapacitated.<sup>4388</sup> Accordingly, the Chamber finds that the first element of mutilation as a war crime is fulfilled.

1410. The Chamber recalls that Dédéou Maiga's hand was amputated as a punishment for theft, rather than as a medical, dental or hospital treatment or in the victim's interest. The Chamber also recalls its finding at paragraph 1329 above that the amputation and its publicisation was aimed at deterring the civilian population from breaching its rules and discouraging any opposition against the realisation of what Ansar Dine/AQIM considered as being their ideal society. The Chamber

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<sup>4386</sup> [First Regulation 55 Decision](#), para. 80.

<sup>4387</sup> See paragraphs 820, 824-826 above.

<sup>4388</sup> See paragraph 835 above.

accordingly finds that the amputation of Dédéou Maiga was carried out to further the cause of Ansar Dine/AQIM, rather than in the interest of the victim himself. Indeed, the subsequent effect of the amputation on the mental health and private life of Dédéou Maiga and the ostracisation he suffered clearly illustrates that the amputation was not in the interest of the victim.<sup>4389</sup> Accordingly, the Chamber finds that the second element of mutilation as a war crime is satisfied.

**b) Status of the victim**

1411. Referring to its finding at paragraph 1326 above that Dédéou Maiga was a civilian inhabitant of Timbuktu taking no active part in the hostilities, the Chamber finds that the third element of mutilation as a war crime, *i.e.* that the person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities, is satisfied.

**c) Mental elements**

1412. Turning to the mental elements of mutilation as a war crime, the Chamber refers to its findings at paragraph 1329 above. Recalling in particular that the amputation was carried out in front of many people following public announcements by Ansar Dine/AQIM members concerning the amputation and after announcing the sentence in public, and that the amputation was carried out as a result of the Islamic Court's sentence 'to have [Dédéou Maiga's] hand cut off',<sup>4390</sup> the Chamber finds that the members of Ansar Dine/AQIM who engaged in the relevant conduct meant to engage in the conduct which caused Dédéou Maiga's mutilation. Considering the above, the Chamber finds that the general mental elements under Article 30 of the Statute in respect of the crime of mutilation are satisfied.

1413. Finally, referring to its finding at paragraph 1335 above that the members of Ansar Dine/AQIM who engaged in the relevant conduct were aware of the factual circumstances establishing Dédéou Maiga's status as a civilian and his non participation in the hostilities, the Chamber finds the fourth element of mutilation as a war crime, *i.e.* the perpetrator was aware of the factual circumstances that

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<sup>4389</sup> See paragraphs 833, 835, 837 above.

<sup>4390</sup> See paragraph 822 above.

established the status of the victim as *hors de combat*, or civilians, medical personnel or religious personnel taking no active part in the hostilities, to be satisfied.

**d) Conclusion**

1414. The Chamber accordingly finds the elements of mutilation as a war crime, pursuant to Article 8(2)(c)(i) of the Statute (Count 14), fulfilled in relation to Dédéou Maiga.

**6. Forced marriage as an other inhumane act (Article 7(1)(k) of the Statute (Count 8))**

1415. Under Count 8, Mr Al Hassan is charged with the other inhumane act of forced marriage as a crime against humanity, pursuant to Article 7(1)(k) of the Statute, in relation to the following victims:

- a. P-0520;
- b. P-0602;
- c. P-0610;
- d. P-0538; and
- e. P-1162.

1416. Before turning to the specific incidents, the Chamber will first make some general remarks about the nature of the ‘marriages’ under consideration.

**a) The nature of the ‘marriages’ under consideration**

1417. The Chamber notes the Defence argument that a distinction must be drawn between traditional or arranged marriages on the one hand, and forced marriages on the other,<sup>4391</sup> and notably its submission that ‘[t]he evidence demonstrates that members of the groups concluded marriages following traditional practices. Either the woman or her guardian consented, a dowry was negotiated and provided, and there was a religious ceremony with witnesses [...] Women also

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<sup>4391</sup> [Defence Final Brief](#), para. 272.

continued to possess the ability to seek a divorce'.<sup>4392</sup>

1418. At the outset, the Chamber recalls its findings that prior to 2012, marriages in Timbuktu were arranged between families, and in practice, the consent of the woman getting married was not always sought,<sup>4393</sup> and also that some such marriages involved AQIM members.<sup>4394</sup> However, having regard to the Chamber legal findings described below, particularly the threats, harassment and fear used against the victims in most cases, and in some cases their families, to get agreement for the 'marriage' and the ensuing sexual violence committed against the victims,<sup>4395</sup> the Chamber, in relation to P-0602, P-0610, P-0520, and P-0538, and the Majority, Judge Akane dissenting,<sup>4396</sup> in relation to P-1162, concludes that members of Ansar Dine/AQIM forced these victims to enter into a conjugal union with their Ansar Dine/AQIM 'husbands'.<sup>4397</sup> In the circumstances of each case, and considering that the victims were forced to enter into these conjugal unions through the use of physical and psychological force, by threat of force, and/or by taking advantage of the coercive environment of Ansar Dine/AQIM's control of Timbuktu, the fact that for example a dowry was provided in the 'marriages' of P-0602, P-0610, P-0538 and that a religious marriage ceremony was conducted in the 'marriages' of P-0602, P-0520 and P-0610 does not in any way, in the Chamber's view, diminish the coercive nature of the 'marriages' in those instances. To the contrary in fact, in the context, the Chamber considers that the provision of the dowries and conducting of marriage ceremonies were steps taken by Ansar Dine/AQIM to give the forced marriages the appearance of a traditional marriage, notably in order to validate the sexual violence that followed.<sup>4398</sup>

1419. In addition, although recalling that in Timbuktu prior to 2012 'early marriages' were arranged in some instances, namely those where the girl was not yet 18 years old,<sup>4399</sup> the Chamber considers that the young age of the victim is a relevant factor

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<sup>4392</sup> [Defence Final Brief](#), para. 273.

<sup>4393</sup> See paragraph 416 above.

<sup>4394</sup> See paragraph 432 above.

<sup>4395</sup> See paragraph 1425 below.

<sup>4396</sup> See below.

<sup>4397</sup> See below.

<sup>4398</sup> *Contra* [Defence Final Brief](#), para. 273.

<sup>4399</sup> See paragraph 416 above.



in assessing the victims' vulnerability and susceptibility to suffering in the circumstances.

**b) Great suffering or serious injury by means of an inhumane act**

1420. The Chamber turns to the first element of other inhumane acts as a crime against humanity, namely, that the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act. The Chamber further recalls that forced marriage, an inhumane act, describes a situation in which a person is compelled to enter into a conjugal union with another person by the use of physical or psychological force, or threat of force, or by taking advantage of a coercive environment.<sup>4400</sup>

1421. In relation to P-0520, the Chamber found that a group of men from Ansar Dine/AQIM approached P-0520's house, asking to marry her to a member of Ansar Dine/AQIM.<sup>4401</sup> They continued to insist despite P-0520's repeated refusals,<sup>4402</sup> until one of the group pointed his weapon at P-0520, saying that she had to accept what they were saying to her or they would take her away forcibly.<sup>4403</sup> P-0520 felt obliged to do what the men from Ansar Dine/AQIM said out of fear for what might happen to her family.<sup>4404</sup> The group conducted a religious marriage ceremony without P-0520 or her parents present, and P-0520 did not receive any money from the group.<sup>4405</sup> Following that, P-0520's 'marriage' lasted a total of around 24 days,<sup>4406</sup> which she mainly spent in two different locations,<sup>4407</sup> one being the *Gouvernorat*.<sup>4408</sup> While at these locations, P-0520's 'husband' was physically violent with her, told her she was his 'wife',

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<sup>4400</sup> See paragraph 1190 above.

<sup>4401</sup> See paragraphs 913-915 above.

<sup>4402</sup> See paragraphs 913-915 above.

<sup>4403</sup> See paragraph 915 above.

<sup>4404</sup> See paragraphs 915-916 above. See also paragraph 933 above. In light of all of the circumstances, including that P-0520 consistently refused the proposal of the 'marriage' and only went along with things after being threatened with the weapon and out of fear for her family, the Chamber rejects the Defence suggestion that P-0520 (or her family) gave any genuine consent to the marriage ([Defence Final Brief](#), para. 273)

<sup>4405</sup> See paragraph 916 above.

<sup>4406</sup> See paragraph 929 above.

<sup>4407</sup> See paragraphs 913-928 above. This excludes the night and day that P-0520 spent in prison (see below).

<sup>4408</sup> See paragraph 922 above.

and raped her a number of times.<sup>4409</sup> At the *Gouvernorat*, P-0520's 'husband' discovered her with contraceptive pills.<sup>4410</sup> He accused her of killing his children, flogged her and sent her to prison,<sup>4411</sup> where she spent a day and a night before she returned to the *Gouvernorat*, after which her 'husband' continued to rape her.<sup>4412</sup> One day P-0520 took advantage of an open gate at the *Gouvernorat* and escaped;<sup>4413</sup> she never saw her 'husband' again.<sup>4414</sup>

1422. In relation to P-0602, the Chamber found that three members of the Islamic Police, two of whom were armed, repeatedly approached P-0602's father at home, asking for one of them to marry P-0602.<sup>4415</sup> Despite repeated refusals from P-0602's father and P-0602 herself,<sup>4416</sup> the men persisted, bearing weapons and harassing P-0602's father and P-0602 until P-0602's father conceded to a marriage between P-0602 and one of the men.<sup>4417</sup> A religious marriage ceremony, which P-0602 did not attend, took place at the mosque and a dowry was provided by the members of Ansar Dine/AQIM.<sup>4418</sup> Following the 'marriage', P-0602 stayed at her father's house during the day<sup>4419</sup> and each night, her Islamic policeman 'husband' would come and take her to another house.<sup>4420</sup> P-0602's 'husband' raped her a few times over several days,<sup>4421</sup> at times threatening P-0602 with his weapon, frightening her, and telling her that they were married and she was supposed to know what married persons do.<sup>4422</sup> P-0602's 'marriage' lasted

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<sup>4409</sup> On the first night, P-0520's 'husband' told her that she was his 'wife' and after her refusals, eventually pushed her into the bedroom of where she was staying and forced her to have sexual intercourse with him (*see* paragraph 918 above). He forced her to have sexual intercourse with him a number of times more at both locations (*see* paragraphs 919, 924, 926 above). For the legal qualification of these facts as rape, *see* paragraph 1472 below.

<sup>4410</sup> *See* paragraph 925 above.

<sup>4411</sup> *See* paragraphs 925-926 above.

<sup>4412</sup> *See* paragraph 926 above. For the legal qualification of these facts as rape, *see* paragraph 1472 below.

<sup>4413</sup> *See* paragraph 928 above.

<sup>4414</sup> *See* paragraph 930 above.

<sup>4415</sup> *See* paragraphs 935-937 above.

<sup>4416</sup> *See* paragraphs 935-937 above.

<sup>4417</sup> *See* paragraph 937 above. In light of all of the circumstances, the Chamber rejects the suggestion that this concession represented any genuine consent to the marriage by P-0602's father ([Defence Final Brief](#), para. 273).

<sup>4418</sup> *See* paragraph 938 above.

<sup>4419</sup> *See* paragraphs 940-942 above.

<sup>4420</sup> *See* paragraphs 939-942 above.

<sup>4421</sup> *See* paragraph 943 above. For the legal qualification of these facts as rape, *see* paragraph 1472 below.

<sup>4422</sup> The first two nights, P-0602 refused to have sexual intercourse with her 'husband'. On the first night, the 'husband' did not touch her after she refused but complained 'that if a man and woman get married [...] they should touch and [...] sleep together' and he put his rifle next to him in the room (*see*

for a limited period of time during Ansar Dine/AQIM's control of Timbuktu.<sup>4423</sup>

1423. In relation to P-0610, the Chamber found that three members of Ansar Dine/AQIM came to P-0610's mother's home asking that one of them marry P-0610.<sup>4424</sup> P-0610's mother repeatedly told P-0610 that it was not possible to refuse and that if they refused, the 'Islamists' would kill or hurt them.<sup>4425</sup> P-0610 repeatedly told her mother that she did not want to marry.<sup>4426</sup> P-0610 was afraid, and felt that she had no choice because 'they were running the show in Timbuktu'.<sup>4427</sup> After the members of Ansar Dine/AQIM returned to the house with a sum of money as a 'dowry' to 'arrange the marriage',<sup>4428</sup> and again to set a date for the marriage,<sup>4429</sup> the 'marriage' took place in the home of a male relative of P-0610 and was attended by P-0610 and a few family and friends.<sup>4430</sup> There was no celebration and no ceremony at the mosque.<sup>4431</sup> Following the 'marriage', P-0610 was accompanied by two female friends to a house she had never been before.<sup>4432</sup> In the evening, two members of Ansar Dine/AQIM arrived, one of whom was P-0610's 'husband'.<sup>4433</sup> Eventually when P-0610 was left alone in the house with her 'husband',<sup>4434</sup> he raped her<sup>4435</sup> and was physically violent with her,<sup>4436</sup> and then left the room<sup>4437</sup> and did not return.<sup>4438</sup> In the morning, an

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paragraph 939 above). On the second night, after P-0602 again refused to sleep with him, the man became very angry, was shouting and had his weapon in his hand (*see* paragraph 941 above). His behaviour frightened P-0602 (*see* paragraph 941 above). The first two nights, P-0602 thought of escaping but did not do so out of fear (*see* paragraphs 939, 941 above). On the third night, P-0602's Islamic policeman 'husband' became forceful, and frightened P-0602 with his weapon and forced her to have sexual intercourse with him, telling her that they were married and she was supposed to know what married persons do (*see* paragraph 942 above).

<sup>4423</sup> *See* paragraph 945 above.

<sup>4424</sup> *See* paragraph 948 above.

<sup>4425</sup> *See* paragraphs 948-949 above.

<sup>4426</sup> *See* paragraphs 948-949 above.

<sup>4427</sup> *See* paragraph 948 above. In light of all of the circumstances, including that P-0610 herself did not accept the marriage and that her mother consistently told her that P-0610 had to accept the marriage for fear that the 'Islamists' would otherwise harm them, the Chamber rejects the Defence suggestion that P-0610's family gave any genuine consent to the marriage ([Defence Final Brief](#), para. 231).

<sup>4428</sup> *See* paragraph 949 above.

<sup>4429</sup> *See* paragraph 950 above.

<sup>4430</sup> *See* paragraph 951 above.

<sup>4431</sup> *See* paragraph 951 above.

<sup>4432</sup> *See* paragraph 952 above.

<sup>4433</sup> *See* paragraph 952 above.

<sup>4434</sup> *See* paragraph 952 above.

<sup>4435</sup> *See* paragraph 952 above. For the legal qualification of these facts as rape, *see* paragraph 1472 below.

<sup>4436</sup> *See* paragraph 952 above.

<sup>4437</sup> *See* paragraph 952 above.

<sup>4438</sup> *See* paragraph 953 above.

older female friend came to take P-0610 to her mother's house<sup>4439</sup> and thereafter P-0610 did not see her 'husband' again and she and her family never heard anything more about him.<sup>4440</sup>

1424. In relation to P-0538, the Chamber found that several armed members of Ansar Dine/AQIM approached P-0538's home, asking to marry her to a member of Ansar Dine/AQIM.<sup>4441</sup> Both P-0538 and her father told the men that they refused the 'marriage'.<sup>4442</sup> The family unwillingly accepted the 'marriage' after being threatened by the men.<sup>4443</sup> The members of Ansar Dine/AQIM threw money at P-0538's father, saying it was a dowry.<sup>4444</sup> P-0538 was 'married' to the man who wanted to marry her and she never consented to the marriage.<sup>4445</sup> The members of Ansar Dine/AQIM came to the house, and forced P-0538 into a vehicle and took her to the house of her 'husband', flogging her with a whip when she refused to cooperate.<sup>4446</sup> P-0538's 'husband' also whipped her at this house and threatened to kill her.<sup>4447</sup> P-0538 escaped from the man and eventually went back to her family home.<sup>4448</sup> Members of Ansar Dine/AQIM went to P-0538's family house and brought her back to her 'husband', who threatened to kill her, struck her several times and raped her.<sup>4449</sup> P-0538 fled again and returned when she learned that her 'husband' and four of his friends had caught and beaten up her father, saying that her father was the one encouraging her to flee.<sup>4450</sup> P-0538's 'husband' complained about P-0538 and her parents to the Islamic Police, claiming that P-0538's parents were interfering in the 'marriage'.<sup>4451</sup> Divorce proceedings subsequently took place before the Islamic Court,<sup>4452</sup> resulting in a

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<sup>4439</sup> See paragraph 953 above.

<sup>4440</sup> See paragraph 954 above.

<sup>4441</sup> See paragraph 959 above.

<sup>4442</sup> See paragraphs 959, 961 above.

<sup>4443</sup> See paragraph 959 above.

<sup>4444</sup> See paragraph 960 above.

<sup>4445</sup> See paragraph 961 above. In light of all of the circumstances, including that both P-0538 and her father told the men that they refused the 'marriage' and that family unwillingly accepted the 'marriage' after being threatened by the men, and P-0538 never consented to the marriage, the Chamber rejects the Defence suggestion that P-0538 (or her family) gave any genuine consent to the marriage ([Defence Final Brief](#), para. 227).

<sup>4446</sup> See paragraph 962 above.

<sup>4447</sup> See paragraph 963 above.

<sup>4448</sup> See paragraph 963 above.

<sup>4449</sup> See paragraph 964 above. For the legal qualification of these facts as rape, see paragraph 1472 below.

<sup>4450</sup> See paragraph 965 above.

<sup>4451</sup> See paragraph 966 above.

<sup>4452</sup> See paragraphs 966-967, 970 above.

divorce six to eight months after the day the dowry money was thrown at P-0538's father.<sup>4453</sup>

1425. On the basis of the foregoing, and particularly in light of the harassment and threats used against P-0520, P-0602, P-0610<sup>4454</sup> and P-0538 and in some cases their families, and the ensuing sexual violence committed against the victims under the pretext of the 'marriage', the Chamber finds that the members of Ansar Dine/AQIM, including as relevant the victims' Ansar Dine/AQIM 'husbands', forced P-0520, P-0602, P-0610 and P-0538 to enter into conjugal unions with their 'husband' by the use of physical and psychological force, by threat of force, and by taking advantage of the coercive environment of Ansar Dine/AQIM's control of Timbuktu. The Chamber further considers that in the circumstances as a whole, P-0520's marriage ceremony was conducted to add a façade of legitimacy to her forced marriage, and to validate the subsequent sexual violence.<sup>4455</sup> Further, the fact that P-0538 was able to obtain a divorce through the Islamic Court does not, in light of the circumstances as a whole, affect the forced nature of the preceding 'marriage'.<sup>4456</sup>

1426. In relation to P-1162, the Majority, Judge Akane dissenting, found that during Ansar Dine/AQIM's control of Timbuktu, P-1162 'married' a member of Ansar Dine/AQIM.<sup>4457</sup> The Majority notes that: (i) P-1162 had been brought to<sup>4458</sup> and was staying at the *Gouvernorat* together with other women who also had 'husbands',<sup>4459</sup> including P-0520 whose marriage was forced,<sup>4460</sup> and (ii) the place where they stayed had a door with iron bars that did not open.<sup>4461</sup> The

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<sup>4453</sup> See paragraph 971 above.

<sup>4454</sup> In relation to P-0610, the Chamber notes in particular that P-0610 herself did not accept the marriage and that her mother consistently told her that she had to accept the marriage for fear that Ansar Dine/AQIM would otherwise harm them, irrespective of whether the men who came to ask for P-0610 were armed or actually threatened P-0610's mother (see [Defence Final Brief](#), para. 231). In light of the full facts surrounding the way P-0610's 'marriage' was conducted, the Chamber dismisses the Defence submission that 'the location of the husband's house, its lack of security, and P-0610 having never saw her husband armed indicate that this was a marriage entirely independently of Ansar Dine and AQIM' ([Defence Final Brief](#), para. 235).

<sup>4455</sup> *Contra* [Defence Final Brief](#), para. 273.

<sup>4456</sup> *Contra* [Defence Final Brief](#), paras 227, 272-273.

<sup>4457</sup> See paragraph 974 above

<sup>4458</sup> See paragraph 974 above.

<sup>4459</sup> See paragraph 974 above.

<sup>4460</sup> For the legal qualification of the victim's 'marriage' as a forced marriage, see paragraph 1438 above.

<sup>4461</sup> See paragraph 974 above.

Majority infers that P-1162's Ansar Dine/AQIM 'husband' forced her to enter a conjugal union with him by the use of psychological force, by threat of force, or by taking advantage of the coercive environment of Ansar Dine/AQIM's control of Timbuktu'. The Majority, Judge Akane dissenting,<sup>4462</sup> additionally infers from the facts in totality that while at the *Gouvernorat*, P-1162 was subjected to sexual violence by her 'husband'.<sup>4463</sup>

1427. The Chamber, and in relation to P-1162, the Majority, considers that the abovementioned acts, which resulted in the imposition of a conjugal union and which were inhumane, caused great suffering to P-0520, P-0602, P-0610, P-0538 and P-1162. In this regard, the Chamber notes the following. In relation to P-0520, the Chamber notes that after escaping the *Gouvernorat*, P-0520 could not initially return home for fear of being caught again,<sup>4464</sup> and was ostracised by her family because of her experiences.<sup>4465</sup> In relation to P-0602, after the rape, P-0602 did not feel well although she did not have any marks or injuries on her body.<sup>4466</sup> She went to the hospital where she received medication.<sup>4467</sup> As a result of the events, P-0602 felt sick and would withdraw from others and she 'still feel[s] sadness in her heart'.<sup>4468</sup> In relation to P-0610, after the rape the victim felt very bad and could only walk home the next morning 'bit by bit' with the help of a female friend.<sup>4469</sup> P-0610 continues to suffer from her experiences with her Ansar Dine/AQIM 'husband' today.<sup>4470</sup> P-0610 also experienced social ostracism as a result of the experience: neighbours and friends learned what had happened to her and started whispering about her, laughing at her and criticising her.<sup>4471</sup> The Chamber also takes into account P-0610's very young age at the time, being between 13 and 15 years old,<sup>4472</sup> which it considers increased her vulnerability

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<sup>4462</sup> **Judge Akane dissents**, noting that she is unable to make a finding that P-1162 experienced great suffering, in the absence of evidence regarding P-1162's circumstances including the conditions in which she was placed during her 'marriage' and how long she had been at the *Gouvernorat*.

<sup>4463</sup> See paragraph 975 above.

<sup>4464</sup> See paragraph 931 above.

<sup>4465</sup> See paragraph 931 above.

<sup>4466</sup> See paragraph 944 above.

<sup>4467</sup> See paragraph 944 above.

<sup>4468</sup> See paragraph 946 above.

<sup>4469</sup> See paragraph 953 above.

<sup>4470</sup> See paragraph 955 above.

<sup>4471</sup> See paragraph 954 above.

<sup>4472</sup> See paragraph 948 above.

and made her more susceptible to suffering. In relation to P-0538, the victim was pregnant but was not aware of it at the time of her divorce and subsequently gave birth by caesarean to a stillborn child.<sup>4473</sup> P-0538 also suffered as a result of her experiences, becoming ill, having nightmares and feeling as if she had ‘lost [her] mind’.<sup>4474</sup> In relation to P-1162, the Majority in particular notes the very young age of the victim at the time, being around 15 years old.<sup>4475</sup>

1428. Considering the above, the Chamber, and in relation to P-1162, the Majority, finds that the first element of the crime of other inhumane acts is satisfied in relation to P-0520, P-0602, P-0610, P-0538 and P-1162.

### **c) Character of the act**

1429. The Chamber, and in relation to P-1162, the Majority, turns to the second element of other inhumane acts as a crime against humanity, namely, that such act was of a character similar to any other act referred to in Article 7, paragraph 1, of the Statute. Recalling its finding that forced marriage constitutes an inhumane act pursuant to Article 7(1)(k) of the Statute,<sup>4476</sup> the Chamber, and in relation to P-1162, the Majority, finds that the second element of the crime of other inhumane acts is satisfied in relation to P-0520, P-0602, P-0610, P-0538 and P-1162.

### **d) Mental elements**

1430. The Chamber, and in relation to P-1162, the Majority, turns to the mental elements of other inhumane acts as a crime against humanity.

1431. In relation to P-0520, the Chamber recalls that a group of Ansar Dine/AQIM members approached P-0520’s house, asking to marry her<sup>4477</sup> and continued to insist on the marriage, despite her repeated refusals,<sup>4478</sup> until one of the group threatened her with his weapon and told her they would take her away forcibly unless she accepted.<sup>4479</sup> P-0520’s ‘husband’ then proceeded to rape her a number

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<sup>4473</sup> See paragraph 971 above.

<sup>4474</sup> See paragraph 972 above.

<sup>4475</sup> See paragraph 974 above.

<sup>4476</sup> See paragraph 1187 above.

<sup>4477</sup> See paragraphs 913-915 above.

<sup>4478</sup> See paragraphs 913-915 above.

<sup>4479</sup> See paragraph 915 above.

of times at both locations where she stayed for the duration of her 24-day-long ‘marriage’,<sup>4480</sup> telling her on the first night that she was his ‘wife’ and pushing her into the bedroom when she refused to go.<sup>4481</sup> He also used physical violence against her and imprisoned her after discovering her with contraceptive pills.<sup>4482</sup>

1432. In relation to P-0602, the Chamber recalls that three members of the Islamic Police, two of whom were armed, repeatedly approached P-0602’s father at the family home, asking for one of them to marry P-0602.<sup>4483</sup> Despite repeated refusals from P-0602 and her father,<sup>4484</sup> the three members of the Islamic Police, bearing arms, persisted in harassing P-0602 and her father until P-0602’s father conceded to a marriage with one of the three men.<sup>4485</sup> P-0602’s Islamic policeman ‘husband’ raped her a few times over several days,<sup>4486</sup> on at least one occasion frightening P-0602 with his weapon and telling her that they were married and she was supposed to know what married persons do.<sup>4487</sup>

1433. In relation to P-0610, the Chamber recalls that three members of Ansar Dine/AQIM, including the one who would eventually be P-0610’s ‘husband’, came to P-0610’s mother’s home asking that one of them marry P-0610.<sup>4488</sup> P-0610 was afraid, and felt that she had no choice because ‘they were running the show in Timbuktu’.<sup>4489</sup> P-0610’s mother also repeatedly told P-0610 that it was not possible to refuse for fear that Ansar Dine/AQIM would kill or hurt them.<sup>4490</sup> Following the ‘marriage’, P-0610’s Ansar Dine/AQIM ‘husband’ tried to touch

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<sup>4480</sup> See paragraphs 918-919, 922, 924, 926, 929 above. For the legal qualification of these facts as rape, see paragraph 1472 below.

<sup>4481</sup> See paragraph 918 above.

<sup>4482</sup> See paragraphs 925-926 above.

<sup>4483</sup> See paragraphs 935-937 above.

<sup>4484</sup> See paragraphs 936-937 above.

<sup>4485</sup> See paragraph 937 above. In light of the consistent evidence that P-0602 and her father were not in agreement with the marriage and that her father only conceded to the marriage following harassment, Chamber rejects the Defence suggestion that P-0602’s ‘husband’ was unaware that the ‘proper’ process for consent had not been followed ([Defence Final Brief](#), para. 274).

<sup>4486</sup> See paragraphs 942-943 above. For the legal qualification of these facts as rape, see paragraph 1472 below.

<sup>4487</sup> See paragraph 942 above.

<sup>4488</sup> See paragraph 948 above.

<sup>4489</sup> See paragraph 948 above. In light of all of the circumstances, including that P-0610 herself did not accept the marriage and that her mother consistently told her that P-0610 had to accept the marriage for fear that the ‘Islamists’ would otherwise harm them, the Chamber rejects the Defence suggestion that P-0610’s family gave any genuine consent to the marriage ([Defence Final Brief](#), para. 231).

<sup>4490</sup> See paragraphs 948-949 above.



her, when she refused to let him, he slapped her and then raped her.<sup>4491</sup> He left the room during the night<sup>4492</sup> and was gone the next morning,<sup>4493</sup> after which P-0610 did not see him again and neither she nor her family ever heard anything more about him.<sup>4494</sup>

1434. In relation to P-0538, the Chamber recalls that several armed members of Ansar Dine/AQIM, including the one who would later become P-0538's 'husband' approached P-0538's home, asking for one of them to marry her.<sup>4495</sup> Both P-0538 and her father told the men that they refused the 'marriage' and only finally accepted the 'marriage' under threat from the men.<sup>4496</sup> Ansar Dine/AQIM members forcibly took P-0538 from her home to her 'husband's' house, flogging her with a whip when she refused to cooperate. For his part, in the early days of the 'marriage' P-0538's 'husband' used physical violence against her and threatened to kill her on at least two occasions,<sup>4497</sup> and also raped her.<sup>4498</sup> He and others also beat P-0538's father after P-0538 escaped from the 'husband's' house, saying that her father was the one encouraging her to flee.<sup>4499</sup> He also used physical violence against P-0538 during the course of divorce proceedings at the Islamic Court.<sup>4500</sup>

1435. On this basis, also taking into account the generally coercive nature of the circumstance at the time,<sup>4501</sup> the Chamber is satisfied that the members of Ansar Dine/AQIM who engaged in the relevant conduct, including the victims' 'husbands', meant to engage in conduct that respectively caused P-0520, P-0602,

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<sup>4491</sup> See paragraph 952 above. For the legal qualification of the relevant facts as rape, see paragraph 1472 below.

<sup>4492</sup> See paragraph 952 above.

<sup>4493</sup> See paragraph 953 above.

<sup>4494</sup> See paragraph 954 above.

<sup>4495</sup> See paragraph 958 above.

<sup>4496</sup> See paragraphs 959, 961 above. In light of all of the circumstances, including that both P-0538 and her father told the group, which included the one who would later become P-0538's 'husband', that they refused the 'marriage' and that the family unwillingly accepted the 'marriage' after being threatened by the men, and P-0538 never consented to the marriage, the Chamber rejects the Defence suggestion that P-0538's 'husband' was under the apprehension that P-0538 had consented ([Defence Final Brief](#), para. 274).

<sup>4497</sup> See paragraphs 963-964 above.

<sup>4498</sup> See paragraph 964 above. For the legal qualification of the relevant facts as rape, see paragraph 1472 below.

<sup>4499</sup> See paragraph 965 above.

<sup>4500</sup> See paragraph 970 above.

<sup>4501</sup> See paragraphs 501-503 above.

P-0610 and P-0538 great suffering and meant to cause the victims great suffering, or were aware that great suffering would occur in the ordinary course of events. Accordingly, the Chamber finds that the general mental elements under Article 30 of the Statute in respect of the crime against humanity of forced marriage as an other inhumane act are satisfied in relation to P-0520, P-0602, P-0610 and P-0538.

1436. In relation to P-1162, considering that (i) P-1162 had been brought to<sup>4502</sup> and was staying at the *Gouvernorat* together with other women who also had ‘husbands’,<sup>4503</sup> including P-0520 whose marriage was forced,<sup>4504</sup> (ii) the place where they stayed had a door with iron bars that did not open,<sup>4505</sup> and (iii) while at the *Gouvernorat* P-1162 was subjected to sexual violence by her ‘husband’,<sup>4506</sup> the Majority infers that P-1162’s Ansar Dine/AQIM ‘husband’ meant to engage in conduct that caused her great suffering and meant to cause P-1162 great suffering, or was aware that great suffering would occur in the ordinary course of events. Accordingly, the Majority finds that the general mental elements under Article 30 of the Statute in respect of the crime against humanity of forced marriage as an other inhumane act are satisfied in relation to P-1162.

1437. For the same reasons, the Chamber and, in relation to P-1162, the Majority, also finds that the members of Ansar Dine/AQIM who engaged in the relevant conduct, including the victims’ ‘husbands’, were aware of the factual circumstances that established the character of the act. Accordingly, the Chamber and, in relation to P-1162, the Majority, finds that the third element of the other inhumane acts as a crime against humanity is also satisfied in relation to each victim.

#### e) Conclusion

1438. The Majority, Judge Akane dissenting, accordingly finds the elements of other inhumane act of forced marriage as a crime against humanity, pursuant to Article

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<sup>4502</sup> See paragraph 974 above.

<sup>4503</sup> See paragraph 974 above.

<sup>4504</sup> For the legal qualification of the victim’s ‘marriage’ as a forced marriage, see paragraph 1438 above.

<sup>4505</sup> See paragraph 974 above.

<sup>4506</sup> See paragraph 975 above.

7(1)(k) of the Statute (Count 8), fulfilled in relation to the following victims:

- a. P-0520;
- b. P-0602;
- c. P-0610;
- d. P-0538; and
- e. P-1162.

1439. As noted, Judge Akane dissents on the satisfaction of the contextual elements of other inhumane act of forced marriage as a crime against humanity, pursuant to Article 7(1)(k) of the Statute (Count 8), in relation to P-0520, P-0602, P-0610 and P-0538, while finding the other elements of this crime otherwise satisfied in respect of those victims. In relation to P-1162, Judge Akane dissents on the satisfaction of the contextual elements, as well as other elements of this crime, as set out above.

**7. Sexual slavery (Article 7(1)(g) and Article 8(2)(e)(vi) of the Statute (Counts 9-10))**

1440. Under Counts 9-10, Mr Al Hassan is respectively charged with sexual slavery as a crime against humanity, pursuant to Article 7(1)(g) of the Statute, and as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute, in relation to the following victims:

- a. P-0520;
- b. P-0602;
- c. P-0610;
- d. P-0538; and
- e. P-1162.

**a) Powers of ownership**

1441. The Chamber turns to the first element of sexual slavery as a crime against humanity and as a war crime, namely, that the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as

by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.

1442. In relation to all the victims under consideration, the Chamber, and in relation to P-1162, the Majority, Judge Akane dissenting, notes that, as elaborated below, the events they experienced follow their forced marriages to members of Ansar Dine/AQIM.

1443. Specifically in relation to P-0520, the Chamber recalls its statement of the relevant facts at paragraph 1421 above. The Chamber notes in particular that P-0520's forced 'marriage'<sup>4507</sup> to her Ansar Dine/AQIM 'husband' lasted for around 24 days, during which time the victim stayed three or four days at a large house in the Koiratao neighbourhood<sup>4508</sup> and around 20 days at the *Gouvernorat*.<sup>4509</sup> P-0520 also spent one night and one day in prison after her husband discovered her with contraceptive pills. In addition to being held at a prison, the Chamber considers that P-0520 was not free to leave either of the other two locations noting that: (i) at the Koiratao house, although P-0520 had her telephone with her and her mother was able to get information from P-0520's friends about her situation,<sup>4510</sup> and her 'husband' would come and go,<sup>4511</sup> P-0520 was not free to leave and did not try to run away because the door was closed.<sup>4512</sup> In addition, she was very afraid of her 'husband',<sup>4513</sup> she did not want to eat,<sup>4514</sup> and did not know whether she was going to get out of that situation.<sup>4515</sup> P-0520 also expressly told her 'husband' on the first night in the Koiratao house that he had forcibly brought her there;<sup>4516</sup> (ii) similarly at the *Gouvernorat*, although P-0520's husband would come and go,<sup>4517</sup> at times there was nobody at the house,<sup>4518</sup> and notwithstanding that at one point she received a visit from a

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<sup>4507</sup> For the legal qualification of the victim's 'marriage' as a forced marriage, *see* paragraph 1438 above.

<sup>4508</sup> *See* paragraphs 918-919.

<sup>4509</sup> *See* paragraph 922 above.

<sup>4510</sup> *See* paragraph 920 above.

<sup>4511</sup> *See* paragraph 919 above.

<sup>4512</sup> *See* paragraph 921 above.

<sup>4513</sup> *See* paragraph 918 above.

<sup>4514</sup> *See* paragraph 921 above.

<sup>4515</sup> *See* paragraph 921 above.

<sup>4516</sup> *See* paragraph 918 above.

<sup>4517</sup> *See* paragraph 928 above.

<sup>4518</sup> *See* paragraph 923 above.

friend,<sup>4519</sup> P-0520 was locked up in the house the whole time, could not go outside of the house, and there was a door with iron bars that did not open.<sup>4520</sup> P-0520 was also kept at the *Gouvernorat* with three to five other women who also had ‘husbands’<sup>4521</sup> and P-0520 only escaped the *Gouvernorat* by taking advantage of a gate being left open one day.<sup>4522</sup> Further, P-0520’s ‘husband’ raped her a number of times at both houses, and was physically violent with her on at least two occasions.<sup>4523</sup> The Chamber finds that through these circumstances, P-0520’s Ansar Dine/AQIM ‘husband’ exercised powers of ownership over P-0520 by depriving her of her liberty for a period of approximately 24 days. The Chamber also considers that in the context of the marriage as a whole, given that it was effected forcibly through threats and harassment, P-0520’s ‘husband’ assumed and exercised powers of ownership over P-0520 by virtue of the conducting of the marriage ceremony, which was a step taken to give the forced marriage the appearance of a traditional one and give legitimacy to the subsequent sexual violence committed against P-0520.

1444. In relation to P-0602, the Chamber recalls its statement of the relevant facts at paragraph 1422 above. The Chamber considers in particular that, notwithstanding that following her forced marriage<sup>4524</sup> P-0602 would be returned to her father’s house during the day,<sup>4525</sup> and that her forced marriage lasted only a limited period of time,<sup>4526</sup> it is significant that each night after being forcibly married, P-0602 was taken to a house by her Islamic policeman ‘husband’,<sup>4527</sup> where her ‘husband’ threatened her and/or raped her.<sup>4528</sup> The Chamber considers that P-0602 was not free to leave during the nights she spent with her ‘husband’, considering that: (i) he was armed and threatened her with his weapon;<sup>4529</sup> (ii)

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<sup>4519</sup> See paragraph 928 above.

<sup>4520</sup> See paragraph 928 above.

<sup>4521</sup> See paragraph 923 above.

<sup>4522</sup> See paragraph 928 above.

<sup>4523</sup> See paragraphs 918-919, 924-927 above. For the legal qualification of the relevant facts as rape, see paragraph 1472 below.

<sup>4524</sup> For the legal qualification of the victim’s ‘marriage’ as a forced marriage, see paragraph 1438 above.

<sup>4525</sup> See paragraphs 939-942 above.

<sup>4526</sup> See paragraph 945 above.

<sup>4527</sup> See paragraphs 939-942 above.

<sup>4528</sup> See paragraphs 939-943 above. For the legal qualification of the relevant facts as rape, see paragraph 1472 below.

<sup>4529</sup> See paragraphs 939, 941-942 above.

notably on the first two nights, P-0602 thought of escaping the house but did not do so out of fear;<sup>4530</sup> and (iii) P-0602 was unable to sleep during nights at the house with her ‘husband’ out of fear.<sup>4531</sup> The Chamber finds that through these circumstances, P-0602’s Islamic policeman ‘husband’ exercised powers of ownership over P-0602 by depriving her of her liberty. Although as noted, the deprivation was temporary and time limited, the Chamber considers that it satisfies the first element of sexual slavery, in light of the circumstances of P-0602’s case as a whole. The Chamber also considers that in the context of the marriage as a whole, given that it was effected forcibly through threats and harassment, P-0602’s ‘husband’ assumed and exercised powers of ownership over P-0602 by virtue of the provision of the dowry and the conducting of the marriage ceremony, which were steps taken to give the forced marriage the appearance of a traditional one and give legitimacy to the subsequent sexual violence committed against P-0602.

1445. In relation to P-0610, the Chamber recalls its statement of the relevant facts at paragraph 1423 above. The Chamber notes that following her forced marriage<sup>4532</sup> two friends accompanied P-0610 to the house where she stayed with her Ansar Dine/AQIM ‘husband’, and the two friends ultimately left.<sup>4533</sup> The Chamber also notes that P-0610 spent one night with her ‘husband’: he slapped her, left the room after raping her and was gone the next morning.<sup>4534</sup> The next morning, a friend of P-0610’s mother came to take P-0610 to her mother’s house. While P-0610 was only in the house for one night, the Chamber finds it significant that P-0610 was only present there after being forcibly married and that while she was at the house, her ‘husband’ was physically violent with her and raped her. In these circumstances and also considering that P-0610 was a very vulnerable young woman, being only 13-15 years old at the time,<sup>4535</sup> the Chamber finds that P-0610’s ‘husband’ exercised powers of ownership over P-0610 by depriving her of her liberty. The Chamber also considers that in the context of the marriage as

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<sup>4530</sup> See paragraphs 939, 941.

<sup>4531</sup> See paragraphs 939, 941-942 above.

<sup>4532</sup> For the legal qualification of the victim’s ‘marriage’ as a forced marriage, *see* paragraph 1438 above.

<sup>4533</sup> See paragraph 952 above.

<sup>4534</sup> See paragraphs 952-953 above. For the legal qualification of the relevant facts as rape, *see* paragraph 1472 below.

<sup>4535</sup> See paragraph 948 above.

a whole, given that it was effected forcibly, P-0610's 'husband' assumed and exercised powers of ownership over P-0610 by virtue of the dowry, which was provided to give the forced marriage the appearance of a traditional one and legitimise the subsequent sexual violence committed against P-0610.

1446. In relation to P-0538, the Chamber recalls its statement of the relevant facts at paragraph 1424 above. The Chamber notes in particular that P-0538's forced 'marriage'<sup>4536</sup> to her Ansar Dine/AQIM 'husband' lasted for around six to eight months.<sup>4537</sup> The Chamber considers that, at least as concerns the early days of the 'marriage' P-0538 was not free to leave her 'husband's' house, noting that: (i) she escaped the house on at least two occasions;<sup>4538</sup> (ii) after the first escape, her 'husband' threatened to kill her and struck her several times; (iii) after the second escape her 'husband' and his friends caught and beat her father, saying that he was the one encouraging her to flee. The Chamber finds that through these circumstances, P-0538's Ansar Dine/AQIM 'husband' exercised powers of ownership over P-0538 by depriving her of her liberty, at least in the early days of the 'marriage'.

1447. In relation to P-1162, the Majority, Judge Akane dissenting,<sup>4539</sup> recalls its statement of the relevant facts at paragraph 1426 above. The Majority recalls its conclusion that this marriage was forced<sup>4540</sup> and further that: (i) P-1162 had been brought to and was staying at the *Gouvernorat* together with other women who also had 'husbands', including P-0520 whose marriage was forced,<sup>4541</sup> and (ii) the place where they stayed had a door with iron bars that did not open. Taking these facts, together with the very young age of the victim at the time, being around 15 years,<sup>4542</sup> the Majority infers that P-1162's 'husband' exercised powers of ownership over P-1162 by depriving her of her liberty.

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<sup>4536</sup> For the legal qualification of the victim's 'marriage' as a forced marriage, *see* paragraph 1438 above.

<sup>4537</sup> *See* paragraph 971 above.

<sup>4538</sup> *See* paragraphs 963-965 above.

<sup>4539</sup> **Judge Akane** considers it unnecessary to consider the first element of sexual slavery in relation to P-1162 in light of her finding below that the second element of sexual slavery is not satisfied in relation to P-1162.

<sup>4540</sup> For the legal qualification of the victim's 'marriage' as a forced marriage, *see* paragraph 1439 above.

<sup>4541</sup> For the legal qualification of the victim's 'marriage' as a forced marriage, *see* paragraph 1438 above.

<sup>4542</sup> *See* paragraph 974 above.

1448. Considering the above, the Chamber, and in relation to P-1162, the Majority, finds that the first element of sexual slavery as a crime against humanity and as a war crime is satisfied in relation to P-0520, P-0602, P-0610, P-0538 and P-1162.

**b) Acts of sexual nature**

1449. The Chamber and in relation to P-1162, the Majority, turns to the second element of sexual slavery as a crime against humanity and as a war crime, namely, that the perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

1450. Recalling that (i) P-0520's Ansar Dine/AQIM 'husband' forced her to have sexual intercourse with him a number of times during their approximately 24-day-long forced marriage;<sup>4543</sup> (ii) P-0602's Islamic policeman 'husband' forced her to have sexual intercourse with him a few times over several days during their forced marriage;<sup>4544</sup> (iii) P-0610's 'husband' forced her to have sexual intercourse with him;<sup>4545</sup> (iv) P-0538's Ansar Dine/AQIM 'husband' forced her to have sexual intercourse with him during their 'marriage',<sup>4546</sup> the Chamber finds that the second element of sexual slavery as a crime against humanity and as a war crime is satisfied in relation to P-0520, P-0602, P-0610 and P-0538.

1451. In relation to P-1162, the Majority,<sup>4547</sup> recalls that while at the *Gouvernorat* P-1162 was subjected to sexual violence by her 'husband'.<sup>4548</sup> The Majority accordingly finds that the second element of sexual slavery as a crime against humanity and as a war crime is satisfied in relation to P-1162.

**c) Mental elements**

1452. The Chamber, and in relation to P-1162, the Majority, turns to the mental elements of sexual slavery as a crime against humanity and a war crime.

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<sup>4543</sup> See paragraphs 918-919, 924, 926 above. For the legal qualification of the victim's 'marriage' as a forced marriage, see paragraph 1438 above.

<sup>4544</sup> See paragraphs 942-943 above. For the legal qualification of the victim's 'marriage' as a forced marriage, see paragraph 1438 above.

<sup>4545</sup> See paragraph 952 above.

<sup>4546</sup> See paragraph 964 above.

<sup>4547</sup> **Judge Akane** dissents, recalling that she considered that it could not be established that P-1162 was subjected to sexual violence during her stay at the *Gouvernorat* (see paragraph 975 above).

<sup>4548</sup> See paragraph 975 above.



1453. In relation to P-0520, considering that: (i) the victim stayed with her Ansar Dine/AQIM ‘husband’ in two different locations during the course of their 24-day-long forced marriage where she was not free to leave; (ii) she expressly told her ‘husband’ on the first night in the first location that he had brought her there forcibly; (iii) while at the two locations P-0520 was subjected to repeated sexual violence by her ‘husband’; and (iv) P-0520 spent a night and day in prison after her ‘husband’ discovered her with contraceptive pills, the Chamber is satisfied that P-0520’s Ansar Dine/AQIM ‘husband’ meant to exercise powers of ownership over P-0520 and to cause her to engage in one or more acts of a sexual nature.

1454. In relation to P-0602, considering that each night after being forcibly married, the victim was taken to a house by her ‘husband’ where her ‘husband’ threatened her and/or forced her to have sexual intercourse with him, and that P-0602 was not free to leave during the nights she spent with her ‘husband’, the Chamber is satisfied that P-0602’s Ansar Dine/AQIM ‘husband’ meant to exercise powers of ownership over P-0602 and to cause her to engage in one or more acts of a sexual nature. In relation to P-0610, considering that following the victim’s forced marriage, P-0610’s ‘husband’ was physically violent with her at the house where she stayed for one night and forced her to have sexual intercourse with him that night, the Chamber is satisfied that P-0610’s Ansar Dine/AQIM ‘husband’ meant to exercise powers of ownership over P-0610 and to cause her to engage in one or more acts of a sexual nature. In relation to P-0538, considering that after the victim’s first escape from his house, P-0538’s ‘husband’ threatened to kill her and struck her several times, that after her second escape her ‘husband’ and his friends caught and beat her father, saying that he was the one encouraging her to flee, and that her ‘husband’ forced her to have sexual intercourse with him during their ‘marriage’ the Chamber is satisfied that P-0538’s Ansar Dine/AQIM ‘husband’ meant to exercise powers of ownership over P-0538 by depriving her of her liberty and to cause her to engage in one or more acts of a sexual nature.

1455. Considering the above, the Chamber finds that the general mental elements under Article 30 of the Statute in respect of sexual slavery as a crime against humanity and a war crime are satisfied in relation to P-0520, P-0602, P-0610 and P-0538.

1456. In relation to P-1162, considering that following her forced marriage to her Ansar Dine/AQIM ‘husband’, P-1162 was brought to the *Gouvernorat* to stay in a place with a door with iron bars that did not open, and that while there she was subjected to sexual violence by her ‘husband’ the Majority is satisfied that P-1162’s Ansar Dine/AQIM ‘husband’ meant to exercise powers of ownership over her by depriving her of her liberty and to cause her to engage in one or more acts of a sexual nature. Accordingly, the Majority finds that the general mental elements under Article 30 of the Statute in respect of sexual slavery as a crime against humanity and a war crime are satisfied in relation to P-1162.

**d) Conclusion**

1457. The Chamber, in relation to sexual slavery as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 10), and the Majority, Judge Akane dissenting, in relation to sexual slavery as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 9), accordingly finds the elements of those crimes fulfilled in relation to the following victims:

- a. P-0520;
- b. P-0602;
- c. P-0610; and
- d. P-0538.

1458. Further, the Majority, Judge Akane dissenting, finds the elements of sexual slavery as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 9), and as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 10), fulfilled in relation to P-1162.

**8. Rape (Article 7(1)(g) and Article 8(2)(e)(vi) of the Statute (Counts 11-12))**

1459. Under Counts 11-12, Mr Al Hassan is respectively charged with rape as a crime against humanity, pursuant to Article 7(1)(g) of the Statute, and as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute, in relation to the following victims:

- a. Azahara Abdou (P-1134),

- b. P-0636;
- c. P-0520;
- d. P-0602;
- e. P-0610;
- f. P-0538; and
- g. P-1162.

1460. The Chamber recalls that it previously provided notice pursuant to Regulation 55(2) of the Regulations that the legal characterisation of the facts and circumstances relating to P-0570<sup>4549</sup> and Fadimata Mint Lilli (P-0547)<sup>4550</sup> may be considered as rape as a crime against humanity and as a war crime, under Counts 11 and 12. Pursuant to Regulation 55(1) of the Regulations and in light of the totality of the evidence submitted, the Chamber hereby modifies the legal characterisation of the facts and circumstances relating to P-0570 and Fadimata Mint Lilli, in accordance with its previous notices.

**a) Invasion by force**

1461. The Chamber turns to the first and second elements of rape as a crime against humanity and as a war crime, *i.e.* that (i) the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body; and (ii) the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

1462. In relation to P-0636, P-0570 and Fadimata Mint Lilli, the Chamber, and in relation to Azahara Abdou the Majority, Judge Akane dissenting, notes that as elaborated below, the victims were subjected to sexual violence by members of

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<sup>4549</sup> [First Regulation 55 Decision](#), para. 86.

<sup>4550</sup> [First Regulation 55 Decision](#), para. 86.

Ansar Dine/AQIM after being arrested and imprisoned for a violation of the groups' dress code rules, in circumstances which included the use of weapons and explicit threats, and sometimes involving multiple men, sometimes with their face concealed.

1463. Specifically, in relation to Azahara Abdou, the Majority, Judge Akane dissenting,<sup>4551</sup> found that five members of the *Hesbah* took turns in forcing the victim to have sexual intercourse with them, while she was detained at the BMS following her arrest; they had their faces concealed and put a gun to her head and told her to be quiet otherwise she would be killed.<sup>4552</sup> In relation to P-0636, the Chamber found that three members of the *Hesbah* forced P-0636 to have sexual intercourse with them, one after the other, at gunpoint, on the first night of her detention at the BMS following her arrest.<sup>4553</sup> P-0636 felt that there 'was no one to protect [her]' and that she 'had no power'.<sup>4554</sup> Afterwards, the men took P-0636 back to her cell.<sup>4555</sup> In relation to P-0570, the Chamber found that three members of the *Hesbah* forced P-0570 to have sexual intercourse with them, one after the other, while P-0570 was detained in a dark room at the BMS following her arrest.<sup>4556</sup> More specifically, the first perpetrator, Mohammed Moussa threatened P-0570, saying that if she did not take off her clothes, he would kill her with his gun and throw her in the hole in the back, and no one would know where she was.<sup>4557</sup> P-0570 screamed but no one heard her and Mohammed Moussa forced her to have sexual intercourse with him.<sup>4558</sup> The second perpetrator, also one of the men who had arrested P-0570, came into the room as Mohammed Moussa was leaving.<sup>4559</sup> He threatened to kill P-0570 on the spot, threatened her with further sexual violence and said that if she refused, they would kill her for

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<sup>4551</sup> **Judge Akane** dissents, recalling that she does not consider there to be a sufficient evidentiary basis to find that Azahara Abdou was raped while detained at the BMS.

<sup>4552</sup> See paragraph 860 above. The Chamber recalls its factual finding that penetration occurred (*see* paragraph 860 above).

<sup>4553</sup> See paragraph 865 above. The Chamber recalls its factual finding that penetration occurred (*see* paragraph 865 above).

<sup>4554</sup> See paragraph 865 above.

<sup>4555</sup> See paragraph 865 above.

<sup>4556</sup> See paragraphs 878-880 above. The Chamber recalls its factual finding that penetration occurred in these instances (*see* paragraphs 878-880 above).

<sup>4557</sup> See paragraph 878 above.

<sup>4558</sup> See paragraph 878 above.

<sup>4559</sup> See paragraph 879 above.

nothing, and forced her to have sexual intercourse with him.<sup>4560</sup> The third perpetrator, another of the men who had arrested P-0570, came into the room after the second man and forced P-0570 to have sexual intercourse with him and also hit her.<sup>4561</sup> The first two perpetrators were armed.<sup>4562</sup> P-0570 had blood coming from her vagina and was in so much pain that she lost consciousness.<sup>4563</sup> In relation to Fadimata Mint Lilli, the Chamber found that the victim was forced by a member of the *Hesbah* to have sexual intercourse with him.<sup>4564</sup> The man blindfolded the victim and took her, at gunpoint, to a separate room whilst she was already in detention.<sup>4565</sup> He also threatened that she would be killed and her children orphaned, should she refuse to have sexual intercourse.<sup>4566</sup>

1464. In relation to P-0520, P-0602, P-0610 and P-0538, the Chamber notes that as elaborated below, the victims were subjected to sexual violence by their Ansar Dine/AQIM ‘husbands’ after being forcibly married to those men, in circumstances which often included the use of weapons and explicit threats.

1465. Specifically, in relation to P-0520, the Chamber found that the victim’s Ansar Dine/AQIM ‘husband’ forced her to have sexual intercourse with him a number of times during the course of her approximately 24-day-long forced marriage to him.<sup>4567</sup> On the first occasion of the forced sexual intercourse, P-0520’s ‘husband’ pushed her into the bedroom after she had refused to go there and had told him that she was not going to enter the bedroom because she was not his wife and he had forcibly brought her there.<sup>4568</sup> In addition, he continued to force her to have sexual intercourse with him after she returned from prison where he had sent

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<sup>4560</sup> See paragraph 879 above.

<sup>4561</sup> See paragraph 880 above.

<sup>4562</sup> See paragraphs 878-879 above.

<sup>4563</sup> See paragraph 880 above.

<sup>4564</sup> See paragraphs 895-896 above. The Chamber recalls its factual finding that penetration occurred (*see* paragraph 896 above).

<sup>4565</sup> See paragraphs 895-896 above.

<sup>4566</sup> See paragraph 896 above.

<sup>4567</sup> See paragraphs 918-919, 924, 926, 929 above. The Chamber recalls its factual finding that penetration occurred in these instances (*see* paragraphs 918-919, 924, 926 above). For the legal qualification of the victim’s ‘marriage’ as a forced marriage, *see* paragraph 1438 above.

<sup>4568</sup> See paragraph 918 above. The Chamber considers that the coercive nature of the circumstances that P-0520 was in when she was in the two houses after being forcibly married are amply established by the circumstances described, regardless of whether or not P-0520’s ‘husband’ was armed the first time he forced her to have sexual intercourse with him (*contra* [Defence Final Brief](#), para. 247) and irrespective of whether or not any of the members of Ansar Dine/AQIM present at the *Gouvernorat* had weapons (*contra* [Defence Final Brief](#), para. 250).

her upon discovering her with contraceptive pills.<sup>4569</sup> In relation to P-0602, the Chamber found that the victim's Islamic policeman 'husband' forced her to have sexual intercourse with him a few times after she was forcibly married to him and was taken to a separate house at night by him.<sup>4570</sup> On the first occasion of the forced sexual intercourse, her 'husband' was forceful, frightening P-0602 with his weapon and telling her that they were married, she was supposed to know what married persons do.<sup>4571</sup> In relation to P-0610, the Chamber found that after the victim was forcibly married and taken to a separate house to spend the night with her Ansar Dine/AQIM 'husband',<sup>4572</sup> the 'husband' slapped her and then forced her to have sexual intercourse with him.<sup>4573</sup> In relation to P-0538, the Chamber found that following the victim's first escape from his house, her 'husband' threatened to kill her, struck her several times and forced her to have sexual intercourse with him.<sup>4574</sup>

1466. In relation to P-1162, the Majority, Judge Akane dissenting,<sup>4575</sup> recalls that while at the *Gouvernorat* P-1162 was subjected to sexual violence by her 'husband'.<sup>4576</sup> The Majority considers that it does not have sufficient details on the nature of the sexual violence to make a finding under the first and second elements of the crime of rape.

1467. Considering the above, the Chamber, and in relation to Azahara Abdou, the Majority, finds that the first and second elements of the crime of rape as a crime against humanity and as a war crime are satisfied in relation to Azahara Abdou, P-0636, P-0570, Fadimata Mint Lilli, P-0520, P-0602, P-0610 and P-0538 but not in relation to P-1162. Accordingly, the remaining elements of these crimes need

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<sup>4569</sup> See paragraphs 925-926 above. The Chamber recalls its factual finding that penetration occurred in these instances (see paragraph 926 above).

<sup>4570</sup> See paragraphs 942-943 above. For the legal qualification of the victim's 'marriage' as a forced marriage, see paragraph 1438 above. The Chamber recalls its factual finding that penetration occurred in these instances (see paragraphs 942-943 above).

<sup>4571</sup> See paragraph 942 above.

<sup>4572</sup> See paragraph 952 above. For the legal qualification of the victim's 'marriage' as a forced marriage, see paragraph 1438 above.

<sup>4573</sup> See paragraph 952 above. The Chamber recalls its factual finding that penetration occurred in this instance (see paragraph 952 above).

<sup>4574</sup> See paragraph 964 above. The Chamber recalls its factual finding that penetration occurred in this instance (see paragraph 964 above).

<sup>4575</sup> Judge Akane considered that it could not be established that P-1162 was subjected to sexual violence during her stay at the *Gouvernorat* (see paragraph 975 above).

<sup>4576</sup> See paragraph 975 above.

not be addressed further in relation to P-1162.

**b) Mental elements**

1468. The Chamber, and in relation to Azahara Abdou, the Majority, turns to the mental elements of sexual slavery as a crime against humanity and a war crime.

1469. In relation to the detained victims Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli, considering respectively the Chamber's, and in relation to Azahara Abdou, the Majority's findings that: (i) five members of Ansar Dine/AQIM forced Azahara Abdou to have sexual intercourse with them at gunpoint while she was in detention; (ii) three members of Ansar Dine/AQIM forced P-0636 to have sexual intercourse with them at gunpoint while she was in detention; (iii) three members of the *Hesbah* forced P-0570 to have sexual intercourse with them while she was in detention and while threatening her and/or using physical violence against her; and (iv) Fadimata Mint Lilli was forced to have sexual intercourse while she was in detention and while threats were made to her life, the Chamber, and in relation to Azahara Abdou, the Majority, finds that the members of Ansar Dine/AQIM who engaged in the relevant conduct meant to invade Azahara Abdou, P-0636, P-0570, and Fadimata Mint Lilli's respective bodies by force.

1470. In relation to the forced marriage victims P-0520, P-0602, P-0610 and P-0538, considering respectively that: (i) P-0520's Ansar Dine/AQIM 'husband' forced her to have sexual intercourse with him a number of times during the course of her approximately 24-day-long forced marriage to him and in particular, pushed her into the bedroom on the first occasion after P-0520 refused to go, and also continued to force her to have sexual intercourse with him after she returned from prison where he had sent her upon discovering her with contraceptive pills; (ii) P-0602's Islamic policeman 'husband' forced her to have sexual intercourse with him a few times after she was forcibly married to him, and threatened her with his weapon, telling her that they were married and she was supposed to know what married persons do; (iii) P-0610's Ansar Dine/AQIM 'husband' forced her to have sexual intercourse with him after she was forcibly married to him, and also used physical violence against her after she tried to refuse him; and (iv) P-0538's Ansar Dine/AQIM 'husband' forced her to have sexual intercourse with

him following her first escape from his house, at the same time when he threatened to kill her and struck her several times, the Chamber finds that P-0520, P-0602, P-0610 and P-0538's Ansar Dine/AQIM 'husbands' respectively meant to invade P-0520, P-0602, P-0610 and P-0538's bodies by force.

1471. Considering the above, the Chamber, and in relation to Azahara Abdou, the Majority, finds that the general mental elements under Article 30 of the Statute in respect of rape as a crime against humanity and as a war crime are satisfied in relation to Azahara Abdou, P-0636, P-0570, Fadimata Mint Lilli, P-0520, P-0602, P-0610 and P-0538.

### **c) Conclusion**

1472. The Chamber, in relation to rape as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 12), and the Majority, Judge Akane dissenting, in relation to rape as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 11), accordingly finds the elements of those crimes fulfilled in relation to the following victims:

- a. P-0636;
- b. P-0570;
- c. Fadimata Mint Lilli (P-0547);
- d. P-0520;
- e. P-0602;
- f. P-0610; and
- g. P-0538.

1473. Further, the Majority, Judge Akane dissenting, finds the elements of rape as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 11), and as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 12), fulfilled in relation to Azahara Abdou.

## **9. Sentencing without due process (Article 8(2)(c)(iv) of the Statute (Count 6))**

1474. Under Count 6, Mr Al Hassan is charged pursuant to Article 8(2)(c)(iv) of the



Statute with the war crime of sentencing without due process, namely the passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.

1475. The Chamber notes that the incidents relevant to this count fall into two categories:<sup>4577</sup> (i) sentences passed without a previous judgment pronounced by a court; and (ii) sentences passed pursuant to a judgment pronounced by a court that was not regularly constituted, *i.e.* the court lacked the essential guarantees of independence and impartiality.

1476. The Chamber will address each category in turn.

**a) Passing of sentences without a previous judgment pronounced by a court**

1477. The first category of sentencing without due process, namely the passing of sentences without a previous judgment pronounced by a court, relates to the following cases:

- a. Foma;<sup>4578</sup>
- b. Azahara Abdou (P-1134);<sup>4579</sup>
- c. P-0636;<sup>4580</sup>
- d. Matalla Arbi (P-1708);<sup>4581</sup>
- e. P-0570;<sup>4582</sup>
- f. Fadimata Mint Lilli (P-0547);<sup>4583</sup>
- g. Salamata Warnamougrez (P-1710) and Hady Aguisa (P-1711);<sup>4584</sup> and
- h. P-1712.<sup>4585</sup>

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<sup>4577</sup> See paragraph 1157 above.

<sup>4578</sup> See paragraphs 854-855 above.

<sup>4579</sup> See paragraphs 858-861 above.

<sup>4580</sup> See paragraphs 863-868 above.

<sup>4581</sup> See paragraphs 870-871 above.

<sup>4582</sup> See paragraphs 874-888 above.

<sup>4583</sup> See paragraphs 890-901 above.

<sup>4584</sup> See paragraphs 903-906 above.

<sup>4585</sup> See paragraphs 908, 909 above.

### i. Passing of sentences and status of the victims

1478. The Chamber turns to the first element of this crime, namely that the perpetrator passed sentence. The Chamber recalls that a sentence is defined, *inter alia*, as the punishment imposed on a criminal wrongdoer.<sup>4586</sup>

1479. Regarding Matalla Arbi, the Chamber found that one Friday during the period when Ansar Dine/AQIM controlled Timbuktu, Mohammed Moussa, the then head of *Hesbah*, imprisoned Matalla Arbi at the ATM room of the BMS. However, given that the duration, conditions and the exact reason for Matalla Arbi's detention are unknown, the Chamber finds that there is insufficient evidence for it to conclude that Matalla Arbi was sentenced. Thus, the Chamber finds that the evidence is insufficient to show that a sentence was passed against Matalla Arbi.<sup>4587</sup>

1480. Turning to the other cases, the Chamber made the following findings: (i) around the month of November/December 2012, Fadimata Mint Lilli was hit with a whip by a member of *Hesbah* in her garden after being told she was not covered up properly<sup>4588</sup> and was subsequently taken to the BMS and detained;<sup>4589</sup> (ii) around or after September 2012, P-0570 was violently arrested by members of the *Hesbah*, including one who hit her with his gun, told to cover up for allegedly not wearing the veil properly, and detained at the BMS;<sup>4590</sup> (iii) between August and November 2012, P-0636 was stopped in the street and detained in the BMS by members of the *Hesbah* for not wearing a veil;<sup>4591</sup> (iv) in late November 2012, Azahara Abdou was arrested outside her home by a member of the *Hesbah* for not wearing the veil, then taken and detained at the BMS;<sup>4592</sup> (v) sometime between early September and late December 2012, Mohammed Moussa, the then head of *Hesbah*, arrested and detained Salamata Warnamougrez and Hady Aguisa at the BMS, for allegedly not being covered up enough;<sup>4593</sup> (vi) at some

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<sup>4586</sup> See paragraph 1162 above.

<sup>4587</sup> See paragraphs 870-871 above.

<sup>4588</sup> See paragraph 891 above.

<sup>4589</sup> See paragraphs 893, 894, 898 above.

<sup>4590</sup> See paragraphs 874, 877-878 above.

<sup>4591</sup> See paragraph 863 above.

<sup>4592</sup> See paragraph 858 above.

<sup>4593</sup> See paragraph 903 above.

time during the period when Ansar Dine/AQIM controlled Timbuktu, P-1712 was arrested and detained at the BMS by a member of Ansar Dine/AQIM because she was allegedly not properly covered<sup>4594</sup> and; (vii) sometime before Ramadan in 2012, the old man known as Foma was caught smoking by Aboubacar Al Chinguetti, a member of Ansar Dine/AQIM, and flogged with ten lashes in the street.<sup>4595</sup>

1481. The Chamber recalls that Article 8(2)(c)(iv) of the Statute requires that the person who passes a sentence without previous judgment has some form of authority, derived from their position, to carry out the punishment.<sup>4596</sup> This standard does not mean that specific orders or instructions need to be formally or officially given to the persons carrying out the punishments. What matters is whether, in context and considering all the relevant circumstances at hand, the persons carrying out the punishments had some form of authority to carry out punishments.

1482. The Chamber recalls that, as of April 2012, Ansar Dine/AQIM created institutions, including the Islamic Police and the *Hesbah*, charged with enforcing the groups' rules on the conduct of the population of Timbuktu.<sup>4597</sup> The Chamber found that members of the Islamic Police and the *Hesbah* punished those they perceived to be criminal wrongdoers in the streets or in their headquarters and/or detained them.<sup>4598</sup>

1483. The Chamber notes that in August 2012, Abou Zeid issued written instructions to the Islamic Police, the *Hesbah* and all soldiers ordering that *ta'zirs* only be applied at the Police and *Hesbah* stations, and only after an adequate investigation was conducted.<sup>4599</sup> Following the issuance of Abou Zeid's instructions, the prior practices continued to happen but 'not as before'.<sup>4600</sup> As demonstrated by the cases of Fadimata Mint Lilli and P-0570, some members of the *Hesbah* continued

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<sup>4594</sup> See paragraph 908 above.

<sup>4595</sup> See paragraph 854 above. The Chamber notes that Aboubacar Al Chinguetti was initially a member of the *Hesbah* and then subsequently a member of the Islamic Police. See paragraph 529 above.

<sup>4596</sup> See paragraph 1167 above.

<sup>4597</sup> See paragraph 653 above.

<sup>4598</sup> See section III.C.4.d)ii above.

<sup>4599</sup> See paragraph 666 above.

<sup>4600</sup> See paragraph 666 above.

to punish civilians for alleged violations of the rules of Ansar Dine/AQIM.<sup>4601</sup> In October 2012, female residents of Timbuktu marched in protest against the strict enforcement of the rules and the conduct of Mohammed Moussa.<sup>4602</sup> Following complaints from the population, in November or December 2012, the *Hesbah* and Islamic Police no longer had the right to punish in their headquarters, unless there was an Islamic Court order to do so.<sup>4603</sup>

1484. Despite Abou Zeid's August 2012 instructions and the withdrawal of the right to punish in November or December 2012, P-0570 was pursued into her home around or after September 2012 and detained at the BMS for not being properly covered.<sup>4604</sup> Around November or December 2012, Fadimata Mint Lilli was chased into her garden from the streets and flogged for not covering up properly, after which she was detained at the BMS.<sup>4605</sup> Further, at various points around October and November 2012, P-0636 and Azahara Abdou were detained at the BMS.<sup>4606</sup> Some time between early September and late December 2012, Salamata Warnamougrez, Hady Aguisa and, at some point during Ansar Dine/AQIM's control of Timbuktu, P-1712 were each arrested and detained by members of Ansar Dine/AQIM, in particular the *Hesbah*, at the BMS as well.<sup>4607</sup> Each victim was beaten and/or detained because of the perception of members of Ansar Dine/AQIM that the victim violated a rule set forth by Ansar Dine/AQIM.

1485. The members of Ansar Dine/AQIM, in particular the *Hesbah*, punished in their role as members of Ansar Dine/AQIM. In the cases of detention, they detained the victims at the BMS, which served initially as the headquarters of the Islamic Police and then subsequently the headquarters of the *Hesbah*. In punishing the victims, the members of the *Hesbah* and the Islamic Police were enforcing the rules and prohibitions adopted by Ansar Dine/AQIM and the victims were punished for not complying with the rules.

1486. The Majority, Judge Akane dissenting, finds that the punishments carried out by

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<sup>4601</sup> See paragraphs 874, 875, 890-894 above.

<sup>4602</sup> See section III.D.2.c) above.

<sup>4603</sup> See paragraph 669 above.

<sup>4604</sup> See paragraphs 874-881 above.

<sup>4605</sup> See paragraphs 890-894 above.

<sup>4606</sup> See paragraphs 858, 863, 867 above.

<sup>4607</sup> See paragraphs 903, 908-909 above.

members of the Islamic Police and the *Hesbah* were in line with the purpose of their institutions' role to enforce Ansar Dine/AQIM's rules on public conduct. In such circumstances, the Chamber concludes that members of the Islamic Police and the *Hesbah* were acting within their authority, derived from their positions, to carry out the punishments, and accordingly passed sentences without previous judgment in those cases.<sup>4608</sup>

1487. Considering the above, the Chamber is satisfied that the first element of the war crime of sentencing without due process is satisfied.

1488. Further, noting that the Chamber found that Foma, Azahara Abdou, P-0636, P-0570, Fadimata Mint Lilli, Salamata Warnamougrez, Hady Aguisa and P-1712 were civilians,<sup>4609</sup> the second element of this crime is also met, namely that the persons on whom the sentences were passed were civilians taking no active part in hostilities.

#### **ii. Absence of a previous judgment pronounced by a court**

1489. Noting that the cases of Foma, Azahara Abdou, P-0636, P-0570, Fadimata Mint Lilli, Salamata Warnamougrez, Hady Aguisa and P-1712 were not referred to the Islamic Court and there were no judgments issued by the Islamic Court, the Chamber concludes that with regard to these individuals, there was no judgment issued by a court before the perpetrators passed sentence on them (either by flogging or detaining them).

1490. Thus, the fourth element, that there was no previous judgment pronounced by a court, is satisfied.

#### **iii. Mental elements**

1491. Recalling that members of Ansar Dine/AQIM used force against Foma, P-0570 and Fadimata Mint Lilli and detained Azahara Abdou, P-0636, Fadimata Mint Lilli, Salamata Warnamougrez, Hady Aguisa and P-1712 for alleged violations of the groups' rules, the Chamber finds that the members of Ansar Dine/AQIM meant to engage in the sentencing of the victims. Furthermore, the Chamber

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<sup>4608</sup> See *contra* [Defence Final Brief](#), para. 377.

<sup>4609</sup> See paragraphs 854, 858, 863, 874, 890, 903, 908 above.

found that the members of Ansar Dine/AQIM passed the sentences for alleged violations of Ansar Dine/AQIM's rules and carried them out directly without previous judgment. The fact that they carried out these sentences in the moment of witnessing the alleged transgression demonstrates that the perpetrators were aware that there was no previous judgment pronounced by a court. Thus, the intent and knowledge requirements of Article 30 of the Statute are satisfied.

1492. Further, given the circumstances in which they encountered the victims<sup>4610</sup> and that the direct punishment of the victims was in line with the *modus operandi* of Ansar Dine/AQIM, Ansar Dine/AQIM members were aware of the victims' status as civilians or persons taking no active part in the hostilities. The Chamber is satisfied that the third element of this crime, that the perpetrator be aware of the factual circumstances that established the status of the victim, is satisfied.

1493. Similarly, considering the circumstances and the conduct of the members of Ansar Dine/AQIM who perpetrated these crimes, *i.e.* that they themselves targeted the victim upon witnessing the alleged transgression of the rules and implemented the punishment there on the spot or at the BMS, the Chamber is satisfied that the fifth element of the war crime of sentencing without due process, namely the perpetrator's awareness of the absence of a previous judgment, is satisfied.

**b) Passing of sentences pursuant to judgments pronounced by a court which was not regularly constituted**

**i. Passing of sentences and status of the victims**

1494. The Chamber turns to the first element of this count, namely that the perpetrator passed sentence.

1495. The Chamber found that members of the Islamic Court issued judgments.<sup>4611</sup> These Islamic Court judges were the authorities empowered by the leadership of Ansar Dine/AQIM to settle cases and pass judgments.<sup>4612</sup>

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<sup>4610</sup> See paragraphs 854, 858, 863, 870, 874, 891, 903, 908 above.

<sup>4611</sup> See section III.E.2 above.

<sup>4612</sup> See paragraph 598 above. See sections III.C.4.c)i, III.C.4.c)ii.

1496. The Chamber finds that a sentence was passed in the relevant incidents listed below, recalling that in each case a judgment was rendered by the Islamic Court and that in each case there was either a written judgment, or a punishment carried out, or both. In particular, the Chamber finds that the judgments issued in the following cases satisfy the first element of the war crime of sentencing without due process, *i.e.* the perpetrators, namely the judges of the Islamic Court, passed sentence on the following individuals:

- a. Ibrahim bin Al-Husayn;<sup>4613</sup>
- b. P-0565;<sup>4614</sup>
- c. P-0557;<sup>4615</sup>
- d. Khudi Bint Ibrahim and ‘Abdallah Bin Mukha;<sup>4616</sup>
- e. Bint Bint Ibrahim and Ikhmad Bin Muhammad;<sup>4617</sup>
- f. Al-Husayn Bin ‘Umar and Halimah Bint Muhammad;<sup>4618</sup>
- g. Dédéou Maiga;<sup>4619</sup>
- h. Sallaka Bent Al-Khair (P-0554);<sup>4620</sup>
- i. Madou Traoré;<sup>4621</sup>
- j. Al-Khayr Bin-Sidi;<sup>4622</sup>
- k. Moussa Ben Mohamed el-Joumaa or Muhammad Musa Muhammad al-Jam’at, ‘Abdu, ‘Ali al-Jaw and Adulahi;<sup>4623</sup>
- l. Abdelkarim Ascofare or ‘Abd-al-Karim Iskufari;<sup>4624</sup>

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<sup>4613</sup> Case 01/1433-2012. *See* paragraph 768 above.

<sup>4614</sup> *See* paragraph 784 above.

<sup>4615</sup> *See* paragraph 784 above.

<sup>4616</sup> Case 48/1433-2012. *See* paragraph 814 above.

<sup>4617</sup> Case 49/1433-2012. *See* paragraph 815 above.

<sup>4618</sup> Case 54/1433-2012. *See* paragraph 817 above.

<sup>4619</sup> Case 17/1433-2012. *See* paragraph 822 above.

<sup>4620</sup> Case 66/1434-2013. *See* paragraph 844 above.

<sup>4621</sup> Case 68/1434-2013. *See* paragraph 845 above.

<sup>4622</sup> Case 23/1433-2012. *See* paragraph 984 above.

<sup>4623</sup> Case 43/1433-2012. *See* paragraph 986 above.

<sup>4624</sup> Case 45/1433-2012. *See* paragraph 988 above.

- m. Nuh bin Muhammad, ‘Isa Bin Jadu, Muhammad Shaka, Ali Bin Barakah and Abdallah Bin Muhammad al-Jum’at;<sup>4625</sup>
- n. Muhammad Bin Musa;<sup>4626</sup>
- o. Muhammad Walad, Aghli Asudh and Arjili Bin Aman;<sup>4627</sup>
- p. Yahya Bin-Muhammad or his companion;<sup>4628</sup>
- q. El-Khamis Bin-el-Sabt;<sup>4629</sup>
- r. Yusfi ‘Uthman and Bili Arbi;<sup>4630</sup>
- s. Halimah Samak and Braym Mik;<sup>4631</sup>
- t. al-Hasan Bin Irzaq and Halimah Bint Sali;<sup>4632</sup>
- u. Muhammad;<sup>4633</sup>
- v. Sha’ban Bin Sidi;<sup>4634</sup>
- w. Umar Anjami;<sup>4635</sup>
- x. Infa Muhammad ‘Ali;<sup>4636</sup>
- y. Halle Bin Hanay;<sup>4637</sup>
- z. Asya Bint ‘Umar;<sup>4638</sup>
- aa. Muhammad Bin Musa, Muhammad Bin Ban and Qurba Mika;<sup>4639</sup>
- bb. Moukhtar Ould-M’barakou or Moukhtar Ould-Ambarkoua;<sup>4640</sup> and
- cc. Mohamed Ben el-Gaw and el-Goumaa.<sup>4641</sup>

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<sup>4625</sup> Case 04/1433-2012. *See* paragraph 990 above.

<sup>4626</sup> Case 25/1433-2012. *See* paragraph 992 above.

<sup>4627</sup> Case 55/1433-2012. *See* paragraph 994 above.

<sup>4628</sup> Case 67/1434-2013. *See* paragraph 996 above.

<sup>4629</sup> *See* paragraph 998 above.

<sup>4630</sup> Case 09/1433-2012. *See* paragraph 999 above.

<sup>4631</sup> Case 11/1433-2012. *See* paragraph 1002 above.

<sup>4632</sup> Case 13/1433-2012. *See* paragraph 1004 above.

<sup>4633</sup> Case 15/1433-2012. *See* paragraph 1006 above.

<sup>4634</sup> Case 16/1433-2012. *See* paragraph 1009 above.

<sup>4635</sup> Case 18/1433-2012. *See* paragraph 1011 above.

<sup>4636</sup> Case 19/1433-2012. *See* paragraph 1013 above.

<sup>4637</sup> Case 21/1433-2012. *See* paragraph 1016 above.

<sup>4638</sup> Case 29/1433-2012. *See* paragraph 1018 above.

<sup>4639</sup> Case 33/1433-2012. *See* paragraph 1020 above.

<sup>4640</sup> Case 46/1433-2012. *See* paragraph 1023 above.

<sup>4641</sup> *See* paragraph 1029 above.



1497. Further, the Majority, Judge Akane dissenting,<sup>4642</sup> finds that the judgments issued in the following cases also satisfy the first element of the war crime of sentencing without due process:

- a. the two men;<sup>4643</sup>
- b. Mahmud Bin al-Mustafa;<sup>4644</sup>
- c. Boune Ould Hassan;<sup>4645</sup>
- d. Ali al-Haji and ‘Ali Shayban;<sup>4646</sup>
- e. ‘Abdullah Kuni;<sup>4647</sup>
- f. Abou-Bakr Soumboulou;<sup>4648</sup> and
- g. Dawoud Oulale.<sup>4649</sup>

1498. The Chamber finds that it cannot establish that Ali Bin Barakah was a civilian taking no active part in hostilities.<sup>4650</sup> Further, recalling its findings that each of the individuals listed in paragraph 1496, apart from Ali Bin Barakah, were civilians,<sup>4651</sup> the Chamber finds that the next element of the war crime of sentencing without due process is satisfied, namely that the persons on whom the sentences were passed were civilians taking no active part in hostilities. The

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<sup>4642</sup> With regard to the cases of: Mahmud Bin al-Mustafa (case 28/1433-2012), Boune Ould Hassan (case 44/1433-2012), Ali al-Haji and ‘Ali Shayban (case 60/1433-2012), Abdullah Kuni (case 61/1433/2012), Abou-Bakr Soumboulou, and Dawoud Oulale, **Judge Akane** considers that the written judgments from the Islamic Court relied upon for the Majority’s findings cannot alone, without other corroborating evidence, substantiate a finding beyond reasonable doubt that the Islamic Court sentenced individuals without due process. Judge Akane finds that the Islamic Court judgments in this instances are on their own, insufficient to prove that these individuals went through any procedures at the Islamic Court. With regard to the case of the two men, Judge Akane considered that the floggings of the two men was a *ta’zir* imposed directly by the Islamic Police without an Islamic Court judgment. Therefore, Judge Akane finds that the two men were sentenced without due process, although considers that the case should be categorised one in which a sentence was passed without prior judgment of a court, as opposed to a case with a sentence passed pursuant to a judgment pronounced by a court that was not regularly constituted.

<sup>4643</sup> See paragraph 762 above.

<sup>4644</sup> Case 28/1433-2012, see paragraph 1017 above.

<sup>4645</sup> Case 44/1433-2012, see paragraph 1021 above.

<sup>4646</sup> Case 60/1433/2012, see paragraph 1024 above.

<sup>4647</sup> Case 61/1433/2012, see paragraph 1025 above.

<sup>4648</sup> See paragraph 1026 above.

<sup>4649</sup> See paragraph 1027 above.

<sup>4650</sup> Case 04/1433-2012, see paragraph 989 above.

<sup>4651</sup> See paragraphs 766, 982, 1326 above.

Majority<sup>4652</sup> further finds that the individuals listed in paragraph 1497 were civilians, and that the second element of the war crime of sentencing without due process is satisfied as well with respect to these individuals.

**ii. The court lacked the essential guarantees of independence and impartiality**

1499. The Chamber turns to the fourth element of the war crime of sentencing without due process *i.e.* that the court that issued or rendered the judgments was not a regularly constituted court, namely, that it did not afford the essential guarantees of independence and impartiality.

1500. In evaluating the independence and impartiality of the Islamic Court, the Chamber will not evaluate these essential guarantees in abstract or engage in a theoretical analysis of how a purported *Sharia* legal system is meant to function. Rather, the Chamber will evaluate how the legal system that Ansar Dine/AQIM created and put in place in Timbuktu in 2012-2013 functioned in practice.

1501. Based on this evaluation, the Chamber finds that the Islamic Court created by Ansar Dine/AQIM during their control of Timbuktu in 2012-2013 was not independent.<sup>4653</sup> The judges of the Islamic Court were shielded neither from outside interference nor undue influence from Ansar Dine/AQIM's leadership, and members of Ansar Dine/AQIM, controlled and directed the decisions taken by the Islamic Court.<sup>4654</sup> Abou Zeid, who was a key member of the political leadership of Ansar Dine/AQIM,<sup>4655</sup> exercised influence over the Islamic Court not only by having the final say on all judgments,<sup>4656</sup> but also by installing loyal functionaries (Radwan, Koutaïba, and Abdallah Al Chinguetti) to monitor and control the Islamic Court's work.<sup>4657</sup> This control by the executive on the judiciary was present from the inception of the Islamic Court until the end, with a continuous and permanent presence involving interferences with the way the

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<sup>4652</sup> See paragraphs 982, 1326 above. Noting that, apart from the case of the two men, **Judge Akane** does not find that there was sufficient evidence that a sentence was passed on these individuals, Judge Akane makes no finding as to the status of these victims.

<sup>4653</sup> *Contra* [Defence Final Brief](#), para. 51.

<sup>4654</sup> See paragraphs 642 and 646 above.

<sup>4655</sup> See paragraph 460 above.

<sup>4656</sup> See paragraph 646 above.

<sup>4657</sup> See paragraphs 615-618, 642 above.

judges were selected,<sup>4658</sup> the way judgments were deliberated on, including the sources referred to and who had the final word,<sup>4659</sup> and the sentences imposed.<sup>4660</sup>

1502. The Chamber recalls that the decision to create the Islamic Court was made at a meeting organised in early April 2012 by Iyad Ag Ghaly, Abou Zeid, and Abou Al Hammam, the heads of Ansar Dine/AQIM.<sup>4661</sup> They established the Islamic Court to ‘fill a justice and security vacuum in the region’<sup>4662</sup> and ‘to impose their own regime or system upon the country’.<sup>4663</sup> In order to exert control over the judiciary, Ansar Dine/AQIM’s leadership<sup>4664</sup> selected judges who would be loyal to them.<sup>4665</sup> Those who disagreed with the groups’ method were not permitted to work as judges, including the local *qadis* who had been judges before Ansar Dine/AQIM’s control of Timbuktu.<sup>4666</sup> Ansar Dine/AQIM’s leadership held individual meetings with local judges and convinced them to either cooperate or to at least not stand against the measures Ansar Dine/AQIM’s leadership was about to undertake in the city.<sup>4667</sup> In that way, the leadership was able to guarantee that the local judges would not stand against any nominee for the bench,<sup>4668</sup> and to ensure that Ansar Dine/AQIM could continue controlling the Islamic Court from afar.

1503. Ansar Dine/AQIM’s leadership wanted the local population to perceive that locals were in charge, but in fact, they were the ones in control of the Islamic Court.<sup>4669</sup> Ansar Dine/AQIM required a judge to be someone perceived by the locals as capable of exercising a judicial function, ‘even if that person was not in fact capable of that’.<sup>4670</sup> To this end, in order to limit opposition to their plan, the armed groups’ leadership purposefully chose individuals who were well-known

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<sup>4658</sup> See paragraphs 605, 606, 608 above.

<sup>4659</sup> See paragraphs 640-642 above.

<sup>4660</sup> See paragraphs 642, 645-646 above.

<sup>4661</sup> See paragraph 592 above.

<sup>4662</sup> See paragraph 596 above.

<sup>4663</sup> See paragraph 596 above.

<sup>4664</sup> The Chamber recalls that the judges of the Islamic Court were appointed by the armed groups’ leadership. See paragraph 608 above. Abou Zeid, Al Mahdi, and Abdallah Al Chinguetti were all tasked with drafting a list of judges who could serve on the Islamic Court. See paragraph 593 above.

<sup>4665</sup> See paragraph 606 above.

<sup>4666</sup> See paragraph 607 above.

<sup>4667</sup> See paragraph 605 above.

<sup>4668</sup> See paragraph 605 above.

<sup>4669</sup> See paragraphs 604, 642 above.

<sup>4670</sup> See paragraph 606 above.

among the locals.<sup>4671</sup> They selected local judges from a cross-section of society with different ethnicities.<sup>4672</sup> Abou Zeid himself appointed Houka Houka; the armed groups' leadership wanted him to be a judge because he embraced Wahhabist ideas consistent with that of the jihadists and because of his popular reputation among the Tuareg community.<sup>4673</sup>

1504. From its inception, the Islamic Court was slated to be controlled by Ansar Dine/AQIM, rather than its own independent entity. The Chamber found that the leadership of Ansar Dine/AQIM appointed judges who would be loyal to the groups and exercise the will of Ansar Dine/AQIM, estopped persons who would not be loyal to Ansar Dine/AQIM from being selected as judges and attempted to create a perception that locals were in control of the justice system while in reality Ansar Dine/AQIM controlled the Islamic Court behind the scenes.

1505. In the functioning of the Islamic Court, the members of Ansar Dine/AQIM influenced the bench and interfered with the Islamic Court. First, besides their role within the Islamic Court, some local judges simultaneously held roles within other Ansar Dine/AQIM institutions.<sup>4674</sup> Some held roles on the *Sharia* Committee<sup>4675</sup> and others in the *Hesbah*.<sup>4676</sup> The Chamber considers that these judges' involvement in other institutions, which were essentially designed to implement the policy of Ansar Dine/AQIM, necessarily influenced their views about the objectives of the Islamic Court, the cases they heard and/or the assessment of those cases. Holding multiple roles in this way challenged the core of the independence requirement as there was no way to shield against the undue influence and conflicting interests between roles.

1506. Additionally, as mentioned above, the bench of the Islamic Court was not only made up of locals, but also included three essentially permanent, although unofficial, members who were all from the Ansar Dine/AQIM leadership: Radwan, Koutaïba and Abdallah Al Chinguetti.<sup>4677</sup> Radwan, Koutaïba and

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<sup>4671</sup> See paragraphs 605-606 above.

<sup>4672</sup> See paragraph 608 above.

<sup>4673</sup> See paragraph 609 above.

<sup>4674</sup> See paragraph 612 above.

<sup>4675</sup> See paragraph 612 above.

<sup>4676</sup> See paragraph 614 above.

<sup>4677</sup> See paragraph 615 above.

Abdallah Al Chinguetti were present on the Islamic Court's bench to make sure that the Islamic Court was serving Ansar Dine/AQIM's agenda.<sup>4678</sup> Ultimately, they controlled the workings of the institution.<sup>4679</sup>

1507. These three individuals represented Ansar Dine/AQIM's ideology on the bench.<sup>4680</sup> Radwan was an affiliate of AQIM and was the main person who conveyed the armed groups' ideology for which he drew the plan and put it in place,<sup>4681</sup> Koutaïba was a highly regarded member of AQIM,<sup>4682</sup> and Abdallah Al Chinguetti, also of AQIM, was brought in by Abou Zeid to monitor all *Sharia* activities in the city.<sup>4683</sup> The ability to be shielded from interference by Ansar Dine/AQIM, as would be required for the Islamic Court to be considered an independent judicial institution, became extremely limited, if not impossible, when active members of AQIM were placed on the bench. The fact that they were not all listed on the Judicial Register, and thus were not transparently and officially judges, yet attended all hearings and controlled the decision-making process, only supports this conclusion further.<sup>4684</sup>

1508. While, as noted above,<sup>4685</sup> the independence requirement does not necessarily preclude a court from having executive branch members on the bench, as long as they are able to perform their functions independently and impartially, this was not the case with the Islamic Court. Abdallah Al Chinguetti, Koutaïba and Radwan controlled the kinds of cases the Islamic Court would receive, making sure to remove any cases from the docket that they felt could affect the future of the leadership of the groups, and they played an extremely influential role in the Islamic Court's decision-making process.<sup>4686</sup> They were neither independent in their own functions within the Islamic Court nor were they independent in their approach to the work of the Islamic Court and the local judges.

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<sup>4678</sup> See paragraph 615 above.

<sup>4679</sup> See paragraph 642 above.

<sup>4680</sup> See paragraph 616 above.

<sup>4681</sup> See paragraph 617 above.

<sup>4682</sup> See paragraph 617 above.

<sup>4683</sup> See paragraph 617 above.

<sup>4684</sup> See paragraph 616 above.

<sup>4685</sup> See paragraph 1173 above.

<sup>4686</sup> See paragraphs 615, 618 above.

1509. The Chamber found that the Islamic Court was essentially under the ‘almost total control’ of Abdallah Al Chinguetti, Radwan and Koutaïba.<sup>4687</sup> In deliberations, reaching the correct opinion was almost always in their hands and the decisions taken depended on their views.<sup>4688</sup>

1510. Abdallah Al Chinguetti in particular attended almost all the deliberations and had the final say in matters.<sup>4689</sup> He urged the local judges to use different law and his opinions were not to be contested.<sup>4690</sup> Further, Radwan and Koutaïba had great influence too; the local judges listened to what they would say and there was no debate, nobody would interrupt them, and their opinions would prevail.<sup>4691</sup>

1511. Essentially, the local judges were bound by the decisions of these three individuals who were not officially appointed judges of the Islamic Court, but nevertheless controlled the outcomes of decisions. The Chamber found that Ansar Dine/AQIM’s strategy was to give the appearance that the judgments came from locals, and not from Ansar Dine/AQIM.<sup>4692</sup> Further, the Chamber recalls that Houka Houka deferred to the opinions of the three individuals even if he had a different opinion.<sup>4693</sup> The Chamber found that Houka Houka did not have the final word on the judgments, as was perceived by the public, but rather Abdallah Al Chinguetti, Koutaïba and Radwan were the true final decision makers.<sup>4694</sup>

1512. Beyond these three individuals who unduly influenced the proceedings at the Islamic Court, Abou Zeid’s influence was also omnipresent. The Chamber recalls that before issuing any judgments, the Islamic Court judges were required to send them to Abou Zeid for his approval.<sup>4695</sup> Abou Zeid had the final say on all judgments.<sup>4696</sup> Ultimately, Abou Zeid orchestrated matters behind the scenes.<sup>4697</sup> The Chamber thereby finds that the functions and competencies of Ansar

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<sup>4687</sup> See paragraph 642 above.

<sup>4688</sup> See paragraph 642 above.

<sup>4689</sup> See paragraphs 641-642, 645 above.

<sup>4690</sup> See paragraphs 641-642 above.

<sup>4691</sup> See paragraph 642 above.

<sup>4692</sup> See paragraph 645 above.

<sup>4693</sup> See paragraph 642 above.

<sup>4694</sup> See paragraphs 642, 645 above.

<sup>4695</sup> See paragraph 646 above.

<sup>4696</sup> See paragraph 646 above.

<sup>4697</sup> See paragraph 646 above.

Dine/AQIM's Islamic Court and Ansar Dine/AQIM's leadership cannot be clearly distinguished because the latter was able to control the former, thereby rendering the Islamic Court not independent.

1513. While the Chamber's finding that the Islamic Court was not independent is sufficient to deem the fourth element of this war crime satisfied, the Chamber highlights the fact that the Islamic Court was also not impartial.<sup>4698</sup> The Chamber finds that many of these same facts, discussed above, demonstrate the Islamic Court's lack of impartiality. The Chamber recalls that impartiality is defined both subjectively and objectively. Subjectively, a judge must be impartial, harbouring no personal prejudice or bias, with no presumption of the guilt of the accused, nor favouring one party's interests or improperly promoting the interests of one side. It follows that 'a judge [be] bound only by his [or her] conscience and the law'. Objectively, the court must also 'appear to a reasonable observer to be impartial'. For example, there is an unacceptable appearance of bias if a judge's decision will lead to the promotion of a cause in which he or she is involved.<sup>4699</sup>

1514. The Chamber considers that the aforementioned findings, including that many judges held multiple leadership roles in other executive institutions, and that the judges' decisions were influenced significantly by Ansar Dine/AQIM, leave little room for the judges of the Islamic Court to have been impartial, or for the Islamic Court to have appeared impartial. The institutions (including the *Hesbah*, the Islamic Police, the *Sharia* Committee) were tasked with furthering the policies of Ansar Dine/AQIM, as were the judges of the Islamic Court, as evidenced both by the fact that they were members of those other institutions and that three AQIM members were influencing each decision in order to promote Ansar Dine/AQIM's cause. This led the judges to improperly promote the interests of Ansar Dine/AQIM and created the unacceptable appearance of bias, which made the Islamic Court not impartial.

1515. Considering the above, the Chamber finds that the Islamic Court operating in Timbuktu from 2012-2013 was not independent and not impartial. As such the

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<sup>4698</sup> *Contra* [Defence Final Brief](#), para. 364.

<sup>4699</sup> *See* paragraph 1174 above.

Chamber finds that the fourth element of the war crime of sentencing without due process is satisfied.

### iii. Mental elements

1516. With regard to the mental elements required by Article 30 of the Statute, the Chamber considers that given the Islamic Court members' participation in the work of the Islamic Court, it is clear the members of the Islamic Court meant to engage in the passing of sentences. Further, given the factual circumstances described above, in particular the role of the Islamic Court and the members' participation in the work of the Islamic Court in conjunction with members of Ansar Dine/AQIM and its leadership, the Chamber, and in the relevant cases, the Majority,<sup>4700</sup> considers that the members of the Islamic Court were aware that they were passing sentence in the absence of the judicial guarantee of independence and impartiality, and meant to engage in that conduct.

1517. Having regard to the facts found in relation to the individuals brought before the Islamic Court and given that the judges of the Islamic Court issued judgments on their cases, the Chamber, and in the relevant cases, the Majority,<sup>4701</sup> is satisfied that the judges of the Islamic Court were aware of the victims' status as civilians, thereby fulfilling the third element of the war crime of sentencing without due process in relation to these aforementioned individuals.

1518. Considering that the members of the Islamic Court were aware of the control the executive had over the functioning of the judiciary,<sup>4702</sup> the Chamber considers that the members of the Islamic Court were aware of the Islamic Court's lack of independence and also of its lack of impartiality. The Chamber recalls that the perpetrators need not be aware or make a value judgment that such a guarantee is indispensable to a fair trial, only that they know of the guarantee's absence.<sup>4703</sup>

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<sup>4700</sup> For the cases referenced in paragraph 1497 above with the exception of case of the two men, **Judge Akane** makes no further findings, having found that the evidence does not prove beyond a reasonable doubt that sentences were passed.

<sup>4701</sup> For the cases referenced in paragraph 1497 above with the exception of case of the two men, **Judge Akane** makes no further findings, having found that the evidence does not prove beyond a reasonable doubt that sentences were passed.

<sup>4702</sup> See paragraph 646 above.

<sup>4703</sup> See paragraphs 1179-1180 above.



Thus, the Chamber, and in the relevant cases, the Majority,<sup>4704</sup> considers the fifth element to be satisfied.

1519. In light of the foregoing, the Chamber considers that Ansar Dine/AQIM failed to ensure that the Islamic Court of Timbuktu was shielded from any outside interference by members of Ansar Dine/AQIM. Accordingly, the Chamber finds that the Islamic Court of Timbuktu did not afford the essential guarantee of independence and impartiality required by Article 8(2)(c)(iv) of the Statute.

1520. As the Chamber finds that the Islamic Court did not afford the essential guarantee of independence and impartiality, it need not address the issue of whether the Islamic Court afforded all other judicial guarantees generally recognised as indispensable under international law.

### c) Conclusion

1521. The Chamber accordingly finds the elements of Article 8(2)(c)(iv) of the Statute (Count 6) fulfilled in relation to the following cases:

- a. Ibrahim bin Al-Husayn;<sup>4705</sup>
- b. the two men;<sup>4706</sup>
- c. P-0557 and P-0565;
- d. Khudi Bint Ibrahim and ‘Abdallah Bin Mukha;<sup>4707</sup>
- e. Bint Bint Ibrahim and Ikhmad Bin Muhammad;<sup>4708</sup>
- f. Al-Husayn Bin ‘Umar and Halimah Bint Muhammad;<sup>4709</sup>

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<sup>4704</sup> For the cases referenced in paragraph 1497 above with the exception of case of the two men, **Judge Akane** makes no further findings, having found that the evidence does not prove beyond a reasonable doubt that sentences were passed.

<sup>4705</sup> Case 01/1433-2012.

<sup>4706</sup> It is noted that while **Judge Akane** dissents on the categorisation of this case under Count 6, namely she considers that the case should be categorised one in which a sentence was passed without prior judgment of a court, as opposed to a case with a sentence passed pursuant to a judgment pronounced by a court that was not regularly constituted, Judge Akane nevertheless agrees that the two men were sentenced without due process.

<sup>4707</sup> Case 48/1433-2012.

<sup>4708</sup> Case 49/1433-2012.

<sup>4709</sup> Case 54/1433-2012.

- g. Dédéou Maiga;<sup>4710</sup>
- h. Sallaka Bent Al-Khair (P-0554);<sup>4711</sup>
- i. Madou Traoré;<sup>4712</sup>
- j. Foma;
- k. Azahara Abdou (P-1134);
- l. P-0636;
- m. P-0570;
- n. Fadimata Mint Lilli (P-0547);
- o. Salamata Warnamougrez (P-1710);
- p. Hady Aguisa (P-1711);
- q. P-1712;
- r. Al-Khayr Bin-Sidi;<sup>4713</sup>
- s. Moussa Ben Mohamed el-Joumaa or Muhammad Musa Muhammad al-Jam'at, 'Abdu, 'Ali al-Jaw and Adulahi;<sup>4714</sup>
- t. Abdelkarim Ascofare or 'Abd-al-Karim Iskufari;<sup>4715</sup>
- u. Nuh bin Muhammad, 'Isa Bin Jadu, Muhammad Shaka, and Abdallah Bin Muhammad al-Jum'at;<sup>4716</sup>
- v. Muhammad Bin Musa;<sup>4717</sup>
- w. Muhammad Walad, Aghli Asudh and Arjili Bin Aman;<sup>4718</sup>
- x. Yahya Bin-Muhammad or his companion;<sup>4719</sup>
- y. El-Khamis Bin-el-Sabt;

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<sup>4710</sup> Case 17/1433-2012.

<sup>4711</sup> Case 66/1434-2013.

<sup>4712</sup> Case 68/1434-2013.

<sup>4713</sup> Case 23/1433-2012.

<sup>4714</sup> Case 43/1433-2012.

<sup>4715</sup> Case 45/1433-2012.

<sup>4716</sup> Case 04/1433-2012.

<sup>4717</sup> Case 25/1433-2012.

<sup>4718</sup> Case 55/1433-2012.

<sup>4719</sup> Case 67/1434-2013.

- z. Yusfi ‘Uthman and Bili Arbi;<sup>4720</sup>
- aa. Halimah Samak and Braym Mik;<sup>4721</sup>
- bb. al-Hasan Bin Irzaq and Halimah Bint Sali;<sup>4722</sup>
- cc. Muhammad;<sup>4723</sup>
- dd. Sha’ban Bin Sidi;<sup>4724</sup>
- ee. Umar Anjami;<sup>4725</sup>
- ff. Infa Muhammad ‘Ali;<sup>4726</sup>
- gg. Halle Bin Hanay;<sup>4727</sup>
- hh. Asya Bint ‘Umar;<sup>4728</sup>
- ii. Muhammad Bin Musa, Muhammad Bin Ban and Qurba Mika;<sup>4729</sup>
- jj. Moukhtar Ould-M’barakou or Moukhtar Ould-Ambarkoua;<sup>4730</sup> and
- kk. Mohamed Ben el-Gaw and el-Goumaa.

1522. The Majority, Judge Akane dissenting, accordingly finds the elements of Article 8(2)(c)(iv) of the Statute (Count 6) fulfilled in relation to the following cases:

- a. Mahmud Bin al-Mustafa;<sup>4731</sup>
- b. Boune Ould Hassan;<sup>4732</sup>
- c. Ali al-Haji and ‘Ali Shayban;<sup>4733</sup>
- d. ‘Abdullah Kuni;<sup>4734</sup>

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<sup>4720</sup> Case 09/1433-2012.

<sup>4721</sup> Case 11/1433-2012.

<sup>4722</sup> Case 13/1433-2012.

<sup>4723</sup> Case 15/1433-2012.

<sup>4724</sup> Case 16/1433-2012.

<sup>4725</sup> Case 18/1433-2012.

<sup>4726</sup> Case 19/1433-2012.

<sup>4727</sup> Case 21/1433-2012.

<sup>4728</sup> Case 29/1433-2012.

<sup>4729</sup> Case 33/1433-2012.

<sup>4730</sup> Case 46/1433-2012.

<sup>4731</sup> Case 28/1433-2012.

<sup>4732</sup> Case 44/1433-2012.

<sup>4733</sup> Case 60/1433-2012.

<sup>4734</sup> Case 61/1433-2012.

- e. Abou-Bakr Soumboulou; and
- f. Dawoud Oulale.

### **10. Persecution (Article 7(1)(h) of the Statute (Count 13))**

1523. Under Count 13, Mr Al Hassan is charged with persecution on religious and/or gender grounds as a crime against humanity, pursuant to Article 7(1)(h) of the Statute, in relation to the acts falling under Counts 1 to 12 and 14,<sup>4735</sup> as well as other acts.<sup>4736</sup>

1524. The Chamber recalls that pursuant to Article 7(1)(h) and 7(2)(g) of the Statute, persecution as a crime against humanity requires that the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights; that the perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such; that such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in Article 7(3) of the Statute, or other grounds that are universally recognised as impermissible under international law; that the conduct was committed in connection with any act referred to in Article 7(1) of the Statute or any crime within the jurisdiction of the Court; and that the conduct was carried out with the intent to discriminate against the targeted persons on any of the grounds enumerated in Article 7(1)(h) of the Statute.

1525. Unless otherwise noted, the assessment below reflects the views of the Majority on the different elements of the crime of persecution, Judge Akane dissenting in part.<sup>4737</sup>

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<sup>4735</sup> The Chamber recalls that, pursuant to Regulation 55(1) of the Regulations and in light of the totality of the evidence submitted, the Chamber modified the legal characterisation of the facts relating to the case of Dédéou Maiga, in accordance with its previous notice, and considered that such facts constituted the war crime of mutilation under Article 8(2)(c)(i) of the Statute (Count 14).

<sup>4736</sup> The Chamber recalls that the underlying acts of persecution need not constitute crimes (*see* paragraphs 1202 above) and notes that it is clear from the charges in this case that acts outside of the charged incidents falling under Counts 1 to 12 and 14 are part of the count of persecution as a crime against humanity (*see* [Confirmation Decision](#), paras 672-684; Self-Contained Set of Charges, para. 19).

<sup>4737</sup> *See* Separate and partly dissenting opinion of Judge Tomoko Akane.

**a) Severe deprivation of fundamental rights contrary to international law**

1526. The Majority turns to the first element of persecution as a crime against humanity, namely, that the perpetrators severely deprived, contrary to international law, one or more persons of fundamental rights.

**i. The right to freedom of thought, conscience and religion**

1527. The Majority assesses first the fundamental right to freedom of thought, conscience and religion, protected notably under Article 18 of the ICCPR and Article 18 of the UDHR.

1528. The Majority recalls the Chamber's findings that Ansar Dine/AQIM imposed rules and prohibitions on the population of Timbuktu,<sup>4738</sup> which reflected their own understanding and subjective interpretation of *Sharia* sources, in the pursuit of their goals.<sup>4739</sup> The imposition of those rules and prohibitions on the local population was central to Ansar Dine/AQIM's objective of imposing and implementing their interpretation of '*Sharia*' and to control Timbuktu and its residents for this purpose.<sup>4740</sup> Through these rules and prohibitions, Ansar Dine/AQIM sought to impose on all members of the Timbuktu population the adoption of certain behaviours and the practice of religion in a specific manner that aligned with Ansar Dine/AQIM's vision and interpretation of *Sharia*.

1529. The Majority notes that Ansar Dine/AQIM's rules and prohibitions spanned many aspects of the life of the local population, forbidding or placing strict restrictions on religious, traditional, social and cultural practices or daily activities. These rules and prohibitions were varied and notably concerned the way, if any, the inhabitants of Timbuktu could practice their own religion and communicate with God, if and how they could celebrate religious, traditional, social and cultural events, what they could consume, how they could dress, as well as how and with whom they could socialise and engage in relationships, as described below; they not only regulated the conduct of individuals in the public

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<sup>4738</sup> See section III.D.1 above.

<sup>4739</sup> See paragraph 1332 above.

<sup>4740</sup> See paragraphs 1618-1619 below.

space, but some of them also restricted what they could do in the privacy of their homes.<sup>4741</sup>

1530. During their control of Timbuktu, Ansar Dine/AQIM notably prohibited the local population from practising or taking part in certain religious and traditional customs, including to show signs of any faith outside of the ‘Muslim faith’,<sup>4742</sup> to celebrate religious or traditional festivities not recognised by Ansar Dine/AQIM, notably the Maouloud celebration which they deemed a prohibited innovation in the religion,<sup>4743</sup> to wear certain clothing while praying,<sup>4744</sup> and to use specific items, such as amulets and talismans, and engage in practices referred to by Ansar Dine/AQIM as ‘heresy’, ‘magic’ or ‘sorcery’.<sup>4745</sup> Ansar Dine/AQIM notably forbade, and forcibly prevented, members of the population from engaging in any religious and customary practices Ansar Dine/AQIM deemed non ‘*Sharia*-compliant’ at the sites of the mausoleums.<sup>4746</sup>

1531. As they considered them against their vision of the religion, Ansar Dine/AQIM also damaged or destroyed monuments of historical value to the population of Timbuktu, such as the Al Farouk monument and the *Monument des Martyrs*, and erased images of human faces and drawings on billboards, signs and mural paintings, notably at the *Monument de la Paix*.<sup>4747</sup> Ansar Dine/AQIM also required that shops be closed during prayers and forced shops open in infringement with this rule to close, as well as forbade them from selling anything they deemed in violation of *Sharia*.<sup>4748</sup> They further forbade the local population from taking part in cultural and social practices, such as dancing, playing or listening to music, whether in festive ceremonies and events like marriages and baptisms or loudly at home.<sup>4749</sup>

1532. Ansar Dine/AQIM also prohibited the local population from consuming and

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<sup>4741</sup> See e.g. paragraphs 673-674, 677, 724, 840 above, and generally section III.D.1.

<sup>4742</sup> See paragraph 713 above.

<sup>4743</sup> See paragraphs 674, 714 above.

<sup>4744</sup> See paragraph 715 above.

<sup>4745</sup> See paragraphs 712, 720-721 above.

<sup>4746</sup> See paragraphs 716-718, 1032-1033 above. On the importance of these mausoleums for the local communities, see notably paragraphs 396-397, 403-405 and, generally, section III.E.3 above.

<sup>4747</sup> See paragraphs 722, 1034 above.

<sup>4748</sup> See paragraphs 485, 686, 705, 719 above.

<sup>4749</sup> See paragraphs 724-725 above.

selling tobacco and alcohol.<sup>4750</sup> Men were forbidden from wearing certain items of clothing, such as long trousers, and had to wear a beard.<sup>4751</sup> Relationships between members of the population became restricted, with Ansar Dine/AQIM prohibiting women and men from engaging in sexual relationships outside of marriage,<sup>4752</sup> as well as women and men who were not married to each other or related from mixing and being seen together in public.<sup>4753</sup> Ansar Dine/AQIM also generally prohibited the organisation of local festivities and, when those events were exceptionally allowed, mixing was forbidden.<sup>4754</sup> They also did not accept the form of education taught in public schools and students were unable to attend those schools which remained generally closed after the arrival of Ansar Dine/AQIM in Timbuktu;<sup>4755</sup> in other *Quranic* schools and those which temporarily reopened, male and female students could not mix in the same class and female students could not attend class without covering their heads.<sup>4756</sup>

1533. Women and girls in particular were subjected to various restrictions linked to their appearance and their occupation of the public space: Ansar Dine/AQIM prohibited women from wearing clothing that showed the shape of the body or was see-through,<sup>4757</sup> as well as from using hair extensions or certain beauty products.<sup>4758</sup> Women were forbidden from leaving their home without wearing a veil and covering their body, and could be arrested for going outside alone after a certain time at night.<sup>4759</sup> Ansar Dine/AQIM generally called upon women to stay at home.<sup>4760</sup>

1534. The imposition and scope of Ansar Dine/AQIM's rules and prohibitions represented a change in comparison with the pre-2012 period in Timbuktu. At that time, while the social life of the population was a patchwork of different

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<sup>4750</sup> See paragraphs 686, 705 above.

<sup>4751</sup> See paragraph 733 above.

<sup>4752</sup> See paragraphs 673, 677 above.

<sup>4753</sup> See paragraphs 673-676 above.

<sup>4754</sup> See paragraph 674 above.

<sup>4755</sup> See paragraphs 727, 731 above.

<sup>4756</sup> See paragraphs 728, 730 above.

<sup>4757</sup> See paragraph 694 above.

<sup>4758</sup> See paragraph 702 above.

<sup>4759</sup> See paragraphs 694-695, 702 above.

<sup>4760</sup> See paragraph 702 above.

behaviours governed by different social norms depending on the communities,<sup>4761</sup> the population of Timbuktu enjoyed freedoms in terms of social activity and religious practices, and it was possible to play and listen to music, to dance and organise parties, to smoke tobacco and drink alcohol, as well as to dress, go out and have relations as they wished and with whom they wanted,<sup>4762</sup> and to practice any kind of religious traditions and rituals.<sup>4763</sup>

1535. Ansar Dine/AQIM's rules and prohibitions were imposed on the local population through the implementation of a system of surveillance and punishment, which relied on acts of violence, force, intimidation, confiscation and destruction, or the threat thereof.

1536. Ansar Dine/AQIM disseminated their rules and prohibitions to the local population through different channels,<sup>4764</sup> notably with members of Ansar Dine/AQIM making announcements on the radio<sup>4765</sup> and flyers being distributed.<sup>4766</sup>

1537. The Majority recalls the Chamber's finding that Ansar Dine/AQIM put in place a well organised system of repression, including several institutions, with the aim of ensuring that *any* alleged contravention to the new rules was punished in a similar fashion.<sup>4767</sup> It found that the institutions created by Ansar Dine/AQIM shared a responsibility for the implementation of the rules and prohibitions.<sup>4768</sup> Members of the different institutions, in particular the *Hesbah* and the Islamic Police, patrolled the city in order to ensure that people adhered to Ansar Dine/AQIM's rules and prohibitions.<sup>4769</sup> Ansar Dine/AQIM sanctioned alleged breaches of their rules and prohibitions by imposing *hudud* or *ta'zir* punishments on members of the population.<sup>4770</sup> People identified as having contravened the rules and prohibitions could be punished directly, brought to the *Hesbah* or

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<sup>4761</sup> See paragraph 415 above.

<sup>4762</sup> See paragraph 414 above.

<sup>4763</sup> See paragraphs 409, 414 above.

<sup>4764</sup> See paragraph 475 above.

<sup>4765</sup> See paragraph 479 above.

<sup>4766</sup> See paragraph 477 above.

<sup>4767</sup> See paragraph 1294 above.

<sup>4768</sup> See paragraph 653 above.

<sup>4769</sup> See paragraphs 573-574, 576, 699 above.

<sup>4770</sup> See section III.C.4.d)ii above.



Islamic Police headquarters, where they could be detained and/or flogged, or taken to the Islamic Court and sentenced.<sup>4771</sup> Under Mohammed Moussa's leadership of the *Hesbah*, women accused of violating the rules and prohibitions were detained at the BMS, some notably in the 'ATM room' (also called the 'women's prison'), where they suffered dire conditions, and where some women were subjected to rape by Ansar Dine/AQIM members.<sup>4772</sup> The Chamber found that acts of violence and beatings, involving weapons and whips, were frequent during 2012,<sup>4773</sup> and specifically that *ta'zir* punishments were frequent at the Islamic Police station.<sup>4774</sup>

1538. The Chamber also found that the sentences issued by the Islamic Court, in particular the *hudud* punishments, were executed publicly and their execution was announced to the public on the radio and over loudspeakers, in order to 'incite' the population to attend and notably deter them from not respecting the rules and prohibitions.<sup>4775</sup> Several punishments, such as floggings and an amputation, were executed in a public square, in front of a crowd of people, including children.<sup>4776</sup>

1539. The Majority also recalls that the Chamber found that Ansar Dine/AQIM carried out inspections for prohibited items at the market and in shops, as well as at the entry and exit checkpoints of the city.<sup>4777</sup> They confiscated and destroyed items deemed contrary to their vision of *Sharia*.<sup>4778</sup>

1540. The rules and prohibitions imposed by Ansar Dine/AQIM, as well as the threat and the application of violent sanctions in case of non-compliance, had a traumatic effect on the population of Timbuktu, which lived in an atmosphere of fear, violence, oppression and humiliation. The Chamber found that members of the local population felt that Ansar Dine/AQIM members could do whatever they

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<sup>4771</sup> See section III.C.4.d) above. See also section III.D.1 above, as well as the Chamber's findings in the context of the charged incidents under Counts 1-6.

<sup>4772</sup> See paragraphs 536-537, as well as the Chamber's findings in the cases of Fadimata Mint Lilli (P-0547), P-0570, P-0636, and, by Majority, Azahara Abdou (P-1134).

<sup>4773</sup> See paragraph 739 above.

<sup>4774</sup> See paragraph 667 above.

<sup>4775</sup> See paragraphs 659, 661 above. See also, for instance, paragraphs 786, 824 above.

<sup>4776</sup> See e.g. the Chamber's findings in the cases of P-0557 and P-0565, Sallaka Bent Al-Khair (P-0554), Madou Traoré and Dédéou Maiga.

<sup>4777</sup> See paragraphs 687, 705 above.

<sup>4778</sup> See paragraphs 686-687, 705-706, 708-709, 720-722, 724 above.

wanted to show their power and that they could only accommodate their life and system of living to the interpretation of *Sharia* which was imposed with a force of arms in the city by Ansar Dine/AQIM.<sup>4779</sup> The Chamber also found that members of the population of Timbuktu felt that ‘everything changed’ and described the atmosphere of the city as ‘terror everywhere’ and ‘confinement’, and Timbuktu as a ‘dead city’ and a ‘ghost town’.<sup>4780</sup>

1541. The Majority recalls that the punishments imposed by Ansar Dine/AQIM were new to the population of Timbuktu, including to Mr Al Hassan, who saw them in 2012 ‘for the first time’.<sup>4781</sup> Many members of the local population became afraid of going out from fear of being reprimanded or brutalised.<sup>4782</sup> The execution of public punishments, such as the floggings and the amputation, also had a strong impact on the morale of the local population.<sup>4783</sup> Members of the population subjected to public punishments described feeling afraid and ashamed and the events affected their relationships with their community, friends and family.<sup>4784</sup>

1542. The Chamber found that women and girls were particularly affected by the situation put into place by Ansar Dine/AQIM, finding it difficult to go to the market and to their regular trade due to Ansar Dine/AQIM’s rules and prohibitions, which had an impact on their ability to earn money.<sup>4785</sup> They drastically reduced their activities outside of the home for fear of arrest and punishment, which some felt could happen ‘whatever [they] did’ to respect the rules and prohibitions, with some women no longer leaving their homes.<sup>4786</sup> The Majority notes that the Chamber notably found that the women of Timbuktu organised a demonstration to protest against the rules and prohibitions imposed on them by Ansar Dine/AQIM, in particular the strictness in enforcing the dress code and the detention of women.<sup>4787</sup>

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<sup>4779</sup> See paragraphs 736, 739 above.

<sup>4780</sup> See paragraph 738 above.

<sup>4781</sup> See paragraph 603 above.

<sup>4782</sup> See paragraph 738 above.

<sup>4783</sup> See e.g. paragraphs 790, 828, 851 above.

<sup>4784</sup> See e.g. paragraphs 786, 798, 833, 852 above.

<sup>4785</sup> See paragraphs 703, 753 above.

<sup>4786</sup> See paragraphs 703, 753 above.

<sup>4787</sup> See paragraph 753 above.

1543. The Majority notes that the Chamber also found that the local economy was impacted, with some jobs and activities unable to continue.<sup>4788</sup> Many inhabitants of Timbuktu left the city because of the violence or because they did not want to submit themselves to Ansar Dine/AQIM's rules and prohibitions, notably musicians who feared being put in prison.<sup>4789</sup> The clergymen disappeared from Timbuktu: some left the city, while others hid in their homes and did not engage in any activity.<sup>4790</sup> Most of the sheikhs who had a special place within the Sufist framework and whose role was to write down amulets also left the city when Ansar Dine/AQIM arrived.<sup>4791</sup> Following the closure of public schools, some inhabitants decided to send their children to other regions to continue their education.<sup>4792</sup> People in Timbuktu celebrated in the streets after the departure of Ansar Dine/AQIM.<sup>4793</sup>

1544. Considering all the above, the Majority finds that Ansar Dine/AQIM carried out a campaign to impose their vision and interpretation of *Sharia* on all members of the Timbuktu population, and thereby forcing members of the population to align their behaviours and to practice religion solely in a way consistent with that vision. In so doing, members of Ansar Dine/AQIM committed a series of acts which, assessed cumulatively and in their context, severely violated the fundamental rights of members of the Timbuktu population to freedom of thought, conscience and religion, contrary to international law. Further, from the combined circumstances and as discussed below, it is clear that they did so intentionally, meaning to cause this consequence.

1545. The Majority considers that the infringement of this right is at the heart of the crime of persecution charged in this case as, throughout the whole period of Ansar Dine/AQIM's control of Timbuktu, the local population saw itself forced to follow and behave in accordance with Ansar Dine/AQIM's religious precepts, or risk being severely punished, with far-reaching effects touching upon all areas of their public and private lives. Members of the population were thereby effectively

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<sup>4788</sup> See paragraph 735 above.

<sup>4789</sup> See paragraphs 725, 740 above.

<sup>4790</sup> See paragraph 713 above.

<sup>4791</sup> See paragraph 721 above.

<sup>4792</sup> See paragraph 729 above.

<sup>4793</sup> See paragraph 454 above.

prevented from exercising their right to adopt a religion or belief of their choice and to manifest their religion or belief (or lack thereof) in the way of their choosing, individually or in community, in public and in private.

1546. In this context, the Majority notes the Defence argument that the population continued to enjoy certain rights, that some acts and restrictions imposed by Ansar Dine/AQIM did not offend human rights law, and that other restrictions fell within permissible derogations allowed under internationally recognised human rights law.<sup>4794</sup> The Defence also alleges that the regulations applied during 2012 were necessary to ensure stability and security, and did not constitute a disproportionate interference of the specific rights in question within the context in which they were taken, and that the Chamber's assessment of the alleged severity of the restrictions must take account of the time period and context in which these actions took place, referring to the situation pre-2012.<sup>4795</sup>

1547. The Majority first notes that derogation measures may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin and that no derogation from the right to freedom of thought, conscience and religion may be made under international law.<sup>4796</sup>

1548. Further, the Majority considers that, in the context and circumstances as described above, and taking into account the far-reaching effects of the underlying acts of persecution on the ability of the population to manifest (or not) religious beliefs in the way of their choosing, which impacted all aspects of the life of the population, no legitimate aim may be invoked to justify the blatant disproportionate infringement of the right. In addition, as further discussed below, failure to adapt one's behaviour with the rules of the groups could be punished by way of other types of crimes against humanity, notably the crime of torture. In this context, while some of the abovementioned acts assessed individually may not be considered to result in a disproportionate interference of the right of the population, the Majority recalls that it is the conjunction of all these acts, assessed

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<sup>4794</sup> [Defence Final Brief](#), paras 563-567.

<sup>4795</sup> [Defence Final Brief](#), paras 568-571.

<sup>4796</sup> See ICCPR, Article 4(1) and (2). See also [UN Human Rights Committee General Comment No. 29 on Article 4](#), para. 12.

cumulatively and in context, which constitutes the severe deprivation of the fundamental right of freedom of thought, conscience and religion of the Timbuktu population.

1549. The Majority is also not convinced by the Defence argument that the existence of legitimate measures taken by Ansar Dine/AQIM in the exercise of public duties during the relevant period warrants a different outcome to the above assessment. The Majority further considers, contrary to the Defence argument,<sup>4797</sup> that the evidence before it does not support the broad assertions that Ansar Dine/AQIM's religious background generally had legitimacy with the local population and that Ansar Dine/AQIM's actions were meaningfully implemented in consultation with local leaders. Moreover, the Majority does not consider these purported factors to be of relevance to the issue of persecution.

**ii. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and the right to bodily integrity**

1550. The Chamber also considers that, in the enforcement of Ansar Dine/AQIM's rules and prohibitions, Ansar Dine/AQIM members committed acts which deprived members of the population of Timbuktu of other fundamental rights, including the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and the right to bodily integrity, protected notably under Articles 7 and 9 of the ICCPR.

1551. Such acts include conduct already characterised as crimes under Counts 1 to 5 and 14, such as floggings, beatings, ill-treatment, humiliation, detention in inhumane conditions, and an amputation committed in the context of the charged incidents, in addition to other acts of a similar character.

1552. Furthermore, the Majority finds that, in the specific contexts of the forced marriages and the subsequent rapes imposed by members of Ansar Dine/AQIM upon women and girls, as well as of the rapes committed by Ansar Dine/AQIM members during the detention of some women and girls, Ansar Dine/AQIM members committed acts which additionally deprived local women and girls of

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<sup>4797</sup> [Defence Final Brief](#), paras 569, 601.

the fundamental right to bodily integrity, as well as of the right not to be held in slavery or servitude, protected notably under Article 8 of the ICCPR. Such acts notably include conduct already characterised as crimes under Counts 8 to 12, such as forced marriages and rapes committed in the context of the charged incidents, in addition to other acts of a similar character.<sup>4798</sup>

1553. The Majority considers that these acts meet, in and of themselves, the minimum level of severity required.<sup>4799</sup>

### **iii. Other rights infringed**

1554. The Majority further considers that the above mentioned acts committed by members of Ansar Dine/AQIM also violated the fundamental rights of female members of the Timbuktu population to freedom of movement and not to be discriminated against on the basis of their gender, protected notably under Articles 12 and 26 of the ICCPR and Article 13 of the UDHR.

1555. These additional violations add to the severity of the deprivation of fundamental rights imposed by Ansar Dine/AQIM on the population of Timbuktu.

1556. Considering as a whole the above acts perpetrated by Ansar Dine/AQIM against members of the population of Timbuktu and their aftermath, the Majority finds that Ansar Dine/AQIM members severely deprived members of the population of Timbuktu, and in particular women and girls within that population, of their fundamental rights, contrary to international law. Accordingly, the Majority finds that the first element of persecution as a crime against humanity is satisfied.

### **b) Identifiable group or collectivity**

1557. Turning to the second element of persecution as a crime against humanity, the perpetrators must have targeted such person or persons by reason of the identity of the group or collectivity or targeted the group or collectivity as such. This element therefore requires the identification of the group or collectivity by reason

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<sup>4798</sup> See sections III.C.3 above, in particular paragraphs 502-503, 509-510, as well as the Chamber's findings in the cases of P-0636, P-0570, Fadimata Mint Lilli (P-0547), P-0520, P-0602, P-0610, P-0538, and, by Majority, Azahara Abdou (P-1134) and P-1162.

<sup>4799</sup> See paragraph 1204 above.

of which individuals were targeted or which was targeted as such.

1558. As discussed, by virtue of the neutral language employed and in particular the alternative of the targeting of a group or collectivity *per se*, it is clear to the Chamber that the members of the group need not have specific personal characteristics. Rather, and contrary to the Defence arguments, it is only necessary that the group or collective, and its members, can be identified, on the basis of criteria which can include neutral features such as geography.<sup>4800</sup> Equally, as outlined above, in the event the persecution entailed the targeting of a group or collectivity as such, the acts of deprivation will evidently be applied against the individual members of the group or collectivity. Finally, while the targeting must be based on discriminatory grounds and the acts of deprivation tied to specific rights, the identification of the group need not be premised on a discriminatory basis.<sup>4801</sup>

1559. Applying these principles, the Chamber recalls its above finding that Ansar Dine/AQIM had the objective to impose and implement their interpretation of ‘*Sharia*’ and to control Timbuktu and its residents for this purpose. As described in detail above, this objective was implemented through the infliction on the population of Timbuktu of measures which constitute severe deprivation of fundamental rights contrary to international law. The Chamber considers in particular that, while the members of the population of Timbuktu deemed by Ansar Dine/AQIM as not adhering to their rules and prohibitions were particularly affected, the targeted group in this case goes beyond and consists of the population of Timbuktu in its entirety. Indeed, as explained below, Ansar Dine/AQIM committed the underlying acts of persecution against that group as a whole, which they perceived as ‘ignorant’ and not ‘real Muslims’, targeting not only those who opposed them but also every member of the population who saw themselves forced to abide by discriminatory rules and prohibitions, which for many had a substantial impact on their individual rights and liberties, as outlined in the previous section.

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<sup>4800</sup> See paragraph 1206 above.

<sup>4801</sup> See paragraph 1206 above.

1560. On this basis, the Chamber finds that the identifiable group was the population of Timbuktu which, in this case, and because it was perceived as (not belonging to) a certain religious group by Ansar Dine/AQIM and/or because of gender grounds, was impermissibly targeted as further discussed below.

**c) Targeting on religious and/or gender grounds**

1561. Turning to the next element of persecution as a crime against humanity, the Chamber will assess whether the perpetrators targeted the population of Timbuktu on religious and/or gender grounds.

1562. In addition to finding that Ansar Dine/AQIM had the objective to impose and implement their interpretation of *Sharia* and to control Timbuktu and its residents for this purpose, the Chamber found that, despite Islam being the main religion in Timbuktu and the city being described as a place in which religious belief was very important,<sup>4802</sup> Ansar Dine/AQIM described the Timbuktu population as ‘ignorant’ and wanted to teach or enlighten them with what Ansar Dine/AQIM considered the ‘real faith’.<sup>4803</sup> The Chamber recalls that this intention was publicly stated by the leadership of Ansar Dine/AQIM and communicated to the civilian population.<sup>4804</sup> The Chamber also found that Ansar Dine/AQIM members perceived the Muslim people of Timbuktu as not ‘practising Muslims’ and therefore not ‘real Muslims’.<sup>4805</sup> The dominant message across sermons was that the country was composed of Muslims whose faith had been taken away from them due to the secular law imposed by western countries, and that the population of Timbuktu had to ‘go back to the origins’, which was to apply the ‘Islamic *Sharia*’.<sup>4806</sup> The Chamber notably found that the leadership of Ansar Dine/AQIM believed that the enforcement of *Sharia* in full required putting an end to any anti-monotheistic manifestations.<sup>4807</sup>

1563. The Chamber further recalls that as outlined in the prior sections, through the enactment of their rules and prohibitions and their violent system of enforcement,

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<sup>4802</sup> See paragraphs 395, 402 above.

<sup>4803</sup> See paragraph 712 above.

<sup>4804</sup> See section III.C.2 above.

<sup>4805</sup> See paragraph 737 above.

<sup>4806</sup> See paragraph 478 above.

<sup>4807</sup> See paragraphs 711, 1032 above.



Ansar Dine/AQIM sought to impose on members of the Timbuktu population the adoption of certain behaviours and the practice of religion in a specific manner that aligned with Ansar Dine/AQIM's vision and interpretation of *Sharia*. Accordingly, whenever a behaviour did not align with Ansar Dine/AQIM's vision of *Sharia*, Ansar Dine/AQIM members ensured that it was suppressed. In this context, the Chamber recalls that Ansar Dine/AQIM created various institutions for the dissemination and enforcement of their rules and prohibitions, and that the institutions created by Ansar Dine/AQIM all shared a responsibility in the implementation of the rules and prohibitions.<sup>4808</sup> The Chamber also found that members of Ansar Dine/AQIM qualified members of the population who did not obey Ansar Dine/AQIM's rules and prohibitions, and thereby were perceived as not subscribing to Ansar Dine/AQIM's interpretation of *Sharia*, as 'stubborn' and that 'stubbornness' was a common argument used to punish anyone among the population of Timbuktu.<sup>4809</sup>

1564. The Chamber considers that while these rules and prohibitions, as well as associated punishments, were imposed on Ansar Dine/AQIM members as well as on the population of Timbuktu as a whole, their enactment and enforcement were *per se* discriminatory on religious grounds.<sup>4810</sup> By forcibly imposing these rules, Ansar Dine/AQIM meant to prohibit and rectify 'wrong' religious beliefs and practices. By punishing anyone viewed as not adhering to their vision and interpretation of *Sharia*, they meant for everyone to adopt and practice the Islamic religion according to Ansar Dine/AQIM's interpretation. The abovementioned underlying acts of persecution were designed and performed to target 'bad Muslims', those lacking the 'correct' form of religious belief. The Chamber particularly notes that, contrary to Ansar Dine/AQIM members who chose to join the groups and abide by their rules and practices, members of the population had no such choice, with those among the population who subscribed to any belief other than Ansar Dine/AQIM's specific vision of *Sharia* and accepted practices being particularly affected.

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<sup>4808</sup> See section III.C.4 above, in particular paragraph 653.

<sup>4809</sup> See paragraphs 576, 663, 675, 697, 707, 724 above.

<sup>4810</sup> *Contra* [Defence Final Brief](#), para. 584.

1565. Considering the above, the Chamber finds that Ansar Dine/AQIM members targeted the population of Timbuktu as a whole on religious grounds, motivated by their perception of all of its members being ‘ignorant’ and not ‘real Muslims’. In their view, this population lacked the ‘correct’ form of religious belief for not subscribing to Ansar Dine/AQIM’s vision and interpretation of *Sharia* and failing to behave in ways prescribed by that belief. The Chamber notes in this regard, contrary to the Defence arguments,<sup>4811</sup> that religious persecution may be based on a perceived lack of a religion, religious affiliation, as well as targeting of persons for their failure to adhere to religious beliefs or precept.<sup>4812</sup>

1566. The Majority, Judge Akane dissenting, considers that, in addition, Ansar Dine/AQIM members specifically targeted local women and girls by reason of their gender, depriving them of some of their fundamental rights because of the particular roles, expectations and conduct Ansar Dine/AQIM assigned to their gender.

1567. In this regard, the Majority notes that with respect to gender as a ground of persecution, Article 7(3) of the Statute defines gender as ‘the two sexes, male and female, within the context of society’. The Chamber considers that persecution may be gender-based if male and female members of the group are targeted in different ways or for different forms of violence depending on their gender.<sup>4813</sup>

1568. In this case, the Chamber found that Ansar Dine/AQIM believed that it was the duty of women to stay at home to take care of children and household affairs,<sup>4814</sup> and that they called upon women to stay at home.<sup>4815</sup> The Chamber also found that those messages were publicly communicated by the leadership of Ansar Dine/AQIM, notably in sermons.<sup>4816</sup> The behaviour of women and girls was particularly controlled: in addition to Ansar Dine/AQIM’s rules and prohibitions

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<sup>4811</sup> [Defence Final Brief](#), paras 597-599.

<sup>4812</sup> See paragraph 1206 above. See also [Bangladesh/Myanmar Investigation Decision](#), para. 103, referring, *inter alia*, to [Kayishema and Ruzindana Trial Judgment](#), para. 98; J. Powderly and N. Hayes, ‘Article 7: Crimes against humanity’ in K. Ambos (ed.) *Rome Statute of the International Criminal Court* (2022), p. 232.

<sup>4813</sup> See J. Powderly and N. Hayes, ‘Article 7: Crimes against humanity’ in K. Ambos (ed.) *Rome Statute of the International Criminal Court* (2022), p. 232.

<sup>4814</sup> See paragraph 509 above.

<sup>4815</sup> See paragraph 702 above.

<sup>4816</sup> See section III.C.2.b) above, in particular paragraphs 488-489.

applying to the entire population of Timbuktu, specific rules and prohibitions were aimed at women and girls, and their violation was repressed with especially harsh punishment and detention conditions, involving gender-specific violence.

1569. As recalled above, Ansar Dine/AQIM imposed a specific dress code on women and girls, who could not leave their home without wearing a veil and covering their body in specific clothing, and could additionally not go outside on their own after a certain time at night.<sup>4817</sup> Notably, when women were considered ‘stubborn’ and did not completely cover their bodies or their heads, they could be detained and/or hit; many women who did not comply with the rules were punished and imprisoned.<sup>4818</sup> Members of Ansar Dine/AQIM patrolled the city daily to control the correct implementation of the dress code of women,<sup>4819</sup> and there were noted incidents where members of Ansar Dine/AQIM entered the hospital to look for women not dressed correctly<sup>4820</sup> and chased women inside their houses for not being sufficiently well covered in their view.<sup>4821</sup> The Chamber also found that, under Mohammed Moussa’s leadership of the *Hesbah*, women were detained at the BMS, some notably in a very small room referred by some as the ‘women’s prison’, in dire conditions, where some women were subjected to rape by Ansar Dine/AQIM members.<sup>4822</sup>

1570. Those specific rules and prohibitions imposed on women and their enforcement had a significant impact on all aspects of the life of women in Timbuktu. While Ansar Dine/AQIM did not prohibit women from going to the market or working, in fact women found it difficult to continue their regular trade due to Ansar Dine/AQIM’s rules and prohibitions and feared going outside, drastically reducing their activities outside of the home for fear of arrest and punishment.<sup>4823</sup> Women also felt that they could be punished ‘whatever [they] did’ to respect the

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<sup>4817</sup> See paragraphs 694-695, 702 above.

<sup>4818</sup> See paragraph 697 above; see e.g. the Chamber’s findings in the cases of Azahara Abdou (P-1134), P-0636, P-0570, P-1712, Fadimata Mint Lilli (P-0547), Salamata Warnamougrez (P-1710) and Hady Aguisa (P-1711).

<sup>4819</sup> See paragraph 699 above.

<sup>4820</sup> See paragraph 700 above.

<sup>4821</sup> See paragraph 701 above; see e.g. the Chamber’s findings in the cases of Azahara Abdou (P-1134) and P-0570.

<sup>4822</sup> See paragraphs 536-537 above, as well as the Chamber’s findings in the cases of Fadimata Mint Lilli (P-0547), P-0570, P-0636, and, by Majority, Azahara Abdou (P-1134).

<sup>4823</sup> See paragraphs 703, 753 above.

rules and prohibitions, and some women no longer left their home.<sup>4824</sup>

1571. While the Majority notes that Ansar Dine/AQIM also requested men to obey certain rules regarding their appearance, there were significant differences in the way those rules were applied and enforced as compared to the rules and prohibitions concerning women, which in the Majority's view resulted from Ansar Dine/AQIM's specific targeting of women and girls because of their gender, as described in this section.<sup>4825</sup> Notably, when Ansar Dine/AQIM discovered men wearing trousers they considered too long, they only asked them to shorten them or cut them themselves.<sup>4826</sup> While the Chamber heard of one instance where Ansar Dine/AQIM members flogged a man for wearing long trousers and a bracelet, and cut his trousers and bracelet,<sup>4827</sup> the Majority notes that it is unclear whether the man was punished specifically for disrespecting the rules regarding the dress code or rather for wearing a bracelet, in possible contravention of Ansar Dine/AQIM's prohibition of amulets and talismans. Even so, the Majority notes that this is the only instance it heard of a man being physically punished for violating the dress code requirement. The Majority however heard many accounts of women being chased, arrested, detained, beaten and/or flogged for even minor violations of the dress code requirements Ansar Dine/AQIM imposed upon them.<sup>4828</sup> The Majority also recalls that, while in detention for alleged violations of the rules and prohibitions, some women were subjected to rape by Ansar Dine/AQIM members.<sup>4829</sup>

1572. The Majority notes that women and girls were also specifically targeted by reason of their gender in the context of the forced marriages, in the course of which women suffered, such as being treated as objects, subjected to rapes or other forms of sexual violence and to significant restrictions to their freedoms, and following which many experienced significant ostracisation and stigmatisation

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<sup>4824</sup> See paragraphs 703, 753 above.

<sup>4825</sup> *Contra* [Defence Final Brief](#), paras 575-576.

<sup>4826</sup> See paragraph 733 above.

<sup>4827</sup> See paragraph 733 above.

<sup>4828</sup> See paragraphs 697, 701 above; *see e.g.* the Chamber's findings in the cases of Azahara Abdou (P-1134), P-0636, P-0570, P-1712, Fadimata Mint Lilli (P-0547), Salamata Warnamougrez (P-1710) and Hady Aguisa (P-1711).

<sup>4829</sup> See the Chamber's findings in the cases of Fadimata Mint Lilli (P-0547), P-0570, P-0636, and, by Majority, Azahara Abdou (P-1134).

from their community.<sup>4830</sup> The Majority considers that this also resulted from the specific roles and expectations assigned to women by Ansar Dine/AQIM, as outlined above. Ansar Dine/AQIM members also expected their ‘wives’ to stay at home and saw ‘marriages’ with local women as a means for Ansar Dine/AQIM members to have sexual intercourse in a ‘permissible’ manner, during which women had no right to refuse to have sexual relations with their ‘husband’.<sup>4831</sup> Considering the above, the Majority finds that female members of the population were subjected to a number of persecutory acts by Ansar Dine/AQIM by reason of their gender.<sup>4832</sup>

1573. In this context, the Majority considers irrelevant the Defence argument concerning the alleged existence of systematic discrimination against women embedded in Malian society,<sup>4833</sup> noting that the Chamber is tasked with assessing the charged acts and conduct in light of the legal requirements of the Statute, and not in comparison with alleged pre-existing domestic practices.

1574. Considering the above, the Chamber, Judge Akane dissenting in part, is satisfied that the perpetrators targeted the population of Timbuktu on religious and gender grounds. The Chamber further finds that the perpetrators, who were all members of Ansar Dine/AQIM, committed the underlying acts of persecution deliberately, with the awareness that members of the targeted group would - as a result - be deprived of one or more of their fundamental rights, and, as demonstrated above, by reason of their perception of the group as ‘bad Muslims’, who in their view lacked the ‘correct’ form of religious belief. Certain persecutory acts were, additionally and as discussed above, gender-based and, in these cases, the Majority is satisfied that the perpetrators also meant to target women and girls as such. In its view, and contrary to the Defence arguments,<sup>4834</sup> the Chamber, Judge Akane dissenting in part, considers it established that all underlying acts were part of Ansar Dine/AQIM’s discriminatory campaign and that its members knew that and intended for their respective acts and conduct to contribute to the

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<sup>4830</sup> *See, in particular*, the Chamber’s findings in the cases of P-0538, P-0520, P-0602, P-0610 and, by Majority, P-1162.

<sup>4831</sup> *See* paragraphs 509-510 above.

<sup>4832</sup> *Contra* [Defence Final Brief](#), para. 585.

<sup>4833</sup> [Defence Final Brief](#), para. 591.

<sup>4834</sup> [Defence Final Brief](#), paras 577-583.

organisation's project to impose its vision and interpretation of *Sharia* on the local population of Timbuktu, particularly on women and girls.

**d) Connection with any act referred to in Article 7(1) of the Statute or any crime within the jurisdiction of the Court**

1575. The Majority recalls that while the underlying acts of persecution need not constitute crimes, there is a requirement that they be connected with acts listed under Article 7(1) of the Statute or any crime within the jurisdiction of the Court, and that it is the persecution as a whole which must be connected in such way, rather than each individual act underlying the same.<sup>4835</sup>

1576. The Majority recalls that the persecution in this case as described above did not take place in isolation. Rather it formed part of series of crimes against humanity involving different acts under Article 7(1) perpetrated against the population of Timbuktu. On this basis alone, the Majority is of the view that the requirement for a connection is established here with respect to both acts under Article 7(1) and crimes within the jurisdiction of the Court.

1577. In addition, as found, the persecution in this case is constituted in large part by acts which themselves were characterised by the Chamber as Article 7(1) crimes, further establishing the necessary connection between the two.

1578. Finally, the Chamber notes that Ansar Dine/AQIM's rules and prohibitions were enforced in a manner which involved the commission of specific crimes under Article 7(1) of the Statute, notably acts of torture and other inhumane acts.

1579. In these combined circumstances, the Majority finds that persecution, comprised of all of the above-mentioned acts assessed cumulatively, was committed in connection with acts referred to in Article 7(1) of the Statute and crimes within the jurisdiction of the Court. Accordingly, the Majority concludes that on the evidence before it, the fourth element of the crime of persecution is also satisfied.<sup>4836</sup>

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<sup>4835</sup> See paragraphs 1202, 1208-1210 above.

<sup>4836</sup> *Contra* [Defence Final Brief](#), paras 582-583.

### e) Conclusion

1580. The Chamber<sup>4837</sup> finds that persecution as a crime against humanity, pursuant to Article 7(1)(h) of the Statute (Count 13), was committed between 2 April 2012 and 29 January 2013 by members of Ansar Dine/AQIM in Timbuktu.

### C. RESPONSIBILITY OF MR AL HASSAN

1581. This section sets out the Chamber's findings on the responsibility of Mr Al Hassan under the modes of liability in Article 25(3)(a), (c) and (d) of the Statute.

1582. The Chamber notes that there are some specific incidents for which Mr Al Hassan is charged under more than one mode of liability for certain crimes. In such instances, the Majority, Judge Akane dissenting,<sup>4838</sup> includes an analysis under each charged mode of liability for completeness but clarifies that in respect of the given specific incident, any conviction is entered only for the mode of liability best suited to denote the accused's responsibility.<sup>4839</sup> The Majority considers this a necessary step in the circumstances of this particular case in light of the alternative modes of liability advanced by the Prosecution and confirmed by the Pre-Trial Chamber.

#### 1. Responsibility of Mr Al Hassan as a direct perpetrator pursuant to Article 25(3)(a) of the Statute

1583. Mr Al Hassan is charged pursuant to Article 25(3)(a) of the Statute as a direct perpetrator for the crimes of torture as a crime against humanity, under Article 7(1)(f) of the Statute (Count 1), and as a war crime, under Article 8(2)(c)(i) of the Statute (Count 3); and outrages upon personal dignity as a war crime, under Article 8(2)(c)(ii) of the Statute (Count 5), in relation to the two men.<sup>4840</sup>

1584. As regards the incident concerning Al-Husyan Bin 'Umar, which was not initially charged by the Pre-Trial Chamber under Article 25(3)(a) of the Statute, the

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<sup>4837</sup> For reasons set out in her separate opinion, **Judge Akane** disagrees with the scope of the crime but joins the Majority in finding that a crime of persecution was committed by members of Ansar Dine/AQIM.

<sup>4838</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>4839</sup> See e.g. [Brdanin Trial Judgment](#), paras 284-285; [Krnojelac Trial Judgment](#), paras 495-496; [Krstić Trial Judgment](#), para. 652.

<sup>4840</sup> Mr Al Hassan is also charged in the alternative pursuant to Article 25(3)(c) and (d) of the Statute for the same crimes in relation to this case.

Chamber recalls that it previously provided notice pursuant to Regulation 55(2) of the Regulations that the legal characterisation of the facts and circumstances for this incident under Counts 1 to 5 may be subject to change to include Mr Al Hassan's responsibility under Article 25(3)(a) of the Statute.<sup>4841</sup> Pursuant to Regulation 55(1) of the Regulations, in light of the totality of the evidence submitted and recalling that the Majority, Judge Prost dissenting,<sup>4842</sup> was not satisfied that Mr Al Hassan personally flogged Al-Husayn Bin 'Umar,<sup>4843</sup> the Majority<sup>4844</sup> declines to change that characterisation.

**a) The two men**

1585. The Defence submits in relation to this incident, *inter alia*, that other institutions played important roles in this event, that Mr Al Hassan played no role in the arrest of these individuals, had no power to influence the way this punishment was executed or to frustrate its occurrence, and would have been punished for disobeying orders and replaced by someone else.<sup>4845</sup> The arguments regarding the superior orders are addressed below. Irrespective of the involvement of the Islamic Court in sentencing the two men and whether or not Mr Al Hassan personally played a role in the victims' arrest, the Chamber notes that Mr Al Hassan played a notable role in the execution of the punishment. Besides personally taking part in the floggings, he also oversaw, with Abou Zhar, the

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<sup>4841</sup> Second Regulation 55 Decision, para. 41.

<sup>4842</sup> **Judge Prost** considered there to be sufficient evidence to find that Mr Al Hassan personally flogged Al-Husayn Bin 'Umar (*see* paragraph 818 above).

<sup>4843</sup> *See* paragraph 818 above.

<sup>4844</sup> **Judge Prost** would have reclassified the legal characterisation of the facts and circumstances for this incident in accordance with the Chamber's previous notice. Further, on the basis of her finding that Mr Al Hassan personally flogged the victim and recalling the Chamber's other legal findings in relation to this individual including satisfaction of the mental elements for each crime in sections B.1 and B.4 above (namely, regarding the mental elements for Counts 1 and 3 that Mr Al Hassan meant to engage in the conduct that inflicted severe physical and mental pain and suffering upon Al-Husayn Bin 'Umar, and meant to cause the victim severe physical and mental pain and suffering, or was at least aware that the severe physical and mental pain and suffering would occur in the ordinary course of events; and for Count 5 that Mr Al Hassan meant to engage in the conduct that humiliated, degraded and otherwise violated the dignity of Al-Husayn Bin 'Umar, and meant to cause the humiliation, degradation and violation of their dignity, or was at least aware that the humiliation, degradation and violation of dignity would occur in the ordinary course of events), Judge Prost would have found Mr Al Hassan criminally responsible as a direct perpetrator within the meaning of Article 25(3)(a) of the Statute for torture as a crime against humanity, under Article 7(1)(f) (Count 1), and as a war crime, under Article 8(2)(c)(i) (Count 3), and outrages upon personal dignity as a war crime under Article 8(2)(c)(ii) (Count 5) in relation to Al-Husayn Bin 'Umar.

<sup>4845</sup> [Defence Final Brief](#), para. 523.



execution of this punishment in particular<sup>4846</sup> and he also gave Abou Zhar the key to unlock the handcuffs chaining the two individuals, so that the punishment could be executed.<sup>4847</sup>

1586. In any event, the Chamber notes that Mr Al Hassan (along with other members of Ansar Dine/AQIM) personally flogged the two victims, Mr Al Hassan himself meting out at least 34 and 37 lashes respectively to each victim.<sup>4848</sup> The Chamber also recalls its other legal findings in relation to this case, including satisfaction of the mental elements for each crime.<sup>4849</sup> Thus, the Chamber finds Mr Al Hassan criminally responsible as a direct perpetrator within the meaning of Article 25(3)(a) of the Statute for the commission of the following crimes in relation to the two men: torture as a crime against humanity, under Article 7(1)(f) of the Statute (Count 1), and as a war crime, under Article 8(2)(c)(i) of the Statute (Count 3); and outrages upon personal dignity as a war crime under Article 8(2)(c)(ii) of the Statute (Count 5).

## **2. Responsibility of Mr Al Hassan pursuant to Article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting**

1587. Mr Al Hassan is charged pursuant to Article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting the following crimes, which the Chamber found were committed:

- a. torture as a crime against humanity, under Article 7(1)(f) of the Statute (Count 1), and as a war crime, under Article 8(2)(c)(i) of the Statute (Count 3); and outrages upon personal dignity as a war crime under Article 8(2)(c)(ii) of the Statute (Count 5), in relation to:
  - i. P-0565 and P-0557; and
  - ii. Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad;

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<sup>4846</sup> See paragraph 763 above.

<sup>4847</sup> See paragraph 763 above. The Chamber further recalls that it dismissed the Defence submissions that Mr Al Hassan was ‘suborned’ to Abou Jaber and Abou Zhar at this event (*see* paragraph 763 above).

<sup>4848</sup> See paragraph 763 above.

<sup>4849</sup> See the Chamber’s legal findings on the case of the two men under Counts 1, 3 and 5 in sections B.1 and B.4 above.

- b. sentencing without due process as a war crime, under Article 8(2)(c)(iv) of the Statute (Count 6), in relation to the cases of:
- i. Ibrahim bin al-Husayn;<sup>4850</sup>
  - ii. Al-Husayn Bin ‘Umar and Halimah Bint Muhammad.<sup>4851</sup>
  - iii. Al-Khayr Bin-Sidi;<sup>4852</sup>
  - iv. Moussa Ben Mohamed el-Joumaa or Muhammad Musa Muhammad al-Jam’at, ‘Abdu, ‘Ali al-Jaw and Adulahi;<sup>4853</sup> and
  - v. Abdelkarim Ascofare or ‘Abd-al-Karim Iskufari.<sup>4854</sup>

1588. The Chamber also recalls that it previously provided notice pursuant to Regulation 55(2) of the Regulations that the legal characterisation of the facts and circumstances underlying the incidents related to the individuals referred to in the following cases under Count 6 of the charges may be subject to change to include Mr Al Hassan’s liability under Article 25(3)(c) of the Statute.<sup>4855</sup>

- i. Muhammad Bin Musa;<sup>4856</sup>
- ii. Muhammad Walad, Aghli Asudh and Arjili Bin Aman;<sup>4857</sup>
- iii. Yahya Bin-Muhammad or his companion;<sup>4858</sup>
- iv. El-Khamis Bin-el-Sabt;
- v. Halimah Samak and Braym Mik;<sup>4859</sup>
- vi. Moukhtar Ould-M’barakou or Moukhtar Ould-Ambarkoua;<sup>4860</sup> and
- vii. Mohamed Ben el-Gaw and el-Goumaa.

1589. Pursuant to Regulation 55(1) of the Regulations and in light of the totality of the evidence submitted:

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<sup>4850</sup> Case 01/1433-2012.

<sup>4851</sup> Case 54/1433-2012.

<sup>4852</sup> Case 23/1433-2012.

<sup>4853</sup> Case 43/1433-2012.

<sup>4854</sup> Case 45/1433-2012.

<sup>4855</sup> [First Regulation 55 Decision](#), para. 110.

<sup>4856</sup> Case 25/1433-2012.

<sup>4857</sup> Case 55/1433-2012.

<sup>4858</sup> Case 67/1434-2013.

<sup>4859</sup> Case 11/1433-2012. *See also* ICC-01/12-01/18-894-Conf-AnxA-Corr.

<sup>4860</sup> Case 46/1433-2012.

- a. the Majority, Judge Akane dissenting, hereby modifies the legal characterisation of the facts and circumstances relating to the following four cases in accordance with its previous notice,<sup>4861</sup> where it was established that Mr Al Hassan wrote and signed the relevant Islamic Police report:<sup>4862</sup>
  - i. Muhammad Bin Musa;<sup>4863</sup>
  - ii. Muhammad Walad, Aghli Asudh and Arjili Bin Aman;<sup>4864</sup>
  - iii. Yahya Bin-Muhammad or his companion;<sup>4865</sup> and
  - iv. El-Khamis Bin-el-Sabt;<sup>4866</sup> and
- b. the Chamber declines to change the existing legal characterisation of the facts and circumstances relating to the following three cases in which the Chamber could not establish that Mr Al Hassan wrote and signed the relevant Islamic Police report:
  - i. Halimah Samak and Braym Mik;<sup>4867</sup>
  - ii. Moukhtar Ould-M'barakou or Moukhtar Ould-Ambarkoua;<sup>4868</sup> and
  - iii. Mohamed Ben el-Gaw and el-Goumaa.<sup>4869</sup>

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<sup>4861</sup> **Judge Akane** dissents on the re-characterisation of the facts and circumstances relating to the four cases for the reasons explained in her separate opinion on Mr Al Hassan's responsibility under Article 25(3)(c) in respect of Count 6 (*see* Separate and partly dissenting opinion of Judge Tomoko Akane).

<sup>4862</sup> The Chamber notes the Defence submission that it was deprived of the opportunity of focusing specifically on the authenticity of the reports concerning these four cases, as well as the three cases discussed immediately below, during cross-examination, given that the testimony of expert P-0620 was heard before the issuance of the [First Regulation 55 Decision](#). However, the Chamber recalls that the Defence was on notice well before P-0620's in-court testimony of her evidence on these seven cases, being in possession of her expert report well before that time. Finally, the Chamber notes that at the time of P-0620's testimony in October 2020, the Defence had already been on notice for some time that the Prosecution was seeking re-characterisation in respect of these seven cases analysed by P-0620 (the Prosecution's application for notice to be given pursuant to Regulation 55(2) of the Regulations, ICC-01/12-01/18-894-Conf, being filed on 23 June 2020). Accordingly, the Chamber dismisses the Defence submission.

<sup>4863</sup> Case 25/1433-2012. *See* paragraph 991 above.

<sup>4864</sup> Case 55/1433-2012. *See* paragraph 993 above.

<sup>4865</sup> Case 67/1434-2013. *See* paragraph 995 above.

<sup>4866</sup> *See* paragraph 997 above. The Chamber notes the Defence submission that requalification of this case should be rejected in addition due to the Chamber's decision denying the request to hear D-0147 by video-link which 'prevented the Defence from eliciting evidence concerning Mr Al Hassan's alleged role in the incident, the circumstances (and, importantly, lack of nexus), and the eventual outcome of the case' ([Defence Response Brief](#), paras 91-92; *see also* [Defence Final Brief](#), para. 318). Noting that it is Mr Al Hassan's writing and signing of the Islamic Police report in this case which triggers the re-characterisation pursuant to Regulation 55, a fact established independently of any other evidence which may have been elicited from D-0147, the Chamber dismisses the Defence argument.

<sup>4867</sup> Case 11/1433-2012. *See* paragraph 1001 above.

<sup>4868</sup> Case 46/1433-2012. *See* paragraph 1022 above.

<sup>4869</sup> *See* paragraph 1028 above.

1590. The Chamber found that these crimes, set out above and charged under Counts 1, 3, 5 and 6, were committed by members of Ansar Dine/AQIM as part of a widespread and systematic attack directed at a civilian population and/or in connection with an armed conflict not of an international character.

**a) Torture and outrages upon personal dignity (Counts 1, 3 and 5)**

1591. The Chamber notes that Mr Al Hassan's alleged liability pursuant to Article 25(3)(c) of the Statute under Counts 1, 3 and 5 concerns events of punishment of persons who were perceived to have violated Ansar Dine/AQIM's rules and prohibitions. The Defence generally claims that the execution of punishments fell under the responsibility and orders of the Islamic Court and *Hesbah*, and Mr Al Hassan acted under superior orders he could not disobey.<sup>4870</sup> The Defence also argues that 'the Prosecution relies on an assortment of *de minimus* and neutral contributions to suggest Mr Al Hassan's culpability' under Article 25(3)(c) of the Statute, 'none of which – either individually or taken together – are reflective of the threshold for criminality as an aider/abettor'.<sup>4871</sup> The arguments regarding the superior orders are addressed below. As to the role of the Islamic Police and Mr Al Hassan, the Chamber finds that Mr Al Hassan's assistance must be analysed taking into account the specific role of the Islamic Police within the institutional system created by Ansar Dine/AQIM in 2012-2013, in addition to the role of Mr Al Hassan in respect of the punishment of such persons.<sup>4872</sup>

**i. P-0565 and P-0557**

1592. Turning to P-0565 and P-0557, the Chamber recalls its findings that the conduct perpetrated by Ansar Dine/AQIM against P-0565 and P-0557, including their flogging, amounted to the crimes of torture as a crime against humanity, under Article 7(1)(f) of the Statute (Count 1), and as a war crime, under Article 8(2)(c)(i) of the Statute (Count 3);<sup>4873</sup> and outrages upon personal dignity as a war crime, under Article 8(2)(c)(ii) of the Statute (Count 5).<sup>4874</sup>

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<sup>4870</sup> [Defence Response Brief](#), para. 91. *See also* [Defence Final Brief](#), section 8.9.2.

<sup>4871</sup> [Defence Final Brief](#), para. 27.

<sup>4872</sup> *See also* paragraphs 1674, 1677, 1688 below.

<sup>4873</sup> *See* the Chamber's legal findings on the case of P-0565 and P-0557 in section B.1 above

<sup>4874</sup> *See* the Chamber's legal findings on the case of P-0565 and P-0557 in section B.4 above.

1593. Although noting the different roles played by other institutions such as the *Hesbah* and the Islamic Court in the events surrounding the victims' floggings,<sup>4875</sup> the Chamber recalls that the two victims were arrested by the Islamic Police for having a child out of wedlock,<sup>4876</sup> and detained at the Islamic Police headquarters at the time.<sup>4877</sup> Following their sentencing by the Islamic Court, the Islamic Police was present to carry out the enforcement of the sentence, namely P-0565 and P-0557's public flogging by members of Ansar Dine/AQIM.<sup>4878</sup> The Islamic Police thus played a notable role in the execution of the punishment. In relation to Mr Al Hassan's specific role at this event, the Chamber found that Mr Al Hassan was present at the event, wearing the vest of the Islamic Police; he was among the small group of Ansar Dine/AQIM members forming a circle around P-0565 during her flogging to ensure the security of the event and the implementation of the sanction, and was also present at the event proximate to the time of P-0557's flogging.<sup>4879</sup> The Chamber considers that by participating in ensuring the security of the flogging event, Mr Al Hassan, in his capacity as a key member of the Islamic Police,<sup>4880</sup> was ensuring the efficient and effective implementation of the sanction.<sup>4881</sup> Accordingly, the Chamber considers that Mr Al Hassan's conduct at the P-0565 and P-0557 flogging event constituted assistance to members of Ansar Dine/AQIM in carrying out the crimes of torture and outrages upon personal dignity.<sup>4882</sup>

1594. Furthermore, the Chamber considers that ensuring the security of the flogging event was necessary in large part due to the presence there of many members of

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<sup>4875</sup> The Chamber recalls that the victims were sentenced by the Islamic Court (*see* paragraphs 778-784 above) and that the head of the *Hesbah* was present at their flogging and announced their punishment via megaphone prior to its execution (*see* paragraph 789 above).

<sup>4876</sup> *See* paragraphs 779, 782, 789 above.

<sup>4877</sup> *See* paragraph 558 above.

<sup>4878</sup> *See* paragraph 787 above.

<sup>4879</sup> *See* paragraph 787 above.

<sup>4880</sup> *See also* paragraphs 1674, 1677, 1688 below.

<sup>4881</sup> The Chamber accordingly rejects the Defence suggestion that Mr Al Hassan's alleged presence at the flogging had no impact on the execution of this incident ([Defence Final Brief](#), paras 518-520).

<sup>4882</sup> In this regard, the Chamber notes that, contrary to the Defence submissions, it is not necessary that Mr Al Hassan exercised authority over the persons conducting the flogging or made statements or engaged in acts of encouragement or support ([Defence Final Brief](#), para. 520). Further, recalling that this provision does not require the accessory's contribution to reach a specific threshold, Mr Al Hassan need not have played a 'substantial' role at the floggings for his liability to be triggered under Article 25(3)(c) (*contra* [Defence Final Brief](#), para. 518).

public.<sup>4883</sup> Indeed, P-0565 and P-0557's flogging was well attended by people and was the first public flogging in Timbuktu following the arrival of Ansar Dine/AQIM.<sup>4884</sup> Public attendance at *hudud* punishments was encouraged by Ansar Dine/AQIM to deter and prevent violations of the rules and to advertise for their cause,<sup>4885</sup> and the Chamber recalls that the very public nature of P-0565 and P-0557's flogging formed an important part of the Chamber's findings that the conduct against them amounted to the crimes of torture and outrages upon personal dignity.<sup>4886</sup> In addition, the Chamber considers that security at the flogging event was also necessary to prevent interruption of the execution of the sanction by members of the attending public who may have opposed it, and to visibly demonstrate Ansar Dine/AQIM's then newly imposed force and authority in Timbuktu. In this context, considering that Mr Al Hassan's role in ensuring the security of the event facilitated the efficient and effective implementation of the sanction and also its publicity, and that through his vital role in the Islamic Police, Mr Al Hassan knew of and deliberately took part in Ansar Dine/AQIM's control over the population of Timbuktu, including the severe punishments for violation of the groups' rules and prohibitions,<sup>4887</sup> the Chamber finds that Mr Al Hassan provided the assistance mentioned above for the purpose of facilitating the abovementioned crimes.

1595. In relation to the mental elements under Article 30 of the Statute, the Chamber further considers for the same reasons that Mr Al Hassan meant to provide the abovementioned assistance for the purpose of facilitating the crimes against P-0565 and P-0557, and knew that his assistance would facilitate the crimes or that the crimes would occur in the ordinary course of events. In this regard, the Chamber recalls that under Article 25(3)(c) of the Statute, Mr Al Hassan need only be aware of essential elements of the crime as it is not necessary for him to have known all the details of the crime in which he assisted.<sup>4888</sup>

1596. Accordingly, the Chamber finds Mr Al Hassan criminally responsible pursuant

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<sup>4883</sup> See paragraph 786 above.

<sup>4884</sup> See paragraph 786 above.

<sup>4885</sup> See paragraphs 659, 661 above.

<sup>4886</sup> See paragraphs 1313, 1385 above.

<sup>4887</sup> See paragraph 1688 below.

<sup>4888</sup> See paragraph 1228 above.

to Article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting members of Ansar Dine/AQIM in the commission of the following crimes in relation to P-0565 and P-0557: torture as a crime against humanity, under Article 7(1)(f) of the Statute (Count 1), and as a war crime, under Article 8(2)(c)(i) of the Statute (Count 3); and outrages upon personal dignity as a war crime, under Article 8(2)(c)(ii) of the Statute (Count 5).

**ii. Case of Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad**

1597. Turning to the case of Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad, the Chamber recalls that the victims were all publicly flogged by Ansar Dine/AQIM following their sentencing by the Islamic Court for committing extra-marital sexual intercourse<sup>4889</sup> and that their floggings amounted to the crimes of torture as a crime against humanity, under Article 7(1)(f) of the Statute (Count 1), and as a war crime, under Article 8(2)(c)(i) of the Statute (Count 3);<sup>4890</sup> and outrages upon personal dignity as a war crime pursuant under Article 8(2)(c)(ii) of the Statute (Count 5).<sup>4891</sup>

1598. In relation to Mr Al Hassan’s specific role at this event, the Chamber found that members of Ansar Dine/AQIM secured the site of the flogging and that Mr Al Hassan was present during the flogging of one of the women, at the forefront of the members of Ansar Dine/AQIM present, next to Abou Zhar and within proximity of the woman who was flogged, among the small group of Ansar Dine/AQIM members forming a circle around the woman.<sup>4892</sup> The Chamber also recalls its general findings that the Islamic Police executed judgments of the Islamic Court<sup>4893</sup> and the Islamic Police managed all tasks related to the

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<sup>4889</sup> See paragraph 818 above.

<sup>4890</sup> See the Chamber’s legal findings on the case of Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad in section B.1 above.

<sup>4891</sup> See the Chamber’s legal findings on the case of Khudi Bint Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad in section B.4 above.

<sup>4892</sup> See paragraph 818 above.

<sup>4893</sup> See paragraph 586 above.

enforcement of penalties and implemented the decisions of the Islamic Court, assisted by other organs of Ansar Dine/AQIM as needed.<sup>4894</sup> In further contextualising Mr Al Hassan's overall role in relation to this event, the Chamber also recalls that Mr Al Hassan wrote and signed an Islamic Police report in relation to two of the victims, Al-Husayn Bin 'Umar and Halima Bint Muhammad, received by the Islamic Court<sup>4895</sup> before it sentenced them.<sup>4896</sup> Taking these facts together with the Chamber's findings on Mr Al Hassan's role at the P-0565 and P-0557 flogging event where he was similarly part of the small group of Ansar Dine/AQIM members forming a circle around a victim while they were flogged, the Chamber infers beyond reasonable doubt that Mr Al Hassan was present at this flogging event to ensure the security of the event and the implementation of the sanction.

1599. The Chamber considers that by participating in ensuring the security of the flogging event, Mr Al Hassan, in his capacity as a key member of the Islamic Police,<sup>4897</sup> was ensuring the efficient and effective implementation of the sanction at this event.<sup>4898</sup> Accordingly, the Chamber considers that Mr Al Hassan's conduct at this event constituted assistance to members of Ansar Dine/AQIM in carrying out the crimes of torture and outrages upon personal dignity.<sup>4899</sup>

1600. Furthermore, as noted above, the Chamber considers that ensuring the security of the flogging event was necessary in large part due to the presence of many members of public at this event.<sup>4900</sup> As noted above, public attendance at *hudud* punishments was encouraged by Ansar Dine/AQIM to prevent and deter violations and to advertise for Ansar Dine/AQIM's cause.<sup>4901</sup> The Chamber recalls that the public nature of the flogging of the victims formed an important part of the Chamber's findings that the conduct against them amounted to the

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<sup>4894</sup> See paragraph 586 above.

<sup>4895</sup> See paragraph 816 above.

<sup>4896</sup> See paragraph 817 above.

<sup>4897</sup> See also paragraphs 1674, 1677, 1688 below.

<sup>4898</sup> The Chamber accordingly rejects the Defence suggestion that Mr Al Hassan's alleged presence at the flogging had no effect whatsoever on the realisation of the floggings ([Defence Final Brief](#), para. 518).

<sup>4899</sup> Recalling that this provision does not require the accessory's contribution to reach a specific threshold, Mr Al Hassan need not have played a 'substantial' role at the floggings, for his liability to be triggered under Article 25(3)(c) (*contra* [Defence Final Brief](#), para. 518).

<sup>4900</sup> See paragraph 818 above.

<sup>4901</sup> See paragraphs 659, 661 above.



crimes of torture and outrages upon personal dignity.<sup>4902</sup> In addition, as noted above, the Chamber considers that security at the flogging event was also necessary to prevent interruption of the execution of the sanction by members of the attending public who may have opposed it, and to visibly demonstrate Ansar Dine/AQIM's force and authority in Timbuktu. In this context, considering that Mr Al Hassan's role in ensuring the security of the event facilitated the efficient and effective implementation of the sanction and also its publicity, and that through his vital role in the Islamic Police, Mr Al Hassan knew of and deliberately took part in Ansar Dine/AQIM's control over the population of Timbuktu, including the severe punishments for violation of the groups' rules and prohibitions,<sup>4903</sup> the Chamber finds that Mr Al Hassan provided this assistance for the purpose of facilitating the abovementioned crimes.

1601. In relation to the mental elements under Article 30 of the Statute, the Chamber further considers for the same reasons that Mr Al Hassan meant to provide the abovementioned assistance for the purpose of facilitating the crimes against Khudi Bint Ibrahim, 'Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin 'Umar and Halimah Bint Muhammad, and knew that his assistance would facilitate the crimes or that the crimes would occur in the ordinary course of events. As noted above, in this regard, the Chamber recalls that under Article 25(3)(c) of the Statute Mr Al Hassan need only be aware of essential elements of the crime as it is not necessary for him to have known all the details of the crime in which he assisted.<sup>4904</sup>

1602. Accordingly, the Chamber finds Mr Al Hassan criminally responsible pursuant to Article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting members of Ansar Dine/AQIM in the commission of the following crimes in relation to Khudi Bint Ibrahim, 'Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin 'Umar and Halimah Bint Muhammad: torture as a crime against humanity, under Article 7(1)(f) of the Statute (Count 1), and as a war crime, under Article 8(2)(c)(i) of the Statute (Count 3); and outrages upon

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<sup>4902</sup> See paragraphs 1316, 1386 above.

<sup>4903</sup> See paragraph 1688 below.

<sup>4904</sup> See paragraph 1228 above.

personal dignity as a war crime, under Article 8(2)(c)(ii) of the Statute (Count 5).

### iii. The two men (in the alternative)

1603. As noted above, Mr Al Hassan is charged in the alternative pursuant to Article 25(3)(c) of the Statute under Counts 1, 3 and 5 in relation to the case of the two men.

1604. The Majority, Judge Akane dissenting,<sup>4905</sup> considers that by directly participating in the flogging of both men as well as overseeing the execution of this punishment and providing the key to unlock the victims' handcuffs 'so that the punishment could be executed', as recalled above, Mr Al Hassan's conduct at the event constituted, in the alternative to its findings above under Article 25(3)(a) of the Statute, assistance pursuant to Article 25(3)(c) of the Statute to members of Ansar Dine/AQIM in carrying out the crimes of torture and outrages upon personal dignity. Considering that Mr Al Hassan's role in ensuring the security of the event facilitated the implementation of the sanction, and that through his vital role in the Islamic Police, Mr Al Hassan knew of and deliberately took part in Ansar Dine/AQIM's control over the population of Timbuktu, including the severe punishments for violation of the groups' rules and prohibitions,<sup>4906</sup> the Majority finds that Mr Al Hassan provided the assistance mentioned above for the purpose of facilitating the abovementioned crimes. In relation to the mental elements under Article 30 of the Statute, the Majority further considers for the same reasons that Mr Al Hassan meant to provide the abovementioned assistance for the purpose of facilitating the crimes against the two men and knew that his assistance would facilitate the crimes or that the crimes would occur in the ordinary course of events.

1605. Accordingly, in the alternative to its findings under Article 25(3)(a) above, the Majority would have found Mr Al Hassan criminally responsible pursuant to Article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting Ansar Dine/AQIM members in the commission of the following crimes in relation to the two men: torture as a crime against humanity, under Article 7(1)(f) of the

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<sup>4905</sup> As noted above, **Judge Akane** dissents on entering alternative findings for this specific incident (*see* Separate and partly dissenting opinion of Judge Tomoko Akane).

<sup>4906</sup> *See* paragraph 1688 below.

Statute (Count 1), and as a war crime, under Article 8(2)(c)(i) of the Statute (Count 3); and outrages upon personal dignity as a war crime, under Article 8(2)(c)(ii) of the Statute (Count 5).

**b) Sentencing without due process (Count 6)**

1606. The Chamber recalls its finding that members of the Islamic Court sentenced the individuals in the following nine cases pursuant to judgments pronounced by a court which was not regularly constituted, under Article 8(2)(c)(iv) of the Statute, in that the court was not independent or impartial: (i) Ibrahim bin Al-Husayn; (ii) Al-Husayn Bin ‘Umar and Halimah Bint Muhammad; (iii) Al-Khayr Bin-Sidi; (iv) Moussa Ben Mohamed el-Joumaa or Muhammad Musa Muhammad al-Jam’at, ‘Abdu, ‘Ali al-Jaw and Adulahi; (v) Abdelkarim Ascofare or ‘Abd-al-Karim Iskufari; (vi) Muhammad Bin Musa; (vii) Muhammad Walad, Aghli Asudh and Arjili Bin Aman; (viii) Yahya Bin-Muhammad or his companion; and (ix) El-Khamis Bin-el-Sabt (the ‘individuals’ and the ‘nine cases’).<sup>4907</sup>

1607. The Chamber also found that prior to the sentencing in the nine cases by the Islamic Court, Mr Al Hassan wrote and signed an Islamic Police report in each of the nine cases, which was received by the Islamic Court.<sup>4908</sup>

1608. The Defence submits that Mr Al Hassan made no culpable contribution to these incidents since, *inter alia*, Mr Al Hassan’s clerical role in transcribing and notarising reports had no impact on the outcome of proceedings at the Islamic Court, the execution of punishments also fell under the responsibility and orders of the Islamic Court and the *Hesbah*, and Mr Al Hassan acted under superior orders he could not disobey.<sup>4909</sup> The arguments regarding the superior orders are addressed below. The Chamber recalls its findings on the context of Mr Al Hassan’s involvement with the work of the Islamic Court as a member of the Islamic Police and notably his role in writing and signing Islamic Police reports. The Chamber found that after starting as an interpreter within the Police, within a short period of time, Mr Al Hassan was an active member of the Police and had

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<sup>4907</sup> See paragraph 1521 above.

<sup>4908</sup> See paragraphs 767, 816, 983, 985, 987, 991, 993, 995, 997.

<sup>4909</sup> [Defence Final Brief](#), paras 380-405; [Defence Response Brief](#), paras 74-76, 91. See also [Defence Final Brief](#), paras 406-429.

started to draft reports as well as exercising administrative functions and organising the police work.<sup>4910</sup> Mr Al Hassan was authorised to sign Police reports and he wrote and signed numerous such reports<sup>4911</sup> related to various criminal and civil matters,<sup>4912</sup> throughout his time with the Islamic Police.<sup>4913</sup>

1609. The Chamber observes that the Islamic Police and their reports had an important function in the work of the Islamic Court. Islamic Police reports were one of at least three ways through which cases were brought to the Islamic Court,<sup>4914</sup> and in many cases, Police reports, written and signed by Mr Al Hassan, were referred to the Islamic Court.<sup>4915</sup>

1610. Further, Islamic Police reports were relied on by the Islamic Court in various ways: when there were no denials or associated controversies, the judges of the Islamic Court mainly verified the authenticity of the Police report by re-investigating the defendant.<sup>4916</sup> If a report from the Islamic Police indicated that the accused confessed, the Islamic Police report was considered by the judges who then questioned the accused and heard any witnesses in order to assess whether the report was accurate.<sup>4917</sup> Mr Al Hassan was familiar with these procedures<sup>4918</sup> and provided evidence, at least once, during a hearing, clarifying a report and providing additional information.<sup>4919</sup> Some defendants were sentenced because they were ‘not able to defend themselves’ against the Police report.<sup>4920</sup> Mr Al Hassan and other members of the Islamic Police brought Police reports to the Islamic Court along with the accused persons.<sup>4921</sup> The Majority, Judge Akane dissenting,<sup>4922</sup> further notes the following for the purpose of the analysis under Article 25(3)(c) of the Statute: after sentences were issued, either

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<sup>4910</sup> See paragraph 1067 above.

<sup>4911</sup> See paragraph 1074 above.

<sup>4912</sup> See paragraph 1075 above.

<sup>4913</sup> See paragraph 1075 above.

<sup>4914</sup> See paragraph 620 above.

<sup>4915</sup> See paragraph 1074 above.

<sup>4916</sup> See paragraph 630 above.

<sup>4917</sup> See paragraph 630 above.

<sup>4918</sup> See paragraph 630 above.

<sup>4919</sup> See paragraph 1076 above.

<sup>4920</sup> See paragraphs 631, 1000 above.

<sup>4921</sup> See paragraph 1076 above. The Chamber also refers to its dismissal of the Defence argument that the Islamic Court did not base its judgments on the contents of the Police reports ([Defence Final Brief](#), paras 380-383) (see paragraph 1698 below).

<sup>4922</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

Mr Al Hassan or somebody else would come to take the person from the Islamic Court;<sup>4923</sup> the Islamic Police executed judgments of the Islamic Court<sup>4924</sup> and the Islamic Police also managed all tasks related to the enforcement of penalties and implemented the decisions of the Islamic Court, assisted by other organs of Ansar Dine/AQIM as needed;<sup>4925</sup> in this context, the judiciary and the Police were ‘inseparable’;<sup>4926</sup> where persons were sentenced to public punishment by the Islamic Court, the Police notably took the accused to the public site where the punishment was meted out;<sup>4927</sup> Mr Al Hassan himself was present during several public punishments and also brought sentenced persons to the punishment sites.<sup>4928</sup>

1611. As a result of his role within the Islamic Police and his interactions with the Islamic Court as set out above, the Majority, Judge Akane dissenting, finds that Mr Al Hassan was clearly aware of the general procedures of the Islamic Court and of the function and importance of his Police reports in the work of the Islamic Court, and was aware that sentences were handed down by members of the Islamic Court and were executed.

1612. In addition, the Majority recalls that Mr Al Hassan was aware of the influence that senior Ansar Dine/AQIM leaders exercised over the Islamic Court and its members. Notably, Mr Al Hassan knew that the Islamic Court judges consulted Abou Zeid as the final step before issuing judgments and that whether or not the judgment would be executed was dependent on Abou Zeid’s order.<sup>4929</sup> Indeed, Mr Al Hassan knew that Abou Zeid had to approve the execution of the judgments because he many times himself had to wait for Abou Zeid’s approval.<sup>4930</sup> Mr Al Hassan also accepted, following the charged events, that it could be said in this context that there was ‘no independence of justice’.<sup>4931</sup> Mr Al Hassan also knew that members of the Islamic Court including Houka Houka and Al Mahdi

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<sup>4923</sup> See paragraph 649 above.

<sup>4924</sup> See paragraph 586 above.

<sup>4925</sup> See paragraph 586 above.

<sup>4926</sup> See paragraph 586 above.

<sup>4927</sup> See paragraph 586 above.

<sup>4928</sup> See paragraph 1078 above.

<sup>4929</sup> See paragraph 646 above.

<sup>4930</sup> See paragraph 646 above.

<sup>4931</sup> See paragraph 646, footnote 1895 above.

simultaneously held other roles within other Ansar Dine/AQIM institutions.<sup>4932</sup> In addition, Mr Al Hassan knew that Abou Zeid could directly instruct that cases be referred to the Islamic Court through the Islamic Police, Mr Al Hassan himself signing at least one report to that effect.<sup>4933</sup> The Majority concludes from these facts that Mr Al Hassan was aware that the Islamic Court was not independent and impartial.

1613. In the context set out above, the Majority considers that Mr Al Hassan's writing and signing of Islamic Police reports in the nine cases constituted assistance to the members of the Islamic Court in their sentencing of the individuals in those cases.<sup>4934</sup>

1614. Further, in light of the relationship between the work of the Islamic Police and the work of the Islamic Court, and notably the important function of the Islamic Police reports in the Islamic Court's judicial process coupled with Mr Al Hassan's knowledge of the lack of independence and impartiality of the Islamic Court, the Majority, Judge Akane dissenting,<sup>4935</sup> considers that Mr Al Hassan's assistance was provided for the purpose of facilitating the sentencing of the individuals pursuant to judgments pronounced by a court which was not independent or impartial. In relation to the mental elements under Article 30 of the Statute, the Majority further considers that Mr Al Hassan meant to provide the abovementioned assistance for the purpose of facilitating the Islamic Court's sentencing of the individuals in the nine cases and knew that his assistance would facilitate the sentencing pursuant to judgments pronounced by a court which was not independent or impartial.<sup>4936</sup>

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<sup>4932</sup> See paragraph 612 above.

<sup>4933</sup> See paragraph 620 above.

<sup>4934</sup> Based on its analysis above, the Chamber accordingly dismisses the Defence argument that Mr Al Hassan made no culpable contribution to the charged incidents and that Mr Al Hassan's role had no impact on the outcome of proceedings at the Islamic Court ([Defence Final Brief](#), paras 380-405; [Defence Response Brief](#), para. 91).

<sup>4935</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>4936</sup> Based on its analysis, **the Majority** accordingly dismisses the Defence argument that Mr Al Hassan did not possess the special knowledge required by Article 8(2)(c)(iv) on the basis, *inter alia*, that he had no actual knowledge of the proceedings in question and had no reason to question the legitimacy and decisions of the Islamic Court ([Defence Final Brief](#), paras 378-379). For reasons mentioned in her separate opinion, **Judge Akane** considers that Mr Al Hassan did not possess the requisite *mens rea* under Article 25(3)(c) of the Statute.

1615. Accordingly, the Majority, Judge Akane dissenting, finds Mr Al Hassan criminally responsible pursuant to Article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting Islamic Court members in the commission of the war crime of sentencing pursuant to judgments pronounced by a court which was not regularly constituted, under Article 8(2)(c)(iv) of the Statute (Count 6), in relation to the individuals in the following nine cases: (i) Ibrahim bin Al-Husayn; (ii) Al-Husayn Bin ‘Umar and Halimah Bint Muhammad; (iii) Al-Khayr Bin-Sidi; (iv) Moussa Ben Mohamed el-Joumaa or Muhammad Musa Muhammad al-Jam’at, ‘Abdu, ‘Ali al-Jaw and Adulahi; (v) Abdelkarim Ascofare or ‘Abd-al-Karim Iskufari; (vi) Muhammad Bin Musa; (vii) Muhammad Walad, Aghli Asudh and Arjili Bin Aman; (viii) Yahya Bin-Muhammad or his companion; and (ix) El-Khamis Bin-el-Sabt.

### **3. Responsibility of Mr Al Hassan pursuant to Article 25(3)(d) of the Statute for contributing**

1616. Mr Al Hassan is charged pursuant to Article 25(3)(d) of the Statute for contributing to the following crimes, which, either the Chamber or a Majority,<sup>4937</sup> found were committed, namely:

- a. torture as a crime against humanity, pursuant to Article 7(1)(f) of the Statute (Count 1), and as a war crime, pursuant to Article 8(2)(c)(i) of the Statute (Count 3), in relation to:
  - i. Dédéou Maiga;
  - ii. Sallaka Bent Al-Khair (P-0554); and
  - iii. Madou Traoré;
- b. other inhumane acts as a crime against humanity, pursuant to Article 7(1)(k) of the Statute (Count 2), and cruel treatment as a war crime, pursuant to Article 8(2)(c)(i) of the Statute (Count 4), in relation to:

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<sup>4937</sup> The Chamber found that crimes were committed in the cases enumerated in lists a-d, f and i as well as in the cases enumerated in list e (sentencing without due process) with the exception of the cases of Mahmud Bin al-Mustafa; Boune Ould Hassan; Ali al-Haji and ‘Ali Shayban; Abdullah Kuni; and Abou-Bakr Soumboulou; Dawoud Oulale, where the findings that crimes were committed were made by Majority, Judge Akane dissenting. Regarding the cases enumerated in lists f, g and h, the finding that crimes were committed in case of Azahara Abdou (P-1134), in relation to Counts 11 and 12 and the case of P-1162 in relation to Counts 8, 9 and 10, as well as in relation to all other victims under Counts 8, 9 and 11 were made by Majority, Judge Akane dissenting.

- i. Foma;
  - ii. Azahara Abdou (P-1134);
  - iii. P-0636;
  - iv. P-0570; and
  - v. Fadimata Mint Lilli (P-0547);
- c. outrages upon personal dignity as a war crime, pursuant to Article 8(2)(c)(ii) of the Statute (Count 5), in relation to:
- i. Dédéou Maiga;
  - ii. Sallaka Bent Al-Khair (P-0554);
  - iii. Madou Traoré;
  - iv. Foma;
  - v. Azahara Abdou (P-1134);
  - vi. P-0636;
  - vii. P-0570; and
  - viii. Fadimata Mint Lilli (P-0547);
- d. mutilation as a war crime, pursuant to Article 8(2)(c)(i) of the Statute (Count 14), in relation to Dédéou Maiga;
- e. sentencing without due process as a war crime, pursuant to Article 8(2)(c)(iv) of the Statute (Count 6), in relation to the cases of:
- i. the two men;
  - ii. P-0557 and P-0565;
  - iii. Khudi Bint Ibrahim and ‘Abdallah Bin Mukha;<sup>4938</sup>
  - iv. Bint Bint Ibrahim and Ikhmad Bin Muhammad;<sup>4939</sup>
  - v. Dédéou Maiga;<sup>4940</sup>
  - vi. Sallaka Bent Al-Khair (P-0554);<sup>4941</sup>
  - vii. Madou Traoré;<sup>4942</sup>
  - viii. Foma;
  - ix. Azahara Abdou (P-1134);

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<sup>4938</sup> Case 48/1433-2012.

<sup>4939</sup> Case 49/1433-2012.

<sup>4940</sup> Case 17/1433-2012.

<sup>4941</sup> Case 66/1434-2013.

<sup>4942</sup> Case 68/1434-2013.



- x. P-0636;
- xi. P-0570;
- xii. Fadimata Mint Lilli (P-0547);
- xiii. Salamata Warnamougrez (P-1710);
- xiv. Hady Aguisa (P-1711);
- xv. P-1712;
- xvi. Nuh bin Muhammad, ‘Isa Bin Jadu, Muhammad Shaka and Abdallah Bin Muhammad al-Jum’at;<sup>4943</sup>
- xvii. Yusfi ‘Uthman and Bili Arbi;<sup>4944</sup>
- xviii. Halimah Samak and Braym Mik;<sup>4945</sup>
- xix. al-Hasan Bin Irzaq and Halimah Bint Sali;<sup>4946</sup>
- xx. Muhammad;<sup>4947</sup>
- xxi. Sha’ban Bin Sidi;<sup>4948</sup>
- xxii. Umar Anjami;<sup>4949</sup>
- xxiii. Infa Muhammad ‘Ali;<sup>4950</sup>
- xxiv. Halle Bin Hanay;<sup>4951</sup>
- xxv. Mahmud Bin al-Mustafa;<sup>4952</sup>
- xxvi. Asya Bint ‘Umar;<sup>4953</sup>
- xxvii. Muhammad Bin Musa, Muhammad Bin Ban and Qurba Mika;<sup>4954</sup>
- xxviii. Boune Ould Hassan;<sup>4955</sup>
- xxix. Moukhtar Ould-M’barakou or Moukhtar Ould-Ambarkoua;<sup>4956</sup>
- xxx. Ali al-Haji and ‘Ali Shayban;<sup>4957</sup>
- xxxi. Abdullah Kuni;<sup>4958</sup>

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<sup>4943</sup> Case 04/1433-2012.

<sup>4944</sup> Case 09/1433-2012.

<sup>4945</sup> Case 11/1433-2012.

<sup>4946</sup> Case 13/1433-2012.

<sup>4947</sup> Case 15/1433-2012.

<sup>4948</sup> Case 16/1433-2012.

<sup>4949</sup> Case 18/1433-2012.

<sup>4950</sup> Case 19/1433-2012.

<sup>4951</sup> Case 21/1433-2012.

<sup>4952</sup> Case 28/1433-2012.

<sup>4953</sup> Case 29/1433-2012.

<sup>4954</sup> Case 33/1433-2012.

<sup>4955</sup> Case 44/1433-2012.

<sup>4956</sup> Case 46/1433-2012.

<sup>4957</sup> Case 60/1433-2012.

<sup>4958</sup> Case 61/1433-2012.

- xxxii. Abou-Bakr Soumboulou;
  - xxxiii. Dawoud Oulale; and
  - xxxiv. Mohamed Ben el-Gaw and el-Goumaa;
- f. other inhumane acts in the form of forced marriage as a crime against humanity, pursuant to Article 7(1)(k) of the Statute (Count 8); sexual slavery as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 9), and as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 10); and rape as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 11), and as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 12), in relation to:
- i. P-0520;
  - ii. P-0602;
  - iii. P-0610; and
  - iv. P-0538;
- g. other inhumane acts in the form of forced marriage as a crime against humanity, pursuant to Article 7(1)(k) of the Statute (Count 8); and sexual slavery as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 9), and as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 10), in relation to P-1162;
- h. rape as a crime against humanity, pursuant to Article 7(1)(g) of the Statute (Count 11), and as a war crime, pursuant to Article 8(2)(e)(vi) of the Statute (Count 12), in relation to the rapes in detention of:
- i. Azahara Abdou (P-1134);
  - ii. P-0636;
  - iii. P-0570; and
  - iv. Fadimata Mint Lilli (P-0547);
- i. persecution on religious and/or gender grounds as a crime against humanity, under Article 7(1)(h) of the Statute (Count 13), in relation to:
- i. the acts falling under Counts 1-6, 8-12 and 14; and
  - ii. other acts that constituted severe deprivations of fundamental rights, contrary to international law.

1617. The Chamber, and in relevant parts, the Majority, found that these crimes, set out above and charged under Counts 1-6 and 8-14, were committed by members of Ansar Dine/AQIM as part of a systematic attack directed at a civilian population and/or in connection with an armed conflict not of an international character.

**a) Whether the persons who committed the crimes belonged to a group acting with a common purpose that involved the commission of a crime**

1618. The Chamber recalls its finding that the perpetrators of the crimes charged in the present case were all members of Ansar Dine/AQIM,<sup>4959</sup> which controlled Timbuktu between 2 April 2012 and 29 January 2013.<sup>4960</sup> The Chamber found that in 2012-2013, Ansar Dine and AQIM were allied and were fighting for the same objectives in Mali.<sup>4961</sup> For reasons previously articulated, the Chamber finds unmeritorious the Defence's contention that because Ansar Dine and AQIM had allegedly different approaches and objectives, Ansar Dine/AQIM cannot be considered as one 'group' within the meaning of Article 25(3)(d) of the Statute.<sup>4962</sup> The Chamber found that, during the period of the charges, Ansar Dine/AQIM had the objective to impose and implement their interpretation of 'Sharia' and to control Timbuktu and its residents for this purpose.<sup>4963</sup> Ansar Dine/AQIM sought to 'educate' and 'enlighten' the people of Timbuktu, whom they perceived as 'ignorant', through the imposition of the 'real faith', and to regulate their ways of living and religious practices.<sup>4964</sup>

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<sup>4959</sup> The Chamber considers that the Defence's argument that the absence of specific information about the identity of many of the alleged perpetrators makes it impossible to establish beyond reasonable doubt that they shared a common criminal purpose or were acting pursuant to a common criminal purpose is devoid of merit (*see* [Defence Final Brief](#), para. 59). It is recalled that under Article 25(3)(d) of the Statute, what is required is a finding that the individual perpetrators belonged to the group acting with a common purpose. Neither the text of the provision nor the jurisprudence cited by the Defence indicate that the specific identity of the perpetrators needs to be established. With respect to the crimes for which Mr Al Hassan is charged, the Chamber has assessed and concluded above that each incident was perpetrated by members of Ansar Dine/AQIM. The Chamber proceeds below to its assessment of whether or not this meant that the perpetrators belonged to a group 'acting with a common purpose'.

<sup>4960</sup> *See* section III.B.2 above.

<sup>4961</sup> *See* paragraph 437 above.

<sup>4962</sup> *See* in particular paragraph 437 above where the Chamber found, *inter alia*, that even if some individuals had different motivations or wanted a less extreme approach, Ansar Dine, as an organisation commanded by Iyad Ag Ghaly, served the objectives of Al-Qaeda. *Contra* [Defence Final Brief](#), paras 38-40.

<sup>4963</sup> *See* paragraphs 430, 436, section III.C.2.b) above. *Contra* [Defence Final Brief](#), para. 37.

<sup>4964</sup> *See* paragraph 712 above.

1619. The intention to rule Timbuktu through the application of *Sharia* was publicly stated by the leadership of Ansar Dine/AQIM<sup>4965</sup> and communicated to the civilian population.<sup>4966</sup> Notably, a sign board was set up stating that Timbuktu was a city built on Islam and would be governed only by the Islamic *Sharia*.<sup>4967</sup> Sermons were given explaining that the population of Timbuktu had to ‘go back to the origins’, which was to apply the ‘Islamic *Sharia*’.<sup>4968</sup> Punishments for violations of Ansar Dine/AQIM’s rules were also carried out publicly, in order to punish the individual offenders, but also to deter the population of Timbuktu from violating the new rules and prohibitions, and broadcast Ansar Dine/AQIM’s conception of an ideal society.<sup>4969</sup>

1620. The Chamber accordingly finds that, between 2 April 2012 and 29 January 2013, Ansar Dine/AQIM acted as a ‘group’ with a common purpose within the meaning of Article 25(3)(d) of the Statute, namely to impose and implement their interpretation of *Sharia* and to control Timbuktu and its residents for this purpose.

1621. Ansar Dine/AQIM used various means to achieve this goal. Ansar Dine/AQIM put in place specific rules and prohibitions concerning various aspects of the daily life and religious practices.<sup>4970</sup> Ansar Dine/AQIM used tactics aimed at winning ‘people’s hearts’,<sup>4971</sup> notably by integrating among local communities<sup>4972</sup> and, on some aspects, adopting a gradual approach in enforcing its rules and prohibitions.<sup>4973</sup> However, they also used force and violence. Different institutions put in place and working together sanctioned breaches of these rules and prohibitions, notably by imposing punishments,<sup>4974</sup> such as *ta’zir* and *hadd*, which included public floggings.<sup>4975</sup>

1622. For the purpose of the present assessment, the Chamber is not called upon to

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<sup>4965</sup> See section III.C.2 above.

<sup>4966</sup> See section III.C.2 above.

<sup>4967</sup> See paragraph 477 above.

<sup>4968</sup> See paragraphs 477-478 above.

<sup>4969</sup> See paragraphs 657-664 above. See also paragraphs 469-471, 475-489, 665-670 above.

<sup>4970</sup> See section III.D.1 above.

<sup>4971</sup> See paragraph 529 above.

<sup>4972</sup> See paragraph 463 above.

<sup>4973</sup> See paragraphs 663, 739, 1032 above.

<sup>4974</sup> See paragraph 653 above.

<sup>4975</sup> See paragraphs 658, 659, 662, 664 above.

determine whether or not Ansar Dine/AQIM's objectives also included a 'legitimate goal'.<sup>4976</sup> Instead, the Chamber will assess whether the common purpose as identified above involved the commission of the crimes with which Mr Al Hassan is charged.

**i. Torture, other inhumane acts, cruel treatment, outrages upon personal dignity, sentencing without due process and mutilation (Counts 1-6 and 14)**

1623. The following analysis is made by Majority, Judge Akane dissenting in relevant part.<sup>4977</sup> The arrests, detentions and punishments – including *ta'zirs* and *hudud* – were an integral component of the goal of the groups to impose their interpretation of *Sharia* on the population of Timbuktu. Members of Ansar Dine/AQIM committed the crimes at issue as part of Ansar Dine/AQIM's institutional system for the enforcement of its rules and prohibitions.

1624. The Majority notes that the Chamber found that the groups' various institutions, notably the *Hesbah* and the Islamic Police, worked together all along during the period of the charges in sanctioning breaches of the rules and prohibitions, including by bringing wrongdoers before an Islamic Court designed for this purpose. As stated above, corporal punishments, including floggings and an amputation, as well as other forms of violence committed in the streets or in detention following alleged breaches to the rules and prohibitions, were acts and conduct which were explicitly and invariably intended to be performed by members of Ansar Dine/AQIM.

1625. For instance, Dédéou Maiga was arrested for alleged theft by members of the Islamic Police, including Mr Al Hassan; he was then detained by the Islamic Police.<sup>4978</sup> With regards to the same victim, the Majority, Judge Akane dissenting, found that Mr Al Hassan drafted a Police report related to the case.<sup>4979</sup> The Islamic Court subsequently sentenced the victim to have his hand amputated and the amputation was carried out publicly by members of Ansar Dine/AQIM.<sup>4980</sup>

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<sup>4976</sup> See [Defence Final Brief](#), paras 44-45, 48.

<sup>4977</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>4978</sup> See paragraph 820 above.

<sup>4979</sup> See paragraph 822 above.

<sup>4980</sup> See paragraph 822, 824-826 above.

One major reason for mutilating Dédéou Maiga was to further Ansar Dine/AQIM's aims of publicly enforcing *hudud* punishments.<sup>4981</sup> Foma was flogged for smoking by Aboubacar Al Chinguetti, who was a member of the *Hesbah* and at one point the Islamic Police,<sup>4982</sup> another iteration of the enforcement of Ansar Dine/AQIM's rules and prohibitions. Members of Ansar Dine/AQIM arrested Madou Traoré; he was convicted by the Islamic Court for extra-marital sexual intercourse and subsequently flogged by members of Ansar Dine/AQIM, in the presence of members of the Islamic Police, at least two of whom participated in the flogging.<sup>4983</sup> Members of Ansar Dine/AQIM beat and arrested Sallaka Bent Al-Khair, detained her in the *Hesbah* headquarters in deplorable conditions; Sallaka Bent Al-Khair was convicted by the Islamic Court for extra-marital sexual intercourse and subsequently publicly flogged by members of Ansar Dine/AQIM, in the presence of members of the Islamic Police, one of whom participated in the flogging.<sup>4984</sup> Alleged failure to follow the dress code imposed on women by virtue of Ansar Dine/AQIM's rules and prohibitions also caused the victimisation of Fadimata Mint Lilli, P-0570, P-0636, and Azahara Abdou, four female inhabitants of Timbuktu who were arrested, detained, and mistreated notably via the use of sexual violence,<sup>4985</sup> by members of Ansar Dine/AQIM.

1626. As such, the Majority finds that, in the present case, the members of Ansar Dine/AQIM working in the various institutions – the Islamic Police, the *Hesbah* and the Islamic Court – acted together in the context of their shared purpose to commit the crimes of: (i) torture as a crime against humanity, pursuant to Article 7(1)(f) (Count 1), and as a war crime, pursuant to Article 8(2)(c)(i) (Count 3); (ii) other inhumane acts as a crime against humanity, pursuant to Article 7(1)(k) (Count 2); (iii) cruel treatment as a war crime, pursuant to Article 8(2)(c)(i) (Count 4); (iv) outrages upon personal dignity as a war crime, pursuant to Article 8(2)(c)(ii) (Count 5); (v) sentencing without due process, pursuant to Article

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<sup>4981</sup> See paragraph 661 above.

<sup>4982</sup> See paragraphs 529, 555, 854 above.

<sup>4983</sup> See paragraphs 845, 849 above.

<sup>4984</sup> See paragraphs 840, 844, 851 above.

<sup>4985</sup> Relating to Azahara Abdou, **Judge Akane** dissents to the finding that she was 'mistreated notably via the use of sexual violence'.

8(2)(c)(iv) (Count 6); and (vi) mutilation as a war crime, pursuant to Article 8(2)(c)(i) of the Statute (Count 14), against the civilian population.

1627. The Majority recalls the Chamber's emphasis on the term 'common purpose' which by its ordinary meaning is a shared aim, goal or objective.<sup>4986</sup> The members of the groups need only be acting with this common purpose in committing the crime; they need not be in agreement on the details of how to achieve the objective or have a common plan of action.

1628. In this context, the Majority notes that in pursuance of their aim of imposing their interpretation of *Sharia*, the general policy communicated by the leadership of Ansar Dine/AQIM to members was two-fold: to force the population to adhere to the rules while avoiding as far as possible clashes with the population.<sup>4987</sup> This two pronged approach created tensions between those leaders concerned with keeping things calm and others who were pressing to have a very visible 'Muslim rule'.<sup>4988</sup> Equally within Ansar Dine/AQIM, there were differing views as to the appropriate *modus operandi* with respect to enforcement between hard liners and those more focused on 'calming' the population and avoiding disagreement with the people.<sup>4989</sup> This latter component of Ansar Dine/AQIM inspired the strategy whereby rules would be introduced gradually and with leniency.<sup>4990</sup> Such a strategy was pursued not out of consideration for the population but as a tactic to avoid disagreements which could frustrate Ansar Dine/AQIM's objective and to ensure that they had 'excuses' if such disagreements arose.<sup>4991</sup> But even this strategy did not have the support of all members of the groups.<sup>4992</sup>

1629. However, none of these divisions or differing approaches impacted on the common purpose. The Majority emphasises that the focus of the leaders was always on their goal – implementation of their interpretation of *Sharia* on the population. When it came to the details of how the members and the institutions went about implementing this objective, this was left in the 'hands of the

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<sup>4986</sup> See paragraph 1236 above.

<sup>4987</sup> See paragraph 566 above.

<sup>4988</sup> See paragraph 466 above.

<sup>4989</sup> See paragraph 466 above.

<sup>4990</sup> See paragraph 466 above.

<sup>4991</sup> See paragraph 466 above.

<sup>4992</sup> See paragraph 466 above.

commissioners of the police and the *Hesbah* [...] [who] had to interpret [...] and implement it according to their own understanding'.<sup>4993</sup> As a result, there was considerable flexibility in the way the members of the groups interpreted and applied the rules and imposed sanctions. The leaders had the objective to force the population to comply and as long as this was achieved, they did not interfere in detail as to how this was accomplished.

1630. Within this context, the Majority recognises that there was some evolution over time as to how the enforcement was to be carried out and the procedures to be followed. Again, this was driven by the leadership of Ansar Dine/AQIM's concern to avoid disagreements with the population.<sup>4994</sup> However, these procedural evolutions did not affect the overall goal or aim of Ansar Dine/AQIM. The Majority considers that the members of Ansar Dine/AQIM acted with a consistent common purpose throughout Ansar Dine/AQIM's control of Timbuktu.

1631. Specifically, in terms of the evolution of procedures, the Chamber has found that initially *ta'zir* punishments could be imposed by any member of Ansar Dine/AQIM.<sup>4995</sup> In this respect, Abou Zeid provided 'small instructions' listing the types of infringements and corresponding punishments. With respect to the manner in which punishments were imposed, there is evidence that 'the aim at the time was not necessarily to apply the rules. There was a little bit of chaos going on. [It could not be said that] the *Sharia* rules were applied in a theoretical manner at the time'.<sup>4996</sup> Eventually, the leadership, concerned about not overprovoking the population, made some attempt to curtail who, where, and under which parameters, Ansar Dine/AQIM were to impose punishments.

1632. Notably, on 15 August 2012, motivated by complaints from the population, Abou Zeid issued a more detailed set of instructions indicating that '[t]a'zir [would] only be applied at police and *Hisba* stations' and 'after an adequate investigation', along with general directives to act with kindness and respect towards the

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<sup>4993</sup> See paragraph 566 above.

<sup>4994</sup> See paragraph 666 above.

<sup>4995</sup> See paragraph 664 above.

<sup>4996</sup> P-0150: T-108, p. 58.



population and to avoid the use of physical force excessively.<sup>4997</sup> Around November or December 2012, following further complaints from the population, the *Hesbah* and the Islamic Police were instructed to no longer punish offenders unless ordered by the Islamic Court.<sup>4998</sup>

1633. The Majority notes that there is no evidence as to how much either set of instructions was followed in practice or as to whether Abou Zeid or other leaders took any meaningful steps to enforce their application. In contrast, there is evidence that ‘there was no total compliance by the members with these instructions’<sup>4999</sup> and that, particularly after the issuance of Abou Zeid’s Instructions on 15 August 2012, arrests and detentions continued to occur that were not in compliance with the directions, and complaints continued to be received.<sup>5000</sup>

1634. Moreover, the Majority reiterates that despite these attempted adjustments to procedures made over time, the basic characteristics of the corporal punishments, namely floggings and an amputation, as well as other forms of violence committed in the streets or in detention following alleged breaches to the rules and prohibitions, did not vary: they all targeted individuals who failed to follow the rules Ansar Dine/AQIM had set; all these rules were justified on Ansar Dine/AQIM’s interpretation of *Sharia*; the conduct constituting the crimes was similar in nature in each instance and all directed at increasing the effectiveness of the repression system put into place by Ansar Dine/AQIM. In sum, the nature of the imposition of their interpretation of *Sharia* through the enforcement of rules and prohibitions remained unchanged. In these circumstances, the Majority considers that whether the acts committed were in compliance with these various instructions is not relevant to determining if they were part of the common purpose.

1635. The Majority does not ignore that the actions of Mohammed Moussa during the time that he served as emir of the *Hesbah* were controversial amongst the

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<sup>4997</sup> See paragraph 666 above.

<sup>4998</sup> See paragraph 669 above.

<sup>4999</sup> P-0150: T-117, p. 37.

<sup>5000</sup> See paragraph 666, 753; sections III.E.1.j), III.E.1.k), III.E.1.n), III.E.1.o), III.E.1.p) above.

membership of Ansar Dine/AQIM<sup>5001</sup> and that his methods were not always compliant with the specific instructions of the leadership as to the necessary procedures and standards.<sup>5002</sup> Nevertheless, the Majority considers that the acts committed by Mohammed Moussa or by the people under his leadership, which formed the basis of charged incidents, all displayed the key characteristics of other crimes committed by Ansar Dine/AQIM over the period of their control of the city. Notably, these were the same types of punishments, imposed for the same category of perceived violations of measures, carried out by Mohammed Moussa in his capacity as head of *Hesbah* and/or by other *Hesbah* members in their official capacity, all in aid of the common goal of imposing their version of *Sharia*. Further, the Majority is of the view that the emirs of Ansar Dine/AQIM did not object to what Mohammed Moussa was doing *per se* – he was in agreement with and applying their ‘project’. Rather, the evidence demonstrates that they were concerned about the complaints generated by the manner in which Mohammed Moussa carried out his activities and the potential discord with the population that could be created.<sup>5003</sup>

1636. Similarly, the Majority acknowledges that some undated punishments, which may have been imposed after November or December 2012, without the involvement of the Islamic Court, may not have fully aligned with the procedural instructions from the leadership of the group. Nonetheless, the Majority finds that the crimes which resulted from these punishments were imposed for breaching Ansar Dine/AQIM’s rules and prohibitions and remained part of the common purpose. Irrespective of whether the group’s intended procedure was followed for these punishments, the underlying crimes and related conducts again displayed the key characteristics shared by other crimes committed by members of the group.

1637. On the basis of these facts and circumstances in combination, the Majority is satisfied that charged arrests, detentions and punishments constitutive of crimes under Counts 1-6 and 14 formed parts of the common purpose.

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<sup>5001</sup> See paragraph 534 above.

<sup>5002</sup> See paragraphs 539, 541, 666 above.

<sup>5003</sup> See paragraphs 539, 540 above.

1638. The Majority finds that throughout the period they were in control of Timbuktu, Ansar Dine/AQIM's leadership, as well as all of its members, invariably meant for the groups to commit the crimes charged under Counts 1-6 and 14. That some members of the groups did not follow all the specific instructions issued as to the procedures with respect to the punishments does not mean that their conduct and the crimes committed fall outside the group's common purpose. For the Majority, the key consideration is that the crimes were committed to enforce the rules and prohibitions adopted by Ansar Dine/AQIM and in full line with the punishments Ansar Dine/AQIM prescribed as an organised group for the conduct prohibited.

1639. For the reasons mentioned in her separate and partly dissenting opinion, Judge Akane is unable to join her colleagues in the above analysis. While she is of the view that certain crimes form part of the common purpose, she considers that the following crimes fall outside the common purpose in the present case: crimes committed against Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli charged under Counts 2 and 4-6.

**ii. Forced marriage as an other inhumane act and associated sexual slavery and rape (Counts 8-12)**

1640. The Majority, Judge Akane dissenting,<sup>5004</sup> recalls that, during their control of Timbuktu between 2012 and 2013, members of Ansar Dine/AQIM, both emirs and soldiers, were eager to marry.<sup>5005</sup> The emirs actively encouraged this practice of 'jihadi marriages' with local women; the 'marriages' were seen by Ansar Dine/AQIM's leadership as a means to gain influence amongst the population of Timbuktu and to disseminate Ansar Dine/AQIM's ideology across the entire society, including to women and children, and to recruit new members.<sup>5006</sup> 'Jihadi marriages' were also seen as a means for Ansar Dine/AQIM members to have sexual intercourse in a 'permissible' manner.<sup>5007</sup>

1641. The emirs themselves married the local women of Timbuktu as did most of the

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<sup>5004</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5005</sup> See paragraph 493 above.

<sup>5006</sup> See paragraph 493 above.

<sup>5007</sup> See paragraph 510 above.

members of Ansar Dine/AQIM; whoever wanted to get married got married.<sup>5008</sup>

1642. The leadership of Ansar Dine/AQIM employed various measures to secure marriage for themselves and for the membership including providing financial assistance for dowries and accommodation for those who ‘married’.<sup>5009</sup> The Islamic Court also formed part of the system of ‘*jihadi* marriages’, as it dealt with cases of marital disputes and divorce.<sup>5010</sup> In these combined circumstances, the Majority concludes that these ‘*jihadi* marriages’ were part of the common purpose.

1643. In addition to providing financial and material support, to facilitate the ‘*jihadi* marriages’, Ansar Dine/AQIM engaged a number of well-known locals as intermediaries.<sup>5011</sup> This was crucial because the leadership was well aware that without intermediaries, proposals for ‘*jihadi* marriages’ by men who were perceived as ‘foreigners’<sup>5012</sup> would be rejected.<sup>5013</sup> The intermediaries were influential and powerful figures within the community and their presence in the discussions put ‘immense pressure on the families and the women themselves’.<sup>5014</sup> ‘Husbands’ and intermediaries would carry weapons when approaching families.<sup>5015</sup> Women and their families feared that there would be consequences for refusing ‘*jihadi* marriages’.<sup>5016</sup> The circumstances in which families were approached and the way marriages with members of the groups were contracted created a general atmosphere of pressure for the women and their families; one witness described that ‘*jihadi* marriages’ were conducted ‘under intense pressure [...] that it sounded almost like an imposition’.<sup>5017</sup> The practice of ‘*jihadi* marriages’ led some families to send women and girls away from Timbuktu, out of fear that they would have to ‘marry’ members of Ansar

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<sup>5008</sup> See paragraphs 491-492, 494 above.

<sup>5009</sup> See paragraphs 495-496 above.

<sup>5010</sup> See paragraph 513 above.

<sup>5011</sup> See section III.C.3.a)ii above.

<sup>5012</sup> See paragraph 430 above.

<sup>5013</sup> See paragraph 498 above.

<sup>5014</sup> See paragraphs 500-501 above.

<sup>5015</sup> See paragraphs 501, 508 above.

<sup>5016</sup> See paragraph 502 above.

<sup>5017</sup> See paragraph 502 above. See *contra* [Defence Final Brief](#), para. 277.

Dine/AQIM.<sup>5018</sup>

1644. The Chamber does not have sufficient evidence before it to conclude that all ‘*jihadi* marriages’ were forced. However, in the view of the Majority this is not relevant to the determination as to whether the common purpose involved forced marriage. Rather, the Majority considers the prevalence of the ‘*jihadi* marriages’ amongst the members of Ansar Dine/AQIM combined with the overall coercive environment in Timbuktu at the time, and the evidence that, in many instances women and families had no option because of the pressure arising from the totality of the circumstances.<sup>5019</sup> Further, the Chamber has made findings as to specific instances of forced marriage by Ansar Dine/AQIM members with local women and the sexual violence and slavery which ensued.<sup>5020</sup> The Majority also takes into account the evidence which links instances of forced marriage to institutions of Ansar Dine/AQIM. Specifically, some women who were forcibly married, notably P-0520 and, by Majority with Judge Akane dissenting, P-1162, were taken to and stayed at the *Gouvernorat*,<sup>5021</sup> a facility that was used by Ansar Dine/AQIM, particularly the Islamic Police, and was one of the most important buildings in Timbuktu,<sup>5022</sup> and subjected to sexual violence while there.<sup>5023</sup>

1645. The Majority is mindful that there is some evidence that Abou Zeid, the emir of Timbuktu, did not necessarily set out to conduct ‘*jihadi* marriages’ through the use of explicit force or threats against the women and their families.<sup>5024</sup> However, the Majority emphasises that this is not a requirement under the applicable law. The Majority recalls that the common purpose itself need not be criminal.<sup>5025</sup> Rather, it is sufficient if the common purpose involves the commission of a crime whether explicitly intentionally or with an awareness that the crime will occur in the ordinary course of events. In practice, the atmosphere of intense pressure to enter the ‘marriages’, as articulated above, facilitated and empowered members

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<sup>5018</sup> See paragraph 503 above.

<sup>5019</sup> See paragraph 502 above.

<sup>5020</sup> See sections III.E.1.s) and III.E.1.u) above. See also section III.E.1.w) above, where the findings regarding P-1162 are made by Majority.

<sup>5021</sup> See paragraphs 922, 974 above.

<sup>5022</sup> See paragraph 558 above.

<sup>5023</sup> See paragraphs 924, 926, 975 above.

<sup>5024</sup> See paragraph 503 above.

<sup>5025</sup> See paragraph 1237 above.

of Ansar Dine/AQIM to forcibly marry women, including by using threats and harassment. In addition, the Majority notes that the Chamber received no evidence to indicate that measures were taken by the leadership to control the circumstances in which these ‘*jihadi* marriages’ were arranged and the differing circumstances of the forced marriages, which the Chamber has found took place, evidence that the members of Ansar Dine/AQIM considered it appropriate to pursue a ‘jihadist marriage’ by whatever means necessary.

1646. The Majority finds that, in these combined circumstances, the practice of ‘*jihadi* marriages’, as part of the common purpose, necessarily involved forced marriage and that the members of Ansar Dine/AQIM knew that forced marriages would occur in the ordinary course of events. Given the above, the Majority, Judge Akane dissenting,<sup>5026</sup> is convinced that forced marriage and associated acts of sexual slavery and rape constituting crimes charged under Counts 8-12 formed part of the common purpose.<sup>5027</sup>

### iii. Rapes in detention (Counts 11-12)

1647. The Majority, Judge Akane dissenting, notes that the Chamber considered that the detention of members of the population of Timbuktu formed part of Ansar Dine/AQIM’s common purpose. The groups allowed for the detention of both men and women as part of its repression system. The Majority notes the Chamber’s finding that, during Mohammed Moussa’s leadership, a lot of people, including men, women and children, were imprisoned at the *Hesbah*.<sup>5028</sup> Moreover, the detention of women sparked a debate amongst the members of Ansar Dine/AQIM about the propriety of such a practice. After a discussion amongst the emirs, the conclusion reached was that the detention of women was authorised under their interpretation of *Sharia* and Mohammed Moussa was allowed in principle to imprison women.<sup>5029</sup>

1648. Regarding the detention of women in particular, the Majority notes that the Chamber has established that the conditions of detention were squalid. The so-

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<sup>5026</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5027</sup> *Contra* [Defence Final Brief](#), paras 54-55, 280-281, 293.

<sup>5028</sup> See paragraph 535 above.

<sup>5029</sup> See paragraph 541 above. *Contra* [Defence Final Brief](#), para. 284.

called women's prison was an ATM room facing the street, which had only a glass door in addition to metal bars.<sup>5030</sup> The detained women were exposed to the public.<sup>5031</sup> The detention conditions at the ATM room were dire: P-0554, who was detained at the ATM room towards the end of 2012, was not given any food and was forced to relieve herself in the same room;<sup>5032</sup> P-0636, who was also detained at the ATM room around October to November 2012 inclusive, was also not given anything to eat and had to endure the smell of urine in the cell.<sup>5033</sup>

1649. In addition, the women were detained at the headquarters of one of the enforcement bodies – the *Hesbah* – and were guarded by armed men who were members of the armed groups which controlled the city.<sup>5034</sup> There were no women guards or employees – in fact no women were employed in any role within the institutions put in place by Ansar Dine/AQIM.<sup>5035</sup>

1650. The Majority recalls the Chamber's findings that P-0636, P-0570, Fadimata Mint Lilli, and, by Majority, Judge Akane dissenting, Azahara Abdou, were victims of rapes by members of the *Hesbah*, including Mohammed Moussa himself, while they were detained following alleged breaches to the rules imposed on the population.<sup>5036</sup>

1651. The Majority observes that a pattern exists between these instances of rape sufficient to support that these were not random acts of individuals. Each victim was arrested and imprisoned with other women at the BMS, the then headquarters of the *Hesbah*, for perceived violations of the rules and prohibitions.<sup>5037</sup> These women were all raped in similar although not identical circumstances, including the use of weapons, explicit threats, and involving multiple men, sometimes with

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<sup>5030</sup> See paragraph 537 above.

<sup>5031</sup> See paragraph 537 above.

<sup>5032</sup> See paragraph 537 above.

<sup>5033</sup> See paragraph 537 above.

<sup>5034</sup> See paragraph 521, 523, 535-536 above. See also footnote 1759 above. The Majority recalls that women were arrested and detained in the ATM room by members of Ansar Dine/AQIM; that members of Ansar Dine/AQIM, including of the *Hesbah*, carried arms; and that all members of Ansar Dine/AQIM were men. The Chamber is convinced that the only possible conclusion on the basis of these facts and circumstances is that the ATM room in which these women were held was guarded by armed men who were members of Ansar Dine/AQIM.

<sup>5035</sup> See footnote 1759 above.

<sup>5036</sup> See paragraphs 860, 865, 878, 896 above.

<sup>5037</sup> See sections III.E.1.k), III.E.1.n), III.E.1.o), III.E.1.j) above.

their face concealed.<sup>5038</sup> Furthermore, it is relevant that members of Ansar Dine/AQIM also took advantage of the existing coercive environment to commit sexual crimes in the context of forced marriages, including at the *Gouvernorat* which served as the headquarters of another enforcement institution. Some of these same features can be observed with respect to the instances of rape by members of Ansar Dine/AQIM in the context of forced marriages.<sup>5039</sup>

1652. As noted, in one instance, Mohammed Moussa himself, while he was the emir of the *Hesbah*, committed the rape of a women in detention.<sup>5040</sup> Mohammed Moussa was known to the leadership of Ansar Dine/AQIM to be violent with women.<sup>5041</sup> Complaints about him had been presented to them by the Crisis Committee, the population in general and even members of Ansar Dine/AQIM.<sup>5042</sup> Notably, specific complaints about the circumstances of detention when Mohammed Moussa was in charge of the *Hesbah* were brought to the attention of Abou Zeid and other emirs, including with respect to assaults on female detainees.<sup>5043</sup> Regarding the nature of these assaults, P-0150 explained that women complained to the Crisis Committee about what they referred to as ‘sexual harassment’.<sup>5044</sup> Aside from Abou Zeid questioning Mohammed Moussa and giving general advice, no concrete steps were taken to intervene or to address the complaints, in particular with respect to sexual violence in detention.<sup>5045</sup> The Majority notes that the Chamber found that, despite Abou Zeid’s assurance to the population that he would take action, the discussions held brought about no meaningful change.<sup>5046</sup> Further, the emirs, in authorising Mohammed Moussa to detain women, had also advised him that the conditions under which he was detaining women did not meet the necessary standards.<sup>5047</sup> And yet there is no evidence that the emirs, in particular Abou Zeid, took any steps to follow up on this advice by way of inspections, supervision or the issuance or enforcement of rules to bring about

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<sup>5038</sup> See sections III.E.1.k), III.E.1.n), III.E.1.o), III.E.1.j) above.

<sup>5039</sup> See sections III.E.1.k), III.E.1.n), III.E.1.o), III.E.1.j) above.

<sup>5040</sup> See paragraph 878 above.

<sup>5041</sup> See paragraph 538-542 above.

<sup>5042</sup> See paragraph 538-542 above.

<sup>5043</sup> See paragraph 538-542 above.

<sup>5044</sup> See paragraph 542 above.

<sup>5045</sup> See paragraph 542 above.

<sup>5046</sup> See paragraph 542 above.

<sup>5047</sup> See paragraph 541 above.



change.

1653. Instead, despite all the information brought to the attention of the leadership and the various complaints, and contrary to what happened with Adama, Mohammed Moussa remained the emir of the *Hesbah* until December 2012 – at which point he was removed from this position and was replaced by Abou Al Walid.<sup>5048</sup> The Majority however notes that he was not removed from his position at the Islamic Court and maintained a role in imposing punishments on the population on behalf of Ansar Dine/AQIM.<sup>5049</sup> The Majority finds that the limited measures taken by the leadership with respect to Mohammed Moussa evidence no real attempt to end his role as the emir of *Hesbah* in the enforcement of the rules against the civilian population of Timbuktu. The leadership did this knowing that his particular manner of execution would involve violence and assaults which, as indicated, included sexual assaults.<sup>5050</sup>

1654. The Majority also notes that the Chamber was not presented with evidence of any general intervention of Ansar Dine/AQIM's leadership to give directions regarding conditions of detention or to regulate or monitor what went on. While Abou Zeid issued instructions in August 2012 on the procedure for *ta'zir* punishments, including to regulate interaction of Ansar Dine/AQIM members with women in the street, he did not provide any instructions as to what should follow in terms of the conditions for the detention with respect to women.

1655. The Majority accepts that the evidence does not show that these rapes were an objective of the leadership of Ansar Dine/AQIM. The Majority however recalls that it need not be established that the groups' goal or objective was the commission of the crime, only that the crime was committed as part of the common purpose. The Majority is of the view that the combined circumstances, including the overall power structure with respect to women, was such that the conditions with respect to the detention of women would include rape. Further, given the extensive complaints about the violent conduct of Mohammed Moussa and the members of *Hesbah*, the Majority concludes that members of Ansar

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<sup>5048</sup> See paragraph 543 above.

<sup>5049</sup> See paragraph 608 above. See also paragraph 543 above.

<sup>5050</sup> P-0150: T-120, p. 13. *Contra* [Defence Final Brief](#), para. 47.

Dine/AQIM knew that acts of rape would be perpetrated against detained women in the ordinary course of events. On that basis, and in light of the above, the Majority, Judge Akane dissenting, is convinced that acts of rape in detention charged under Counts 11-12 were part of the common purpose.

1656. For the Majority, the fact that the official position of Ansar Dine/AQIM was that rape was prohibited, as were other forms of extra-marital sexual intercourse,<sup>5051</sup> under their interpretation of *Sharia* does not inform the Chamber's determination as to the real objective of the group. What matters is how the members of the groups behaved in practice, their relevant knowledge, and, importantly, how the groups' leadership reacted in light of repeated occurrences of rape committed in Timbuktu in 2012-2013. In this respect, the Majority does not ignore that investigations were carried out against a member of the Islamic Police accused of rape and that the perpetrator was detained and sentenced on 27 August 2012 by the Islamic Court to 100 lashes and banishment.<sup>5052</sup> However, for the Majority, this isolated incident, which does not relate to the practice of detention of women and is not indicative of the group's overall objective throughout the relevant period, does not alter the conclusions reached above.

#### **iv. Persecution (Count 13)**

1657. Finally, the Chamber turns to the crime of persecution charged under Count 13. Ansar Dine/AQIM considered that the population of Timbuktu were not actually 'practising Islam' and were therefore not 'real Muslims'.<sup>5053</sup> Indeed, the dominant message across sermons was that the Muslim faith had been taken away by the secular law imposed by western countries and the population of Timbuktu had to 'go back to the origins'.<sup>5054</sup> For this reason, and in order to compel the population to follow their version of religion, which was based on a very strict scriptural reading of the *Quran*,<sup>5055</sup> Ansar Dine/AQIM imposed a series of rules and prohibitions regulating all aspects of people's lives, comprising various forms

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<sup>5051</sup> See paragraph 673 above.

<sup>5052</sup> See paragraphs 678-684 above.

<sup>5053</sup> See paragraph 737 above. See also section B.10.c), in particular paragraphs 1562-1565 above.

<sup>5054</sup> See paragraph 478 above.

<sup>5055</sup> See paragraph 711 above.

of acts underlying the crime of persecution.<sup>5056</sup> In particular, in order to teach and enlighten the so-called ‘ignorant’ people of Timbuktu of what Ansar Dine/AQIM considered to be the real faith, Ansar Dine/AQIM banned a certain number of religious practices.<sup>5057</sup> Breaches of these rules and prohibitions were subject to punishments, which were tools to shape the conduct of the population of Timbuktu in line with Ansar Dine/AQIM’s common purpose.<sup>5058</sup> The Majority also recalls that in enforcing the rules and prohibitions, Ansar Dine/AQIM specifically targeted local women and girls by reason of their gender, and that they also specifically targeted women and girls by reason of their gender in the context of the forced marriages.<sup>5059</sup>

1658. The Chamber, and in relevant part, the Majority, Judge Akane dissenting,<sup>5060</sup> also incorporates by reference its findings above in relation to the other crimes under Counts 1-6, 8-12 and 14 that formed part of the common purpose. The Majority, Judge Akane dissenting, particularly notes that its findings in paragraphs 1633-1637 and 1651-1656 above also apply to the acts underlying the crime of persecution.<sup>5061</sup> On the basis of the above, the Chamber is satisfied that the acts constituting the crime of persecution charged under Count 13 formed part of the common purpose.

#### **v. Conclusion**

1659. For the foregoing reasons, the Chamber concludes that the following crimes, committed by members of Ansar Dine/AQIM in Timbuktu between 2 April 2012 and 29 January 2013, formed part of the common purpose: crimes charged under Counts 1-6 and 14 (with the exception of those charged against Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547) under Counts 2 and 4-6); and relevant acts constituting the crime of persecution charged under Count 13; and by Majority, Judge Akane dissenting: crimes committed against Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547) charged

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<sup>5056</sup> See sections III.D.1 and B.10.a) above.

<sup>5057</sup> See paragraph 712 above.

<sup>5058</sup> See paragraph 1620 above. See also section III.C.4.

<sup>5059</sup> See section B.10.c), in particular paragraphs 1566-1572 above.

<sup>5060</sup> Judge Akane dissents on the Majority’s finding that forced marriages and rapes in detention were part of the common purpose. See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5061</sup> *Contra* [Defence Final Brief](#), paras 590, 595-596.

under Counts 2 and 4-6; forced marriage and associated acts of sexual slavery and rape charged under Counts 8-12; and acts of rape in detention charged under Counts 11-12.

**b) Mr Al Hassan's contribution to the commission of the crimes and the relevant mental elements**

1660. The Chamber first addresses the issue of the time frame of Mr Al Hassan's contribution to the crimes. While the Chamber found that Mr Al Hassan was working with Ansar Dine/AQIM at the end of April 2012,<sup>5062</sup> the Chamber recalls that it previously declined to extend the time frame for Mr Al Hassan's criminal responsibility beyond what the Pre-Trial Chamber clearly identified in the decisions on the charges.<sup>5063</sup> While the Pre-Trial Chamber identified 7 May 2012 as the starting date for examining Mr Al Hassan's criminal responsibility,<sup>5064</sup> the Chamber found that Mr Al Hassan began to work for the Islamic Police in early May 2012.<sup>5065</sup> He continued to work for the Islamic Police until 29 January 2013 when he, along with Ansar Dine/AQIM, departed Timbuktu.<sup>5066</sup> The Chamber considers that the period for which it established that Mr Al Hassan bore criminal responsibility is consistent with the period established by the Pre-Trial Chamber.

1661. Considering the above, the Chamber recalls that in relation to P-1712, charged under Count 6, the victim was arrested and detained at the BMS by members of Ansar Dine/AQIM for not being properly covered.<sup>5067</sup> The Chamber recalls that it established that the crime committed against P-1712 was committed 'at some time during the control of Timbuktu by Ansar Dine/AQIM'.<sup>5068</sup> The Chamber cannot establish beyond a reasonable doubt that this crime was committed while Mr Al Hassan was working for the Islamic Police as of early May 2012. As such, Mr Al Hassan cannot be held responsible for this crime.

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<sup>5062</sup> See paragraph 1060 above.

<sup>5063</sup> See [Decision on Self-contained Set of Charges](#), paras 31-33; [Decision Amending the Charges](#), para. 175; [Annex to Decision Amending the Charges](#), p. 21.

<sup>5064</sup> See e.g. [Confirmation Decision](#), paras 723, 961, 965, p. 466; [Decision Amending the Charges](#), para. 175; [Annex to Decision Amending the Charges](#), p. 21.

<sup>5065</sup> See paragraph 1061 above.

<sup>5066</sup> See paragraph 1061 above.

<sup>5067</sup> See paragraph 908 above.

<sup>5068</sup> See paragraph 908 above.

1662. In relation to P-0602, the Chamber recalls that the victim was forcibly married ‘for a limited period of time’ between late April 2012 and January 2013.<sup>5069</sup>

1663. The Chamber cannot establish beyond a reasonable doubt that this and the associated crimes against P-0602 were committed while Mr Al Hassan was working for the Islamic Police as of early May 2012. As such, Mr Al Hassan cannot be held responsible for these crimes.

1664. Lastly as regards the crime of persecution, notwithstanding that the Chamber found that the crime occurred as of 2 April 2012, the Chamber only attributes liability, if any, to Mr Al Hassan for this crime as of the period where he was working for the Islamic Police, namely as of early May 2012.

1665. The Defence contends that Mr Al Hassan did not knowingly contribute to and did not intend his actions to contribute to either the groups’ common purpose or the commission of any crimes;<sup>5070</sup> in this context, the Chamber recalls that Article 25(3)(d) of the Statute requires only that the accused: (i) intended to engage in the relevant conduct that contributed to the crime; and (ii) be aware that their conduct contributed to the activities of the group of persons for whose crimes the accused bears criminal responsibility.<sup>5071</sup>

1666. As to the Defence’s arguments that Mr Al Hassan did not play a role in ‘creating or shaping the implementation’ of the alleged common purpose,<sup>5072</sup> the Chamber also clarifies that Article 25(3)(d) of the Statute does not require such a link with the common purpose. Rather, Article 25(3)(d) requires that an accused contributed to the commission of the crimes.<sup>5073</sup> Further, the Statute does not define a specific level for the contribution or require that it reach a certain minimum threshold.<sup>5074</sup>

1667. As to the Defence’s contentions that the Prosecution failed to present a clear nexus between Mr Al Hassan’s conduct and the commission of the crimes, the

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<sup>5069</sup> See paragraphs 935, 945 above.

<sup>5070</sup> See [Defence Final Brief](#), paras 60-62.

<sup>5071</sup> See paragraph 1246 above.

<sup>5072</sup> See [Defence Final Brief](#), paras 63-68.

<sup>5073</sup> See paragraph 1240 above.

<sup>5074</sup> See paragraph 1243 above.

Chamber notes that a case-by-case analysis is necessary to establish, in its context, the link between Mr Al Hassan's conduct and the commission of the crimes. The Chamber undertakes such an analysis below.

**i. Torture, other inhumane acts, cruel treatment, outrages upon personal dignity, mutilation (Counts 1-5, 14)**

1668. The Chamber found that members of Ansar Dine/AQIM committed the crimes recounted above and charged in Counts 1-5 and 14.<sup>5075</sup> The Chamber also found that the crimes committed against Dédéou Maiga, Sallaka Bent Al-Khair (P-0554), Madou Traoré and Foma formed part of the common purpose specific to Ansar Dine/AQIM. The Majority, Judge Akane dissenting,<sup>5076</sup> found that the crimes committed against Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547) also formed part of this common purpose and therefore any findings in this subsection on Mr Al Hassan's contribution to the crimes in respect of those four victims are by Majority.

1669. Each of the crimes was committed by members of Ansar Dine/AQIM, some with the participation of members of the Islamic Police, to punish persons who were considered to have violated Ansar Dine/AQIM's rules and prohibitions.<sup>5077</sup> In order to assess the contribution made to the crime by Mr Al Hassan during the period he worked within the Islamic Police, the Majority has looked at: first, the pivotal role played by the Islamic Police within the repressive system put into place by Ansar Dine/AQIM during its control of Timbuktu; and second, the acts and conduct of Mr Al Hassan as a senior member of the Islamic Police and the impact they had on the said system which led to the commission of the crimes.

**a. The pivotal role of the Islamic Police in the repressive system**

1670. The Majority underlines the way the different institutions were working at the time these crimes were committed. Ansar Dine/AQIM established a synergistic and integrated institutional system, which involved several of the groups' organs,

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<sup>5075</sup> Here, the Chamber refers to the cases of Dédéou Maiga, Sallaka Bent Al-Khair (P-0554), Madou Traoré, Foma, Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547). *See* sections IV.A.2.a) to IV.A.2.c) and IV.A.2.j) above.

<sup>5076</sup> *See* Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5077</sup> *See* sections IV.A.2.a) to IV.A.2.c) and IV.A.2.j) above.

to enforce its rules and prohibitions. The Chamber found that the various institutions of Ansar Dine/AQIM, particularly the Islamic Police, the Islamic Court and the *Hesbah*, worked together on a daily basis and shared responsibility for the implementation and enforcement of the rules and prohibitions adopted by Ansar Dine/AQIM,<sup>5078</sup> including through investigations, interrogations and obtainment of confessions from persons accused of violating these rules.<sup>5079</sup> All answered to the leadership of Ansar Dine/AQIM.<sup>5080</sup>

1671. Further, the Islamic Police and the *Hesbah* were tasked with implementing the Islamic Court's decisions,<sup>5081</sup> and were permitted to, on their own initiative, detain people and to impose *ta'zirs* for violation of the rules until the late stages of Ansar Dine/AQIM's control of Timbuktu.<sup>5082</sup> The Islamic Police and the *Hesbah* did the same work in parallel and could tap into each other's resources and personnel.<sup>5083</sup> At times, the Islamic Police would patrol along with members of the *Hesbah*, and would also sometimes patrol with members of the Security Battalion.<sup>5084</sup> Members of the different institutions, including the Islamic Police and the Security Battalion, participated in securing the location of the punishment sites.<sup>5085</sup> All institutions worked with the same purpose: to maintain the coercive environment in Timbuktu and to make the system efficient in the repression of the breaches to the rules and prohibitions imposed by Ansar Dine/AQIM on the population of this city.

1672. While the Chamber was unable to reach conclusive findings on whether there was a full organisational hierarchy between the different institutions created by Ansar Dine/AQIM,<sup>5086</sup> the facts demonstrate that the Islamic Police was a vital and indispensable component in the Ansar Dine/AQIM's repression system.<sup>5087</sup> The Majority also recalls its findings that imprisonment and punishment were

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<sup>5078</sup> See paragraph 653 above.

<sup>5079</sup> See paragraphs 655-664 above.

<sup>5080</sup> See paragraph 654 above.

<sup>5081</sup> See paragraph 655 above.

<sup>5082</sup> See paragraphs 664, 669 above.

<sup>5083</sup> See paragraphs 653, 656 above.

<sup>5084</sup> See paragraph 656 above.

<sup>5085</sup> See paragraph 587 above.

<sup>5086</sup> See paragraph 654 above.

<sup>5087</sup> See section III.C.4.b)v above. *Contra* [Defence Final Brief](#), paras 7, 71-76.

fundamental Islamic Police functions.<sup>5088</sup> The Islamic Police managed all tasks related to the enforcement of penalties and implemented the decisions of the Islamic Court, assisted by other organs of Ansar Dine/AQIM as needed.<sup>5089</sup> Where persons were sentenced to public punishment by the Islamic Court, the Police notably took the accused to the public site where the punishment was meted out.<sup>5090</sup>

1673. Within the system of repression put into place by Ansar Dine/AQIM, and taking into account the specific context of Ansar Dine/AQIM's control of the city in 2012-2013, the way the institutions worked and the impact they had on the people of Timbuktu, the Islamic Police was not an accessory organ. The Islamic Police, which was involved in the arrest, the detention, as well as the punishments of individuals found in breach of the rules and prohibitions, was brought to intervene at all relevant stages of the enforcement of the rules imposed by Ansar Dine/AQIM, *i.e.* before, during and after the victims were arrested, and/or sentenced, and/or punished. As such, the Islamic Police played a pivotal role in the system of repression at the heart of which lies notably the commission of the crimes of torture, other inhumane acts, cruel treatment, outrages upon personal dignity, and mutilation.<sup>5091</sup>

**b. The acts and conduct of Mr Al Hassan as a senior member of the Islamic Police**

1674. At the outset, the Majority refers to the factual findings on Mr Al Hassan's role and functions within Ansar Dine/AQIM.<sup>5092</sup> Mr Al Hassan played a key role within the Islamic Police until the end of Ansar Dine/AQIM's control of Timbuktu and he maintained his position in the Police even through changes in the person officially designated as the emir of the Police.<sup>5093</sup> While the Defence submits that Mr Al Hassan exercised no real power within the Islamic Police and played a limited, clerical and subordinate role,<sup>5094</sup> the Majority is convinced that

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<sup>5088</sup> See paragraph 584 above.

<sup>5089</sup> See paragraph 586 above.

<sup>5090</sup> See paragraph 586 above.

<sup>5091</sup> See paragraph 1625 above.

<sup>5092</sup> See section III.F above.

<sup>5093</sup> See paragraph 1063 above. See also Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5094</sup> See [Defence Final Brief](#), paras 8-9, 69-92, 395, 397, 400-405; [Defence Response Brief](#), paras 73-76.



Mr Al Hassan had a vital and important role in the Islamic Police and in Ansar Dine/AQIM in general.<sup>5095</sup> The Majority considers that in 2012-2013 while Timbuktu was under the leadership of Ansar Dine/AQIM, Mr Al Hassan was not a simple Police officer. He was a key player in the system put into place by the organisation, he chose to participate in this system in an active manner, and he personally collaborated with all the relevant institutions and partners in order to contribute to the efficacy of the repression system. As Mr Al Hassan himself noted, he was very busy.<sup>5096</sup> As explained below, Mr Al Hassan was an important institutional actor who worked on a daily basis for the sustainability of the coercive environment created in Timbuktu in 2012-2013.

1675. Mr Al Hassan served as an interpreter for the Islamic Police<sup>5097</sup> and had many other functions and responsibilities.<sup>5098</sup> In his time in the Police, Mr Al Hassan shared an office with other senior members of the Police, including the Police commissioner/emir.<sup>5099</sup> While people present in Timbuktu at the time used somewhat different words to describe Mr Al Hassan's position in the Police, the words used and description of his role denote a high-ranking role.<sup>5100</sup> While Khaled was head of the Police, Mr Al Hassan translated the instructions Khaled gave to the Islamic Police members.<sup>5101</sup> By the end of Ansar Dine/AQIM's control of Timbuktu, and for a period in January 2013, Mr Al Hassan replaced Khaled as commissioner of the Police.<sup>5102</sup>

1676. The Majority considers that Mr Al Hassan's writing and signing of Police reports<sup>5103</sup> further denotes his high position in the Islamic Police. Contrary to the Defence arguments that Mr Al Hassan's writing of Police reports did not signify

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<sup>5095</sup> The Chamber finds that the contention that Mr Al Hassan was a mere interpreter or clerk (*see* [Defence Final Brief](#), paras 89-92) is unsupported by the evidence discussed and the findings reached concerning Mr Al Hassan's actual functions within the Police force (*see* section III.F.3 above). That some of those functions were administrative does not indicate that Mr Al Hassan was a simple police officer with no or limited authority.

<sup>5096</sup> *See* paragraph 1067 above.

<sup>5097</sup> *See* paragraphs 565, 1068 above.

<sup>5098</sup> *See* section III.F.3 above.

<sup>5099</sup> *See* paragraphs 560, 562 above.

<sup>5100</sup> The witnesses' designations of Mr Al Hassan support a view that Mr Al Hassan was not just another Police officer in Ansar Dine/AQIM's Police force, but rather a high ranking official (*see* paragraph 1063 above).

<sup>5101</sup> *See* paragraph 565 above.

<sup>5102</sup> *See* paragraph 1063 above.

<sup>5103</sup> *See* paragraphs 1073-1075 above.

that he was in a position of authority,<sup>5104</sup> the Majority recalls its discussion of Mr Al Hassan's role and functions wherein the evidence demonstrated that Mr Al Hassan did not have an inconsequential role, but actively participated in the drafting of reports, conducted investigations, brought reports to the Islamic Court along with accused persons and could make clarifications to the reports to the judges of the Islamic Court. Mr Al Hassan was not a low-level administrator, but rather was actively engaged in these various cases.

1677. In his position within the Islamic Police, he also organised Police work, including organising and participating in patrols and registering new members.<sup>5105</sup> Mr Al Hassan was in a position to give orders to Police members and where he did so, they followed his instructions,<sup>5106</sup> evidence of his authority within the Police force. Mr Al Hassan maintained a presence in the community as a representative of the Police, at times interceding on behalf of residents.<sup>5107</sup> This further demonstrates to the Majority that Mr Al Hassan had such authority in the Police that he was able to successfully intervene in favour of local residents. These interactions also demonstrate to the Majority that, in context, Mr Al Hassan had a role beyond a clerical function and consistently engaged with the public as a key representative of Ansar Dine/AQIM's Police force.<sup>5108</sup>

1678. During Ansar Dine/AQIM's control of Timbuktu, Mr Al Hassan's intervention and participation covered a wide range of issues and concerned various areas of what Ansar Dine/AQIM perceived as public order. Mr Al Hassan issued summons for locals to appear in front of the Police and participated in the arrests of people accused of crimes by Ansar Dine/AQIM.<sup>5109</sup> Mr Al Hassan at times visited the Central Prison to check on the prisoners' conditions.<sup>5110</sup> He received complaints from locals, heard and settled disputes between them,<sup>5111</sup> exercises of

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<sup>5104</sup> See [Defence Final Brief](#), para. 74.

<sup>5105</sup> See paragraph 1069 above.

<sup>5106</sup> See paragraph 1069 above.

<sup>5107</sup> See paragraphs 1069-1070 above.

<sup>5108</sup> *Contra* [Defence Final Brief](#), para. 75.

<sup>5109</sup> See paragraph 1073 above.

<sup>5110</sup> See paragraph 1077 above.

<sup>5111</sup> See paragraphs 569, 1071, 1073 above. Contrary to the Defence's contention (see [Defence Final Brief](#), para. 394), Mr Al Hassan did not have a mere clerical role in the taking of complaints. Mr Al Hassan, under the authority of the emir of the Police, acted on complaints, settling disputes between locals. Disputes that could not be settled by the Police would be referred to the Islamic Court.

authority that further evince his role as a leader in Ansar Dine/AQIM's Police force. Mr Al Hassan was present for at least two meetings of the Crisis Committee.<sup>5112</sup> Mr Al Hassan approved media activity on behalf of the Police and issued permits to residents and journalists.<sup>5113</sup> Mr Al Hassan also worked to disperse crowds and demonstrations in the streets of Timbuktu.<sup>5114</sup>

1679. At the women's march which took place on 6 October 2012 to protest against the rules and prohibitions imposed by Ansar Dine/AQIM,<sup>5115</sup> Mr Al Hassan informed the Islamic Police officers that women would be marching and indicated where officers had to be posted to maintain security.<sup>5116</sup> Mr Al Hassan, along with other officials of Ansar Dine/AQIM, came to the location of the women's march after shots were fired by members of the Islamic Police.<sup>5117</sup> After several of the women were taken to the *Gouvernorat*,<sup>5118</sup> Mr Al Hassan, Sanda Ould Boumama and Mohammed Moussa called these women, and Sanda Ould Boumama and Mohammed Moussa spoke to the women while Mr Al Hassan took notes.<sup>5119</sup> When the women were leaving the *Gouvernorat*, Mr Al Hassan told them that they would be punished if they ever took part in another march without permission.<sup>5120</sup> Mr Al Hassan's behaviour in the course of the women's march demonstrates that he played a vital role within the Islamic Police, was frequently near the leaders and was in a position to instruct both Police officers and the public.

1680. His position was such that during Mohammed Moussa's tenure as emir of the *Hesbah*, members of the population complained about Moussa's extremism to members of Ansar Dine/AQIM, including to Mr Al Hassan.<sup>5121</sup> Mr Al Hassan knew, as evidenced through his own statements, that the *Hesbah* under Mohammed Moussa's tenure was detaining people, including women, and did not transfer arrested persons to the Islamic Police, despite the fact that

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<sup>5112</sup> See paragraph 751 above.

<sup>5113</sup> See paragraph 1072 above.

<sup>5114</sup> See paragraph 1071 above.

<sup>5115</sup> See paragraph 753 above.

<sup>5116</sup> See paragraph 754 above.

<sup>5117</sup> See paragraph 757 above.

<sup>5118</sup> See paragraph 758 above.

<sup>5119</sup> See paragraph 759 above.

<sup>5120</sup> See paragraph 760 above.

<sup>5121</sup> See paragraph 538 above.

imprisoning people was the function of the Islamic Police.<sup>5122</sup> Mr Al Hassan himself described Mohammed Moussa as being ‘draconian’ and stated that he believed that a lot of Mohammed Moussa’s actions were contrary to *Sharia*.<sup>5123</sup>

1681. Additionally, Mr Al Hassan was one of the persons tasked with communicating on behalf of Ansar Dine/AQIM, speaking in support of Ansar Dine/AQIM’s mission and objectives and clearly indicating his support and enthusiastic participation in Ansar Dine/AQIM’s activities in Timbuktu.<sup>5124</sup> Regarding the Defence’s arguments that the videos depicting these activities were not disseminated to the public,<sup>5125</sup> the Majority notes that while the evidence does not show that the public saw Mr Al Hassan’s videos, the very fact that Mr Al Hassan was charged with such duties, particularly in relation to Police work, shows his importance to the Islamic Police and to Ansar Dine/AQIM. Moreover, the content of the videos and the comments that Mr Al Hassan made showed his enthusiastic approach to his role within the Islamic Police and commitment to and support for the role of the Islamic Police in the enforcement of the rules and prohibitions. Notably Mr Al Hassan commented that the Islamic Police were correcting objectionable, reprehensible acts such as smoking, drinking alcohol and women adorning themselves.<sup>5126</sup> [REDACTED] shortly after Ansar Dine/AQIM’s retreat into the Tigharghar mountains also show Mr Al Hassan’s commitment to the mission and work of Ansar Dine/AQIM.<sup>5127</sup>

1682. In addition to the above facts which attest to Mr Al Hassan’s leading role within the Islamic Police, the Majority focuses on the following key facts which further demonstrate his contribution to the crimes of torture, other inhumane acts, cruel treatment, outrages upon personal dignity, and mutilation. Mr Al Hassan participated in and independently carried out investigations and interrogations, questioning suspects/accused and witnesses with a special focus on admissions of guilt.<sup>5128</sup> Mr Al Hassan wrote and signed numerous Police reports, including

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<sup>5122</sup> See paragraph 535 above.

<sup>5123</sup> See paragraphs 534-535 above.

<sup>5124</sup> See paragraphs 1080-1084 above.

<sup>5125</sup> See [Defence Final Brief](#), para. 84

<sup>5126</sup> See paragraph 1083 above.

<sup>5127</sup> See paragraph 1093 above. *Contra* [Defence Final Brief](#), para. 87.

<sup>5128</sup> See paragraphs 582, 678, 1073 above.

for cases of individuals found in breach of the rules and prohibitions; many of these cases were referred to the Islamic Court, which adjudicated the matters.<sup>5129</sup>

1683. As noted above, Mr Al Hassan brought accused persons to and from the Islamic Court,<sup>5130</sup> and was, along with other members of the Police, often seen at the Islamic Court.<sup>5131</sup> Mr Al Hassan was present during several public punishments, execution of sentences pronounced by the Islamic Court, and also brought sentenced persons to the punishment sites.<sup>5132</sup> He was also present during *ta'zir* punishments carried out at the Islamic Police headquarters at the behest of the emir of the Police.<sup>5133</sup>

1684. The Majority recalls its view that the Statute does not define a specific level for the contribution under Article 25(3)(d) of the Statute or require that it reach a certain minimum threshold,<sup>5134</sup> rather what is required is that the accused's contribution be connected to the commission of the crime and not solely to the activities of the group in a general sense.<sup>5135</sup> The Majority finds that through his role as a senior member of the Islamic Police, and the individual acts and conduct discussed above, Mr Al Hassan had a leading role in the implementation of the repression system put into place by Ansar Dine/AQIM in Timbuktu.

1685. For the Majority, in light of the circumstances of this case, Mr Al Hassan was instrumental in the various forms of repression by the groups' members for breaches to the rules and prohibitions, notably the carrying out of corporal punishments, namely floggings and one case of mutilation, as well as other forms of violence by Ansar Dine/AQIM members, whether it was done on the streets or in detention.

1686. The Majority, Judge Akane dissenting, further finds that Mr Al Hassan's contribution, made at a senior level within the Islamic Police, allowed not only the Islamic Police to work effectively but also other institutions. Notably, in light

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<sup>5129</sup> See paragraphs 1073-1075 above.

<sup>5130</sup> See paragraphs 1076-1077 above.

<sup>5131</sup> See paragraph 583 above.

<sup>5132</sup> See paragraphs 585, 684, 1078 above.

<sup>5133</sup> See paragraph 1079 above.

<sup>5134</sup> See paragraph 1243 above.

<sup>5135</sup> See paragraph 1244 above.

of the integrated system put into place by Ansar Dine/AQIM regarding the sanctions of breaches to its rules and prohibitions, which directly led to the commission of crimes, Mr Al Hassan's contributions allowed the other institutions to perform their duties in an organised way and to maintain the coercive environment imposed on the population. Regarding in particular the arrests and detentions by the *Hesbah*, the acts and conduct of these members of Ansar Dine/AQIM, which constitute crimes, were inherent to the enforcement of the repression system to which, as explained above, Mr Al Hassan was a leading contributor. In the Majority's view, Mr Al Hassan did not solely contribute to the activities of Ansar Dine/AQIM in a general sense; he was a key player within a synergistic repression system through which members of the relevant institutions committed the crimes.

1687. Considering the foregoing, the Majority finds that Mr Al Hassan's conduct in carrying out his duties and responsibilities in the Islamic Police meaningfully and directly contributed to Ansar Dine/AQIM's integrated system of punishment for violation of its rules and prohibitions and thus to the crimes charged under Counts 1-5 and 14. Considering this, and for reasons mentioned in Judge Akane's separate and partly dissenting opinion,<sup>5136</sup> the Chamber finds that Mr Al Hassan contributed to the crimes committed by members of Ansar Dine/AQIM against Dédéou Maiga, Sallaka Bent Al-Khair (P-0554), Madou Traoré, Foma, and, by Majority, Azahara Abdou (P-1134), P-0636, P-0570, and Fadimata Mint Lilli (P-0547).

1688. In relation to the mental elements, the Defence contends that the Prosecution relies on un-informed and non-intentional conduct, including in relation to the amputation of Dédéou Maiga.<sup>5137</sup> The Chamber finds this argument to be unsupported by the evidence and notes that Mr Al Hassan was aware of the mission of Ansar Dine/AQIM, its rules and prohibitions, and was an active and key participant in their enforcement.<sup>5138</sup> The categories of *hadd* and *ta'zir*

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<sup>5136</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5137</sup> [Defence Response Brief](#), para. 79 (stating that Mr Al Hassan had no way to determine the outcome of such proceedings at the time they commenced). See also [Defence Final Brief](#), paras 515-516, 524-527.

<sup>5138</sup> See paragraphs 573, 585, 657, 665-666, 1069, 1083 above.

punishments were known to Mr Al Hassan while he was working at the Islamic Police.<sup>5139</sup> Members of the Islamic Police, including Mr Al Hassan, were read the content of Abou Zeid's 'small instructions' document at the BMS; it was also read on Radio Bouctou.<sup>5140</sup> Mr Al Hassan also knew about Abou Zeid's Instructions, issued on 15 August 2012, which were formally communicated by Abou Zeid to the Islamic Police.<sup>5141</sup> Through his vital role in the Islamic Police, Mr Al Hassan knew of and deliberately took part in Ansar Dine/AQIM's control over the population of Timbuktu, including the severe punishments for violation of the groups' rules and prohibitions. In particular, the Chamber recalls it has been established that Mr Al Hassan bears responsibility as direct perpetrator under Article 25(3)(a) of the Statute for personally flogging two victims around 8 July 2012, with the required intent under Article 30 of the Statute.<sup>5142</sup> Mr Al Hassan was also present at the execution of punishments, being among the members of Ansar Dine/AQIM who ensured the efficient and effective implementation of the sanctions imposed with a view to facilitate crimes under Counts 1, 3 and 5.<sup>5143</sup> Mr Al Hassan also bragged to P-0150 about his enforcement of Ansar Dine/AQIM's version of *Sharia*.<sup>5144</sup> Further, Mr Al Hassan agreed with Ansar Dine/AQIM that behaviour opposed to their ideology should be repressed and shared Ansar Dine/AQIM's policy of implementing their repressive rules.<sup>5145</sup> Mr Al Hassan also acknowledged after the charged events that public punishments amounted to a 'humiliation' of the dignity of the person being punished.<sup>5146</sup>

1689. For these reasons, the Majority finds that Mr Al Hassan acted deliberately, with

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<sup>5139</sup> See paragraph 657 above.

<sup>5140</sup> See paragraph 665 above.

<sup>5141</sup> See paragraph 666 above.

<sup>5142</sup> See paragraph 1586 above. **Judge Prost**, in dissent, also considers that Mr Al Hassan personally flogged Al-Husayn Bin 'Umar (see paragraph 818 above).

<sup>5143</sup> See section 2.a) above.

<sup>5144</sup> See paragraph 1093 above.

<sup>5145</sup> In reaching this finding, the Chamber recalls its above findings that Mr Al Hassan joined Ansar Dine/AQIM voluntarily after being convinced to work with them by leaders of the groups who spoke to him of the necessity of *jihad* (see paragraph 1059 above); Mr Al Hassan's work with the Islamic Police (see section III.F.3 above), in particular his participation in patrols and knowledge of the purpose of the Police patrols as well as his participation in punishments and knowledge of their purpose further demonstrates his knowledge of and acquiescence to Ansar Dine/AQIM's policy (see sections III.C.4.b)v.g, III.C.4.d)ii, III.F.3.h) above). See also paragraphs 1079-1083, 1093 above.

<sup>5146</sup> See paragraph 661 above.

the aim of (and the knowledge that he was) furthering Ansar Dine/AQIM's criminal activity, and that he was fully aware of the group's intention to commit the crimes against Dédéou Maiga, Sallaka Bent Al-Khair (P-0554), Madou Traoré, Foma, and, by Majority, Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547).

1690. Considering the foregoing, and for reasons mentioned in Judge Akane's separate and partly dissenting opinion,<sup>5147</sup> the Chamber finds Mr Al Hassan criminally responsible pursuant to Article 25(3)(d) of the Statute for contributing to torture as a crime against humanity, pursuant to Article 7(1)(f) (Count 1), and as a war crime, pursuant to Article 8(2)(c)(i) (Count 3), committed against Dédéou Maiga, Sallaka Bent Al-Khair (P-0554), and Madou Traoré; other inhumane acts as a crime against humanity, pursuant to Article 7(1)(k) (Count 2), committed against Foma; cruel treatment as a war crime, pursuant to Article 8(2)(c)(i) (Count 4), committed against Foma; outrages upon personal dignity as a war crime, pursuant to Article 8(2)(c)(ii) (Count 5), committed against Dédéou Maiga, Sallaka Bent Al-Khair (P-0554), Madou Traoré, and Foma; and mutilation as a war crime, pursuant to Article 8(2)(c)(i) (Count 14), committed against Dédéou Maiga.

1691. Further, the Majority, Judge Akane dissenting, finds Mr Al Hassan criminally responsible pursuant to Article 25(3)(d) of the Statute for other inhumane acts as a crime against humanity, pursuant to Article 7(1)(k) (Count 2), cruel treatment as a war crime, pursuant to Article 8(2)(c)(i) (Count 4), and outrages upon personal dignity as a war crime, pursuant to Article 8(2)(c)(ii) (Count 5), all committed against Azahara Abdou (P-1134), P-0636, P-0570, and Fadimata Mint Lilli (P-0547).

1692. Finally, the Majority, Judge Akane dissenting,<sup>5148</sup> recalls that Mr Al Hassan is also charged in the alternative pursuant to Article 25(3)(d) of the Statute under Counts 1, 3 and 5 in relation to the two men, P-0565 and P-0557, and Khudi Bint

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<sup>5147</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5148</sup> As noted above, **Judge Akane** dissents on entering alternative findings for these specific incidents as she considers it not only unnecessary, but also harmful and inconsistent with the duty of the Chamber and the function of the Article 74 judgment in light of the Chamber's findings under Article 25(3)(a) or (c) in relation to these specific incidents. See Separate and partly dissenting opinion of Judge Tomoko Akane.



Ibrahim, ‘Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad, Al-Husayn Bin ‘Umar and Halimah Bint Muhammad. Based on the same reasoning set out above, including on the inclusion of these crimes in the common purpose, the Majority, in the alternative to its findings above under Article 25(3)(a) of the Statute in relation to the two men and Article 25(3)(c) for the other aforementioned victims, would have found Mr Al Hassan criminally responsible in respect of those victims pursuant to Article 25(3)(d) of the Statute for torture as a crime against humanity, under Article 7(1)(f) (Count 1), and as a war crime, under Article 8(2)(c)(i) (Count 3); and outrages upon personal dignity as a war crime, under Article 8(2)(c)(ii) (Count 5).

**ii. Sentencing without due process (Count 6)**

1693. The Chamber found that members of Ansar Dine/AQIM committed crimes charged in Count 6, namely sentencing without due process.<sup>5149</sup> The Chamber also found that the sentencing by the Islamic Court and sentencing without a previous judgment of the Islamic Court in the case of Foma formed part of the common purpose specific to Ansar Dine/AQIM. The Majority, Judge Akane dissenting,<sup>5150</sup> found that the crimes committed against Azahara Abdou (P-1134), P-0636, P-0570, Fadimata Mint Lilli (P-0547), Salamata Warnamougrez (P-1710), and Hady Aguisa (P-1711) formed part of the common purpose specific to Ansar Dine/AQIM and therefore any findings in this subsection on Mr Al Hassan’s contribution to the crimes in respect of those six victims are by Majority.

1694. Regarding the victims who were punished by members of Ansar Dine/AQIM, notably by members of the Islamic Police and the *Hesbah*, without a previous judgment of the Islamic Court, the Majority recalls its above discussion of Mr Al Hassan’s role in the Islamic Police in paragraphs 1674-1678 above as well its discussion in paragraphs 1670-1673 above concerning the Islamic Police’s role in the punishment of persons who violated Ansar Dine/AQIM’s rules and prohibitions. The Majority, also recalls its discussion in paragraph 1686 regarding the collaboration between Ansar Dine/AQIM’s institutions to enforce the groups’ rules and prohibitions. In this context, the Majority notes that each crime was an

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<sup>5149</sup> See section B.9 above.

<sup>5150</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

enforcement of Ansar Dine/AQIM's rules and prohibitions. Foma was flogged for smoking. The Majority notes that Fadimata Mint Lilli was victimised for being 'improperly' veiled, as were Azahara Abdou, P-0636 and P-0570, and that Salamata Warnamougrez and Hady Aguisa were arrested and detained at the BMS by Mohammed Moussa for not being covered enough.<sup>5151</sup>

1695. As demonstrated above, the Majority considers that Mr Al Hassan had a leading role in the implementation of the repression system put into place by Ansar Dine/AQIM in Timbuktu. Thus, Mr Al Hassan's conduct was a contribution to the system that Ansar Dine/AQIM constructed to allow its members to commit the various crimes of sentencing without a previous judgment of the Islamic Court under Count 6. Considering this, the Majority finds that Mr Al Hassan contributed to such crimes committed by members of Ansar Dine/AQIM against Foma and, by Majority, Azahara Abdou, P-0636, P-0570, Fadimata Mint Lilli, Salamata Warnamougrez, and Hady Aguisa.

1696. As to sentencing by the Islamic Court, the Chamber recalls its finding that members of the Islamic Court sentenced individuals in the following cases pursuant to judgments pronounced by a court that was not regularly constituted, under Article 8(2)(c)(iv) of the Statute, given that it was not independent and was not impartial, namely: P-0565 and P-0557; Khudi Bint Ibrahim and 'Abdallah Bin Mukha; Bint Bint Ibrahim and Ikhmad Bin Muhammad; Dédéou Maiga; Sallaka Bent Al-Khair (P-0554); Madou Traoré; Nuh bin Muhammad, 'Isa Bin Jadu, Muhammad Shaka and Abdallah Bin Muhammad al-Jum'at; Yusfi 'Uthman and Bili Arbi; Halimah Samak and Braym Mik; al-Hasan Bin Irzaq and Halimah Bint Sali; Muhammad; Sha'ban Bin Sidi; Umar Anjami; Infa Muhammad 'Ali; Halle Bin Hanay; Asya Bint 'Umar; Muhammad Bin Musa, Muhammad Bin Ban and Qurba Mika; Moukhtar Ould-M'barakou or Moukhtar Ould-Ambarkoua; and Mohamed Ben el-Gaw and el-Goumaa,

1697. The Chamber recalls its above discussion in paragraphs 1608-1610 regarding Mr Al Hassan's role within the Islamic Police and his interactions with the Islamic Court. Considering these findings, the Chamber finds that Mr Al Hassan through

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<sup>5151</sup> See paragraphs 858, 863, 875, 891, 903 above.

his involvement in the work of the Islamic Court as a member of the Islamic Police, including through his role in writing and signing Police reports, bringing accused and Islamic Police reports to the Islamic Court and taking persons to and from the Islamic Court, contributed to the crime of sentencing without due process committed against the above individuals.

1698. Contrary to the Defence's contention that the Prosecution failed to demonstrate that Mr Al Hassan made a culpable contribution to these charged incidents because the Islamic Court did not base their judgments on the contents of Police reports,<sup>5152</sup> the Chamber found that the Police reports had an important function within the Islamic Court. The judges of the Islamic Court relied on the Police reports to guide the judge's own investigations,<sup>5153</sup> and the Police reports could suffice as a 'witness' before the Islamic Court, without the Police officer needing to be present.<sup>5154</sup> Some defendants were sentenced because they were 'not able to defend themselves' against the Police report.<sup>5155</sup> Mr Al Hassan was familiar with these procedures<sup>5156</sup> and provided evidence, at least once, during a hearing, clarifying a report and providing additional information.<sup>5157</sup>

1699. The Defence further contends that the Islamic Police did not bring certain cases before the Islamic Court,<sup>5158</sup> and that the Prosecution failed to demonstrate the Islamic Police's or Mr Al Hassan's involvement in certain other cases,<sup>5159</sup> suggesting that Mr Al Hassan made no culpable contributions to the crimes the judges of the Islamic Court committed against these persons. The Majority, Judge Akane dissenting, is unpersuaded by these arguments. As discussed above, the Majority considers that the Islamic Court, the *Hesbah* and the Islamic Police were a synergistic system through which Ansar Dine/AQIM punished persons deemed

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<sup>5152</sup> [Defence Final Brief](#), paras 380-383.

<sup>5153</sup> See paragraphs 630, 1076 above.

<sup>5154</sup> See paragraph 633 above.

<sup>5155</sup> See paragraphs 1000, 1610 above.

<sup>5156</sup> See paragraph 630 above.

<sup>5157</sup> See paragraph 1076 above.

<sup>5158</sup> See [Defence Final Brief](#), paras 384-387. Here the Defence specifically references the cases of Sallaka Bent Al-Khair, Khudi Bint Ibrahim, 'Abdallah Bin Mukha, Bint Bint Ibrahim, Ikhmad Bin Muhammad.

<sup>5159</sup> Here the Defence specifically references the cases of Yusfi 'Uthman and Bili Arbi, al-Hasan Bin Irzaq and Halimah Bint Sali, Muhammad ag Intsbidar, Sha'ban Bin Sidi, Umar Anjami, Infa Muhammad 'Ali, Halle Bin Hanay, Mahmud Bin al-Mustafa, Asya Bint 'Umar, Boune Ould Hassan, Ali al-Haji and 'Ali Shayban, Abdullah Kuni, Abou-Bakr Soumboulou, and Dawoud Oulale.

to have violated the groups' rules and prohibitions. Both the *Hesbah* and the Islamic Police sent cases to the Islamic Court, and Mr Al Hassan, through his work with the Islamic Police and his interactions with the Islamic Court, contributed to that system of punishment. Further, the Chamber found that the Police was also charged with the security of the Islamic Court and its judges; members of the Police would always guard the Islamic Court, being stationed in front of the entrance of the building and of the courtroom during its hearings.<sup>5160</sup> The Majority considers that the role the Police played in guarding the Islamic Court, irrespective of the body that referred the case, further demonstrates the synergistic system Ansar Dine/AQIM created to effectively enforce its punishments.

1700. While the Defence suggests that the Islamic Police's and Mr Al Hassan's role in registering complaints did not contribute to the realisation of the charged incidents,<sup>5161</sup> the Majority recalls the factual findings as to Mr Al Hassan's role as well as its factual findings on the role of the Islamic Police. The Majority notes that the Islamic Police, including Mr Al Hassan, received complaints from the local population and also actively acted to resolve disputes and forward disputes they could not resolve to the Islamic Court.<sup>5162</sup>

1701. The Majority is further unpersuaded by the Defence's contention that Mr Al Hassan made no culpable contributions to the implementation of penalties related to charged incidents.<sup>5163</sup> The Majority recalls its above discussion of Mr Al Hassan's culpable contributions to the implementation of punishments and the work of the Islamic Court. Further, the Chamber notes that the Islamic Police was an active participant in the implementation of *ta'zir* punishments.<sup>5164</sup> Mr Al Hassan was present during punishments against persons who had not been subject to any judgment by the Islamic Court and were flogged directly at the Police station.<sup>5165</sup> Given his contribution to the collaborative system which facilitated the work of the Islamic Court, the Majority finds that Mr Al Hassan made

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<sup>5160</sup> See paragraph 583 above.

<sup>5161</sup> See [Defence Final Brief](#), paras 388-400.

<sup>5162</sup> See paragraphs 569, 1071, 1073 above.

<sup>5163</sup> See [Defence Final Brief](#), paras 405, 515-518, 524-525.

<sup>5164</sup> See paragraphs 584-585, 663-664, 667, 1079 above.

<sup>5165</sup> See paragraph 1079 above.

contributions to the crimes committed by Islamic Court judges against the above named individuals.

1702. For the same reasons as above, the Majority, Judge Akane dissenting,<sup>5166</sup> considers that Mr Al Hassan contributed to the crimes committed against the two men; Mahmud Bin al-Mustafa; Boune Ould Hassan; Ali al-Haji and ‘Ali Shayban; Abdullah Kuni; Abou-Bakr Soumboulou; and Dawoud Oulale.

1703. In relation to the mental elements, the Majority refers to its above discussion of Mr Al Hassan’s contributions to the system of punishment set forth by Ansar Dine/AQIM. Through his behaviour and active participation in the work of the Police, Mr Al Hassan demonstrated that he intended to engage in the conduct that contributed to the passing of sentences without a previous judgment pronounced by the Islamic Court as well as those related to persons sentenced by the Islamic Court which was not independent or impartial. Mr Al Hassan was also aware and supportive of Ansar Dine/AQIM’s criminal activity. Further, the Majority recalls its discussion, in paragraphs 1611-1614 above, of Mr Al Hassan’s awareness of the importance of his work to the activities of the Islamic Court as well as his awareness of the influence that senior Ansar Dine/AQIM leaders applied on the Islamic Court and its members. Thus, the Majority considers that Mr Al Hassan was aware that the Islamic Court issued judgments, notably against arrested individuals, and that it was neither independent nor impartial. He also knew that his conduct contributed to the activities of the judges of the Islamic Court. For these reasons, the Majority also finds that Mr Al Hassan acted with the aim of (and the knowledge that he was) furthering Ansar Dine/AQIM’s criminal activity and that he was fully aware of the group’s intention to commit crimes set out in Count 6 for sentencing without due process.

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<sup>5166</sup> See footnote 4642 above. With respect to the two men, **Judge Akane** recalls that she considered that the floggings of the two men was a *ta’zir* imposed directly by the Islamic Police without an Islamic Court judgment. Judge Akane thus agreed with the finding that the two men were sentenced without due process under Count 6, although considered that the case should be categorised one in which a sentence was passed without prior judgment, as opposed to a case with a judgment from a court which was not regularly constituted or did not afford other indispensable guarantees. In any case, she agrees with the Majority, for the reasons set out above in relation to punishments imposed by Ansar Dine/AQIM members without a previous judgment of the Islamic Court, that Mr Al Hassan is criminally culpable pursuant to Article 25(3)(d) for the crime committed against these two men under Count 6.

1704. Considering the foregoing, and for reasons mentioned in Judge Akane’s separate and partly dissenting opinion,<sup>5167</sup> the Chamber finds Mr Al Hassan criminally responsible pursuant to Article 25(3)(d) of the Statute for contributing to the sentencing without due process, pursuant to Article 8(2)(c)(iv) (Count 6), in the cases of: the two men; Foma; P-0565 and P-0557; Khudi Bint Ibrahim and ‘Abdallah Bin Mukha; Bint Bint Ibrahim and Ikhmad Bin Muhammad; Dédéou Maiga; Sallaka Bent Al-Khair (P-0554); Madou Traoré; Nuh bin Muhammad, ‘Isa Bin Jadu, Muhammad Shaka and Abdallah Bin Muhammad al-Jum’at; Yusfi ‘Uthman and Bili Arbi; Halimah Samak and Braym Mik; al-Hasan Bin Irzaq and Halimah Bint Sali; Muhammad; Sha’ban Bin Sidi; Umar Anjami; Infa Muhammad ‘Ali; Halle Bin Hanay; Asya Bint ‘Umar; Muhammad Bin Musa, Muhammad Bin Ban and Qurba Mika; Moukhtar Ould-M’barakou or Moukhtar Ould-Ambarkoua; and Mohamed Ben el-Gaw and el-Goumaa.

1705. By Majority, Judge Akane dissenting, the Chamber finds Mr Al Hassan criminally responsible pursuant to Article 25(3)(d) of the Statute for contributing to the sentencing without due process, pursuant to Article 8(2)(c)(iv) (Count 6), in the cases of: Azahara Abdou (P-1134); P-0636; P-0570; Fadimata Mint Lilli (P-0547); Salamata Warnamougrez (P-1710); Hady Aguisa (P-1711); Mahmud Bin al-Mustafa; Boune Ould Hassan; Ali al-Haji and ‘Ali Shayban; ‘Abdullah Kuni; Abou-Bakr Souboulou; and Dawoud Oulale.

1706. Finally, the Majority, Judge Akane dissenting,<sup>5168</sup> recalls that Mr Al Hassan is also charged in the alternative pursuant to Article 25(3)(d) of the Statute under Count 6 in relation to the nine cases in paragraph 1615 above for which the Majority found Mr Al Hassan criminally responsible for Count 6 pursuant to Article 25(3)(c) of the Statute. Based on the same reasoning set out above, including on the inclusion of these crimes in the common purpose, and in relation to Mr Al Hassan’s contribution to sentencing by the Islamic Court under Article 25(3)(d), the Majority, in the alternative to its findings under Article 25(3)(c)

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<sup>5167</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5168</sup> As noted above, **Judge Akane** dissents on the Majority’s findings under Article 25(3)(c) in relation to these nine specific incidents and accordingly, for the relevant reasons noted in relation to the other cases of the Islamic Court charged under Count 6 pursuant to Article 25(3)(d) of the Statute, would have found Mr Al Hassan liable in respect of these incidents under Article 25(3)(d). See Separate and partly dissenting opinion of Judge Tomoko Akane.

above, would have found Mr Al Hassan criminally responsible in respect of those cases pursuant to Article 25(3)(d) of the Statute for contributing to the sentencing without due process pursuant to Article 8(2)(c)(iv) (Count 6).

**iii. Forced marriage as an other inhumane act and associated sexual slavery and rape (Counts 8-12)**

1707. The Chamber, or in the relevant part the Majority, Judge Akane dissenting, found that members of Ansar Dine/AQIM committed the crimes recounted above and charged under Counts 8 to 12.<sup>5169</sup>

1708. Regarding P-0520, P-0610, P-0538 and P-1162, the Chamber, or in the relevant part the Majority, Judge Akane dissenting, found that members of Ansar Dine/AQIM forced P-0520, P-0538 and P-0610 into marriage; after they were married, their ‘husbands’ raped them and subjected them to sexual slavery. The Majority, Judge Akane dissenting, found that a member of Ansar Dine/AQIM forced P-1162 into marriage and subjected her to sexual slavery.

1709. The Majority, Judge Akane dissenting, found that crimes committed against P-0520, P-0610, P-0538 and P-1162 formed part of the common purpose specific to Ansar Dine/AQIM and therefore any findings in this subsection on Mr Al Hassan’s contribution to the crimes in respect of these victims are by Majority. For reasons mentioned in her separate opinion, Judge Akane considers that Mr Al Hassan did not make the requisite contribution to these crimes.<sup>5170</sup>

1710. Contrary to the Defence’s arguments that the Prosecution failed to demonstrate that Mr Al Hassan made culpable contributions to these charged incidents and that the evidence does not reflect that Mr Al Hassan directly or indirectly took any part in, or otherwise generally contributed to, a system of forced marriage, rape, or other gender-based crimes in Timbuktu during the relevant period,<sup>5171</sup> the Majority considers that the evidence demonstrates Mr Al Hassan’s contribution.

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<sup>5169</sup> See paragraphs 1438-1439, 1457-1458, 1472-1473 above. See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5170</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

<sup>5171</sup> See [Defence Final Brief](#), para. 282.

1711. At the outset, the Majority recalls that the Chamber has found that Mr Al Hassan actively supported Ansar Dine/AQIM's members' practice of '*jihadi* marriages'. Specifically, to facilitate such marriages, Mr Al Hassan was directly involved in arranging finances for those who needed it.<sup>5172</sup> He wrote to his superiors, including to Abou Zeid, requesting support payments for Islamic Police officers who wished to marry and, in one instance, wrote a collective request on behalf of Police officers to the emir of the Police for alimony payments.<sup>5173</sup> Thus, Mr Al Hassan played an important role in the context of '*jihadi* marriages' by using his power to obtain financial support from the highest emir in Timbuktu to allow the Islamic Police members to marry.

1712. Further, given Mr Al Hassan's important role in the Islamic Police, particularly his contribution to the Islamic Police's enforcement of Ansar Dine/AQIM's rules and prohibitions, as well as to the Islamic Police's control of Timbuktu through armed patrols, he contributed to the overall coercive atmosphere in which forced marriages took place.<sup>5174</sup> More specifically, the Majority recalls that Mr Al Hassan, as a well-known local, and because of his status and the confidence the emirs placed in him, willingly participated in mediations in the context of '*jihadi* marriages', including as an intermediary in the arrangement of Abou Zhar's marriage.<sup>5175</sup> The Majority notes its previous finding that the intervention of such intermediaries was crucial to 'convince' or 'pressure' local women to get married to members of Ansar Dine/AQIM.<sup>5176</sup> The marriages were concluded 'under intense pressure', including from the intermediaries using their leverage with the population.<sup>5177</sup> In participating in this role, Mr Al Hassan was well aware of the fear that the population had of 'jihadists'<sup>5178</sup> and how important the role of the intermediary was in applying the necessary pressure to secure the marriage to not only foreigners but foreigners who had taken over the city by force.<sup>5179</sup> Thus, Mr Al Hassan's contribution was not limited to '*jihadi* marriages' but also

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<sup>5172</sup> See paragraph 505 above.

<sup>5173</sup> See paragraph 505 above.

<sup>5174</sup> See paragraph 1276 above.

<sup>5175</sup> See paragraph 505 above. The Majority recalls that Mr Al Hassan's role as an intermediary was related to the negotiation of the dowry.

<sup>5176</sup> See paragraph 498 above.

<sup>5177</sup> See paragraph 502 above.

<sup>5178</sup> See paragraph 738 above.

<sup>5179</sup> See section III.C.3.a)ii above.



specifically to forced marriages.

1713. Hence, while the evidence does not indicate that Mr Al Hassan personally participated in the forced marriages of P-0520, P-0610, P-0538 and P-1162, the Majority considers that his role in the Islamic Police contributed to a coercive environment in Timbuktu where such marriages could be forced. Further, in working to facilitate the marriages of members of the Islamic Police by obtaining financing, Mr Al Hassan supported the system put into place by the Ansar Dine/AQIM leadership through which these crimes occurred. Finally, by participating, as a well-known local figure, in mediations in the context of ‘*jihadi* marriages’,<sup>5180</sup> Mr Al Hassan directly contributed to the pressure brought to bear on women and their families which facilitated forced marriages. On the basis of these facts, the Majority is convinced that Mr Al Hassan made a contribution not only to ‘*jihadi* marriages’ but also directly to forced marriages.

1714. Regarding the mental elements, the Majority considers that Mr Al Hassan’s culpable conduct was deliberate and made with the required knowledge of the groups’ intent to commit the crimes.<sup>5181</sup> The Majority recalls that Mr Al Hassan was a local of the Timbuktu region, educated, well-known in the community and therefore familiar with local customs and traditions.<sup>5182</sup> The Majority considers that, as such, he knew that marriages in Timbuktu were normally arranged within local tribes and that families and women did not generally marry outside their tribe, let alone with individuals coming from a foreign country with different cultures and traditions.<sup>5183</sup> Moreover, as noted above, Mr Al Hassan participated as a mediator of marriages and in supporting the marriages of Islamic Police officers with locals. While doing so, Mr Al Hassan was well aware he was facilitating marriages of local women with members of armed groups, which had taken control of Timbuktu through a violent take-over and was imposing its will on the population using very harsh methods. In these combined circumstances, the only possible conclusion is that Mr Al Hassan knew that without the intervention of intermediaries, the proposals would have no prospect of success

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<sup>5180</sup> See paragraphs 502, 505 above.

<sup>5181</sup> *Contra* [Defence Final Brief](#), paras 287, 290, 292, 295.

<sup>5182</sup> See paragraph 6 above.

<sup>5183</sup> See paragraph 416 above.

and that their presence put immense pressure on the families and the women themselves.<sup>5184</sup>

1715. The Majority considers that in addition to his knowledge with respect to the pressurising role of the intermediaries, Mr Al Hassan was aware of the full circumstances surrounding these ‘*jihadi* marriages’. Notably, the Majority recalls its finding that Ansar Dine/AQIM created a coercive environment in Timbuktu, which played a major part in the ability of perpetrators (all members of Ansar Dine/AQIM) to commit crimes.<sup>5185</sup> Ansar Dine/AQIM submitted the population of Timbuktu to their rule, by force.<sup>5186</sup> The city of Timbuktu was under Ansar Dine/AQIM’s sole control<sup>5187</sup> and their members would use force and violence to punish contraventions of the rules they established.<sup>5188</sup> As referenced above, in his role with the Islamic Police, Mr Al Hassan was fully aware of, and contributed to, this repressive system and the atmosphere it generated. He was familiar with the practice of members of Ansar Dine/AQIM, including those in the Islamic Police, of carrying arms when interacting with members of the public;<sup>5189</sup> Mr Al Hassan himself also carried arms in performing some of his duties.<sup>5190</sup> Additionally, in his role with the Islamic Police, particularly in the taking of complaints, Mr Al Hassan had frequent contacts with the local population and was aware of their concerns and the coercive circumstances resulting from Ansar Dine/AQIM’s military presence and control of the city of Timbuktu.<sup>5191</sup> Moreover, he himself acknowledged the fear the armed takeover and enforcement of rules had created in the population; he knew that ‘everybody was afraid of the word ‘*jihadist*’ or ‘*terrorist*’ and that ‘people would fear being punished’.<sup>5192</sup>

1716. In its analysis, the Majority is mindful that not all ‘*jihadi* marriages’ were of a nature such as the forced marriages of P-0520, P-0610, P-0538 and P-1162, and also that there were cases where the woman and/or her family successfully

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<sup>5184</sup> See paragraph 501 above.

<sup>5185</sup> See paragraph 1276 above. *Contra* [Defence Final Brief](#), paras 267-268.

<sup>5186</sup> See paragraph 1276 above.

<sup>5187</sup> See paragraph 451 above.

<sup>5188</sup> See paragraph 1276 above.

<sup>5189</sup> See paragraphs 508, 557, 573 above.

<sup>5190</sup> See paragraph 1078 above.

<sup>5191</sup> See paragraph 1070 above.

<sup>5192</sup> See paragraph 738 above.

rejected a marriage proposal, including one in which Mr Al Hassan was involved.<sup>5193</sup> However, in many other instances, women and their families had no option but to accept<sup>5194</sup> and, from the combined circumstances, the Majority finds that the only possible conclusion is that Mr Al Hassan was well aware that was the case. He knew that the practice of ‘*jihadi* marriage’ was conducted in an overwhelmingly coercive context where women and their families were ‘pressured’ by the totality of the circumstances, including Ansar Dine/AQIM members who were armed,<sup>5195</sup> intermediaries who were influential,<sup>5196</sup> and the fear of consequences for refusing a ‘*jihadi* marriage’.<sup>5197</sup> Thus, the Majority finds that Mr Al Hassan knew that the practice of ‘*jihadi* marriages’ would necessarily involve instances of forced marriage. Further, Mr Al Hassan as a member of the Islamic Police knew of the prohibition against sexual relations outside of marriage in the group’s interpretation of *Sharia*. Considering this, and the active role he played in facilitating ‘marriages’, the only possible conclusion is that he understood that this practice of ‘*jihadi* marriage’ was designed to allow members of Ansar Dine/AQIM to have sexual intercourse in a ‘permissible’ manner<sup>5198</sup> and that once women were ‘married’ it would be impossible for them to refuse to have sexual intercourse with their ‘husbands’ who had control over everything.<sup>5199</sup>

1717. Given the foregoing, the Majority considers it established that Mr Al Hassan made a contribution to the crimes of rape and sexual slavery in the context of forced marriage knowing of Ansar Dine/AQIM’s intention to commit these crimes.<sup>5200</sup>

1718. Considering the foregoing, the Majority, Judge Akane dissenting, finds Mr Al Hassan criminally responsible pursuant to Article 25(3)(d) of the Statute for contributing to crimes committed against P-0520, P-0538 and P-0610; namely the other inhumane acts in the form of forced marriage as a crime against humanity,

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<sup>5193</sup> See paragraph 502 above.

<sup>5194</sup> See paragraph 502 above.

<sup>5195</sup> See paragraph 501 above.

<sup>5196</sup> See paragraph 498 above.

<sup>5197</sup> See paragraph 502 above.

<sup>5198</sup> See paragraph 510 above.

<sup>5199</sup> See paragraph 510 above.

<sup>5200</sup> With respect to the intention of the group to commit the crime, the Majority relies on the definition set out in Article 30(2)(b) of the Statute that the group meant to cause the consequence or was aware that it would occur in the ordinary course of events.

pursuant to Article 7(1)(k) (Count 8); sexual slavery as a crime against humanity, pursuant to Article 7(1)(g) (Count 9), and as a war crime, pursuant to Article 8(2)(e)(vi) (Count 10); and rape as a crime against humanity, pursuant to Article 7(1)(g) (Count 11), and as a war crime, pursuant to Article 8(2)(e)(vi) (Count 12). The Majority finds Mr Al Hassan criminally responsible for the commission of these same crimes against P-1162 (Counts 8-10), apart from rape (Counts 11-12).

#### **iv. Rapes in detention (Counts 11-12)**

1719. The Chamber, in relation to Count 12, and the Majority, Judge Akane dissenting, in relation to Count 11, found that members of Ansar Dine/AQIM committed the crimes of rape recounted above. Regarding Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli, the Chamber found that members of Ansar Dine/AQIM arrested the victims for not being properly covered or veiled, detained them and, by Majority, Judge Akane dissenting in relation to Azahara Abdou, raped them while in detention.

1720. The Majority, Judge Akane dissenting, found that the crimes committed against Azahara Abdou, P-0636, P-0570 and Fadimata Mint Lilli formed part of the common purpose specific to Ansar Dine/AQIM.

1721. For the reasons explained below the Majority, Judge Prost dissenting,<sup>5201</sup> finds that Mr Al Hassan did not have the requisite knowledge under Article 25(3)(d) of the Statute as regards rape as a crime against humanity and a war crime, committed in detention (Counts 11 and 12). For reasons set out in her separate and partly dissenting opinion, Judge Akane is also of the view that the acts of Mr Al Hassan do not constitute an objective contribution to the rapes in detention.<sup>5202</sup>

1722. The Majority highlights at the outset that there is no direct evidence that Mr Al Hassan knew of complaints relating to sexual harassment or rape of detained women. In this context, the Majority recalls that to satisfy Article 25(3)(d) of the Statute, a requisite contribution by Mr Al Hassan must have been intentional and

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<sup>5201</sup> See Partly dissenting opinion of Judge Kimberly Prost.

<sup>5202</sup> See Separate and partly dissenting opinion of Judge Tomoko Akane.

(i) made with the aim of furthering Ansar Dine/AQIM's criminal activity or criminal purpose, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court or (ii) made in the knowledge of Ansar Dine/AQIM's intention to commit the crime.<sup>5203</sup>

1723. The Majority recalls that in the present case, each of the victims was arrested and detained at the BMS when it was controlled by the *Hesbah* under Mohammed Moussa as emir. While the evidence indicates that Mr Al Hassan was familiar with the detention facilities at the BMS, including the ATM room, having worked at the BMS initially in his position within the Islamic Police, where on occasion individuals were detained,<sup>5204</sup> the evidence does not demonstrate that any women were raped at the BMS while it was occupied by the Islamic Police. In addition, while there is evidence on the record regarding Mr Al Hassan's awareness of Mohammed Moussa's abuses in general,<sup>5205</sup> the Majority considers that there is no evidence indicating that Mr Al Hassan was aware that members of Ansar Dine/AQIM intended to commit acts of rape against detained women. The Majority emphasises in this regard that it is not sufficient to establish that Mr Al Hassan had knowledge of Ansar Dine/AQIM's general criminal intention but rather he must be aware of their intention to commit the specific crime to which he is contributing.

1724. Furthermore, in his statements, Mr Al Hassan indicated that apart from the case of rape involving an Islamic Police officer, he did not hear of any other rapes.<sup>5206</sup> Putting aside the credibility of this assertion, the Majority finds it important that in relation to the rape case involving the Islamic Police officer,<sup>5207</sup> the evidence indicates that Mr Al Hassan was actively involved in the investigations and was

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<sup>5203</sup> See paragraph 1245 above.

<sup>5204</sup> See paragraph 579 above.

<sup>5205</sup> For example, Mr Al Hassan knew that the *Hesbah* under Mohammed Moussa's tenure was detaining people, including women, and did not transfer arrested persons to the Islamic Police and Mr Al Hassan himself received complaints about Mohammed Moussa's extremism during the latter's tenure as emir of the *Hesbah* and he described Mohammed Moussa's behaviour as 'draconian' (see paragraphs 534, 535, 538 above). Mr Al Hassan further stated that women were detained by Mohammed Moussa for one or two days and that he was aware of complaints both from members of Ansar Dine/AQIM and the public in relation to Mohammed Moussa's practice of imprisoning women at the *Hesbah* (see paragraphs 537-539 above).

<sup>5206</sup> See paragraph 678 above.

<sup>5207</sup> See paragraph 678 above.

reported to be ‘very angry’ about what happened.<sup>5208</sup>

1725. For the reasons set out above, the Majority is not convinced that there is sufficient evidence proving beyond reasonable doubt Mr Al Hassan’s awareness of the intention of members of Ansar Dine/AQIM to engage in acts of rape in detention, let alone that a requisite contribution by Mr Al Hassan would have been intentional or made with the aim of furthering the criminal purpose of Ansar Dine/AQIM in relation to the crime of rape committed against detained women.

1726. Considering the foregoing, and for the reasons also expressed separately by Judge Akane,<sup>5209</sup> the Majority, Judge Prost dissenting, finds that Mr Al Hassan is not criminally responsible pursuant to Article 25(3)(d) of the Statute for rape as a crime against humanity, pursuant to Article 7(1)(g) (Count 11), and as a war crime, pursuant to Article 8(2)(e)(vi) (Count 12), committed by members of Ansar Dine/AQIM against Azahara Abdou (P-1134), P-0636, P-0570 and Fadimata Mint Lilli (P-0547).

#### v. Persecution (Count 13)

1727. The Majority, Judge Akane dissenting, addresses the following considerations underpinning its understanding of Mr Al Hassan’s culpability for the crime of persecution.

1728. The Majority recalls its finding that members of Ansar Dine/AQIM committed the crime against humanity of persecution under Count 13.<sup>5210</sup> This crime also formed part of Ansar Dine/AQIM’s common purpose, which was to impose and implement their interpretation of *Sharia* in Timbuktu. In doing so, members of the groups, including Mr Al Hassan, imposed and promoted a set of rules and prohibitions and set up and enforced a system of repression which regulated the way of living and religious practices of the people of Timbuktu, performing daily

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<sup>5208</sup> See paragraph 678 above.

<sup>5209</sup> It is recalled that, in addition to the reasoning set out in this section, **Judge Akane** dissents on the finding that Azahara Abdou was raped while in detention (*see* footnote 2811 above and paragraph 1473 above), considers that the contextual elements of rape as a crime against humanity are not fulfilled, considers that rapes in detention were not part of the common purpose, and considers that Mr Al Hassan made no contribution to rapes in detention (*see* Separate and partly dissenting opinion of Judge Tomoko Akane).

<sup>5210</sup> See section B.10 above.

numerous acts which severely deprived civilians of certain fundamental rights and targeted them on religious as well as gender grounds.

1729. The Majority further recalls the discussion above of Mr Al Hassan's contributions under Article 25(3)(d) of the Statute to the crimes charged as Counts 1 to 5, 8 to 12 and 14 and that the conduct underlying these crimes amounted to persecutory acts under Count 13. In this respect, the Majority refers to the nature of Mr Al Hassan's role in the Islamic Police, his knowledge of and deliberate involvement in the imposition and promotion of Ansar Dine/AQIM's system of surveillance and punishment, which targeted the population of Timbuktu by way of acts of violence, force, intimidation, confiscation and destruction, or the threat thereof.

1730. Specifically, the Majority recalls that Mr Al Hassan was convinced to work with Ansar Dine/AQIM after senior leaders of AQIM, notably Abdallah Al Chinguetti, spoke with him about the *jihad* doctrine, the obligation of *jihad* and its necessity.<sup>5211</sup> Mr Al Hassan agreed with Ansar Dine/AQIM that behaviour opposed to their ideology should be repressed and shared Ansar Dine/AQIM's policy of implementing their repressive rules.<sup>5212</sup> In this context, the Majority recalls the Chamber's finding that in various video communications, Mr Al Hassan spoke in support of Ansar Dine/AQIM's mission and objectives and clearly indicated his support of and enthusiastic participation in Ansar Dine/AQIM's activities in Timbuktu.<sup>5213</sup> The Majority also recalls the Chamber's finding concerning Mr Al Hassan's involvement in the women's march and his admonition to several women that they would be punished if they ever took part in another march without permission.<sup>5214</sup>

1731. Further, as noted above, Mr Al Hassan organised, and sometimes participated in, patrols of the Police.<sup>5215</sup> Among the duties of these patrols was to enforce the discriminatory rules set out by Ansar Dine/AQIM for the population, cautioning people to observe the *Sharia* rules, often targeting women and girls

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<sup>5211</sup> See paragraph 1059 above.

<sup>5212</sup> See paragraph 1688, footnote 5145 above.

<sup>5213</sup> See paragraphs 1080-1084 above.

<sup>5214</sup> See paragraph 760 above.

<sup>5215</sup> See paragraph 1069 above.

specifically.<sup>5216</sup> The Islamic Police also arrested and sanctioned persons who refused to follow or behave in accordance with Ansar Dine/AQIM's religious precepts.<sup>5217</sup> Mr Al Hassan was aware of this.<sup>5218</sup>

1732. Mr Al Hassan wrote and signed numerous Islamic Police reports, many of which were sent to and received by the Islamic Court.<sup>5219</sup> The Police reports, written and signed by Mr Al Hassan, related to various matters, including breaches of Ansar Dine/AQIM's discriminatory rules and prohibitions.<sup>5220</sup> As discussed above, the Police reports were a part of the system created by Ansar Dine/AQIM to impose and promote their set of rules and prohibitions and enforce a system of repression.

1733. Mr Al Hassan and other members of the Islamic Police brought Police reports to the Islamic Court along with the accused persons.<sup>5221</sup> Mr Al Hassan also participated in bringing persons to the punishment sites.<sup>5222</sup> He was present during several public punishments<sup>5223</sup> and was personally involved in the punishment of victims.<sup>5224</sup> He also mediated in the marriages of Ansar Dine/AQIM members to local women. Mr Al Hassan's above described conducts are further evidence of his contribution to the imposition and promotion of Ansar Dine/AQIM's rules and enforcement of their system of repression of the population of Timbuktu.

1734. Considering the foregoing, and having had regard to the types of fundamental rights which were infringed, the Majority finds that by virtue of his key role in the Islamic Police and his involvement in Ansar Dine/AQIM's imposition and promotion of the rules and measures and in the system of surveillance and punishment, including in multiple instances of violent and public punishments, Mr Al Hassan meaningfully contributed to Ansar Dine/AQIM's campaign

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<sup>5216</sup> See paragraph 576 above.

<sup>5217</sup> See e.g. paragraph 576 above.

<sup>5218</sup> See paragraphs 581, 584, 585 above.

<sup>5219</sup> See paragraph 1074 above.

<sup>5220</sup> See paragraph 1075 above.

<sup>5221</sup> See paragraph 1076 above. The Chamber also recalls its dismissal of the Defence argument that the Islamic Court did not base its judgments on the contents of the Police reports ([Defence Final Brief](#), paras 380-383) (see paragraph 1698 above).

<sup>5222</sup> See paragraph 1078 above.

<sup>5223</sup> See paragraphs 787, 818 above.

<sup>5224</sup> See paragraph 764 above.



targeting the civilian population on religious and gender grounds. As such, the Majority is satisfied that Mr Al Hassan's conduct contributed to the commission of the crime of persecution by members of Ansar Dine/AQIM in Timbuktu in 2012-2013.

1735. Regarding the mental elements, as noted above, the Majority recalls that after senior leaders of AQIM, notably Abdallah Al Chinguetti, spoke to Mr Al Hassan about the doctrine of *jihad* and of the need for *jihad*, Mr Al Hassan was convinced to work with them.<sup>5225</sup> The Majority also recalls that Mr Al Hassan bragged to P-0150 about his enforcement of Ansar Dine/AQIM's version of *Sharia*,<sup>5226</sup> agreed with Ansar Dine/AQIM that behaviour opposed to their ideology should be repressed and shared Ansar Dine/AQIM's policy of implementing their repressive rules.<sup>5227</sup> Mr Al Hassan also acknowledged after the charged events that public punishments amounted to a 'humiliation' of the dignity of the person being punished.<sup>5228</sup> Given his voluntary joining of Ansar Dine, and recalling its above discussions about Mr Al Hassan's important role in the Islamic Police, the Majority finds that Mr Al Hassan meant to engage in the conduct that constitutes his contribution to the crime under Count 13.<sup>5229</sup> For these same reasons, and particularly given his knowledge of the discriminatory rules and prohibitions enforced by Ansar Dine/AQIM, the Majority finds that Mr Al Hassan was aware of Ansar Dine/AQIM's intention to commit persecutory acts on religious and gender grounds.<sup>5230</sup>

1736. Considering the foregoing, the Chamber<sup>5231</sup> finds Mr Al Hassan criminally responsible pursuant to Article 25(3)(d) of the Statute for persecution as a crime against humanity, under Article 7(1)(h) of the Statute (Count 13), as of early May

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<sup>5225</sup> See paragraph 1059 above.

<sup>5226</sup> See paragraph 1093 above.

<sup>5227</sup> See paragraph 1688, footnote 5145 above.

<sup>5228</sup> See paragraph 661 above.

<sup>5229</sup> *Contra* [Defence Final Brief](#), para. 607.

<sup>5230</sup> *Contra* [Defence Final Brief](#), para. 608.

<sup>5231</sup> **Judge Akane** disagrees with the Majority on the scope of the crime of persecution (*see* Separate and partly dissenting opinion of Judge Tomoko Akane). To the extent related to acts which in her view comprise the crime of persecution, Judge Akane agrees with the analysis in the present section and finds Mr Al Hassan criminally responsible pursuant to Article 25(3)(d) of the Statute limited to the scope of religious grounds.

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## D. GROUNDS FOR EXCLUDING CRIMINAL RESPONSIBILITY

### 1. Introduction

1737. The Majority, Judge Mindua dissenting,<sup>5232</sup> addresses the following considerations on duress and mistake of law under Articles 31 and 32 of the Statute.

1738. The Chamber finds that grounds for excluding criminal responsibility, explicitly defined in Article 31 of the Statute and also referenced in Articles 32 and 33 of the Statute, shall be considered when there is sufficient evidence in the record of the case to warrant such consideration.<sup>5233</sup> The Chamber is not obliged to consider a ground to exclude criminal responsibility merely because the Defence asserts that such a ground exists, rather, within the evidence as a whole, there must be evidence which put the existence of such a ground at genuine issue.<sup>5234</sup>

1739. Concerning the burden and standard of proof in relation to the grounds excluding criminal responsibility, the Chamber notes that there is no specific provision in the Statute related to the burden and standard of proof for these grounds. The Chamber recalls that Article 66(2) of the Statute places the onus on the Prosecutor to prove the guilt of the accused and that Article 66(3) of the Statute holds that to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt. Further, Article 67(1)(i) of the Statute requires that the accused may not have ‘imposed on him or her any reversal of the burden of proof or any onus of rebuttal’. Absent any specific provision regarding the burden and standard of proof in relation to the grounds excluding criminal responsibility, the Chamber considers that the general provisions of these articles apply to these grounds and that the onus is on the Prosecutor to prove the guilt of the accused.<sup>5235</sup>

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<sup>5232</sup> See Opinion individuelle et partiellement dissidente du Juge Antoine Kesia-Mbe Mindua. For reasons mentioned in his separate and dissenting opinion, **Judge Mindua** would have acquitted Mr Al Hassan of all crimes found above on the basis of duress and of some crimes additionally on the basis of mistake law.

<sup>5233</sup> See [Ongwen Appeal Judgment](#), para. 340; S. Powles *et al.*, *May on Criminal Evidence, Sixth Edition* (2015), paras 4.07-4.10.

<sup>5234</sup> See [Ongwen Appeal Judgment](#), paras 340-343; S. Powles *et al.*, *May on Criminal Evidence, Sixth Edition* (2015), paras 4.07-4.10.

<sup>5235</sup> See [Ongwen Appeal Judgment](#), para. 337; [Ongwen Trial Judgment](#), paras 231, 2455, 2588.

However, this is not to say that the Prosecutor bears the ‘burden *per se* to disprove each element of a ground excluding an accused’s criminal responsibility’.<sup>5236</sup> Indeed, when raising grounds for excluding criminal responsibility, it is incumbent on the Defence to present evidence to substantiate its allegations.<sup>5237</sup>

1740. Further, the Chamber recalls that Rule 145(2)(a)(i) of the Rules provides that circumstances falling short of constituting a ground for exclusion of criminal responsibility may be a mitigating circumstance when determining a sentence.

## **2. Duress (Article 31(1)(d) of the Statute)**

### **a) Applicable law**

1741. Article 31(1)(d) of the Statute concerns duress as a ground for excluding criminal responsibility and provides that a person shall not be criminally responsible, if at the time of that person’s conduct:

The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid the threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such threat may either be:

Made by other persons; or

Constituted by other circumstances beyond that person’s control.

1742. It follows that duress contains three elements. The first element is that the conduct alleged to constitute the crime has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person. This threat may either be: (i) made by other persons or (ii) constituted by other circumstances beyond that person’s control.<sup>5238</sup>

1743. Regarding the threat, the Defence argues that it need only be imminent, but not immediate in prospect, stating that ‘[w]hat matters is that the risk is in existence and affects the mind of the defendant at the time he commits the criminal act(s)

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<sup>5236</sup> See [Ongwen Appeal Judgment](#), para. 338.

<sup>5237</sup> See [Ongwen Appeal Judgment](#), para. 340.

<sup>5238</sup> See [Ongwen Trial Judgment](#), para. 2581.

in question’.<sup>5239</sup> The Majority, Judge Mindua dissenting, considers that it is clear from the plain meaning of the statutory text that ‘imminent death’ or ‘continuing or imminent serious bodily harm’ refers to the immediacy of the threatened harm.<sup>5240</sup> In that understanding, the accused, at the time he or she undertook the conduct, must have been exposed to a threat, either of imminent death, or of imminent or continuing serious bodily harm which would occur in close proximity to the moment he or she committed the offence. Thus, in line with the *Ongwen* jurisprudence, the Majority considers that a claim of ‘duress is unavailable if the accused is threatened with [death] or serious bodily harm that is not going to materialise sufficiently soon’.<sup>5241</sup> As noted by the Appeals Chamber, ‘for a person to be compelled to commit a crime under the jurisdiction of the Court, the threat must be “present” and real at the time of the charged conduct, “that is, the materialization of the danger cannot lie too far in the future.”’<sup>5242</sup>

1744. Further, as noted in the *Ongwen* case, ‘[a] merely abstract danger or simply an elevated probability that a dangerous situation might occur – even if continuously present – does not suffice’.<sup>5243</sup> This means that the threat cannot be a generalised fear, a possible danger or even a potentially dangerous concern, rather there must be a well-founded and specific threat of imminent death or continuing or imminent serious bodily harm present at the moment the accused undertook the conduct.<sup>5244</sup>

1745. Additionally, the Majority considers that within the plain meaning of the statutory text, the reference to ‘serious bodily harm’ indicates that the threat must be of a

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<sup>5239</sup> [Defence Trial Brief](#), para. 86. The Chamber notes that the Defence incorporated by reference arguments raised in its Trial Brief (*see* [Defence Final Brief](#), para. 93). The Chamber recalls that parties are not prohibited from referring to arguments already advanced in other documents and incorporating them by reference, so long as such references do not create ambiguity on substance in the final briefs. *See* Chamber email decision of 19 December 2023 at 9:40.

<sup>5240</sup> *See* [Ongwen Trial Judgment](#), para. 2582; [Ongwen Appeal Judgment](#), para. 1421.

<sup>5241</sup> *See* [Ongwen Trial Judgment](#), para. 2582; [Ongwen Appeal Judgment](#), paras 1422-1423. *Contra* [Defence Trial Brief](#), para. 86.

<sup>5242</sup> [Ongwen Appeal Judgment](#), para. 1423.

<sup>5243</sup> *See* [Ongwen Trial Judgment](#), para. 2582; [Ongwen Appeal Judgment](#), para. 1423.

<sup>5244</sup> The Defence submits that ‘[t]he threat does not need to be explicitly stated’ ([Defence Trial Brief](#), para. 83). In this context, the Majority notes that while the threat under which the conduct was committed does not need to be explicitly stated, the threat must be specific and the prospect of harm immediate enough to articulate a viable threat of imminent death or of continuing or imminent serious bodily harm.

harm of a severe nature. The assessment of the nature of the harm must be made on a case-by-case basis, depending on the specific circumstances at issue.

1746. As to the threat being either ‘made by another person’ or ‘constituted by other circumstances beyond that person’s control’, the Majority notes that the statutory text applies the same principles to duress by threat and duress by circumstances and only makes clear the nature of the threat faced. Hence, contrary to the Defence’s submission that the Statute’s reference to ‘other circumstances’ embodies the separate defence of necessity,<sup>5245</sup> the Majority sees no reason to include the defence of necessity within the meaning of Article 31(1)(d) of the Statute.

1747. Further, the Majority considers that the plain language of the statutory text demonstrates that a risk created by the person him/herself cannot satisfy the elements of duress set out in Article 31(1)(d) of the Statute.<sup>5246</sup>

1748. The Majority also considers that the plain meaning of the Statute makes it clear that the threat must be objectively present and it is not sufficient that a threat existed merely in the accused’s view.<sup>5247</sup> As noted by the Appeals Chamber:

[T]he existence of the threat must be objectively assessed and exist in reality and not merely on the perpetrator’s mind, [...] [i]t is not sufficient that a threat is simply believed to exist by the accused, [...] it must be established at least that a reasonable person in those circumstances would nonetheless apprehend the risk of serious harm [...] irrespective of whether the accused genuinely but mistakenly believed [him/herself] to be under threat.<sup>5248</sup>

1749. The second element of duress under Article 31(1)(d) of the Statute is that the person acts necessarily and reasonably to avoid the threat. The Majority considers that the standard requires a factual evaluation of the totality of the accused’s

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<sup>5245</sup> [Defence Trial Brief](#), para. 84.

<sup>5246</sup> See also UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, [15 June – 17 June 1998], Volume III, Working Paper on Article 31 prepared by the Working Group on General Principles of Criminal Law, p. 252 (writing that ‘if the person has voluntarily exposed himself or herself to a situation which was likely to lead to the threat [made by other persons], the person shall remain responsible’). The Chamber notes that the Working Paper refers specifically to threats created by other persons but considers that this prohibition also inherently applies to threats created by circumstances outside of a person’s control.

<sup>5247</sup> *Contra* [Defence Trial Brief](#), para. 85 (arguing that where the threat emerges from circumstances, what is crucial is the individual’s perception of those circumstances).

<sup>5248</sup> [Ongwen Appeal Judgment](#), para. 1424. *Contra* [Defence Trial Brief](#), para. 85.

specific circumstances.<sup>5249</sup> Further, if the Chamber heard reliable evidence that others in similar circumstances were able to necessarily and reasonably avoid the same threat, the Majority will consider this evidence as relevant in assessing the accused's acts and conduct.<sup>5250</sup>

1750. Turning to the third element of duress, that the person does not intend to cause a greater harm than the one sought to be avoided, what is required is that the person intended to avoid the greater harm, not that the person actually avoided such harm.<sup>5251</sup> The Majority considers that Article 31(1)(d) of the Statute mandates a factual analysis of the intent of the accused.

### **b) Analysis**

1751. The Majority, having considered the totality of evidence, finds that the credible and reliable evidence of the case does not put the existence of duress as a ground for excluding criminal responsibility at genuine issue. Nonetheless, the Majority has examined the Defence submissions on this ground in the interests of completeness. In its submissions that the accused was under duress and thus bears no criminal responsibility for his alleged acts, the Defence identified various causes of an imminent threat, allegedly from both Ansar Dine and the Malian army, and raised a series of arguments touching upon different aspects of the case. Specifically, the Defence submits that Mr Al Hassan joining Ansar Dine was not voluntary as Tuaregs in Northern Mali had no choice but to either join the MNLA or Ansar Dine,<sup>5252</sup> including due to tribal pressures,<sup>5253</sup> and that the Malian army threatened, killed, disappeared and tortured members of the Tuaregs in 2012 and thus Mr Al Hassan faced an imminent threat from the Malian army.<sup>5254</sup> The Defence further submits that Mr Al Hassan would have faced imminent threat of death and injury from Ansar Dine had he renounced his position in the Islamic Police<sup>5255</sup> and that Mr Al Hassan did not have the financial means to relocate, nor

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<sup>5249</sup> See [Ongwen Trial Judgment](#), para. 2583.

<sup>5250</sup> See [Ongwen Trial Judgment](#), para. 2583.

<sup>5251</sup> See [Ongwen Trial Judgment](#), para. 2584.

<sup>5252</sup> [Defence Trial Brief](#), paras 94-95; [Defence Response Brief](#), para. 82.

<sup>5253</sup> [Defence Response Brief](#), para. 82.

<sup>5254</sup> [Defence Trial Brief](#), paras 92-96.

<sup>5255</sup> [Defence Trial Brief](#), paras 92, 96; [Defence Response Brief](#), para. 81.

could he undertake a dangerous exile to leave Ansar Dine.<sup>5256</sup>

1752. Regarding the notion that Mr Al Hassan was forced to work for Ansar Dine/AQIM, the Chamber found that Mr Al Hassan voluntarily chose to start working with Ansar Dine/AQIM after a discussion with Ansar Dine/AQIM leaders in which he was told about the obligation of *jihad* and its doctrine, and about its necessity.<sup>5257</sup> The Ansar Dine/AQIM leaders encouraged Mr Al Hassan to join them, noting that he was a young man from Timbuktu and they would give him a position if he would work with them.<sup>5258</sup> As a result of the discussion, Mr Al Hassan was convinced to work with them.<sup>5259</sup> Ansar Dine/AQIM had already taken control of Timbuktu at the time Mr Al Hassan joined in their cause and given his activities in Timbuktu, he was in a position to be aware of their actions in the city. Further, Mr Al Hassan, having spoken to leaders of the groups, joined Ansar Dine/AQIM with the knowledge of what their goals were for Timbuktu. In the course of his time with Ansar Dine/AQIM, Mr Al Hassan was given authority in the Islamic Police.<sup>5260</sup> The evidence of Mr Al Hassan's time with Ansar Dine/AQIM shows that he was a committed member of the groups and there is simply no evidence on the record that Mr Al Hassan was not acting on his own volition or that he was under any actual threat from anyone or from the circumstances when he engaged in the relevant conduct. The Defence also did not point to such evidence. What is more, in relation to the Defence suggestion that individuals had no choice but to join Ansar Dine/AQIM, the Majority recalls that the Chamber heard evidence of persons who were asked to join Ansar Dine/AQIM and refused.<sup>5261</sup>

1753. The Defence's contention that the Malian army posed an imminent threat of death or of continuing or imminent serious bodily harm to Mr Al Hassan is predicated on Mr Al Hassan's identity as a Tuareg living in the region at the relevant time.

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<sup>5256</sup> [Defence Trial Brief](#), paras 93, 96-97; [Defence Response Brief](#), para. 82.

<sup>5257</sup> See paragraph 1059 above.

<sup>5258</sup> See paragraph 1059 above.

<sup>5259</sup> See paragraph 1059 above.

<sup>5260</sup> See paragraphs 1674-1677 above.

<sup>5261</sup> See e.g. paragraph 797 above, referring to P-0557, a Songhai man, who was asked by members of Ansar Dine/AQIM if he wanted to join their group, he did not answer and they left (P-0557: T-055, p. 27); paragraph 436, footnote 1093 above, referring to P-0638, a member of the Kel Ansar tribe, who was asked by a friend of to join Ansar Dine/AQIM and refused (P-0638: T-058, pp. 21, 23-24).

However, there is also no evidence on the record of any particularised threat Mr Al Hassan personally faced from the Malian authorities.

1754. As noted above, the Tuareg community felt discriminated against by the rest of the population and by the Malian army, in particular during and as a result of the Tuareg rebellions.<sup>5262</sup> Within the Tuareg community, people repeatedly referred to several killings allegedly committed by the Malian army targeting Tuareg people.<sup>5263</sup> However, despite this, having considered the evidence as well as the Defence's submissions, the Majority finds particularly unfounded the contention that this generalised fear amounted to an imminent threat of death or serious bodily harm to Mr Al Hassan in such a way that it would have caused him to engage in the wrongful conduct charged. Duress as a ground for excluding criminal responsibility requires an immediacy, a proximity that creates an atmosphere of great threat which in turn caused the particular conduct at issue. As a Tuareg in Northern Mali, Mr Al Hassan may have generally faced a danger from the Malian army, but the Majority considers that there is no evidence before the Chamber that links this threat to the charged conduct, let alone suggests that it would have been the cause of it. Such a possibility does not amount to duress within the meaning of Article 31(1)(d) of Statute.

1755. Regarding the Defence's allegations that Mr Al Hassan risked punishment or death had he renounced his position in the Islamic Police, the Majority first notes that a risk created by the accused cannot satisfy the elements of duress set out in Article 31(1)(d) of the Statute. Mr Al Hassan voluntarily joined Ansar Dine/AQIM having being told of their goals for Timbuktu. Having voluntarily joined Ansar Dine/AQIM and subjecting himself to the governance of their members, Mr Al Hassan cannot now claim duress as a result of a harm he willingly exposed himself to.

1756. For the Majority, the evidence before the Chamber does not indicate that the disciplinary regime of Ansar Dine/AQIM applied measures that involved imminent death or continuing or imminent serious bodily harm for leaving the

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<sup>5262</sup> See paragraph 411 above.

<sup>5263</sup> See paragraph 411 above.



groups or refusing to comply with or disagreeing with orders. The Chamber heard evidence that it was possible for members of Ansar Dine/AQIM to effectively leave the groups.<sup>5264</sup> In the cases where members of Ansar Dine/AQIM were subjected to physical violence, the member had committed a crime that the groups considered deserving of *Sharia* punishment.<sup>5265</sup> One such case was that of Abou Boccar, the member of Ansar Dine/AQIM who was convicted by the Islamic Court; he was convicted for having sexual intercourse with a girl, after pointing at her with his weapon and threatening to take her to the Islamic Police station, and sentenced to 100 lashes and to be banished (by means of imprisonment) for one year.<sup>5266</sup> However, it was not always the case that committing a crime or going against the groups resulted in physical punishment. Members who refused to comply or disagreed with orders were, as with P-0099,<sup>5267</sup> imprisoned or, as with the young Police officer who disagreed with P-0150, expelled.<sup>5268</sup> Adama was relieved of his position as head of the Islamic Police because of his participation in the arrest and beating of a woman in the streets of Timbuktu and in her home.<sup>5269</sup>

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<sup>5264</sup> Specifically, the Chamber heard evidence that a member of the *Hesbah* left Ansar Dine/AQIM and returned to his hometown when Mohammed Moussa took over as emir of the *Hesbah* because he did not believe in the ‘radical Islamist groups’ vision’ (see paragraph 534 and footnote 1451 above, referring to P-0150: T-094, pp. 47-48). In response to the question of whether this individual was able to freely leave the groups, the witness stated, ‘[i]t was not clear to the group that he has completely left them, but he avoided all activities and responsibilities that the group imposed. So he went somewhere where he could not be seen at all times’.

<sup>5265</sup> See P-0582’s statement MLI-OTP-0062-3788-R02, at 3801-3802.

<sup>5266</sup> See paragraphs 678-680 above. The Majority also refers to other cases: i) a Police member who fired a gun in the city was flogged for violating the rules of the Police, prevented from leaving the Police courtyard for three days and later left the group; Police officers were told that this event took place to ‘give police members a lesson’ (P-0582’s statement MLI-OTP-0062-3788-R02, at 3801-3810); ii) another member of the groups was arrested and imprisoned for stealing several weapons from the armed groups after one of the stolen weapons was recovered from a merchant whom he had sold it to; this member was also threatened with amputation (P-0582’s statements MLI-OTP-0062-3820-R02, at 3831-3833; MLI-OTP-0062-4150-R02, at 4152, 4154-4156); iii) a member of the groups was convicted by the Islamic Court for stealing an electric generator, and sentenced to 30 lashes a fine and imprisonment; his hand was not amputated because he had stolen public property as opposed to private property (P-0150: T-095, pp. 28-30, referring to Islamic Court judgment MLI-OTP-0068-4784, translation MLI-OTP-0078-1774); iv) a member of the groups was executed for the killing of a civilian (see paragraph 1078 above).

<sup>5267</sup> Insider P-0099 was put into prison at the *Hesbah* for four to five days after publicly reprimanding Mohammed Moussa (P-0099: T-145, pp. 40-41; T-148, p. 14). Abou Zeid indicated to P-0099 that the investigation was motivated by P-0099’s action against Mohammed Moussa (P-0099: T-145, pp. 41-42; T-146, p. 8, 10-11). P-0099 was eventually released (P-0099: T-148, p. 21). See also P-0641: T-138, pp. 31-36.

<sup>5268</sup> P-0150: T-117, p. 34.

<sup>5269</sup> See paragraph 552 above.

1757. Regarding P-0150's situation, whom the Defence cites in support of its argument that if Mr Al Hassan had renounced his position in the Islamic Police or refused to obey orders, he would have been punished as a traitor, banished or compelled to flee into exile,<sup>5270</sup> the Majority finds that the Defence did not put P-0150's testimony in its holistic context. P-0150, [REDACTED] as Mr Al Hassan, and a [REDACTED] member of the groups faced with greater responsibilities than Mr Al Hassan, stated:

[REDACTED], I knew very well that I would have been dismissed from all the positions that I had at the time, - and also, I would have been chased or maybe accused by very big charges and accusations. And I could have been killed. And it would have been a very big risk. And, I thought about this, if I were courageous and if I had the courage to bear the consequences, [REDACTED].<sup>5271</sup>

1758. In addition, the Majority notes P-0150's testimony that 'it never occurred to [him] at the time to refuse because [he] was prepared to abide by the commands of Abou Zeid and Iyad at the time, even if [he] thought that their opinion[s] are not 100 per cent right'.<sup>5272</sup>

1759. It is clear to the Majority that in the former quotation, P-0150 spoke of a hypothetical threat, which is not a threat of imminent death or of continuing or imminent serious bodily harm within the meaning of Article 31(1)(d) of the Statute. And indeed, from the full context of P-0150's testimony, it is also clear to the Majority that he followed orders not because of the potential threat of harm or even his fear of dismissal but because at the time, he believed in the cause of Ansar Dine/AQIM and in his own words, 'was prepared to abide' by his superior's commands. The Majority does not find P-0150's testimony to be indicative that he, and by extension other members of the groups, like Mr Al Hassan, undertook criminal conduct under threat of imminent death or of continuing or imminent serious bodily harm. In any case, the Majority also notes that the possibilities the Defences raises, to '[be] punished as a traitor, banished *or* compelled to flee into exile', do not indicate an actual threat of imminent death

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<sup>5270</sup> See [Defence Trial Brief](#), para. 96.

<sup>5271</sup> P-0150: T-103, pp. 30-31.

<sup>5272</sup> P-0150: T-103, p. 24.

or of continuing or imminent serious bodily harm.

1760. The Majority also notes that there were generally open avenues of communication between members of Ansar Dine/AQIM and the leadership,<sup>5273</sup> which shows that within the groups the atmosphere was not one in which members were afraid to take affirmative steps *vis-à-vis* the leadership when needed.

1761. Regarding the contention that Mr Al Hassan did not have the financial means to relocate, nor could he undertake a dangerous exile to leave Ansar Dine,<sup>5274</sup> the Majority notes that on its face this argument does not indicate that Mr Al Hassan faced a threat of an ‘imminent death’ or ‘continuing or imminent serious bodily harm’ of a nature that would implicate duress as a ground for excluding criminal responsibility.

1762. Having found that Mr Al Hassan was not faced with a threat of imminent death or of continuing or imminent serious bodily harm, the Majority need not consider the facts related to the other elements of duress as a ground for excluding criminal responsibility.

### **3. Mistake of facts and mistake of law (Article 32(1) and (2) of the Statute)**

#### **a) Applicable law**

1763. Article 32 of the Statute states that:

- (1) A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.
- (2) A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

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<sup>5273</sup> See e.g., Mr Al Hassan saw young members of the Police asking Iyad Ag Ghaly to allow them to go to Kidal (Mr Al Hassan’s statement MLI-OTP-0051-0537, at 0542-0544). While Mr Al Hassan was in the Police, [REDACTED] (Mr Al Hassan’s statement MLI-OTP-0051-0537, at 0547-0550); Mr Al Hassan wrote to the emir of Police and Abou Zeid on behalf of Police members requesting money to marry (Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0901-0903); Mr Al Hassan made a request to Abou Zeid regarding a member of the armed groups who wanted to marry and the money was given (Mr Al Hassan’s statement MLI-OTP-0051-0891, at 0906-0907).

<sup>5274</sup> [Defence Trial Brief](#), paras 93, 96-97. See also paragraphs 740-741 above.

1764. Article 32(1) and (2) of the Statute provides that a mistake of fact or of law shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

1765. As previously noted, regarding the mental elements of a crime, unless otherwise provided in the Statute, the material elements of the crimes must have been committed with ‘intent’ and ‘knowledge’ within the meaning of Article 30 of the Statute.<sup>5275</sup> The phrase ‘will occur in the ordinary course of events’ in Article 30(2)(b) and (3) of the Statute requires virtual certainty that the consequence in question would occur.<sup>5276</sup> ‘Knowledge’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.<sup>5277</sup>

1766. As a mistake of fact goes to negate the requisite mental element defined under Article 30 of the Statute, unless otherwise provided in the Statute, the Chamber considers that a possible mistake of fact is a factor to be considered in the Chamber’s analysis of the facts that prove or fail to prove the existence of the mental element required to find the accused criminally responsible.<sup>5278</sup>

1767. Article 32(2) of the Statute specifies that a mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. Thus, the plain language of the Statute makes the scope of mistake of law within the meaning of Article 32(2) relatively limited. It is not necessary that an accused have knowledge that his conduct is a crime within the jurisdiction of the Court for him to be held criminally responsible.

1768. Citing the *Lubanga* Pre-Trial Chamber finding that ‘the defence of mistake of law can succeed under Article 32 of the Statute only if [the accused] was unaware of a normative objective element of the crime as a result of not realising its social significance (its everyday meaning)’,<sup>5279</sup> the Defence contends that this includes

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<sup>5275</sup> See also [Ongwen Trial Judgment](#), para. 2695; [Lubanga Appeal Judgment](#), paras 446-451.

<sup>5276</sup> See paragraph 1121 above.

<sup>5277</sup> Article 30(3) of the Statute.

<sup>5278</sup> See 1996 Report of the Preparatory Committee on the Establishment of an International Criminal Court, Volume II, p. 96; 1998 Report of the Preparatory Committee on the Establishment of an International Criminal Court, Article 30, footnote 21.

<sup>5279</sup> [Lubanga Confirmation Decision](#), para. 316.

circumstances where the accused acted in a way that he honestly believed was lawful or when he relied on official rules that he believed had to be obeyed.<sup>5280</sup>

1769. While the Majority, Judge Mindua dissenting, notes the *Lubanga* Pre-Trial Chamber finding, the Majority, Judge Mindua dissenting, clarifies that Article 32(2) of the Statute provides that a mistake of law may be a ground for excluding criminal responsibility only if it negates the mental element required by such a crime or as provided for in Article 33, which relates to superior orders. When criminal responsibility requires that the accused committed a crime with intent and/or knowledge in relation to the legal characterisation of his conduct, a mistake of law which negates the mental elements may be a defence. Thus, mistake of law is a ground for excluding criminal responsibility only when knowledge of a legal characteristic is required by the requisite mental element of the offence. The Majority considers that as with mistake of fact, the existence of a mistake of law is to be considered in the Chamber's analysis of the existence of the required mental element. Although mistake of law specifically concerns the factors which relate to a legal element of the crime, the Chamber's assessment of whether such a ground constitutes a ground for excluding criminal responsibility necessitates analysis of the factual circumstances which prove or fail to prove a requisite mental element.

#### **b) Analysis**

1770. The Chamber, and the Majority, Judge Mindua dissenting in relation to mistake of law regarding acts of flogging,<sup>5281</sup> notes that while the Defence raised mistake of facts and law as a ground for excluding criminal responsibility, the credible and reliable evidence of the case does not substantiate that such grounds are at genuine issue.

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<sup>5280</sup> [Defence Trial Brief](#), para. 53. Further, citing to jurisprudence from domestic and other international courts, the Defence argues that mistakes of law have been used to exclude criminal responsibility where it was found that the accused's circumstances were such that they could have reasonably entertained the belief that they were not acting unlawfully ([Defence Trial Brief](#), paras 52-56). The Majority notes that contrary to the cases cited, the Statute requires that a mistake of fact or law be a ground for excluding criminal responsibility not merely when an accused was ignorant of international law, a reasonable man may have believed the officer had been tried according to the law, or was operating under a mistaken factual belief. Rather, the mistake of fact or law must be tied to the negation of the requisite mental element. *See* [Defence Final Brief](#), para. 530.

<sup>5281</sup> *See* Opinion individuelle et partiellement dissidente du Juge Antoine Kesia-Mbe Mindua.

1771. Nonetheless, in the interests of completeness, the Chamber, and in relation to mistake of law regarding acts of flogging, the Majority, considers the Defence's arguments in support of its contention that Mr Al Hassan should not be held criminally liable for his conduct because of a mistake of facts or law. The Defence submits that Mr Al Hassan's lived experiences and circumstances ensured that he could not reasonably have been expected to know that punishments pursuant to *Sharia* would constitute criminal acts for which he could be held culpable.<sup>5282</sup> The Defence draws attention to the fact that Mr Al Hassan was a pharmacist and had not received any police training.<sup>5283</sup> The Defence alleges that Mr Al Hassan grew up in Mauritania and Libya, where punishments pursuant to *Sharia* constituted the law of the land.<sup>5284</sup> The Defence also points to the fact that the international community has repeatedly refrained from condemning *Sharia* practices and punishments.<sup>5285</sup> The Defence contends, noting the pre- and post-2012 use of *qadis* and arranged marriages in Timbuktu, that Mr Al Hassan could not be expected to have envisioned that his role and participation in furtherance of Ansar Dine/AQIM's imposition of rules and punishments would be unlawful and that in the circumstances, Mr Al Hassan could not have culpable knowledge that his or Ansar Dine's actions were criminally unlawful.<sup>5286</sup> The Chamber, and in relation to mistake of law regarding acts of flogging, the Majority, finds that the arguments and interpretation of evidence made by the Defence are unpersuasive in light of the credible and reliable evidence of this case.

1772. Critically, the Chamber, and in relation to mistake of law regarding acts of flogging, the Majority, notes that the Defence's arguments in relation to Mr Al Hassan's alleged mistakes of facts or law are general assertions about Mr Al Hassan's circumstances and experiences and the Defence fails to identify the specific mistakes of fact or law alleged or how Mr Al Hassan's circumstances and experiences negated the requisite mental elements. Nothing in the Chamber's, or where relevant the Majority's, understanding of Mr Al Hassan's

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<sup>5282</sup> [Defence Trial Brief](#), paras 57-63. *See also* [Defence Final Brief](#), paras 218, 406-412, 530, 609; [Defence Response Brief](#), para. 81; Defence Closing Statements, T-215, p. 35.

<sup>5283</sup> [Defence Trial Brief](#), para. 59.

<sup>5284</sup> [Defence Trial Brief](#), para. 59; [Defence Final Brief](#), para. 406.

<sup>5285</sup> [Defence Trial Brief](#), para. 59; [Defence Final Brief](#), paras 406-407.

<sup>5286</sup> [Defence Trial Brief](#), paras 60-62; [Defence Final Brief](#), para. 296, referring notably to P-0605's evidence (MLI-OTP-0062-2888-R02, at 2902-2903).

lived experiences, circumstances and knowledge of pre-existing conditions in Timbuktu negated the requisite mental elements necessary to find Mr Al Hassan criminally liable for his conduct. The Chamber thus concludes that no mistake of fact constitutes a ground for excluding criminal responsibility.

1773. The Chamber recalls that a mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. Thus, the Chamber finds that Mr Al Hassan's possible lack of knowledge that criminal liability, under the Statute, attached to his conduct is not a ground for excluding his criminal liability under Article 32(2) of the Statute.

1774. Considering the foregoing, the Chamber, and in relation to mistake of law regarding acts of flogging, the Majority, finds that no mistake of facts or of law negate the mental elements required for the crimes committed under Counts 1-6 and 8-14 pursuant to Article 25(3)(a), (c) or (d) of the Statute as relevant.

#### **4. Superior orders and prescription of law (Article 33 of the Statute)**

##### **a) Applicable law**

1775. Article 33 of the Statute requires that:

(1) The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

(2) For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

1776. At the outset, Article 33(1) of the Statute refers to situations where a crime 'has been *committed* by a person pursuant to an order' in which case the responsibility of 'that person' shall not be relieved, save for situations where the cumulative

requirements under the provision are satisfied. This is in contrast with Article 31 which speaks of a person's conduct, as opposed to the *commission* of a crime by a person. The Chamber considers that the plain meaning of Article 33(1) illustrates that the defence of superior orders under Article 33 only applies to persons who incur responsibility under Article 25(3)(a) of the Statute by virtue of *committing* a crime, pursuant to an order, as opposed to persons who incur responsibility under Articles 25(3)(c) and (d) due to conduct that facilitated or contributed to the commission of a crime. The Chamber also notes that Article 33(1)(b) requires that the 'person did not know that the order was unlawful', which presupposes that the order was unlawful. This further supports the above interpretation since orders to engage in conduct that facilitates or contributes to the commission of crimes need not necessarily be unlawful, while orders to *commit* crimes are *ipso facto* unlawful. In the same vein, the fact that Article 33(2) speaks of orders to *commit* genocide and crimes against humanity as opposed to broader conduct giving rise to responsibility for these crimes further militates in favour of the aforementioned interpretation.

1777. The text of Article 33 of the Statute makes clear that as a general rule, an order of a Government or of a superior does not absolve the accused of criminal responsibility.<sup>5287</sup> Only in exceptional circumstances where *all* of the cumulative requirements under Article 33(1) are satisfied can superior orders constitute grounds for excluding criminal responsibility.

1778. The Chamber notes that, as a prerequisite, Article 33(1) of the Statute requires that there be an order of a Government or of a superior. The Chamber considers that 'orders' within the context of Article 33 include all explicit or implied oral or written demands addressed to a certain person or groups of persons, individually or by referring to their functions.<sup>5288</sup>

1779. Article 33(1)(a) of the Statute requires that the subordinate be under a 'legal

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<sup>5287</sup> O. Triffterer and S. Bock 'Article 33', in K. Ambos (ed.) *Rome Statute of the International Criminal Court: Article by Article Commentary* (2022), p. 1413; G. Werle & F. Jeßberger, *Principles of International Criminal Law* (2020), p. 293.

<sup>5288</sup> O. Triffterer and S. Bock 'Article 33', in K. Ambos (ed.) *Rome Statute of the International Criminal Court: Article by Article Commentary* (2022), p. 1414. See [Defence Trial Brief](#), para. 70; [Prosecution Final Brief](#), para. 626.



obligation' to obey orders. The Chamber considers that the term 'legal obligation' must be interpreted in light of Article 33 which was drafted with a military structure in mind.<sup>5289</sup> The legal obligation placed on the subordinate to follow the order must be distinguished from mere force without official authority compelling the person to commit an act.<sup>5290</sup> Absent an order creating a legal obligation, a person's subjective belief that he has no choice but to follow a certain course of conduct does not suffice.<sup>5291</sup>

1780. The Chamber considers that whether an order is 'manifestly unlawful' is an objective standard of such a nature that the unlawfulness of the order must be obvious and self-evident to a reasonable person in the circumstances.

1781. The Chamber notes that Article 33(2) limits the provisions of Article 33(1) to war crimes and crimes of aggression and that all orders to commit crimes against humanity and genocide are manifestly unlawful. The Chamber considers that it is inapposite that for a conduct charged as both war crimes and crimes against humanity, the same order would be manifestly unlawful when the ordered act is conceived as a crime against humanity but possibly lawful when conceived as a war crime.<sup>5292</sup> Accordingly, the Chamber finds that any conduct that constitutes both a war crime and a crime against humanity would be covered by Article 33(2) of the Statute.

### **b) Analysis**

1782. At the outset, the Chamber observes that the Defence, while raising superior orders as a general ground for exclusion of criminal responsibility, fails to specify any act that constitutes an 'order' within the meaning of Article 33 of the Statute or the entity that gave the order.<sup>5293</sup> Instead, the Defence advances general submissions that the circumstances during the temporal scope of the charges were

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<sup>5289</sup> O. Triffterer and S. Bock 'Article 33', in K. Ambos (ed.) *Rome Statute of the International Criminal Court: Article by Article Commentary* (2022), p. 1416.

<sup>5290</sup> K. Ambos, *Treatise on International Criminal Law Vol I: Foundations and General Part* (2021), p. 499. Contra [Defence Trial Brief](#), para. 68.

<sup>5291</sup> K. Ambos, *Treatise on International Criminal Law Vol I: Foundations and General Part* (2021), pp. 499-500. Contra [Defence Trial Brief](#), para. 68.

<sup>5292</sup> [Prosecution Final Brief](#), para. 624.

<sup>5293</sup> See [Prosecution Final Brief](#), paras 622, 629.

such that Mr Al Hassan acted as a result of ‘moral compulsion’.<sup>5294</sup> In this regard, the Defence also maintains that the obligation to apply punishments did not come from men or the groups but was instead ‘mandatory directives from God’,<sup>5295</sup> whilst also referring to Mr Al Hassan’s obedience to orders of the emir of the Islamic Police, the emirate of Timbuktu and the Islamic Court.<sup>5296</sup> The Chamber considers that the absence of specificity in the Defence allegations falls short of putting superior orders at genuine issue and the Defence’s submissions pertaining to Article 33 of the Statute ought to be dismissed on this basis alone.

1783. In any event and in the interests of completeness, for the reasons mentioned above, the Chamber considers that the defence of superior orders is inapplicable to the crimes Mr Al Hassan is charged with under Articles 25(3)(c) and (d) of the Statute. Mr Al Hassan’s responsibility under Article 25(3)(a) only concerns crimes charged under Counts 1, 3 and 5 in relation to the two men. In line with Article 33(2) of the Statute, superior orders cannot constitute a ground for excluding criminal responsibility with respect to crimes against humanity charged under Count 1. Further, the Chamber recalls that the conduct underlying these crimes against humanity is the same as that alleged to constitute the war crimes charged under Counts 3 and 5. In the Chamber’s view, in light of Article 33(2), orders to commit these war crimes, if any, are equally manifestly unlawful and therefore cannot be subject to the defence of superior orders.

1784. For the foregoing reasons, the Chamber considers that the conditions for invoking Article 33 of the Statute as a ground for excluding the criminal responsibility of Mr Al Hassan have not been established.

## VI. DISPOSITION

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<sup>5294</sup> [Defence Final Brief](#), para. 423. *See also* [Defence Response Brief](#), para. 81.

<sup>5295</sup> [Defence Final Brief](#), paras 408-409. *See also* [Defence Trial Brief](#), paras 77-79.

<sup>5296</sup> [Defence Trial Brief](#), paras 76, 529.

1785. For the foregoing reasons and on the basis of the evidence submitted and discussed before this Chamber at trial and the entire proceedings, pursuant to Article 74(2) of the Statute, **THE CHAMBER FINDS**

Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

*Under Count 1 of the charges*, by Majority, Judge Mindua dissenting, **GUILTY** of the **crime against humanity of torture** under Article 7(1)(f) of the Statute as a direct perpetrator under Article 25(3)(a) for one flogging event, as well as for facilitating and contributing to the commission of the crime under Articles 25(3)(c) and (d) of the Statute;

*Under Count 2 of the charges*, by Majority, Judge Mindua dissenting, **GUILTY** of the **crime against humanity of other inhumane acts** under Article 7(1)(k) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute;

*Under Count 3 of the charges*, by Majority, Judge Mindua dissenting, **GUILTY** of the **war crime of torture** under Article 8(2)(c)(i) of the Statute as a direct perpetrator under Article 25(3)(a) for one flogging event, as well as for facilitating and contributing to the commission of the crime under Articles 25(3)(c) and (d) of the Statute;

*Under Count 4 of the charges*, by Majority, Judge Mindua dissenting, **GUILTY** of the **war crime of cruel treatment** under Article 8(2)(c)(i) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute;

*Under Count 5 of the charges*, by Majority, Judge Mindua dissenting, **GUILTY** of the **war crime of outrages upon personal dignity** under Article 8(2)(c)(ii) of the Statute as a direct perpetrator under Article 25(3)(a) for one flogging event, as well as for facilitating and contributing to the commission of the crime under Articles 25(3)(c) and (d) of the Statute;

*Under Count 6 of the charges*, by Majority, Judge Mindua dissenting, **GUILTY** of the **war crime of passing of sentences without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable** under Article 8(2)(c)(iv) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute;

*Under Count 7 of the charges*, **NOT GUILTY** of the **war crime of intentionally directing attacks against protected objects** under Articles 8(2)(e)(iv) and 25(3)(d) of the Statute;

*Under Count 8 of the charges*, by Majority, Judge Prost dissenting, **NOT GUILTY** of the **crime against humanity of other inhumane acts in the form of forced marriage** under Article 7(1)(k) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute;

*Under Count 9 of the charges*, by Majority, Judge Prost dissenting, **NOT GUILTY** of the **crime against humanity of sexual slavery** under Article 7(1)(g) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute;

*Under Count 10 of the charges*, by Majority, Judge Prost dissenting, **NOT GUILTY** of the **war crime of sexual slavery** under Article 8(2)(e)(vi) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute;

*Under Count 11 of the charges*, by Majority, Judge Prost dissenting, **NOT GUILTY** of the **crime against humanity of rape** under Article 7(1)(g) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute;

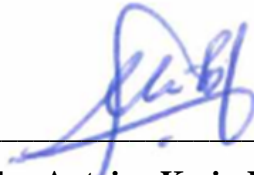
*Under Count 12 of the charges*, by Majority, Judge Prost dissenting, **NOT GUILTY** of the **war crime of rape** under Article 8(2)(e)(vi) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute;

*Under Count 13 of the charges*, by Majority, Judge Mindua dissenting, **GUILTY** of the **crime against humanity of persecution, on religious grounds**, under Article 7(1)(h) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute; and

*Under Count 14 of the charges*, by Majority, Judge Mindua dissenting, **GUILTY** of the **war crime of mutilation** under Article 8(2)(c)(i) of the Statute for contributing to the commission of the crime under Article 25(3)(d) of the Statute.

Judge Akane appends a separate and partly dissenting opinion to the present Judgment; Judge Prost appends a separate and partly dissenting opinion to the present Judgment; and Judge Mindua appends a separate and partly dissenting opinion to the present Judgment.

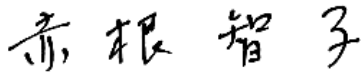
Done in English. A French translation will be prepared, but the English version remains authoritative.



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**Judge Antoine Kesia-Mbe Mindua**

**Presiding Judge**



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**Judge Tomoko Akane**



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**Judge Kimberly Prost**

Dated this Wednesday, 26 June 2024

At The Hague, The Netherlands