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TRIAL CHAMBER X

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

With Confidential Annex A

**Public Redacted Version of ‘Defence Response to the Closing Briefs of the
Prosecution and the Legal Representative of Victims, 2 May 2023, ICC-01/12-01/18-
2490-Conf’**

Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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1. This Defence Response to the final trial briefs of the Prosecution and the Legal Representatives for Victims (LRV) demonstrates why this Trial Chamber must acquit Mr Al Hassan. Their main lines of argument are based on erroneous or misleading interpretations of the evidence; undue reliance on unreliable accomplice evidence; and an invalid interpretation of individual responsibility. The Prosecution's case is fully controverted by evidence, introducing clear doubt as to whether Mr Al Hassan knew of and intended to contribute to the alleged crimes. They have failed to disprove that Mr Al Hassan was acting under a mistake of fact or law, superior orders, or duress that would eliminate his knowledge or intention to contribute to the charged crimes. The Regulation 55 criteria for recharacterisations were also not met. The LRV are not second prosecutors, and V-0001 and V-0002 cannot be relied upon as standalone incidents or to shore up gaps in the Prosecution's case.

1 The OTP Case is Based on Erroneous or Misleading Evidential Interpretations

1.1 Misstated or Exaggerated Evidence

2. The Prosecution's claims that Mr Al Hassan participated in punishments not ordered by the Islamic Tribunal and personally mediated disputes are based on an erroneous interpretation of P-0582's evidence. **First**, P-0582 never told the Prosecution that Mr Al Hassan participated in or contributed to « *petite sharia* » involving corporal punishment. Indeed, P-0582 could not remember any examples resulting in flogging.¹ His Rule 68(2) evidence on this point is untested speculation. He also clarified that his references to the « *responsable/s* » meant Khaled.² **Second**, the suggestion that Mr Al Hassan regulated a dispute between two women³ is based on an incomplete reading of P-0582's evidence. P-0582 told the investigator that it was the director's role to resolve this,⁴ and « *[c]'est Khalid qui était le directeur.* »⁵ In this specific instance, Mr Al Hassan translated the document because Khaled « *ne comprend pas [...] français, ne comprend pas [...] bambara.* »⁶ Mr Al Hassan was simply acting as an interpreter for the director (Khaled).⁷ Khaled also gave money and arranged assistance for one of the women, cementing his decision-making role.⁸ The amicably resolved incident is not probative of either action or intent for the charged crimes.

¹ **P-0582**: [MLI-OTP-0062-3872-R02](#) at 3879, lines 230-239.

² **P-0582**: [MLI-OTP-0062-4117-R02](#) at 4133, lines 530-533.

³ OTP Final Trial Brief, para. 164.

⁴ **P-0582**: [MLI-OTP-0062-3736-R02](#) at 3738, lines 52-55. *See also* [MLI-OTP-0062-3760-R02](#) at 3769, line 287.

⁵ **P-0582**: [MLI-OTP-0062-4117-R02](#) at 4137, line 654.

⁶ **P-0582**: [MLI-OTP-0062-3760-R02](#) at 3770-3771, lines 343-349.

⁷ **P-0582**: [MLI-OTP-0062-3760-R02](#) at 3771, lines 350-358 (« *c'est obligatoire parce qu'il [Mr Al Hassan] ...il interprétait aussi au directeur* »).

⁸ **P-0582**: [MLI-OTP-0062-3760-R02](#) at 3771-3772, lines 377-385.

3. Similarly, the claim that Mr Al Hassan shared the groups' ideology is based on D-0006 and an erroneous attribution to D-0202.⁹ D-0006 used the phrase "these people" in an inclusive manner to highlight Mr Al Hassan's positive interactions with the local population, ensuring they felt welcomed and able to exercise their rights and find solutions at the Police.¹⁰ This counters the Prosecution's case that Mr Al Hassan supported or adhered to an ideology that sought to harm the local population. In addition, the claim that "Ansar Dine/AQIM took no effective steps to prevent or punish their members who took advantage of their power to commit sexual violence"¹¹ is manifestly incorrect. There is incontrovertible evidence to the contrary, including the Bocar case, where ██████ confirmed the defendant was "found guilty of rape"¹² and that "the emirs were very careful to make sure that he be punished".¹³ P-0626 also confirmed that Bocar was sentenced for rape, leading to a punishment of 100 lashes and a year-long banishment.¹⁴ ██████¹⁵ The Prosecution omitted P-0582's direct evidence ██████

█████¹⁶ ██████
 ██████¹⁷ P-0004 did not recall ██████ used by the Prosecution, and ██████ methodology involved hearsay within hearsay.¹⁸

1.2 Inaccurate References

4. The Prosecution's Brief contains incorrect footnotes and flawed evidential references.¹⁹ The Prosecution also adds information absent from transcript excerpts²⁰ and overstates its case, attempting, for example, to extrapolate a general practice (that a police statement was sufficient to sentence a defendant) from a decontextualised extract of ██████ testimony.²¹ ██████

⁹ OTP Final Trial Brief, para. 578.

¹⁰ D-0006: T-205, p. 34, line 13 – p. 35, line 1 (Conf).

¹¹ OTP Final Trial Brief, para. 437.

¹² ██████

¹³ ██████

¹⁴ ██████

¹⁶ P-0582: [MLI-OTP-0062-3820-R01](#) at 3821, lines 10-25.

¹⁷ ██████

¹⁸ ██████

¹⁹ ██████

█████ OTP Final Trial Brief, paras 307, 329.

[REDACTED]²² [REDACTED]

[REDACTED]²³ [REDACTED]

[REDACTED]²⁴ The evidence on this incident also must be considered in light of the evidential record as a whole, which demonstrates the Tribunal’s decisions were not based on police reports.²⁵

5. The Prosecution’s attempt to discredit D-0202’s evidence as speculation and hearsay is also based on a similarly flawed foundation. [REDACTED]

1.3 Reliance on Mistranslations of Evidence

6. The Prosecution relies on inadmissible testimonial statements from D-0202 for the truth of their contents.²⁹ In doing so, it ignored that the word « *adjoint* » translates to “assistant” in the context in question.³⁰ Under oath, D-0202 averred that this was the sense he had conveyed at the time.³¹ He also freely and candidly explained that he was only able to testify on the basis of what he actually witnessed. He saw Mr Al Hassan perform clerical and translation roles but had never been informed that Mr Al Hassan was appointed or designated as a deputy.³² There is no evidence that Mr Al Hassan was given such a title.³³

²² [REDACTED]
²³ [REDACTED]
²⁴ [REDACTED]

²⁵ Defence Final Trial Brief, paras 380-383.

²⁶ [REDACTED]
²⁷ [REDACTED]

²⁸ Defence Final Trial Brief, para. 307.

²⁹ OTP Final Trial Brief, para. 116.

³⁰ [REDACTED]

³² [REDACTED]

³³ [REDACTED]

7. The Prosecution also relies on mistranslations attributing a false degree of responsibility to Mr Al Hassan.³⁴ It indicates that Mr Al Hassan said « *je désigne les personnes* »³⁵ when the original Arabic should translate to « *et je les appelle* ».³⁶ This error is then repeated in a different interview: « *[c]haque jour, je désigne les noms des personnes* »³⁷ when in the original, Mr Al Hassan never used “designate”,³⁸ instead specifying that the *emir* chose individuals and gave instructions for patrol and security.³⁹ This is consistent with Mr Al Hassan’s later statement that he completed computer work and printed documents.⁴⁰

1.4 Use of Unreliable Evidence

8. The Prosecution used one unreliable source to claim that “[w]omen or girls who sought to escape forced marriages with Ansar Dine/AQIM members were harassed and punished”,⁴¹ while ignoring that this was a draft submission to ██████████ which chose not to reproduce this specific allegation.⁴² If the allegation fails to satisfy the reliability threshold of an advocacy-oriented NGO, it certainly fails to constitute a reliable foundation for findings of fact in a criminal judgment.⁴³

1.5 Unfounded Allegations Falling Outside the Scope of the Charges

9. The temporal scope of the charges starts on 7 May 2012, not before.⁴⁴ The evidential record also does not support the Prosecution’s claim that Mr Al Hassan was working with Ansar Dine in April. The Police itself was not established immediately, but sometime after the groups’ arrival⁴⁵ and after Talha and the Security arrested people for drinking alcohol.⁴⁶ D-0211 testified that, when he arrived in Timbuktu about one month after Ansar Dine’s arrival,⁴⁷ Mr Al Hassan had not started work with Ansar Dine.⁴⁸ The first alleged contacts between Mr Al

³⁴ OTP Final Trial Brief, para. 133.

³⁵ P-0398: [MLI-OTP-0051-0457](#) at 0466-0467, lines 278-326.

³⁶ P-0398: [MLI-OTP-0051-0457](#) at 0466-0467, lines 289-292. See also MLI-OTP-0051-0465_01 (*remarques concernant l’interprétation*); [ICC-01/12-01/18-2475-Conf-Corr2](#) (The Prosecution’s explanatory note to its corrigendum accepting the Defence’s corrections to the Prosecution’s mistranslation).

³⁷ P-0398: [MLI-OTP-0051-1257](#) at 1287-1288, lines 1008-1034; OTP Final Trial Brief, para. 133.

³⁸ P-0398: [MLI-OTP-0051-1257](#) at 1287, line 1016. See also MLI-OTP-0051-1287_01 (*remarques concernant l’interprétation*); [ICC-01/12-01/18-2475-Conf-Corr2](#) (The Prosecution’s explanatory note to its corrigendum accepting the Defence’s corrections to the Prosecution’s mistranslation).

³⁹ P-0398: [MLI-OTP-0051-1257](#) at 1288, lines 1024-1026.

⁴⁰ P-0398: [MLI-OTP-0051-1257](#) at 1288, lines 1024-1026.

⁴¹ OTP Final Trial Brief, para. 406, ██████████

⁴² ██████████

⁴³ [ICC-02/11-01/11-432](#), paras 29-32 (NGO reports do not meet confirmation threshold).

⁴⁴ [ICC-01/12-01/18-923-Conf](#), paras 31-33.

⁴⁵ P-0065: T-046, p. 55, line 10 – p. 56, line 12 (Conf).

⁴⁶ P-0065: T-046, p. 55, line 10 – p. 56, line 12 (Conf).

⁴⁷ D-0211: T-190, p. 75, line 23 – p. 76, line 1 (Conf).

⁴⁸ D-0211: T-190, p. 81, lines 18-22; p. 83, lines 8-9 (Conf).

Hassan and Adama occurred on 30 April 2012.⁴⁹ P-0065 first encountered Mr Al Hassan towards the end of June.⁵⁰

10. The Prosecution's piecemeal approach to P-1086 does not prove Mr Al Hassan's earlier involvement. P-1086's memory of dates was poor.⁵¹ There are, however, objective markers that pinpoint his conversations with Mr Al Hassan to June 2012, including: the theft of the hospital ambulance, which [REDACTED] dates as 11 June 2012;⁵² the reference to a dispute between individual members of the MNLA and Ansar Dine,⁵³ reported in June 2012;⁵⁴ [REDACTED]
[REDACTED]⁵⁵ [REDACTED]⁵⁶ at the end of June 2012).⁵⁷ [REDACTED]
[REDACTED]⁵⁸ who confirmed that the interaction between Mr Al Hassan and the [REDACTED] journalist occurred just before the MNLA left the airport.⁵⁹ In line with P-1086's agreement that his meeting with Mr Al Hassan could have occurred in early July,⁶⁰ it can reasonably be concluded that the meeting occurred around June.

11. The Prosecution incorrectly relies on D-0544 to establish an earlier date, even though D-0544 did not know when Mr Al Hassan started working with the Police⁶¹ and was unable to provide a clear date of when their interactions occurred.⁶² D-0544 described the general arrival of such persons into [REDACTED] neighbourhood,⁶³ as opposed to a specific incident that transpired one evening.⁶⁴ D-0544 also testified that the interaction with Mr Al Hassan occurred after the arrival of these individuals in [REDACTED] neighbourhood. The Prosecution did not verify D-544's

⁴⁹ OTP Final Trial Brief, para. 83.

⁵⁰ [REDACTED]

⁵¹ P-1086: T-122, p. 4, lines 17-21 (Conf).

⁵² [REDACTED]

⁵³ [REDACTED]

⁵⁴ [REDACTED]

⁵⁵ [REDACTED]

⁵⁶ [REDACTED]; [MLI-D28-0005-6471](#) (article); [MLI-D28-0005-6489](#) (video); [MLI-D28-0005-6490](#) (transcript).

⁵⁷ OTP Final Trial Brief, para. 540 (referring to MUJAO taking over Gao at that point in time).

⁵⁸ [REDACTED]

⁵⁹ D-0246 [REDACTED]
[REDACTED] ([MLI-D28-0006-9124](#) [REDACTED]); at 9128, para. 21 (referring to issues between MUJAO and MNLA occurring one week after they left Gao); at 9130, para. 32 (leaving Timbuktu when the MNLA left the airport). [REDACTED]
[REDACTED]

⁶⁰ P-1086: T-122, p. 42, lines 7-13 (Conf).

⁶¹ D-0544: [MLI-D28-0006-3342-R01](#) at 3345, para. 15.

⁶² D-0544: T-196, p. 37, line 4 (Conf).

⁶³ D-0544: T-196, p. 36, lines 17-22 (Conf).

⁶⁴ D-0544: T-196, p. 37, lines 5-14 (Conf).

understanding as to when the groups arrived in Timbuktu or how much time elapsed between the general arrival of such persons in his neighbourhood and when he met with Mr Al Hassan. 12. D-0544's evidence also does not establish that unidentified persons trying to break into the houses were affiliated with Ansar Dine. There is a significant volume of evidence of positive acts taken by Ansar Dine to protect or restore property to rightful owners after looting by others.⁶⁵ During this first period, MNLA members had access to the *medina* and lived in town,⁶⁶ and Ansar Dine had promised to protect the local population against theft committed by the MNLA and other bandits.⁶⁷ D-0544 gave no evidence that Mr Al Hassan knew the individuals that tried to break into D-0544's house or that they knew or were associated with Mr Al Hassan. D-0544 testified only that Mr Al Hassan was in a vehicle with others, but that he did not know their identities, affiliations, or roles.⁶⁸ This interaction also demonstrates Mr Al Hassan's commitment to helping and protecting the local population and reasonable understanding that there would be opportunities where he could use his position in the Islamic Police to help locals.

1.6 Flawed Approach to Defence Evidence

13. Defence witness evidence soundly controverts the accounts of Prosecution witnesses while establishing the absence of any basis to conclude Mr Al Hassan was aware of the alleged incidents. The Prosecution's claim that such evidence lacks probative value because it is "anecdotal" is puzzling since all evidence from non-expert observers is anecdotal.⁶⁹

14. **D-0512**: The Prosecution's argument that D-0512 is unreliable is based on a single, misleading instance of D-0512 supposedly rejecting negative acts by the groups in control of Timbuktu.⁷⁰ D-0512 did not testify that no punishments were carried out in Timbuktu, but that she did not witness any punishments conducted by the "Islamists".⁷¹ This is highly plausible, [REDACTED] where there were no public punishments. In videos, the crowd during the public application of *Shari'a* was composed primarily of men.⁷² It is logical that D-0512 would not have directly witnessed punishments. D-0512 did testify

⁶⁵ Defence Final Trial Brief, para. 97; **P-0654**: T-134, p. 5, line 1 – p. 6, line 16 (Conf); **P-0608**: T-154, p. 91, line 23 – p. 93, line 12 (Conf); **P-0004**: T-164, p. 29, line 20 – p. 30, line 3; p. 36, lines 1-6; p. 36, line 19 – p. 27, line 2 (Conf); T-166, p. 61, line 2 – p. 62, line 23 (Conf).

⁶⁶ Defence Final Trial Brief, para. 257, fn. 919.

⁶⁷ **P-0641**: T-139, p. 56, lines 21-24 (Conf).

⁶⁸ **D-0554**: T-196, p. 31, lines 22-25; p. 34, lines 16-24; p. 43, lines 8-12 (Conf); [MLI-D28-0006-3342-R01](#) at 3345, paras 16, 20.

⁶⁹ "anecdotal". *Merriam-Webster* (2023).

⁷⁰ OTP Final Trial Brief, para. 591.

⁷¹ **D-0512**: T-181, p. 42, lines 14-21; p. 44, line 25 – p. 45, line 8 (Conf).

⁷² See [MLI-OTP-0018-0398](#); [MLI-OTP-0018-0742](#); [MLI-OTP-0018-0293](#).

about matters that impacted [REDACTED] including problems caused by Hamed Moussa.⁷³ Her credibility is bolstered by the fact that her testimony is based on what she saw and heard directly, as compared to rumours.

15. D-0512 provided a first-hand account of probative matters related to [REDACTED] and [REDACTED]. D-0512 was present in the neighbourhood when [REDACTED] and gave precise details concerning [REDACTED] including what she learned from speaking to [REDACTED] and from [REDACTED] when [REDACTED].⁷⁴ This information demonstrates that [REDACTED] marriage was consensual according to existing traditions. D-0512's evidence is sufficiently detailed and precise as to raise reasonable doubt about [REDACTED] account. D-0512 also provided a reliable account of [REDACTED] interaction with the Islamists, based on what [REDACTED] relayed to [REDACTED] on the very day it occurred.⁷⁵ D-0512 identifies [REDACTED] accurately, referring to [REDACTED] current health.⁷⁶ D-0512's evidence falls within the scope of what she was capable of seeing and hearing as [REDACTED] and acquaintance. D-0512 has no incentive to fabricate her account.

16. **D-0240 and D-0272** provide reliable and credible evidence in respect of marriages.⁷⁷ **D-0240** distinguished between speculation and what he personally saw and heard regarding [REDACTED]. The Prosecution's allegation that D-0240 "conceded that it was unclear whether local women had genuinely consented to marrying Ansar Dine/AQIM members" is misleading.⁷⁸ D-0240 stated that some marriages were consensual, but he could not confirm that all marriages were. His acknowledgement that "consent depends on the person and the statement of the person" since "there could have been some types of influence"⁷⁹ bolsters the credibility of his conclusion that, based on what he was told, [REDACTED] freely and willingly gave consent.⁸⁰ In the same way that D-0240 could only testify about marriages about which he knew, Mr Al Hassan can only be judged in relation to marriages where the Prosecution has established that he knew consent was not freely given. Since the Prosecution has failed to do so, Mr Al Hassan must be acquitted of these incidents.

⁷³ **D-0512**: T-181, p. 45, lines 3-8 (Conf).

⁷⁴ **D-0512**: [MLI-D28-0006-2611-R01](#) at 2618, paras 50-56.

⁷⁵ **D-0512**: [MLI-D28-0006-2611-R01](#) at 2617, para. 41. *See also* Defence Final Trial Brief, para. 213. [REDACTED]

⁷⁶ **D-0512**: [MLI-D28-0006-2611-R01](#) at 2617-2618, para. 43.

⁷⁷ OTP Final Trial Brief, para. 620.

⁷⁸ OTP Final Trial Brief, para. 620.

⁷⁹ **D-0240**: T-191, p. 63, lines 9-10 (Conf).

⁸⁰ **D-0240**: [MLI-D28-0006-4222-R01](#) at 4234, line 33 – 4235, line 6; T-191, p. 63, line 19 – p. 64, line 17 (Conf).

17. **D-0272**'s evidence regarding Mr Al Hassan's character was also based on personal knowledge tempered by a willingness not to overstate. A bald, unsupported assertion⁸¹ that D-0272 had proximity to Mr Al Hassan does not undermine his credibility. The Prosecution has not demonstrated that this resulted in bias or dishonesty. His nuanced portrayal of Ansar Dine, including ██████████ further strengthens his credibility.⁸²

18. The Prosecution's attack on D-0272's credibility on the grounds that he was absent misses the point. D-0272 gave evidence of his knowledge of Mr Al Hassan before 2012, his interactions during the events with Mr Al Hassan and third persons who knew Mr Al Hassan, and his personal knowledge of ██████████ D-0272 explained the basis for his knowledge and was candid as to what he could attest. Since D-0272 was neither a member of Ansar Dine nor physically present, it was credible and plausible for him to acknowledge that he was unaware of Mr Al Hassan's role within the Police while recounting that he had been told by others that people who knew Mr Al Hassan in Timbuktu would reach out to him.⁸³ D-0272 provided a concrete example ██████████ in support of this.⁸⁴

19. In respect of ██████████ D-0272 had known her personally since ██████████⁸⁵ The consensual nature of ██████████'s marriage was recounted to him first-hand.⁸⁶ D-0272, who had experience with victims in ██████████ did not assume the marriage was consensual and asked follow-up questions as to the context in which the marriage was concluded. ██████████ confirmed that "she wanted to marry him because it was -- it was a good deal for her."⁸⁷ There is no evidential foundation to infer that ██████████ was not free to describe her marriage accurately to D-0272. Any suggestion that ██████████ lied on this point due to D-0272' ██████████ is speculative: ██████████ have no indication that she either knew, or knew of, ██████████ when she testified. D-0272 – an educated person with specific sensibility to human rights violations – reached the conclusion that ██████████ marriage was consensual. It is reasonable to conclude that Mr Al Hassan also did not know of a forced marriage concerning V-0001.

20. **D-0213**: The Prosecution's narrative concerning ██████████'s marriage does not reflect D-0213's sworn testimony. D-0213 testified that ██████████

⁸¹ OTP Final Trial Brief, paras 606, 620.

⁸² **D-0272**: T-182, p. 23, lines 9-21; p. 25, lines 18-25 (Conf).

⁸³ **D-0272**: T-182, p. 52, lines 13-18; p. 53, lines 8-13 (Conf).

⁸⁴ **D-0272**: [MLI-D28-0006-4181-R01](#) at 4184-R01, para. 22.

⁸⁵ **D-0272**: T-182, p. 16, lines 2-22 (Conf).

⁸⁶ **D-0272**: T-182, p. 17, line 14 – p. 18, line 8 (Conf).

⁸⁷ **D-0272**: T-182, p. 18, lines 2-8 (Conf).

had raped women and that he was later marginalised for refusing to present what would have been false facts [REDACTED]⁹⁹

22. **D-0605**: The Prosecution’s claim that Abu Dhar only exercised authority over certain Police members is inconsistent with D-0605’s evidence that Abou Dhar was in charge whenever Adama was absent.¹⁰⁰ The Prosecution also misconstrued D-0605’s evidence in relation to Mr Al Hassan’s capacity to give orders.¹⁰¹ D-0605 testified Adama was in charge, that “the authority and the prerogative – absolute prerogative was Adam’s. He made the law in Islamic police”.¹⁰² Mr Al Hassan could not act unless he had the consent of Adama, Khaled, or Abu Dhar,¹⁰³ meaning he could not issue orders of his own volition and was a subordinate.

2 The Prosecution Relies Extensively on Unreliable Co-Operating Accomplices

23. The Prosecution relies to a decisive extent on unreliable evidence from unreliable insider witnesses. The Prosecution interviewed these witnesses in circumstances in which they were extremely vulnerable, forging a dynamic that incentivised the witnesses to support the Prosecution’s case to either obtain assistance or avoid adverse consequences. The Prosecution’s recycled arguments attacking Defence experts on the effects of uncontrollable stress are an unfounded attempt to disguise its witnesses’ failure to satisfy minimum standards of probity.¹⁰⁴

24. Accomplice evidence should be treated with caution,¹⁰⁵ [REDACTED]
[REDACTED].¹⁰⁶ When considering the weight, if any, that can properly attach to such evidence, the Chamber must consider the totality of circumstances concerning the witness’s evidence, taking account of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰⁷

⁹⁹ **D-0147**: [MLI-D28-0006-2873](#) and 2874; [ICC-01/12-01/18-2398-Conf-AnxB](#), pp. 12-28.

¹⁰⁰ **D-0605**: T-192, p. 83, line 25 – p. 84, line 7; p. 90, lines 18-22 (Conf).

¹⁰¹ OTP Final Trial Brief, para. 131.

¹⁰² **D-0605**: T-192, p. 90, lines 18-22 (Conf).

¹⁰³ **D-0605**: T-192, p. 83, line 25 – p. 84, line 7 (Conf).

¹⁰⁴ See **D-0025**: Defence email, 31 May 2022, 10:49; **D-0020**: Defence emails, 11 May 2022, 14:04, 12 May 2022, 19:00, 13 May 2022, 12:07; 17 May 2022, 12:00; **D-0502**: Defence emails, 3 June 2022, 16:04, 7 June 2022, 17:21.

¹⁰⁵ *Banda Confirmation Decision*, para. 42; *Mbarushimana Confirmation Decision*, para. 50.

¹⁰⁶

¹⁰⁷

25. These factors are present in the evidence of ██████, P-0099, and P-0626. These witnesses had a subjective belief that their testimony or cooperation would result in leniency or give rise to material advantages, and there are indications that the witnesses provided false evidence or details not found in initial statements.¹⁰⁸ In terms of the latter, ██████
 ██████.¹⁰⁹ The Prosecution’s claim that their credibility is bolstered through corroboration is legally specious: Unreliable evidence cannot corroborate unreliable evidence.¹¹⁰ It would be an error of law for this Chamber to reach adverse conclusions based on this body of evidence.¹¹¹

2.1 ██████

26. The Chamber cannot place weight on the mutations that corrupted ██████’s evidence after the Prosecution ██████ to obtain his testimonial evidence, given that:

- i. the circumstances under ██████ relationship with the Prosecution was forged were oppressive and created a transactional dynamic of dependence;
- ii. ██████
 ██████ evidence mutated to support the Prosecution’s allegations;
- iii. the new mutations are implausible and incoherent, raising the conclusion that they are based on speculation or contaminated memories; and
- iv. ██████ has demonstrated a record of providing materially incorrect information and omitting details impacting the accuracy of his evidence.

2.1.1 *The Transactional Dynamic of Dependence Between ██████ and the Prosecution*

27. ██████ in broad and unspecified ways when he was in a situation of extreme vulnerability. ██████
 ██████
 ██████

There were insufficient safeguards to alleviate the dependence created by

¹⁰⁸ [Bizimungu AJ](#), paras 63-64.

¹⁰⁹ ██████
 ██████
 ██████
 ██████

¹¹⁰ See [Bemba AJ](#), para. 183; [ICC-02/11-01/15-1263-AnxB-Red](#), para. 49.

¹¹¹ ECtHR, [Adamčo v. Slovakia](#), App. No. 45084/14, Judgment, 12 November 2019, paras 56-71 (**para. 59**: “the risk that a person might be accused and tried on the basis of unverified allegations that are not necessarily disinterested must not, therefore, be underestimated”; **para. 69**: “the intensity of scrutiny called for with regard to evidence from an accomplice has a correlation with the importance of the advantage that the accomplice obtains in return for the evidence he or she gives”; **para. 71**: “all the decisions concerning the prosecution of M. were taken under the sole responsibility of the prosecution service with no element of any judicial control!”).

the leverage exercised by the Prosecution from their first interview until the conclusion [REDACTED]

28. When [REDACTED] was arrested in [REDACTED] by [REDACTED] forces, he was shot in his ankle, thigh, and stomach,¹¹² and injured to such an extent the [REDACTED] soldiers asked him, “do you want us to kill you so that you go to heaven? Or do you want us to try to help you?”¹¹³ This was followed by a violent and coercive interrogation. While “tether[ed] [...] to an IV drip” and covered with a foil sheet for warmth,¹¹⁴ he was given no assistance to urinate,¹¹⁵ forcing him to try “to move away [from the urine] by crawling on [his] back.”¹¹⁶ During [REDACTED] transit to a medical facility, [REDACTED] turned their backs on [him] and [...] leaned the weight of their packs on [him]”,¹¹⁷ pressing further when he attempted to push away the weight due to his injuries.¹¹⁸ He endured “tremendous suffering”,¹¹⁹ and was interrogated while dehydrated and in pain,¹²⁰ testifying that the [REDACTED] “deliberately made sure I remained thirsty”.¹²¹ His psychological fear was more profound than his physical injuries. He had heard stories of prisoner torture at Guantanamo and feared a similar fate.¹²²

29. [REDACTED] described “intense psychological pressure”, with French interrogators directing “a very strong lamp” at him while they sat in silence, and photographs taken “from all sides”, making him “feel scared.”¹²³ The interrogator made an “implicit” and “literal threat”, promising he would experience “a lot of suffering” if he did not cooperate and referring to “the members o [REDACTED] family and what would happen to them in [his] absence”.¹²⁴ He was interrogated while “detained in a solitary form of detention, in an iron container with [his] leg in metal chains, in iron chains”.¹²⁵ The French [REDACTED] investigations were “carried out in a situation where his rights were not observed [...] under adverse physical, mental, and emotional health conditions”,¹²⁶ producing interview reports which “lack credibility.”¹²⁷ [REDACTED] was very

¹²⁶ [MLI-OTP-0080-2534-R01](#) at 2552.

angry against AQIM, he felt abandoned: fear and anger motivated the information he gave to the French.¹²⁸ [REDACTED] was also interrogated by [REDACTED] authorities. In his first exposure to transactional co-operation, after he “assisted them so much”, they brought him a phone to contact his family.¹²⁹

30. When [REDACTED] met the ICC Prosecution on [REDACTED] he was experiencing severe stressors, enhancing his vulnerability and the transactional dynamics of dependency.¹³⁰ **First**, [REDACTED] was held in “very appalling conditions in every sense of the word”, referring to the poor food and hygiene situation inflicted on “us” (*i.e.* [REDACTED] and fellow detainees).¹³¹ He had started a hunger strike the week before he met the Prosecution and had a fever for which he was only given medication immediately before his interviews.¹³² **Second**, [REDACTED]

[REDACTED]¹³³ [REDACTED]

[REDACTED]³⁵ [REDACTED]

[REDACTED].¹³⁶ **Third**, until the

arrival of the ICC duty counsel, [REDACTED] had no access to a lawyer or independent legal

advice.¹³⁷ During the first day of substantive interviews, he informed the Prosecution that his

cooperation was contingent on [REDACTED] continued involvement as his permanent lawyer.¹³⁸

He later told an acquaintance that he had not received effective legal advice from [REDACTED].³⁹

During the first interviews, [REDACTED] did not “understand at all the parts about the law and

the procedures that have to do with investigations of these crimes”.¹⁴⁰ In [REDACTED]

[REDACTED]

[REDACTED]¹⁴¹ **Fourth**, the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹³⁰ D-0502: T-179, p. 12, lines 1-18; p. 14, lines 12-20; p. 25, line 3 – p. 26, line 2; p. 51, lines 2-6 (Conf).

[REDACTED]

██████████¹⁵⁷ ██████████
 ██████████
 ██████████¹⁵⁸ Under the Rome Statute, only the Prosecutor has the power to initiate proceedings for false testimony,¹⁵⁹ which meant that the Prosecutor was, in effect, the sole arbiter for deciding whether the information and evidence provided by ██████████ breached the agreement.

33. The Prosecution ██████████
 ██████████
 ██████████ ██████████¹⁶⁰ ██████████
 ██████████ confessed that he developed a “bond” with the Prosecution,¹⁶¹ ██████████
 ██████████¹⁶² In contrast, he declined to be interviewed by the Defence.¹⁶³

34 ██████████ continued to leverage information in a transactional manner to improve his, and his family’s, situation. In June 2018 (after Mr Al Hassan’s arrest), ██████████ informed the Prosecution through ██████████ that he would not testify until “after there are protection procedures taken towards his family, his father, his mother, his siblings”.¹⁶⁴ ██████████ concern for protection extended beyond his immediate family to relatives, stating that he did not “want to expose my relatives to [...] any kind of risk when I testify before the Court.”¹⁶⁵ ██████████
 ██████████ acknowledged that he was obviously “worried about one of my nearest and dearest who is ██████████.”¹⁶⁶

35. After his transfer to ██████████ suffered stressors similar to those in ██████████ He was placed “██████████
 ██████████.”¹⁶⁷ The cognitive impact was so severe that he told Prosecution interviewers that “I am even surprised because I managed to answer the questions and I can remember things because sometimes I feel like I am having a blackout. It’s like someone inside a dark cave.”¹⁶⁸ ██████████

¹⁵⁷ [MLI-OTP-0067-0027](#) at 0031.

¹⁵⁸ [MLI-OTP-0067-0027](#) at 0030, para. 18.

¹⁵⁹ [ICC-01/04-02/06-1883](#), para. 30; [ICC-01/05-01/13-2275-Red](#), para. 481.

¹⁶⁰

¹⁶¹ ██████████ p. 54, lines 3-6 (Conf).

¹⁶² ██████████ p. 53, lines 16-21 (Conf).

¹⁶³ ██████████ p. 86, line 20 – p. 87, line 2 (Conf).

¹⁶⁴ ██████████ p. 13, lines 9-11; p. 17, lines 15-25 (Conf).

¹⁶⁵ ██████████ p. 52, lines 9-15 (Conf).

¹⁶⁶ ██████████ p. 90, line 24 – p. 91, line 3 (Conf).

¹⁶⁷ ██████████ p. 78, line 25 – p. 79, line 1 (Conf).

¹⁶⁸ ██████████ p. 77, line 25 – p. 78, line 2 (Conf).

requested that the Prosecution provide a “training” to help prepare his testimony,¹⁶⁹ assist his relatives ██████████¹⁷⁰ and obtain ██████████. The Prosecution, in turn, offered to intercede with Court Management and VWS to find solutions and assured him that his “reward” would soon come.¹⁷¹ ██████████

██████████¹⁷³

36. The Prosecution’s ██████████ ██████████ was subject to their evaluation of whether his testimony in this case constituted full cooperation.¹⁷⁴ The oppressive nature of this situation shines through in ██████████. Counsel underscored the time ██████████ spent in “working sessions with the Prosecutor that lasted for more than ██████████”,¹⁷⁵ while claiming that ██████████ testified in “very hard circumstances, physically and morally”.¹⁷⁶ This included the claim that ██████████ was ██████████ ██████████ from arrival until the end of his testimony.¹⁷⁷ During ██████████ testimony, the Prosecution reinforced the dynamics of dependence, stating, in ██████████ presence, that ██████████

██████████ ██████████¹⁷⁸ ██████████

37. ██████████ believed ██████████ resulted in a substantive advantage.¹⁷⁹ ██████████ ██████████ he used to “justify” his cooperation and role as a “witness in the Timbuktu case”¹⁸⁰ reveals his belief that ██████████ depended on, and was significantly affected by, his status as a witness ██████████ ██████████ acknowledged that he was ██████████

¹⁶⁹ ██████████ p. 50, line 10 – p. 51, line 12 (Conf).

¹⁷⁰ ██████████ p. 84, lines 15-19 (Conf).

¹⁷¹ ██████████ p. 56, line 20 – p. 59, line 1 (Conf).

¹⁷² ██████████, p. 26, lines 1-4 (Conf).

¹⁷³ ██████████

¹⁷⁴ [MLI-OTP-0067-0027](#) at 0031, paras 19(d), 20.

¹⁷⁵ ██████████ p. 11, lines 9-13 (Conf).

¹⁷⁶ ██████████ p. 11, lines 21-22 (Conf).

¹⁷⁷ ██████████ p. 11, lines 23-25 (Conf).

¹⁷⁸ ██████████ p. 10, lines 12-25 (Conf) (emphasis added).

¹⁷⁹ ██████████ p. 59, lines 12-16 (Conf) (██████████)

¹⁸⁰ ██████████ p. 60, lines 7-17 (Conf).

██████████ that the “main reason” he cooperated with the Prosecution was to ██████████
 ██████████ he thus agreed that he had “made gains”.¹⁸¹

38. The Defence’s ability to test ██████████ about the impact ██████████ on his evidence was curtailed. The Chamber limited the time allocated to this issue, directing the Defence to move on from lines of questioning¹⁸² and prohibiting the use of certain items on the Defence list,¹⁸³ even though the overall length of cross-examination fell within the allotted time. The Prosecution and Rule 74 Counsel also made testimonial interventions in ██████████ presence at critical points.¹⁸⁴

2.1.2 ██████████ Evidence Mutated to Support the Prosecution’s Allegations in this Case

39. ██████████ evidence, occurring nine years after the events and ██████ ears after his first interviews with the Prosecution, was marked by significant divergences and mutations from earlier accounts. ██████████ was unable to explain such material inconsistencies, stating “I don’t know why I didn’t mention it, I didn’t refer to him. But the question determines the answer that you give”¹⁸⁵ and later, “if it’s the case that I didn’t give details, it’s because it wasn’t necessary to mention Al Hassan.”¹⁸⁶

40. ██████████ evidence evolved to fit the Prosecution’s case, ██████████
 ██████████
 ██████████ acknowledged his own “weak observational ability and also my weakness in describing and remembering events”;¹⁸⁷ “the Prosecution saw that I was weak when it came to numbers, names, and dates. And they used items of evidence [including photographs and videos] to refer

¹⁸¹ ██████████ p. 12, lines 3-12 (Conf).

¹⁸² ██████████ p. 29, line 24 – p. 36, line 16 (Conf) (not permitting Defence questions on ██████████’s treatment and interrogation by authorities of France ██████████); **Email from Trial Chamber**, 9 July 2021, 13:44; **Email from Trial Chamber**, 10 July 2021, 12:21; ██████████, p. 9, line 14 – p. 10, line 8 (disallowing questions as to whether ██████████ consequences of ██████████); p. 40, line 17 – p. 42, line 2 (Conf) (disallowing questions concerning the good things that ██████████ had done in 2012 in order to test his ██████████); p. 61, line 8 – p. 62, line 5 (directing the Defence against questions concerning ██████████ during which he was interviewed by the Prosecution); p. 81, line 9 – p. 82, line 17 (Conf) (no questions about ██████████); p. 7, lines 11-16 (Conf) (Defence directed not to ask questions concerning a factor referred to ██████████); p. 36, line 24 – p. 37, line 17 (Conf) (disallowing Defence questions on ██████████);

¹⁸³ ██████████ p. 86, lines 6-10 (Conf) (not allowing the Defence to put to ██████████
 ██████████ p. 81, lines 17-25; p. 85, line 15 (Conf) (ruling against a Defence question on whether ██████████);

¹⁸⁴ *See e.g.* ██████████, p. 67, lines 1-8 (Conf); ██████████ p. 6, line 22 – p. 7, line 8; p. 8, lines 3-14 (Conf); ██████████ p. 14, line 18 – p. 15, line 6; p. 29, line 20 – p. 30, line 1; p. 54, lines 11-14; p. 55, lines 8-11 (Conf); ██████████ p. 11, line 23 – p. 12, line 2 (Conf).

¹⁸⁵ ██████████ p. 63, lines 2-3 (Conf).

¹⁸⁶ ██████████ p. 70, lines 19-20 (Conf).

¹⁸⁷ ██████████, p. 9, lines 5-6 (Conf).

play an important role in the case; and third, that information concerning the likely charges against Mr Al Hassan were publicly available on the ICC website.²⁰⁹ [REDACTED] did in fact read or learn about them.²¹⁰ Two months later, the Prosecution told [REDACTED] it needed more information concerning the population’s reaction to the Islamic Police: it therefore invited [REDACTED] to speculate on the basis of information he might have heard about, even if he did not experience it himself.²¹¹ After reviewing the Prosecution’s video evidence to identify events involving Mr Al Hassan,²¹² [REDACTED] only then claimed that Mr Al Hassan drove through a gate in front of the airport when the MNLA left Timbuktu. In response to Prosecution attempts to elicit more evidence of Mr Al Hassan’s position in the Police hierarchy, [REDACTED] claimed Mr Al Hassan “took over” from Khaled at the end (when Khaled was tasked to go on secret missions).²¹³ This is a concrete departure from his [REDACTED] stance that it was only “likely” that Mr Al Hassan replaced Khaled when Khaled left.²¹⁴

45. When pressed in [REDACTED] for further information concerning Mr Al Hassan’s role, [REDACTED] averred that his information originated from Mr Al Hassan.²¹⁵ [REDACTED] also claimed for the first time that [REDACTED] with Mr Al Hassan and that – even while people were dying around them (through bombs, fighting, and thirst), they apparently used their time to discuss minute details that happened to relate to the Prosecution’s allegations in this case.²¹⁶ While [REDACTED] previously could not explain how he knew Mr Al Hassan’s position concerning the levelling of the shrines (it was just something he “knew in his heart”),²¹⁷ he then claimed they discussed it during this alleged sojourn through [REDACTED].²¹⁸ Similarly, [REDACTED] said he and [REDACTED] with Khaled, whom he described as a doctor,²¹⁹ but later switched this role from Khaled to Mr Al Hassan.²²⁰

46. [REDACTED] epiphany of Mr Al Hassan’s alleged role as the “last head” of the Islamic Police was not based on true memory recall. Rather, he conceded that he divined it from piecing together things he had “heard” and “using some of the sources or by crosschecking information

²⁰⁹ [REDACTED] p. 27, line 3 – p. 30, line 24 (Conf).

²¹⁰ [REDACTED] p. 44, lines 9-22 (Conf).

²¹¹ [REDACTED] p. 31, line 12 – p. 32, line 15 (Conf).

²¹² [REDACTED] p. 21, line 8 – p. 22, line 12 (Conf); T-113, p. 77, line 12 – p. 78, line 12 (Conf).

²¹³ [REDACTED] p. 32, line 10 – p. 34, line 3 (Conf).

²¹⁴ [REDACTED] p. 34, line 25 – p. 35, line 15 (Conf).

²¹⁵ [REDACTED] p. 35, lines 13-25 (Conf).

²¹⁶ [REDACTED] p. 37, lines 1-2 (Conf).

²¹⁷ [ICC-01/12-01/18-394-Conf](#), para. 63.

²¹⁸ OTP Final Trial Brief, para. 468.

²¹⁹ [REDACTED] p. 59, line 18 – p. 60, line 22 (Conf).

²²⁰ [REDACTED] p. 69, lines 9-11, p. 71, lines 16-17 (Conf).

from same – the same video excerpts that were played by the OTP or that the OTP presented to me”.²²¹ [REDACTED] thus assumed that because he remembered seeing Khaled in videos or at the Police when [REDACTED] was levelling the mausolea, Khaled must have been the *emir* at the time.²²² He did not consider the possibility of an overlap between Adama and Khaled. [REDACTED] also assumed that because he saw Mr Al Hassan, not Khaled, Mr Al Hassan must have been in charge or in *de facto* authority: he reached this conclusion from the video in which Mr Al Hassan allegedly calls Khaled for assistance regarding the transport of individuals from Ber.²²³ No weight can be attributed to this evidential deduction. **First**, it is opinion, not fact. **Second**, in images taken in October 2012,²²⁴ [REDACTED] was unable to identify the person described by [REDACTED] as “Khaled” as the *emir* of the Police.²²⁵ He also incorrectly identified an individual as “Khaled” in a 30 June 2012 video [REDACTED].²²⁶ [REDACTED] onwards, there are grounds to conclude that [REDACTED] was not familiar with Khaled, the *emir* of the Police, and would not have recognised him even if he had seen him in videos or encountered him in 2012. As there were two “Khaleds” (the *emir* and the Mauritanian) in the Islamic Police,²²⁷ it cannot be discounted that [REDACTED] memory of their roles and functions is conflated. In fact, [REDACTED] testified that he confused the two in 2012.²²⁸ [REDACTED]

[REDACTED] The Chamber cannot overlook the reasonable inference that [REDACTED] wrongly assumed that “Khaled the *emir*” was absent or replaced based on a faulty memory of “Khaled the Mauritanian”. **Third**, [REDACTED] opinion rested on Khaled’s absence from videos, which were pre-vetted by the media office. [REDACTED] explained that leaders deliberately chose to feature locals in videos to hide the foreigners’ identities (the real chiefs).²³⁰ Mr Al Hassan’s alleged participation in such videos means that he was not someone of importance.

²²¹ [REDACTED] p. 37, line 23 – p. 38, line 5 (Conf).

²²² [REDACTED] p. 38, lines 6-19 (Conf).

²²³ [REDACTED] p. 39, line 22 – p. 40, line 6 (Conf). *See also* T-118, p. 31, line 20 – p. 32, line 5 (Conf).

²²⁴ [REDACTED] p. 32, lines 6-19 (Conf).

²²⁵ [REDACTED] p. 11, lines 13-19 (Conf).

²²⁶ [REDACTED] p. 40, line 16 – p. 41, line 1 (Conf), showing [MLI-OTP-0018-0362](#) (00:00:00:18). *Cf* [REDACTED]

[REDACTED] p. 40, line 17 - p. 41, line 6 (Conf) (describing Talha and Abou Sayaf).

²²⁷ [REDACTED] p. 32, lines 20-23 (Conf) (one was Mauritanian and one was Al Sahraoui).

²²⁸ [REDACTED] p. 33, lines 1-4 (Conf).

²²⁹ According to [MLI-D28-0005-4317](#) at 4636, rows 4310-4312, [REDACTED] was [REDACTED] (see [MLI-D28-0005-4317](#) at 4858, rows 10334 *et seq*).

²³⁰ [REDACTED] p. 38, lines 13-20 (Conf).

47 [REDACTED] “analysis” of the events was also predicated on [REDACTED].²³¹ Prosecution evidence alleging Mr Al Hassan’s presence at January 2013 meetings [REDACTED] [REDACTED] would have impacted his assessment as to Mr Al Hassan’s role at this time. [REDACTED] [REDACTED]²³² [REDACTED] memory was directly shaped by [REDACTED]. Similarly, [REDACTED] answers in cross-examination demonstrate his conclusions of Mr Al Hassan’s “*de facto*” role were based on double speculation: “I think that Hassan thought of himself as being in charge of the units, or the things that we talked about to use the word ‘symbolic’ chief or ‘real’ chief”.²³³

48. In [REDACTED] before showing videos and police reports, the investigators told [REDACTED] that there was “no doubt” he would “realise that it focuses on AL HASSAN when we’re moving towards trial”²³⁴ and further, that they were showing this material to [REDACTED] so he could “explain whether [...] the material should be considered for holding him responsible or not.”²³⁵ When testifying, [REDACTED] confirmed he understood this to mean he would be shown footage depicting Mr Al Hassan, which would be used as evidence in this case.²³⁶ The investigators thus contaminated his ability to make a free and unbiased identification of Mr Al Hassan or his alleged signature.²³⁷

49. The investigators showed [REDACTED] a video of a flogging incident, even though [REDACTED] was neither present at the incident nor had any personal knowledge of the contents or date of the video. After watching it, [REDACTED] speculated that “if we suppose that this video was filmed during the last episode when [Al Hassan] was the head of the police, we can say that he did that as the main responsible and this is a possibility.”²³⁸ The context in which the video was shown (*i.e.* to obtain more evidence of Mr Al Hassan’s alleged role) tangibly impacted [REDACTED] perception of this role.

50. Prosecution investigators then attempted to capitalise on [REDACTED] propensity for speculation by summarising their perception of Mr Al Hassan’s alleged role, and then asking [REDACTED] to agree if this amounted to a *de facto* chief.²³⁹ Whereas [REDACTED] had previously told the

²³¹ [REDACTED] p. 53, lines 3-13 (Conf).

²³² [MLI-D28-0005-4317](#) at 4324, row 120 (referring to [MLI-OTP-0001-1984](#), a June 2012 Security Council report describing the government in Bamako as unconstitutional). *See also* [MLI-OTP-0001-1984](#), para. 4.

²³³ [REDACTED] p. 45, lines 4-7 (Conf).

²³⁴ [REDACTED] p. 66, lines 15-25 (Conf).

²³⁵ [REDACTED] p. 66, lines 2-14 (Conf).

²³⁶ [REDACTED] p. 66, line 23 – p. 67, line 2 (Conf).

²³⁷ Defence Final Trial Brief, paras 195-196.

²³⁸ [REDACTED] p. 69, lines 10-12 (Conf).

²³⁹ [REDACTED] p. 70, lines 1-16 (Conf).

Prosecution that Mr Al Hassan had worked as an ordinary “facilitator” in the Police before being promoted to “assistant”,²⁴⁰ he claimed for the first time after this exchange that Mr Al Hassan started by working for Security.²⁴¹ This new claim also first arose at a time when he told the Prosecution that “I am even surprised because I managed to answer the questions and I can remember things because sometimes I feel like I am having a blackout. It’s like someone inside a dark cave.”²⁴² ██████ explained, when testifying, that he was attempting to convey the point that the length of time had “caused a lot of confusion with certain issues” and further, that “some things become clearer because some issues have been raised more”.²⁴³ ██████ was ██████ and psychologically unwell at this point,²⁴⁴ given these stressors, his memory was highly malleable and susceptible to unreliable mutations created by suggestive questioning techniques. Ultimately, even ██████ agreed his evidence concerning Mr Al Hassan’s position was not completely reliable: he was “not 100% sure of the piece of information itself” and might be “missing information”.²⁴⁵

51. As explained by Dr Morgan, once a false memory is implanted, the witness loses the capacity to distinguish between what they experienced as compared to what they learned or were told afterwards.²⁴⁶ This phenomenon applies to ██████ as demonstrated by his evidence concerning the last *emir* of *Hesbah*. When testifying, ██████ claimed that Prosecution ██████ “reminded” him that Abou Walid was the last *emir* of *Hesbah* and that he knew this information previously.²⁴⁷ This claim was, however, directly controverted by his admission during a ██████ interview that he did not know the identity of the last *emir* of *Hesbah* and that he only “learned this afterwards from ██████ ██████”.²⁴⁸

2.1.3 *The New Mutations are Implausible and Incoherent*

52. **Mutations Pertaining to Post-2012 Activities:** ██████ stated during his testimony that Mr Al Hassan was “not an Emir”:²⁴⁹ Generally speaking, he was “one of the followers, that is,

²⁴⁰ ██████ p. 32, lines 17-21 (Conf).

²⁴¹ ██████ p. 70, lines 24-25 (Conf).

²⁴² ██████ p. 77, line 25 – p. 78, line 2 (Conf).

²⁴³ ██████ p. 78, lines 4-9 (Conf).

²⁴⁴ ██████ p. 78, line 20 – p. 79, line 9; p. 80, lines 17-20 (Conf) (relating to an intervention from one of the attendees concerning ██████ need for psychological support).

²⁴⁵ ██████ p. 38, line 14 – p. 39, line 1 (Conf).

²⁴⁶ D-0502: T-179, p. 44, lines 17-23 (Conf).

²⁴⁷ ██████ p. 24, line 23 – p. 25, line 4 (Conf).

²⁴⁸ ██████ p. 25, lines 5-16 (Conf).

²⁴⁹ ██████ p. 73, lines 16-17 (Conf) (emphasis added).

not a decision-maker”²⁵⁰ who “spent most of his time as an assistant to the chief”.²⁵¹ As an assistant, Mr Al Hassan would not liaise directly with the leaders or senior chiefs.²⁵² In general, he had no regular interactions with the *emirs*.²⁵³ The *Shura* Council did not replace Adama or appoint Khaled.²⁵⁴ Given this backdrop, ██████’s claim that the *Shura* Council appointed Mr Al Hassan as the last Chief of Police is intrinsically incoherent. ██████²⁵⁵ and was unable to refer to “the dates. I didn’t know at what moment in time Khaled Al Sahraoui had taken over the command of the police or at what moment Hassan became the head of the police.”²⁵⁶ ██████ also testified that he “forgot” and “was not sure” what Mr Al Hassan was doing while ██████²⁵⁷ ██████²⁵⁸ is also implausible. When ██████ first told the Prosecution about this Council, he acknowledged he did not know of their role or how they reached decisions.²⁵⁹ His ignorance indicates that ██████ and did not have first-hand knowledge of their decision-making processes. Before testifying, he also told the Prosecution that there was no “*Shura* Council” for Timbuktu, only one for the Tariq Ibn Ziyad brigade, which only discussed matters pertaining to the work of the brigade itself.²⁶⁰ Given that Mr Al Hassan was not a member of this brigade and had no role in or over Al Qaeda matters,²⁶¹ there was no basis for the *Shura* Council to discuss his activities.

53. ██████ claim that he heard in February 2014 that Mr Al Hassan was in Iyad’s camps in Mali is contradicted by his evidence that he “expected” that Mr Al Hassan was in Oubari, Libya.²⁶² Mr Al Hassan’s presence in Oubari at this time is corroborated by ██████ and ██████, who both testified that Mr Al Hassan worked there in a pharmacy in February 2014.²⁶³ Given the birthdates of Mr Al Hassan’s children (March and June 2014),²⁶⁴ it is reasonable to conclude that he was living with his family in Oubari since at least May 2013. ██████ gave

250 ██████ p. 44, lines 17-18 (Conf) (emphasis added).
 251 ██████ p. 82, line 14 (Conf) (emphasis added).
 252 ██████ p. 82, lines 14-15 (Conf).
 253 ██████ p. 82, lines 23-24 (Conf).
 254 ██████ p. 25, lines 3-4 (Conf).
 255 ██████ p. 55, line 24 – p. 56, line 1 (Conf).
 256 ██████ p. 37, line 23 – p. 38, line 1 (Conf).
 257 ██████ p. 31, lines 22-25 (Conf).
 258 ██████ p. 12, lines 23-25 (Conf).
 259 ██████ p. 11, lines 11-18 (Conf).
 260 ██████ p. 9, line 13 – p. 10, line 21; p. 18, line 16 – p. 19, line 11 (Conf).
 261 ██████ p. 34, lines 1-7 (Conf).
 262 ██████ p. 71, lines 11-14 (Conf).
 263 ██████

²⁶⁴ [MLI-D28-0005-3129](#), [MLI-D28-0005-3133](#).

evidence that Mr Al Hassan returned to Mali later in 2014, at ██████'s suggestion, to join the HCUA.²⁶⁵ Multiple witnesses confirmed that Mr Al Hassan joined the HCUA, then the CJA, and that any contemporaneous involvement with Iyad Ag Ghaly or Ansar Dine would not have been tolerated.²⁶⁶

54. The Claim That Mr Al Hassan Drove Through a Gate: ██████ claim that Mr Al Hassan drove through a closed metal gate in front of the airport and forced it open on the day of the MNLA's departure to demonstrate the absence of mines on the road²⁶⁷ is physically impossible and implausible. There were no closed gates blocking the road in the area pinpointed by ██████²⁶⁸ ██████ testified that an MNLA member ██████ ██████ was sick that day and brought to the hospital.²⁶⁹ According to the CDRs, the number attributed to Mr Al Hassan was in contact with persons from the hospital and ██████ ██████²⁷⁰ ██████ also viewed Prosecution videos of Talha in the same car he described Mr Al Hassan as driving ("a white Toyota")²⁷¹ in front of a gate at the energy plant next to the airport.²⁷² ██████ had, on prior occasions, confused Talha for Mr Al Hassan, believing they looked alike.²⁷³ ██████ also acknowledged he did not know why the car was there and was speculating²⁷⁴ and that his "memory should not be taken as cast in stone. I might have think - I might remember things differently".²⁷⁵ It is reasonable to conclude that in his search for examples of Mr Al Hassan in a "leadership role", ██████ conflated video images of Talha driving a white Toyota on this day with a memory of seeing Mr Al Hassan near the airport road (which would have been the case if he was taking MNLA members to the hospital) or hearing that he had been helpful on that day. Conversely, given that Mr Al Hassan was allegedly driving

²⁶⁵ ██████

²⁶⁶ P-1086: T-122, p. 50, lines 5-15; p. 51, lines 6-15; p. 55, line 18 – p. 56, line 3 (Conf); ██████ p. 23, line 2 – p. 25, line 4 (Conf) (discussing nationalist groups created after January 2013 that cooperated, and attempted to negotiate for peace, with Bamako as well as Mr Al Hassan's interest and role in creating such a splinter group); D-0627: [MLI-D28-0006-5699-R01](#) at 5703-R01, para. 28; D-0628: [MLI-D28-0003-2049-R01](#) at 2050, paras 5-9; D-0534: [MLI-D28-0006-4188-R01](#) at 4197-R01, lines 1-23; at 4199, lines 29-30.

²⁶⁷ ██████ p. 6, lines 20-24 (Conf).

²⁶⁸ ██████ ██████; ██████ p. 70, lines 20-21 (Conf); D-0211: T-190, p. 52, lines 2-25 (Conf); D-0202: T-202, p. 81, line 3 – p. 82, line 2 (Conf).

²⁶⁹ ██████

²⁷⁰ For contact with *Aide soignant*, see [MLI-OTP-0031-0818](#), line 4098. For contact with ██████ see [MLI-OTP-0031-0818](#), lines 1522-1524.

²⁷¹ ██████ p. 71, line 6 (Conf).

²⁷² ██████ p. 13, line 5 – p. 16, line 20 (Conf) (Video: [MLI-OTP-0018-0350](#), identifying Talha at 00:00:06:00 mark, identifying a white Toyota parked near a fence, 00:00:10:12 and at 00:00:12:16, and a white police car at 00:00:10:05). ██████ ██████ ██████

²⁷³ ██████ p. 76, line 9 – p. 77, line 9 (Conf).

²⁷⁴ ██████ p. 75, lines 8-16 (Conf).

²⁷⁵ ██████ p. 12, lines 9- 14 (Conf).

a normal police car²⁷⁶ and not an armoured vehicle, and the MNLA laid no mines or explosives in Timbuktu,²⁷⁷ it is completely implausible to believe Mr Al Hassan drove at the forefront of all (trained) soldiers directly through a seemingly closed gate²⁷⁸ to check for mines on the road. 55. In any case, when pressed to explain what transpired, ██████ testified that the “crowd” would have pushed through the gate irrespective of whether Mr Al Hassan drove through or not. The sole effect of his alleged contribution, if any, was to potentially save lives if mines had been present.²⁷⁹ The evidence is not only flawed but also irrelevant to the charged common purpose.

56. **Mr Al Hassan’s Alleged Wahabbist Beliefs Before 2012:** ██████ assertions on this point are implausible and intrinsically incoherent. He was unable to explain why Mr Al Hassan allegedly “believes that you cannot shave your beard, although he didn’t have -- although there was no beard.”²⁸⁰ Nor could ██████ explain the discrepancy between his assertion that Mr Al Hassan had allegedly displayed Wahabbist beliefs towards music in 2006 and evidence that Mr Al Hassan had engaged in conduct that directly contravened such beliefs in the subsequent years. Specifically, ██████ acknowledged that a person who adhered to Wahabbist beliefs would not listen to secular music, dance, or sell tickets to concerts playing secular music.²⁸¹ He could not reconcile his testimony with evidence Mr Al Hassan had sold tickets to the Festival of the Desert, danced, and attended music concerts during the same period. Critically, unlike ██████ and a host of local notables, Mr Al Hassan was not a member of the *Union des jeunes musulmans du Mali* and played no role in pre-2012 initiatives related to the *Assemblée des moeurs*. Given that ██████ was unable to name Mr Al Hassan’s siblings or friends pre-2012,²⁸² the more reasonable conclusion is that ██████ evidence is based on speculation rather than actual familiarity with Mr Al Hassan.

2.1.4 ██████ *Has a Demonstrated Record of Providing Materially Incorrect Information*

57. ██████ propensity of providing false or misleading information or omitting key details persisted during his testimony in this case. Although the Defence was able to identify some of these instances through ██████ it was never given all ██████ with ██████ ██████²⁸³ The Defence’s ability to confront

²⁷⁶ ██████ p. 71, lines 5-6 (Conf).

²⁷⁷ ██████ p. 75, lines 22-23 (Conf).

²⁷⁸ ██████ p. 75, lines 3-6 (Conf).

²⁷⁹ ██████ p. 74, line 25 – p. 75, line 6 (Conf).

²⁸⁰ ██████ p. 22, lines 1-2 (Conf).

²⁸¹ ██████ p. 82, lines 5-14; p. 83, lines 13-20 (Conf).

²⁸² ██████ p. 42, line 17 – p. 45, line 9 (Conf).

²⁸³ [ICC-01/12-01/18-1482-Conf-Red](#), para. 6.

██████████ with contradictions was also hampered by extensive redactions.²⁸⁴ The sample below nonetheless illustrates ██████████ untruthful evidence in areas supporting the Prosecution’s case.

58. During initial interviews with the ██████████ authorities, ██████████ withheld evidence concerning the identities and role of “soldiers” or “secret agents” in the groups, focusing only on known leaders and *emirs*.²⁸⁵ When meeting Prosecution investigators, he described his detention conditions as “appalling”, leaving out ██████████ to shop and purchase food.²⁸⁶ On day five, he told Prosecution interviewers that he had not been fully truthful with the ██████████.²⁸⁷ When testifying, he explained that he had withheld information during these interviews due to “sensitivity of the information” and to protect persons who were still at liberty.²⁸⁸ He also explained that “sometimes, I give half the truth ... during one interrogation and the other half in another interrogation” and “I did this on ... purpose.”²⁸⁹

59. After ██████████ he understood he could “decline to meet if I think that it’s going to do me more harm ██████████”,²⁹⁰ but he “never had a reason to decline the meeting.”²⁹¹ During these meetings, ██████████ withheld information which he did not believe “served” the Prosecution’s case.²⁹² If he knew interviews would be spread over days, he reserved parts of the truth until the “last session”.²⁹³ He advised ██████████ to adopt the same stance, telling him: “Do not meet these people, unless they ensure that ██████████. Have you understood? [...] Because they want something for free. Well they’ve got money. They want something for free, namely the work of others. They want to have free intelligence without spending anything. That makes me so angry, so drop them [...] You have to drop them because they are not giving a good counterpart ██████████. Drop them, do nothing for them”.²⁹⁴ While advising ██████████ not to cooperate, ██████████ simultaneously told the Prosecution it needed him to speak to ██████████ to secure his cooperation.²⁹⁵

²⁸⁴ ██████████ p. 20, line 1 - p. 21, line, 17 (Conf): the ██████████ were redacted to such an extent that even the name “Hassan” (and thus references to Mr Al Hassan) were redacted from the Defence.

²⁸⁵ ██████████ p. 23, line 25 – p. 24, line 6 (Conf).

²⁸⁶ ██████████ p. 40, lines 17-24 (Conf).

²⁸⁷ ██████████ p. 17, lines 16-24 (Conf).

²⁸⁸ ██████████ p. 17, line 16 – p. 18, line 7 (Conf).

²⁸⁹ ██████████ p. 22, lines 10-17 (Conf).

²⁹⁰ ██████████ p. 45, lines 11-13; p. 46, lines 12-17 (Conf).

²⁹¹ ██████████ p. 47, line 5 (Conf).

²⁹² ██████████ p. 77, line 22 – p. 78, line 4 (Conf).

²⁹³ ██████████ p. 79, lines 1-4 (Conf).

²⁹⁴ ██████████ p. 49, line 21 – p. 51, line 2 (Conf).

²⁹⁵ ██████████ p. 42, line 7 – p. 44, line 19 (Conf).

60. [REDACTED] continued to provide untruthful, self-serving information while testifying under oath to this Chamber. He even acknowledged that “[w]ith regard to sincerity, I believe that this is an extraordinary quality, and that nobody can ascertain that they are 100 per cent sincere -- or nobody can claim that they are 100 per cent sincere”,²⁹⁶ and that “I have said the truth that I believe to be the truth, even if it does not correspond to reality. I say the truth that I see as the truth because it is the -- what I deem to be conclusive probability and also because I have evidence that can assist the Chamber when my testimony is compared to that of others. So I believed that it was important to say those things that I believed to be the truth, even if I was not 100 per cent sure.”²⁹⁷

61. There are multiple examples of [REDACTED] providing “insincere” (*i.e.* untruthful) evidence. [REDACTED] testified that he had tried to convince [REDACTED] to “stay away” from the group²⁹⁸ and further, that he did not recall ever requesting or suggesting that [REDACTED] contact group members or convey a message to them from [REDACTED].²⁹⁹ This evidence is controverted by [REDACTED]. After [REDACTED] guessed the Prosecution’s investigations were focusing on Mohamed Moussa,³⁰⁰ [REDACTED] tell Mohamed Moussa to “take care” because he was a “person of interest”.³⁰¹ [REDACTED] also asked whether [REDACTED] had “heard any news from our friends, Ansar Dine”.³⁰² [REDACTED] testified that [REDACTED] was “not aware of Al Qaeda”³⁰³ and had never worked as [REDACTED] for Al Qaeda,³⁰⁴ then later claimed that [REDACTED] had been conducting missions for Al Qaeda and carrying out a mission for the *emir* of Al Qaeda, [REDACTED], while he was in communication with [REDACTED].³⁰⁵ When [REDACTED] was reminded that he had told the Prosecution, [REDACTED], that [REDACTED] had separated from the groups and had not worked for them after 2012, [REDACTED] said that he only learned of [REDACTED] interactions with Al Qaeda after [REDACTED].³⁰⁶ This is controverted by a [REDACTED], in which [REDACTED] told [REDACTED] that [REDACTED] had arranged for [REDACTED] to be brought to him [REDACTED].³⁰⁷ According to [REDACTED] when [REDACTED] mentioned this, [REDACTED]

²⁹⁶ [REDACTED] p. 65, lines 20-22 (Conf).

²⁹⁷ [REDACTED] p. 66, lines 1-6 (Conf).

²⁹⁸ [REDACTED] p. 60, lines 11-12 (Conf).

²⁹⁹ [REDACTED] p. 89, line 22 – p. 90, line 2 (Conf).

³⁰⁰ [REDACTED] p. 92, lines 12-16 (Conf).

³⁰¹ [REDACTED] p. 72, lines 5-15 (Conf).

³⁰² [REDACTED] p. 75, lines 10-16 (Conf).

³⁰³ [REDACTED] p. 42, line 12 (Conf).

³⁰⁴ [REDACTED] p. 42, lines 8-16 (Conf).

³⁰⁵ [REDACTED] p. 35, lines 2-24; p. 40, lines, 20-25 (Conf).

³⁰⁶ [REDACTED] p. 33, lines 5-21 (Conf).

³⁰⁷ [REDACTED] p. 34, line 1 – p. 37, line 11 (Conf).

Abou Hamman,³²² whereas ██████████ demonstrate it was ██████████ himself who told ██████████ not to speak to the Prosecution.³²³ ██████████ simply cannot be relied upon to establish or corroborate the Prosecution's charges.

2.2 P-0099

64. P-0099 has a troubled psyche and apparently lost the ability to distinguish between persons, their responsibilities, and time periods.³²⁴ P-0099 conceded that his memory in "2014 was more fresh than it is today".³²⁵ P-0099 has no probative insight into the leadership structure. He testified that he could "confirm 100%" that Talha was the head of the "morality police".³²⁶ He described Khaled as "Mauritanian"³²⁷ and believed he occupied a subordinate role in the Police.³²⁸ He could not remember why he asserted that "Khaled" was a Chief in 2014.³²⁹ His evidence seems to refer to Khaled the Mauritanian (who was not an *emir*) and not Khaled Al Sahraoui (the *emir* of the Police). His testimony that he accompanied "Khaled" to Diabaly in late December/early January³³⁰ can be given no weight concerning the Chamber's assessment as to Khaled Al Sahraoui's presence in Timbuktu or position *vis-à-vis* Mr Al Hassan at this point, particularly as there are videos of Khaled Al Sahraoui in Timbuktu in early January. P-0099's confusion regarding Khaled clearly affected his memory concerning Mr Al Hassan's role in the Police, which was also improperly influenced and tainted through Rule 74 Counsel showing P-0099 a photograph of Mr Al Hassan, which P-0099 later discussed with ██████████³³¹ The publicly available photo is most likely from the charging sheet, which describes Mr Al Hassan as the *de facto* Chief of the Police.³³²

65. P-0099's evidence was also impacted by his psychological problems³³³ and incentive to incriminate the Accused, ██████████
██████████ P-0099's lack of probity is demonstrated by his testimony that the Islamists never asked him about contacts with the ██████████³³⁴ when 2012 records demonstrate the

³²² ██████████

³²³ See *supra* para. 58.

³²⁴ OTP Final Trial Brief, para. 116.

³²⁵ P-0099: T-147, p. 41, line 8 (Conf).

³²⁶ P-0099: T-147, p. 47, lines 6-8 (Conf).

³²⁷ P-0099: T-147 (FRA), p. 23, lines 16-18 (Conf).

³²⁸ P-0099: T-147, p. 25, lines 7-9 (Conf) ("[b]ut when I hear talk about his successor of Mauritanian origin by the name of Khalid, I believe that the successor of Hassan when Hassan replaced Adama").

³²⁹ P-0099: T-147, p. 41, lines 10-11 (Conf).

³³⁰ P-0099: T-148, p. 25, lines 17-20 (Conf).

³³¹ P-0099: T-146, p. 30, lines 7-9 (Conf); T-147, p. 45, lines 2-12; p. 80, line 21 – p. 81, line 2 (Conf).

³³² [MLI-D28-0005-7603](#) at 7603.

³³³ P-0099: T-147, p. 92, lines 1-12 (Conf); T-148, p. 18, line 10 – p. 19, line 3 (Conf).

³³⁴ P-0099: T-148, p. 15, lines 22-24 (Conf).

opposite.³³⁵ P-0099 also displayed self-serving tendencies, testifying in ██████████ that he never joined Al Qaeda.³³⁶ After interrogation by ██████████ authorities, he testified that ██████████ anyone they interrogated “fearful” of stating exculpatory information, even if giving evidence to other authorities in different proceedings.³³⁷

2.3 P-0626

66. No probative weight can be attached to P-0626’s testimony. P-0626, ██████████ ██████████ but was treated as a witness in exchange for his evidence against Mr Al Hassan. Apart from the advantage of avoiding ICC charges, P-0626’s evidence changed to benefit the Prosecution after P-0626 received significant help concerning his transfer away from torture at the DGSE, which he credited to the Prosecution.³³⁸ The self-serving nature of his testimony is reflected by his avowal that he performed ██████████³³⁹ ██████████ ██████████³⁴⁰ and his claim to have no memory of ██████████ ██████████³⁴¹ There is thus 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 Tribunal.

67. Prosecution investigators led P-0626 to speculate through leading questions. P-0626 was never present and never participated in police investigations, never saw police reports being written,³⁴² and never read them in 2012.³⁴³ The Prosecution still relied on these reports extensively to direct P-0626 to speculate. In November 2018, the investigators showed P-0626 a report, twice telling him that it “bears the stamp of the Islamic Police”.³⁴⁴ He did not know the handwriting or the signature and had not seen them before, assuming, from the stamp, they were from the Police.³⁴⁵ On 17 December 2018, the investigators showed P-0626 a document with the same stamp. P-0626 did not recognise the signature,³⁴⁶ and had no “opinion” as to the report’s origin. When prompted that he had previously said Mr Al Hassan questioned people and compiled reports (even though P-0626 never witnessed this)³⁴⁷ and asked if he had ever

³³⁵ P-0099: T-148, p. 17, line 21 – p. 18, line 8 (Conf).

³³⁶ P-0099: T-147, p. 61, lines 10-19 (Conf).

³³⁷ P-0099: T-148, p. 45, line 17 – p. 46, line 21 (Conf).

³³⁸ P-0626: T-144, p. 31, line 20 – p. 42, line 5 (Conf).

³³⁹ P-0626: T-141, p. 39, lines 5-8, lines 24-25 (Conf).

³⁴⁰ P-0626: T-141, p. 41, line 21 – p. 42, line 2 (Conf).

³⁴¹ P-0626: T-144, p. 64, lines 7-8 (Conf).

³⁴² P-0626: T-144, p. 80, lines 12-18 (Conf).

³⁴³ P-0626: T-144, p. 71, lines 19-23 (Conf).

³⁴⁴ P-0626: T-144, p. 73, lines 6-7; p. 74, lines 16-21 (Conf).

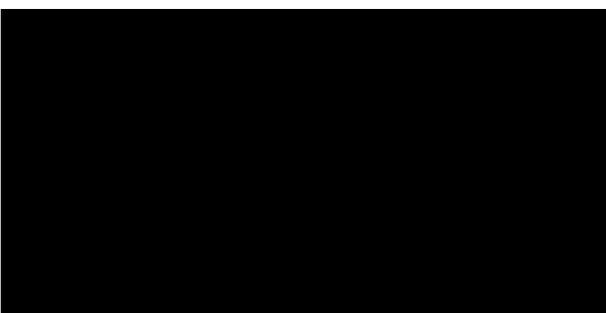
³⁴⁵ P-0626: T-144, p. 73, lines 6-17 (Conf).

³⁴⁶ P-0626: T-144, p. 75, line 11 – p. 76, line 3 (Conf).

³⁴⁷ P-0626: T-142, p. 32, line 4 – p. 33, line 5 (Conf).

seen anyone else sign reports,³⁴⁸ P-0626 stated that “maybe”, he believed “in all likelihood” it was Mr Al Hassan’s signature.³⁴⁹ When testifying, P-0626 agreed that he reached this conclusion through an assumption.³⁵⁰ This assumption led to P-0626’s assumption that Mr Al Hassan conducted investigations,³⁵¹ but it was simply a guess based on a guess.

68. P-0626’s evidence was also irrevocably impaired by his detention experience. His opinions were heavily predicated on the slivers of memory available to him when questioned at the DGSE. He pinned actions and responsibilities on Mr Al Hassan because it was the only name and image in the forefront of his mind. This, in turn, was because Mr Al Hassan was the name and image on which the Prosecution focused during its interviews and preparations sessions with him. The only Police members he could name were Mr Al Hassan, a “Bombali”, and a “Khaled” who he thought was Mauritanian.³⁵² He only remembered the name “Adama” when asked about it in cross-examination in 2021, but had no memory of his functions or those of Khaled.³⁵³ He also had no memory of Adama ever being present at the Tribunal, even though the Chamber has videos reflecting Adama’s presence.³⁵⁴ Although there were days when police officers (not Mr Al Hassan) came to the Tribunal, he did not know their names or who they were.³⁵⁵ Like ██████████, he claimed under oath that he could not remember the names of any of Houka Houka’s relatives in the Police.³⁵⁶ Given that ██████████ ██████████, his evidence is simply not plausible for a cognitively-unimpaired witness. When asked about ██████████ functions, he testified he did not know these functions “[a]nd if I knew, I forgot. I tried to remember. However, I do not remember anything about him”.³⁵⁷ P-0626 was in contact with ██████████ ██████████ (regular liaison), but was unable to remember if they had discussed the events of 2012 during these contacts.³⁵⁸ P-0626 conceded they had discussed ██████████, but could not remember the content of these



conversations.³⁵⁹ He claimed not to remember key details throughout his evidence.³⁶⁰ These extensive memory gaps are deliberate or due to impaired cognition: Either P-0626 provided self-serving evidence to protect himself and [REDACTED] (while blaming Mr Al Hassan) or his memories are irretrievably impaired due to the continuing effects of interrogations, which occurred while he was experiencing severe forms of uncontrollable stress. In either scenario, his evidence cannot be used to establish Mr Al Hassan’s responsibility.

3 The Prosecution’s Invalid Interpretation of Individual Responsibility

69. The Prosecution’s case stems from the premise that crimes were committed by alleged members of an amorphous “group”, and that since Mr Al Hassan participated in activities related to this group, he is responsible for these crimes. There are, however, two major flaws with this approach. First, the Prosecution has not established that the alleged crimes can be imputed to a common purpose shared by the group. It ignored an abundance of evidence from its own witnesses to the contrary.³⁶¹ Second, the Prosecution has not demonstrated any “normative and causal link” between Mr Al Hassan’s activities and the commission of these charged crimes by individual members.³⁶² The Prosecution fails to appreciate that the Rome Statute does not criminalise membership of a criminal organisation or group.³⁶³

70. Articles 25(3)(c) and (d) require the Prosecution to demonstrate a concrete impact: *i.e.* the defendant must have purposefully facilitated the commission of the crime or knowingly and intentionally contributed to its commission. The plain meaning of “facilitate” is to help bring about³⁶⁴ and “contribute” is to “play a significant part in making something happen”.³⁶⁵ A clearly defined degree of responsibility is necessary to ensure the principle of legality and protects defendants against arbitrary applications of the Statute. As such, the *ad hoc* tribunals

³⁶¹ While using P-0099 for incriminating purposes, it has testimonial evidence that incidents committed by *Hesbah* members were either separate from the group’s policy or indirectly contrary to policy. See T-147, p. 51, lines 4-13 (Conf). P-0099 also complained about divisions and differences in the groups, including the presence of too many moderate/non-jihadists elements due to the presence of Ansar Dine: [MLI-D28-0005-7588](#).

³⁶² See Dissenting Opinion of Judge Fernandez, [ICC-01/04-01/10-514](#), p. 33, para. 12 (arguing that “neutral” contributions could be weeded out by “analysing the normative and causal links between the contribution and the crime”). See also [Said Confirmation Decision](#), para. 45 (referring to the need to “address the issue of the individual criminal responsibility of the suspect by looking at his alleged contributions in respect of each of the charged crimes and at the evidence cited in support of those allegations”).

³⁶³ See e.g. [Mbarushimana Confirmation Decision](#), paras 276-277 (finding against group liability and holding that it would be inappropriate were liability to be incurred for *any* contribution to a group crime).

³⁶⁴ “[facilitate](#).” *Merriam-Webster.com* (2023).

³⁶⁵ “[contribute](#).” *Merriam-Webster.com* (2023).

have all concluded that such concrete impact requires at a minimum either a substantial contribution (when combined with proof the defendant intended to contribute to a criminal purpose) or a significant contribution in respect of aiding and abetting.³⁶⁶ These thresholds arose from the need to establish an objective benchmark for adjudicating cases in a manner compliant with general criminal law principles. In line with Article 21(2) of the Statute, these degrees of contribution were adopted as the minimum thresholds in *Mbarushimana*,³⁶⁷ and applied in *Katanga*³⁶⁸ and *Ruto & Sang*.³⁶⁹ There are persuasive reasons to conclude the *Bemba et al* judgment did not eliminate the obligation to prove, at the very least, a substantial contribution for Article 25(3)(c) and a significant contribution for Article 25(3)(d).³⁷⁰ Post *Bemba et al*, Pre-Trial Chambers have also continued to employ benchmarks for differentiating between actions that fail to satisfy the normative and causal link required for individual criminality responsibility. They have thus rejected contributions which are “flimsy”,³⁷¹ “inconsistent or otherwise inadequate”,³⁷² or “insufficient”.³⁷³ This nexus was not satisfied in cases where the accused’s only role in connection with the arrest and detention of an individual was to order the individual to leave his cell and go towards the person who later interrogated him.³⁷⁴ Similarly, the Pre-Trial Chamber II found that Said’s role in allegedly recruiting soldiers who later worked at a facility that tortured people was not sufficient due to the absence of proof that this action helped bring about the commission of crimes.³⁷⁵ These examples demonstrate the Prosecution’s obligation to show the accused played a tangible and intentional role in bringing about a criminal result. As explained by Kai Ambos, “normative considerations” dictate that accomplice liability should “focus on the quality of the act of assistance/contribution with a view to exclude the apparently innocent (neutral, daily etc.) contributions from the scope of criminality”; contributions must help bring about or increase the level of harm.³⁷⁶ This is precisely the missing link in this case. This is because the

³⁶⁶ ICTY, *Gotovina & Markač AJ*, para. 149; ICTR, *Muhimana AJ*, para. 189; ECCC, *Duch TJ*, paras 514-516; SCSL, *Taylor AJ*, paras 390-392.

³⁶⁷ *Mbarushimana Confirmation Decision*, paras 279-284, fns. 662, 668, 670, 673.

³⁶⁸ *Katanga TJ*, paras 1472, 1632-1636; 1670-1681.

³⁶⁹ *Ruto & Sang Acquittal Decision*, paras 69, 136, 142.

³⁷⁰ M. Ventura, *Aiding and Abetting and the International Criminal Court’s Bemba et al. Case: The ICC Trial and Appeals Chamber Consider Article 25(3)(c) of the Rome Statute* (2020) 20(6) *International Criminal Law Review* 1138-1166, pp. 8-14.

³⁷¹ *Said Confirmation Decision*, para. 49.

³⁷² *Said Confirmation Decision*, para. 49.

³⁷³ *Said Confirmation Decision*, para. 128.

³⁷⁴ *Said Confirmation Decision*, para. 130.

³⁷⁵ *Said Confirmation Decision*, para. 136.

³⁷⁶ K. Ambos, “Evacuation of Civilian Populations and Criminal Complicity: A Critical Appraisal of the February 2017 Report of the Syria Commission of Inquiry”, *EJIL Talk!* (24 May 2017).

Prosecution's Brief is based on conduct falling outside the scope of Article 25(3), *i.e.* conduct not facilitating or contributing to the commission of charged crimes, or uninformed and unintentional conduct.

3.1 The Prosecution's Reliance on Conduct that Neither Facilitated nor Contributed to the Charged Crimes

71. The Prosecution has ignored the wealth of evidence that the Islamic Police functioned, for the most part, like a typical police force: receiving complaints, regulating traffic, and ensuring civilian security.³⁷⁷ Police actions concerning the application of *Shari'a* were limited, occurred under the Tribunal's direct command and *Hesbah's* supervision, and had no nexus to an armed conflict.³⁷⁸

72. Since Article 25(3)(c) and (d) require a nexus to the commission of specific charged crimes, the Chamber must focus on the proved facts pertaining to these alleged crimes. As explained by ██████ when Ansar Dine first established institutions, there was a distinction between religious-oriented organs and those relating to standard civilian governance and security: whereas *Hesbah* and the Islamic Tribunal fell into the former category, the Islamic Police were in the latter.³⁷⁹ The Police had no responsibility for formulating religious rules. Nor was it within its remit to apply these rules when on patrols: ██████ even issued a *fatwa* against a member of the Police for improperly attempting to do so.³⁸⁰ This distinction is borne out by witness testimony that attributes alleged exactions to persons working for Mohamed Moussa (*i.e. Hesbah*)³⁸¹ and specifies that such actions were not linked to Ansar Dine's rules or policies.³⁸² Mr Al Hassan was also "not involved in consultations about the administration and

³⁷⁷ **D-0315**: T-185, p. 37, lines 6-12 (Conf); **P-0654**: T-128, p. 19, lines 2-4; p. 31, lines 11-19 (Conf); **P-0065**: T-038, p. 48, lines 6-14; T-046, p. 53, lines 17-24 (Conf); **P-0099**: T-147, p. 53, lines 1-6 (Conf).

³⁷⁸ See K. Fortin, *The Accountability of Armed Groups under Human Rights Law* (OUP 2017), p. 50 ("international humanitarian law will generally only apply to the aspects of the law enforcement paradigm which are connected to the armed conflict [...] Articles 5 and 6 of Additional Protocol II only provide protection for individuals who have been arrested, detained, interned, or prosecuted as a result of their attitude to the armed conflict"). Fortin further describe examples of conduct falling outside the nexus element as "the ability to travel to work, move around freely, access health care, express an opinion freely, gather in public places and be protected from common crime" (p. 51). See also E. Heffes, "[Rebellious Detention: Reflections on the ICRC Study on Detention by Non-State Armed Groups](#)", Articles of War, Lieber Institute, West Point (17 April 2023) ("[f]urthermore, some detentions may be grounded in the commission of 'common' crimes with no *nexus* to the conflict, 'such as paedophilia, marital rape by a civilian or the beating of a child by a parent'. In these cases, I have argued that 'a judicial authority established by an NSAG may issue an arrest warrant, resulting in the deprivation of liberty of an individual, and it would be difficult to post that this is indeed regulated by IHL'") (italics in original) (internal citations omitted).

³⁷⁹ ██████

³⁸⁰ ██████

³⁸¹ Defence Final Trial Brief, paras 514, 596.

³⁸² ██████ **P-0099**: T-147, p. 51, lines 4-18 (Conf) (says that there was a lot of confusion – some people acting without receiving orders and some disobeying orders).

76. In terms of the accusation that Mr Al Hassan brought individuals to the Tribunal, such actions occurred pursuant to orders from the Tribunal,³⁹¹ under the supervision of the Police *emir*, who also performed this task.³⁹² There is no evidence that Mr Al Hassan used force in executing this task; that the persons he brought to the Tribunal were restrained or brought against their will; that he was armed; or that he had the authority to release them. Evidence that he took steps to bring about the release of individuals by alerting those with power to do so does not satisfy the threshold for a *post facto* contribution,³⁹³ but does show that he lacked the intent to contribute to a criminal purpose.³⁹⁴

3.2 The Prosecution's Reliance on Uninformed and Non-Intentional Conduct

77. The Prosecution has failed to establish that, at the specific point Mr Al Hassan engaged in a particular action contributing to a particular incident, he was aware he was helping to facilitate the commission of a crime and that he intended his contribution to do so.

78. The Prosecution has asserted that Mr Al Hassan resided in [REDACTED] during the period of the charges.³⁹⁵ None of the charged incidents took place in [REDACTED]. The Prosecution has not demonstrated that he was aware of the goings-on in Abaradjou, Sankoré, or Koiratao, particularly those occurring within different ethnic communities. Mr Al Hassan was also not privy to discussions within Ansar Dine, or between Ansar Dine and the local notables concerning the interpretation and application of *Shari'a*. He did not have a role in crisis committee meetings.³⁹⁶ Though the Prosecution has incorrectly claimed he attended the August 2012 meeting,³⁹⁷ neither the meeting notes³⁹⁸ nor the Prosecution's cited extracts from Mr Al Hassan's statements demonstrate his presence at this meeting.³⁹⁹ On the contrary, [REDACTED] testified that Mr Al Hassan was not present during this meeting.⁴⁰⁰ The only meeting which Mr Al Hassan is alleged to have attended occurred at the end of the charged time period.

³⁹¹ Even [REDACTED] confirmed that this would occur after the judges called the police. *See* [REDACTED].

³⁹² **D-0202**: T-204, p. 20, lines 13-21 (Conf); [REDACTED].

³⁹³ *Delalić et al. AJ*, paras 357-358. *Cf.* OTP Final Trial Brief, para. 199.

³⁹⁴ *Kvočka TJ*, para. 311.

³⁹⁵ OTP Final Trial Brief, para. 76.

³⁹⁶ [REDACTED]

³⁹⁷ OTP Final Trial Brief, para. 140.

³⁹⁸ [MLI-OTP-0030-1044-R01](#), at 1067-1070.

³⁹⁹ Mr Al Hassan told investigators he was present at only one such meeting, where he acted as an interpreter. *See* **P-0398**: [MLI-OTP-0051-0557](#) at 0562, lines 155-163.

⁴⁰⁰ [REDACTED]

79. Most cases at the Islamic Tribunal were of the type regulated by *Qādis* prior to 2012.⁴⁰¹ Mr Al Hassan's alleged compliance with Tribunal judgments, including the flogging at Youbatao where he was not the person in charge,⁴⁰² does not attract individual criminal responsibility under Articles 25(3)(c) or (d).⁴⁰³ Mr Al Hassan had no way of determining the outcome of such proceedings at the time they commenced. While the Prosecution has attempted to wring some mileage out of a script where the speaker refers to the amputation, this interview post-dated the amputation and does not demonstrate Mr Al Hassan was aware the Tribunal would order amputations before this incident occurred. The speaker describes clear limitations of the Police's authority, including an inability to regulate social cases, cases concerning magic, theft, adultery, or consumption of alcohol; it was instead required to transmit them to the Tribunal.⁴⁰⁴ No inferences can be drawn from the fact that the speaker did not criticise the amputation while being filmed reading a script under the watchful eyes of Al Qaeda leaders.⁴⁰⁵ There is no evidence that Mr Al Hassan subsequently took intentional steps to bring about such a result. All subsequent theft cases involving the Police were initiated by members of the local population, and not through independent Police action.⁴⁰⁶ These complaints were also framed in such a way as to avoid the criteria for imposing the *hadd*. For example, in the 18 October 2012 theft case, the defendants were accused of stealing cards described as public property (which does not attract the *hadd*).⁴⁰⁷ In the 19 November 2012 case, the defendants were accused of stealing an amount insufficient to impose the *hadd*.⁴⁰⁸ ██████████'s case was not framed or judged as a theft case at all but as a betrayal of trust, which would not result in the *hadd*.⁴⁰⁹ ██████████'s case was initiated by the Malian authorities, who

⁴⁰¹ Defence Final Trial Brief, paras 3, 327.

⁴⁰² Defence Final Trial Brief, para. 523.

⁴⁰³ See *Kvočka TJ*, para. 311 (“the threshold required to impute criminal responsibility to a mid or low level participant in a joint criminal enterprise as an aider and abettor or co-perpetrator of such an enterprise normally requires a more substantial level of participation than simply following orders to perform some low level function in the criminal endeavor on a single occasion”).

⁴⁰⁴ [MLI-OTP-0078-4629](#), at 4631, lines 26-28; at 4632, lines 54-56.

⁴⁰⁵ *Delalić et al. AJ*, para. 359.

⁴⁰⁶ *Case of ██████████*, Judgment of the Islamic Tribunal. See Original: [MLI-OTP-0001-7437](#); Translation (ENG): [MLI-OTP-0078-0212](#) at 0213 (Reference to “Plaintiff”), Islamic Police report, [MLI-OTP-0001-7552](#), Translation (ENG): [MLI-OTP-0034-0179](#), p. 0180; *Case of ██████████*, Judgment of the Islamic Tribunal. See Original: [MLI-OTP-0001-7434](#), Translation (ENG): [MLI-OTP-0069-4112](#) at 4113-4114, Islamic Police report, [MLI-OTP-0001-7554](#), Translation (ENG): [MLI-OTP-0052-0107](#) at 0108 (“██████████ lodged a complaint...”); *Case of ██████████*, Judgment of the Islamic Tribunal. See Original: [MLI-OTP-0001-7413](#), Translation (ENG): [MLI-OTP-0077-2378](#), p. 2380, Islamic Police report, [MLI-OTP-0001-7538](#), Translation, [MLI-OTP-0034-0173](#), p. 0174 (“██████████ complained that his shop ... was robbed”).

⁴⁰⁷ [MLI-OTP-0034-0171](#) at 0172.

⁴⁰⁸ [MLI-OTP-0034-0179](#) at 0180.

⁴⁰⁹ [MLI-OTP-0052-0107](#) at 0108.

arrested and seemingly tortured ██████'s accomplice into confessing.⁴¹⁰ Since the confession was inadmissible and the police report contained a denial, the conditions for imposing the *hadd* were not fulfilled.⁴¹¹ Finally, the Prosecution relied on ██████'s evidence that, in January 2013, Mr Al Hassan “asked some police officers to coordinate so that an Arab man belonging to the Ansar Dine/AQIM groups who had stolen some weapons from the police ‘could escape’ from prison, and avoid an amputation.”⁴¹² This shows that after the Tribunal ordered Dédéou’s amputation, Mr Al Hassan did not participate in any cases that would result in an amputation. Police actions also served to reduce harm, by reporting elements that would ensure the *hadd* was averted, and where possible, trying to help the accused escape.

80. The same trajectory applies to adultery cases. Mr Al Hassan had no power to stop the transmission of cases to the Tribunal, and there is no proof he played any role in encouraging locals to file such complaints. His limited involvement did, however, serve to reduce the risk of harm. Contrary to the Prosecution’s assertions,⁴¹³ ██████ evidence, read in context, demonstrates this point. The case concerned a woman who had committed adultery with a married man. It was not a rape case⁴¹⁴ and was initiated through a complaint filed by the woman.⁴¹⁵ Since the case was initiated through a complaint concerning a *hudud* crime, the Police were obliged to refer it to the Tribunal. The actions attributed to Mr Al Hassan – aiding the respondent in proving he was a “slave” – helped reduce the harm the respondent was likely to suffer. Mr Al Hassan’s actions thus fall within the class of non-criminal contributions described by Kai Ambos.⁴¹⁶

⁴¹⁰ The report ([MLI-OTP-0034-0173](#)) states that the defendant was arrested and imprisoned “a long time ago”, at which point the defendant confessed that the defendant, ██████ and ██████ were involved. The judgment ([MLI-OTP-0077-2378](#)) states that when this initial confession was obtained, the defendant first claimed not to be involved but then confessed under torture. According to the police report, the defendant “later” escaped from prison. This means that the arrest and confession occurred a long time ago *i.e.* during the time of the Malian authorities. This is consistent with the fact that the confession is not attributed to the police, to the contrary, the judgment found that the complaint was only substantiated by the circumstantial reference to the tools.

⁴¹¹ ██████, lines 9-12; p. 14, lines 5-22 (Conf).

⁴¹² OTP Final Trial Brief, para. 607.

⁴¹³ OTP Final Trial Brief, para. 148.

⁴¹⁴ ██████, p. 60, line 13 (Conf).

⁴¹⁵ ██████ p. 59, lines 23-24 (Conf). *See also* Original: [MLI-OTP-0001-7509](#), Translation: [MLI-OTP-0034-0167](#) at 0168.

⁴¹⁶ K. Ambos, ‘[Evacuation of Civilian Populations and Criminal Complicity: A Critical Appraisal of the February 2017 Report of the Syria Commission of Inquiry](#)’, *EJIL Talk!* (24 May 2017) referring to actions of a humanitarian nature, taking place within the context of a criminal event, which diminish the risk of harm to the civilian population.

4 The Prosecution Has Failed to Disprove Mr Al Hassan's Affirmative Defences

81. Although the Prosecution Brief solely mentions mistake of law and not mistake of fact, both were pleaded and proved by the Defence.⁴¹⁷ The Chamber must thus acquit Mr Al Hassan in circumstances where either or both apply. The logical inference, on all the evidence, is that Mr Al Hassan was operating under an honest belief that his conduct as a police officer was not unlawful and that it was required by his superiors. There is ample evidence that a reasonable person in Mr Al Hassan's position would have believed that people had been duly tried according to Islamic law (or the laws established by Ansar Dine) and that punishments were carried out subsequent to a proper judicial order;⁴¹⁸ therefore, he must be excused.⁴¹⁹ Mr Al Hassan was operating pursuant to superior orders, even if under a mistake of fact over the operation of governance, a mistake of law as to the basis for governance, or a combination of the two.⁴²⁰ The fact that the public engaged extensively in that system suggests this was a belief held by many, making it manifestly reasonable for Mr Al Hassan to believe as he did.⁴²¹ [REDACTED] candid [REDACTED] statement to his close acquaintance that if the tribes "wish to put the Sharia in place, they will have a *cadi* who follows the Sharia. I don't think that will be a problem" is emblematic of the beliefs shared widely by Mr Al Hassan's community.⁴²² Accordingly, Mr Al Hassan can reasonably claim on the evidence that it cannot be proved he believed his role nor any of the orders he followed to be manifestly unlawful. Had Mr Al Hassan not carried out his role, he would have been dismissed, expelled, or treated as a traitor or spy. These consequences were applied to other members of the groups.⁴²³ Expulsion from Timbuktu, given Mr Al Hassan's circumstances (*i.e.* a Tuareg with a vulnerable family) would have generated a disproportionate risk to his life and that of his family.

⁴¹⁷ Defence Trial Brief, paras 50-64.

⁴¹⁸ Defence Trial Brief, paras 50-64.

⁴¹⁹ *Trial of Otto Sandrock et al.*, Case No. 3, British Military Court, 24-26 November 1945, United Nations War Crimes Commission, Law Reports of Trials of War Criminals, Vol. I (1947), p. 41. *See also* M. J. Osiel, *Obeying Orders: Atrocity, Military Discipline and the Law of War* (Taylor & Francis Group, 1999), p. 969 (referring to excusable conduct when faced with "grey areas" and the predominant view that it is not "incumbent upon a soldier in a subordinate position to screen the orders of superiors for questionable points of legality"). *See also* A. Coco, *The Defence of Mistake of Law in International Law* (OUP 2022), p. 172 (opining that a mistake "about the existence and/or meaning" of the relevant due process guarantees could "negate the required mental element" of Article 8(2)(c)(iv)); fn 306 (noting commentary that it could be "unjust and overreaching" to impose responsibility for due process errors that would normally lead to a retrial rather than a criminal sanction for the judge); p. 186 (noting in context of torture, that "an honest mistake about the lawfulness of the purported sanctions could exclude responsibility before the ICC").

⁴²⁰ [REDACTED] belief that Mahmoud Dicko along with other southern tribes expressly supported Ansar Dine's application of *Shari'a* ([REDACTED]) is probative as to a reasonable mistake of fact if that were not the case.

⁴²¹ Defence Final Brief, para. 28, fn. 104; para. 388-389. *See above*, fn. **Error! Bookmark not defined.**

⁴²² [REDACTED]

⁴²³ Defence Final Brief, paras 428-429.

82. The Prosecution has wrongly suggested that the defence of duress is unsubstantiated and incorrect.⁴²⁴ First, a general threatening political climate amounts to a situation of duress where it impairs a person's ability to understand the lawfulness or unlawfulness of their behaviour, inducing them into a regular mistake of fact/law or compliance with superior orders. In this sense, duress reinforces a claim that a mistake of fact/law was honest and reasonable or that compliance with orders was unavoidable.⁴²⁵ Secondly, duress is a stand-alone defence even if a superior orders/mistake defence is not available. Article 31(1)(d) allows both duress and necessity to exclude criminal responsibility.⁴²⁶ It is therefore the correct approach for the Chamber to consider the totality of the circumstances existing at the time. An absence of duress cannot be inferred from working with Ansar Dine, particularly when no other options were available for someone with Mr Al Hassan's profile. Several witnesses explained the necessity of staying in Timbuktu for their families,⁴²⁷ and others were compelled to work with the groups due to their family and economic situations.⁴²⁸ The suggestion that Mr Al Hassan could have fled is fanciful. Duress of circumstances means the Chamber must consider whether it was necessary for him to stay. This must be put in context: Any "choice" between staying and going to a refugee camp was not a choice at all. Mr Al Hassan had come to Timbuktu because he had no work in Zorho following the forced closure of his pharmacy.⁴²⁹ The Chamber has clear evidence on refugee conditions,⁴³⁰ the conditions of Tuaregs in other parts of Mali and the dangers of travelling for Tuaregs during that period,⁴³¹ and the fact that Mr Al Hassan would

⁴²⁴ Cf OTP Final Trial Brief, paras 571 to 573.

⁴²⁵ A. Eser, "Article 31 – Grounds for excluding criminal responsibility" in Otto Triffterer and Kai Ambos (eds), *Rome Statute of the International Criminal Court - A Commentary* (3rd ed., OUP 2016) pp. 1150-1151.

⁴²⁶ W. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd ed., OUP 2016) p. 645; A. Eser, "Article 31 – Grounds for excluding criminal responsibility" in Otto Triffterer and Kai Ambos (eds), *Rome Statute of the International Criminal Court - A Commentary* (3rd ed., OUP 2016) pp. 1149-1150; M. Scaliotti, "Defences before the International Criminal Court – Part 1" (2001) 1 *International Criminal Law Review* 111, 155.

⁴²⁷ **D-0093**: [MLI-D28-0006-4212-R01](#) at 4213-4214, paras 8-9; **P-0654**: T-133, p. 62, line 16 – p. 63, line 14, p. 82, lines 15-24 (Conf); **P-0010**: T-021, p. 9, lines 4-9 (Conf); **P-0065**: T-045, p. 38, line 18 – p. 39, line 16; p. 82, lines 1-8 (Conf).

⁴²⁸ **D-0202**: T-202, p. 85, line 4 – p. 86, line 2 (Conf); **D-0540**: T-183, p. 48, lines 9-14 (Conf); [REDACTED] (Conf).

⁴²⁹ **D-0627**: [MLI-D28-0006-5699-R01](#) at 5702, para. 21.

⁴³⁰ **P-1086**: T-122, p. 17, line 19 – p. 18, line 7; p. 61, line 19 – p. 63, line 4; p. 63, line 13 – p. 64, line 11 (Conf); **P-0065**: T-044, p. 44, lines 10-23; p. 56, line 22 – p. 57, line 15 (Conf); T-045, p. 37, lines 3-20 (Conf); **D-0611**: [MLI-D28-0006-4287](#) at 4301, line 27 (stating he "would have preferred to die rather than go to the refugee camps").

⁴³¹ **P-0608**: T-154, p. 89, lines 13-22 (Conf); **P-0065**: T-044, p. 44, lines 10-23 (Conf); **P-0638**: T-059, p. 20, lines 18-23 (Conf); **D-0540**: T-183, p. 31, line 16 – p. 33, line 11; p. 35, line 15 – p. 37, line 1 (Conf); **D-0211**: T-190, p. 32, line 21 – p. 33, line 25 (Conf); **D-0006**: T-205, p. 15, lines 6-18 (lines 12-13: "[i]t was very tiring. A lot of women were carsick. When they arrived, we even thought that they would not survive") (Conf).

not have been able to access or work in such camps after he was associated with Ansar Dine.⁴³² Those who stayed had no choice but to work with the group with which their tribe associated.⁴³³ Religious leaders, including in Zorho, expressed their position that members should collaborate with Ansar Dine,⁴³⁴ and key Kel Ansar notables joined the group before Mr Al Hassan did so.⁴³⁵ Given the reported criminal reputation of the MNLA⁴³⁶ coupled with tribal pressures,⁴³⁷ it was reasonable for Mr Al Hassan to believe that working with Ansar Dine was the least-worst option. The Prosecution simply cannot ignore the reality that in this context, Mr Al Hassan's actions were a reasonable and necessary response to protect himself, his family, and the local population.⁴³⁸ The relevant conditions for duress are met: Non-compliance would have risked severe and irreparable harm to himself and his family; there was no adequate means of averting these risks; his role was not disproportionate to the evil threatened; and, he was not the author of his own predicament.⁴³⁹

5 The Criteria for the Requalification of Charges Have Not Been Fulfilled

83. Throughout its Final Trial Brief,⁴⁴⁰ the Prosecution relies on nine new Regulation 55 charges relating to six incidents⁴⁴¹ and alternative modes of liability for seven incidents.⁴⁴² The Prosecution has failed to prove these charges due to lack of evidence, lack of corroboration, withdrawal of witnesses, contradictory and conflicting testimony, or disputed witness accounts and credibility. Entering a conviction on such charges would fall foul of Regulation 55(2) as

⁴³² **D-0272**: T-182, p. 101, lines 4-13 (Conf); [MLI-D28-0006-5567](#) at 5567 (“UNHCR took the necessary steps to preserve the civilian character of the camp”); [ICC-01/12-01/18-2394-Conf](#), para. 15; [ICC-01/12-01/18-2396-Conf](#), para. 11(d).

⁴³³ [REDACTED]; **P-0065**: T-045, p. 37, lines 3-7 (Conf).

⁴³⁴ **P-0065**: T-045, p. 37, lines 14 – 18 (Conf); T-050, p. 18, lines 14 – 25 (Conf); **D-0611**: [MLI-D28-0006-4287-R01](#) at 4306, line 7 – p. 4308, line 21; [REDACTED]; **P-0654**: T-133, p. 84, line 25 – p. 85, line 19.

⁴³⁵ [REDACTED] (Abdelhay and Houka Houka) (Conf); [REDACTED] (Mohamed the jailer); [REDACTED] (Ousmane Ag Abdoulaziz).

⁴³⁶ **D-0611**: [MLI-D28-0006-4287-R01](#) at 4300, lines 21 - 26. *See also* **P-0152**: T-032, p. 37, lines 9 – 17; p. 71, lines 6-9; p. 81, line 22 – p. 82, line 15 (Conf).

⁴³⁷ **P-0654**: T-133, p. 84, line 25 – p. 85, line 16 (Conf); **P-0065**: T-050, p. 18, lines 14-25 (Conf); **D-0611**: [MLI-D28-0006-4287](#) at 4306, lines 5-26.

⁴³⁸ Where possible, Mr Al Hassan took steps to protect the local population: **D-0544**: [MLI-D28-0006-3342-R01](#) at 3345, paras 16-21; at 3346, para. 24; **D-0272**: T-182, p. 51, line 1 – p. 52, line 10; [MLI-D28-0006-4181-R01](#) at 4184, para. 22; **D-0243**: [MLI-D28-0006-9053-R01](#) at 9058-9059, para. 46; Defence Final Trial Brief, paras 66-67, 88-90.

⁴³⁹ [Erdemović AJ, Separate and Dissenting Opinion of Judge Cassese](#), para. 16.

⁴⁴⁰ OTP Final Trial Brief: **Section VIII.B** in relation to counts 11 and 12 against P-0570 and P-0547; **Section VI.B.2** on counts 2, 4 and 5 for P-0570; **Section VI.B.8** on counts 2, 4 and 5 for P-0547; **Section VI.B.10 and VI.B.14** in relation to the counts 1 and 3 regarding P-1134 and P-0609; **Section VI.B.6** on the mutilation of Dédéou Maiga; **Sections VI.B.9, and VI.C.1** in relation to the incident regarding [REDACTED]; and **Section VII.D.1** in relation to the additional mode of liability of Mr Al Hassan pursuant to art. 25(3)(c).

⁴⁴¹ Incidents regarding P-1134, P-0609, P-0570, P-0547, Dédéou Maiga, and [REDACTED].

⁴⁴² Incidents 1, 4, 16, 24, 31, 38, and 41.

the Defence was never afforded adequate time and facilities to address this significant expansion of the Prosecution's case.

5.1 The Requalified Charges of Alleged Rape and Sexual Violence Have Not Been Proved

84. The three Regulation 55 Notices concerning P-0570 and P-0547 were issued in December 2020 (when the trial was already well underway), September 2021, and November 2021.⁴⁴³

85. **P-0570**: The P-0570-centred allegations⁴⁴⁴ are based on her Rule 68(2)(c) statement,⁴⁴⁵ which was tendered with the understanding that it was intended to be cumulative or corroborative of the evidence of P-0636, P-0547, and P-0542 concerning alleged incidents of ██████████⁴⁴⁶ P-0542 was withdrawn from the witness list.⁴⁴⁷ The Prosecution also does not rely on either P-0636 or P-0547 to corroborate the Regulation 55 counts in respect of P-0570,⁴⁴⁸ referring to them only as other alleged victims ██████████⁴⁴⁹ P-0570's untested statement is an insufficient basis to enter a conviction for either the initial charges or their Regulation 55 counterparts. Her incoherent statement is directly contradicted by D-0512's *viva voce* testimony.⁴⁵⁰ The *chapeau* element for both the original charged offences and their Regulation 55 counterparts were also not proved.⁴⁵¹

86. **P-0547**: P-0547's *viva voce* testimony took place from 26 to 28 October 2021,⁴⁵² approximately one month after the Second Notice. The evidence adduced to support P-0547's rape allegation⁴⁵³ is unreliable, incoherent, contrary to other witness testimony, and uncorroborated.⁴⁵⁴ The Defence was also precluded from recalling P-0547,⁴⁵⁵ despite (i) the Chamber's requalification in all three Regulation 55 notices of the facts surrounding the alleged incident reported by the witness; (ii) the Prosecution's repeatedly late disclosure of documents related to this witness,⁴⁵⁶ and (iii) frustrated Defence opportunities to question P-0524,⁴⁵⁷ P-

⁴⁴³ The trial began on 14 July 2020.

⁴⁴⁴ OTP Final Trial Brief, paras 220-225.

⁴⁴⁵ [ICC-01/12-01/18-1588-Conf](#).

⁴⁴⁶ [ICC-01/12-01/18-1408-Conf](#), paras 27-29.

⁴⁴⁷ The witness was withdrawn on 24 December 2021 and the Prosecution confirmed the withdrawal of the incident regarding P-0542 in the OTP Final Trial Brief, para. 212.

⁴⁴⁸ OTP Final Trial Brief, paras 220-225.

⁴⁴⁹ OTP Final Trial Brief, para. 420.

⁴⁵⁰ Defence Final Trial Brief, paras 212-213. *See supra* para. 15.

⁴⁵¹ Defence Final Trial Brief, Sections 5.2, 5.3, 9.6.

⁴⁵² **P-0547**: T-151 – T-153 (Conf) (testified on 26-28 October 2021).

⁴⁵³ OTP Final Trial Brief, paras 243-245.

⁴⁵⁴ Defence Final Brief, paras 236-243.

⁴⁵⁵ [ICC-01/12-01/18-2344-Conf](#), paras 8-11.

⁴⁵⁶ [ICC-01/12-01/18-2344-Conf](#), paras 8-11.

⁴⁵⁷ P-0524's statement was submitted through Rule 68(2)(b): [ICC-01/12-01/18-2125-Conf](#). The Defence's leave to appeal this decision was denied: [ICC-01/12-01/18-2139](#).

1204,⁴⁵⁸ and P-0130⁴⁵⁹ in relation to P-0547's allegations. The Regulation 55(2) criteria are unfulfilled due to the absence of a reliable evidential foundation and the existence of unremedied prejudice.

5.2 The Requalified Charges of Alleged Torture and Mutilation Have Not Been Proved

87. **P-1134**: The recharacterised torture charge was predicated on allegations concerning P-1134's detention and alleged rape,⁴⁶⁰ which were not proved at trial.⁴⁶¹ The Prosecution also failed to establish the underlying *chapeau* elements of torture as a crime against humanity or a war crime.⁴⁶² It also has not proved that torture was part of a common plan as opposed to opportunistic,⁴⁶³ that the detainees were mistreated,⁴⁶⁴ and that Mr Al Hassan possessed the necessary *dolus* for torture, *i.e.* that he intentionally contributed to P-01134's alleged arrest, punishment, and detention knowing these acts were intended to cause severe pain and suffering. The Defence was additionally prejudiced by the timing of the Notice. The Prosecution's allegations were predicated on P-0010's testimony,⁴⁶⁵ who testified before the Chamber recharacterised P-1134's incident as torture.⁴⁶⁶ The Defence was thus precluded from confronting and cross-examining P-0010 in respect of this new count.

88. **P-0609**: This recharacterisation should be rejected due to the considerable prejudice experienced by the Defence.⁴⁶⁷ The Regulation 55 application was submitted while the witness's identity was withheld from the Defence,⁴⁶⁸ P-0609's identity was only disclosed the day prior to trial.⁴⁶⁹ The First Notice was also issued five months after the commencement of trial, while the ability of the Defence to investigate was still impeded. Given the specific constellation of this case and witness, the requisite degree of fairness has not been secured.

89. **Dédéou Maiga**: In its First Notice, the Chamber recharacterised Dédéou Maiga's amputation as an Article 8(2)(c)(i) act of mutilation. Since the Prosecution has not established

⁴⁵⁸ The OTP decided not to call the witness, who refused Defence contacts: [ICC-01/12-01/18-2295-Conf](#), para. 41.

⁴⁵⁹ [ICC-01/12-01/18-2295-Conf](#), para. 42.

⁴⁶⁰ [ICC-01/12-01/18-1211-Conf](#), paras 18-26.

⁴⁶¹ Defence Final Trial Brief, paras 210 and 211.

⁴⁶² Defence Final Trial Brief, Sections 5.1 and 7.4.1.

⁴⁶³ Defence Final Trial Brief, para. 284.

⁴⁶⁴ Defence Final Trial Brief, para. 286.

⁴⁶⁵ OTP Final Trial Brief, para. 253.

⁴⁶⁶ **P-0010**: T-020 and T-021 (testified on 9 and 10 September 2020).

⁴⁶⁷ *See also* Defence Final Brief, paras 205-209.

⁴⁶⁸ [ICC-01/12-01/18-941-Conf](#), para. 50.

⁴⁶⁹ Email from Prosecution to Defence, 13 July 2020, 16:51.

the incident took place in the context of, or was associated with, an armed conflict,⁴⁷⁰ the legal standard for mutilation under Article 8(2)(c)(i) is not met.

5.3 Article 25(3)(a) Liability for the November 2012 Incident Has Not Been Proved

90. The Prosecution has failed to prove Mr Al Hassan's responsibility concerning the flogging incident relating to [REDACTED] and [REDACTED].⁴⁷¹ The Prosecution relies heavily on unverified and untested documentary evidence, including Mr Al Hassan's statements, which are unreliable and should not be afforded any weight given the conditions under which his statements were obtained.⁴⁷² Furthermore, Mr Al Hassan was prejudiced since he was not permitted to present evidence of this incident through D-0231: The Chamber denied the Defence's Rule 68(2)(b) request to introduce D-0231's statement, which was expected to address this incident.⁴⁷³ The Rule 68 request was the only alternative by which the Defence could introduce the witness's evidence after the Chamber limited the location of D-0231's *viva voce* video-link testimony to [REDACTED].⁴⁷⁴ The Chamber recognised that [REDACTED]

[REDACTED] When considering (i) the lack of verified evidence to support Mr Al Hassan's contribution as direct perpetrator, and (ii) the prejudice suffered by the Defence in the presentation of its case, the Article 25(3)(a) mode of responsibility ought to be dismissed.

5.4 Article 25(3)(c) Liability for the Count 6 Incidents Has Not Been Proved

91. The Defence has demonstrated, both above and in its Final Trial Brief, that first, there is an insufficient evidential foundation to enter convictions,⁴⁷⁷ and second, that Mr Al Hassan's clerical role in transcribing and notarising reports had no impact on the outcome of proceedings at the Islamic Tribunal.⁴⁷⁸ The execution of punishments also fell under the responsibility and

⁴⁷⁰ Defence Final Trial Brief, Section 5.2.

⁴⁷¹ Defence Final Trial Brief, paras 297, 382.

⁴⁷² Defence Final Trial Brief, Section 8.1.

⁴⁷³ [ICC-01/12-01/18-2457-Conf](#), para. 15.

⁴⁷⁴ Although D-231 was willing to testify in the case, he was unable to testify in [REDACTED] as requested by the Trial Chamber. See Email from Defence, 25 October 2022, 18:03.

⁴⁷⁵ [ICC-01/12-01/18-2462-Conf](#), para. 14.

⁴⁷⁶ [ICC-01/12-01/18-2462-Conf](#), para. 13.

⁴⁷⁷ Defence Final Trial Brief, para. 303 (of relevance to [REDACTED] and [REDACTED] *et al*).

⁴⁷⁸ Defence Final Trial Brief, paras 310 (no role initiating or reporting cases), 381 (no impact on outcome), 395 (judgment not based on the police report).

orders of the Tribunal and *Hesbah*,⁴⁷⁹ and Mr Al Hassan acted under superior orders he could not disobey.⁴⁸⁰

92. A further basis to reject the requalification of ██████████'s case arises from the Chamber's decision denying the request to hear D-0147 by video-link,⁴⁸¹ 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.⁴⁸² The same consideration applies to the testimony of P-0620, heard before the issuance of the First Notice, resulting in the Defence being deprived of the opportunity of focusing specifically on the authenticity of the reports concerning these cases during cross-examination. Given the lack of evidence and failure to meet Regulation 55 requirements, no conviction should be entered.

5.5 The Recharacterisations Caused Irremediable Prejudice to Mr Al Hassan

93. Though Regulation 55 may be applied at any time during the proceedings, the ICC Appeals Chamber has nevertheless held that notice should be given as early as possible,⁴⁸³ and the Defence's fair trial rights be fully respected.⁴⁸⁴ This aligns with human rights jurisprudence, which underlies the need to afford an accused "the possibility of exercising their defence rights on that issue in a practical and effective manner and, in particular, in good time".⁴⁸⁵ The fairness of proceedings must also be assessed with regard to the proceedings as a whole.⁴⁸⁶

94. The recharacterisations were neither timely nor were Defence rights sufficiently safeguarded, given their impact on already-strained Defence resources. The prejudice against Mr Al Hassan was aggravated by numerous circumstances affecting the manner in which the Defence was forced to investigate and present its case.⁴⁸⁷ From the outset, travel restrictions to Mali resulting from the pandemic limited the Defence's ability to meet, find, and interview potential Defence witnesses,⁴⁸⁸ circumstances exacerbated by the regional security situation at the time.⁴⁸⁹ Due to these restrictions, the Defence informed the Chamber that it was not trial-

⁴⁷⁹ Defence Final Trial Brief, Section 8.9.2.

⁴⁸⁰ Defence Final Trial Brief, para. 419.

⁴⁸¹ Email from Trial Chamber X Communications, 30 September 2022, 15:29. The request for reconsideration or leave to appeal this decision ([ICC-01/12-01/18-2371-Conf-Red](#)) was rejected by Trial Chamber X ([ICC-01/12-01/18-2379-Conf](#)). See also [ICC-01/12-01/18-2436-Conf-Red](#), para. 3(a), withdrawing the witness.

⁴⁸² Defence Final Trial Brief, para. 318.

⁴⁸³ [ICC-01/04-01/07-3363](#), para. 24. See also [ICC-01/14-01/18-542](#), para. 12 (internal citations omitted). See also [ICC-01/04-01/07-3363](#), para. 88, citing [ICC-01/04-01/06-2205](#), paras 85, 100 (emphasis added).

⁴⁸⁴ [ICC-01/04-01/07-3363](#), para. 88, citing [ICC-01/04-01/06-2205](#), paras 85, 100 (emphasis added).

⁴⁸⁵ ECtHR, *Pélissier and Sassi v. France*, App. No. 25444/94, Judgement, 25 March 1999, para. 62.

⁴⁸⁶ ECtHR, *Dallos v. Hungary*, App. No. 29082/95, Judgement, 1 March 2001, para. 47.

⁴⁸⁷ See e.g. [ICC-01/12-01/18-927-Red2](#), para. 2(c), citing [ICC-01/12-01/18-548](#), para. 12.

⁴⁸⁸ See [ICC-01/12-01/18-825-Conf-Red](#), para. 21.

⁴⁸⁹ The Mali situation is one of the highest security risks at the Court (see [ICC-01/12-01/18-824-Conf-AnxII](#), para. 1).

ready, since it had not yet been afforded the “length of time to investigate, which the Chamber previously identified as being sufficient, to allow the Defence to ‘meaningfully prepare [Mr Al Hassan’s] defence’”,⁴⁹⁰ and that the commencement of trial would prevent the Defence from being able to conduct even the “bare minimum” of investigations.⁴⁹¹ The trial date was not modified nor were sufficient accommodations made at trial. To the contrary, the handicap faced by the Defence was aggravated by multiple Regulation 55 Notices issued when the Defence was already engaged in the trial process and was severely hampered from conducting on-site investigations. At least 12 requests to adjourn trial to allocate Defence resources to investigating and challenging the charges⁴⁹² were denied.⁴⁹³ The Defence was forced to continue with trial despite the additional new charges and was also compelled to simultaneously litigate these recharacterisation notices.

95. Whereas ICC Chambers have consistently granted trial suspensions to investigate recharacterised charges,⁴⁹⁴ Mr Al Hassan was never granted any such adjournment. The issuance of the Notices after the start of trial and after numerous witnesses had been heard prevented the Defence from raising relevant issues with witnesses who had already testified. The Defence was thus not only impeded from conducting on-site investigations in Mali and Mauritania but was also prevented from investigating the new charges through witness testimony. The Chamber rejected various Defence attempts to mitigate the prejudice, including requests for adjournments,⁴⁹⁵ to recall witnesses,⁴⁹⁶ or to hear witnesses via video-link in [REDACTED].⁴⁹⁷

⁴⁹⁰ [ICC-01/12-01/18-927-Red2](#), para. 2(c), citing [ICC-01/12-01/18-548](#), para. 12.

⁴⁹¹ [ICC-01/12-01/18-927-Red2](#), para. 3(d) (emphasis in original).

⁴⁹² See e.g. [ICC-01/12-01/18-927-Conf-Red](#); [ICC-01/12-01/18-953-Conf-Red](#); Email from Defence, 17 September 2020, 15:47; Email from Defence, 21 September 2020, 13:51; Email from Defence, 6 November 2020, 18:00; Email from Defence, 20 November 2020, 16:49; [ICC-01/12-01/18-1256-Conf](#); Email from Defence, 25 January 2021, 10:16; Email from Defence, 1 March 2021, 13:56; [ICC-01/12-01/18-1324](#); Email from Defence, 18 June 2021, 11:42; Email from Defence, 29 September 2021, 10:26.

⁴⁹³ See e.g. [ICC-01/12-01/18-940-Conf](#); [ICC-01/12-01/18-983-Conf](#); Email from Chamber, 17 September 2020, 17:56; Email from Chamber, 22 September 2020, 13:23; Email from Chamber, 9 November 2020, 14:26; Email from Chamber, 20 November 2020, 19:40; Email from Chamber, 26 January 2021, 10:22; Email from Chamber, 8 February 2021, 17:05; Email from Chamber, 2 March 2021, 16:14; [ICC-01/12-01/18-1324](#); Email from Chamber, 23 June 2021, 13:19; Email from Chambers, 4 October 2021, 09:36.

⁴⁹⁴ In *Bemba*, the Trial Chamber suspended the trial for two and a half months, following a notice adding the alternative Article 28 limb: [ICC-01/05-01/08-2480](#), paras 13-15; In *Katanga*, a notice changing responsibility from Article 25(3)(a) to (d) resulted in the Defence being granted an additional three months for investigations: [ICC-01/04-01/07-3388-tENG](#), para. 44 *et seq*; in *Lubanga*, the case was suspended for over three months pending appellate review: [ICC-01/04-01/06-2143](#), para. 23.

⁴⁹⁵ See *supra* fn. 492.

⁴⁹⁶ [ICC-01/12-01/18-2295-Conf](#).

⁴⁹⁷ [ICC-01/12-01/18-2436-Conf-Red](#), para. 3 (withdrawing reliance on D-0147 after the Chamber rejected the Defence’s attempts to secure video-link testimony [REDACTED]). See also [ICC-01/12-01/18-2436-Conf-Red](#), fn. 2.

5.6 Requalified Charges Cannot Result in Cumulative Convictions

96. Regulation 55 was adopted to streamline ICC proceedings by obviating the need to resort to alternative or cumulative charges,⁴⁹⁸ which was considered to be unduly burdensome on the Defence.⁴⁹⁹ Regulation 55 and cumulative convictions are intended to eliminate accountability and impunity gaps in different ways.⁵⁰⁰ While neither, taken alone, is contrary to an accused's rights, employing them together raises significant charging, impartiality and fair trial concerns. A cumulative conviction requires proof of a distinct factual or material element.⁵⁰¹ Where the Chamber has recharacterised the charges on the same set of facts and circumstances, the Chamber cannot also issue multiple convictions on the same sets of facts. Conversely, if the criteria for entering a cumulative conviction is met for both the original charges and their Regulation 55 equivalent, the Regulation 55 charges must exceed the confirmed facts and circumstances of the original charges (by including materially different facts or elements). In any case, the Chamber cannot employ a broad definition of "facts and circumstances" to trigger Regulation 55 while simultaneously narrowing it down to allow for a cumulative conviction.

6 The Trial Chamber Cannot Rely on V-0001 or V-0002

97. As a matter of law, V-0001 and V-0002 cannot be relied upon by the Chamber as part of its assessment of Mr Al-Hassan's responsibility.⁵⁰² Their evidence also does not assist the Chamber's general appreciation of the charged incidents since both lack credibility and reliability.

98. V-0001's account is riddled with inconsistencies and reliability red flags. V-0001 could not explain how she communicated with her husband, [REDACTED]⁵⁰³ She was unable to provide plausible explanations of material discrepancies between her different accounts, [REDACTED]

[REDACTED] These discrepancies, which are contained in a number of victims' statements,⁵⁰⁵ cannot be attributed to illiteracy, time, or stigma, as averred by the LRV,⁵⁰⁶ not least because the

⁴⁹⁸ C. Stahn, "[Modification of the Legal Characterization of Facts in the ICC System: A Portrayal of Regulation 55](#)" (2005) 16 *Criminal Law Forum* 1, 25.

⁴⁹⁹ [ICC-01/05-01/08-424](#), para. 202. See also [ICC-01/05-01/08-532](#), para. 53.

⁵⁰⁰ See e.g. M. Klamberg, "[Recharacterisation of Charges in International Criminal Trials](#)" in S. Andersson and K. Lainpelto (eds.) *Festskrift till Christian Diesen* (Norstedts Juridik 2014), p. 327.

⁵⁰¹ [Kunarac AJ](#), para. 173. [ICC-01/05-01/08-424](#), para. 202. See also [ICC Chambers Practice Manual, May 2017](#), p. 19.

⁵⁰² [ICC-01/12-01/18-2063-Conf](#), para. 12.

⁵⁰⁵ See Defence Final Trial Brief, Section 7.2. See also LRV Final Trial Brief, paras 126-127.

⁵⁰⁶ LRV Final Trial Brief, paras 135-136.

LRV's own lawyers had oversight of the completion of victims' applications.⁵⁰⁷ V-0001's attempt to attribute blame to the intermediaries and NGOs ██████████ highlights the fallibility of the evidence collection process that led to the identification of several witnesses in this case, particularly as she was assisted by an individual from ██████████ an organisation that gave aid to V-0001),⁵⁰⁸ who subsequently became a Prosecution investigator in this case.⁵⁰⁹ The Defence was only notified of this key issue at the end of V-0001's testimony.⁵¹⁰

99. V-0001's evidence further illustrates testimonial contamination between victims and witnesses: She stated that when attending ██████████ meetings and while filling in the victim application form, other victims were present⁵¹¹ including ██████████ at a training session.⁵¹² This led such individuals to testify in Bamako, using terminology heard in meetings.⁵¹³ Individuals appearing on the same dates employed identical language to describe their experiences.⁵¹⁴

100. V-0001's evidence is also controverted by both D-0272 and D-0240.⁵¹⁵ Further, V-0001 was not mistreated by her community following 2012, with witnesses testifying that they continued to visit her at each other's houses⁵¹⁶ and would see her at social gatherings such as marriages and baptisms where she interacted with others.⁵¹⁷ V-0001 continued to be treated as a "very respected person in her neighbourhood."⁵¹⁸ The corroborating accounts of Defence witnesses *prima facie* raise reasonable doubt with respect to the overall reliability of V-0001's evidence.

101. **V-0002's** testimony is irrelevant and unreliable to establish these charges. She had no first-hand knowledge of the effects of the groups on women in Timbuktu in 2012, and admitted she could not obtain contemporaneous accounts from women who remained in Timbuktu.⁵¹⁹

⁵⁰⁷ **V-0001**: [MLI-V43-0002-0001-R01](#) at 0003 (referring to Maître Seydou Doumbia and Maître Fidel Luvengika Nsita); at 0004 (referring to Maître Seydou Doumbia); [MLI-V43-0002-0008-R01](#) at 0009 (specifying Maître Seydou Doumbia as representing the applicant).

⁵⁰⁸ **V-0001**: T-169, p. 38, line 17 (Conf).

⁵⁰⁹ **V-0001**: [MLI-V43-0002-0008-R01](#) at 0009 (referring to ██████████ and ██████████); **V-0001**: T-169, p. 33, line 17 - p. 35, line 11 (Conf) (referring to ██████████).

██████████ Email from Prosecution to Trial Chamber X and parties, 9 February 2023, 13:04 ("[d]ear Defense, We have double checked the application form and realised that ██████████ (mentioned on page MLI-V43-0002-0009) started working with the OTP in May 2020.")

⁵¹¹ **V-0001**: T-169, p. 34, lines 10-20; p. 49, lines 22-23 (Conf).

⁵¹² **V-0001**: T-169, p. 35, line 25 - p. 36, line 2 (Conf); p. 36, lines 18 - 22 (Conf).

⁵¹³ **V-0001**: T-169, p. 48, line 24 - p. 49, line 2 (Conf).

⁵¹⁴ **V-0001**: T-169, p. 47, line 20 - p. 48, line 17 (Conf). See also [MLI-OTP-0081-0216-R03](#) at 0259, 0262.

⁵¹⁵ **D-0272**: [MLI-D28-0006-4181-R01](#) at 4185, para. 28; T-182, p. 18, lines 2-8 (Conf). See also **V-0001**: T-169, p. 6, line 16 (Conf); **D-0240**: [MLI-D28-0006-4222-R01](#) at 4235, lines 2-3. See *supra* paras 16-19.

⁵¹⁶ **D-0240**: [MLI-D28-0006-4222-R01](#) at 4235, line 28; **D-0272**: T-182, p. 17, lines 14-24 (Conf).

⁵¹⁷ **D-0240**: T-191, p. 31, lines 3-17 (Conf).

⁵¹⁸ **D-0240**: [MLI-D28-0006-4222-R01](#) at 4236, lines 6-8.

⁵¹⁹ **V-0002**: T-170, p. 4, line 23 - p. 5, line 4 (Conf).

Her knowledge of the 2012 events rests solely on other women's accounts.⁵²⁰ She was known to "propagate rumours",⁵²¹ which directly affects the reliability of the witnesses [REDACTED] completing victim statements and applications, [REDACTED]⁵²² Despite these issues, [REDACTED]
[REDACTED]⁵²³

102. V-0002's evidence must be treated with caution given the inference that her testimony was directed towards seeking a financial advantage [REDACTED] V-0002 indicated that before 2013, "no one" was helping [REDACTED]⁵²⁴ it was "after the crisis that people started helping us"⁵²⁵ *vis-à-vis* "partners who came and supported the women,"⁵²⁶ including [REDACTED]
[REDACTED]⁵²⁷ Although she claimed the "Islamists" interfered with the [REDACTED] activities,⁵²⁸ [REDACTED]
[REDACTED]
[REDACTED]⁵³⁰ Her efforts to [REDACTED] to secure financial assistance for its constituents undermines the already-negligible weight of her hearsay evidence.

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Respectfully submitted on 2nd May 2023

At The Hague, The Netherlands

⁵²⁰ **V-0002**: T-170, p. 7, lines 3-24.

⁵²¹ **D-0514**: T-208, p. 31, lines 19-21 (Conf). *See also* Defence Final Trial Brief, paras 164, 173, 180, 185.

⁵²² **V-0002**: T-170, p. 8, line 21 (Conf).

⁵²³ **D-0514**: T-208, p. 29, lines 9-12 (Conf).

⁵²⁴ **V-0002**: T-169, p. 80, lines 1-3 (Conf).

⁵²⁵ **V-0002**: T-169, p. 80, lines 1-3 (Conf).

⁵²⁶ **V-0002**: T-169, p. 86, lines 19-21 (Conf).

⁵²⁷ **V-0002**: T-169, p. 86, line 24 – p. 87, line 1 (Conf).

⁵²⁸ **V-0002**: T-170, p. 29, lines 2-7 (Conf). *Contra* **V-0002**: T-170, p. 31, line 11 – p. 32, line 22 (Conf).

⁵²⁹ **V-0002**: [MLI-V43-0001-0001-R01](#) at 0005.

⁵³⁰ **D-0524**: [MLI-D28-0006-4469-R02](#) at 4471, para. 13.