

## Al Hassan Trial Judgment Reinforces Concerns Over Judicial Deliberations

The International Criminal Court (ICC)'s fragmented trial judgment in the case against Al Hassan reinforces concerns regarding joint judicial deliberations, with significant implications for victims' pursuit of justice. The [judgment](#) reveals a disjointed approach by Trial Chamber X with all charges being decided upon by majority rather than unanimously, and the composition of the majority differing for various charges.

Judge Mindua [acquitted](#) Al Hassan on the basis of duress and mistake of law. Judge Akane [found](#) Al Hassan guilty of some charges but disagreed with the scope of his criminal responsibility. While finding him guilty of religious persecution, she found the evidence insufficient to prove gender persecution. Finally, Judge Prost [underscored](#) the coercive environment and the systematic nature of the crimes, advocating for a more comprehensive acknowledgment of Al Hassan's responsibility in facilitating gender-based violence. This divergence in the evaluation of evidence on key aspects of the case points to inadequate joint deliberation and undermines the coherence of the judgment.

Gender-based violence survivors [have expressed](#) disappointment and frustration with the judgment, their legal representative believing the evidence presented was sufficient to prove Al Hassan's responsibility.

Both the Rome Statute and the Chambers Practice Manual mandate judicial deliberation as essential, with the former advocating for unanimity in decisions and the latter advising that dissenting opinions be reserved as a measure of last resort.

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*The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges (Article 74(3) Rome Statute).*

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*While dissenting and separate opinions are a hallmark of judicial independence, any decision to issue such opinions should be considered only once every effort to arrive at consensus, through deliberations, has been exhausted. Dissenting and separate opinions should in principle be a measure of last resort (Paragraph 104 Chambers Practice Manual).*

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The trend of insufficient joint deliberation in certain ICC Chambers, as evidenced in this case and highlighted by the [Report of the Independent Expert Review](#) (paras 615-627) in 2020, must be addressed urgently. As recommended in the report, 'The Presidency should encourage the development of a genuine deliberation practice' (R219). Notably, Judge Tomoko Akane, one of the three judges in Trial Chamber X, currently holds the position of President of the Court.

While disagreement among the judges may have ensued following a genuine attempt at joint deliberation, the lack of decision-making transparency and procedural concerns in the Al Hassan case are indicative of insufficient deliberation. The delivery of the judgment, initially scheduled for 18 January 2024, was postponed to 26 June 2024 due to the Presiding Judge's health issues. In spite of a [request for information](#) by the defense, details were not disclosed by the Chamber, and while details about a judge's illness are not necessary, it is important for the parties to know how this situation

## WOMEN'S INITIATIVES FOR GENDER JUSTICE

might impact the judge's ability to deliberate and fair trial rights more broadly. The changes in the composition of the Trial Chamber – on 28 June 2024, Judges Mindua and Akane being replaced with Judges Paek and Korner respectively, and on 9 July 2024, Judge Akane returning to replace Judge Korner – are also concerning, especially as Judge Paek would have very limited time to get acquainted with and evaluate the relevant evidence prior to deliberations for a timely delivered sentencing judgment.

To adequately recognize the experiences of victims and bolster the credibility of the judicial process, it is crucial to evaluate the evidence relevant to specific grounds of appeal contextually, taking into account the coercive environment created by Ansar Dine and Al Hassan's knowledge and implication in the way the Islamic Police mistreated and abused the Timbuktu population. Such thorough evaluation could lead to a more coherent and accessible outcome which can restore credibility to the judicial process and more adequately recognize the experiences of victims.

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*On 26 June 2024, the International Criminal Court (ICC) [delivered](#) its trial judgment in the case of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, convicting him of multiple war crimes and crimes against humanity, committed during the occupation of Timbuktu, Mali, by the Islamist groups Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM) from April 2012 to January 2013.*

*Al Hassan was convicted of the crimes against humanity of torture, religious persecution and other inhumane acts, and war crimes of torture, outrages upon personal dignity, mutilation, cruel treatment and passing sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.*

*Despite evidence indicating the occurrence of rape, forced marriages, and sexual slavery and evidence showing a pivotal role in the Islamic police force and enforcing the repressive measures imposed by Ansar Dine, Al Hassan was acquitted of these gender-based crimes. Similarly noteworthy is that Al Hassan was found guilty of the crime of religious persecution but not of gender persecution, [a crime being prosecuted by the ICC for the first time](#).*