

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Kimberly Prost, Judge María del Socorro Flores Liera and Judge
7 Keebong Paek
8 Reparations Hearing - Courtroom 1
9 Wednesday, 17 September 2025
10 (The hearing starts in open session at 9.38 a.m.)
11 THE COURT USHER: [9:38:36] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE PROST: [9:38:57] Sorry.
15 Court officer, could you call the case, please.
16 THE COURT OFFICER: [9:39:11] Good morning, Madam President.
17 Situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan Ag
18 Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
19 And for the record, we are in open session.
20 PRESIDING JUDGE PROST: [9:39:33] Thank you very much.
21 And welcome to everyone, including those present in the public gallery today with us
22 and those who are following the proceedings remotely, with particular thought to the
23 victims and the affected communities.
24 I would like to have the appearances please, starting with the Legal Representatives
25 of Victims.

1 MR LUVENGIKA: [9:40:03](Interpretation) Good morning, your Honour,
2 your Honours. The Legal Representative of Victims team is composed of -- or, rather,
3 the victims are represented in this hearing by Maître Seydou Doumbia, who is
4 following the hearing from Bamako; by Maître Mayombo Kassongo, who's following
5 the hearing from the DRC, I won't give the location. And to my left I have
6 Julie -- Maître Julie Goffin and Maître Anouk Kermiche. And behind me, we have
7 Madam Prisque Dipanga Biyeke and Madam Delice Lunga. However, in the field in
8 Bamako, we have assistants, Maître Boubacar Maïga and Madam Jeanine Kapinga
9 Ilunga who are following from Bamako as well.

10 Thank you very much.

11 PRESIDING JUDGE PROST: [9:41:34](Interpretation) Thank you.

12 (Speaks English) The Office of Public Counsel for Victims, please.

13 MR SUPRUN: [9:41:43] Good morning, Madam President. Good morning,
14 your Honours. Good morning, everyone present in the courtroom. The Office of
15 Public Counsel for Victims is represented by Adeline Bedoucha and myself, Dmytro
16 Suprun. Thank you.

17 PRESIDING JUDGE PROST: [9:41:58] Thank you very much.

18 Now counsel for the Defence of Mr Al Hassan.

19 MS TAYLOR: [9:42:04] Good morning, Madam President. Good morning,
20 your Honours. And good morning to everyone in and around the courtroom. The
21 Defence for Mr Al Hassan is represented today by Dr Felicity Gerry, who's
22 participating remotely, Ms Alka Pradhan, Maître Mélissa Beaulieu Lussier,
23 Mr Mohamed Al-Ansary, Mr Ibrahim Ag Mohamed, Mr Shan Patel, Mr Omar Kausar,
24 Ms Myriam Whaibe, Mr Ahmed Al Ammar. And Mr Al Hassan is present today.
25 And myself, Melinda Taylor. Thank you.

1 PRESIDING JUDGE PROST: [9:42:37] Thank you very much, Ms Taylor.

2 The Prosecution, please. Mr Dutertre.

3 MR DUTERTRE: [9:42:44](Interpretation) Good morning, your Honour,
4 your Honours. Good morning, your Honours. The Prosecution is represented
5 today by Madam Dianne Luping, Mousa Allafi, Madam Sandra Schoeters, and Paola
6 Sacchi, and myself, Gilles Dutertre. Thank you very much.

7 PRESIDING JUDGE PROST: [9:43:04](Interpretation) Thank you very much,
8 Mr Dutertre.

9 (Speaks English) I turn now to the Trust Fund for Victims, please.

10 MS ECKELMANS: [9:43:12] Good morning, your Honours. The Trust Fund for
11 Victims is today represented by Nicole Stark Rychter, associate legal officer; Veena
12 Suresh, associate legal officer; Emma Besse and Diana Revilak, legal interns; and by
13 myself, Franziska Eckelmans, legal advisor. The executive director, Deborah Ruiz
14 Verduzco will present the oral submissions of the Trust Fund for Victims in session
15 two.

16 PRESIDING JUDGE PROST: [9:43:51] Thank you very much.

17 And representation from the Registry.

18 MS BRIKCI: [9:43:56] Good morning, your Honours. I will be here today alone to
19 represent the Registry. I'm Soraya Brikci from VPRS.

20 PRESIDING JUDGE PROST: [9:44:03] Thank you very much.

21 Thanks, everyone, for those appearances.

22 Mr Al Hassan, I just wanted to advise you, if, at any point in time during the
23 proceedings, you have any issues or concerns, please, please just let me know by or
24 signal to the security officers, if there's any problems.

25 Today marks an important stage in these reparation proceedings. The Chamber will

1 hear the final submissions of the parties and participants on specific aspects of
2 reparations relevant in the particular circumstances of this case.

3 This hearing provides an opportunity for the parties and participants to engage
4 directly, orally with the Chamber on the issues of importance from their perspective.

5 As the Chamber has already received extensive submissions in writing, extensive
6 observations from all the participants and parties, as well as from amicus curiae, the
7 aim here today is for the participants, the parties to highlight particular issues they
8 wish to emphasise, to give detail or additional information where necessary, to clarify
9 arguments and to respond to arguments which may have been raised in the course of
10 the written submissions.

11 In particular, the Chamber considers this to be an essential moment for the voices of
12 the victims to be heard through their legal representatives who are present here today.

13 All of this will assist the Chamber in its determination on the reparations order.

14 And in this context, I encourage the parties and participants to focus on the most
15 essential points and matters you wish to bring to the attention of the Chamber and to
16 avoid any repetition of the submissions which will be given careful consideration by
17 the Chamber as well.

18 We will now begin the submissions of the various parties and participants, starting
19 with the Legal Representatives of Victims.

20 You have, as you are aware, 75 minutes in total. We will adhere strictly to the
21 time frame, albeit it can be divided amongst the Legal Representatives of Victims as
22 you see fit.

23 There will be a separate time frame for the Office of Public Counsel, so this is
24 exclusive to the Legal Representatives of Victims.

25 So you have the floor.

1 MR LUVENGIKA: [9:47:22](Interpretation) I would like to thank you,

2 Madam President.

3 The presentation of the legal representatives are going to be done in three different
4 phases. I will open with the submissions and then my colleague, Maître Doumbia
5 and Maître Kassongo, they will complete from the field, hoping that the technology
6 available will not turn against us.

7 Thank you, Madam President, your Honours, for giving me this opportunity which is
8 given to the victims to put forward their concerns with regard to this hearing in the
9 reparations stage. I would first like to emphasise that we are defending the interests
10 of the victims we represent. This is something that distinguishes us from the other
11 parties in this courtroom and explains the positions that we take, particularly with
12 regard to the choice of reparations as well. And we would like to insist on the fact
13 that we are speaking on behalf of the victims. We are their voice, but they are not
14 homogenous. They are dispersed everywhere and the approaches aren't always
15 homogenous between them.

16 The analysis of this is that it makes it possible for us to formulate concrete realistic
17 proposals that we hope will meet their wishes. The documents which have been
18 submitted within the framework of the reparations procedure, as well as those that
19 have been submitted previously as well as our past submissions, highlight and repeat
20 the nature of the harm suffered as well as its extent and consequences. I will,
21 therefore, not repeat all of this in detail, but we will stress the factors that we consider
22 to be central in the adoption of the forthcoming order when it comes to answering the
23 following two questions: Who will be eligible for reparations and what reparations
24 will be granted?

25 Underlying this is the question of the number of victims of crimes for which the

1 conviction was handed down.

2 We are aware of the requirements set by the Appeals Chamber regarding the
3 definition of the number of victims, but we also note the precautions taken in this
4 regard by Trial Chamber IX in the Ongwen case. Such a requirement cannot be
5 imposed to the detriment of the victims and in an unrealistic way. Experience has
6 shown that it is impossible to precisely determine the number of victims of crimes
7 covered by the conviction. This determination remains furthermore autonomous
8 and separate from the implementation process, which alone will make it possible to
9 identify the portion of victims who will be the beneficiaries of the reparations.

10 And in this regard, there are two realities with which we are faced. The first is that
11 the entire population of Timbuktu was persecuted. There's no need to repeat the
12 passages from the judgment on the sentence and the decision on the re-examination
13 of the sentence that establishes this. This means on average 50,000 people on the
14 basis of different assessments of the parties and participants.

15 And the second reality that has to be taken into account is that it is essential that the
16 reparations requested be realistic so that they can be implemented. As such, it is
17 necessary to take into account the number of victims who will never participate in the
18 reparation process, either because they have not expressed their will so to do, or
19 because they cannot be reached.

20 We therefore consider it reasonable to refer to the assessments of the Registry, which
21 would indicate that reparations would only be sought for 15,000 people in all
22 categories. This estimate corresponds to the findings we were able to make during
23 the too few missions that we were authorised to conduct.

24 That is why we are trying as far as possible to adopt a realistic approach based on
25 concrete data, which will take into account the budgetary constraints facing the Court,

1 while at the same time responding to the real needs of the population.

2 With regard to the first two questions I mentioned above, I will now turn to the issue

3 of eligibility. With regard to the question of who should be recognised as

4 beneficiaries of reparations to be ordered, we are of course bound by the terms and

5 limits of the judgment. However, the specific nature of the case leads us to consider

6 a dual-fold issue:

7 Namely, one, the scope of the crime of persecution in quantitative and qualitative

8 terms. And secondly, the fact that with regard to the other crimes covered by the

9 judgment, the Court recognised among the entire population of Timbuktu during the

10 period that was covered, they only recognised 49 victims of torture, other inhumane

11 acts, cruel treatment, attacks on dignity, condemnation without trial, and mutilation.

12 And it has to be noted that nearly 90 per cent of these 49 victims are men.

13 Firstly, with regard to the crime of persecution, reparations should be aimed at the

14 entire population of Timbuktu, and more specifically at all those who were present in

15 Timbuktu at the time of the occupation, including those who left the city because of it.

16 The crime of persecution is of particular importance in this case. First of all, the

17 nature of the persecution is notable and its multifaceted nature is impressive. The

18 difficulty in this case is not to establish a list of the fundamental rights of which the

19 population of Timbuktu was deprived, but rather to find the rights of which it was

20 not deprived. We have not identified any. Even rights whose deprivation may

21 seem also insignificant, such as the right for young children to play football or listen

22 to music, they were prohibited.

23 Furthermore, the fact that the acts underlying the crime of persecution do not

24 constitute crimes under international law should in no way influence the assessment

25 of the serious -- of the crime itself. This gravity stems precisely from the spectrum of

1 violations and the lasting impact of the restrictions imposed on absolutely every
2 aspect of daily life, which resulted in a veritable ban on living.

3 The collective aspect of persecution, on which we have already commented, takes on
4 a particular significance in the case of Timbuktu. The social cohesion was destroyed
5 by obstacles in the future, and it's fundamental that any order in the future replies to
6 the need to have recognition of persecution, which was both collective, and, it was
7 also targeted individually on every inhabitant, it therefore has to grant modalities
8 which are appropriate such that the harm suffered can be addressed in its component
9 aspects.

10 Furthermore, the occupation as it happened in Timbuktu in 2012 to 2013 necessarily
11 led to the emergence of the phenomenon of transgenerational transmission of harm.

12 We will not revisit the principles relating to the recognition and determination of this
13 harm as was established by the Court, or has been established by the Court since the
14 Katanga case.

15 But in this case, in the field, we have been able to observe in the field all the
16 conditions which are conducive to the development of this harm, particularly through
17 our moving interviews with relatives who were clearly suffering from post-traumatic
18 stress disorder and who described a situation in the upbringing of their children that
19 clearly revealed the transmission of harm between generations, and that's with
20 regards to parents who are clearly suffering from post-traumatic stress.

21 I now turn to the question of the other crimes for which Mr Al Hassan was convicted.

22 We note that the sentencing decision interpreted the judgment as limiting the victims
23 of these crimes to a small number of individuals and, as such, we would like to stress
24 the incomprehension and the sense of injustice that such an interpretation creates
25 among victims. The debates have revealed a huge number of victims of acts such as

1 torture, attacks on human dignity and other inhumane acts. And here we refer to
2 our observations regarding the results of our interviews with a number of these
3 victims and to the conclusions to be drawn in terms of eligibility. The granting of
4 specific reparations for the abovementioned crimes committed against these
5 identified individuals on the basis of documents or reports whose clarity and
6 probative value are questionable is a source of concern and is questionable.
7 However, some of these victims who confirm the incidents referred to in the
8 judgment do not, however, recognise the documents on which the Chamber based its
9 reasoning and have expressed doubts about their accuracy.
10 Furthermore, most acts of torture and other violations of physical or moral integrity
11 were perpetrated in conditions that were traumatic for the entire population. The
12 occupiers above all tried to create terror through public floggings with one objective,
13 that of maintaining order.
14 And in this regard, we note that in the instant case, this issue was addressed during
15 the preliminary phase, pre-trial phase. The single judge of Pre-Trial Chamber I
16 concluded that persons who witnessed crimes committed against other members of
17 the population may be considered victims who have suffered psychological harm.
18 More importantly, the Ntaganda reparations order settled this issue in its paragraph
19 128:
20 "... the Chamber recalls that, in the sentencing Judgment, it concluded that, in certain
21 cases, crimes may have irreversible consequences not only for the direct victims but
22 also for persons who have witnessed the commission of those crimes. These indirect
23 victims may also be entitled to reparations [...] provided that they demonstrate, in
24 accordance with the applicable standard of proof, the personal harm that they have
25 suffered".

1 We consider that these conclusions should be applied here to all persons who
2 witnessed the commission of crimes against the identified individuals. Among these
3 victims, there is a victim of mutilation which took place in Sankoré Square. At least
4 two other witnesses for the Prosecution were victims of flogging in the same square in
5 the presence of children.

6 We also spoke with two other individuals from this group who were flogged in
7 public and who witnessed a large number of people gathering at the time the
8 sentence was carried out.

9 As a result, all individuals who witnessed the punishments should be acknowledged
10 as victims eligible for reparations.

11 The trauma and the psychological consequences are even more evident for all these
12 people to the extent that every witness to these acts understood that they could be
13 next and subjected to the same treatment. I refer to paragraph 45 of the sentencing
14 decision.

15 In conclusion on eligibility, and this must first and foremost cover the entire
16 population affected by the crime of persecution - and, let us not forget the clarification
17 that reparations will likely only reach a portion of this population - with regard to
18 other crimes, we are of the opinion that the order will only be able to meet the
19 requirements for appropriate and meaningful reparations, if it includes all of the
20 indirect victims of the crimes as we have just defined.

21 I now turn to the question of the modalities of reparation.

22 We note the semantic discussions around the various categories of reparation and the
23 terms, the collective -- individual, collective, with an individual component,
24 community, symbolic, et cetera, et cetera. But for a given victim, what is of
25 importance is knowing what the promised reparations consist of and how they will

1 assist them in moving forward in their lives, regardless of how they are classified.
2 In our various filings we have outlined the various forms of reparation that
3 correspond to the wishes of the victims. We were of the mind that they could
4 reasonably be part of a reparation programme into which these forms would be
5 integrated in one way or another.
6 Of course, when a population finds itself quite literally stunned and immobilised by
7 terror, by a regime of terror, economic and social recovery is all the more important as
8 it will assist in restoring the mechanism of trust and collaboration that will prove
9 essential to any community. In such a context, the courses of action obviously take
10 shape in social activities, in education and the restoration of the economic fabric
11 through all forms of support for income-generating activities.
12 When asked about what their wishes were, the victims we met talked mainly about
13 support for income-generating activities in the fields of, for example, agriculture,
14 agri-foods and crafts. The forms in which these activities are envisaged have
15 a strong collective component and, in some instances, they refer to
16 mentoring -- a mentoring system, which would integrate social and training
17 components. All the avenues indicated by the victims point to collective projects
18 which seek support in order to be relaunched in a solid manner.
19 The -- I don't think I have time to go into the details about the peace garden which is
20 of particular interest, but the number of direct and indirect beneficiaries is sufficient
21 to justify the relevance of such form of support in the reparation to be granted.
22 The revival of this garden through planting activities directly affects several hundred
23 people and indirectly affects several thousand. Our visit to the site enabled us to
24 assess the existing skills and the infrastructure present and the measures -- the simple
25 measures that could be taken to improve and make the existing system profitable. In

1 addition, combined with the revival of activities around the peace monument, this
2 indirectly targets a significant portion of the population. The same applies to
3 agri-food production and various craft activities in which Timbuktu has particular
4 expertise and the specific features of which we have outlined in our observations.
5 We believe that if there is a targeted support in various complementary areas of
6 activity, it is realistic to expect that there will be repercussions for the entire
7 population. There should be a specific modality for those people who are
8 non-Muslims and who were affected by lootings and destruction. We also need to
9 think about the reconstruction of the social fabric and matters of cohabitation and
10 cohabitation between communities. We suggest that we develop this point when the
11 Chamber puts their questions to us.

12 One last wish that we would like to transmit on the part of the victims, they are
13 requesting reparations that apply to their situation in their file and not an Al Mahdi
14 bis.

15 Now let me talk about symbolic reparations in the form of a payment. We take note
16 of the observations from the OPCV, which sets an amount that would be intended
17 exclusively for direct crimes, for direct victims of crimes other than persecution. For
18 our part, we would like to advocate the adoption of an order granting a symbolic
19 amount to all eligible victims, and with this idea in mind, we would like to submit
20 a few ideas to the Chamber to consider.

21 From our interviews with the victims, they said to us, both those who remained in
22 Timbuktu and those who were displaced out of the city, that they thought that they
23 would be able to start an AGR under good conditions with an amount of money
24 ranging from 250,000 CFA to 300,000 CFA. So, we suggest that the Chamber do not
25 go below this threshold, that is to say, approximately 400 euros. Were it to -- were

1 the Chamber to contribute this reparation, we believe it would be appropriate. This
2 symbolic amount should be awarded on the sole basis of the victims demonstration of
3 their membership of the community targeted by the crimes.

4 Now, I'd like to point -- talk about the prioritising implementation. Of course, we
5 need to take into account the age, gender, and physical and mental health state of the
6 victims. This must be properly assessed, taking into account the situation of the
7 victims to date and their degree of vulnerability at the time of implementation.

8 We would also like to direct the Chamber's attention to another criterion of priority
9 which we would think would identify ways to accelerate effective implementation.

10 We want to emphasise the dynamism shown by women in the Timbuktu economy,
11 and the way that they provide for the needs of their families.

12 Last of all, we would also submit that it would be appropriate as a priority to take
13 into account those victims of persecution who have suffered particularly serious and
14 harmful underlying acts. In practice, this could cover victims identified on the basis
15 of vulnerability criteria.

16 By way of conclusion, Madam President, your Honours, as you will have understood,
17 the victims have high expectations of this order and it will be after a very
18 disappointing judgment for them. So they are pinning their hopes on obtaining
19 reparations that will meet their concerns and the wishes that we share, without there
20 being any peripheral issues such as the manner in which the crimes were committed
21 undermining them in any way. Thank you very much.

22 PRESIDING JUDGE PROST: [10:14:12](Interpretation) Thank you very much.

23 MR LUVENGIKA: [10:14:17](Interpretation) I would like to hand the floor over my
24 learned colleague, Maître Mayombo Kassongo. Oh, it's Mr Seydou Doumbia now,
25 first of all, and then Mr Kassongo will come and wrap up. Thank you.

1 Mr Doumbia, please.

2 PRESIDING JUDGE PROST: [10:14:56] Mr Doumbia, you have the floor.

3 Mr Doumbia, you appear to be muted. Please unmute.

4 Mr Nsita.

5 MR LUVENGIKA: [10:16:14](Interpretation) Yes, your Honour, I noted at an earlier
6 stage that Mr Kassongo was ready to intervene. So I think that Maître Kassongo can
7 take the floor and Maître Doumbia, in the interim, will do his best to connect in order
8 to take the floor at a later stage. Thank you very much.

9 Mr Kassongo, please.

10 PRESIDING JUDGE PROST: [10:16:54] I'm sorry, but there is no sound.

11 MR KASSONGO: [10:17:32](Interpretation) Can you hear me?

12 PRESIDING JUDGE PROST: [10:17:35](Interpretation) Yes, we can. Thank you.

13 (Overlapping speakers)

14 MR KASSONGO: [10:17:37](Interpretation) Thank you, Madam President.

15 Thank you, Madam President.

16 I would like to present the views and concerns of victims at this stage of the
17 proceedings and provide information given by my excellent colleague, Maître Nsita,
18 who I would like to thank enormously for having shown the table of all our concerns
19 throughout this stage of the procedure. And it is with particular concern of
20 obtaining reparative justice that I will not spend an overt amount of time over what
21 has already been said, but quite simply add certain precisions thereto and
22 clarifications thereto. I will also mention other points of interest to us such that you
23 may understand the essential elements of my remarks.

24 Jean Patrick Musenga Kalambay, who is Congolese, wrote an important text on the
25 definition of victims of war. And he addresses a question, which is quite close to

1 that we have -- question we have, and he says that it is following fear of displacement
2 and the loss of property that the displaced person falls into the trauma and suffers.
3 Displaced persons, as they say, these are internally displaced persons who are
4 displaced from one place to another through fear of persecution or reprisals. And to
5 that I would add an important element thereto, and that is the category of victims that
6 I have met - approximately 1,000 people - and they move between the area called
7 *Trois Frontières* or Three Borders.
8 And in this area of *Trois Frontières*, it covers Burkina, Burkina Faso, Niger, and Mali.
9 And the Chamber wanted to know in its questions the way in which your Chamber
10 could attenuate the risks that there are when giving a reparations order for the
11 security of the information of the beneficiaries. And that is a question that has been
12 of concern to me when it comes to adding to the explanations which my colleague has
13 already given. In other words, when I was proposed to have a system to attenuate
14 or mitigate the risk with regards to the security of information in the framework of
15 reparations, I would like to point out to the Chamber that there is a risk to victims'
16 security and, more precisely, the victims of this *Trois Frontières* zone, because they
17 have to move about between Ouagadougou, Bobo-Dioulasso, Niger, Bamako and
18 Timbuktu, and they move quite frequently between the two, and they go back and
19 forth and their security cannot be guaranteed.
20 And there is a lot more security with regards to the information that can be disclosed
21 in the reparations order because, quite simply, the public nature of the debates
22 imposes this -- because quite simply, the order can be classified as public, and, as such,
23 our concern is to point out that there is indeed a risk.
24 I opted for an approach with these victims in this *Trois Frontières* zone, and I will give
25 you some answers with regards to the victimisation and the expertise which is ours as

1 Legal Representatives of Victims.

2 Now, firstly, the victims think that living in a community will -- or should give an
3 element of confidence and trust between the beneficiaries themselves, between the
4 beneficiaries that have been identified within the proceedings because the
5 proceedings can -- well, exclude some people as such. These people could react
6 badly to the situation.

7 Now, where it concerns the legal representatives, the Chamber must look at the Trust
8 Fund for its reparations plan such that it presents the concerns when reparations are
9 ordered.

10 Now the Chamber can call in its order, as has been observed already during the
11 reparation stage, it -- as the account of the treatment, individual treatment of requests,
12 individual requests are found, and, as a corollary to this principle, the
13 notification -- direct notification of victims and intermediaries to reduce this means
14 that the victims are to be informed about their situation, whether they are candidates
15 for reparations or requested reparations.

16 Now, the Chamber can exercise its right in ensuring that any information which goes
17 against confidentiality can be redacted in communications with -- or on individual
18 decisions, or when providing individual notifications. And in this way, the
19 Chamber can in a paragraph put a principle according to which -- put forward
20 a principle according to which the parties and participants are invited to observe the
21 principles of confidentiality and, in particular, by reducing the number of these
22 people.

23 THE INTERPRETER: [10:24:11] Inaudible.

24 MR KASSONGO: [10:24:17](Interpretation) For example, by reducing other acts of
25 mediation between the organs of the proceedings and the victims, orienting the victim

1 and the beneficiaries, guiding them in order to stay in permanent contact with the
2 office of the Trust Fund; that is for the proper receipt of compensation in a secure
3 manner.

4 The Chamber can also ensure direct communication with the requesters
5 without -- who do not have representation, and that will also reduce the formalities
6 associated. An example of the special formalities could concern this aspect when the
7 parents can no longer act in an easy way and they have -- or if they have a member of
8 their family or a relative in their family is affected or not concerned with the
9 reparations process.

10 Exceptionally, we can admit that victims have a member of their family who can look
11 after them, and, as we have seen in the past, if it is not a candidate for reparations,
12 then the information that is provided makes us realise that there are two people who
13 have requested reparations. So this precaution or the formality is prudent -- or to
14 ensure the formality is prudent to ensure that security of the reparations is assured.
15 Now, with regards to the question of the information, the legal representatives
16 consider -- or when it concerns the redacting of information, we consider that you
17 can't redact information which was already public in public orders.

18 Nevertheless, the legal representatives proposed that there is a distinction made
19 between information which names the people concerned and individual information
20 which can guarantee a right to reparations on an individual basis, and, here, we have
21 the obligation to protect those people. Having this distinction with other
22 information in a general way, that means that it is general information and collective
23 information which concerns the victims as a whole, where, for example, the life of the
24 victim, they are part of a large family and they choose -- they are eligible to be
25 a beneficiary. They don't proceed in the reparations proceedings, however, although

1 their right is recognised.

2 Now, in this case, the Chamber may carry out this notification or this guarantee to
3 ensure it is assured for this victim.

4 Now, another example that we have seen in the past means that a policeman, who has
5 provided a request that has been accepted, has the -- a reservation with regards to
6 disclosure of information. Now, it could be ethnic identity. Such people can
7 benefit from individual reparations. If this right is not guaranteed, there is
8 a potential risk to security and with regards to their profession.

9 THE INTERPRETER: [10:29:00] Inaudible.

10 MR KASSONGO: [10:29:06](Interpretation) With regards to precautions that need to
11 be taken for confidentiality, they need to go beyond simple guidance for cross-border
12 victims, because for their work in the *Trois Frontières* area between Bamako, towards
13 Niger -- or, in Burkina Faso, towards Mali.

14 Now, these victims form a group of families who want to carry out family visits as
15 well. They want to keep up with the family traditions. I have spoken about
16 returning to their living -- life, the family life of the extended family in their traditions
17 and their diversity and their religious and ethnic conception thereof with regards to
18 the traditions of the elders. That is also the -- when it comes to parents of victims,
19 direct or indirect victims who have the right to travel for -- in order to meet their
20 needs to do so, and that is the reason why the Legal Representatives of Victims
21 respectfully put to the Chamber that there are these avenues for reflection when it
22 comes to the coming order -- when it comes to the criteria that the Chamber will
23 choose, according to which it will assess these elements. Once they are taken into
24 account, the question that remains is to know if these victims accept a type of pardon
25 which could come from Mr Al Hassan himself. And what do I mean by that?

1 There are a sample of a thousand victims. They are a large group, if you like. If
2 you want to divide them into three groups -- a group of women, adult women, and
3 you have adult men and the group of children, if they accept an apology from
4 Mr Al Hassan, if he himself, and, according to their expression, if he could
5 take -- make an apology which is written or oral, and play a role at his level to
6 reiterate the non-repetition of what has been done in the past, namely, the occupation
7 of Timbuktu, I'd like to stress that, because it is an expression by having an apology.
8 But the sentence that was repeated to me several times is that of saying, above all, do
9 not do that. Otherwise, we are Legal Representatives of Victims, we are the voice of
10 victims and what I have reported to your Chamber is the expression of this majority
11 of the victims who consider that they do not want to hear a light apology, but they at
12 least want him, Mr Al Hassan himself, through his actions or through the way he
13 does things, to make a commitment, written or orally, and this proposal in this regard
14 will be something that would calm tensions between these victims. And there is
15 tension between Mr Al Hassan as well who, one day, will return after the end of his
16 sentence.

17 His community among -- there is his community among these people, so these
18 proposals that are made to calm the tensions for Mr Al Hassan and the victims, that
19 would be something that would be the most appreciated.

20 And finally I will -- I have spent a lot of time on different aspects but I would like to
21 thank my colleague, Maître Doumbia, who is going to complete after me, but I think
22 that my colleague, Nsita, already addressed all the different issues concerning the
23 form of reparations.

24 However, I would like to add another element and perhaps one which isn't
25 particularly lengthy and that is that where you have the division or the subdivision or

1 the regrouping by age of vulnerable -- vulnerabilities and geographical location, that
2 might make it possible to ensure that these victims are treated and identified by
3 different categories. These geographical criteria are not far from the geographical
4 area and we have always worked with those to enable us to meet the mass of victims.
5 I would like to thank your Chamber, Madam President, your Honours, all the victims
6 that I have met, thank you for this time. And I have finished.

7 PRESIDING JUDGE PROST: [10:35:06](Interpretation) Thank you very much,
8 Mr Kassongo.

9 Now Mr Nsita, what is the situation with Mr Doumbia?

10 MR LUVENGIKA: [10:35:18](Interpretation) I believe Mr Doumbia can intervene
11 now, but if there any outstanding issues, we do have his speaking notes; so if that
12 does arise, we will see whether one of us here present in the courtroom will be able to
13 present for him. But otherwise, I think he's up on the screen now. Thank you very
14 much.

15 PRESIDING JUDGE PROST: [10:35:39] *Monsieur* Doumbia.

16 MR DOUMBIA: [10:35:58] (Interpretation) Hello?

17 PRESIDING JUDGE PROST: [10:36:14] (Interpretation) Good morning, Mr Doumbia,
18 we can hear you. You can start please.

19 Mr Doumbia, you can start.

20 MR DOUMBIA: [10:36:24] (Interpretation) Good morning, Madam President.

21 Ladies and gentlemen, your Honours, this morning on this solemn day I have come to
22 bear the voice of the victims, these numerous victims who remain -- who continue to
23 suffer and who can hear us from so far away, but also from so close.

24 When listening to my very brilliant and esteemed colleagues, I would now like to
25 intervene with regard to three points. Firstly, the feedback from the field. Then I

1 would like to talk about the difficulties encountered by the Legal Representatives for
2 Victims, the challenges that they encountered on their mission in relation to the
3 reparation process; and then finally, the implementation of the reparations process on
4 the territory of Mali.

5 So my first point regards feedback from the field.

6 THE INTERPRETER: [10:38:43] Inaudible.

7 MR DOUMBIA: [10:38:51] (Interpretation) This conveys --

8 THE INTERPRETER: [10:39:01] Message from the English booth: the echo is very
9 distinct and it's very difficult for us to interpret under such circumstances. We will
10 try.

11 MR DOUMBIA: [10:39:12] (Interpretation) The following anecdote clearly conveys
12 the heartfelt cry of the victims who were awaiting today's hearing. During a recent
13 interview about this hearing, a victim said to me:

14 "Counsel, do you think that something worthwhile will come out of these trials -- or
15 this trial for the victims?"

16 I responded to this question by putting another:

17 "Do you have any good reason to think that nothing worthwhile will come out of this
18 for the victims?"

19 To which he responded, he said:

20 "The fact is that we have suffered greatly and we continue to suffer. Many victims
21 have died and peace is not on the horizon. We still have hope and remain confident
22 that justice will be done for the victims. Personally, I need to regain my honour and
23 my dignity as a man by resuming my activities, my cattle-farming activities. I don't
24 want to be a burden on anyone anymore."

25 Another victim said the following to me:

1 "What's done is done. The occupiers sacrificed Timbuktu with its people, its values,
2 its history, its dignity, its present and its future. Timbuktu must rise again from the
3 ashes, both physically, morally and in every other possible way." End of quote.
4 These words to a great extent reflect the aspirations, the deep aspirations and the
5 expectations of the victims. First of all, they would like to be able to recover their
6 honour and dignity as human beings. First and foremost, this requires a solemn -- or
7 the solemn reaffirmation by international justice of their status as victims of the
8 occupation of Timbuktu from 2012 onwards, which in itself, is a symbolic form of
9 reparation that they could benefit from - whether they be direct or indirect victims,
10 whether they be identified or unidentified victims - and then there would be other
11 possible and conceivable forms of reparation that would follow.
12 Mr Nsita talked about this and we have lengthily discussed these matters, I shall not
13 come back to them now.
14 Now, the second point that I would like to raise is -- or are the difficulties
15 encountered by the victims' legal representatives when they were carrying out their
16 mission associated with the reparation process. Amongst these challenges are --
17 THE INTERPRETER: [10:43:58] Inaudible.
18 MR DOUMBIA: [10:44:00] (Interpretation) Namely, the restrictions associated to the
19 insecurity which prevented us from carrying out our desired missions, and also the
20 fact that victims were scattered across the entire territory and beyond. Firstly,
21 restrictions associated with the insecurity prevailing which stopped us from carrying
22 out our requested missions.
23 In Timbuktu, it should be noted that access to victims by the LRVs was not as
24 extensive as we wanted and there were only two missions that were possible. In
25 Mauritania, where there is a large concentration of a community coming from

1 Timbuktu living in refugee camps and elsewhere in the country, the access to the
2 victims was not possible due to last-minute restrictions that were imposed by the
3 authorities in charge of security in the country, and this was despite the heavy
4 involvement of the UNHCR.

5 In Niger, where there is a great concentration of Timbuktu nationals who were
6 victims of the occupation, the only mission authorised was carried out under extreme
7 conditions because it was difficult to obtain visas and it was also difficult to access
8 victims.

9 Then, let us talk about the scattering of the victims across the entire territory. The
10 scattering of victims across all of the regions of Mali, but also across many other
11 countries, proved for the LRVs to be a real impediment and prevented them from
12 identifying the maximum number of victims.

13 The number of victims registered by the LRVs is much higher than the number of
14 applications for participation that was submitted to and accepted by the
15 Trial Chamber. The number of recognised or acknowledged direct victims, that is to
16 say, 49 victims recognised by the Chamber, is insignificant compared to the number
17 of direct victims listed by the LRVs and compared to all those who have not been -- or
18 could never be identified.

19 The judgment of 26 June 2024 of Trial Chamber X found Mr Al Hassan guilty of eight
20 counts of crimes against humanity and war crimes. The Chamber also recognised
21 that the entire population living in Timbuktu at the time of the commission of the
22 crimes charged against Mr Al Hassan, that they were all victims of persecution.

23 The question that now arises is how to compensate for so much harm suffered by so
24 many people in Timbuktu. These matters have been discussed on many an occasion
25 and in various submissions to the Chamber, and we would call upon the Chamber to

1 refer to them. We should highlight once again the challenges so that the Chamber's
2 orders -- order on reparation takes them into account when defining the nature, the
3 scope and the modalities of the reparations.

4 My third point, the implementation of the reparations process in the current context
5 in Mali, and this is a sensitive matter. Everyone is aware of the fact today that the
6 current context is full of threats. There have been renewed terrorist attacks
7 throughout the country, throughout the Malian territory, and in this regard, I will not
8 be telling you anything new.

9 THE INTERPRETER: [10:50:26] Inaudible.

10 MR DOUMBIA: [10:50:29] (Interpretation) Because the world today is --

11 THE INTERPRETER: [10:50:34] Inaudible.

12 MR DOUMBIA: [10:50:36] (Interpretation) Currently, it would not be exaggerated to
13 say that no locality from east to west or from the north to the south is really safe from
14 terrorist attacks in Mali, and, as a result, it has become very difficult to access victims
15 for the reparation process.

16 The Legal Representatives for Victims submit this matter for it to be taken into
17 account when a decision is taken and when the reparations are implemented.

18 Secondly, there is also the fact that the prospect of the ESA countries withdrawing
19 from the Rome Statute. The LRVs have learned from the media that these countries
20 are preparing to withdraw from the ICC in order to create a Sahelian court.

21 Although it may seem premature to discuss the impact of such a possibility, however,
22 were this to happen, it would have an impact on the progress of the proceedings -- of
23 the reparations proceedings at this stage of the case.

24 Nevertheless, it is worth considering this prospect for the future and talking about it
25 with regard to the Al Hassan case.

1 However, such a withdrawal should not have --

2 THE INTERPRETER: [10:53:22] Inaudible.

3 MR DOUMBIA: [10:53:25] (Interpretation) -- on the reparations process. We could
4 imagine, for example, a monitoring system between the two systems -- the two
5 judicial systems in order to ensure that the implementation plan adopted retains its
6 adaptability in order to react appropriately to any such event.

7 Madam President, your Honours, I would like to reiterate once again that the victims
8 that we represent are expecting a great deal from you. They are expecting a great
9 deal from you because today, they are quite simply waiting to be rehabilitated and
10 such rehabilitation can be conducted --

11 THE INTERPRETER: [10:55:06] Inaudible.

12 MR DOUMBIA: [10:55:08] (Interpretation) -- can be conducted with funds.

13 Rehabilitation can happen when we show people how they can best live together.

14 And today, the Legal Representatives of Victims are submitting their concerns, their
15 expectations, so that the hearing on the reparations can take into account all of their
16 concerns.

17 And I thank you very much indeed.

18 PRESIDING JUDGE PROST: [10:55:47] *Merci beaucoup, Monsieur Doumbia.* And I
19 understand that concludes the submissions of the Legal Representatives for Victims
20 and thank you very much for adhering to the time frame.

21 We will now, at this juncture, we are a few minutes early, but we will take the
22 morning break and we'll return to commence with the Office of Public Counsel for
23 Victims after the break.

24 Thank you very much. We will reconvene at 11.30.

25 THE COURT USHER: [10:56:28] All rise.

1 (Recess taken at 10.56 a.m.)

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

3 THE COURT USHER: [11:33:05] All rise.

4 Please be seated.

5 PRESIDING JUDGE PROST: [11:33:33] Welcome back to everyone.

6 We will now proceed to hear from OPCV. Fifteen minutes. You have the floor.

7 MR SUPRUN: [11:33:42] Thank you, Madam President.

8 Before I start, based on our team's counting, the legal representatives used 65 minutes.

9 So my question is, if I need just a few minutes more than 15 minutes, would it be
10 possible for me just to use this time not spent by my colleagues?

11 PRESIDING JUDGE PROST: [11:34:02] We would prefer very much that we stick to
12 the allotted time. There could be some flexibility if necessary, but please try and
13 finish within the 15. Thank you.

14 MR SUPRUN: [11:34:11] Thank you, Madam President. And I will make my
15 submissions in French.

16 (Interpretation) Your Honour, your Honours, during my intervention I'm going to go
17 into two different issues.

18 Firstly, for the needs of the publicity of nature, I will give a summary of my
19 submissions about reparations which I will propose for the victims in this case, with
20 certain clarifications relating to my remarks.

21 Secondly, I'm going to go into the issue relating to the eligibility of potential
22 beneficiaries of reparations as direct victims of other crimes than the crime of
23 persecution for which Mr Al Hassan was found guilty.

24 Where it concerns my first theme, I represent four individuals who are, in the first
25 place, victims of the crime under charge 6, which is the crime related to the execution

1 carried out without any prior judgment issued by an irregularly constituted tribunal.
2 These victims have suffered profound and multi-dimensional harm in short and long
3 term. This includes physical suffering due to the detention and, for some of them,
4 corporal punishment.

5 In psychological terms, they had humiliation, anxiety and emotional distress, which is
6 lasting, as well as material harm, due to the fact that the means of subsistence for
7 victims and their family stability were disturbed, and because some of these victims
8 had to abandon their place of residence, their place of usual residence.

9 None of these victims was ever able to recover their level of life that they had before
10 the commission of the crimes that affected them. The members and relatives of these
11 victims suffered psychological harm, but also they suffered material harm because
12 several of them were and still are financially dependent as direct victims.

13 So the four victims that I represent have asked that reparations in their favour include
14 measures to provide socioeconomic support, financial payment, to address their most
15 urgent needs as well as the needs for close members of their families. And
16 furthermore, support to undertake income-generating activities to ensure their
17 well-being and their means of lasting subsistence.

18 And they also wish that reparations measures which are appropriate be accorded in
19 order to establish, as far as possible, their social structure in the Timbuktu community
20 as such.

21 The elements of the case file show that the victims of crimes other than persecution,
22 indirect and direct victims, they suffered harm which is similar of persecution. They
23 also suffered collective traumatism and that was linked to their religious group
24 because the social structures, religious, educational structures and other of the
25 Timbuktu community, were affected in a significant way by the crimes for which

1 Mr Al Hassan was found guilty.

2 The harm goes beyond the individuals, but it is for the Timbuktu community, as such,
3 the community of Timbuktu has suffered harm at a multi-dimensional level, such as
4 community harm, economic harm, as well as transgenerational harm, which affects
5 the coming generations.

6 Taking into account the multiple harms that have been suffered by the victims, and in
7 accordance with the wishes of the victims that I represent, I propose the type of
8 reparations modalities as follows, that they be accorded to victims in the present case:
9 Firstly, I would propose symbolic compensation of 600,000 West African francs to be
10 accorded to each direct victims of crimes other than that of persecution. And this
11 compensation would make it possible, firstly, to take up the most urgent needs of the
12 victims and it would also help to bear fruit for their family members.

13 And this compensation has been calculated given the Court's practice in other cases,
14 but also taking into account the principles of the establishment of amounts for
15 compensation envisaged by the national reparations policy in Mali. Here, I would
16 insist that the compensation proposed must be considered as symbolic and it must be
17 complemented by reparation -- by additional reparations measures.

18 Secondly, I would propose collective reparations with individualised components in
19 the form of rehabilitation measures, medical measures and socioeconomic measures.
20 They should be accorded to all the direct and indirect victims of other crimes than the
21 crime of persecution.

22 These proposals are inspired by the practice of the Court in the Lubanga and
23 Ntaganda cases. These reparations measures should include socioeconomic support
24 to make it possible for the victims to undertake income-generating activities
25 according to the preferences of the victims.

1 Thirdly, I would propose that there be collective reparations on a community basis,
2 that they be accorded to the Timbuktu community as such, and to members of the
3 population of Timbuktu, including the victims of the crime of persecution. This
4 proposal is inspired by the practice of the Court in the Ongwen case, according to
5 which these reparations must include measures of collective rehabilitation.

6 In the circumstances in the instant case, I would propose that collective reparations on
7 a community basis should include two aspects:

8 The first are community rehabilitation measures with a view to restoring, as far as
9 possible, the social structures, the religious, educational and other structures as well
10 of the Timbuktu community.

11 The second aspect is the rehabilitation measures, which should make it possible,
12 collectively, to provide this for large population groups. On the one side,
13 psychological rehabilitation measures are formed -- could take the form of collective
14 psychological therapy, for example. On the other hand, rehabilitation, or
15 socioeconomic rehabilitation measures should make it possible for the wider group of
16 the population to collectively exercise income-generating activities.

17 An option could, for example, be for associations or cooperations in agriculture to
18 receive funds -- the Trust Fund for Victims, which has worked in Mali, could perhaps
19 propose several activities in the form of projects, which would reach large groups of
20 the population.

21 Now, this form of rehabilitation could also include professional training. And, of
22 course, none of the collective rehabilitation measures would be imposed on members
23 of the population who do not wish to benefit therefrom. So the participation of
24 victims in the project must be completely voluntary.

25 Fourthly, I would also propose symbolic measures, or measures of satisfaction, but

1 such measures should be made in consultation with a wider group, as well as the
2 chiefs and prominent persons and figures in these communities.

3 When it comes to these possibilities, there is the expression of apologies by
4 Mr Al Hassan. I shall make a few remarks about that point. I would already
5 propose that there is a symbolic measure with a practical suggestion as well, made by
6 my clients, which goes towards the idea of restoring social cohesion, and this is the
7 construction of one or two different meetings rooms or sports activity rooms where
8 people could come together and, for example, if they want to have collective therapy,
9 or if they want to undertake professional activities or to discuss questions of common
10 interest in such a multi-purpose arena or forum.

11 And, in the present case, it should be discrete, and it has to be inclusive and adapted
12 to the reality experienced by the persons concerned, as well as taking into account
13 their security situation in general and in the community of Timbuktu in particular.

14 The implementation of these measures must in no case give rise to stigmatisation of
15 the beneficiaries, nor to tension or jealousy within the respective communities.

16 I will go into further additional questions during the question and answer session.

17 I shall now go on to my second theme in the written submissions of the defence of
18 Mr Al Hassan. They argued that only the victims specifically cited in the judgment
19 should be considered for the needs of reparations as direct victims of crimes other
20 than that of persecution, and the fact of recognising for the purpose of recognising the
21 status of direct victims to other persons would harm the presumption of innocence on
22 the part of Mr Al Hassan, Mr Al Hassan's presumption of innocence.

23 And I respectfully submit that the number of direct victims of crimes concerned is for
24 reparations. In this case, that should not be limited to victims specifically cited in the
25 judgment. And this is for the following reasons:

1 In the instant case, probably for strategic reasons, the Prosecution has advanced
2 within the framework of the presentation of its case a certain number of incidents
3 which involve the victims and demonstrating the criminal responsibility of
4 Mr Al Hassan for crimes other than the crime of persecution.

5 The Chamber has recognised the criminal responsibility of Mr Al Hassan for the
6 crimes concerned on the basis of the present case and also with regard to the incidents
7 put forward by the Prosecution. When doing so, the Chamber also determined the
8 status of victims as individuals on the basis of the beyond reasonable doubt standard
9 of evidence.

10 I would remind everyone that Article 75 of the Rome Statute explicitly expresses the
11 rights of victims to reparations for the harm suffered in -- by the -- in the crimes for
12 which the accused was found guilty. The standard of proof -- standard of applicable
13 proof for the determination of the eligibility of victims for reparations is that of the
14 preponderance of probability, which is a lot lower than the standard of proof beyond
15 all reasonable doubt. According to this standard of evidence, it only is required to
16 demonstrate that the most -- that it is more probable than not that the persons
17 concerned had suffered harm caused by one of the crimes for which the accused was
18 found guilty.

19 According to the practice of the Court in the case that the victim is not able to provide
20 documentary evidence or other evidence during the reparations procedure, then a
21 coherent statement from this person can suffice, such that they can be classified as
22 benefiting from reparations.

23 If the case put forward by the Defence should be followed, that would mean, firstly,
24 that the rights of victims for reparations set out in the Rome Statute must entirely
25 depend on the discretion or the strategic choice of the Prosecution to move forward

1 within the presentation of its case and to put forward certain incidents involving the
2 victims and, not to mention, other incidents, as well as making its strategic cases to
3 cite certain victims -- to mention certain victims.

4 And, secondly, this would mean that the eligibility of victims for reparations should
5 be determined within the framework of the judgment and, according to the standard
6 of proof, by the highest -- the standard of proof of the highest level, beyond
7 reasonable doubt.

8 I respectfully submit that this approach is quite simply -- that this cannot be used in
9 terms of the reparations of the Court which provides that the eligibility of victims for
10 reparations must be determined under the standard of proof, which is the
11 preponderance of probability.

12 Now, the Defence case has no basis in light of the considerations of the Chamber
13 taken in the judgment relating to the mode of criminal responsibility of Mr Al Hassan
14 for the commission of the crimes in question. The Chamber has determined beyond
15 all reasonable doubt the mode of criminal responsibility of Mr Al Hassan for the
16 crimes concerned under Article 25(3)(d), and this is the mode of responsibility as a
17 contribution by another means. And this type of contribution does not require a
18 specific demonstration of that said contribution, unlike the requirements of paragraph
19 (a), (b), (c) of the same article.

20 The Chamber has developed in detail a way in which Mr Al Hassan contributed to
21 the crimes in question, given the following elements:

22 Firstly, the Islamic Police played a crucial role in ensuring the implementation of the
23 system of punishment and repression as set up by the Ansar Dine/AQIM group
24 throughout the community of Timbuktu during the period between April 2012 and
25 2013.

1 And, furthermore, Mr Al Hassan had no secondary position in that, but he played a
2 crucial role and an important role within the Islamic Police and the Ansar Dine group
3 in general.

4 Mr Al Hassan was one of the leaders of the Islamic Police. He had an important role
5 when it came to the implementation of repression, and enforcement when it came to
6 the Ansar Dine group when it came to the commission of crimes.

7 I understand that I've already gone over. Can I just have two more minutes and then
8 I can conclude.

9 PRESIDING JUDGE PROST: [11:52:30] Two more.

10 MR SUPRUN: [11:52:31](Interpretation) Just two minutes. Thank you very much,
11 your Honour.

12 So, I am not going to give other examples, because they're in the judgment and on the
13 sentencing, but when it comes to the considerations of the Chamber when it comes to
14 the judgment on the sentence and the measures were implemented and the -- for the
15 crimes committed in Timbuktu in the time frame of nine months.

16 Now, according to the estimations from the Trust Fund for Victims, more than 1,210
17 persons were convicted without any trial or judgment by a regularly constituted
18 tribunal, and more than 1,600 persons were detained and more than 9,000 had
19 corporal punishment inflicted on them. Under the standard of proof which is
20 applicable at this stage, and which has the preponderance of probability, it is most
21 probable than not that a much higher number of victims than that given in the
22 judgment suffered directly from harm caused by other crimes than the crime of
23 persecution, and their eligibility for reparations should therefore be evaluated under
24 these applicable standard at that stage and in accordance with the criteria of eligibility
25 which should be established by the Chamber.

1 To conclude, where it concerns the argument of the Defence that there are more
2 important elements when it comes to crimes other than the crime of persecution
3 which could -- that could harm Mr Al Hassan if such people suffering from that are
4 included, we should say that this has already been decided on a definitive way. The
5 sentence has been set definitively and the reparations before this Court have no
6 punitive effect for the person who is found guilty. The only objective of this
7 procedure is to make it possible for victims to obtain reparations as far as possible for
8 the harm that they have suffered.

9 And, by way of conclusion, I would respectfully ask the Chamber to set aside this line
10 of reasoning of the Defence because, if this approach is followed in this case, it could
11 constitute an extremely dangerous precedent for the future with harmful effects for
12 the reparation system before this Court.

13 Thank you very much.

14 PRESIDING JUDGE PROST: [11:55:03](Interpretation) Thank you very much.

15 Now Mr Dutertre for the Prosecution.

16 MR DUTERTRE: [11:55:14](Interpretation) Thank you very much, Madam President.

17 I'm going to try and get hold of the lectern, if I may, from my learned colleague.

18 Thank you, Madam President. Thank you, your Honours.

19 I shall try and stick to the allocated time, around 10 minutes rather than the
20 15 minutes.

21 It is not customary for the Prosecution to be involved in the reparations phase at the
22 ICC, and Trial Chamber II in the Ntaganda case ruled that the Prosecution is not a
23 party to the reparations phase. This primarily concerns the victims, of course, and
24 the Prosecution would therefore like to thank the Chamber for inviting it to this
25 hearing today.

1 Now, allow me to focus on a number of points.

2 First, the women and girls of Timbuktu whose courage during the demonstration
3 in October 2012 is well established and commands respect and admiration.

4 Mr Al Hassan, present here today, was found guilty of directly participating in the
5 implementation of the policy of persecution carried out by Ansar Dine and AQIM and
6 of contributing on a daily basis to the campaign that was waged by Ansar Dine and
7 AQIM against the civilian population for religious reasons. I'm not going to repeat
8 the list that my colleague provided us with just now.

9 So, it must be noted that women and girls were particularly
10 affected by this religious persecution.

11 In the judgment, the Chamber noted in paragraph 1570, and I'm going to quote in
12 English: (Speaks English)

13 "... specific rules and prohibitions imposed on women and their enforcement had a
14 significant impact on all aspects of the life of women in Timbuktu. [...] in fact
15 women [...] feared going outside, drastically reducing their activities outside of the
16 home [...]". End of quote.

17 (Interpretation) In a similar manner, in paragraph 74 of the sentencing judgment, the
18 Chamber also took care to specify, and I quote in English once again: (Speaks English)

19 "... the restrictions imposed, notably on the appropriate clothing and the occupation of
20 the public space, were implemented in such a way that they had a specific and
21 disproportionate impact on females members of the population of Timbuktu who, in
22 the circumstances, were in a position of particular vulnerability." End of quote.

23 (Interpretation) The Prosecution also notes the gendered component of the harm
24 suffered by women as a result of other crimes or the circumstances underlying other
25 crimes for which Mr Al Hassan was convicted. I am, for example, referring to cases

1 of flogging for adultery or, inter alia, to a number of sanctions or measures that were
2 imposed in marital matters, such as alleged insubordination.

3 And I must say that the existence and the impact of the persecution of women by
4 Ansar Dine and AQIM is not a coincidence. When one seeks to dominate and
5 subjugate a population, a classic way of doing so is to target women, and this has an
6 effect on men and society as a whole.

7 And may I remind you of an item of evidence to illustrate this. In video
8 MLI-OTP-0011-0376, at lines 97 to 100 of the corresponding transcript, and I
9 quote - that a gentleman from Timbuktu said - and I quote:

10 "We no longer had any dignity. Our dignity was sold, because when they beat a
11 woman in front of you, or your wife in front of you, when they beat your sister in
12 front of you ... you can't say a thing. When they beat your mother, and you can't say
13 anything. It means that you no longer have any dignity."

14 In any event, the Prosecution submits that the Chamber must adopt a
15 gender-inclusive approach and promote gender parity in all aspects of reparations,
16 and I would imagine that the Defence would not see any hurdle to such an approach.
17 Because if we repair the damage suffered by women and restore part of their dignity,
18 we also, in so doing, restore part of the dignity of the entire population.

19 I heard this term or word "dignity" used by Maître Doumbia, and beyond financial
20 and material issues, these are -- this moral dimension has all its value.

21 I'm going to move on to my second point now, Madam President, your Honours. It
22 is the question of the number of victims. In paragraph 74 of the judgment on
23 sentence, the Chamber, and I quote in English, found: (Speaks English)
24 "Ansar Dine/AQMI targeted not only members of the population who opposed them,
25 but also every member of the population who saw themselves forced to abide by the

1 rules and prohibitions ..." (Interpretation) To move on a little bit and continue:
2 (Speaks English) "The number of victims of the crime of persecution is therefore very
3 high: the entire population of the city of Timbuktu was targeted and was the subject
4 of the deprivation of fundamental rights."
5 (Interpretation) And, in this regard, the Prosecution would like to underscore that we
6 need to also take into account the members of the population who fled Timbuktu in
7 order to escape religious persecution conducted by AQMI and Ansar Dine, because
8 all of these individuals suffered moral and material harm when they left the city, of
9 course. And you will be able to read in our submissions that one witness said that
10 30 per cent of the population of Timbuktu, in his estimation, had fled the city.
11 The third point that the Prosecution would like to raise is the age of the victims, in
12 accordance with Article 68, as well as the harm related to the age of the victims and
13 their needs, in accordance with Rule 86. I am, for example, thinking of a certain
14 elderly person who was a victim of AQIM and Ansar Dine. I am also thinking of
15 P-0565, who was approximately 14 years of age when she received 100 lashings in
16 Timbuktu in 2012 in front of a crowd.
17 In its reparations programme, the Court should take into account the specific needs of
18 victims who were children at the time of the crimes. In so doing, they should bear in
19 mind any long-term effects these crimes might have on their development.
20 Reparations for minor victims should, in particular, cover lost opportunities for the
21 future, and reparations should also include measures to prevent ostracism and
22 discrimination against children, as well as promote their reintegration into society.
23 Two final quick points, Madam President, your Honours.
24 The definition of the concept of harm which must be interpreted broadly. Harm can
25 be material, physical or moral, and it does not necessarily have to be direct. There

1 might be indirect victims as long as the harm is personal to them.

2 Secondly, in this context, we should emphasise that the type of crimes for which

3 Mr Al Hassan was convicted sometimes have transgenerational effects, and I am

4 talking here about what our learned colleague from the OPCV talked about earlier.

5 The marks left by whipping do not disappear on a father or a mother. Children and

6 grandchildren can see these marks and they cannot pretend that they haven't seen

7 them. This factor needs to be taken into account, as it is very important. Any

8 programme -- and we believe that the Chamber should take into account -- this into

9 account. That is our submission.

10 One last point. I would like to belabour this point.

11 In addition to individuals, there are also entities that have been affected by crimes of

12 persecution. I am here thinking about schools that were closed or forced to apply

13 the religious views of Ansar Dine and AQIM. One witness said that around 150

14 schools were closed because they were not able to meet the conditions imposed by

15 these groups. And here, there are, of course, long-term effects on the education of

16 children who were affected.

17 So, to conclude, your Honour, reparations in the Al Mahdi case are nearing

18 completion and it can be said that -- because of the combined efforts of all those

19 involved, the LRVs and the Trust Fund. So now work is beginning on the Al Hassan

20 case. The LRVs have experience that will be invaluable to the Chamber because they

21 have experience of the field, of the reality of Timbuktu, matters of security. I won't

22 go into details here because, of course, security details are very important to the

23 Chamber and very precious.

24 Thank you very much.

25 PRESIDING JUDGE PROST: [12:09:41](Interpretation) Thank you very much,

1 Mr Dutertre.

2 (Speaks English) Now we will hear from the Trust Fund for Victims. Thirty minutes,
3 please.

4 MS RUIZ VERDUZCO: (Microphone not activated)

5 THE INTERPRETER: [12:10:22] Microphone, please. We cannot hear counsel.

6 PRESIDING JUDGE PROST: [12:10:30] Can you try again, please.

7 Can you ...

8 Perhaps you could use the row behind, if it's working, while we try and deal with the
9 technical problem. Thank you very much, Ms Ruiz Verduzco.

10 MS RUIZ VERDUZCO: [12:12:08] Thank you. Good morning.

11 PRESIDING JUDGE PROST: [12:12:10] Thank you very much. Good morning.

12 Please proceed.

13 MS RUIZ VERDUZCO: [12:12:13] Your Honours, I would like to first place on the
14 record that our team composition at the Trust Fund for Victims has changed over the
15 break. I am now present in the room, my name is Deborah Ruiz Verduzco, I'm the
16 executive director. And my colleague, Veena Suresh, associate legal officer, has also
17 joined the team.

18 The Trust Fund is honoured by the opportunity of addressing the Chamber at this
19 critical stage in the proceedings to deliver a set of observations by the TFV which
20 complement our written submission.

21 In these oral observations I will cover three issues.

22 The question of the Chamber in relation to costs, a matter in relation to the principles
23 of reparations, and other issues related to the implementation of an eventual
24 reparation programme.

25 In relation to costs, in addressing this topic, the Trust Fund needs to be reminded of

1 the current stage at which the proceedings are. This is the judicial reparations stage
2 that will result in the issuance of a reparation order. This stage needs to look at both
3 what has been destroyed by the crimes committed, for which Mr Al Hassan was
4 convicted for, as well as what has to be repaired.

5 And, when looking into addressing the matter of costs, we are naturally brought often
6 into a bargaining process, because we are, of course, naturally compelled, the Trust
7 Fund, and possibly you as well, on the tension between the principle of what it is and
8 the reality of what can be, the need to balance full recognition with feasibility.

9 However, for this approach, the Trust Fund respectfully posits that if we are
10 reminded at the moment at which we are, there is no need to engage in this
11 bargaining. Today and in the current phase, the reparation order should recognise
12 the harm suffered by the victims, and consider the liability of the convicted person in
13 relation to those victims. In the future, once the order is issued, in the next phase,
14 the administrative implementation will begin, and practical considerations can inform
15 better future decisions.

16 Now, going into the matter of costs, of course, drawing an estimate needs to be
17 grounded on several assumptions for issues that are yet to be determined, both in the
18 order and during implementation. That is, the judges have to determine the extent
19 of the harm, the measures ordered and the criteria and final or estimate number of
20 eligible victims. In addition, certain costs might be further impacted by individual
21 and specialised assessments of the victims' conditions themselves, for instance,
22 medical assessments, treatment plans that will determine the scope of a medical
23 intervention and that will, of course, also result in potentially different costs.

24 But, to move into this exercise in a productive and helpful way to the stage at which
25 we are, we have ensured that we use certain assumptions, and we make those

1 assumptions explicit, therefore allowing the Chamber to adjust our calculations to the
2 extent that you finalise certain matters, especially when our assumptions might
3 drastically change.

4 As I will present the costs, my statements reflect summative amounts. Should the
5 Trial Chamber require so, the detailed calculations that have led to these sums can be
6 made available in writing.

7 The key assumptions are that, from the information that the Trust Fund obtained,
8 from relevant stakeholders as well as through an ample study of victims' views that
9 we have called the 2025 Victims' Voices Study, harm has been suffered by the
10 community, by specific groups within the community, affected particularly, and by a
11 number of individuals in particular within that community. In relation to costs,
12 therefore, we will address first the costs covering measures for the community, which
13 is a category of victims in its own right. All parties have recognised that the crime of
14 persecution has affected the entire population collectively and communally. The
15 Chamber itself has recognised this in its judgment decision of 26 June 2024. The
16 harms may be considered to be moral, psychological, religious and economic.
17 The TFV collected information on some measures proposed by the members of the
18 community, and these notions have informed the way we have gone about cost
19 estimations. In relation to community symbolic commemoration and satisfaction
20 measures, the community has given us some ideas. This includes the inscription of
21 the *Mawlid* on the national and world heritage lists, memorialisation initiatives and
22 educational programmes. The cost estimate for these measures is around 1.1 million
23 EUR. This calculation comprises six symbolic measures, valued each between 90,000
24 EUR and 200,000 EUR.

25 For socio-economic rehabilitation measures, the Trust Fund is informed by a

1 community-based approach followed in the Al Mahdi programme, which comprises a
2 selection, accompaniment and funding of micro and macro-economic projects. *

3 Those projects are estimated at 300,000 EUR and 30,000 EUR respectively. If we
4 estimate that four macro projects can be implemented and 80 micro projects can be
5 delivered, also focusing on particular communities affected, such as Christian
6 minorities, certain professions that were prohibited or restricted during the
7 occupation, or individuals who saw their fundamental freedoms violated, or were
8 forced to flee Timbuktu, then we can estimate that the socio-economic measures at the
9 community level could be valued at around 4 million EUR.

10 Finally, concerning the need of psychological rehabilitation, the Trust Fund
11 recognises that interventions are required across the community. In the Al Mahdi
12 programme, the Trust Fund has implemented community level psychosocial
13 interventions. If we estimate to reach around 10,300 individuals, the cost of these
14 measures would be 1.2 million EUR.

15 Together, all these community measures are estimated at around 6.3 million EUR.
16 These costs include costs that have been included and detailed as costs C in our
17 written submission.

18 Now, at the individual level, your Honours, of course, the harm was suffered by
19 individuals themselves, and the question is, how many individuals have suffered this
20 harm. In our study, we understand that more than 9,000 individuals, 9,453 precisely,
21 suffered severely; 8,849 moderately; and 9,563 mildly. There are also other similar
22 numbers for severe economically affected, moderately affected and mildly affected
23 individuals at the individual level.

24 If individual medical or psychological measures are implemented, the Trust Fund
25 estimates that basic care will cost 150 EUR at a minimum, up to 6,000 EUR for major

1 care.

2 If you want to make the calculation, the numbers that are provided in the victims
3 study by unit cost will allow to obtain a total amount. However, from a general
4 calculation made by the Trust Fund, we estimate that only 10 per cent of those
5 affected severely have actually acute persistent harm. So that would be another
6 approach for the Chamber to consider individualised measures.

7 In relation to socio-economic measures, the Trust Fund makes reference to
8 programmes implemented elsewhere where individuals receive between 350 EUR
9 and 850 EUR, in addition to training. With these costs in mind, the variation of
10 individualised measures ranges from 21.3 million, if the entire population of affected
11 individuals is considered, or 3.9 million if only those affected severely with acute
12 persistent harm are considered. That is 10 per cent of the total population.

13 Finally, in relation to compensation and individual awards, this is a matter that the
14 Trust Fund did not address in its written submission. This can be, of course,
15 awarded through individual or through collective awards as a modality of
16 reparations.

17 The Trust Fund has taken note of the submission of the parties, the *amici curiae*, and
18 the Prosecutor, in relation to compensation or individual measures. There is a clear
19 preference in their submissions for that compensation -- for example, in the form of
20 symbolic payments. The Trust Fund took note of today's submissions of the LRV to
21 provide 350 EUR to each victim, and OPCV-LRV proposed to get -- that proposed to
22 get an orientation for such symbolic payments from the Malian national policy on
23 reparations. In this regard, the TFV recalls that such policy provides for a
24 comprehensive compensation scale for physical, psychological and material damage,
25 that a dedicated agency, the AGRV, has been created and is in the process of being

1 operationised.

2 The amounts for compensation in this policy ranges from 900 EUR to 5,500 EUR for
3 physical and psychological rehabilitation, and up to 7,300 EUR for economic
4 rehabilitation. These amounts would need to be extrapolated to the number of
5 victims the Chamber considers eligible.

6 The Trust Fund, however, submits respectfully that in order to impose a
7 compensation scheme as a modality for reparations, prior cases of Trial Chambers
8 that have established prerequisites for compensation, including individualised
9 assessment of harm, might be required.

10 It is also important to consider that the application of the Malian national policy on
11 reparations falls exclusively within the competence of the Malian authorities, and we
12 caution the way that referencing or relying on this law may be relevant for purpose of
13 estimated estimates relevant to the application in the ICC.

14 From a practical perspective, should the victims receive compensation through the
15 ICC, Malian authorities may request the Court to share information on those
16 individuals to ensure no double reparation, and measures would need to be put in
17 place to facilitate or manage these requests, while preserving the integrity of the
18 individuals that benefit from compensation before the Court.

19 Other issues arise in relation to compensation. {ICR: (Redacted)}

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)}.

12 In conclusion, in relation to costs, we estimate 6.3 million for collective measures and
13 between 21.3 or 3.9 million for individualised measures. And if the 49 victims
14 identified in the conviction are delivered measures, it would amount to 100,000 EUR
15 for that measure alone.

16 If I may, your Honour, in relation to a second matter, that is the principles of
17 reparations, which, according to Rome Statute Article 75(1), you are required to
18 develop and which the Assembly has requested the Court continues to develop.
19 These principles are essential for the Trust Fund and for the victims themselves.
20 The jurisprudence has progressively articulated and refined these principles across
21 several cases. They represent an evolving body of law and practice that reflects legal
22 thought and on the ground experience. These principles are not only our guiding
23 standards, but they are also the benchmarks at which we measure our outcomes and
24 we evaluate the success of implementation. They have been integrated into every
25 activity we undertake and we seek to pursue that the Chamber advances these

1 principles on this occasion and we respectfully submit three recommendations for the
2 refinement of reparations principles.

3 The first one, similar to the Ntaganda principle that the implementation must be
4 gender sensitive and inclusive, the Trust Fund proposes that it should also be conflict
5 sensitive. Representations should be designed with an awareness of prevailing
6 tensions so as to not exacerbate them, but instead to ensure that they contribute to
7 rebuilding trust and fostering co-existence.

8 Secondly, participatory reparations. It is necessary that the principles go beyond the
9 principle of consultation, a victim-centred approach or accessibility. Instead, we
10 believe that participatory approaches ensures that victims participate in the design, in
11 the evaluation and in the consultation of the way that reparations are implemented.

12 Finally, the principle of adaptive prioritisation. This is set out in paragraph 129 of
13 our written observations, that refers to the necessity of enabling and empowering the
14 implementation phase to adapt to practical limitations as well as to preference of
15 communities.

16 This issue of principles leads me now to address the issues of implementation that we
17 may face in the future.

18 In this regard, I wish to make, simply, brief reference to important factors that are
19 essential looking forward but are not necessarily pertinent at this point for the
20 reparation order.

21 The first one is the essential element of the order to be well known and understood by
22 the communities, while also measures specifically addressed to individual victims be
23 accompanied by confidentiality and other manners to protect the victims themselves.

24 We will be certainly informed by the security contexts, which in the Al Mahdi case
25 has defined the way we adapt to manage tensions, access -- and ensure access

1 conditions, but that the security context has very much been informed by the level of
2 cooperation that we have received from the Malian authorities themselves. Mali, as
3 a State Party that has also welcomed the physical presence of the Court in its territory,
4 has cooperated with the Trust Fund in the implementation of the reparations at the
5 national level as well at the local level, including through a steering committee that
6 was established to oversee the implementation of these reparations.

7 This brings me, of course, to the essentiality of the cooperation of Mali to the success
8 of the reparations and of the order. The Trust Fund values the constructive
9 engagement it has received and we posit, your Honours, that it could also be -- the
10 Malian state could be encouraged to continue this cooperation. It is important to
11 acknowledge the progress in relation to transitional justice that the Malian law
12 provides and the necessity for any future programme of reparations to be
13 implemented in a manner that strengthens the trust that individuals have on the
14 Malian state and that ensures that that implementation of the policy is catalysed and
15 further expanded.

16 As a final point, your Honours, I would like to emphasise as well that the Trust Fund
17 would welcome any contribution that Mr Al Hassan could make economically,
18 however modest, to meet his financial obligations under the reparation order. The
19 evaluations that we have conducted on reparation programmes show that any gesture
20 by the convicted person, even a symbolic one, can have a significant effect on the
21 value of any measure that the Court may issue. For the victims to accept some
22 gesture may take some time. And as researchers of the University of Edinburgh
23 indicated in their *amicus curiae*, it often has a multiplier effect on the victims'
24 satisfactions. Combined with a sincere and accessible apology, such a financial
25 contribution has the potential of being deeply reparative.

1 The Trust Fund anticipates the finalisation of this phase of the proceedings. We
2 remain prepared and ensuring our increased readiness to implement any programme
3 and any decision that you may deliver, as it will be certainly for the benefit of the
4 Court's legitimacy, of the victims, and of the trust in institutions that these measures
5 can take.

6 Thank you, your Honours.

7 PRESIDING JUDGE PROST: [12:35:08] Thank you very much for those submissions.

8 We will move now to the Defence.

9 Ms Taylor, in the interest of efficiency and time, we have obtained the Registry's
10 cooperation to extend the session to 1.15, in the hope that the Defence can complete
11 their submissions. But if - appreciating you have 45 minutes - there are any
12 remaining remarks you wish to make after that, we can take a few minutes in the next
13 session. That will leave us good time for a back and forth with the parties and
14 participants in the final session. So, if that's acceptable to you, we'll begin your
15 submissions and we'll see how we proceed. Thank you.

16 Ms Taylor, you have the floor.

17 MS TAYLOR: [12:36:11](Microphone not activated)

18 THE INTERPRETER: [12:36:16] Microphone, please, counsel.

19 PRESIDING JUDGE PROST: [12:36:19] You seem to have the same problem. It
20 seems to be a front row problem today.

21 Can we test? Can we test the middle section there with the front row? We don't
22 seem to have anything. Can we try the second row there to see if that is working?
23 Perhaps, counsel, you could just check and see if your -- if your microphone is
24 working.

25 MS TAYLOR: [12:37:08] Hello. That works? Okay.

1 PRESIDING JUDGE PROST: [12:37:11] Yes. Sorry, Ms Taylor, we'll have to have
2 the same adjustments to position.

3 Please proceed, Ms Taylor.

4 MS TAYLOR: [12:37:40] Is this working now? Thank you.

5 I will be addressing the role of Mr Al Hassan in this process and also the issue of how
6 the victims are identified and defined in connection with Mr Al Hassan's conviction
7 for persecution. My colleague, Maître Beaulieu Lussier, will focus on proposed
8 modalities to ensure a fair and efficient and non-discriminatory process.

9 The Defence has filed a table of authorities and we will be referring to these
10 authorities by number. We are also showing a document on the screen. It should
11 be broadcast in public.

12 While Mr Al Hassan is indigent, he would like to underscore his wish to contribute to
13 this process to the best of his ability and in a way that is impactful.

14 There are four different ways by which he is seeking to repair the harm caused by his
15 actions.

16 The first is his public apologies; the second, through the assistance he provided
17 voluntarily in identifying victims; the third concerns a financial contribution to the
18 Trust Fund; and the fourth relates to his support for an efficient and effective
19 reparations process, which will be addressed by Maître Beaulieu Lussier.

20 Mr Al Hassan issued two public voluntary apologies: the first on 17 December 2024
21 and the second on 14 April 2025. And they have both been widely disseminated in
22 local languages. The April apology can now be seen in French on the screen.

23 His apology was not intended to reduce his liability for reparations and we are not
24 asking that it do so. For some victims it may be a form of satisfaction, for others it
25 will not. Grief and suffering are personal and they manifest differently for everyone.

1 And that is why he ended his apology by emphasising that, "The victims of Timbuktu
2 have the right to both seek justice through the International Criminal Court's
3 reparations process and to choose whether to accept my personal apology. These are
4 not choices that need to be made against each other."

5 If I may ask, is the document being shown?

6 PRESIDING JUDGE PROST: [12:40:20] I haven't been able to find it, Ms Taylor.

7 THE COURT OFFICER: [12:40:26] Evidence channel 1.

8 PRESIDING JUDGE PROST: [12:40:28] Thank you.

9 I have a picture on evidence channel 1.

10 I would suggest we continue, Ms Taylor, and there seems to be a technical problem.

11 Hopefully it can be resolved. Thank you.

12 MS TAYLOR: [12:41:09] Certainly. Certainly.

13 The complexity of the events and the diversity of experiences in Timbuktu calls for a
14 multi-pronged approach to reparations that accommodates diversity and difference.

15 And we suggest that there is room within such a strategy to use Mr Al Hassan's
16 apologies to help repair the harm he caused and to prevent its recurrence. And we
17 further propose that his apology may resonate with the following groups of persons:

18 The first are the victims; the second are the other individuals who made wrong
19 choices and whom he may now be able to influence in a positive manner; the third is
20 the community of Timbuktu, whom he seeks to support the reparations process.

21 As concerns the victims, Mr Al Hassan has used a particular supplication which is
22 derived from the Sayyid ul Istighfar.

23 And he chose this language because the prophet has decreed that it is the most
24 powerful and genuine apology that a Muslim can use.

25 And there are three key reasons why that is the case:

1 First, it is anchored in faith, and that means, to invoke it, you have to be truly
2 repentant because you can't lie or pretend to God. As Mr Al Hassan said in his
3 sentencing statement, God sees into his heart and will know if his apology is from his
4 heart or not. That's reference 2.

5 Second, the supplication uses languages which juxtaposes the blessings received from
6 God and the fact that the person has sinned. This shows that the person
7 acknowledges their wrongdoing and shows repentance having disappointed God.

8 Third, the reference to keeping God's covenant is a pledge to God to never repeat the
9 wrongdoing.

10 I refer to reference 3.

11 So, when Mr Al Hassan apologised to all the victims he harmed, he made this
12 apology from his heart, and he used the Sayyid ul Istighfar to emphasise his pledge
13 before God to repair and never repeat this conduct. This is an apology built on
14 Mr Al Hassan's religious faith, but it is also addressed to all victims irrespective of
15 their faith.

16 And that is why Mr Al Hassan cited the prophet's statement that, "Not one of you
17 truly believes until you wish for others that which you wish for yourself". This
18 statement is an iteration of the principle of mutual respect for other people, other
19 values and other religions.

20 Mr Al Hassan's religion is important to him, but he also understands that, in the same
21 way his beliefs are important to him, other people may have different beliefs which
22 are equally important to them and equally deserving of respect and protection.

23 And that's why he acknowledged in his public apology that it was wrong for the
24 groups to impose foreign beliefs and ideology on the people of Timbuktu in 2012, and
25 it was wrong for him to have been part of that. This public acknowledgement of

1 wrongdoing and pledge before God of non-repetition are elements of the right to an
2 holistic remedy.

3 And since the community of Timbuktu has suffered from collective harm, it is
4 significant that notable religious and community leaders have expressed their support
5 for Mr Al Hassan's apology, and they have further suggested that it can play a
6 positive role in local reconciliation processes. And I refer to the statements at
7 authority number 4.

8 This brings me to the second potential group whom Mr Al Hassan hoped to address
9 with his apology. Mr Al Hassan shared his path towards recognising the suffering
10 experienced by victims in the hope that it is a journey that resonates with others and
11 encourages them to embark on similar paths. And in so doing, he talked about what
12 he suffered, not to minimise or excuse the harm he caused, but to highlight the
13 importance of looking beyond one's own pain and opening your eyes to the
14 perspectives and suffering of others. And he hoped to demonstrate that if someone
15 like him can reach this understanding, others can do so as well.

16 When Mr Al Hassan came to the ICC, he had suffered from torture. He then lost a
17 daughter. He was alone, afraid, closed off, and his religion saved him in his darkest
18 time.

19 And then the day of the conviction came and the Presiding Judge clarified that "this
20 trial had nothing to do with either Sharia law or the Muslim religion in general".

21 Reference 5.

22 The war crimes and crimes against humanity were not committed by Islam, nor were
23 these crimes the necessary and foreseeable by-product of Islam. They were the
24 product of specific individuals and specific policies developed by individuals and
25 applied by force.

1 The victims were targeted because of their religious views, but they were targeted by
2 individuals and not by Islam.

3 And because Islam is a religion that values peace and reconciliation among peoples,
4 that embraces justice and kindness, it was right for Mr Al Hassan to acknowledge his
5 wrongdoing and seek forgiveness for the victims' suffering.

6 And it is also the right thing for Muslims like him to state their opposition to acts that
7 are not part of Islam, such as rape, forced marriage or prohibition of work or
8 education for women. And I refer to reference 6.

9 Mr Al Hassan hopes through his public declaration that others will also see that it is
10 not too late to say sorry, that it is not too late to recognise and repair this harm, with a
11 view to ensuring that all communities and all faiths in Timbuktu can live together in
12 social cohesion, *de vivre ensemble*.

13 And this brings me to the third group that Mr Al Hassan hoped would hear his
14 apology, and that is the community of Timbuktu.

15 Mr Al Hassan was found by this Chamber to have been generally well liked by the
16 population of Timbuktu. That's reference 7. He has now called on that population
17 to support the reparations process. He has also asked them to support victims right
18 to access justice, irrespective as to whether they accept his apology or not.

19 And Mr Al Hassan made this public statement to eliminate any potential stigma
20 concerning the reparations process or any perception that persons who viewed him
21 favourably should not support this process or victims' rights.

22 I'm turning now to Mr Al Hassan's second contribution to the reparations process,
23 which is that he voluntarily shared information for the purpose of helping the
24 Registry locate and identify victims, and this information has now helped locate six
25 previously unidentified victims, two of which are survivors. This, in turn, facilitated

1 their right to access justice and the reparations process.

2 And we respectfully submit that it is appropriate for the Chamber to refer to this

3 voluntary assistance in the reparations order to highlight the importance of the right

4 to truth and access to justice as core components of an holistic reparations process.

5 The right to the truth and the related right to know the identity and location of

6 victims are referred to as a form of satisfaction in the UN Basic Principles and

7 Guidelines on the right to a remedy. That's reference 8.

8 And an example of the application of these principles in restorative justice context can

9 be found in Colombia's Special Jurisdiction for Peace where perpetrators can

10 volunteer to repair the harm by providing information that can help locate or identify

11 victims. That's reference 9.

12 And Mr Al Hassan's actions are consistent with these principles and precedents.

13 The individuals were publicly named in the judgment. There were therefore no

14 protective measures. Three were known to the Defence and the Defence only took

15 steps to identify the others after VPRS first confirmed that it had been unable to do so.

16 So these were individuals who had not yet been identified by the Registry and who

17 might never have been identified if not for the voluntary assistance of Mr Al Hassan.

18 And Mr Al Hassan has also expressed his willingness to assist VPRS in whichever

19 way they deem helpful in relation to any other of the named 49 victims who have not

20 yet been located. That's reference 10.

21 And we submit that referencing this voluntary contribution in the reparations order

22 would be helpful, because, first, Mr Al Hassan's direct assistance is a very concrete

23 indication of his support for this process and for the right of victims to come forward,

24 and this is another action that can help eliminate stigma and promote security for the

25 process. And, second, it may also encourage other defendants in other cases to

1 consider making similar contributions in support of the right to the truth.

2 This brings me to the third contribution, which is that Mr Al Hassan wishes to make a
3 financial contribution to the Trust Fund for Victims, notwithstanding his indigency.
4 To that end, he has proposed to save and contribute 164,000 CFR, from his personal
5 funds at the detention unit, to be used as the Chamber deems most appropriate.
6 This is the equivalent of about 17 weeks income and can cover the cost of a cow or a
7 sheep or a symbolic financial amount to direct victims.

8 And we sought the opinion of the Trust Fund as to whether it would be more helpful
9 to make an immediate voluntary contribution that is separate from the reparations
10 order, or one that is part satisfaction of the order. And the Trust Fund, in turn,
11 indicated that if such funds are used against payment of the reparations order, and if
12 approved, this would be the first time that this would happen in the history of
13 Court-ordered reparations at the ICC.

14 As concerns the proposed allocation, Mr Al Hassan suggested in our filing of 16 July
15 that his contribution could form part of a symbolic ceremony organised by the Trust
16 Fund. For example, sheep could be distributed as food on the occasion of a festival,
17 such as Tabaski, or Maouloud, the prophet's birthday. And the idea behind this was
18 to show his support for the reparations process and to underscore the importance of
19 respecting local beliefs concerning such festivals.

20 We are also aware that in previous cases reparations orders have provided for
21 symbolic amounts to be given to victims in recognition of the harm done and
22 suffering caused. That's reference 13 and 14.

23 We defer to the Chamber and Trust Fund as concerns how best to use such funds.
24 I'm moving now to the more complex question concerning the number of direct
25 victims, including for the crime of religious persecution.

1 There seems to be general agreement that since the crime of persecution targeted the
2 community of Timbuktu as such, the collective identity of Timbuktu suffered
3 community harm, which should be recognised and repaired.

4 The Defence also supports the position that community reparations should address
5 intersectional forms of harm and prioritise vulnerable groups within that community.

6 And we submit that the approach to independent trauma in the Ntaganda reparations
7 addendum provides a sound framework for recognising and repairing harm caused
8 by crimes which Mr Al Hassan did not commit. And that's reference 15.

9 In Ntaganda, the Chamber accepted expert evidence that past exposure to trauma can
10 make victims more vulnerable to future suffering and can also aggravate the way
11 they experience such suffering. So even though Mr Lubanga was not responsible for
12 pre-existing trauma caused by the armed conflict in the DRC, this pre-existing trauma
13 was relevant to reparations because it informed or impacted the way the victims
14 experienced the crimes committed by Lubanga.

15 So, in the case before you, Mr Al Hassan was acquitted of all crimes concerning sexual
16 and gender-based violence. Judge Akane further found that such crimes fell outside
17 the common purpose, did not satisfy the chapeau elements of crimes against
18 humanity and also could not be considered as underlying acts of persecution. That's
19 reference 16.

20 Nonetheless, the fact that victims experienced sexual violence and gender-based
21 crimes would have impacted the way they experienced the collective harm of
22 persecution. There is therefore a basis for prioritising schemes to repair such harm
23 in any collective reparations schemes for persecution without imputing criminal
24 responsibility to Mr Al Hassan.

25 The same can also be said for historically discriminated segments of the community.

1 And the notion of community may also include future generations impacted by harm,
2 children who died in infancy, those who were never born, the miscarriages caused by
3 psychological stress or a lack of access to appropriate care.

4 These are the points of agreement. Where there is disagreement is the question as to
5 whether the fact that Timbuktu community suffered harm means that each member
6 of that community can be considered as a direct victim in their own right.

7 And it is our position that since Judge Akane's opinion is a reference point for the
8 parameters of persecution, the verdict means that not every individual can be
9 considered as a direct victim of persecution, and not every victim of persecution can
10 be considered to be the victim of Mr Al Hassan.

11 And while the trial judgment section on persecution refers to a majority of
12 Judge Prost and Judge Mindua, this majority became the minority because of Judge
13 Mindua's full acquittal by operation of duress. And as explained by Judge Akane,
14 her opinion "ultimately defines the scope of the conviction [for persecution]". That's
15 reference 17.

16 And in her opinion, Judge Akane set out two core limiting features on the crime of
17 persecution: the first arose from the connection element, and the second,
18 Mr Al Hassan's personal liability.

19 In terms of the connection element, Judge Akane found that under the Rome Statute,
20 it is necessary to have a connection between the deprivation of rights and a specific
21 crime. And she further found that this connection was only satisfied with a
22 sufficient degree of specificity and notice in connection with the criminal acts
23 underpinning Mr Al Hassan's convictions in counts 1 to 5 and 14. That's reference
24 18.

25 In practical terms, this means that the fact that someone was present in Timbuktu in

1 2012 and suffered from a severe deprivation of rights, is not enough to make them a
2 victim of the crime of persecution.

3 Judge Akane further restricted Mr Al Hassan's responsibility for persecution to
4 Article 25(3)(d).

5 And while this mode of liability is not relevant to the quantum of his liability to repair
6 harm, it is relevant to the scope of his convictions.

7 And this is because the Trial Chamber expressly found that Article 25(3)(d) penalises
8 contributions to specific crimes. And I quote, "Article 25(3)(d) does not result in a
9 reciprocal imputation of the acts of the members of the group". That's reference 19.
10 Consequently, even though the group targeted the population of Timbuktu as a
11 whole, Mr Al Hassan's convictions under Article 25(3)(d) were based on specific
12 incidents to which he was found to have made a culpable contribution.

13 Now, the LRV have relied on Ongwen to claim that it is impossible to determine the
14 number of victims at the time of judgment. That might be true for a case like
15 Ongwen where the defendant was convicted as an indirect co-perpetrator and bore
16 individual responsibility for large-scale attacks involving multiple victims based not
17 only on his actions but the actions of the group at large.

18 But that's not the situation with this case. The Chamber was able to identify and list
19 the incidents and victims related to Mr Al Hassan's culpable contributions and they
20 did so in the annex to the judgment.

21 And this means that the same direct victims who are the victims of counts 1 to 5 and
22 14, also constitute the direct victims of the crime of persecution on religious grounds.

23 The fact that the community of Timbuktu suffered collective harm also does not mean
24 that its individual constituents obtain derivative direct victim status.

25 As explained in Katanga, collective reparations differ from individual reparations: the

1 former confer on a group a benefit to which its individual members are not
2 exclusively entitled, whereas in the case of the latter, the benefit belongs to each
3 member of the group. That's reference 20.

4 In the context of the current case, this means that if the victims are being repaired as a
5 member of the community and not in their individual capacity, their participation in
6 collective schemes will not extinguish their individual rights and their rights to be
7 recognised as direct victims and to receive full reparations for such in future
8 proceedings.

9 Conversely, if the Chamber were to find that every member of Timbuktu community
10 is in addition a direct victim, then this would result in a reparations order that
11 includes direct victims who were expressly excluded from Mr Al Hassan's conviction
12 and sentence.

13 And this is precisely the scenario that was addressed by the Appeals Chamber in the
14 Lubanga reparations judgment of 3 March 2015 at paragraphs 212 to 214. That is
15 reference 21.

16 And there, the Appeals Chamber explained that where a group of victims have
17 suffered harm as a community, the reparations order should not be framed in such a
18 way as to impute liability to the defendant for victims within this community who fall
19 outside the scope of the conviction.

20 In the context of this case, the Trial Chamber expressly recognised in the sentencing
21 decision that Mr Al Hassan's liability for persecution does not encompass victims of
22 sexual violence or forced marriage. Nor does it encompass crimes committed
23 independently by Hesbah. To describe such individuals as direct victims of
24 Mr Al Hassan would exceed the scope of his liability.

25 Words matter. The words "direct victims" generate a public perception of guilt.

1 The settled case law of the ICC means that these words cannot be used in connection
2 with the very crimes for which Mr Al Hassan was acquitted.

3 And we know and appreciate that this is not the outcome that has been suggested to
4 you today, but this situation is not new. You would not be creating a precedent, you
5 would be applying the established case law of this Court as it has come up in every
6 case that reached the reparations phase. And in every case, the judges explain that
7 they cannot recognise direct victims outside the framework of the crimes expressly
8 recognised in the judgment itself. And I refer to references 22, 23, 24, 25 and 26.

9 As explained in Ntaganda, the ICC is a Court of last resort bound by the principle of
10 complementarity. It cannot assume responsibility for repairing the harm of all
11 victims of all crimes. That's reference 27.

12 And with due respect to the victims' counsel, the strategic choices of the Prosecution
13 do dictate the scope of ICC cases and reparations is not the forum for rewriting the
14 Rome Statute and the role of the ICC as a court of last resort and a court which is not a
15 human rights court writ large. Surveys cannot replace a sound evidential
16 framework tied to convictions.

17 We fully support the right of such individuals to be assisted by the Trust Fund's other
18 assistance mandate. We fully support their right to participate in collective
19 reparations schemes and for the specific experiences of collective suffering to be
20 acknowledged and prioritised in such schemes. And my colleague Maître Beaulieu
21 Lussier will address that.

22 And while we take no position on the definition of indirect victims, we note that this
23 concept could capture the multi-faceted forms of collective harm that existed in 2012
24 for those who stayed, those who fled, those who saw exactions on the street and those
25 who hid inside.

1 Videos of punishments were circulated widely in Timbuktu and also refugee camps,
2 and to limit this notion to those who witnessed the crimes in person would result in
3 an arbitrary distinction between those who remained in Timbuktu and could freely
4 circulate and those who could not.

5 And we ask in turn that the Chamber pay special attention to the way it words its
6 reparation order and the way it is framed, so as to ensure that the public appearance
7 and the public understanding of Mr Al Hassan's responsibility is consistent with the
8 limits set out in the trial judgment.

9 Thank you. I will now turn to my colleague, Maître Beaulieu Lussier.

10 MS BEAULIEU LUSSIER: [13:07:45] Good morning.

11 (Interpretation) Good morning, Madam President. I have about 15 minutes to
12 address the Chamber, the time remaining for the Defence. Would you wish me to
13 continue now, or to restart after the break? I'm at your disposal.

14 PRESIDING JUDGE PROST: [13:08:14] I think that it's probably easier then if we
15 take the break at this point and then you can commence with your full 15 minutes, so
16 as to not interrupt you in an awkward point in your submissions, and we can return
17 and deal with the remaining submissions after the break.

18 So, we will recommence at 2.40, which would adhere to the hour and a half break that
19 is forecasted. I believe my calculations are right, unless someone corrects me on my
20 math.

21 Okay. Thank you very much. We are adjourned until 2.40.

22 THE COURT USHER: [13:08:53] All rise.

23 (Recess taken at 1.08 p.m.)

24 (Upon resuming in open session at 2.46 p.m.)

25 THE COURT USHER: [14:46:10] All rise.

1 Please be seated.

2 PRESIDING JUDGE PROST: [14:46:48] Good afternoon to everyone.

3 We will continue now with the submissions of the Defence.

4 MS BEAULIEU LUSSIER: [14:47:01](Interpretation) Madam President, your

5 Honours, I thank you again for this opportunity to address you today on the subject

6 of reparations, and I will be speaking in French.

7 {ICR: (Redacted)}

8 (Redacted)

9 (Redacted)

10 (Redacted)}.

11 With regard now to the harm resulting from the crime of persecution, as established

12 in the judgment and the sentencing judgment, we propose that collective reparations

13 aimed at meeting the needs of the community of Timbuktu as an affected group

14 would be, to our mind, the most effective and appropriate.

15 And we are even more convinced after we heard the submissions this morning, that

16 this is an efficient way of repairing the harm suffered, persecution, in view of the

17 large number of individuals.

18 And I will now broach three points in support of this. The fact that this approach

19 does not require an individual assessment of eligibility, as was the case in the

20 Al Mahdi case for the collective reparations, has the advantage of avoiding long

21 delays and extensive costs during the implementation phase. It is important that the

22 money that is to be given during the reparations phase goes directly to the victims

23 and that this money not be lost in a laborious process.

24 Secondly, this approach makes it possible to address a larger segment of the

25 population and avoid the risk of creating resentment and frustration, and thereby

1 promote cohesion and reconciliation.

2 Thirdly, this approach could be based on the adoption of several presumptions of fact,
3 thereby contributing to a more holistic and transformative approach, and it will
4 enable an opportunity to remedy the harm caused by sexual and gender-based
5 violence without exceeding the limits of the judgment against Mr Al Hassan, and
6 without holding him responsible.

7 So, if we observe past experience, where reparations were given on an individual
8 basis but in a collective context, we can refer to the Ntaganda case, where collective
9 reparations had an individual component, giving rise to individual rights to
10 reparations within the community itself.

11 However, in March 2024, the Chamber alerted the -- to the length of the process, to
12 the extent that the fund had still not been able to conduct the identification process,
13 and this was three years after the verdict against Mr Ntaganda, in March 2025, the
14 Chamber confirmed that the number of victims considered eligible to date is 1,549.

15 And I'm referring to number 1 in our table. The identification process is still
16 ongoing.

17 We need to imagine what this would signify, if we were to apply such an approach,
18 which was adopted in the Ntaganda case, where the figures were far lower than those
19 given by the parties this morning.

20 Now, adopting such an approach, according to which the participation in collective
21 reparations is based on the belonging to the community itself, and not on the status of
22 individual, which does not require the individual assessment of eligibility, will enable
23 the Court to reduce its costs and the delays.

24 Now, the Chamber in the Ntaganda case noted that collective reparations made it
25 possible to maximise the efficiency of available resources which are already limited,

1 and even more so today. I'm referring here to reference number 3.
2 This approach will also enable us to reduce the risks of fraud and identity theft,
3 because the fund, yet again in the Ntaganda case, noted that some people were
4 usurping the identity of beneficiaries in order to participate in a reparation
5 programme. The fund also had to put in place a reinforced procedure for assessing
6 claims for reparations and for remedying this issue. So, a collective approach, based
7 on collective rights and collective harm, would also help prevent this type of fraud
8 and avoid the need for additional steps or mechanisms that cause unnecessary delays
9 and extra costs.

10 So, in such a way, we would be able to focus the money on reparations for
11 communities and for the harm suffered by the beneficiaries as opposed to investing
12 the money in the process itself.

13 Now, lastly, this is a subject that some of my colleagues mentioned this morning.
14 We would invite the Chamber to take into account the obstacles associated with
15 insecurity. In the Ntaganda case, many of the beneficiaries remain unlocated,
16 unlocated, particularly due to the insecurity reigning in the region and the many
17 people who have been displaced because of the various conflicts. This was reference
18 number 4.

19 The fund encountered difficulties in contacting certain beneficiaries in order to have
20 them complete a questionnaire and then to have them to proceed, or take part in the
21 eligibility assessment. In some cases this was even impossible.

22 In addition, the Chamber noted in the Al Mahdi case that the issue of security was an
23 obstacle both with regard to the submission of applications for reparations and also
24 with regard to the provision of supporting documentation. That's reference number
25 5.

1 These difficulties still exist today in Mali. VPRS and the Registry and the fund also
2 highlighted these very obstacles in their observations in the present case -- reference
3 6.

4 The fact that people have to complete and submit claims for reparations for a large
5 part of the population of Timbuktu will be potentially a laborious and virtually
6 impossible task under the circumstances prevailing in northern Mali as we speak.

7 Now, secondly, this approach will be more -- will be -- will promote living together
8 and reconciliation in Timbuktu. Focusing on the harm suffered by the community
9 rather than the harm suffered individually will allow a greater number of community
10 members to have access to reparations and thus avoid creating tensions within the
11 community. And, as my colleague underscored, this will enable individuals in
12 Timbuktu and outside of Timbuktu and the various groups, the vulnerable groups, to
13 have access to reparations.

14 In the Al Mahdi case, the Chamber also recalled that - and I quote - quote: "To the
15 extent possible, such reparations should be implemented in a manner that is gender
16 and culturally sensitive, and that does not exacerbate or even resolve any pre-existing
17 discriminatory situation that denies equal opportunities to victims". End of quote.
18 Reference 9.

19 In the same vein, the Appeals Chamber made this point in the Lubanga case.
20 Reference 10.

21 By way of an example, we would like to underscore that, according to the evidence
22 presented at trial, the Arab population represented the largest group in Timbuktu
23 during the period in question in the judgment. Reference 11.

24 And, as you can see on the screen - and this document should please be not shown to
25 the public - approximately 32 of the individuals who were tried by the Islamic court

1 were either of Arab or Tuareg origin. Whereas, we note that only 4 per cent of these
2 groups are represented in the SenseMaker survey that was conducted by the fund.
3 We should also underscore that there has been a change in the composition of the
4 population of Timbuktu after 2012, because a significant portion of the Tuareg and
5 Arab population fled in January and February 2013. Reference number 12.
6 So, we therefore submit to the Chamber that it is essential to take into account all
7 ethnic groups in Timbuktu and avoid focusing solely on victims of a single ethnic
8 origin and their specific needs in terms of reparations, in order to avoid creating
9 marked differences between the different groups that make up the population of
10 Timbuktu.
11 This approach makes it possible to focus in on the needs of the community today, but
12 also, as mentioned by my colleagues, also on the communities that existed in 2012,
13 which are now located in other regions of Mali or even outside of the country.
14 And this would enable us to address the systemic discrimination that exists in the
15 Timbuktu community, and provide redress for all communities.
16 Now, thirdly, adopting certain presumptions would make it easier to promote
17 broader access to reparations for more people, and the Defence supports the adopting
18 of these presumptions. In the Lubanga case, the Chamber established that it was not
19 necessary to examine in detail the specific harm suffered. Considering that the
20 obstacles that exist in the present case and the fact that it is a matter of redressing
21 harm that is common to the community of Timbuktu, we are minded that -- of the
22 opinion that the presumption of economic, moral, psychological and physical harm
23 are appropriate in this case and it would be a way of not retraumatizing those people
24 after the harm that they suffered. Now, the fund with its expertise, and with the
25 assistance of the LRVs and the Registry, also have the necessary information with

1 regard to those groups that are specifically vulnerable and their needs in order to put
2 in place programmes that are adapted to those groups and their vulnerabilities within
3 Timbuktu.

4 In addition, reference number 14, with regard to the adoption of eligibility for victims
5 who demonstrate a sufficient connection to Timbuktu is also appropriate in the
6 present situation, as it will allow for the inclusion of people who fled the city during
7 this period and after 2012.

8 Now, the advantages of this approach, which would be to provide remedy for these
9 common harms and provided -- providing groups -- more vulnerable groups within
10 the community would enable certain projects to be adopted that could take into
11 account those harms that are gender based. And we suggest two types of manner in
12 which we can address this.

13 So, this is within the -- we need, first, to address the specific needs of certain
14 community groups within the framework of collective and community reparations
15 which will be adapted to this type of harm. In the Al Mahdi case, for example, who
16 was not convicted of sexual crimes, but the Fund was able to establish a programme
17 that was tailored to the needs of vulnerable groups, or the pre-existing vulnerabilities,
18 namely, women and girls within the community of Timbuktu.

19 We would also support, as our colleague mentioned today, the inclusion of an
20 intersectional approach that would respect a gender-based approach in the
21 reparations order.

22 A second manner in which we can remedy this harm would be to adopt a
23 recommendation to the Fund to use its assistance mandate, as occurred both in
24 Lubanga and Katanga. Even though these people were convicted of this type of
25 crime, they could not be held financially liable. The Fund has set up a number of

1 programs under its assistance programme.

2 Now, with regard to the presumption of transgenerational harm, the Defence is not
3 opposed to the application of this, which comprises the reparations to -- I'm going to
4 come now to my observations. I'm going to come to my conclusion.

5 It is very important that the process be local and sustainable, based on a model that
6 will meet current needs without compromising a long-term viable process.

7 The community of Timbuktu has suffered from the withdrawal of MINUSMA and
8 international NGOs. The security situation and political situation means that the
9 community at this moment in time cannot depend on international organisations, but
10 it has to depend on local processes coming from the population itself.

11 So we understand that this hearing is an opportunity to provide our final
12 observations, and the practice of reparations at the Court has shown that this is a
13 process that evolves according to the context and situation and is dynamic.

14 The Defence is ready to contribute creatively to the discussions and this is the position
15 that we have transmitted to our colleagues and are transmitting to the Chamber,
16 namely, that we want to find a solution that will be the most efficient and the most
17 beneficial to the victims, whilst respecting the limits of the judgment against
18 Mr Al Hassan.

19 And thank you, that marks the end of the Defence's submissions. Thank you very
20 much.

21 PRESIDING JUDGE PROST: [15:04:36] Thank you to all the parties and participants
22 for those submissions, which have been very helpful for the Chamber.

23 The Chamber is now going to put some questions on matters that we consider require
24 some additional clarification or more information, and I would ask all the parties and
25 participants to please respond very focused on the question that has been posed, and

1 to respond directly to that and not to enter into resubmissions, if I can put it that way.

2 So we are going to begin those questions.

3 I will turn to my colleagues. First Judge Flores, I understand you have some
4 questions.

5 JUDGE FLORES LIERA: [15:05:38] Yes, thank you very much, Judge Prost. And
6 thank you also to all the parties and participants for their submissions today.

7 I have some specific questions, and the first is addressed to the Legal Representative
8 of Victims.

9 Mr Nsita, I think in your submission today, in the morning, 10.10, you stated that you
10 advocate for the adoption of an order granting a symbolic amount to all eligible
11 victims.

12 And my question is: by "eligible victims", you are referring to both direct and indirect
13 victims for all crimes?

14 MS GOFFIN: [15:06:33](Interpretation) Madam President, your Honours, with your
15 leave, I will answer the question, hoping that the response will be satisfying and in
16 response to your question.

17 Our approach has always been a practical one, extremely practical, in identifying the
18 eligible victims, those victims of persecution and those victims of other crimes, on the
19 proviso of course of the eligibility of those victims.

20 Now, on the basis of the symbolic reparations, yes, indeed, a symbolic amount of
21 money that was pleaded this morning, we are saying that all eligible victims are
22 indeed direct and indirect. We're talking here -- these would be direct victims of
23 persecution, and those direct victims would be those identified, which is the entire
24 population of Timbuktu, with the restrictions that we have placed on that.

25 The indirect victims, as we can assess them, the indirect victims of persecution, are

1 linked to those individuals who were not in Timbuktu at the time but who might
2 have suffered some harm associated with the harm of the direct victims. That is to
3 say, those people who were actually there during the period charged.

4 So, the harm, that would be the transgenerational harm, for one example.

5 So, to give you an easy answer to your question, yes, our proposal is aimed at the
6 indirect and direct victims indeed. Thank you.

7 JUDGE FLORES LIERA: [15:08:23](Interpretation) Thank you very much for your
8 answer.

9 (Speaks English) Now I would like also to pose a question, and this is for the Trust
10 Fund for Victims, and for the sake of the time I will pose two questions.

11 The first one is related to the security situation, and my question is how does the
12 security situation impact the Trust Fund's ability to actually carry out a collective
13 reparation programme on the ground? This is the first question.

14 The second, and I think it also has an implication, is about the principles. This
15 morning, you referred to the principles of reparations and also referred to their
16 evolving nature and the importance of refinement. In particular, you mentioned two
17 areas for refinement. One is conflict sensitive and the other is adaptive
18 prioritisation.

19 Could you please elaborate a bit further on both elements, please.

20 MS ECKELMANS: [15:09:33] Thank you, your Honour.

21 I will respond to the first question on the security situation first. As we are all aware,
22 the implementation in the Al Mahdi case is at the moment ongoing, so despite the
23 security situation, reparation implementation continues until the end of this year,
24 then the programme will conclude.

25 Each modality, in our submission, has specific -- a specific security profile. Each

1 modality has different requirements. So, we see it as the task of the Trust Fund in
2 developing the implementation plan and later on in the implementation to actually
3 assess and reassess the security situation with respect to each of the modalities,
4 according to the risk profile of each such modality.

5 As has just been said also by the colleague in the Defence, the reparation
6 implementation is dynamic, and the security situation in particular speaks to that,
7 that we need to adapt continuously to any changes.

8 We might have to pause a programme. We might, because of the security
9 circumstances, but then we might be able again to continue. These decisions will
10 have to be taken as they arise.

11 From the perspective of the Trust Fund, also in this context it's very important to
12 point out, the more we are connected to the community and to the victims, the more
13 we have a good cooperation with the State - like, for example, Mali, a State Party in
14 the Al Mahdi reparations - the better also the security situation is for us, the more we
15 are grounded, the better the implementation will proceed.

16 These are the submissions on the security situation.

17 Just to conclude, in that sense, we consider as the issues arise we assess them, but
18 from the very beginning we have a risk profile and we follow up on the risks that
19 exist with respect to each modality.

20 On your second question, the principles of reparations, indeed we have specifically
21 averted to the conflict sensitivity as a principle that is at the moment, in our view, not
22 yet mirrored in the reparations principles. There is a very clear principle on gender
23 sensitivity, but the principle of conflict sensitivity, which is so important, as we have
24 heard from many of the colleagues today, as well, to really move forward towards
25 reconciliation and restoration of peace, if possible, in that -- in that environment is

1 very essential.

2 And as an example, in the Al Mahdi reparation implementation in particular, we did
3 not only have a consultant for gender sensitivity, but also for conflict sensitivity,
4 which made it possible to create a participatory mechanism in a way that decreased
5 attention that allowed for inclusion and that really has embedded the reparations in
6 the Timbuktu society.

7 For the second point, the adaptive prioritisation, this is linked to the submissions we
8 made in June, the written submission, where you asked a question relevant to
9 prioritisation of victims.

10 So, in this respect, it is the -- in the TFV's experience, determining the prioritisation is
11 best with the victims and the communities.

12 For us today, to determine the prioritisation and say this is how it will be, has shown
13 in recent cases as difficult. Prioritisation of measures or prioritisation of victims does
14 not always correspond to the realities of implementation in the end to the security
15 situation, to the funding available, to what we can actually do on the ground. And
16 also, to what is most accepted by the victims.

17 So, our suggestion, therefore, is to amend the principle that is already there on
18 prioritisation in the reparation principles, and basically make it clear that the
19 implementer, together with the victims and the community, will determine the
20 criteria for prioritisation, to leave, so to say, flexibility to the Trust Fund and to the
21 programme implementation in this respect.

22 Thank you.

23 JUDGE FLORES LIERA: [15:15:16] Thank you. Thank you very much for your
24 responses.

25 I have one last question, and for this question I would kindly request a private session,

1 Judge President. It will be very short, so I hope that we will remain in private
2 session for a short period of time.

3 PRESIDING JUDGE PROST: [15:15:33] Thank you very much.

4 Just for those in the public gallery, we will be going into private session, you will not
5 be able to hear, but we don't expect it to be very long, so be patient with us.

6 Court officer, could we move to private session, please.

7 (Private session at 3.15 p.m.)

8 THE COURT OFFICER: [15:15:59] We are in private session, Madam President.

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16 (Open session at 3.23 p.m.)

17 THE COURT OFFICER: [15:23:26] We are back in open session, Madam President.

18 PRESIDING JUDGE PROST: [15:23:28] Thank you very much.

19 My thanks to Judge Flores. I understand that that was her questions.

20 I turn now to my colleague, Judge Paek.

21 JUDGE PAEK: [15:23:45] Thank you, Judge Prost, the Presiding Judge, and thank

22 you for the parties and participants for your formal submissions.

23 I have several questions and my first question goes to the Legal Representatives of

24 Victims in relation to the reparation to non-Muslim community.

25 In your written submissions at paragraphs 81 and 82, the LRVs raised the need for the

1 reparations to take the experience of non-Muslims into account. Can counsel kindly
2 explain what, in your view, would be the appropriate types and modalities of
3 reparations to address the harm suffered by this non-Muslim community in
4 connection with the crime of religious persecution?

5 MS GOFFIN: [15:24:48](Interpretation) Your Honour, thank you for this question.
6 You will have noted that this question on the reparations modalities which would be
7 appropriate with regard to this category of victims was briefly addressed also by
8 Maître Nsita this morning in his submissions, and we have indeed put this question
9 to the communities which were met, to those responsible, we looked at places of
10 worship which were not Muslim. And what we have seen in terms of the harm,
11 there's been the destruction of the buildings and their content, which are all the
12 different religious objects therein. Everything was destroyed and they were
13 questioned with regards to what type of reparations there could be to repair this harm
14 and they said that having the religious objects back would be very difficult for a
15 whole series of reasons and, therefore, some kind of compensation would be
16 something which, to a certain extent, could satisfy them or at least compensate a part
17 of the harm suffered.

18 But the fact of the complete destruction, both of the building and of the content
19 therein, means that it is difficult to envisage in a concrete way in the field anything
20 else than some type of financial compensation for those losses. I hope that I have
21 answered your question.

22 MR LUVENGIKA: [15:26:38](Interpretation) I just wanted to complete the answer
23 from Maître Julie Goffin.

24 For the non-Muslim community, they have concerns where it concerns the religious
25 places, and that is something that has been stated by Ms Goffin, and the sacred objects

1 related to their religion. And the second part is where it concerns the physical
2 persons, so there are moral persons and physical persons. Where it concerns
3 physical persons, they say that they are part of the Timbuktu community and, as such,
4 for the physical persons who are not Muslims, when -- how can they be assimilated
5 into the population of Timbuktu in general, because where it concerns the religious
6 objects, or objects of worship, they are used by the religion, as was said by
7 Maître Goffin. They ask for compensatory -- or compensation, and it could be
8 collective, and they will arrange, as a group, to be able to meet their needs in this
9 regard. Thank you very much.

10 JUDGE PAEK: [15:28:01] Thank you. I especially appreciate your efforts to consult
11 those affected and convey their views and concerns.

12 My second question goes to the Prosecution. In your written paragraph, 10 to 15, the
13 Prosecution provides different sources to determine the population of the city of
14 Timbuktu, and in this respect I wonder whether the Prosecution cannot advance a
15 theory as to Timbuktu's population in 2012?

16 MS LUPING: [15:28:42] Thank you, your Honour, Madam President.

17 Dianne Luping on behalf of the Prosecution.

18 In response to that question, your Honour, whilst obviously we have to be clear that
19 it's not possible to provide any exact numbers of inhabitants living in Timbuktu city
20 in 2012, for the reasons we elaborate on at paragraph 13 of our written submissions,
21 the Prosecution does consider that the number provided by the Legal Representatives
22 of Victims of approximately 50,000 to be reasonable, based on the different sources
23 available and for the following reasons.

24 As mentioned at paragraph 12, footnote 22 of our written submissions, the Malian
25 *Institut National de la Statistique* states that there were 54,629 people living in

1 Timbuktu urban commune, based on the 2009 Malian census.

2 It would then be reasonable, your Honours, to interpret the other figure drawn from
3 the Malian 2009 census of 87,552 living in "*Tombouctou urbain*", cited at paragraph 11
4 of our submissions, as rather being a reference to the total number of people living in
5 all of the urban centres of Timbuktu region rather than Timbuktu city alone.

6 We would refer to the witness mentioned at paragraph 15 of our written submissions,
7 who considered that this figure of 87,500 plus as being too high as a number of those
8 living in the city. He believed it was a figure closer to 35,000. Indeed, he lived in
9 Timbuktu city during the events. We do consider him to be a credible and reliable
10 witness. However, his figures are based on personal observations, and we would
11 submit that numbers obtained from a more formal process of the Malian census to be
12 more reliable, and that, therefore, the figures of 2009 provided of more than 50,000 as
13 at 2009, to be likely to be reliable, and they will in fact be even lower than the figures
14 one would have expected in 2012, if you take into account an increase, natural
15 increase in population, due to births.

16 And even with taking into account unrest in the area at the time, for all these reasons,
17 the Prosecution considers the estimate of 50,000 provided by the Legal Representative
18 for Victims to be both not unreasonable and likely, in fact, to be a conservative figure.

19 Thank you.

20 JUDGE PAEK: [15:31:40] Thank you, Prosecution, for your further elaboration,
21 explanation, about your position, which was explained in the written submissions.

22 Now, my next questions go to the Trust Fund for Victims. I have two questions,
23 both of which are connected to the security situation. I understand you have already
24 mentioned and elaborated on some of the security situations that impact on your
25 plan.

1 My first question is related to the draft implementation plan. Given the current
2 situation in the country, can the TFV provide any estimate as to how many months
3 you may need to submit a draft implementation plan.

4 And the second question is, are there any specific and particular types and modalities
5 of reparations that are not feasible or recommended, given the current situation and
6 the reason. And, conversely, are there any particular types and modalities that
7 would be the most effective, given the security situation? And your further
8 explanation on this one will be helpful for the Chamber's better understanding.

9 MS ECKELMANS: [15:33:19] Thank you so much, your Honour.

10 On the first question, that is the duration and the time needed to develop the draft
11 implementation plan - and I note that you are linking that, indeed, to the security
12 situation - I would like to recall that in the Ongwen case, we had -- the Trust Fund
13 was given six months to develop the draft implementation plan, based on a new
14 format developed by the Chamber. And, in that period, the Trust Fund was able to
15 have extensive consultations with the victims and then develop the -- and many other
16 stakeholders, and then develop the draft implementation plan. So, to do so,
17 therefore, the Trust Fund needs to collect and analyse diverse sets of data, needs
18 planning, conduct these consultations, coordinate stakeholder inputs. The Trust
19 Fund also has to assess the collected information, devise an implementation strategy,
20 and then validate the proposed plan, including involving the board of directors and
21 the parties. We seek, therefore perhaps in the reparation order, if possible,
22 clarification as to the format also of the draft implementation plan, and get guidance
23 on how the draft implementation plan should be submitted.
24 But, given the security situation in Mali, and the necessity for the Trust Fund to travel
25 to Timbuktu and interact with the community and the victims, and the volatile

1 security situation, the Trust Fund suggests that nine months would be necessary to
2 develop the draft implementation plan, should the format remain the same as it was
3 developed by the Trial Chamber in the Ongwen case.

4 The Trust Fund also emphasises that the use of the 2025 Victims' Voices Study, based
5 on the collection of over 800 individual narratives, provides a robust foundation for
6 engaging in meaningful discussions with the relevant categories of victims and
7 affected communities.

8 I now turn to the second question. The question turns around the feasibility or
9 non-feasibility of particular types and modalities of reparations. The Trust Fund
10 first recalls that in its oral -- in its written submissions, certain types and modalities of
11 reparations were developed. In so doing, the Trust Fund has considered the
12 appropriateness of these modalities of reparations, and part of such considerations of
13 the appropriateness of reparation modalities are feasibility considerations. So, the
14 Trust Fund took these considerations into account in suggesting the modalities that
15 were included in the submissions in June.

16 In that sense, there is very little to add from the position of the Trust Fund as to
17 whether or not the proposed modalities are feasible.

18 Previously, I have already alluded to the fact that for each modality, there will have to
19 be a different risk profile and feasibility, of course, is a matter that then plays a role
20 throughout the implementation. That is the question I responded earlier.

21 In that sense, there is one aspect that has been raised by the parties, that is, in
22 particular, compensation. And the Trust Fund would like to underline that mobile
23 money is a way how payments are regularly made in Mali, and it functions very well.
24 Mobile money transfers have been used by the Trust Fund in the case, Al Mahdi, and
25 that also ensured confidentiality, in the sense that upon the evaluation of that case,

1 victims were satisfied how the transfer of money took place and they also felt safe.

2 And I conclude the submissions on this point. Thank you.

3 JUDGE PAEK: [15:38:46] Thank you.

4 PRESIDING JUDGE PROST: [15:38:51] Thank you very much.

5 Judge Paek indicates that's the end of his questions.

6 I have just a couple of questions that I would like to pose at this point.

7 First, Ms Taylor for the Defence, the Defence has made substantial submissions today

8 about Mr Al Hassan's previous apologies and, in particular, with reference to the

9 apology -- I think it dates from April 2025, the statement. You said in your

10 submissions that this statement has been translated and distributed broadly.

11 I'd like you to elaborate on that, as to particularly the distribution point of view, how

12 has it been distributed, if you are able to do so, and to where.

13 MS TAYLOR: [15:39:40] Certainly, Madam President. May I address this in private

14 session, though?

15 PRESIDING JUDGE PROST: [15:39:46] You may, Ms Taylor. I would ask you to be

16 as brief as possible, then, once we go into private session. But I have asked for the

17 elaboration myself, so ...

18 Court officer -- and again, to the public gallery, we expect it to be a brief session.

19 Court officer, private session, please.

20 (Private session at 3.40 p.m.)

21 THE COURT OFFICER: [15:40:16] We are in private session, Madam President.

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13 (Open session at 3.43 p.m.)

14 THE COURT OFFICER: [15:43:40] We are back in open session, Madam President.

15 MS TAYLOR: [15:43:42] Thank you very much, Madam President. On your

16 screens you will see Mr Al Hassan's apology. It is public. It is specific. He has

17 named his crimes, he has identified the victims and he has apologised for their

18 suffering. These are his words, his signature. In the same way that a judgment has

19 weight, his written words have weight and are consequential. And the steps taken

20 to disseminate this exceeds what has been recommended in other cases where the

21 defendants were invited to give confidential apologies. And the UN special

22 rapporteur on the right to truth, this is reference 11, has said that reparations should

23 be tailored to the culture in question. And we have heard today that actions often

24 speak louder than words, and I'd like you to focus on what Mr Al Hassan is

25 suggesting to do with his actions. He has offered to contribute money for an animal

1 to be sacrificed and distributed as food, as is consistent with local traditions. He is
2 also willing, which I did not mention earlier, to do a handwritten manuscript, which
3 can be handed over to the Timbuktu community and stored in a municipal building.
4 In that way, if the victims wish to regard his apology, they can do so. If they don't
5 wish to do so, they do not need to do so. The community can use it in whatever way
6 they deem fit.

7 We have also established contact with persons within the *vivre ensemble* festival,
8 which will take place in December this year. And that manuscript can be handed
9 over to the Timbuktu community during the *vivre ensemble* community.

10 We listened today to Maître Kassongo discussing the possibility of written apologies
11 to the groups of victims he represents. Mr Al Hassan will write a written apology to
12 those victims and any victim who wishes to receive such an apology. This is all that
13 he is willing to do.

14 His personal situation is dynamic. His family situation is dynamic. But while
15 Timbuktu is his home, he's also given written assurances not to return to Timbuktu
16 before at least March 2028, to respect the wishes of the victims. He does not know if
17 he will step foot in Timbuktu again, but he does hope that, through his conviction,
18 through this hearing, through the actions he has committed to take, that the victims
19 and the community of Timbuktu know what he did, know why it was wrong and
20 know that he apologises to them from his heart.

21 PRESIDING JUDGE PROST: [15:46:19] Thank you, Ms Taylor.

22 On this same point, I'm going to turn to the Legal Representatives of the Victims and
23 the Office of Public Counsel for Victims to ask if you have any comments, any
24 additional submissions. You have made submissions on these issues, but anything
25 additional arising from these submissions that have been made today, particularly by

1 Ms Taylor. I will start with you and then proceed to the OPCV. Please, you have
2 the floor.

3 MS GOFFIN: [15:46:53](Interpretation) Thank you very much, your Honour. Just
4 quite simply with regards to the issue of apologies, as you mentioned, we have
5 already submitted observations in this regard and our position is unchanged, the
6 position of victims is unchanged.

7 And just an additional remark in this regard, is the possibly -- the possibly divisive
8 nature of apologies, when you have some victims in conditions which are not totally
9 controllable, I would say, and so there is risk in all this that it could be done in that
10 way.

11 Something else I anticipate on the next question is, with regards to apologies, at the
12 moment, at this time, they represent an aspect where the victims -- it's linked to the
13 contribution of Mr Al Hassan, and there's a lot to be said about that. But, once again,
14 perhaps I'm anticipating questions that you would like to put to us with regards to
15 the issue of Mr Al Hassan's contribution and reparations.

16 If there are no questions of the Chamber on that, I would ask you for the possibility to
17 go into that question as soon as possible. If it's part of the questions that you would
18 like to put with regards to the position of the LRV and OPCV with regards to the
19 proposal of Mr Al Hassan for a contribution to reparations, then we have a certain of
20 number of things that we believe are important to say with the objective of today's
21 hearing. I don't know if I'm anticipating future questions or if you would give me
22 leave to address it now.

23 PRESIDING JUDGE PROST: [15:48:38] I think you might as well address it now,
24 because there is no planned specific question on that, but if you have a reaction which
25 is obviously to what has been said today, please proceed. Then I will turn to OPCV

1 and you can address both points as well.

2 Actually, while you are at it, there is one additional point, which you may want to
3 express a view on, which is whether you have any views on his willingness to
4 contribute to future symbolic ceremonies, whether you have any submissions on that.
5 He's indicated that ability. So, if you -- but you can comment generally on
6 contribution, including that if you wish, or not. So, please proceed. You have the
7 floor.

8 MS GOFFIN: [15:49:26](Interpretation) Thank you very much, Madam President.

9 I think that my answer on contributions goes, to a certain extent, into the position that
10 we take with regard to a proposal in participating in symbolic reparations, because I
11 would say that it's the same category of ideas and reflections that we would have to
12 make.

13 So, quite simply, in three different points with regard to the proposals that have been
14 formulated, in terms of what is called a contribution, we have already said, and I
15 think that my esteemed colleague has repeated it, that this is something which it is
16 not easy to have a unanimous victim position on. Some victims are more in favour
17 than others.

18 The second point is that we insist on the fact that, in reality, it is important, perhaps
19 today more than at any other time, to keep in mind that the convicted person is still
20 responsible for reparations. He is responsible for reparations. The system was
21 made as a system on which the convicted person keeps the responsibility to provide
22 reparations, and the fund is an intermediary, which can help the implementation of
23 reparations, in the case of the instance of the convicted person.

24 And, as such, this system for us - and we have defended our case that it's important
25 for victims - it should be clear for everybody, the system should be that of monitoring,

1 continuous monitoring of the situation of the convicted person, as far as possible, who
2 has to assume his responsibilities when it comes to reparations and, if necessary,
3 reimburse the fund for reparations. Even if obviously it appears as an idealistic
4 scenario, in terms of the principle, it is important to stay with what was established by
5 the Statute and Rules of Procedure and, in particular, Article 98.

6 So, we have also noted that there have indeed been discussions between the Defence
7 and the fund with regards to the way in which Mr Al Hassan could contribute to
8 reparations on the form or the type of contribution. And I think that, at the end of
9 the day, it is not about thanking Mr Al Hassan for contribution to reparations, but, for
10 us, reparations are about his complete responsibility. And the message that is given
11 out here is really a bit concerning to have in the courtroom, because we have this idea
12 of contributing to something which completely wipes away this notion of reparations,
13 which I have to insist on.

14 But, once again, it is important and with -- furthermore, as we have already heard
15 from the Defence, there are extremely detailed proposals as to how the reparations
16 would be implemented. So it is quite an uncomfortable situation for us, because it
17 would seem to me that the essential aspects are lost from sight and the message has to
18 be clear with regards to the issue of responsibility.

19 Just one last point in order to finish. The system, as set out in the Rome Statute and
20 which I have spoken about, in it, it is important as an objective to have non-repetition
21 and dissuasion. That is to say, that this idea that the responsibility remains with the
22 convicted person, this is also important when you have a perspective of trying to
23 dissuade repetition and to try to progress with regards to -- make progress with
24 regards to the dissuasion objective.

25 I think that I'm going to stop there. Thank you very much, Madam President.

1 PRESIDING JUDGE PROST: [15:53:28] Thank you very much for those submissions
2 which are helpful to us. OPCV, please.

3 MR SUPRUN: [15:53:40] Thank you, Madam President.

4 With regards to the issue of apologies, as I indicated in my submissions, some of my
5 clients would not be opposed to Mr Al Hassan expressing his apologies.

6 However, the question at hand is that I have a concern because I read, or I saw, and

7 I know, that while I wasn't in the trial, I know that Mr Al Hassan has expressed

8 apologies during the proceedings itself and the Chamber decided that it wasn't

9 sufficient to accord an attenuating value thereto, because it was too general.

10 Now, because my colleagues from the Defence have sent references to the expression

11 of apologies more recently -- I read this three times, I read this statement three times

12 and, really, I haven't understood how this is different to the apologies which were

13 made by Mr Al Hassan during the trial. Because the note that the Chamber admitted,

14 or the comment of the Chamber was that the apologies were too general without an

15 expression of remorse or compassion towards victims.

16 So I would ask once again with regards to this statement, I still haven't found in this,

17 where is the remorse, where is the compassion of Mr Al Hassan towards the victims?

18 In my perception, of course, it's a perception, a subjective perception, but when I see

19 this text in this statement, I see it as an attempt to justify himself by referring to the

20 circumstances which were behind the fact that he had to commit certain acts.

21 So, as a human being, I think when a person wants to give an apology, first of all, they

22 have to recognise what they have done. Here, I never saw that Mr Al Hassan said,

23 "Indeed, I committed these crimes". However, what he says is that, "Indeed, I was

24 convicted for certain crimes". And I think that is -- or there is a difference there.

25 Furthermore, Mr Al Hassan said here that, "Indeed, I condemn these practices, these

1 practices against women", et cetera, et cetera, but where does Mr Al Hassan say, "I
2 apologise to all victims who suffered atrocious crimes, who suffered
3 multi-dimensional harm, who continue to suffer from this harm to this day." Where
4 is the compassion of Mr Al Hassan for -- or towards his victims.

5 By way of conclusion, I find that this statement can never be accepted by victims.

6 That's one thing.

7 Second thing, where it concerns the terminology, because we have had consultations,
8 internal consultations, external consultations and, in fact, if I understand this - and
9 please correct me if I am wrong - within the framework of the cultural context in the
10 republic of Mali, apologies can mean that it could replace any other reparatory
11 measure.

12 And, as such, I will give an example once again. I'm just representing a very limited
13 number of people. For the people who accept, or the people who are not opposed to
14 such an apology from Mr Al Hassan, that does not prevent them from saying to us,
15 nevertheless, "Even with the apologies, we would like to have reparations for the
16 harm suffered".

17 So, for these people, an apology does not replace the implementation of reparations to
18 repair, as far as possible, the harm they have suffered. And for that reason, perhaps
19 once again I would -- well, my position is this question is very sensitive and, once
20 again, additional consultations with the wider group should be carried out in order to
21 avoid a situation where there is tension within the community.

22 Now, I have also listened to my colleague from the Defence who said, "Well, we have
23 had consultations with the chiefs", et cetera, "with NGOs, yes" - and I am not giving
24 any names because it was said during the private session - but where are the
25 consultations with victims? Because I do understand that, perhaps, but this is my

1 perception, that if the chiefs are in agreement, then the community must be in
2 agreement as well.

3 It could go in that way, because I've known that in other cases, but that does not mean
4 that if the chiefs are in agreement, that the community has to be in agreement with it.

5 So, my suggestion is that additional consultations must be carried out with the wider
6 group of victims to see what they think. It's not just about the opinion of the chiefs
7 of the community.

8 Now, furthermore, when it comes to the terminology here, perhaps -- and, once again,
9 perhaps I've misunderstood this idea about apologies, that they could give rise to a
10 certain erroneous perception, but what I would say is that rather calling that as an
11 expression of remorse and compassion towards victims, rather than saying
12 "apologies", that's my suggestion.

13 And, another thing where it concerns a contribution, or another form of contribution
14 on the part of Mr Al Hassan, frankly, on the basis of my experience in other cases, for
15 me, at the reparation stage, the only way through which the convicted person, or the
16 guilty person, can contribute, is financially.

17 I really wanted to know more about that, because I didn't see any other form of
18 contribution that could be made, and, ultimately, I haven't found any.

19 So, for the victims, once again, consultations, I would suggest, because it's very
20 important for the victims, or the majority of the victims in the population, that they
21 accept it.

22 And, for myself, I say that on the basis of what we have had as a result of the
23 consultations, and that is that for victims, if Mr Al Hassan indeed does want to
24 contribute, then this contribution must be significant -- that is to say that the victims
25 don't need a symbolic contribution, because they have suffered extreme harm. They

1 continue to suffer from extreme harm. They do not need a symbolic contribution
2 and, above all, not a financial symbolic contribution.
3 I'm just going to finish. We have heard about the Trust Fund for Victims. Even
4 if -- according to the most conservative estimates, it's going to cost a lot of money and
5 we understand that Mr Al Hassan can't contribute in a significant way. So, for the
6 victims, no, I think that it would be perhaps considered as insulting. It could be
7 considered as insulting.

8 Thank you.

9 PRESIDING JUDGE PROST: [16:00:54] Thank you very much for those submissions.
10 I have one final question, and it is directed to the OPCV. Very brief answer, please,
11 to the question, if you could, because it's just very focused on an evidentiary point.
12 This relates to a completely different topic. It is, the Chamber notes that in some of
13 the cases of sentencing without due process - so it focuses on that - there is no direct
14 evidence in the Court record that the sentences were ever carried out.
15 In your submissions at paragraph 44, you're seeking both moral and physical harm
16 should be included in reference to the direct victims of the crime under count 6.
17 Just briefly, can you elaborate on your proposal, notably in the circumstances outlined
18 above. What are you arguing specifically in terms of the basis for, in particular,
19 physical harm?

20 MR SUPRUN: [16:02:06](Interpretation) Thank you, Madam President.

21 I'm going to try and be very brief. I do apologise that I was a bit lengthy.

22 I would remind you that in the judgment, the crime under count 6 was committed in
23 two manners, either by the execution of a sentence in the absence of a judgment
24 where the sentence was carried out immediately, in the sense that the victim suffered
25 immediate harm; or, a sentence was handed down by a regularly constituted court

1 and the victims were placed in detention. And, in the context of that detention, they
2 suffered various forms of harm.

3 I understand that certain aspects of the detention were not part of the judgment, but,
4 as the standard of proof is a little bit different and with the effort that we have made,
5 and in the submissions that we have made and in the filings, I can explain. And I
6 would like to draw the attention of the Chamber to the fact that, according to the
7 jurisprudence of the Court in the Ongwen case - and this is the reparations order,
8 paragraph 168 - physical harm can be one of physical suffering that is not caused by a
9 physical wound. I think that would be something that could be in support of our
10 approach, and I thank you.

11 PRESIDING JUDGE PROST: [16:03:39] Thank you very much for that clarification.
12 (Interpretation) Unless my colleagues have any other further questions to put, the
13 hearing is coming to an end.

14 MS TAYLOR: [16:04:08] Thank you very much, Madam President. I would ask to
15 just have one or two minutes to have the last word, as is the right of the Defence, to
16 address issues that weren't raised previously. As I said, I will be very brief.
17 It's on an issue that touches Mr Al Hassan's responsibility personally.

18 PRESIDING JUDGE PROST: [16:04:49] Ms Taylor, we are not in the trial
19 proceedings, we are not in the sentencing proceedings; we are in the reparations
20 proceedings. You've had an extensive opportunity to address the matters. You've
21 made extensive submissions. The responses I have drawn from the victims were
22 directly related to matters that you raised, and this can't be a ping-pong match, so --

23 MS TAYLOR: [16:05:10] We completely understand. It was just on the issue of the
24 count 6, the additional harms of count 6. That was the only issue we were intending
25 to address. As I said, I can address it in one minute. I didn't address it earlier

1 because we were waiting to hear what the submissions were, because we had --

2 PRESIDING JUDGE PROST: [16:05:25] I think that we have sufficient information

3 on this. There are submissions on count 6, we have your submissions on count 6.

4 That was just a point of clarification in the OPCV, so I really don't think we'll need the

5 submissions. We are well familiar with the count 6 arguments. I just wanted some

6 clarification on the physical harm point, so I think we can conclude it there.

7 MS TAYLOR: [16:05:44] Thank you.

8 PRESIDING JUDGE PROST: [16:05:45] Thank you very much.

9 (Interpretation) The hearing is coming to a close. Before we conclude this session, I
10 would like to thank the parties and the participants for their spirit of cooperation, and
11 for the good manner in which the discussions unfolded today.

12 I would also like to thank the interpreters - it was a little bit difficult today, thank you
13 for that - the court reporters, as well as the security guards of the Court, for their
14 essential contribution to the good conduct of this hearing.

15 I'd like, finally, to address my final words to those who took part in this hearing from
16 the gallery public, or further afield, online, and I hope, from Mali, with a particular
17 thought for the victims and the entirety of the Timbuktu community.

18 (Speaks English) The Chamber will now proceed to the deliberation phase of these
19 proceedings. The parties, participants and the public will be informed at the
20 appropriate moment of the date the reparation order will be rendered.

21 As there are nothing further, this hearing is now adjourned.

22 THE COURT USHER: [16:07:30] All rise.

23 (The hearing ends in open session at 4.07 p.m.)