

ANNEX A

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Prosecution Trial Brief

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**International
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Judge Tomoko Akane
Judge Kimberly Prost

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
*THE PROSECUTOR V. AL HASSAN AG ABDOUL AZIZ AG MOHAMED
AG MAHMOUD***

Confidential

Prosecution Trial Brief

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I. Introduction

1. Between 2012 and 2013, the armed groups Ansar Dine and Al Qaeda in the Islamic Maghreb (AQIM) (together, “the Groups”) took over and occupied the ancient city and region of Timbuktu in Mali.¹ The Accused, Al HASSAN Ag ABDOUL AZIZ Ag Mohamed Ag Mahmoud (“Al HASSAN”), originating from the region, joined Ansar Dine.² Al HASSAN was the *de facto commissaire*³ of the Islamic Police in Timbuktu – namely, the leader effectively responsible for the daily management, organisation, and work of the police. In that role, he was a key actor and the police’s key interface with the local population of Timbuktu.

2. The evidence will show that Timbuktu was cosmopolitan, comprising a mix⁴ of communities, cultures, and religions, with the majority of its population of the Muslim faith.⁵

3. As soon as they arrived and for nearly ten months thereafter, the Groups and the institutions they created to administer the town, such as the Islamic Police, morality brigade (*Hesbah*), Islamic Tribunal, security battalions, media office, and religious committee (“the Organs”) (together with the Groups referred to as “the Organisation”) executed their common purpose and/or plan to impose their control and power, and their own ideological and religious vision, upon the civilian population of Timbuktu town and region by any and all means available, including by conduct and measures which in the ordinary course of events led to a violation of their fundamental rights and the commission of crimes charged in this case.⁶

¹ The Prosecution uses the terms “occupied” and “occupation” in this case to refer to the control and administration of the territory by the Organisation. The Prosecution uses these terms in a colloquial, non-legal sense, and does not seek to imply that the situation in Timbuktu from April 2012 to January 2013 amounted to an occupation in the technical meaning of this term for the purpose of the law of international armed conflict. To the contrary, the Prosecution submits that the applicable legal framework is that of non-international armed conflict, including any requirements which may be imposed in the context upon non-State organised armed groups in control of territory.

² [REDACTED]
 Ansar Dine is an armed group founded by Iyad AG GHALY. *See* section II.C.2 below.

³ Regardless of what formal or informal position or title Al HASSAN had, he played an essential role and carried out important functions within the Islamic Police.

⁴ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

⁵ *See* ICC-01/12-01/18-335-Conf-Corr (“DCC”), section 7.2.1; ICC-01/12-01/18-461-Conf-Corr (“Confirmation Decision”), para. 181, 816-836. *See also, e.g.* [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

4. Al HASSAN is charged with war crimes and crimes against humanity he committed with other members of the Organisation during the occupation.⁷

5. Indeed, in the context of the ongoing non-international armed conflict in northern Mali, members of the Organisation occupied Timbuktu's town and region⁸ and launched a widespread and systematic attack against the civilian population,⁹ pursuant to an organisational policy,¹⁰ disrupting¹¹ and controlling every aspect of the population's public¹² and private¹³ lives. They severely and systematically violated the fundamental rights and liberties of Timbuktu's inhabitants, subjecting them to oppressive and discriminatory new rules, violations of which were sanctioned by brutal punishments. This attack involved acts underlying the charged incidents as well as other acts occurring in Timbuktu region,¹⁴ including persecution on religious grounds against the population of Timbuktu perceived as not adhering to the Organisation's rules, and persecution on the grounds of gender against the women and girls of Timbuktu.

6. The Organisation imposed numerous new rules and prohibitions on Timbuktu's civilian population. For example, the population could no longer visit the mausoleums of Muslim saints in the town's famous cemeteries,¹⁵ a number of which were destroyed by the

⁷ See Confirmation Decision and ICC-01/12-01/18-767-Conf-Corr ("Amendment Decision").

⁸ The evidence will show that the crimes charged under article 8 took place in the context of and were associated with a non-international armed conflict, which existed at all material times between the government of Mali and one or more non-State organised armed groups (including the Groups). At all material times, the conflict satisfied the criteria of intensity and organisation of the parties, and had not been brought to a general conclusion of peace. While active hostilities did not take place in Timbuktu during its occupation and administration by the Groups, they had seized control from the government by force of arms, and hostilities continued in other parts of Mali during this period. Likewise, the Groups eventually withdrew from Timbuktu in response to the government's own offensive actions to re-take its territory. Given his own conduct and role, Al HASSAN could not have failed to have been aware of these factual circumstances.

⁹ Confirmation Decision, Section VI, para. 174, 190-191; DCC, Section 6.2, para. 194-204.

¹⁰ Confirmation Decision, Section VI, para. 180-185; DCC, Section 6.1.3, para. 177-193.

¹¹ See, e.g. [REDACTED]

¹⁵ See, e.g. [REDACTED]

Organisation¹⁶ as charged in count 7 of the Document Containing the Charges (“DCC”). Inhabitants could no longer wear amulets¹⁷ or talismans¹⁸ or practice certain rituals.¹⁹ Ceremonies and religious, civil, and cultural events were prohibited.²⁰ Residents could no longer dance, listen to music,²¹ or watch television.²² Neither men²³ nor women²⁴ could wear the clothing of their choice, even traditional clothes or jewellery;²⁵ they were forced instead to adopt the strict dress code established by the Organisation. Unmarried men and women who were not relatives could not be seen together in public.²⁶ These new rules, and the cruel punishments imposed on those who violated them, were contrary to longstanding customs and practices in Timbuktu and struck fear in the civilian population.

7. Indeed, the punishment for those who did not conform to the Organisation’s religious and ideological views was often cruel. Residents were publically flogged or beaten, for

¹⁶ See, e.g. [REDACTED]

See, e.g. [REDACTED]

“Inside the Islamic Emirate of Timbuktu”, *Foreign Policy*, 14 February 2013, [REDACTED]

[REDACTED] “Et un beau jour, ils ont appliqué la charia”, *Libération*, 29 January 2013, [REDACTED].

²² [REDACTED] “Mali: Tombouctou dans l’enfer du djihad”, *L’EXPRESS.fr*, 12 December 2012, [REDACTED].

²³ [REDACTED]

²⁴ [REDACTED]

²⁶ [REDACTED]

they were not married or related.³⁸ Some women and girls were subjected to a system of forced marriage³⁹ and made victims of sexual slavery and rape by their so-called “husbands” (and sometimes also by other members of the Organisation).⁴⁰ Some were raped in detention.⁴¹ As a result, some women did not dare to leave their homes.⁴² Their victimisation, discussed further in sections VII and VIII below, is emblematic of the physical and psychological violence inflicted on the civilian population of Timbuktu city and the surrounding region between April 2012 and January 2013.

9. Far from denying or concealing their conduct, members of the Organisation publically proclaimed their oppression of Timbuktu’s people.⁴³

10. The evidence will show that Al HASSAN adopted and endorsed this campaign of violent oppression, actively and intentionally participating in the discriminatory and criminal campaign waged by the Organisation in the town and region of Timbuktu.

11. During the charged period, Al HASSAN was one of the key members of the Organisation and the *de facto commissaire* of the Islamic Police, which was one of the principal Organs put in place by the Groups to ensure their grip on Timbuktu and its population, and the imposition of their religious and ideological views by punishing, as

.⁴⁴

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See section VII.A.2 below.

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See, e.g.,

; “Ansar Dine au Nord-Mali: les talibans comme modèle”, 11 September 2012,

12. In this role, Al HASSAN was at the heart of the oppressive, coercive, and persecutory system that promoted and enabled the crimes charged in this case. As described in more detail below: he arrested and detained persons; he conducted investigations of alleged violations of the Organisation's rules, during which he and his subordinates tortured or threatened suspects to extract confessions; he referred cases to the Islamic Tribunal, transported prisoners to and from hearings, and provided the reports upon which the Tribunal based its decision; and he participated personally in the implementation of corporal punishments ordered by the Tribunal or administered without judgment at the Police headquarters or in the streets.

13. Al HASSAN was effectively responsible for the management, organisation, and work of the Islamic Police. He boasted about the efficacy of this system and the sanctions imposed.⁴⁵ Because of his functions, he was the essential interlocutor between the Islamic Police and the population – he was the person they came to see if they had a complaint, dispute, or needed formal police authorisation. He was the person they would face if they were investigated or punished by the police. Al HASSAN's personal mobile phone number was displayed on the front of the police headquarters at the former location of the *Banque Malienne de Solidarité* (BMS). Moreover, he acted as the police spokesman – for instance he provided media interviews, [REDACTED].

14. Al HASSAN's guilt will be proven beyond reasonable doubt at trial. The Prosecution does not propose in this Trial Brief to exhaustively summarise the evidence it will present, a great deal of which has already been discussed in detail in the DCC and the Confirmation Decision.⁴⁶ Instead, and particularly bearing in mind the instructions of the Chamber,⁴⁷ this brief presents below the main aspects of the Prosecution's case, incorporating recent amendments to the charges,⁴⁸ additional evidence collected since the confirmation proceedings, and evidence previously subject to non-disclosure or redactions. The Prosecution will also address a number of proposed corrections to the Confirmation Decision that will be dealt with during trial,⁴⁹ [REDACTED].

⁴⁵ [REDACTED]

DCC. The Prosecutor relies on submissions and supporting evidence in the DCC and findings on facts and evidence made by Pre-Trial Chamber I in the Confirmation Decision (ICC-01/12-01/18-461-Conf-Corr).

⁴⁷ ICC-01/12-01/18-770-Conf, para. 12.

⁴⁸ See generally Amendment Decision.

⁴⁹ See ICC-01/12-01/18-608-Conf, para. 41-48.

15. Section II below addresses the key features of the Organisation's takeover and control of Timbuktu, including the creation of the Islamic Police and other Organs. Section III explores in more detail Al HASSAN's role, acts, and conduct during the occupation. The remaining sections address the charged crimes in turn, with torture and other ill-treatment charged in counts 1-5 in section IV, the passing of sentences without due process as charged in count 6 in section V, attacks against historic monuments and buildings dedicated to religion as charged in count 7 in section VI, sexual and gender-based crimes charged in counts 8-12 in section VII, and finally persecution as charged in count 13 in section VIII.

16. The Prosecution files this Trial Brief confidentially pursuant to regulation 23*bis*(1) of the Regulations of the Court, because its contents could identify protected witnesses. A public redacted version will be filed in due course.

II. Takeover and control of Timbuktu by armed groups in 2012-2013

A. Introduction

17. The Prosecution will establish that in the beginning of April 2012, the armed groups Ansar Dine and AQIM occupied Timbuktu and the surrounding region and installed a new administration.

B. Types of evidence to be presented

18. The Prosecution will present various types of evidence regarding the controls and powers exercised over the local population during the Organisation's occupation of Timbuktu and its surrounding region, the structure and functioning of the new system of administration created by the Groups and their key members. The Prosecution will call various witnesses,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. These witnesses will testify on a wide range of subjects, including the controls exercised over the local population through the occupation of Timbuktu and its surrounding region and the Organs they established to administer the territory under their control. The Prosecution will also present documentary evidence, such as Islamic Police reports, Islamic Tribunal judgments, videos, photos, contemporaneous Malian military intelligence bulletins, call data records, and open source media reports. Moreover, the Prosecution will also submit [REDACTED] statement into evidence under rule 68(2)(c) of the Rules of Procedure and Evidence.

C. Armed groups operating in northern Mali during the relevant period

20. There were four main armed groups operating in northern Mali during the period subject of this case, from April 2012 to January 2013: AQIM, Ansar Dine, the Movement for Oneness and Jihad in West Africa (“MUJAO”), and the National Movement for the Liberation of Azawad (“MNLA”). The armed groups Ansar Dine, AQIM, and MUJAO were allied from the beginning of the armed conflict in northern Mali and throughout the period relevant to the charges.⁵¹

1. AQIM

21. AQIM is an armed group linked to Al-Qaeda. This group, originating from Algeria, includes members from the Sahel region and south of the Sahara, such as Mauritania, Nigeria,

⁵¹ [REDACTED]

[REDACTED] Committee of the Security Council, “Résumé des motifs ayant présidé aux inscriptions sur la liste”, 20 March 2013, [REDACTED]; according to this document, on 20 March 2013, the UN Security Council Sanctions Committee placed Ansar Dine on a sanctions list as a group associated with Al-Qaeda.

“Islamist jihadist project”.

25. Since its creation, Ansar Dine received military and financial support from AQIM,⁶¹ as well as manpower.⁶² Ansar Dine’s organisational and operational capacities during the charged period were allied, and worked closely, with those of AQIM. The two groups’ memberships (as well as that of MUJAO) were based on a system of allegiance: a declaration of loyalty and obedience, founded upon the principle “listen and obey”.⁶³ Although the actual relationship between the Groups was purposefully hidden from the public during much of the occupation, by November 2012, Iyad Ag GHALY openly proclaimed his adherence to and shared ideology with AQIM: “*Nous partageons tout avec Al-Qaida [...] ce n’est pas un secret à partir d’aujourd’hui, notre position n’est plus un secret, jusqu’à notre mort et jusqu’à l’au-delà, nous serons en lien avec Al-Qaida.*”⁶⁴ In the beginning of 2013, Iyad Ag GHALY personally led AQIM battalions against French forces at the Tigharhar massif.⁶⁵

3. MUJAO

26. MUJAO was a splinter group of AQIM. MUJAO published its first military manifesto

objective was reaffirmed. See, e.g. *Jeune Afrique*, “Iyad Ag Ghali: ‘Ansar Dine ne connaît que le Mali et la charia’”, 8 April 2012, [REDACTED]; *Enquête Exclusive*, 21 October 2012, [REDACTED], from 00:19:21 to 00:20:10, Transcript, [REDACTED]. Translation, [REDACTED].

[REDACTED] Soon after the takeover of Timbuktu, on 16 April 2012, the spokesperson of the Organisation, Sanda Ould BOUMAMA, declared in an interview with the Sahara Media newspaper: “*What we demand and work for is to live under the shadow and rule of the Islamic Sharia, and we reject every constitution or system except the Sharia of Islam [...]*” – See interview of Sanda Ould BOUMAMA with Sahara Media, 16 April 2012, [REDACTED]. In November 2012, Iyad Ag GHALY reaffirmed his intention to lead the jihad - Audio of Iyad Ag GHALY, [REDACTED].

[REDACTED] Video, [REDACTED]. Transcript, [REDACTED]. Translation, [REDACTED]. (Iyad Ag Ghaly calls for jihad). See also [REDACTED].

[REDACTED] See also “Al-Qaeda papers: The Multinational”, *Associated Press*, [REDACTED]; “Résumé des motifs ayant présidé aux inscriptions sur la liste”, Sanctions Committee of the Security Council, 20 March 2013, [REDACTED].

⁶² “Résumé des motifs ayant présidé aux inscriptions sur la liste”, Sanctions Committee of the Security Council, 20 March 2013, [REDACTED].

⁶³

[REDACTED]; [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]: “25 November 2012: Iyad Ag Ghali a exprimé son adhésion - l’idéologue d’AQIM”.

⁶⁵

in October 2011, also considered as the period when it was established.⁶⁶ It consisted largely of sub-Saharan jihadists.⁶⁷ It subscribed to AQIM's ideology, declaring jihad in a large part of West Africa.⁶⁸

27. MUJAO was co-founded and led by Mauritanian Hamad El Khairy, a former AQIM combatant.⁶⁹ MUJAO was linked to AQIM and Ansar Dine, receiving support from the two groups.⁷⁰ MUJAO was the main armed group which controlled and administered the town of Gao during the period relevant to the charges.⁷¹

4. MNLA

28. MNLA is a nationalist, secular Tuareg movement.⁷² It was created on 16 October 2011 as an opposition Tuareg movement⁷³ and advocates for the independence of Azawad and its people's right to self-determination.⁷⁴ It was composed mostly of Tuareg former combatants who joined pro-Gaddafi forces in Libya and returned to Mali after the 2011 Libyan

⁶⁶ Al-Akhbar, "Al-Qaida in the Islamic Maghreb (AQIM): infrastructure, institutions, leaders and affiliated movements (2)", 4 October 2012, [REDACTED], Translation, [REDACTED]; US State Department, "Terrorist Designations of the Movement for Unity and Jihad in West Africa, Hamad el Khairy, and Ahmed el Tilemsi", 7 December 2012, [REDACTED].

⁶⁷ [REDACTED].
⁶⁸ US State Department, "Terrorist Designations of the Movement for Unity and Jihad in West Africa, Hamad el Khairy, and Ahmed el Tilemsi", 7 December 2012, [REDACTED]; Al Wasat, "Trying to Understand MUJWA", 22 August 2012, [REDACTED]. See also FIDH, 'Crimes de guerre au Nord-Mali', 11 July 2012, [REDACTED]; Al-Akhbar, 'Al-Qaida in the Islamic Maghreb (AQIM): infrastructure, institutions, leaders and affiliated movements (2)', 4 October 2012, [REDACTED], Translation, [REDACTED].

US State Department, 'Terrorist Designations of the Movement for Unity and Jihad in West Africa, Hamad el Khairy, and Ahmed el Tilemsi', 7 December 2012, [REDACTED]; FIDH, 'Crimes de guerre au Nord-Mali', 11 July 2012, [REDACTED].

⁷⁰ US State Department, 'Terrorist Designations of the Movement for Unity and Jihad in West Africa, Hamad el Khairy, and Ahmed el Tilemsi', 7 December 2012, [REDACTED]; Committee of the Security Council, "Résumé des motifs ayant présidé aux inscriptions sur la liste", 20 March 2013, [REDACTED].

⁷¹ [REDACTED].
[REDACTED] Report of the Secretary-General on the situation in Mali, S/2012/894, 29 November 2012, [REDACTED], para. 10; press article, [REDACTED]; press article, [REDACTED].

"Communiqué No.1 du MNLA", MNLA, 16 October 2011, [REDACTED]; [REDACTED].
[REDACTED] MNLA, "Une semaine dans l'Azawad", 27 January 2012, [REDACTED]; "Mali: Five Months of Crisis", Amnesty International Report, 2012, [REDACTED]; FIDH, 'Crimes de guerre au Nord-Mali', 11 July 2012, [REDACTED].

⁷³ "Communiqué No.1 du MNLA", MNLA, 16 October 2011, [REDACTED].

⁷⁴ MNLA, "Une semaine dans l'Azawad", 27 January 2012, [REDACTED]; FIDH, 'Crimes de guerre au Nord-Mali', 11 July 2012, [REDACTED]; "Mali: Five Months of Crisis", Amnesty International Report, 2012, [REDACTED].

revolution.⁷⁵ Numerous Malian army deserters joined MNLA's ranks.⁷⁶ The MNLA took control of several areas, and was briefly present in Timbuktu in 2012, before being ousted by the Organisation.⁷⁷

D. Arrival of Ansar Dine and AQIM in Timbuktu in the beginning of April 2012

29. The evidence will show that around mid-January 2012, local media began reporting the offensives of armed groups in northern Mali. Aguelhok was attacked by armed groups, including AQIM and Ansar Dine and taken over on 24 January, resulting in the death of many Malian soldiers, including captured prisoners who were executed by the Groups.⁷⁸ Kidal was taken over on 30 March 2012, followed by Gao the next day.⁷⁹

30. Having become aware of the impending arrival in Timbuktu of the Groups, Malian state authorities and civil servants fled, along with the members of the Malian army stationed in and around Timbuktu.⁸⁰ Numerous residents who possessed the means to leave town likewise fled ahead of the armed groups' arrival.⁸¹

31. In the morning of Sunday, 1 April 2012, a local Arab militia⁸² started the pillage of public buildings⁸³ before withdrawing.⁸⁴ The MNLA entered Timbuktu the same day.⁸⁵ On 1

⁷⁵ MNLA, "Une semaine dans l'Azawad", 27 January 2012, [REDACTED]; France24, "Images et témoignage exclusifs du nord du Mali: un colonel du MNLA dévoile son arsenal militaire", 21 June 2012, [REDACTED].

MNLA, "Déclaration de désertion de l'armée Malienne et d'adhésion au MNLA", 3 December 2011, [REDACTED]; MNLA, "Léré dans la région de Tin-Bouctoun est libre", 26 January 2012, [REDACTED]; MNLA, "Une semaine dans l'Azawad", 27 January 2012, [REDACTED].

Déclaration d'indépendance de l'Azawad, MNLA, 6 April 2012, [REDACTED]; Report of the Secretary-General on the situation in Mali, S/2012/894, 29 November 2012, [REDACTED] para. 21; [REDACTED].

See, e.g., [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Video, [REDACTED], 00:01:59:10 - 00:05:43:00, Transcript, [REDACTED] Translation, [REDACTED].

⁷⁹ [REDACTED]
[REDACTED].

In 2013, the Timbuktu region counted 780658 inhabitants, based on Malian government figures: 4^e Recensement général de la population et de l'habitat du Mali (RGPH), [REDACTED].

[REDACTED]
[REDACTED]

or 2 April 2012,⁸⁶ Ansar Dine and AQIM⁸⁷ took control of the town,⁸⁸ becoming the new authorities.⁸⁹ The Groups chased the MNLA away,⁹⁰ forcing the latter to withdraw to the Timbuktu airport and towards the Niger River.⁹¹

32. In April 2012, within the first two weeks of the Groups' arrival in Timbuktu, the Groups held meetings with the population to inform them that the Groups were now in control of the city and to communicate their intentions and plans. For example, the Groups called a meeting at Hotel Bouctou, inviting the chiefs of the *quartiers* and religious leaders, including Abdelahman Ben ESSAYOUTI, Grand Imam of the Djingareyber mosque, and Alfadi Ahmed WANGARA, imam of the Sidi Yahia mosque.⁹² Iyad Ag GHALY and Abou ZEID delivered speeches in which they invited the people to cooperate with the Groups to implement *Sharia* law. The Groups also promised the people of Timbuktu that they would protect them.⁹³ Several prominent locals who attended this meeting, including some imams and HOUKA

83

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; Video, [REDACTED], 00:02:56:00 - 00:05:13:00, 00:06:50:00 - 00:07:32:00, Transcript, [REDACTED], Translation, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90

[REDACTED]

[REDACTED]

[REDACTED] Video, [REDACTED], 00:00:10:00 - 00:02:46:00, Transcript, [REDACTED], Translation, [REDACTED]

[REDACTED]

[REDACTED]

92

[REDACTED]; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

HOUKA, agreed to cooperate with the Groups.⁹⁴

33. In another meeting, Abou ZEID [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁹⁵ LAMINE was initially nominated President of the Islamic Tribunal, but he had limited involvement in its work.⁹⁶ HOUKA HOUKA acted as *de facto* President.⁹⁷

34. In like manner, Al HASSAN was recruited by the Groups and eventually became the *de facto* Islamic Police *commissaire*.⁹⁸ Al HASSAN's role is discussed in section III below.

35. In early April 2012, discontent grew between the Timbuktu residents and the Organisation, along with the MNLA who had not yet been driven out of the area. The local population called upon the chiefs and counsellors of the *quartiers*, and the religious leaders to meet with the Organisation and advocate their concerns. Representatives of each *quartier* were chosen, and the *Comité de crise* was born. This committee existed throughout the occupation and met regularly with representatives of the Organisation to raise the concerns of the population.⁹⁹

36. The Organisation remained in control of Timbuktu and its surrounding region until January 2013, when they were forced out by the armed intervention of the French military.

E. New administration established in Timbuktu

37. The principal leaders of the Organisation during the 10 months of occupation and oppression in the town and region of Timbuktu were the following:

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- Iyad Ag GHALY, the founder and chief of Ansar Dine, who from the very beginning of the occupation of Timbuktu laid the foundation of the new order in Timbuktu;¹⁰⁰
- Abou ZEID,¹⁰¹ a long-time member of AQIM and chief of the *Tarek Ibn Ziyad* battalion, who was presented by Ag GHALY as the new “governor” of Timbuktu;¹⁰²
- Yahia Abou Al HAMMAM,¹⁰³ head of the AQIM *Al Fourqane* battalion,¹⁰⁴ and the new “Emir of the Sahara” as of November 2012;¹⁰⁵ and
- Abdallah Al CHINGUETTI, spiritual leader and member of the AQIM *Al Fourqane* battalion.¹⁰⁶

38. After being present in Timbuktu in the early days of the occupation, Iyad Ag GHALY was principally based in his stronghold of Kidal. He nevertheless remained informed of and involved in matters arising from Timbuktu, and important decisions concerning the administration of the city and the region. Iyad Ag GHALY regularly sent emissaries to Timbuktu and travelled to the town on numerous occasions.¹⁰⁷

39. The senior management of Timbuktu was delegated to the “emirate” or “Presidency”,¹⁰⁸ which consisted of the “governor” Abou ZEID, Yahia Abou Al HAMMAM and Abdallah Al CHINGUETTI.¹⁰⁹

¹⁰⁰ See, e.g., [REDACTED]

¹⁰¹ His first name is Abdelhamid: United Nations Al-Qaeda sanctions list, [REDACTED]; [REDACTED]

Later known as the AQIM emir for the Sahel, RFI, “*AQIM au Sahel: Mokhtar Belmokhtar écarté son commandement*”, 15 October 2012, [REDACTED].

¹⁰⁴ [REDACTED]

¹⁰⁵ [REDACTED]; “Treasury Designates an Additional Senior Leader of Al-Qa’ida in the Lands of the Islamic Maghreb”, US Department of the Treasury, 14 February 2013, [REDACTED].

¹⁰⁶ He succeeded Yahia Abou Al HAMMAM when the latter became the AQIM emir for the Sahel. See, e.g., [REDACTED] In addition to these four leaders, there were other co-perpetrators who were members of the common plan, as listed at section 7.2.2.1 of the DCC. See also para. 39 of ICC-01/12-01/18-430-Conf (“Prosecution final written observations”).

¹⁰⁷ [REDACTED]

40. However, in the day-to-day management of Timbuktu, the Presidency was supported by various organs of propaganda, control and repression, particularly the Islamic Police,¹¹⁰ the morality brigade (*Hesbah*),¹¹¹ security battalion,¹¹² religious committee,¹¹³ and a media office.¹¹⁴ In addition, there was an Islamic Tribunal¹¹⁵ which served as the judicial branch of the authority in town. These Organs are discussed further in subsection G below. The Organisation was organised and hierarchical,¹¹⁶ and its leaders ensured near automatic compliance with orders by its members through the sense of a shared commitment to the Organisation's common purpose and/or plan,¹¹⁷ the obligation of allegiance,¹¹⁸ and an ability to discipline and punish.¹¹⁹

41. The Organisation rapidly implemented various new rules and prohibitions in accordance with its proclaimed religious vision, such as the prohibitions on smoking, drinking alcohol, and sexual relationships outside marriage (deemed "adultery"), and the strict dress code for women, as described in detail below, particularly in paragraph 286.

F. Groups' use of Timbuktu locals to facilitate the control and authority of the Organisation

42. The evidence will show that Ansar Dine and AQIM [REDACTED] their control and authority over the town, [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]¹²⁰ [REDACTED]¹²¹, [REDACTED]

¹¹⁰ *Al Mahdi* Judgment, ICC-01/12-01/15-171, para. 31; [REDACTED]
[REDACTED]

Al Mahdi Judgment, ICC-01/12-01/15-171, para. 31; [REDACTED]
[REDACTED].

¹¹³ [REDACTED]

¹¹⁴ *Al Mahdi* Judgment, ICC-01/12-01/15-171, para. 31; [REDACTED]
[REDACTED]

¹¹⁵ *Al Mahdi* Judgment, ICC-01/12-01/15-171, para. 31; [REDACTED]
[REDACTED]

DCC, Section 7.3.1.
¹¹⁷ See DCC, Sections 6.1.3, 7.2.1 and 7.2.2. *See also*, e.g., [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

DCC, Section 7.2.3.2.2; Prosecution final written observations, para. 62, 65.
¹²⁰ [REDACTED]
¹²¹ [REDACTED]

[Redacted text block with superscripts 122 and 123]

G. Organs established by Ansar Dine and AQIM in Timbuktu

1. Islamic Police, key organ of repression in Timbuktu

a) Organisation of the Islamic Police

43. The Organisation created the Islamic Police sometime in April 2012,¹²⁴ shortly after the armed groups’ arrival in Timbuktu.¹²⁵ The evidence will show that the Islamic Police was at the centre of the repressive apparatus put in place to subject the civilian population of Timbuktu city and region to the Organisation’s power and new rules.

44. The Islamic Police was initially based at the BMS¹²⁶ in the same *quartier* as the Yoboutao market.¹²⁷ Towards the end of August or beginning of September 2012,¹²⁸ the Islamic Police moved to the *Gouvernorat*¹²⁹ across from the military camp left by the Malian

¹²² [Redacted]
[Redacted]
[Redacted] Video, *Al Jazeera*, 17 January 2014, [Redacted] 00:35:23:00 - 00:35:40:00, Transcript, [Redacted], Translation, [Redacted].

¹²⁴ [Redacted]
[Redacted]
[Redacted] *Mali: Quand la Police islamique fait sa loi - Tombouctou, Algérie*, 1 May 2012, [Redacted]; New Mali militia leaves Timbuktu to avoid bloodbath, *AFP*, 28 April 2012, [Redacted].

¹²⁶ [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

army.¹³⁰ The Islamic Police operated within Timbuktu city, and in other cities within Timbuktu region.¹³¹

45. The Islamic Police was formally headed by an “emir”. The first emir was Oumar Ould Mohamed GULAM AL GHALAWI alias Adama, a member of AQIM.¹³² Adama was replaced by Khaled Abou SOULEYMANE,¹³³ a Sahraoui member of the *Tarek Ibn Ziyad* battalion led by Abou ZEID.¹³⁴ The emir of the Islamic Police received orders from, and reported to, governor Abou ZEID.¹³⁵ Abou ZEID oversaw the financing of the Islamic Police¹³⁶ and issued instructions to it.¹³⁷

46. The evidence will show that the Accused, Al HASSAN, was from April 2012 the *de facto* Islamic Police *commissaire*.¹³⁸ As discussed in more detail below in section III, Al HASSAN played a critical role in the functioning and activities of the Islamic Police throughout its existence.¹³⁹

47. During the period of the charges, there were around 40 policemen in all,¹⁴⁰ including Abou DHAR, Abdallah Burkinabe, DEMBA DEMBA,¹⁴¹ Abdelaziz BARBOUCHI,¹⁴² Ismael

¹³⁰ [REDACTED]

¹³¹ See e.g., [REDACTED]

¹⁴⁰ [REDACTED]

See, e.g., [REDACTED]

DIALLO¹⁴³ and Mohamed Ag Mohamed EMETTA.¹⁴⁴ The majority of the policemen were members of Ansar Dine or of the *Al Fourqane* battalion¹⁴⁵ of AQIM. They were of various ethnicities from Timbuktu, distant locations throughout Mali, and from other countries.¹⁴⁶

48. The police were armed with Kalashnikovs.¹⁴⁷ They often wore a uniform consisting of a blue vest with “Islamic Police” written in Arabic and French.¹⁴⁸ They used vehicles with the same inscription.¹⁴⁹

b) Essential mission of the Islamic Police

49. Al HASSAN explained the core mission of the Islamic Police in interviews he gave in 2012:¹⁵⁰

“ [REDACTED]

50. The Islamic Police participated in the proclamation of new rules and prohibitions through the distribution of leaflets.¹⁵²

51. Moreover, the Islamic Police kept a close watch over the civilian population of Timbuktu and brutally repressed them in accordance with the new rules and prohibitions: the

¹⁴¹ See, e.g., [REDACTED]

¹⁴² [REDACTED]

¹⁴³ [REDACTED] See also [REDACTED]

[REDACTED]

[REDACTED]

¹⁴⁵ [REDACTED]

¹⁴⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Video [REDACTED] 00:27:26:04 - 00:27:31:00, Transcript, [REDACTED]

[REDACTED] Translation, [REDACTED]; [REDACTED]

[REDACTED]

¹⁵⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Islamic Police patrolled throughout Timbuktu,¹⁵³ manned checkpoints, and carried out inspections on the streets, in markets, stores and homes.¹⁵⁴ These patrols ensured, for example, that women complied with the dress code, particularly with the requirement that they wear a veil to cover their heads, and that men and women did not mingle unless they were married or siblings.¹⁵⁵ They pursued people practising magic or sorcery, for example, or wearing amulets.¹⁵⁶ They forbade anyone from listening to non-religious music.¹⁵⁷ Those found violating the rules were pursued, stopped, advised, and arrested or beaten.¹⁵⁸

52. The Islamic Police worked in close coordination with the other organs, especially the *Hesbah*,¹⁵⁹ Islamic Tribunal and security battalions.¹⁶⁰ Some patrols and other activities, such as the implementation of sanctions imposed by the Islamic Tribunal and the destruction of mausoleums, comprised members of both the Islamic Police and the *Hesbah*.¹⁶¹

53. The Islamic Police could impose certain sanctions *in situ*.¹⁶² For example, if an individual were caught smoking, the Islamic Police could beat him or her right then and there

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on the street.¹⁶³ The sanctions inflicted were brutal and usually publicly imposed, instilling fear in the hearts of the citizenry. Women and girls were also victims of the Islamic Police's repression, with violence against them peaking towards the end of the month of Ramadan in August 2012.¹⁶⁴

54. The Islamic Police had prison cells at their disposal,¹⁶⁵ for cases where they could impose sanctions themselves, or those where people were interrogated and/or transferred to the central prison or to the Islamic Tribunal.¹⁶⁶

55. The Islamic Police worked closely with the Islamic Tribunal. The Islamic Police investigated violations of the newly imposed rules and prohibitions.¹⁶⁷ It summoned, arrested, detained, and interrogated those accused of violating these rules. The Islamic Police would thereafter transfer the cases to the Islamic Tribunal with reports of the investigation.¹⁶⁸

56. The Islamic Police implemented the sentences imposed by the Islamic Tribunal, or played an essential role in their execution, in coordination with the other organs.¹⁶⁹ The police brought the sentenced individual from the Tribunal or the prison to the site where the sanction was to be carried out.¹⁷⁰ The execution of sanctions was announced in advance on the radio or by public criers.¹⁷¹ The Islamic Police, sometimes together with the *Hesbah* and security battalions, established a security perimeter around the sanction site to ensure that the population kept a distance¹⁷² and could not interfere with the punishment. For example,

163

[REDACTED]

167

[REDACTED] "In a long interview a Commant from the Sahara Emirate talks about the Islamists' rule over northern Mali", Islamic Media Observatory, 24 December 2013, [REDACTED].

168

[REDACTED]

during Dédéou Maiga's amputation, the Islamic Police and the *Hesbah* implemented a security cordon around him.¹⁷³ As discussed in more detail below in section III, Al HASSAN handled these Islamic Police activities as its *de facto commissaire*.

2. Morality brigade (“*Hesbah*”)

57. The morality brigade¹⁷⁴ (“*Hesbah*”) was operational around the same time as the Islamic Police in April 2012.¹⁷⁵ It was initially based at a telecommunications centre (“*télécentre*”).¹⁷⁶ The *Hesbah* then moved to the BMS¹⁷⁷ when the Islamic Police moved to the *Gouvernorat*.¹⁷⁸

58. The *Hesbah*'s mission consisted of patrolling, monitoring compliance with the rules, preaching and suppressing all behaviour deemed contrary to virtue and morals,¹⁷⁹ and compelling people to adopt what the Organisation deemed acceptable behaviour, such as with respect to male-female relations and clothing worn by women and girls.¹⁸⁰ The *Hesbah* participated in arrests, investigations, and sanctions imposed upon violators, in coordination with other organs, particularly the Islamic Police, and also proclaimed sanctions imposed by the Islamic Tribunal.¹⁸¹

¹⁷³ [REDACTED]

Centre Recommandation du Convenable et l'Interdiction du Blâmable; [REDACTED]

59. [REDACTED]¹⁸² [REDACTED]
 [REDACTED]¹⁸³ [REDACTED]¹⁸⁴ [REDACTED]
 [REDACTED].

60. *Hesbah* members¹⁸⁵ sometimes wore a distinct vest¹⁸⁶ with the word “*Hesbah*” written on it.¹⁸⁷ They had vehicles¹⁸⁸ and prison cells at the BMS¹⁸⁹ at their disposal.

3. Islamic Tribunal

61. The Islamic Tribunal operated within the “*La Maison*” hotel beginning April 2012.¹⁹⁰ Its members included HOUKA HOUKA, the tribunal’s *de facto* president, Aboubacar Ibn ABDULLAH (Radwan)¹⁹¹, Abdallah Al CHINGUETTI¹⁹² and Koutaïba Al NOAMAN (Koutaïba),¹⁹³ among others.¹⁹⁴ These latter three were members of AQIM.¹⁹⁵ HOUKA

¹⁸² [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

¹⁸⁶ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] Video, *France 2*, 31 January 2013, [REDACTED]
 00:03:31:00 - 00:03:41:00; [REDACTED]

¹⁸⁸ [REDACTED]
¹⁸⁹ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Radwan was an AQIM member who is now deceased. *See* [REDACTED]
 [REDACTED] making reference to video, [REDACTED]
 p. 00:13:26:00; Transcript, [REDACTED], Translation, [REDACTED]; [REDACTED]

¹⁹² *See, e.g.*, [REDACTED]
 [REDACTED] Video, [REDACTED]; Transcript, [REDACTED]
 [REDACTED]

KOUTAIBA was a scholar and an important person in AQIM, [REDACTED]
 [REDACTED]
 [REDACTED] *See* [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

HOUKA hailed from Timbuktu, [REDACTED],¹⁹⁶ [REDACTED]

[REDACTED]¹⁹⁷ [REDACTED].¹⁹⁸

62. The evidence will show that the Islamic Tribunal was neither independent nor impartial. [REDACTED]

[REDACTED]¹⁹⁹ [REDACTED]

[REDACTED] or were involved in this authority's activities on the ground. Iyad Ag GHALY²⁰⁰ could interfere in the judicial process and was involved in important judgments. A notebook containing Islamic Tribunal judgments and notes on judicial deliberations reveal an absence of impartiality among the tribunal members.²⁰¹ [REDACTED] the leadership of the Organisation was able to control the Tribunal's decisions in some cases.²⁰²

63. Furthermore, the Tribunal did not respect fundamental due process rights. Its judgments were rendered summarily, without the possibility of staging an effective defence or being represented by counsel. Imprisonment was used as a means of coercion²⁰³ to obtain confessions. The judge himself could authorise the police to torture suspects if the latter refused to confess.²⁰⁴ Finally, certain sanctions were imposed on an *ad hoc* basis, such as having one's head shaved or having tar placed on oneself as a form of humiliation.²⁰⁵

64. The Tribunal meted out numerous sanctions entailing physical ill-treatment,²⁰⁶

¹⁹⁶ [REDACTED]

¹⁹⁷ Video, [REDACTED], 00:11:10:00 - 00:11:24:00; Transcript, [REDACTED]

[REDACTED]; [REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

See, e.g., [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁰⁶ *See, e.g.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Religious committee

68. The Organisation also established a religious committee in charge of overseeing the Islamic Tribunal, the *Hesbah*, and matters related to education and religion.²²⁰ [REDACTED]

[REDACTED] Abdallah AL CHINGUETTI, who was officially appointed its president in September 2012,²²¹ [REDACTED]

[REDACTED].²²²

III. Al HASSAN's role, acts, and conduct during the charged period

A. Introduction

69. The evidence will show that Al HASSAN was aware of the existence of the armed conflict and participated in the widespread and systematic attack against the civilian population of Timbuktu region between April 2012 and January 2013. By his acts and conduct as the *de facto commissaire* of the Islamic Police, Al HASSAN intentionally and actively contributed as a key player in the oppressive, coercive, and persecutory system that promoted and enabled the crimes charged in this case.²²³

B. Types of evidence to be presented

70. The Prosecution will rely at trial on evidence including, for example, testimonial evidence from: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED].

71. [REDACTED]
[REDACTED] several of them showing Al HASSAN
[REDACTED] with other members of

²¹⁹ [REDACTED]
[REDACTED].

²²¹ [REDACTED]
[REDACTED].

²²³ See also DCC, section 7.2.4.

the Islamic Police and the Organisation, [REDACTED] crimes being perpetrated by Al HASSAN and/or other members of the Organisation during the occupation.

72. Several witnesses identified Al HASSAN in the images, [REDACTED]. A facial recognition expert and a voice recognition expert will also confirm Al HASSAN's presence in several images, including at crime scenes. Call data records of the telephone of Al HASSAN and other leaders of the Organisation, analysed by an expert, will show Al HASSAN's communications with other leaders and his presence in the field.

73. The Prosecution also intends to adduce at trial a number of Islamic Police reports authored by Al HASSAN on a wide range of cases involving alleged violations of the rules imposed by the Organisation and civil and marital disputes. Al HASSAN also signed other Islamic Police documents, including summonses to appear and permits (some in the name of the emir). The majority of the reports and documents bear the stamp of the Islamic Police. Expert [REDACTED] will testify about the authenticity of the reports. The Prosecution will also rely on experts, such as [REDACTED] regarding the signatures on the reports and other documents, and [REDACTED] regarding *inter alia* the handwriting on this same material. [REDACTED], and witnesses such as [REDACTED] a member of the Islamic Tribunal, will testify that the Islamic Police reports were authored by Al HASSAN. [REDACTED].

74. There are also *inter alia* written judgments bearing the stamp of the Islamic Tribunal and signed by Judge HOUKA HOUKA, some of which are related to cases processed by the Islamic Police and documented in reports authored and signed by the Accused. These documents and other documentary evidence were collected [REDACTED] from the buildings occupied by the Islamic Tribunal and the Islamic Police, [REDACTED].

C. A valued member of the Organisation and the Groups, Al HASSAN was the *de facto commissaire* of the Islamic Police and key interface with the population throughout the occupation

1. Timing: Al HASSAN was an active member of the Organisation from the start of the occupation

75. The evidence will show that Al HASSAN was a member of the Organisation at all

times relevant to the charges in this case. He was also a member of the Groups, specifically Ansar Dine. Al HASSAN shared the views of the Organisation and intentionally and actively contributed to its activities devoted to imposing its power and enforcing the new rules imposed on the population, from the early days of the occupation in April 2012²²⁴ until his departure from Timbuktu in January 2013.²²⁵

76. Al HASSAN joined and worked at the Islamic Police as soon as it was created in April 2012.²²⁶ Unlike other leaders, like Adama, Al HASSAN kept his same functions within the Islamic Police throughout the occupation and thus was the permanent key pillar of this Organ.

77. As soon as they entered Timbuktu, the Organisation occupied several buildings, including those where they intended to set the headquarters of the Organs of control they swiftly put in place. The BMS was one such building. Al HASSAN,²²⁷ Abou TALHA, Abou DHAR, and Adama²²⁸ were all seen at the BMS the first days of the occupation. Indeed, from the first days of the occupation, before the formal establishment of police headquarters, Al HASSAN participated in security and police-related activities (especially patrols), including with Abou TALHA²²⁹ and others.

78. Al HASSAN remained actively involved in the work of the police when the formal headquarters were established in the course of April 2012.²³⁰ The BMS became the first headquarters of the Islamic Police, which was a key omnipresent component in the oppressive and repressive system put in place to subjugate and impose on the population of Timbuktu the power and rules of the Organisation. Al HASSAN had his office at the BMS when it was first

²²⁴

[REDACTED]

²²⁸

²²⁹ *See, e.g.* [REDACTED]

See, e.g. [REDACTED]

[REDACTED]

including for subsequent Ansar Dine operations. At the time of his arrest, he was also responsible for a CJA military base.²⁴³

2. Al HASSAN ensured the daily functioning and work of the Islamic Police

81. Al HASSAN ensured the daily functioning and work of the Islamic Police. [REDACTED]
[REDACTED]²⁴⁴ and [REDACTED].²⁴⁵ [REDACTED]
[REDACTED]
[REDACTED] Al HASSAN managed the work of the police on a daily basis.²⁴⁶ Civilians who interacted with Al HASSAN will also confirm that he undertook these functions, including [REDACTED],²⁴⁷ [REDACTED]²⁴⁸ and [REDACTED].²⁴⁹ In addition, Al HASSAN admitted organising the work of the Islamic Police.²⁵⁰

82. During the entire period relevant to the charges, Al HASSAN organised the daily activities of the around 40 members of the Islamic Police.²⁵¹ Subordinates [REDACTED] recognised him as their superior who had the authority to give them orders and instructions related to the work of the Islamic Police.²⁵² [REDACTED].²⁵³ Al HASSAN gave them instructions, for example regarding the patrols or for specific tasks, such as their respective positions during the women's demonstration.²⁵⁴ Al HASSAN would communicate and give instructions using his walkie-talkie or by mobile phone,²⁵⁵ [REDACTED]
[REDACTED].²⁵⁶ Al HASSAN could also discipline and punish his subordinates.²⁵⁷

242 [REDACTED]
[REDACTED]

244 [REDACTED]
245 [REDACTED]
[REDACTED]

247 [REDACTED]
248 [REDACTED]
249 [REDACTED]
250 [REDACTED]
251 [REDACTED]
[REDACTED]
[REDACTED]

253 [REDACTED]
[REDACTED]
[REDACTED]

See, e.g. [REDACTED]

See, e.g. [REDACTED]

[REDACTED] *. See also* [REDACTED]
[REDACTED]

83. Al HASSAN organised and participated in the patrols of the Islamic Police.²⁵⁸ The Islamic Police's own patrols (and patrols and other operations organised with the *Hesbah* and members of the security battalion) were an essential tool in the Organisation's system to ensure the control of the population and the enforcement of their new rules.

84. Al HASSAN started sending patrols out "at an early stage when the groups arrived in Timbuktu."²⁵⁹ He chose which member of the police to send on a given patrol.²⁶⁰ Members of the Islamic Police and their patrols were constantly scouring the streets, the markets, and every corner of the city and other localities in the region, checking and controlling every aspect of people's lives, and deciding whether they were in compliance with the newly imposed rules.²⁶¹ [REDACTED].²⁶²

85. The Islamic Police also patrolled other localities in the region, for example in [REDACTED] village where members of the Islamic Police [REDACTED] would control people at the market.²⁶³ [REDACTED]
[REDACTED]²⁶⁴ [REDACTED] the dispatching of vehicles and patrols outside the city.²⁶⁵

86. Al HASSAN and the other perpetrators of the crimes, notably members of the Islamic Police he directly worked with, conducted such operations and patrols on a daily basis throughout the occupation.

87. The population was systematically targeted and mistreated, in particular women and girls. Those found committing [REDACTED] (acts

257 [REDACTED]

Confirmation decision, para. 730-731 and footnotes 1992, 1993, 1994.

259 [REDACTED]

260 [REDACTED]

See, e.g. [REDACTED]

also [REDACTED] *See*

263 [REDACTED]

264 [REDACTED]

265 [REDACTED]

such as smoking, drinking alcohol, or women ‘adorning themselves’)²⁶⁶ were stopped, “advised”, and often arrested and subjected to various sanctions, including physical violence.

3. Al HASSAN participated in the investigation of cases and referred selected ones to the Islamic Tribunal

88. During the entire period relevant to the charges, Al HASSAN also handled, on behalf of the Islamic Police, numerous cases of alleged violations of the rules imposed by the Organisation, as well as civil and marital disputes between members of the population. Several of the cases he handled resulted in punishments and various acts and conduct underpinning the crimes charged in this case.

89. Al HASSAN thus actively encouraged and participated in the imposition and the enforcement of the Organisation’s rules and harsh sanctions and punishments, which he knew were foreign to the population of Timbuktu and Mali.²⁶⁷

90. The evidence shows that Al HASSAN was actively involved in, and his role was important at every stage of the process: from arrest, summons, detention, and investigation of a given case, to the judgment and the execution of sanctions decided by the Islamic Tribunal. This will be demonstrated by testimonial, documentary, and video evidence placing Al HASSAN and other members of the Islamic Police at various scenes of numerous crimes.

a) Investigations and Islamic Tribunal cases

Timing and evidence of Al HASSAN’s function in investigating and referring cases

91. The evidence will show that Al HASSAN started dealing with cases, including those to be referred to the Islamic Tribunal, within the first month of the arrival of the Groups in April 2012.²⁶⁸

²⁶⁶ [REDACTED]

See, e.g. [REDACTED]

²⁶⁸ *See* [REDACTED]

92. Following the investigation and the interrogation of persons involved,²⁶⁹ Al HASSAN wrote reports forming the basis of his referral of cases to the Islamic Tribunal.²⁷⁰ He would classify the cases.²⁷¹ By his own admission, his signature on the reports was sufficient for police matters. He had the authority to represent the police.²⁷² The Islamic Tribunal trusted his reports and opinions, which according to the reported cases available and descriptions of the proceedings, it followed.²⁷³ He referred numerous cases to the Islamic Tribunal, knowing well that they would result in the acts underpinning the crimes charged in this case, including floggings and other corporal punishments, for example in matters involving adultery, theft, use and selling of alcohol and cigarettes, and violations of the dress code.

93. Al HASSAN drafted and referred police reports to the Islamic Tribunal during the entire period of the charges.²⁷⁴ For instance, on 7 May 2012, the Islamic Tribunal had before it about 11 cases, including at least one referred to it by Al HASSAN (as admitted by him).²⁷⁵ Al HASSAN continued to perform such tasks throughout the occupation.

94. Tellingly, all of the Islamic Police's reports found at the BMS and at *Hôtel La Maison*, where the Islamic Tribunal was based, were written and submitted by Al HASSAN himself. The Islamic Police reports are in Al HASSAN's handwriting; many also bear his signature. The Trial Chamber will hear from two handwriting experts, [REDACTED] and [REDACTED], about their analyses of these reports.²⁷⁶ [REDACTED] also authenticated these reports [REDACTED].²⁷⁷ [REDACTED] believes that the reports shown to him were written

²⁶⁹ See, e.g. [REDACTED]

[REDACTED] See [REDACTED]

[REDACTED] See, e.g. [REDACTED]

[REDACTED] See, e.g. [REDACTED] Islamic Police report, [REDACTED] Islamic Police report, [REDACTED]

[REDACTED] See, e.g. [REDACTED]

[REDACTED] See Confirmation Decision, para. 735.

²⁷³ [REDACTED]

²⁷⁴ See, e.g. [REDACTED]

[REDACTED] See Report of the Islamic Police, [REDACTED]

[REDACTED] See also [REDACTED]

[REDACTED] See [REDACTED]

[REDACTED] See Confirmation Decision, para. 718.

[REDACTED] See, e.g. [REDACTED]

by Al HASSAN and bears his signature.²⁷⁸ [REDACTED]

[REDACTED]²⁷⁹

95. Al HASSAN could also issue summonses to appear,²⁸⁰ arrest and detain individuals.²⁸¹ On the evidence, individuals arrested, like [REDACTED], were taken directly to Al HASSAN.²⁸² He could question whom he wanted during his investigations, including leaders. For instance, he heard evidence from Abou TALHA when he investigated a murder case.²⁸³ He also investigated a complaint made against the emir of the police Adama, whom he questioned, then referred the case to the Tribunal.²⁸⁴ Moreover, Al HASSAN, or his subordinates, decided upon some of the relatively minor criminal cases,²⁸⁵ and at the police headquarters.²⁸⁶

96. Al HASSAN and the police further played an important role in the process of the Tribunal, by bringing detainees to its hearings. Al HASSAN and the police assured the transfer of the suspects to and from the place of detention to the Islamic Tribunal, as well as to and from places where public sanctions were executed.²⁸⁷ Al HASSAN would personally bring detainees concerned to the Islamic Tribunal or send other members of the Islamic Police

²⁷⁸ See, e.g. [REDACTED]

²⁷⁹ [REDACTED]

²⁸¹ See, e.g. [REDACTED]

739.

²⁸³ See [REDACTED] See [REDACTED]

See, e.g. [REDACTED]

²⁸⁶ See, e.g. [REDACTED]

²⁸⁷ [REDACTED]

[REDACTED] Confirmation Decision, para. 99.

to do so.²⁸⁸ The detainees would be brought in turn into the room where the judges were seated,²⁸⁹ with the police report corresponding to their respective case.²⁹⁰ After reviewing the report, the judges would question the individual concerned and decide the matter.²⁹¹

Geographical scope of Al HASSAN's investigations

97. Al HASSAN also had the power and authority to investigate outside Timbuktu city, and travelled outside the city to investigate cases. For example, he dealt with cases that took place in Léré, some 400 km away from Timbuktu near the border with Mauritania,²⁹² in Goundam, Niafunké, Rharouss and other localities in Timbuktu region.²⁹³

98. Al HASSAN also gave instructions regarding people arrested for committing an offence in other places. For example, when thieves were arrested in [REDACTED], he instructed that they be brought to Timbuktu where – [REDACTED] – they would be imprisoned.²⁹⁴ Similarly, he asked [REDACTED] to intercept people who had stolen a car full of [REDACTED].²⁹⁵

Torture and other methods used in police investigations

99. Methods of interrogations in the course of the investigations at the Islamic Police included the use of threat, violence and torture.²⁹⁶ When the police considered that a person was refusing to confess to something that he or she had done, they used methods “like beating and other things”²⁹⁷, to extract the information. The police – Al HASSAN included – beat and

²⁸⁸ See, e.g. [REDACTED]

See, e.g. Video [REDACTED]

²⁹² [REDACTED] See also [REDACTED]

See, e.g. [REDACTED] See Confirmation Decision, para. 734. See also [REDACTED]

Video, [REDACTED]

²⁹⁶ [REDACTED] See Confirmation Decision, para. 266-267, 744.

²⁹⁷ [REDACTED] See also e.g. [REDACTED]

tortured a person if they thought he or she had committed a crime and was refusing to confess.²⁹⁸ The Islamic Tribunal also instructed the Islamic Police to use “pressuring methods” during imprisonment to ensure a suspect’s cooperation.²⁹⁹

100. The evidence will show that Al HASSAN was well-aware of, and was involved in such practices. In one of his Islamic Police reports, he expressly wrote that victim ██████████ was tortured during the interrogation by the Islamic Police.³⁰⁰ Al HASSAN admitted that the Islamic Police used torture and other forms of violence.³⁰¹ In fact, he was personally involved in using threatening methods, for example in the case of ██████████.³⁰² During an interrogation in his office at the Islamic Police, Al HASSAN also threatened to ██████████ with the knife he was holding, if he refused to tell him the truth.³⁰³ ██████████ states that Al HASSAN also used methods such as beatings during interrogations like others within the police.³⁰⁴ Many people were flogged at the Islamic Police.³⁰⁵

Significant impact of Al HASSAN’s function in investigating and referring cases

101. Al HASSAN’s investigations had a significant impact on the judgments issued by the Islamic Tribunal.

102. Based on his classification of the cases and his decision to refer them to the Islamic Tribunal, Al HASSAN’s reports, containing his representation of the facts and the result of the investigations, were decisive factors in the decisions of the Islamic Tribunal.

103. The evidence shows that for cases referred by the Islamic Police, the Islamic Tribunal relied on the reports submitted by Al HASSAN,³⁰⁶ who was involved throughout the process.

²⁹⁸ ██████████ See Confirmation Decision, para. 745-746..

²⁹⁹ ██████████
³⁰⁰ ██████████ ██████████ See Confirmation decision, para. 266-267. See ██████████ See also ██████████

See, e.g. ██████████

³⁰³ ██████████

³⁰⁴ ██████████

³⁰⁵ See, e.g. ██████████

The Organisation entrusted Al HASSAN with the tasks, Abou ZEID received a copy of his reports, and the Islamic Tribunal essentially relied upon his findings and conclusions to decide the matters before it.³⁰⁷ This is demonstrated in particular, by the following factors:

- First, the Islamic Tribunal could not decide cases, particularly serious matters, in the absence of such investigations and reports from the Islamic Police³⁰⁸ (or, in a few instances, the *Hesbah*). Al HASSAN decided on the classification and referral of cases to the tribunal and noted down the decisions.³⁰⁹ The reports were essential, as a pre-condition to trigger the intervention of the Islamic Tribunal,³¹⁰ and the principal basis for its decisions and the nature and severity of the sanctions imposed;
- Second, with respect to cases handled by the Islamic Police and referred to the Islamic Tribunal, the investigations were conducted by Al HASSAN.³¹¹ ██████████ ██████████ Al HASSAN as the “*Chef*” of the Islamic Police and the only police member that ██████████ was involved in interrogating suspects and preparing the police reports submitted to the Islamic Tribunal;³¹²
- Third, the duration of the Tribunal hearings demonstrates that they relied upon reports produced by Al HASSAN. For instance, the sessions at the Islamic Tribunal ██████████ would generally start at around 8:00 or 9:00 am³¹³ and adjourn at around 2:00 pm, by which time it could have heard an average five cases and rendered its sentences.³¹⁴ A comparison of the dates on Al HASSAN’s Islamic Police reports and corresponding judgments shows that the reports were submitted the same day or within one or two days prior to a session and the judgments of the Islamic Tribunal on those cases. This was the case, for example, of ██████████.

³⁰⁷ ██████████
██████████
██████████
██████████

³⁰⁹ *See, e.g.* ██████████
██████████;

Reports from the *Hesbah* would have the same effect.

³¹¹ *See, e.g.* ██████████
██████████
██████████
██████████
██████████

³¹⁴ ██████████
██████████

judged and sentenced by the Islamic Tribunal on ██████████ 2012 based on Al HASSAN's report dated the same day.³¹⁵ This victim was arrested well before, spent some two months in detention,³¹⁶ and was submitted to interrogation and torture by the Islamic Police. This was also the case for at least ██████████ victims flogged ██████████ ██████████ 2012³¹⁷ (██████████, ³¹⁸ and ██████████ ██████████³¹⁹ that suspects could be in detention for some time before Al HASSAN drafted and provided such a police report to the Islamic Tribunal).

- The Tribunal judges would rely principally or solely on the reports, asking only limited questions of the accused person, for example to confirm a confession. ██████████ ██████████ the Islamic Tribunal could, if necessary, request Al HASSAN to provide further clarification of information.³²⁰ Al HASSAN ██████████ ██████████ was called to explain further the content of his report to the judges.³²¹

104. Accordingly, the fact that the Islamic Tribunal decided the cases following the process described and in the course of short hearings demonstrates the importance of Al HASSAN's Islamic Police reports, their impact on the outcome of the cases, and the nature and severity of the sanctions and corporal punishments imposed. For example, when one of Al HASSAN's reports indicated that an individual had confessed to adultery, the confession would constitute sufficient evidence and the principal basis³²² to impose the fixed sentence of 100 lashes.

315 ██████████ ██████████

See, e.g. ██████████

See also ██████████

321 ██████████

322 ██████████

See also ██████████

DCC, para. 285-313.

Where such confessions did not exist, the sentences were discretionary and normally lower than the fixed imposed ones.

105. The evidence also shows that after the Islamic Tribunal rendered its judgments, sanctions such as public floggings were executed the same day or within one or two days after its decisions. This was the case, for example, in the case of the [REDACTED] victims flogged [REDACTED] 2012.³²³ Al HASSAN and members of the Islamic Police such as Abou DHAR and Abdallah Burkinabe actively participated in this and other execution of sentences decided by the Islamic Tribunal.³²⁴

b) Complaints and Disputes

106. Al HASSAN also dealt with numerous civil and marital disputes in Timbuktu. Members of the population [REDACTED] went to, or were directed to Al HASSAN to handle their problems or disputes at the police.³²⁵ People [REDACTED],³²⁶ [REDACTED] directed to him, “the chief”, when they arrived at the Islamic Police.³²⁷ [REDACTED]
[REDACTED],³²⁸ [REDACTED],³²⁹ [REDACTED] Al HASSAN received numerous complaints.

³²³ [REDACTED]

³²⁶ [REDACTED]

³²⁷ [REDACTED]

107. Evidence from witness statements, video and documentary evidence further show that Al HASSAN handled and decided matters by himself, in his office at the Islamic Police.³³⁰ As mentioned above, he even heard a complaint against Adama, then emir of the Islamic Police; he questioned him, and referred the case to the Islamic Tribunal.³³¹ He personally intervened in marital issues,³³² and was known to pressure women to return to their husbands whom they had left or wanted to divorce.³³³

c) Execution of sanctions including punishment

108. Al HASSAN and members of the Islamic Police were actively involved in the organisation and execution of sentences during the occupation.

109. Al HASSAN and other members of the Islamic Police were involved in the sanctions inflicted on numerous victims in Timbuktu, whether it was the payment of a fine or flogging for example.³³⁴ Al HASSAN was himself often present and actively involved in organising the execution of sentences:³³⁵ calling the medical doctor and others to come to the scene of the sentence,³³⁶ organising the transportation of the victims, and, in some cases, physically participating in flogging, to mention a few examples.

110. This is supported by testimonial, documentary and video evidence placing Al HASSAN and other members of the Islamic Police at the crime scenes. [REDACTED]

³³⁰ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] and [REDACTED]
[REDACTED] See also Confirmation Decision, para. 96, 727 and 740-743; [REDACTED]
[REDACTED]
Islamic Police report, [REDACTED]; [REDACTED]
[REDACTED]
Marriage issue / 1, [REDACTED] Matrimonial Case, [REDACTED]
[REDACTED] Islamic Police report, [REDACTED]
[REDACTED] Social Case, [REDACTED] Social Case, [REDACTED]
[REDACTED] Social Case, [REDACTED] Social Case, [REDACTED]
[REDACTED] Social Case, [REDACTED] Matrimonial Case, [REDACTED]
[REDACTED] See also Matrimonial Case, [REDACTED]
[REDACTED] and Judgment, [REDACTED]
[REDACTED]

³³⁵ See, e.g. [REDACTED]
[REDACTED]
[REDACTED]

recalled in this regard: “the Islamic Police was often in charge of organising executions of sentences, [REDACTED] Al HASSAN in charge of them.”³³⁷ [REDACTED] also said: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED].³³⁸ Some of the punishments were executed by the police at the police headquarters.³³⁹

111. The following are examples of incidents in which Al HASSAN was involved and/or present:

- Al HASSAN was involved in the [REDACTED] flogging of a couple [REDACTED] [REDACTED] 2012 [REDACTED] flogging of [REDACTED] men [REDACTED] [REDACTED], and the [REDACTED] f [REDACTED] [REDACTED].³⁴⁰ Specifically, Al HASSAN was present together with other members of the Islamic Police and the Organisation at [REDACTED] flogging organised in Timbuktu [REDACTED] [REDACTED].³⁴¹ [REDACTED] [REDACTED] [REDACTED].³⁴² [REDACTED] [REDACTED].³⁴³
- Al HASSAN led and physically participated in the [REDACTED] flogging [REDACTED] men [REDACTED] 2012 at [REDACTED].³⁴⁴ Al HASSAN conducted the

337 [REDACTED]
338 [REDACTED]
339 [REDACTED]
340 [REDACTED]

341 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
338 [REDACTED]
[REDACTED]

operation on the ground with other members of the Islamic Police, [REDACTED]
[REDACTED].³⁴⁵ Al HASSAN [REDACTED] flogged [REDACTED]
men.³⁴⁶ [REDACTED], [REDACTED]
[REDACTED] Al HASSAN was the highest leader at the scene that day.³⁴⁷ Al HASSAN
[REDACTED] being one of the persons who flogged [REDACTED].³⁴⁸

- Al HASSAN actively participated in the [REDACTED] flogging of [REDACTED] couples on [REDACTED]
[REDACTED] 2012 [REDACTED].³⁴⁹ The evidence in this regard further
illustrates Al HASSAN’s active participation in the chain of events, from the arrest
and detention of at least [REDACTED] of the victims, [REDACTED] sanction of all [REDACTED] victims
after the Islamic Tribunal sentenced them to [REDACTED] lashes [REDACTED]. The victims
were judged between [REDACTED] 2012 and flogged [REDACTED].
Notably, Al HASSAN drafted the report that formed the basis of the Islamic
Tribunal’s judgment against at least [REDACTED] of the victims flogged [REDACTED], [REDACTED]
[REDACTED].³⁵⁰ Al HASSAN [REDACTED] participated,
physically, in the flogging of [REDACTED] that day.³⁵¹ During the flogging
of [REDACTED] 2012, Al HASSAN [REDACTED],
[REDACTED]
[REDACTED] flogged and subsequently during the flogging of another [REDACTED]
victim [REDACTED].³⁵² [REDACTED]

[REDACTED]

³⁴⁶ [REDACTED]

[REDACTED]

³⁴⁹ [REDACTED]
³⁵⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See [REDACTED]

[REDACTED] ³⁵³ [REDACTED]
[REDACTED], [REDACTED], [REDACTED], [REDACTED]
[REDACTED], [REDACTED] and [REDACTED]. ³⁵⁴ [REDACTED]
[REDACTED]. ³⁵⁵ Other members of the Organisation present [REDACTED]
[REDACTED] members of the Islamic Police. ³⁵⁶

- Al HASSAN was also present during the public flogging of [REDACTED] and [REDACTED] [REDACTED] 2013 [REDACTED] following a judgment by the Islamic Tribunal. ³⁵⁷ [REDACTED], [REDACTED] Al HASSAN was present that day [REDACTED] [REDACTED]. ³⁵⁸ [REDACTED] [REDACTED]. ³⁵⁹ The Islamic Police played an important role during this event, as evidenced for example by the presence of its members such as Al HASSAN, Demba Demba, ³⁶⁰ Ismael DIALLO, and others, and the use of the police vehicle to transport the victims. ³⁶¹

d) Direct involvement in other crimes

112. Members of the Islamic Police were also directly involved in all of the other crimes committed in Timbuktu, including crimes against women and girls, ³⁶² and the attacks against

³⁵³ [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

³⁵⁶ [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

Judgment of the Islamic Tribunal, [REDACTED] Judgment of the Islamic Tribunal, [REDACTED]

³⁵⁸ [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
See also [REDACTED] [REDACTED]

³⁶⁰ [REDACTED] [REDACTED] [REDACTED]
³⁶¹ [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

the mausoleums, mosques, and historical monuments.³⁶³ This is explained further below in sections IV to VIII.

4. Al HASSAN, as the *de facto commissaire* of the police, was a key interface with the population

113. Because of all his activities, Al HASSAN was considered, *de facto*, to be the *commissaire*. In this role, he was the key interface of the police with the local population.

114. The visible nature of Al HASSAN's role as the key interface of the police with the local population is seen in all his work as the *de facto commissaire*, especially, for example, by the following:

- It was his personal phone number displayed on the police headquarters board for people to call;
- He was active in the field interacting with local people – including during patrols, at the police headquarters, carrying out investigations, and executing punishments;
- He was the leader writing and usually signing the investigative reports concerning the people; and he had his own power to sign permits issued to local people, including in the name of the emir of the Islamic Police;
- He was the one the local population consistently saw in their mediations and disputes;
- He was chosen to be a spokesman during media interviews;
- He acted as a mediator on behalf of his men in their personal interactions with the local population – in marriage “negotiations” and in requesting dowries for these so-called marriages.

115. Adama and Khaled Abou SOULEYMANE were, successively, formal heads (or emir) of the Islamic Police.³⁶⁴ In that role they had power to make decisions, and carry out certain

³⁶³ [REDACTED]

[REDACTED]

[REDACTED]

activities of the police (such as passing on instructions to police subordinates and help organise patrols).³⁶⁵

116. However, the evidence shows that throughout the occupation, Al HASSAN acted as, and was consistently seen as the key day-to-day interface of the police with the local population in his functions as the *de facto commissaire* of the police, namely the leader effectively responsible for the daily management, organisation and work of the police.³⁶⁶

117. His role as *de facto commissaire* - and therefore the key interface with the population - was common knowledge among the population in Timbuktu, including amongst victims and eyewitnesses [REDACTED]

[REDACTED]³⁶⁷ [REDACTED] described him as the *de facto commissaire*, [REDACTED]

[REDACTED]

[REDACTED]³⁶⁸ [REDACTED],³⁶⁹ [REDACTED],³⁷⁰ [REDACTED]

[REDACTED]³⁷¹, [REDACTED]

[REDACTED].³⁷² Al HASSAN introduced himself as the *commissaire* or person responsible for the police to individuals, [REDACTED],³⁷³ [REDACTED],³⁷⁴ [REDACTED].³⁷⁵ At times, he was the acting emir of the police, and signed documents in the emir's name.³⁷⁶

[REDACTED]

[REDACTED]

[REDACTED] See, e.g. Final Written Submissions, para. 62-63; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁷⁰

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁷⁴

118. It was logical that Al HASSAN acted and was seen as the key daily interface of the police with the local population, because of his activities particularly as *de facto commissaire*: directly interacting with the local population was a necessary and important part of his work as a leader of the police; unlike Adama and Khaled, Al HASSAN came from Timbuktu and was therefore known by the local population, and he spoke local languages as well as French and Arabic; Al HASSAN was also trusted and supported by the other leaders of the Organisation, including because he was capable and shared their ideological, religious, and political views,³⁷⁷ and he was a member of the influential *Kel Ansar* tribe.³⁷⁸

119. The “Kel Ansar” tribe, to which Al HASSAN belongs, is known for its affiliation, orientation, and attachment to religion.³⁷⁹ When in 2012, people in northern Mali chose between joining Ansar Dine or MNLA, for some in the Kel Ansar, Ansar Dine was the obvious choice given their Islamist convictions and as Ansar Dine was considered the more powerful group.³⁸⁰ For Al HASSAN, joining Ansar Dine also presented an opportunity to join a group whose ideology he shared, and to participate in the application of this ideology.³⁸¹

120. Al HASSAN was not alone. When he joined Ansar Dine he was accompanied by his cousin,³⁸² and when he left Timbuktu in 2013 he left with his cousins and other members ■■■■■³⁸³ During the whole period of the occupation of Timbuktu, Al HASSAN was

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■■■■■³⁸⁴ ■■■■■³⁸⁵ ■■■■■

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121. The evidence will show that because the senior leadership trusted Al HASSAN, he was able to have regular access to them, was in constant communication with them, and was entrusted other responsibilities. This is demonstrated for instance by evidence from the call data records that indicate the extent of his communications with the senior leadership (as the expert report by [REDACTED] and [REDACTED] shows)³⁸⁸ as well as his active presence in Timbuktu. In the course of his handling of police matters, when necessary, Al HASSAN could seek advice and instructions from the top leaders in Timbuktu, such as AQIM leaders Abou ZEID and Yahia Abou Al HAMMAM.³⁸⁹ He attended meetings with them (and, for example, with members of the *Comité de crise*).³⁹⁰ The senior leadership entrusted him with the role of a spokesman for the Organisation in the recording of a video with Abdallah Al CHINGUETTI in which he explained the work and successes of the Islamic Police,³⁹¹ and another one with Sanda Ould BOUMAMA and Radwan in which he discussed the relations between the government of Mali and the Azawad region, justifying the fact that Ansar Dine took control of northern Mali.³⁹² He gave media interviews.³⁹³ Towards the end of October 2012, at the request of Iyad Ag GHALY, Al HASSAN led a delegation [REDACTED] to Kidal, in order to meet Abdelhamid AL TARGUI and receive further instructions regarding the role of the Islamic Police and the *Hesbah*.³⁹⁴

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Video

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. See also

See

See also

Video,

5. Impact of Al HASSAN's functions and activities: his contributions to the crimes

122. As a result of all of the work and the controls over the population that Al HASSAN organised and participated in, his acts and conduct directly impacted every aspect of the lives of the civilian population of Timbuktu by supporting the coercive and persecutory environment and helping to enforce the Organisation's rules. He also had various control over the work of the police.³⁹⁵ He contributed to the crimes perpetrated.³⁹⁶

123. Al HASSAN's handling of numerous cases involving violations of the new rules and civil and marital disputes is further evidence of his key role at various stages (arrest, investigation, reports, implementation of punishments) in the controlling and oppressive system put in place by the Organisation and the victimisation in Timbuktu town and region.

124. The population of Tombouctou was the target. The numerous victims included, for example, women and girls arrested for alleged violation of the new rules such as the dress code, and detained in harsh and inhuman conditions. Many women and girls were subjected to sexual violence while in detention. Many others were victims of sexual violence in the context of forced marriages that Al HASSAN facilitated through his important role in the imposition of a coercive and repressive environment, and, in some cases, by directly assisting members of the Islamic Police and others within the Organisation to engage in such marriages.³⁹⁷

125. Al HASSAN also made a contribution to the crimes by his involvement in the arrest, summons, detention, interrogation of individuals subsequently subjected to violence, torture, and severe sanctions. He was at the heart of the repressive system and involved at various stages of its functioning. The victims included, for example, Dédéou MAIGA whom Al HASSAN arrested and whose hand was amputated,³⁹⁸ as per a judgment of the Islamic Tribunal,³⁹⁹ and [REDACTED] who was severely and repeatedly beaten, tortured, and detained.⁴⁰⁰

³⁹⁵ See also DCC, section 7.3.

³⁹⁶ See sections IV.D, V.D, VI.D, VII.D, and VIII.F below. See also DCC, Sections 7.3.1, 7.3.2, 7.3.3, 7.2.3; Prosecution's final written submissions, para. 41-49, 58, 63-69.

³⁹⁷ [REDACTED]
[REDACTED]
[REDACTED]; [REDACTED]
[REDACTED]; [REDACTED] See
also [REDACTED]
[REDACTED]

Judgment of the Islamic Tribunal [REDACTED]

126. The evidence will also show that by his continuous acts, utterances, and overall conduct throughout the relevant time, Al HASSAN intended the criminal acts and overall conduct constituting the crimes against humanity and war crimes charged. Al HASSAN was, and still is, conscious of the detrimental impact that his acts and conduct had on the lives of the population and the persecution thereof. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 401 [REDACTED]

[REDACTED]

[REDACTED] 402

IV. Torture, cruel treatment, other inhumane acts, and outrages upon personal dignity (counts 1-5)

A. Introduction

127. The evidence will show that members of the Organisation, including Al HASSAN and other members of the Islamic Police, imposed the new rules of the Organisation by force and violently punished any alleged transgression in Timbuktu from April 2012 until January 2013.

128. The Islamic Police and the *Hesbah* had the power to impose discretionary penalties (so-called “*tazir*”) on those who violated the Organisation’s rules, such as the prohibition on smoking or the dress code for women. The punishment could take the form of floggings, imprisonment or fine.⁴⁰³ This power was formalised through instructions issued by Abou ZEID, including in a document dated 15 August 2012.⁴⁰⁴

400 [REDACTED]

[REDACTED]

402 [REDACTED]

403 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] . See [REDACTED]

129. The Islamic Police also used physical violence as a method of interrogation to extract confessions.⁴⁰⁵

130. When violations were characterised as, for example, adultery or theft, which could be subject to a prescribed penalty (so-called “*hudud*”),⁴⁰⁶ they were referred to the Islamic Tribunal.⁴⁰⁷ If conditions for imposing *hudud* were not satisfied, the Tribunal would impose a lower discretionary punishment called “*tazir*”.⁴⁰⁸ Even cases which would fall under the category of *tazir*, such as smoking, and which could be punished on site, were sometimes referred to the Islamic Tribunal.⁴⁰⁹ The sentence pronounced by the Islamic Tribunal could include corporal punishments, such as floggings⁴¹⁰ and amputation, which were executed in public to spread fear among the population and discourage violations of the Organisation’s rules.⁴¹¹ The Islamic Police and the *Hesbah* were responsible for the execution of sentences pronounced by the Islamic Tribunal.⁴¹²

131. As *de facto commissaire* of the Islamic Police, Al HASSAN contributed to the crimes of torture (article 7(1)(f) and article 8(2)(c)(i) of the Statute), cruel treatment (article 8(2)(c)(i) of the Statute), other inhumane acts (article 7(1)(k) of the Statute) and/or outrages upon personal dignity (article 8(2)(c)(ii) of the Statute), including by directly participating in arrest, detention and floggings of civilians accused of violating the Organisation’s rules.

[REDACTED]

See, e.g., Report of the Islamic Police, [REDACTED]

See also the DCC, para. 531-534;

Confirmation Decision, para. 266-267.

⁴⁰⁶ “*Hudud*” for sexual relationships outside marriage, deemed “adultery”, was 100 lashes. If the man or the woman is married, the punishment is stoning until death. “*Hudud*” for theft is amputation and for murder is death. See, e.g., [REDACTED]

See, e.g., [REDACTED]

See, e.g. the judgment regarding the [REDACTED], [REDACTED]

See, e.g., Report of the Islamic Police, [REDACTED]

⁴¹⁰ The Islamic Tribunal could order even 100 lashes as *tazir*. Judgment of the Islamic Tribunal, [REDACTED]

See, e.g., [REDACTED]

See, e.g., [REDACTED]

B. Types of evidence to be presented

132. The Prosecution case regarding counts 1-5 is based on, *inter alia*: (i) testimonial evidence from victims,⁴¹³ ██████████,⁴¹⁴ and other witnesses who were present in Timbuktu and its region at the relevant time;⁴¹⁵ (ii) documentary evidence collected from relevant locations in Timbuktu, including reports of the Islamic Police authored and/or signed by the Accused and judgments of the Islamic Tribunal; (iii) ██████████ ██████████;⁴¹⁶ (iv) expert evidence;⁴¹⁷ (v) ██████████ ██████████; and (vi) reporting by international organisations, NGOs and the media.⁴¹⁸

C. Incidents

133. Al HASSAN is charged with the following incidents of torture and other ill-treatment committed against 27 civilians during the charged period:

██████████ men flogged at ██████████ on or ██████████ 2012⁴¹⁹

134. The evidence will show that ██████████ 2012, Al HASSAN, accompanied by other members of the Islamic Police, took two men accused of ██████████ o ██████████.⁴²⁰ Al HASSAN and Abou DHAR took turns to flog ██████████ men, each of whom was flogged ██████████ times ██████████.⁴²¹

135. The incident was ██████████

⁴¹³ They include, for example, ██████████ ██████████.

They include, for example, ██████████

⁴¹⁵ They include, for example, ██████████

See, e.g., ██████████

See, e.g., Report of ██████████ on graphologist analysis, ██████████

See, e.g., Incident reports of the UN OHCHR Mali Fact-Finding Mission, ██████████

report, ██████████; Press article, ██████████.

⁴¹⁹ Charged under counts 1, 2, 3, 4, 5 and 6.

⁴²⁰ *See, e.g.,* ██████████

See also ██████████

See, e.g., ██████████

[REDACTED]⁴²² Several witnesses, including [REDACTED], [REDACTED], [REDACTED] and [REDACTED], identified Al HASSAN as the one flogging the victims [REDACTED].⁴²³ [REDACTED].⁴²⁴ At the time of the flogging, there were many members of the Islamic Police present.⁴²⁵

[REDACTED]⁴²⁶

136. [REDACTED] was arrested by the Islamic Police for [REDACTED].⁴²⁷ He was interrogated and tortured so he would give the name [REDACTED].⁴²⁸ After around two months of detention,⁴²⁹ Al HASSAN referred the case to the Islamic Tribunal with his signed police report dated [REDACTED] 2012, with specific reference to the torture inflicted [REDACTED] during interrogations.⁴³⁰ In a judgment dated the same day, the Islamic Tribunal sentenced him to [REDACTED] lashes, a fine [REDACTED].⁴³¹

[REDACTED]⁴³²

137. [REDACTED] were arrested, detained, and flogged by members of the Organisation for [REDACTED].⁴³³ Around [REDACTED] 2012, [REDACTED] the Islamic Police arrested [REDACTED] and took [REDACTED] to the BMS where [REDACTED] was detained [REDACTED] under

⁴²² [REDACTED]; [REDACTED].
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴²⁵ [REDACTED]
⁴²⁶ [REDACTED]
⁴²⁷ [REDACTED]
[REDACTED]

the
⁴²⁹ [REDACTED]
[REDACTED]

⁴³¹ Judgment of the Islamic Tribunal, [REDACTED]
⁴³² [REDACTED]
⁴³³ [REDACTED] See also
[REDACTED]

inhumane conditions.⁴³⁴ [REDACTED] was subsequently condemned [REDACTED] by the Islamic Tribunal, presided by HOUKA HOUKA, to a sentence of [REDACTED] lashes.⁴³⁵

138. [REDACTED] kept in a small room at the BMS without being provided any food or water [REDACTED].⁴³⁶ [REDACTED] was brought before members of the Organisation, [REDACTED]
 [REDACTED].⁴³⁷ [REDACTED] enjoyed the assistance of a lawyer or the possibility to mount their defence, for example, by calling witnesses.⁴³⁸

139. [REDACTED]
 [REDACTED]
 [REDACTED].⁴³⁹ [REDACTED]
 [REDACTED]
 [REDACTED].⁴⁴⁰ [REDACTED].⁴⁴¹ [REDACTED]
 [REDACTED]
 [REDACTED].⁴⁴² [REDACTED]
 [REDACTED].⁴⁴³ [REDACTED]
 [REDACTED].⁴⁴⁴ [REDACTED]

434 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

443 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

██████████⁴⁴⁵

140. ██████████ arrest, detention and flogging for a violation of the dress code imposed by the Organisation around ██████████ 2012.⁴⁴⁶ ██████████ was raped.⁴⁴⁷ ██████████

██████████.⁴⁴⁸ ██████████

██████████.⁴⁴⁹

██████████⁴⁵⁰

141. ██████████ was tortured and mistreated at the hands of members of the Organisation, including Al HASSAN, on several occasions ██████████ during the occupation of Timbuktu ██████████.⁴⁵¹ ██████████ he was first arrested by Al HASSAN in ██████████ 2012 in Timbuktu for ██████████.⁴⁵² He was detained at the BMS and interrogated on multiple occasions, including by Al HASSAN.⁴⁵³ ██████████

██████████ by members of the Islamic Police,⁴⁵⁴ and flogged ██████████ on several occasions.⁴⁵⁵ On one occasion, Al HASSAN told ██████████ lashes, ██████████

445 ██████████

446 ██████████

448 ██████████

449 ██████████

451

See also the ██████████ respectively. *See* Civil party complaint, ██████████

454 ██████████

455 ██████████

[REDACTED]⁴⁵⁶ [REDACTED] was arrested [REDACTED] and detained [REDACTED]⁴⁵⁷

142. [REDACTED]
[REDACTED]
[REDACTED]⁴⁵⁸ [REDACTED]
[REDACTED]
[REDACTED]⁴⁵⁹ [REDACTED]
[REDACTED]⁴⁶⁰ [REDACTED]
[REDACTED]
[REDACTED]⁴⁶¹ [REDACTED]
[REDACTED]⁴⁶²

[REDACTED] flogged on or around [REDACTED] 2012⁴⁶³

143. [REDACTED] 2012, [REDACTED] condemned by the Islamic Tribunal for “adultery” ([REDACTED]) were subjected to [REDACTED] lashes each [REDACTED].⁴⁶⁴ Al HASSAN was present [REDACTED]
[REDACTED].⁴⁶⁵ He was identified [REDACTED],⁴⁶⁶ [REDACTED]
[REDACTED].⁴⁶⁷ Other members

⁴⁵⁶ [REDACTED]
⁴⁵⁷ See, e.g., [REDACTED]
⁴⁵⁸ [REDACTED]

See, e.g., [REDACTED]
[REDACTED]

⁴⁶¹ [REDACTED]
⁴⁶² [REDACTED]

⁴⁶⁴ [REDACTED]
[REDACTED]

[REDACTED] See also [REDACTED]
[REDACTED]

⁴⁶⁷ [REDACTED]
[REDACTED]

of the Islamic Police, [REDACTED], were also present.⁴⁶⁸

144. Pursuant to the judgment of the Islamic Tribunal, [REDACTED] were flogged [REDACTED] times each because [REDACTED].⁴⁶⁹

145. [REDACTED] were also condemned to [REDACTED] lashes each for [REDACTED].⁴⁷⁰

146. [REDACTED] and [REDACTED] were flogged after the Islamic Tribunal sentenced them to [REDACTED].⁴⁷¹ They were [REDACTED].⁴⁷² The report of the Islamic Police bearing the signature of Al HASSAN describes the accounts of the victims, and contains a referral of the case to the Islamic Tribunal.⁴⁷³ [REDACTED].⁴⁷⁴

Dédéou Maiga⁴⁷⁵

147. The evidence will show that Al HASSAN and Adama arrested Dédéou Maiga from his house for alleged theft.⁴⁷⁶ He was detained for several weeks,⁴⁷⁷ and subsequently taken to the Islamic Tribunal, which convicted and sentenced him to amputation of his hand in a

of [REDACTED]

Judgment of the Islamic Tribunal, [REDACTED]
⁴⁷⁰ Judgment of the Islamic Tribunal, [REDACTED]
⁴⁷¹ Judgment of the Islamic Tribunal, [REDACTED]

Report of the Islamic Police, [REDACTED]
⁴⁷³ Report of the Islamic Police, [REDACTED]

[REDACTED]

[REDACTED]

Charged under counts 1, 2, 3, 4, 5 and 6. [REDACTED]

⁴⁷⁷ Video interview of Dédéou Mahammad MAIGA, [REDACTED], from 00:16:20:00 to 00:20:42:00, Transcript, [REDACTED]

judgment dated 12 September 2012.⁴⁷⁸ On 16 September 2012, Dédéou Maiga's right hand was publicly amputated behind Hotel Bouctou.⁴⁷⁹ The amputation was witnessed by several witnesses, including [REDACTED],⁴⁸⁰ [REDACTED],⁴⁸¹ [REDACTED],⁴⁸² [REDACTED],⁴⁸³ [REDACTED],⁴⁸⁴ and [REDACTED]

[REDACTED]⁴⁸⁵ [REDACTED]
[REDACTED]⁴⁸⁶.

[REDACTED] and [REDACTED]⁴⁸⁷

148. On [REDACTED] 2013, members of the Organisation, including members of the *Hesbah* and the Islamic Police, [REDACTED], flogged [REDACTED] and [REDACTED].⁴⁸⁸

149. [REDACTED] was arrested, detained and flogged [REDACTED] by members of the Organisation [REDACTED], [REDACTED]⁴⁸⁹ [REDACTED]
[REDACTED]

⁴⁷⁸ Judgment of the Islamic Tribunal, [REDACTED]
⁴⁷⁹ [REDACTED]
[REDACTED]
[REDACTED] Press article, [REDACTED]
Amnesty International report, [REDACTED]. See also [REDACTED]
[REDACTED]

See, e.g., [REDACTED]
[REDACTED]
[REDACTED]. See [REDACTED]
[REDACTED]

⁴⁸³ [REDACTED]
⁴⁸⁴ [REDACTED]
⁴⁸⁵ [REDACTED]
[REDACTED]

[REDACTED] Dédéou Maiga passed away in 2017.

⁴⁸⁸ See, e.g., [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See also [REDACTED]
[REDACTED]

⁴⁹⁰ On [REDACTED] 2013, the Islamic Tribunal sentenced [REDACTED] to [REDACTED] lashes.⁴⁹¹ [REDACTED] had no possibility to receive the assistance of a lawyer in her defence, [REDACTED]
[REDACTED]
⁴⁹²

150. On the same day, [REDACTED], also accused of [REDACTED], was sentenced by the Islamic Tribunal to [REDACTED] lashes and a fine.⁴⁹³ [REDACTED] will testify that [REDACTED]
[REDACTED], [REDACTED], before they were both flogged by members of the Organisation.⁴⁹⁴ [REDACTED]
[REDACTED]⁴⁹⁵ [REDACTED] [REDACTED]⁴⁹⁶

151. The floggings of [REDACTED] [REDACTED] [REDACTED] at the scene,⁴⁹⁷ and [REDACTED].⁴⁹⁸ [REDACTED] witnessed the flogging of [REDACTED] at [REDACTED] and [REDACTED]
[REDACTED].⁴⁹⁹ [REDACTED] Al HASSAN was present at the scene of the floggings, and [REDACTED].⁵⁰⁰

⁴⁹⁰ [REDACTED] *See also* [REDACTED]
[REDACTED]
Judgment of the Islamic Tribunal, [REDACTED]
⁴⁹² [REDACTED]
⁴⁹³ Judgment of the Islamic Tribunal, [REDACTED]
⁴⁹⁴ [REDACTED]
⁴⁹⁵ [REDACTED]
[REDACTED]
[REDACTED] *See, e.g.,* [REDACTED]
[REDACTED]
See, e.g., [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *See also* [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]⁵⁰¹

152. [REDACTED] will testify that she directly witnessed Abou BACCAR AI CHINGUETTI (Firaoun), a member of the Organisation, flog [REDACTED] until he fell to the ground [REDACTED]⁵⁰²

[REDACTED]⁵⁰³

153. [REDACTED] will testify about her arrest and detention [REDACTED] [REDACTED] during the period relevant to the charges.⁵⁰⁴ She will state that she was detained at [REDACTED] without food and with her hands tied behind her back.⁵⁰⁵ [REDACTED] [REDACTED] [REDACTED]

[REDACTED]⁵⁰⁶

[REDACTED]⁵⁰⁷

154. [REDACTED] will testify that she was arrested and detained [REDACTED] [REDACTED] after the arrival of the Groups in Timbuktu.⁵⁰⁸ [REDACTED] was chased [REDACTED] [REDACTED] [REDACTED].⁵⁰⁹ She was beaten [REDACTED].⁵¹⁰ She was taken [REDACTED] where she was detained [REDACTED]⁵¹¹

[REDACTED]
[REDACTED]
[REDACTED] *See also* [REDACTED]

[REDACTED] noting that the person appearing [REDACTED]

[REDACTED] seems to resemble Al HASSAN.

Charged under counts 2, 4, 5 and 6.

502 [REDACTED]

503 Charged under counts 5 and 6, and in relation to her rape in detention, under count 13.

504 [REDACTED] *See also* [REDACTED]

506 [REDACTED]

507 Charged under counts 5 and 6, and in relation to her rape in detention, under count 13.

508 [REDACTED] *See also* the [REDACTED]

[REDACTED] s account is also described in her prior statement given to the Malian judicial authorities in 2015. *See Procès-verbal* of [REDACTED]

509 [REDACTED]

510 [REDACTED]

511 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

██████████⁵¹²

155. ██████████ will testify that, during ██████████ 2012, she was arrested by members of the Organisation and flogged on the spot ██████████⁵¹³ She was taken to a small cell ██████████ where she was detained, ██████████ with no access to food or sanitary facilities, ██████████⁵¹⁴

██████████⁵¹⁵

156. ██████████ will testify that ██████████, was arrested and imprisoned by members of the Organisation ██████████. ██████████ was a direct witness to ██████████'s arrest and her ill treatment during her arrest.⁵¹⁶ ██████████ will also testify that she and ██████████ were detained ██████████⁵¹⁷ ██████████ and ██████████'s direct accounts of ██████████'s victimisation will be corroborated by evidence from several other witnesses, including ██████████, ██████████ and ██████████, as well as documentary evidence.⁵¹⁸

██████████⁵¹⁹

157. ██████████ will testify that she was arrested and imprisoned by members of the Organisation ██████████.⁵²⁰ ██████████.⁵²¹ Her account will be corroborated by ██████████ and related documents.⁵²²

██████████ See ██████████

Charged under counts 5 and 6, and in relation to her rape in detention, under count 13.

⁵¹³ ██████████ See also ██████████

██████████ See ██████████

⁵¹⁵ Charged under counts 2, 4, 5, 6, 11 and 12. The Prosecution reserves its position regarding the inclusion of the crime of torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (Count 1) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (Count 3) in relation to this victim ██████████

⁵¹⁷

⁵¹⁸

██████████ Audio interview of ██████████, ██████████, ██████████ Press article, ██████████; Press article, ██████████; Incident reports of the UN OHCHR Mali Fact-Finding Mission, ██████████

⁵¹⁹ Charged under counts 2, 4, 5, 6, 11 and 12.

[redacted] ⁵²³

158. [redacted] will testify that she saw [redacted] beaten with a baton by a member of the Organisation, [redacted].⁵²⁴ Members of the Organisation threatened [redacted] and [redacted] with their arms, and arrested [redacted].⁵²⁵

[redacted] ⁵²⁶

159. [redacted] will testify that [redacted], [redacted], [redacted] was arrested by [redacted] at a market in Timbuktu [redacted] [redacted].⁵²⁷ While passing [redacted] where [redacted] was detained, [redacted] heard him shout.⁵²⁸ [redacted] [redacted] [redacted] [redacted]’s [redacted] [redacted] [redacted] [redacted] [redacted].⁵²⁹

[redacted] ⁵³⁰

160. The evidence will show that [redacted] was arrested and imprisoned [redacted] [redacted], and flogged multiple times by members of the Organisation in the course of one day. [redacted] [redacted].⁵³¹ Documentary evidence of [redacted]’s victimisation, [redacted] [redacted], will be corroborated by [redacted]

⁵²⁰ [redacted] *See also* [redacted]

⁵²² [redacted]

[redacted] Civil party complaint, [redacted] Video, [redacted]

⁵²⁴ [redacted]

⁵²⁵ [redacted]

⁵²⁶ [redacted]

⁵²⁷ [redacted]

⁵²⁸ [redacted]

⁵²⁹ [redacted]

⁵³⁰ [redacted]

[REDACTED]

[REDACTED]⁵³²

D. Al HASSAN's contributions to the commission of the crimes under counts 1-5

1. Article 25(3)(a) of the Statute

161. As described above in paragraphs 134 to 136 and 143 to 146, Al HASSAN personally flogged [REDACTED] men [REDACTED] 2012 and [REDACTED] [REDACTED] 2012.⁵³³

2. Article 25(3)(c) of the Statute

162. Al HASSAN assisted the commission of the crimes under counts 1-5 by different means, such as participating in the arrest, detention, and interrogation, drafting and signing the reports of the Islamic Police, [REDACTED]

[REDACTED]

[REDACTED]

163. As described in paragraph 136 above, Al HASSAN assisted the torture of [REDACTED] [REDACTED], including by drafting and signing the report of the Islamic Police, with reference to the use of torture during his interrogations.⁵³⁴

[REDACTED] *and* [REDACTED]

164. As described in paragraphs 137 to 139 above, Al HASSAN assisted the floggings of [REDACTED] and [REDACTED], including by being present and participating [REDACTED] [REDACTED], together with other members of the Organisation.⁵³⁵

⁵³² [REDACTED]

⁵³³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See [REDACTED]

⁵³⁴ See Confirmation Decision, para. 921.

⁵³⁵ See Confirmation Decision, para. 916.

- His role in drafting reports of the Islamic Police on civil and criminal cases, and referring them to the Islamic Tribunal;⁵⁴⁰
- His participation in the arrest of persons suspected of violating the Organisation's rules;⁵⁴¹
- His participation in the ill-treatment of [REDACTED];⁵⁴²
- His direct participation in the execution of sentences pronounced by the Islamic Tribunal;⁵⁴³ and
- His presence at the scene of the execution of such sentences.⁵⁴⁴

170. The evidence also establishes that Al HASSAN had the requisite intent and knowledge under articles 25 and 30 of the Statute, as well as under the elements of the crimes charged under counts 1-5. In addition to the facts relating to his contributions to the commission of the crimes as described above, his intent and knowledge can be inferred from, *inter alia*:

- He was in contact with the population, receiving their complaints and concerns;⁵⁴⁵
- He investigated complaints and alleged violations of the Organisation's rules, which led in many instances to the punishments discussed above;⁵⁴⁶
- He participated in the *Comité de crise* meetings where complaints from the population were discussed;⁵⁴⁷
- He was present at the demonstration of women on 6 October 2012;⁵⁴⁸
- The widespread and systematic nature of the acts of violence;⁵⁴⁹
- Contemporaneous reporting on the acts of violence committed against the population;⁵⁵⁰ and
- His participation in the Organisation's activities throughout the charged period.⁵⁵¹

⁵⁴⁰ See section III.C.3(a) above.

⁵⁴¹ See, e.g., para. 141 above.

⁵⁴² See para. 141 above.

⁵⁴³ See section 0(0) above.

⁵⁴⁴ See, e.g., the cases of [REDACTED] and [REDACTED], the floggings of [REDACTED] and the cases of [REDACTED] and [REDACTED]. See also [REDACTED]

See, e.g., [REDACTED]; [REDACTED]

See section 3 above.

⁵⁴⁷ See, e.g., [REDACTED]

See, e.g., [REDACTED]; [REDACTED]

[REDACTED] Regarding the women's demonstration, see also Press Article, [REDACTED].

⁵⁴⁹ See Confirmation Decision, Section VI and more specifically para. 962 for counts 1 to 5.

⁵⁵⁰ See, e.g., [REDACTED]; Press article, [REDACTED]; Press article, [REDACTED].

V. Passing of sentences without due process (count 6)

A. Introduction

171. The evidence will show that Al HASSAN and other members of the Organisation systematically punished members of the civilian population of Timbuktu town and region for violations of their rules without affording the fundamental safeguards associated with a proper judicial process. Victims who failed to strictly follow the newly imposed rules were subjected to sentences passed extra-judicially by members of the Organisation, in particular the Islamic Police and the *Hesbah*, or by the Islamic Tribunal, which did not afford the essential guarantees of independence and impartiality or other judicial guarantees.

172. The Islamic Tribunal established by the Organisation was a tool created to ensure the Organisation's power and control over Timbuktu and its civilian population, and to impose its ideological and religious vision by all means, including through imposing harsh sanctions for violations of the new rules such as corporal punishments and amputation.⁵⁵²

173. The Islamic Tribunal was not a "regularly constituted court" affording all the essential guarantees of independence and impartiality. Iyad Ag GHALI and the Presidency controlled the appointment of judges as well as the funding, functioning, and decisions of the tribunal.⁵⁵³ HOUKA HOUKA, its *de facto* President, was involved in the activities of the Organisation beyond his judicial functions, in order to advance its policy and common purpose in a manner that undermined his impartiality.

174. For instance, HOUKA HOUKA actively participated in the Organisation's political and military activities, including an initial meeting with Abou ZEID and Iyad Ag GHALY when HOUKA HOUKA agreed to cooperate with them,⁵⁵⁴ a meeting to discuss ways to spread the application of the new rules to other areas in the region,⁵⁵⁵ a meeting to plan and discuss the military attack in Konna,⁵⁵⁶ and a meeting with leaders of the Organisation and

⁵⁵¹ See, e.g., [REDACTED]

See sources cited in the DCC, para. 428.

⁵⁵³ See sources cited in the DCC, para. 426, 427.

⁵⁵⁴ [REDACTED]

⁵⁵⁵ [REDACTED]

See also [REDACTED]

representatives of the population to plan staged demonstrations aimed at advancing the Organisation's political goals by showing the opposition of the population to the military intervention against the Organisation.⁵⁵⁷

175. Witnesses including [REDACTED] and [REDACTED] will testify that the Islamic Tribunal was just a *façade* put in place so that the population would not know that members of AQIM and other key members of the Organisation were the ones taking the decisions.⁵⁵⁸

176. In addition, evidence will show that cases which were considered to be important by the Organisation were decided by persons other than the members of the Islamic Tribunal, notably by Abu Zeid and Iyad Ag Ghaly,⁵⁵⁹ who then asked the judges to rule according to their point of view.⁵⁶⁰ For example, the amputation of Dédéou Maiga was decided by Iyad Ag GHALY.⁵⁶¹

177. The evidence will show that members of the Presidency and the executive branch of the Organisation were part of the Tribunal while concomitantly exercising their executive powers.⁵⁶² The Judges attended the proceedings of the tribunal with their weapons in an intimidating manner,⁵⁶³ lacked proper judicial qualifications,⁵⁶⁴ and had loyalties and affiliations to parties in cases before the Tribunal.⁵⁶⁵

178. In addition, the Tribunal did not afford other judicial guarantees generally recognised as indispensable under international law,⁵⁶⁶ such as those enunciated in article 75 of Additional Protocol I, article 6(2) of Additional Protocol II, and the International Covenant on Civil and Political Rights. For example, the proceedings were summarily conducted without

⁵⁵⁷ [REDACTED] Video, [REDACTED]

⁵⁶¹ [REDACTED] Audio recording of Iyad Ag Ghaly, [REDACTED], 00:35:00:00 - 00:36:58:00, Translation, [REDACTED]; [REDACTED]

⁵⁵⁸ See sources cited in the DCC, para. 426 and Prosecution final written observations, para. 17-21.

⁵⁶³ See sources cited in the DCC, para. 433.

⁵⁶⁴ See sources cited in the DCC, para. 430.

⁵⁶⁵ See sources cited in the DCC, para. 432.

⁵⁶⁶ See sources cited in the DCC, para. 443-446.

affording the time and facilities to prepare the defence.⁵⁶⁷ In particular, accused persons were systematically denied the possibility of receiving the assistance of a defence lawyer.⁵⁶⁸ In addition, the principle of *nulla poena sine lege*,⁵⁶⁹ non-retroactive application of the law,⁵⁷⁰ and presumption of innocence,⁵⁷¹ and a possibility to appeal the judgment were not applied. Moreover, persons were subjected to coercive pre-trial detentions in inhumane conditions,⁵⁷² suffered different forms of ill-treatment and were not brought before a judge who established the legality of the detention within a reasonable period.⁵⁷³

179. The evidence will also show that the civilian population in Timbuktu was subject to direct extra-judicial punishments by members of the Organisation on a daily basis, in particular, by members of the police and the *Hesbah*. As previously noted, the Islamic Police and the *Hesbah* had the discretionary power to detain or flog those who violated the newly

⁵⁶⁷ See, e.g. incidents 9, 17, 20, 21, 22, 23, 24, 25, 26, 27, 31, 33, 35, 37, 38, 46, 47, 48, 49 in sub-section C *infra* and Incident 2: Case of ██████ at para. 0140; Incident 3: Case of ██████'s ██████ at para. 142; Incident 4: Case of ██████'s ██████ at para. 142; Incident 28: Case of ██████ – case 48/1433-2012 at para. 143-142; Incident 29: Case of ██████ – case 49/1433-2012 at para. 143-142; Incident 30: Case of ██████ – Case 54/1433-2012 at para. 143-142; Incident 7: Case of ██████ at para. 152; Incident 6: Case of ██████ at para. 153; Incident 5: Case of ██████ at para. 154; Incident 1: Case of ██████ at para. 155; Incident 44: Case of ██████ at para. 156; Incident 45: Case of ██████ at para. 157; Incident 50: Case of ██████ at para. 159.

See all incidents, sub-section C *infra*.

See, e.g. incidents 12, 13, 18, 21, 22, 23, 24, 32, 33, 37, 39, 40 in sub-section C *infra* and incident 43: Case of ██████ at para. 134-131; Incident 8: Case of ██████ – case 01.1433-2012 at para. 136; Incident 41: Case of ██████ at para 137-135; Incident 42: Case of ██████ at para. 133-135; Incident 2: Case of ██████ at para. 140; Incident 3: Case of ██████ at para. 142; Incident 4: Case of ██████ at para. 138; Incident 28: Case of ██████ – case 48/1433-2012 at para. 143-142; Incident 29: Case of ██████ – case 49/1433-2012 at para. 139-142; Incident 30: Case of ██████ – Case 54/1433-2012 at para. 139-142; Incident 15: Case of Dédéou Muhamad Maiga – case 17/1433-2012 at para. 147; Incident 34: Case of ██████ – case 66/1434-2013 at para. 148-145, 147; Incident 36: Case of ██████ – case 68/1434-2013 at para. 150-147; Incident 7: Case of ██████ at para. 152.

⁵⁷⁰ See, e.g. incidents 30, 39 at para. 143-142 and 212 *infra* and Incident 41: Case of ██████ at para 137-135; Incident 42: Case of ██████ at para. 133-135.

⁵⁷¹ See, e.g. incidents 10, 16, 35, 38 at para. 186, 191, 208-205 and 211 *infra*.

⁵⁷² See, e.g. incidents 26, 35 at para. 202-199 and 208-205 *infra* and Incident 8: Case of ██████ – case 01.1433-2012 at para. 136, Incident 41: Case of ██████ at para. 137-135; Incident 42: Case of ██████ at para. 137-135; Incident 2: Case of ██████ at para. 140; Incident 6: Case of ██████ at para. 153; Incident 5: Case of ██████ at para. 154; Incident 1: Case of ██████ at para 155; Incident 44: Case of ██████ at para. 156; Incident 45: Case of ██████ at para. 0157.

⁵⁷³ See, e.g. incidents 12, 14, 16, 18, 23, 35 at para. 188, 190, 191, 193, 198 and 208-205 *infra* and Incident 8: Case of ██████ – case 01.1433-2012 at para. 136, Incident 41: Case of ██████ at para. 137-135; Incident 42: Case of ██████ at para. 137-135; Incident 2: Case of ██████ at para. 140; Incident 6: Case of ██████ at para. 153; Incident 5: Case of ██████ at para. 154; Incident 1: Case of ██████ at para. 155; Incident 44: Case of ██████ at para. 156; Incident 45: Case of ██████ at para. 157.

imposed rules.⁵⁷⁴ According to Al HASSAN, the Islamic Police was involved in patrols within the town and [REDACTED] such as drinking alcohol, smoking and a woman adorning herself.⁵⁷⁵ Under this ‘summary punishment’ system, where sentences were pronounced and executed on site, the population was denied any semblance of due process.

180. The majority of the sanctions imposed on the population were discretionary ‘*tazir*’ punishments, which were neither coded nor foreseeable by the population and may vary from flogging (to an undetermined number of lashes which can go up to hundreds of lashes in some instances),⁵⁷⁶ to shaving or painting the head with a degrading substance,⁵⁷⁷ imprisonment for an undetermined period of time,⁵⁷⁸ or ordering the individual to walk shamefully with the allegedly stolen items for the population to see.⁵⁷⁹

B. Types of evidence to be presented

181. The Prosecution case regarding count 6 is based on, *inter alia*: (i) testimonial evidence from victims,⁵⁸⁰ insider witnesses,⁵⁸¹ and other witnesses who were present in Timbuktu and its region at the relevant time;⁵⁸² (ii) documentary evidence collected from relevant locations in Timbuktu, including reports of the Islamic Police authored and/or signed by the Accused and judgments of the Islamic Tribunal; (iii) videos and photographs taken by witnesses, including [REDACTED], [REDACTED] and [REDACTED];⁵⁸³ (iv) expert evidence;⁵⁸⁴ and (v) [REDACTED]

⁵⁷⁴ See para.128 *supra*.

⁵⁷⁵ [REDACTED]
[REDACTED]
[REDACTED]
See, e.g. incident 30: Case of [REDACTED] – Case 54/1433-2012 at para. 143-142; incident 43: Case of [REDACTED] at para. 134-131; incident 40: Case of [REDACTED] at para. 213 ; Incident 32: Case of [REDACTED] – Case 60/1433-2012 at para. 206; incident 33: Case of [REDACTED] – Case 61/1433-2012 at para. 207; incident 37: Case of [REDACTED] at para. 210.

⁵⁷⁷ Incident 38: Case of [REDACTED] at para. 211.

⁵⁷⁸ See, e.g. incident 12: Case of [REDACTED] – Case 13/1433-2012 at para. 188; incident 17: Case of [REDACTED] – Case 19/1433-2012 at para. 192.

⁵⁷⁹ See incident 40: Case of [REDACTED] at para. 213.

⁵⁸⁰ Those include, for example, [REDACTED] and [REDACTED]

Those include, for example, [REDACTED]
⁵⁸² Those include, for example, [REDACTED] and [REDACTED]

See, e.g., Video, [REDACTED], [REDACTED]
[REDACTED] Video, [REDACTED]; Transcript, [REDACTED]; Video, [REDACTED]
[REDACTED].

See, e.g., Report of [REDACTED] on graphologist analysis, [REDACTED] Report of [REDACTED] on metadata of files obtained from [REDACTED] and [REDACTED].

C. Incidents

182. There are 50 charged incidents for this crime. In respect of several incidents, there was no previous judgment pronounced by a court at all.⁵⁸⁵ Where there was a sentence pronounced by the Islamic Tribunal, in each case the Tribunal's proceedings lacked the essential guarantees of independence and impartiality, as well as other judicial guarantees, such as the possibility to receive the assistance of a lawyer.

183. To avoid unnecessary repetition, the Prosecution refers to section IV above regarding incidents 1 to 8,⁵⁸⁶ 15,⁵⁸⁷ 28,⁵⁸⁸ 29,⁵⁸⁹ 30,⁵⁹⁰ 34,⁵⁹¹ 36,⁵⁹² 41 to 45,⁵⁹³ and 50,⁵⁹⁴ and discusses only the remaining incidents below:

Incident 9: Case of [REDACTED], [REDACTED], [REDACTED] 2012

184. Based on a police report written and signed by Al HASSAN on [REDACTED] 2012,⁵⁹⁵ a week later, the victims appeared before the Islamic Tribunal.⁵⁹⁶ They were accused of [REDACTED] and were sentenced on the same day [REDACTED].⁵⁹⁷

⁵⁸⁵ See, e.g., [REDACTED] and [REDACTED]

⁵⁸⁶ Incident 1: Case of [REDACTED] at para. 155; Incident 2: Case of [REDACTED] at para. 140; Incident 3: Case of [REDACTED] at para. 142; Incident 4: Case of [REDACTED] at para. 142; Incident 5: Case of [REDACTED] at para. 154; Incident 6: Case of [REDACTED] at para. 153; Incident 7: Case of the old man [REDACTED] at para. 152; Incident 8: Case of [REDACTED] – case 01. [REDACTED] at para. 136.

⁵⁸⁷ Incident 15: Case of Dédéou Muhamad Maiga – case 17/ [REDACTED] at para. 147.

⁵⁸⁸ Incident 28: Case of [REDACTED] – [REDACTED] at para. 143-142.

⁵⁸⁹ Incident 29: Case of [REDACTED] at para. 143-142.

⁵⁹⁰ Incident 30: Case of [REDACTED] – Case [REDACTED] at para. 143-142.

⁵⁹¹ Incident 34: Case of [REDACTED] – [REDACTED] at para. 148-147.

⁵⁹² Incident 36: Case of [REDACTED] at para. 150-147.

⁵⁹³ Incident 41: Case of [REDACTED] at para 137-135; Incident 42: Case of [REDACTED] at para. 137-135; Incident 43: Case of the two men who were flogged [REDACTED] at para. 130-131; Incident 44: Case [REDACTED] at para. 156; Incident 45: Case of [REDACTED] at para. 157.

⁵⁹⁴ Incident 50: Case of [REDACTED] at para. 159.

⁵⁹⁵ [REDACTED]

Judgment of the Islamic Tribunal, [REDACTED]

185. Al HASSAN [REDACTED] handwriting and signature on the police report concerning this case.⁵⁹⁸ A handwriting expert will also confirm that Al HASSAN is the author of the report.⁵⁹⁹

Incident 10: [REDACTED] 2012

186. [REDACTED] 2012, the Islamic Tribunal sentenced [REDACTED] days of imprisonment for [REDACTED]. The victims appeared, were convicted, and were sentenced to imprisonment for [REDACTED], adding a clear violation of the presumption of innocence to the other systemic inadequacies of the Tribunal's work.⁶⁰⁰

Incident 11: [REDACTED]-2012

187. [REDACTED] 2012, the victims appeared before the Islamic Tribunal and were sentenced on the same day. [REDACTED] was sentenced to [REDACTED] lashes for [REDACTED]. [REDACTED] was sentenced [REDACTED] of [REDACTED] imprisonment [REDACTED].⁶⁰¹ The judgment is based on an Islamic Police report in Al HASSAN's handwriting and dated the same day as the Islamic Tribunal judgment.⁶⁰²

Incident 12: [REDACTED]

[REDACTED] 2012

188. [REDACTED] at hotel "La Maison", the seat of the Islamic Tribunal in Timbuktu, shows that [REDACTED] was detained since [REDACTED]

⁵⁹⁸ [REDACTED]

See

[REDACTED] forensic document examination report, [REDACTED] confirming that Al HASSAN is the author of document [REDACTED]

Judgment of the Islamic Tribunal, [REDACTED]

⁶⁰¹ Judgment of the Islamic Tribunal, [REDACTED] See also Judgment of the Islamic Tribunal, [REDACTED] Witness [REDACTED]

[REDACTED], and [REDACTED]

Islamic Police report, [REDACTED]

██████████ 2012.⁶⁰³ On ██████████ 2012, he and ██████████ appeared before the Islamic Tribunal. On that day, the Islamic Tribunal sentenced each of them to ██████████ lashes for committing ██████████, relying on their confession. Additionally, it sentenced ██████████ to an imprisonment for an undetermined period pending its further consideration of an additional punishment ██████████.⁶⁰⁴

Incident 13: ██████████ 2012

189. ██████████ was arrested and detained for ██████████
██████████.⁶⁰⁵ According to the List of Detainees, ██████████
██████████ was detained since ██████████ 2012.⁶⁰⁶ On the same day, ██████████
appeared before the Islamic Tribunal, which sentenced him on the same day to ██████████ lashes, and to be admonished, after which he could be released.⁶⁰⁷

Incident 14: ██████████ 2012

190. On ██████████ 2012, ██████████ was detained and accused of ██████████⁶⁰⁸ On ██████████
██████████ 2012, the Islamic Tribunal sentenced him to imprisonment and reprimand for having been found accompanying ██████████
██████████.⁶⁰⁹

Incident 16: ██████████-2012

191. Since ██████████, ██████████ was detained on accusation of ██████████⁶¹⁰ (██████████

⁶⁰³ List of detainees, ██████████, ██████████, ██████████
██████████.

Judgment of the Islamic Tribunal, ██████████

⁶⁰⁵ List of detainees, ██████████, ██████████
██████████

Judgment of the Islamic Tribunal ██████████

List of detainees, ██████████

Judgment of the Islamic Tribunal, ██████████

⁶⁰⁸ List of detainees, ██████████
██████████

Judgment of the Islamic Tribunal, ██████████

⁶¹⁰ List of detainees, ██████████
██████████.

██████████).⁶¹¹ On ██████████ 2012, he appeared before the Islamic Tribunal. On the same day, while noting the insufficiency of evidence against him, the Islamic Tribunal convicted him nonetheless and sentenced him to *inter alia* ██████████ imprisonment ██████████⁶¹².

Incident 17: ██████████-2012

192. On ██████████ 2012, ██████████ appeared before the Islamic Tribunal. On the same day, the Tribunal sentenced him to ██████████ imprisonment for ██████████⁶¹³ ██████████⁶¹⁴.

Incident 18: ██████████-2012

193. Since ██████████ 2012, ██████████ was detained on accusation of ██████████⁶¹⁵. On ██████████ 2012, he appeared before the Islamic Tribunal. On the same day, the Tribunal ordered the victim to repent ██████████⁶¹⁶ ██████████ which he did. After that, the Tribunal decided to spare him the capital punishment and instead sentenced him to imprisonment for ██████████⁶¹⁶.

Incident 19: ██████████-2012

194. Based on an Islamic Police report with Al HASSAN's handwriting and signature,⁶¹⁷ ██████████ appeared before the Islamic Tribunal, on ██████████ 2012, accused of ██████████. On the same day, the Tribunal explained to him that ██████████

⁶¹¹ Judgment of the Islamic Tribunal, ██████████

⁶¹² Judgment of the Islamic Tribunal, ██████████

⁶¹³ Judgment of the Islamic Tribunal, ██████████

⁶¹⁴ List of detainees, ██████████

List of detainees, ██████████

Judgment of the Islamic Tribunal, ██████████

⁶¹⁷ Islamic Police report, ██████████

[REDACTED]
[REDACTED], the Tribunal sentenced him to [REDACTED] punishment of imprisonment.⁶¹⁸

Incident 20: [REDACTED]-2012

195. On [REDACTED] 2012, Al HASSAN authored and signed an Islamic Police report documenting the arrest of [REDACTED]
[REDACTED].⁶¹⁹ [REDACTED] the victim was arrested for [REDACTED] and brought to the police headquarters, before he was transferred to the Islamic Tribunal.⁶²⁰ On [REDACTED] 2012, [REDACTED] appeared before the Islamic Tribunal. On the same day, the Tribunal concluded [REDACTED] and asked him to repent, which he did [REDACTED]
[REDACTED]. The Tribunal decided to spare him the death penalty and instead sentenced him to [REDACTED] punishment of imprisonment.⁶²¹

Incident 21: [REDACTED]-2012

196. On [REDACTED] 2012, [REDACTED] appeared before the Islamic Tribunal on accusation of [REDACTED]. On the same day, the Tribunal sentenced [REDACTED] to [REDACTED] lashes and a fine and sentenced [REDACTED] to pay a fine. [REDACTED] were sentenced to remain in prison until they paid the fine.⁶²²

Incident 22: [REDACTED]-2012

197. On [REDACTED] 2012, [REDACTED] appeared before the Islamic Tribunal. On the same day, the Tribunal sentenced her to [REDACTED] lashes for [REDACTED]
[REDACTED].⁶²³

⁶¹⁸ Judgment of the Islamic Tribunal, [REDACTED]

⁶¹⁹ Islamic Police report, [REDACTED]
[REDACTED]
[REDACTED]

⁶²¹ Judgment of the Islamic Tribunal, [REDACTED]

⁶²² Judgment of the Islamic Tribunal, [REDACTED]

⁶²³ Judgment of the Islamic Tribunal, [REDACTED]

Incident 23: [REDACTED]
[REDACTED] 2012

198. Since [REDACTED] 2012, [REDACTED] were detained on accusation of [REDACTED].⁶²⁴ On [REDACTED] 2012, they appeared before the Islamic Tribunal. On the same day, the Tribunal sentenced each of them to pay [REDACTED]. Additionally, it sentenced [REDACTED] to be whipped [REDACTED] lashes, and ordered that they all remain in prison until they paid their fines.⁶²⁵ The incident will also be [REDACTED],⁶²⁶ [REDACTED] corroborated by documentary evidence.⁶²⁷

Incident 24: [REDACTED]
[REDACTED] 2012

199. On [REDACTED] 2012, Al HASSAN authored and signed the Islamic Police report concerning this case.⁶²⁸ According to this report, [REDACTED] was arrested on accusation of [REDACTED]. In the investigation conducted by the Police, [REDACTED] also confessed that he [REDACTED] before the arrival of the Organisation [REDACTED].⁶²⁹

⁶²⁴ [REDACTED]

Judgment of the Islamic Tribunal, [REDACTED]

⁶²⁶ [REDACTED]

[REDACTED]

[REDACTED] See [REDACTED]

[REDACTED] See [REDACTED]

Islamic Police report, [REDACTED] p. 0180.

200. Following Al HASSAN's referral of the case to the Islamic Tribunal,⁶³⁰ [REDACTED] appeared before the Islamic Tribunal on the same day. The Tribunal found that [REDACTED]. It took into account that he committed [REDACTED] before the arrival of the Organisation and [REDACTED] decided not to impose [REDACTED] punishment. Instead, the Tribunal sentenced him (including retroactively [REDACTED] to [REDACTED] lashes and [REDACTED] and sentenced [REDACTED] to [REDACTED] lashes each.⁶³¹

Incident 25: [REDACTED]-2012

201. On [REDACTED] 2012, [REDACTED] appeared before the Islamic Tribunal. On the same day, the Tribunal sentenced him to imprisonment [REDACTED] and fined him to pay the sum [REDACTED] of the established [REDACTED].⁶³²

Incident 26: [REDACTED] 2012

202. On [REDACTED] 2012, Al HASSAN authored and signed an Islamic Police report⁶³³ detailing the facts related to the arrest of a man [REDACTED].⁶³⁴

203. Following Al HASSAN's referral of the case to the Islamic Tribunal,⁶³⁵ [REDACTED] appeared before the Islamic Tribunal, on the same day. The Tribunal sentenced him to pay a fine [REDACTED].⁶³⁶

⁶³⁰ Islamic Police report, [REDACTED] (the backside of Islamic Police report, [REDACTED] at the bottom "to the Islamic Court").

Judgment of the Islamic Tribunal, [REDACTED]

⁶³² Judgment of the Islamic Tribunal, [REDACTED]

⁶³³ [REDACTED], [REDACTED] the handwriting expert confirmed that Al HASSAN is the author of the report [REDACTED]. See [REDACTED] forensic document examination report, [REDACTED]

Islamic Police report, [REDACTED]

⁶³⁵ See [REDACTED]

⁶³⁶ Judgment of the Islamic Tribunal, [REDACTED]

Incident 27: [REDACTED]⁶³⁷ – [REDACTED]-2012

204. Following an Islamic Police report authored and signed by Al HASSAN,⁶³⁸ and his referral of the case to the Islamic Tribunal,⁶³⁹ [REDACTED] appeared before the Islamic Tribunal on [REDACTED] 2012. On the same day, the Tribunal sentenced him to imprisonment for [REDACTED] and ordered that [REDACTED] pay their value to [REDACTED].⁶⁴⁰

Incident 31: [REDACTED]
[REDACTED]-2012

205. The Islamic Police report, dated [REDACTED] 2012 and drafted and signed by the Accused, describes the arrest of men accused of [REDACTED].⁶⁴¹ The case was referred to the Islamic Tribunal.⁶⁴² On the same day, [REDACTED] appeared before the Islamic Tribunal on accusation of [REDACTED]. The Tribunal sentenced them to imprisonment for [REDACTED]. [REDACTED].⁶⁴³

Incident 32: [REDACTED]-2012

206. On [REDACTED] 2012, [REDACTED] appeared before the Islamic Tribunal for [REDACTED]. On the same day, the Tribunal sentenced [REDACTED] to be whipped [REDACTED] lashes and to pay [REDACTED].

⁶³⁷ The Confirmation Decision names the victim in relation to [REDACTED]. However, as explained in the Prosecution Request for corrections and amendments concerning the Confirmation Decision, the victim (defendant) in this case was [REDACTED]. See [REDACTED].

Islamic Police report, [REDACTED]. See [REDACTED].

Islamic Police report, [REDACTED].

Judgment of the Islamic Tribunal, [REDACTED].

⁶⁴¹ Islamic Police Report, [REDACTED].

[REDACTED] also recognised the Accused's signature on the report of the Islamic Police, [REDACTED].

Islamic Police Report, [REDACTED].

Judgment of the Islamic Tribunal, [REDACTED].

a fine of [REDACTED] CFA francs [REDACTED] and [REDACTED] to be whipped [REDACTED] lashes and to pay a fine of [REDACTED] CFA francs [REDACTED].⁶⁴⁴

Incident 33: [REDACTED] 2012

207. On [REDACTED] 2012, [REDACTED] appeared before the Islamic Tribunal on accusation of [REDACTED]
[REDACTED]. On the same day, the Tribunal sentenced him to be whipped [REDACTED] lashes.
[REDACTED]
[REDACTED].⁶⁴⁵

**Incident 35: [REDACTED]
[REDACTED] – [REDACTED] 2013**

208. On [REDACTED] 2013, [REDACTED] appeared before the Islamic Tribunal on accusation of [REDACTED]. On the same day, the Tribunal found that the basis of his accusation is the fact that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED],⁶⁴⁶ it ordered him to pay [REDACTED]
[REDACTED].⁶⁴⁷

209. This case is related to an Islamic Police report drafted and signed by Al HASSAN.⁶⁴⁸
The Islamic Police report is dated [REDACTED] 2012,⁶⁴⁹ [REDACTED]

⁶⁴⁴ Judgment of the Islamic Tribunal, [REDACTED].

⁶⁴⁵ Judgment of the Islamic Tribunal, [REDACTED].

⁶⁴⁶ Judgment of the Islamic Tribunal, [REDACTED].

⁶⁴⁷ Judgment of the Islamic Tribunal, [REDACTED].

⁶⁴⁸ Islamic Police report, [REDACTED].

⁶⁴⁹ Islamic Police report, [REDACTED].

[REDACTED] Although the names of the defendants are not

[REDACTED] 650 [REDACTED] 651 [REDACTED]
[REDACTED] 652

Incident 37: [REDACTED]

210. On [REDACTED] 2012, Al HASSAN investigated a case of theft against [REDACTED] and wrote and signed the Islamic Police report.⁶⁵³ On the same day, [REDACTED] appeared before the Islamic Tribunal which sentenced him to be whipped [REDACTED] lashes as a [REDACTED] [REDACTED] 654

Incident 38: [REDACTED]

211. After a long period of detention, [REDACTED], appeared before the Islamic Tribunal on [REDACTED] 2012 on accusation of [REDACTED].⁶⁵⁵ [REDACTED] [REDACTED] sentenced him [REDACTED] [REDACTED] 656

Incident 39: [REDACTED]

212. [REDACTED] [REDACTED] appeared before the Islamic Tribunal on [REDACTED] 2012, accused of [REDACTED]. The Islamic Tribunal found that

included in the Islamic Police report, the details described in the Islamic report and Islamic Tribunal judgment clearly relate to the same case.

⁶⁵⁰ Islamic Police report, [REDACTED] Judgment of the Islamic Tribunal, [REDACTED] [REDACTED] [REDACTED] 651 [REDACTED] 652 [REDACTED] 653 Islamic Police report, [REDACTED] [REDACTED]

[REDACTED] [REDACTED] Judgment of the Islamic Tribunal, [REDACTED] [REDACTED] [REDACTED]

[REDACTED] The name of the judge HOUKA HOUKA appears [REDACTED] with names of other members of the Tribunal. [REDACTED] [REDACTED]

Judgment of the Islamic Tribunal, [REDACTED] 656 Judgment of the Islamic Tribunal, [REDACTED]

[Redacted] sentenced him [Redacted] to the [Redacted] punishment of [Redacted] lashes.⁶⁵⁷

Incident 40: [Redacted]

213. In [Redacted] 2012,⁶⁵⁸ [Redacted] appeared before the Islamic Tribunal, after their arrest by Adama⁶⁵⁹ and based on a police report authored and signed by Al HASSAN.⁶⁶⁰ They were accused of [Redacted].⁶⁶¹ The Tribunal sentenced [Redacted] to be whipped [Redacted] lashes each, and [Redacted].⁶⁶²

Incidents 46 and 47: Cases of [Redacted]

214. [Redacted] will testify that [Redacted] arrested and detained [Redacted] [Redacted] [Redacted] for not wearing a headscarf. [Redacted] them both imprisoned [Redacted].⁶⁶³
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted].⁶⁶⁴

⁶⁵⁷ Judgment of the Islamic Tribunal, [Redacted]
⁶⁵⁸ The date [Redacted] 2012 [Redacted]. See [Redacted]
[Redacted] Islamic Tribunal document, [Redacted]
⁶⁶⁰ Islamic Police report, [Redacted] See [Redacted]
[Redacted]
[Redacted] Islamic Police report, [Redacted] Judgment of the Islamic Tribunal, [Redacted]
⁶⁶² [Redacted]
⁶⁶³ [Redacted]
⁶⁶⁴ [Redacted]

Incident 48: Case of [REDACTED]

215. [REDACTED] in [REDACTED] 2012, [REDACTED] arrested and imprisoned [REDACTED] [REDACTED] for not wearing a headscarf. [REDACTED] saw [REDACTED] go [REDACTED] When [REDACTED] asked for [REDACTED] to be released, [REDACTED] refused and threatened to imprison them both.⁶⁶⁵

Incident 49: Case of [REDACTED]

216. [REDACTED] will also describe how [REDACTED] had a conflict with the Organisation after he saw them enter [REDACTED] and beat [REDACTED] because she was not veiled.⁶⁶⁶ [REDACTED]

[REDACTED]
[REDACTED].⁶⁶⁷ [REDACTED] was there [REDACTED]
[REDACTED] and saw what happened.⁶⁶⁸

217. [REDACTED] will testify that he heard a number of complaints from people in Timbuktu and knew the example of how [REDACTED] was arrested by [REDACTED] when he caught her [REDACTED] without being correctly covered. She was arrested and violently beaten by members of the Organisation. [REDACTED] had told him about the injuries she saw that [REDACTED] sustained from her beatings.⁶⁶⁹

D. Al HASSAN's contributions to the commission of the crime**1. Article 25(3)(c) of the Statute**

218. Al HASSAN assisted the commission of the crimes under count 6 in relation to the following incidents:

- incidents 8,⁶⁷⁰ 9,⁶⁷¹ 11,⁶⁷² 19,⁶⁷³ 20,⁶⁷⁴ 24,⁶⁷⁵ 26,⁶⁷⁶ 27,⁶⁷⁷ 30,⁶⁷⁸ 31,⁶⁷⁹ 35,⁶⁸⁰ 37,⁶⁸¹ and 40⁶⁸² described above, by drafting, signing and transmitting the reports of the Islamic Police regarding those cases to the Islamic Tribunal;⁶⁸³

⁶⁶⁵ [REDACTED].

⁶⁶⁶ [REDACTED].

⁶⁶⁷ [REDACTED].

⁶⁶⁸ [REDACTED].

⁶⁶⁹ [REDACTED].

⁶⁷⁰ [REDACTED] at para. 136.

⁶⁷¹ [REDACTED].

[REDACTED], at para. 184, 185.

- [REDACTED], by ordering his subordinates to call [REDACTED] who decided that she should be flogged [REDACTED] times for not wearing a veil.⁶⁸⁴

2. Article 25(3)(d) of the Statute

219. The evidence will show that Al HASSAN otherwise contributed to the commission of the crimes of passing of sentences without due process in several ways, including:

- He arrested people and investigated alleged violations of the new rules imposed by the Organisation⁶⁸⁵ and prepared and signed police reports⁶⁸⁶;
- He issued summons,⁶⁸⁷ actively participated in interrogations, including where torture and violence were used⁶⁸⁸ or where imprisonment was employed as a coercive means to extract information;⁶⁸⁹
- He classified the cases,⁶⁹⁰ referred selected cases to the Islamic Tribunal for judgment,⁶⁹¹ made recommendations on the punishment,⁶⁹² and transferred suspects to the Tribunal;⁶⁹³

⁶⁷² [REDACTED] at para. 187.

⁶⁷³ [REDACTED] at para. 194.

⁶⁷⁴ [REDACTED] at para. 195.

⁶⁷⁵ [REDACTED]
at para. 199, 200.

⁶⁷⁶ [REDACTED] at para. 202.

⁶⁷⁷ [REDACTED] at para. 204.

⁶⁷⁸ [REDACTED] at para. 143-146.

⁶⁷⁹ [REDACTED] at para. 205.

⁶⁸⁰ [REDACTED] and another anonymous companion – [REDACTED] at para. 208-209.

⁶⁸² [REDACTED] at para. 210.

[REDACTED] at para. 213.

⁶⁸³ See Confirmation Decision, para. 928. While only incidents [REDACTED] were confirmed pursuant to article 25(3)(c) of the Statute, there exist reports of the Islamic Police drafted and signed by the Accused in relation to eight additional incidents. As suggested by Pre-Trial Chamber in its decision [REDACTED].

See Confirmation Decision, para. 932, 292.

⁶⁸⁵ See evidence cited in the DCC, para. 290-295 and in particular see Islamic Police report, [REDACTED] in which he signed the report as investigator.

See evidence cited in DCC, para. 299-303.

⁶⁸⁷ Summons to appear, [REDACTED], [REDACTED], [REDACTED], [REDACTED].

See evidence cited in DCC, para. 296-298 and in particular incident 30: Case of [REDACTED] – Case 54/1433-2012 at para. 143 - 146.

Incident 26: Case of [REDACTED] – Case 45/1433-2012 at para. 202-203.

- He assisted in the enforcement of the rules and inflicted punishments and participated in the execution of punishments at the Police, or together with other members of the Organisation, including on the basis of the Police's discretion and following a judgment by the Islamic Tribunal;⁶⁹⁴
- He endorsed, and expressed his support to, the rules of the Organisation, regarding for example the female dress code and behaviour expected from women, as well as the application of sanctions against the population.⁶⁹⁵

220. The facts relating to his contributions described above also establish that Al HASSAN had the requisite intent and knowledge under articles 25 and 30 of the Statute, as well as under the elements of the crime charged under count 6.⁶⁹⁶ In particular, in light of his close working relationship with the Islamic Tribunal, he was aware of the lack of essential judicial guarantees in its process. For example, he was aware of the influence exercised by Abou ZEID over the Islamic Tribunal,⁶⁹⁷ and the lack of other essential judicial guarantees, such as the possibility to appeal,⁶⁹⁸ and to receive the assistance of a lawyer.⁶⁹⁹

VI. Attacks on protected objects (count 7)

A. Introduction

221. Al HASSAN is charged in count 7 with the war crime of directing an attack against buildings dedicated to religion and historic monuments.

222. The evidence will show that Al HASSAN and other members of the Organisation directed an attack against the door of a mosque and nine mausoleums of Muslim saints who were dear to the population, were the subject of religious practices, constituted part of the

⁶⁹⁰ See evidence cited in DCC, para. 304-305.

⁶⁹¹ See evidence cited in DCC, para. 304-305.

⁶⁹² Islamic Police report, [REDACTED]

See evidence cited in DCC, para. 306 and in particular, [REDACTED]

See evidence cited in DCC, para. 315-323.

⁶⁹⁵ See evidence cited in DCC, para. 329, 331-339.

⁶⁹⁶ See DCC, para. 499-500.

⁶⁹⁷ [REDACTED]

⁶⁹⁸ [REDACTED]

⁶⁹⁹ [REDACTED]

historic heritage of Timbuktu, and embodied the identity of the city known as “the city of 333 saints”.

223. The following sites were targeted and destroyed:

- the Sidi Mahmoud Ben Omar Mohamed Aquit mausoleum;
- the Sheikh Mohamed Mahmoud Al Arawani mausoleum;
- the Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti mausoleum;
- the Alpha Moya mausoleum;
- the Sheikh Mouhamad El Micky mausoleum;
- the Sheikh Abdoul Kassim Attouaty mausoleum;
- the Sheikh Sidi Ahmed Ben Amar Arragadi mausoleum.
- a door of the Sidi Yahia mosque; and
- two mausoleums adjoining the Djingareyber mosque.

B. Types of evidence to be presented

224. At trial, the Prosecution will present testimony from multiple eye witnesses and former members of the Organisation, including ██████████, the main organiser of the destructions, as well as photographs, videos, satellite imagery, expert reports, media articles, and NGO reports demonstrating the alleged crimes.

225. In particular, the Trial Chamber will receive several videos taken on the different attack sites ██████████ ██████████ ██████████ ██████████, many of which show the attacks in progress. In this regard, the Prosecution highlights two key points in relation to these videos that are applicable for all sites:

- Firstly, in terms of geographical scope, the location of these videos will be established using (i) the accounts of ██████████, ██████████, ██████████ and ██████████ (ii) the 360-degree panoramas completed by ██████████⁷⁰⁰ (iii) the report ██████████⁷⁰¹; (iv) reports from ██████████ and ██████████⁷⁰² and ██████████⁷⁰³; and (vi) a geolocation report from ██████████⁷⁰⁴.

⁷⁰⁰ See 360 presentation, ██████████.

⁷⁰¹ Expert report ██████████.

⁷⁰² Expert report ██████████

⁷⁰³ Expert report ██████████

⁷⁰⁴ Expert report ██████████

- Secondly, in terms of temporal scope, [REDACTED] [REDACTED] will testify about the dates on which the videos were created,⁷⁰⁵ and [REDACTED] [REDACTED] will explain how the dates of destruction are corroborated by satellite images.⁷⁰⁶

C. The charged attacks against protected objects

1. Sidi Mahmoud Ben Omar Mohamed Aquit mausoleum

226. The evidence will show that members of the Organisation first attacked the cemetery of Sidi Mahmoud on 30 June 2012.⁷⁰⁷

227. The Sidi Mahmoud Ben Omar Mohamed Aquit mausoleum is both an historic site⁷⁰⁸ and a place of worship⁷⁰⁹ with strong religious significance.⁷¹⁰ It is classified pursuant to Malian law⁷¹¹ and it is listed as a World Heritage site.⁷¹²

228. Eye witnesses [REDACTED] will identify several perpetrators as having been present on site [REDACTED] Abou THAR (Islamic Police),⁷¹³ [REDACTED], Radwan, Abou TALHA, Abou AL BARAA,⁷¹⁴ Abou BACCAR⁷¹⁵, Abou SAYAF,⁷¹⁶ Yazid,⁷¹⁷ Abdallah Al CHINGUETTI, as

⁷⁰⁵ Expert report of [REDACTED].

⁷⁰⁶ Expert report of [REDACTED].

⁷⁰⁷ [REDACTED] UNESCO Director-General calls for a halt to destruction of cultural heritages in Timbuktu, UNESCO, 30 June 2012, [REDACTED]; Video, [REDACTED] p. 00:17:04, 00:18:00-00:21:00, 00:54:00-00:59:24, Transcript, [REDACTED]; [REDACTED]

[REDACTED] WHC Nomination Documentation/Timbuktu, UNESCO, 9 December 1988, [REDACTED].

[REDACTED] WHC Nomination Documentation/Timbuktu, UNESCO, 9 December 1988, [REDACTED]; [REDACTED]

⁷¹¹ Loi N° 85-40/AN-RM, [REDACTED]; *Décret Nr.92-245/P-RM portant classement des villes anciennes de Tombouctou et Djenné* (18 Dec 1992), [REDACTED].

⁷¹² [REDACTED].

⁷¹³ [REDACTED] Video, [REDACTED]; [REDACTED] Video, [REDACTED].

[REDACTED] Video, [REDACTED], p. 00:16:22 and 00:41:24, Transcript, [REDACTED], Translation, [REDACTED].

[REDACTED]; Video, [REDACTED] at 00:00:22; [REDACTED] Video, [REDACTED] at 00:07:10, [REDACTED]

[REDACTED] Video, [REDACTED]

well as three members of the *Al Fourqane* battalion named Nasser, Hamza and Abou Moneem.⁷¹⁸ Videos of the incident will show members of the Islamic Police participating in the attack.⁷¹⁹

229. Video footage and satellite imagery will also show the extensive damage caused to the mausoleum following its destruction.⁷²⁰

2. Sheikh Mohamed Mahmoud Al Arawani mausoleum

230. Sheikh Mohamed Mahmoud Al Arawani mausoleum is located a few feet away from the Sidi Mahmoud mausoleum in the Sidi Mahmoud cemetery.⁷²¹ Insider and expert testimony will show that it was destroyed on the same day (*i.e.*, 30 June 2012) simultaneously with the Sidi Mahmoud mausoleum⁷²² and reduced to ruins.⁷²³

3. Cheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti mausoleum

231. The Cheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kounti mausoleum⁷²⁴ is located in the Sidi El Mokhtar cemetery.⁷²⁵ It is a historical monument⁷²⁶ with a religious dimension.⁷²⁷ It is registered as a World Heritage site.⁷²⁸

Video, [REDACTED] at 00:00:19:07 and 00:00:16:22 at 00:00:41:24 and at 00:00:36:08, Transcript [REDACTED].

[REDACTED] Video, [REDACTED], [REDACTED]

⁷¹⁸ [REDACTED]

⁷¹⁹ See, e.g., Video [REDACTED] at 00:14:35:14, Transcript [REDACTED].

⁷²⁰ [REDACTED] Video, [REDACTED] Video, [REDACTED] Video, [REDACTED], [REDACTED] Video, [REDACTED] [REDACTED]

⁷²¹ [REDACTED] Expert report [REDACTED].

⁷²² [REDACTED]

⁷²³ Expert report [REDACTED] Expert report [REDACTED].

Photograph, Government of Mali, [REDACTED]; *Liste illustrée des mausolées et cimetières*, 1 January 2006, [REDACTED].

⁷²⁵ Photograph, Government of Mali, [REDACTED]; [REDACTED]

[REDACTED] WHC Nomination Documentation/Timbuktu, UNESCO, [REDACTED]; *Le Patrimoine Culturel de Tombouctou: Enjeux et Perspectives*, 1 February 2008, [REDACTED].

232. [REDACTED] will testify that it was attacked and destroyed by the Organisation on 30 June 2012.⁷²⁹ His account will be corroborated by video footage of the events showing *inter alia* [REDACTED] a member of the Islamic Police,⁷³⁰ [REDACTED],⁷³¹ Abou BACCAR,⁷³² [REDACTED],⁷³³ Abou Al BARAA, and Al ARABIYA.⁷³⁴

4. Sheikh Alpha Moya mausoleum

233. The Alpha Moya mausoleum is located in the Alpha Moya cemetery.⁷³⁵ It is an historical building⁷³⁶ with a religious dimension.⁷³⁷ It is protected under Malian law⁷³⁸ and listed as a World Heritage site.⁷³⁹

234. [REDACTED] will testify that it too was attacked and completely destroyed on 30 June 2012.⁷⁴⁰ This account will be corroborated by witness testimony and other evidence such as video footage taken by [REDACTED] placing the perpetrators on site at the time, including members

⁷²⁷ [REDACTED] WHC Nomination Documentation/Timbuktu, UNESCO, [REDACTED]; *Plan de conservation et de gestion de Tombouctou – Mali*, 1 January 2006, [REDACTED].

⁷²⁸ [REDACTED].

⁷²⁹ [REDACTED] “UNESCO Director-General calls for a halt to destruction of cultural heritages in Timbuktu”, UNESCO, 30 June 2012, [REDACTED].

[REDACTED] Video, [REDACTED], at 00:00:08:19 and 00:00:46:00, Translation, [REDACTED], Transcript, [REDACTED].

[REDACTED] Video, [REDACTED] at 00:45:08:23 and 00:45:20:00, Translation, [REDACTED], Transcript, [REDACTED].

[REDACTED] Video, [REDACTED], at 45:17:10, Translation, [REDACTED], Transcript, [REDACTED].

⁷³³ Video, [REDACTED], at 00:00:08:19 and 00:00:46:00, Translation, [REDACTED], Transcript, [REDACTED].

[REDACTED] Video, [REDACTED] at 00:45:23:00, Translation, [REDACTED], Transcript, [REDACTED].

⁷³⁵ Photograph [REDACTED] Expert report [REDACTED] Photographs [REDACTED] (GPS coordinates).

[REDACTED]

Réunion internationale d’experts pour la sauvegarde du patrimoine culturel malien, UNESCO, 18 February 2013, [REDACTED].

⁷³⁷ [REDACTED].

[REDACTED]

Loi N° 85-40/AN-RM, [REDACTED]; Décret Nr.92-245/P-RM portant classement des villes anciennes de Tombouctou et Djenné (18 Dec 1992), [REDACTED].

⁷³⁹ [REDACTED].

[REDACTED] Photograph, Government of Mali, [REDACTED].

of the Islamic Police,⁷⁴¹ ██████████,⁷⁴² Abou DARDAR⁷⁴³, Youssouf,⁷⁴⁴ Sanda Ould BOUMAMA,⁷⁴⁵ Radwan,⁷⁴⁶ Abou Al BARAA, Abdoul KHALIL⁷⁴⁷ and ██████████.⁷⁴⁸

5. Three mausoleums in the Three Saints cemetery

235. The evidence, based on expert reports by ██████████, accounts from ██████████ witness ██████████, eye witnesses like ██████████, and video footage by ██████████ and ██████████, will show that attacks on the three mausoleums located in the Three Saints cemetery⁷⁴⁹, *i.e.* the Sheikh Mouhamad El Micky, Sheikh Abdoul Kassim Attouaty, and Sheikh Sidi Ahmed Ben Amar Arragadi mausoleums, occurred on 1 July 2012.⁷⁵⁰ All three mausoleums were of high historical⁷⁵¹ and religious⁷⁵² importance and listed as World Heritage.⁷⁵³

⁷⁴¹ ██████████ Video, ██████████, ██████████ Video, ██████████ at 00:00:35.13, Transcript, ██████████.

⁷⁴² ██████████ Video ██████████ at 00:01:00; Video ██████████ at 00:00:52:13, Translation, ██████████; Transcript, ██████████.

⁷⁴⁴ ██████████
⁷⁴⁵ ██████████
⁷⁴⁶ ██████████ Video, ██████████ at 00:00:09:13; Video, ██████████ at 00:00:15:08, ██████████

⁷⁴⁸ Videos, ██████████; ██████████ Expert report of ██████████

Expert report, ██████████ (Videos ██████████, and ██████████ to ██████████ (Videos ██████████ and ██████████ Video ██████████ and Video ██████████

Expert report of ██████████ 657; *Liste patrimoine mondial/Dossier Tombouctou*, UNESCO, 1 January 1987, ██████████

UNESCO, ██████████ *Le Patrimoine Culturel de Tombouctou: Enjeux et Perspectives*, 1 February 2008, ██████████; WHC Nomination Documentation/Timbuktu, UNESCO, 9 December 1988, ██████████; ██████████

Video ██████████ WHC Nomination Documentation/Timbuktu, UNESCO, 9 December 1988, ██████████; ██████████ *Plan de conservation et de gestion de Tombouctou – Mali*, 1 January 2006, ██████████.

⁷⁵³ ██████████

236. Video footage and eye witnesses will demonstrate that [REDACTED] [REDACTED]⁷⁵⁴ [REDACTED]⁷⁵⁵ and Abou BACCAR.⁷⁵⁶ Insider evidence and official photographs will show that all three mausoleums were completely destroyed.⁷⁵⁷

6. The door of the Sidi Yahia mosque

237. The Sidi Yahia mosque is a historical monument⁷⁵⁸ dedicated to religion.⁷⁵⁹ It is protected by Malian law and is listed as a World Heritage site.⁷⁶⁰ The destruction of its sacred door took place on 2 July 2012.⁷⁶¹ Witness testimony and video evidence will demonstrate that [REDACTED] [REDACTED] [REDACTED], Radwan, Abdallah Al CHINGUETTI, Youssouf, Abou BACCAR, Abou Al BARAA, and QUTAIBA⁷⁶² all participated in the attack and destruction of the door.⁷⁶³

⁷⁵⁴ [REDACTED]
⁷⁵⁵ [REDACTED] Video [REDACTED]
 [REDACTED]
 [REDACTED] Video [REDACTED]
 Photograph, Gouvernement du Mali, [REDACTED]; [REDACTED]
 [REDACTED]
 [REDACTED]
 Réunion internationale d'experts pour la sauvegarde du patrimoine culturel malien, UNESCO, 18 February 2013, [REDACTED]; Expert report [REDACTED].
⁷⁵⁹ [REDACTED] Dossier d'information sur le Mali, UNESCO, [REDACTED]
 [REDACTED]; Expert report [REDACTED] WHC Nomination Documentation/Timbuktu, UNESCO, 9 December 1988, [REDACTED].
⁷⁶⁰ [REDACTED] Plan de revitalisation et de sauvegarde de la vieille ville de Tombouctou/ phase 1/ grands axes de la stratégie/ action d'urgence, UNESCO, [REDACTED]
 [REDACTED]
 [REDACTED] Press article, [REDACTED]
 [REDACTED]; Message porté, Government of Mali, 2 July 2012, [REDACTED]
 [REDACTED]
 Expert report, [REDACTED] (Videos [REDACTED] to [REDACTED]
 Videos, [REDACTED] to [REDACTED] and from [REDACTED] to [REDACTED].
⁷⁶³ [REDACTED] Video, [REDACTED], [REDACTED]
 [REDACTED] Video, [REDACTED], [REDACTED]
 [REDACTED] Video, [REDACTED], [REDACTED]
 [REDACTED] Video, [REDACTED], [REDACTED]
 [REDACTED] and Video, [REDACTED], [REDACTED]
 [REDACTED].

7. Two mausoleums adjoining the Djingareyber mosque

238. The Bahaber Babadié and Ahamed Fulane mausoleums are located on the West wall of the Djingareyber mosque which is the epicentre of religious life in Timbuktu.⁷⁶⁴ This mosque is a historical⁷⁶⁵ building dedicated to religion.⁷⁶⁶ It is protected under Malian law⁷⁶⁷ and listed as a World Heritage site.⁷⁶⁸

239. The Bahaber Babadié and Ahamed Fulane mausoleums were completely destroyed on or around 10-11 July 2012.⁷⁶⁹ Witnesses accounts and videos of the destruction will show [REDACTED] Adama (Islamic Police),⁷⁷⁰ Abou THAR (Islamic Police),⁷⁷¹ Abou JELIL, Radwan, [REDACTED],⁷⁷² Abou BACCAR⁷⁷³, Mohamed HAMA,⁷⁷⁴ Abou ZEID, Abou Al HAMAM, Sanda Ould BOUMAMA, and Abdallah Al CHINGUETTI.⁷⁷⁵

D. Al HASSAN's contributions to the destruction

240. The evidence will demonstrate that Al HASSAN contributed to the charged destructions in at least the following ways:

- he provided, or at the very least permitted, members of the Islamic Police (several of whom are visible on video footage) to participate in the attacks;⁷⁷⁶ and

⁷⁶⁴ [REDACTED].

⁷⁶⁵ Expert report [REDACTED].

⁷⁶⁶ [REDACTED] Expert report [REDACTED].

[REDACTED] Video, [REDACTED].

[REDACTED] Video, [REDACTED].

[REDACTED].

Loi N° 85-40/AN-RM, [REDACTED]; *Décret Nr.92-245/P-RM portant classement des villes anciennes de Tombouctou et Djenné* (18 December 1992), [REDACTED].

⁷⁶⁸ *Eléments de réponse a la lettre de la CPI du 5 décembre 2013*, UNESCO, [REDACTED]; [REDACTED].

[REDACTED]; [REDACTED].

[REDACTED] «Création d'un compte spécial pour la sauvegarde du patrimoine mondial au Mali», UNESCO, [REDACTED].

Expert report of [REDACTED].

⁷⁷⁰ [REDACTED].

⁷⁷¹ [REDACTED] Video, [REDACTED].

[REDACTED].

⁷⁷³ [REDACTED] Video, [REDACTED].

[REDACTED].

[REDACTED] Video [REDACTED] at 00:13:11:14, Translation, [REDACTED], Transcript, [REDACTED].

⁷⁷⁵ [REDACTED].

⁷⁷⁶ [REDACTED].

[REDACTED]; Video, [REDACTED], at 00:00:22:00, Transcript, [REDACTED]; Video, [REDACTED], at 00:00:35:00, Transcript, [REDACTED]; Video, [REDACTED].

- he was personally present at or near the destruction sites on the first day of attacks, publicly signaling his support for the destructions and providing moral support to the attackers, particularly those who were members of the Islamic Police.⁷⁷⁷

241. Al HASSAN's presence on the first day of destructions and the involvement of his Islamic Police at several sites also show the Accused's knowledge of the destructions. ■■■■■, ■■■■■, ■■■■■ will testify that Al HASSAN consented to and supported the destruction campaign.⁷⁷⁸ Al HASSAN was also well aware of the historical and cultural value of the sites, having previously studied the saints and mausoleums of Timbuktu and the basis for its recognition as a world heritage site.⁷⁷⁹ Al HASSAN, who contributed to the coercive environment, therefore shared the intention of destroying the mausoleums and other targeted buildings, was aware that the attacks were going to occur, and was aware of their religious, historical, and cultural significance.

VII. Rape, sexual slavery, and forced marriage as another inhumane act (counts 8-12)

A. Introduction

242. The evidence will show that during the period of its control over Timbuktu, using terror and armed presence, the Organisation facilitated the mistreatment and sexual abuse of local women and girls. The Organisation did so in two main ways. First, it put in place a system of forced marriages which – in addition to their inherent criminality – served as devices for members of the Organisation to rape local girls and women. Second, it enabled certain of its members – armed men, described as being violent, and perceived as wanting sex⁷⁸⁰ – to arbitrarily arrest and detain women and girls, including in facilities where some were raped or otherwise sexually abused.

■■■■■ Video, ■■■■■
 ■■■■■ Video, ■■■■■
 ■■■■■ Video, ■■■■■
 ■■■■■
 ■■■■■
 ■■■■■ See ■■■■■
 ■■■■■ and ■■■■■
 ■■■■■
 779 ■■■■■
 780 ■■■■■
 ■■■■■.

243. Al HASSAN, through his leading role within the Islamic Police and his direct participation in the system of forced marriages, acted to create, promote, and maintain a violent, coercive, and oppressive regime in Timbuktu, whereby women and girls were objectified and subjected to violence by members of the Organisation. This contributed to the charged sexual crimes against these women and girls, notably against [REDACTED] and [REDACTED].⁷⁸¹

1. Forced marriage in Timbuktu – pretext for rape and sexual slavery

244. Forced marriage⁷⁸² was not new to the Groups and existed in other areas where the Groups operated, not just in Timbuktu. Evidence from insiders,⁷⁸³ UN and NGO reports,⁷⁸⁴ as well as witnesses based in Timbuktu at the relevant time,⁷⁸⁵ will show that forced marriage was tolerated and even promoted within the Organisation. The understanding was that when a member of the Organisation wanted to take a wife from amongst the location population, the Organisation would provide support – such as by so-called ‘negotiation’ and funds.⁷⁸⁶ A notable from Timbuktu, [REDACTED], will testify that he heard from daily conversations that they said that a “‘Mujahedeen’ must marry everywhere he goes”.⁷⁸⁷

⁷⁸¹ This also contributed to the rapes of [REDACTED] and [REDACTED], [REDACTED], currently charged as underlying incidents of the crime of persecution (see section VIII below). These four victims will be included [REDACTED].

As noted by Pre-Trial Chamber I, the evidence on the existence of a “marriage” does not require a formal or official marriage, but could be based on the subjective view of the victim, the third parties and the perpetrator and the latter’s intention to consider the couple “married”. See Confirmation Decision, para. 336.

⁷⁸³ [REDACTED].
UN Report, ‘Report of the Secretary-General on the Situation in Mali, S/2012/894’, 29 November 2012, [REDACTED], para. 24 (“Cases of forced marriage have been reported in all areas under rebel occupation, including instances of young women forced into unions with members of the armed groups in circumstances where the marriage arrangement is simply a cover to legitimize the reality of abduction and rape, which in some cases could amount to sexual slavery”); UN Report, ‘Sexual violence in conflict / Report of the Secretary-General / A/67/792-S/2013/149’, 14 March 2013, [REDACTED], para. 54; *Africa Security Brief*, Report “West Africa’s Growing Terrorist Threat: Confronting AQIM’s Sahelian Strategy”, 11 February 2011, [REDACTED]; *Center for Strategic & International Studies*, Report “Al Qaeda in the Islamic Maghreb”, September 2011, [REDACTED].

⁷⁸⁵ [REDACTED].
[REDACTED].
[REDACTED].
[REDACTED].
[REDACTED].

245. The system served two main objectives of the Organisation.⁷⁸⁸ First, it served their goal to consolidate their presence in the region (by mixing with the locals) and to tighten their control over the local populations. This will be demonstrated by open source documents⁷⁸⁹ and corroborated notably by ██████████.⁷⁹⁰ A victim will testify that she was flogged for ██████████ ██████████.⁷⁹¹

246. Second, it served to reward their members, by enabling them to sexually abuse local women and girls under the façade of a legitimate union (in line with the ideology they purportedly defended).⁷⁹² ██████████ will explain the direct link between marriages and sexual gratification; he has stated that the marriages in Timbuktu were “*guided by the needs*” and that “*all the members who came to TOMBOUCTOU needed to get married regardless of the fact that they had been married before or not.*” [...] *Because the need for sex is similar to the need for food or drink. And it is important to do it in line with religion.*”⁷⁹³ Notably, for members of the Organisation, no ceremony was required⁷⁹⁴ and short-term marriages⁷⁹⁵ were allowed.

⁷⁸⁸ See Section 8.5.1.3 of the DCC.

⁷⁸⁹ See, e.g., *Africa Security Brief*, Report “West Africa’s Growing Terrorist Threat: Confronting AQIM’s Sahelian Strategy”, 11 February 2011, ██████████; *Center for Strategic & International Studies*, Report “Al Qaeda in the Islamic Maghreb”, September 2011, ██████████; Report “If our men won’t fight, we will, A gender analysis of the armed conflict in Northern Mali”, FOI-R-4121-SE, November 2015, ██████████.

⁷⁹⁰ ██████████

⁷⁹² ██████████

⁷⁹⁴ See, e.g., ██████████

⁷⁹⁵ ██████████

247. In Timbuktu, all members of the Organisation were able to benefit from the system of forced marriage, from foot soldiers to the leaders.⁷⁹⁶ Some local men who had joined the Organisation even took advantage of the occupation to force women to marry them.⁷⁹⁷

248. And many members of the Organisation did. The widespread nature of this practice will be demonstrated by multiple sources: insider witnesses,⁷⁹⁸ members of the population,⁷⁹⁹ journalists present in Timbuktu at the time,⁸⁰⁰ NGO staff members,⁸⁰¹ complaints filed on behalf of victims of sexual violence before the Malian authorities,⁸⁰² contemporaneous UN and NGO reports⁸⁰³ and the media.⁸⁰⁴ [REDACTED] many members of the Organisation got married in Timbuktu during the occupation,⁸⁰⁵ and he personally

⁷⁹⁶ For examples of leaders who “married” in Timbuktu to local women/girls: [REDACTED]

[REDACTED]

[REDACTED]. *See also,* [REDACTED]

[REDACTED]

See, e.g., [REDACTED]

[REDACTED]

⁸⁰⁰

⁸⁰¹

[REDACTED]

⁸⁰³ In contemporaneous UN reports, reference is made to cases of forced marriages within the Groups Ansar Dine, AQMI and the MUJAO in the North of Mali. UN Report, ‘Rapport de la Haut-Commissaire des Nations Unies aux droits de l’homme sur la situation des droits de l’homme au Mali / A/HRC/22/33’, 7 January 2013, [REDACTED], para. 34; UN Report, ‘Report of the Secretary-General on the situation in Mali / S/2012/894’, 29 November 2012, [REDACTED], para. 24.

⁸⁰⁴ *See, e.g., ‘La vie au « Tombouctoustan »*’, 4 February 2013, [REDACTED].

⁸⁰⁵

facilitated such marriages.⁸⁰⁶ According to [REDACTED], such “marriages” took place on average once a week, sometimes more than once a week.⁸⁰⁷ He will testify that many members of the Organisation got married to local women or girls.⁸⁰⁸ [REDACTED]
[REDACTED].⁸⁰⁹

249. Members of the Organisation viewed these “marriages” as an entitlement: they could enter into such unions without regard to the consent of the woman or girl.⁸¹⁰ It was well known in Timbuktu that if one of the men patrolling the streets found a woman he liked, he could marry her.⁸¹¹ As put simply by [REDACTED]: when soldiers wanted to marry, they were able to marry.⁸¹²

250. The violent pattern of abduction of the victim witnesses will show that members of the Organisation took advantage of the coercive environment and did not give any choice to the women or girls they chose to have sex with.⁸¹³ Threats were implicit and explicit. If the families did not agree, members of the Organisation would abduct the woman/girl, take her by force, or threaten to kill either the girls or family members. Insiders will testify that women and their families were under pressure to accept the unions, to the extent that they had no real choice.⁸¹⁴ Some women or their relatives were imprisoned or flogged for refusing to consent to marriage.⁸¹⁵ One victim, [REDACTED], will testify that she was detained [REDACTED]
[REDACTED].⁸¹⁶

251. Members of the Organisation were also encouraged to marry, as evidenced notably by the provision of funds for members to pay dowries where requested; by the fact that certain

⁸⁰⁶ [REDACTED].
⁸⁰⁷ [REDACTED] and [REDACTED]
[REDACTED]

⁸¹⁰ [REDACTED]
[REDACTED]
See, e.g., [REDACTED]
[REDACTED]

⁸¹³ *See* Section 8.5.3.1.1 of the DCC.
⁸¹⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

j [REDACTED].

leaders acted as intermediaries to help find a “wife”; and by instructions issued by the leadership.⁸¹⁷

252. Witnesses will testify that forced marriage was notorious during the occupation.⁸¹⁸ This reality was an everyday fear for many women and girls of Timbuktu. [REDACTED] will explain how during the period of the Organisation’s control over the city, during prayers, the *Grand Imam* systematically advised the congregation not to let girls go out of their home, notably to avoid that an “Islamist” should “*fall in love*” with them.⁸¹⁹ She will describe her fear of simply walking in the streets of Timbuktu because she could end up being coerced into a “marriage”.⁸²⁰ According to [REDACTED], [REDACTED] [REDACTED] was a victim of forced marriage, those who had enough money sent their daughters to other regions to avoid their daughters to be married by force to a member of the Organisation.⁸²¹

253. Once “married,” in the hands of members of the Organisation, the evidence will show that the women were treated as objects: they were taken to unknown locations, often cut off from their family and friends, some were beaten or insulted, and obliged to conform to the sexual demands of their so-called “husband” or other men that they were “shared” with. The victims will describe themselves as being sexual objects in the hands of members of the Organisation who exercised over them powers attaching to the rights of ownership for the duration of the so-called marriage.⁸²²

2. Sexual violence committed against women in detention

254. Witnesses will explain that there were two categories of cases of sexual violence during the occupation of Timbuktu – as put by [REDACTED]: “*Some resulted in marriages, some*

⁸¹⁷ See Section 8.5.1.3 of the DCC.

⁸¹⁸ See, e.g., [REDACTED] According to [REDACTED], a leader of a *quartier* in Timbuktu and the founder and President of ADVERMA, it was very well known to the population in Timbuktu in 2012 that women were married against their will to the occupiers. Annex 4 to [REDACTED]

⁸²⁰ [REDACTED]

⁸²¹ [REDACTED]

⁸²² See, e.g., [REDACTED] See also Confirmation Decision, para. 547, indicating that in analysing the imposition of deprivation of liberty, the subjective nature of such deprivation, that is, the person’s perception of his or her situation as well as his or her fear, may be taken into account.

did not".⁸²³ This will be corroborated by public reports published during the Occupation or shortly after.⁸²⁴

255. As noted, so-called "marriages" were official cover for the Organisation to allow its members to have sex with local women and girls, which served in part to consolidate their presence in the region by mixing with the locals. The evidence will show that detention, in premises hidden from the public and under their sole control, was another means for members of the Organisation to sexually abuse their victims.

256. Rape in detention did not fit within the proclaimed ideology or the rules imposed by the Organisation in Timbuktu. Such rape, however, like forced marriages, was a direct result of the coercive and violent environment established and nurtured by the Organisation, aimed at asserting its power and authority over the population, including women.

257. The evidence will show that many women and girls from Timbuktu and its region were arbitrarily arrested by members of the Islamic Police and the *Hesbah* during the relevant time for not abiding by the rules imposed by the Organisation.⁸²⁵ They were for the most part detained at the BMS, for usually up to five days,⁸²⁶ in a room nicknamed the "women's prison" ("*prison des femmes*")⁸²⁷ or the "cell of the women's nightmare" ("*cellule de cauchemar des femmes*").⁸²⁸

258. NGO staff members who met with SGBC victims – Witnesses [REDACTED], [REDACTED], [REDACTED] and [REDACTED] – will testify about the scale of the recorded cases of rape and other sexual violence [REDACTED]. [REDACTED]

[REDACTED]⁸²⁹.

⁸²³ [REDACTED]

⁸²⁴ See, e.g., UN Report, [REDACTED], para. 35.

⁸²⁵ See Annex A to the DCC. See also paragraph 9 (notably footnote 37), and sections 8.1.2.1 and 8.6.3.2.2 of the DCC. See also, for example, [REDACTED]

[REDACTED]

Press article, [REDACTED].

⁸²⁸ See paragraph 968 of the DCC. See also [REDACTED]

[REDACTED]

[REDACTED]

259. The testimony of several victims of rape ██████████ – including ██████████ ██████████ and ██████████⁸³⁰ – will show that rape was committed in a similar manner by members of the Organisation. These victims’ accounts will show that the rapes followed the same *modus operandi*: ██████████

██████████
 ██████████
 ██████████
 ██████████
 ██████████, ██████████, ██████████, ██████████, ██████████.
 ██████████
 ██████████
 ██████████⁸³¹

B. Types of evidence to be presented

260. The Prosecution will prove its case regarding SGBC with the following evidence:

- The testimony of victims of SGBC about their own victimisation (in 6 instances out of the 13 cases of SGBC currently charged);⁸³²
- The testimony of victims of SGBC about the victimisation of others (in 5 of the remaining 7 instances);⁸³³
- A divorce judgment from the Islamic Tribunal;⁸³⁴
- The testimony of four NGO representatives who have met with victims of SGBC;⁸³⁵
- Complaints (“*Plainte avec constitution de partie civile*”) filed by NGOs;⁸³⁶
- Photographs of injuries suffered by victims;⁸³⁷

██████████ ██████████
 ██████████
 ██████████
 ██████████

⁸³⁰

⁸³¹

In the cases ██████████

⁸³³

In the cases ██████████

⁸³⁵

⁸³⁶

Those NGO representatives are: ██████████

See Complaint ██████████

at

See also, Complaint, ██████████,

- Medical records of the victims and psychological assessments;⁸³⁸
- Statements from insider witnesses;⁸³⁹
- Statements from other witnesses present in Timbuktu during the relevant time;
- Statements from victims of SGBC to Malian authorities as contained in the “*Procès verba[ux] d’audition de partie civile*”, when the testimony of the direct victim witnesses is not available;⁸⁴⁰
- Statements from victims of SGBC to NGO representatives as contained in the “*Grille[s] de recueil de témoignages de victimes*”, when the testimony of the direct victim witnesses is unavailable;⁸⁴¹
- [REDACTED]
- [REDACTED]
- Public sources such as media articles, audio-video materials, UN and NGO reports.

C. Charged incidents of SGBC

261. There are 13 charged incidents under counts 8, 9, 10, 11 and 12. To avoid unnecessary repetition, the Prosecution refers to section IV above regarding [REDACTED],⁸⁴² [REDACTED]⁸⁴³ and [REDACTED]⁸⁴⁴ and discusses only the remaining incidents below:

- [REDACTED]⁸⁴⁵ between May 2012 and January 2013. She will testify that she was raped and flogged on numerous occasions [REDACTED]

⁸³⁷ These photographs are available in the cases of [REDACTED] (see [REDACTED] and [REDACTED]), [REDACTED] (see [REDACTED] to [REDACTED]), [REDACTED] (see [REDACTED] and [REDACTED]) (see [REDACTED])

[REDACTED] [REDACTED] (*médecin légiste*) et [REDACTED] (*médecin et psychiatre*) pour examiner sur place à Bamako les témoins victimes de torture et de violences sexuelles [...] »

⁸³⁹ Notably, but not limited to, insider witnesses [REDACTED]

⁸⁴⁰ Although the Prosecution has collected and disclosed such statements for victim witnesses [REDACTED] [REDACTED] it anticipates to only rely on those in the cases of [REDACTED] who are currently not on the witness list.

⁸⁴¹ Although the Prosecution has collected and disclosed such statements for victim witnesses [REDACTED] [REDACTED] [REDACTED] [REDACTED], [REDACTED] and [REDACTED] [REDACTED] it anticipates to only rely on those in the cases of [REDACTED] who are currently not on the witness list.

⁸⁴² See para. 157 *supra*. Count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁴³ See para. 156 *supra*. Count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁴⁴ See para. 160 *supra*. Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁴⁵ Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

[REDACTED]

[REDACTED].⁸⁴⁶ Her account will be corroborated by [REDACTED], who met with [REDACTED] [REDACTED].⁸⁴⁷

- [REDACTED]⁸⁴⁸ during the summer of 2012. She will testify that she was detained [REDACTED] [REDACTED].⁸⁴⁹ Her account will be corroborated by [REDACTED], who was present during [REDACTED]'s interview in [REDACTED].⁸⁵⁰
- [REDACTED]⁸⁵¹ around August/September 2012. She will testify that she was raped [REDACTED] [REDACTED].⁸⁵²
- [REDACTED]⁸⁵³ between around June 2012 and January 2013. She will testify that she was raped [REDACTED] [REDACTED]. She was flogged [REDACTED] [REDACTED].⁸⁵⁴
- [REDACTED]⁸⁵⁵ between April 2012 and mid-January 2013. She will testify that she was repeatedly raped [REDACTED] [REDACTED] [REDACTED] [REDACTED].

⁸⁴⁶ [REDACTED] [REDACTED] [REDACTED] [REDACTED].

⁸⁴⁸ Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁴⁹ [REDACTED] [REDACTED] [REDACTED] [REDACTED].

⁸⁵¹ Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁵² [REDACTED]

⁸⁵³ Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁵⁴ [REDACTED] [REDACTED] [REDACTED] [REDACTED].

Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

[REDACTED]
 [REDACTED].⁸⁵⁶ Her account will be corroborated by [REDACTED], who was present during [REDACTED]
 [REDACTED]'s interviews [REDACTED].⁸⁵⁷

- [REDACTED]⁸⁵⁸ around mid-2012 or the end of 2012. [REDACTED] will testify that his sister was forcibly “married” and taken from her home [REDACTED]
 [REDACTED].⁸⁵⁹
- [REDACTED]⁸⁶⁰ between May 2012 and the beginning of 2013. [REDACTED] will testify that [REDACTED] was forcibly “married” [REDACTED]
 [REDACTED].⁸⁶¹
- [REDACTED]⁸⁶² during the period of the charges. [REDACTED] will testify that [REDACTED] was forcibly “married” [REDACTED].⁸⁶³
- [REDACTED]⁸⁶⁴ between around the summer 2012 and January 2013. The evidence will show that she was forcibly “married” [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED] The Prosecution will rely on her statement before the Malian authorities⁸⁶⁵ and NGO representatives.⁸⁶⁶ The Prosecution will also rely

⁸⁵⁶ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

⁸⁵⁸ Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁵⁹ [REDACTED]
⁸⁶⁰ Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁶¹ [REDACTED]
⁸⁶² Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁶³ [REDACTED]
⁸⁶⁴ Count 8 – forced marriage as an inhumane act (article 7(1)(k)), count 9 – sexual slavery (article 7(1)(g)), count 10 – sexual slavery (article 8(2)(e)(vi)), count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁶⁵ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

on the statement of [REDACTED], who saw [REDACTED] before her interview [REDACTED]
[REDACTED].⁸⁶⁷

- [REDACTED]⁸⁶⁸ during the period of the charges. [REDACTED]
[REDACTED] will testify that [REDACTED] was arrested by members of the Organisation. [REDACTED]
[REDACTED]
[REDACTED]⁸⁶⁹

262. The Prosecution also refers to the incidents relating to [REDACTED]
[REDACTED] described in section IV, all of who were raped [REDACTED]
[REDACTED].⁸⁷⁰

D. Al HASSAN's contributions to the charged SGBC

1. Al HASSAN contributed in various ways to the commission of SGBC

263. The evidence will show that Al HASSAN contributed to SGBC committed by members of the Organisation including in the following ways:

- Through his position of responsibility within the Islamic Police, maintaining and furthering the coercive regime that governed and regulated all aspects of life in Timbuktu, and which was a precondition for forcing women into marriages and for the commission of other sexual and gender-based crimes with impunity. Most notably, Al HASSAN was responsible for dispatching patrols of Islamic Police and daily surveillance activities.⁸⁷¹ The Islamic Police used the patrols to display their power and enforce their purported ideology and associated rules but also to identify and target women and girls whom they would subsequently force into marriage;
- Overseeing the arrest and detention of women in facilities guarded by armed men.⁸⁷²
Witnesses will testify how Al HASSAN directly participated in the detention of

⁸⁶⁷ [REDACTED]

⁸⁶⁸ Count 11 – rape (article 7(1)(g)), count 12 – rape (article 8(2)(e)(vi)).

⁸⁶⁹ [REDACTED]

⁸⁷⁰ The Pre-Trial Chamber confirmed Al HASSAN's criminal responsibility for these incidents under counts 1, 2, 3, 4 or 5 as well as count 6 and as part of the crime of persecution under count 13. [REDACTED]

See section III.C.2 above. *See also* paragraph 342 of the DCC; [REDACTED]

See Section 7.2.3 in the DCC, referring notably to the [REDACTED]

See also, [REDACTED]

women.⁸⁷³ [REDACTED]

[REDACTED] Al HASSAN justified instances of arrests and detentions of women as being in line with the Islamic Police's duty to enforce the Organisation's rules.⁸⁷⁴

Witnesses will further testify how the Islamic Police and the *Hesbah* collaborated on these matters;⁸⁷⁵

- Assisting members of the Organisation who wanted to get married, by helping them to obtain necessary funds from the leaders or by acting as an intermediary with the parents or guardians of the women and girls.⁸⁷⁶ [REDACTED]

[REDACTED]⁸⁷⁷ concerning his role in mediating marriages and providing funds where requested, the evidence of [REDACTED] – [REDACTED]⁸⁷⁸ and [REDACTED]⁸⁷⁹ – will elaborate on the operation of this system.

264. For additional details concerning Al HASSAN's contribution to the commission of SGBC, the Prosecution recalls the evidence cited in section VII.D.2 of the Confirmation Decision and section IV.B of the Amendment Decision. The Prosecution further incorporates its submissions on the shared powers between the Islamic Police and the *Hesbah* in conducting surveillance patrols and in arresting women who did not obey their rules.⁸⁸⁰

2. Al HASSAN's contribution was intentional

265. The evidence will show that Al HASSAN's contribution was intentional. He voluntarily joined the Organisation⁸⁸¹ and voluntarily accepted to work for the Islamic

[REDACTED]

[REDACTED]

[REDACTED]

⁸⁷⁵ See para. 5256 above. See also [REDACTED]

See paragraphs 838 and 862 of the DCC on Al HASSAN's role in helping members of the Islamic Police to obtain the necessary funds from the leaders to get married where requested and on Al HASSAN's role as an intermediary with the parents or guardians of the women/girls.

⁸⁷⁷ [REDACTED]

⁸⁷⁸ [REDACTED]

[REDACTED]

See paragraphs 5256 above and paragraph 342 of the DCC. See also [REDACTED]

[REDACTED]

[REDACTED]

Police,⁸⁸² knowing the intentions and the goals of the Organisation. Al HASSAN notably demonstrated a continuous support to the implementation of the rules prescribed by the Organisation, even after abuses had been reported.⁸⁸³

266. Moreover, his important position with the Islamic Police and evidence – [REDACTED] – that he used violence to punish violators of the rules imposed by the Organisation,⁸⁸⁴ indicate that Al HASSAN was well-aware that the Islamic Police and other organs of the Organisation were active in establishing and maintaining by all means a violent and coercive environment. Notably, the evidence will demonstrate that:

- He knew that members of the Islamic Police and the *Hesbah* were entitled to punish those who violated the Organisation’s rules, and that they did so;⁸⁸⁵
- He knew that the patrols and other surveillance activities he organised for the Islamic Police and those conducted by the *Hesbah* primarily affected women and girls;⁸⁸⁶
- He knew that the Islamic Police and the *Hesbah* used violent methods against women, including torture;⁸⁸⁷
- He had daily contacts with the population,⁸⁸⁸ for whom the violence against women was common knowledge.⁸⁸⁹ [REDACTED] he knew that the population feared the Organisation.⁸⁹⁰

⁸⁸² [REDACTED]

⁸⁸³ See Section 7.2.1.1 of the DCC on the statements made by leaders of the Organisation and Section 7.2.1.4 of the DCC on the issuance of orders and instructions along those lines. *See also*, section 7.2.4.1 of the DCC [REDACTED]

See the sections above on the role of Al HASSAN (section III) and on the crime of torture and related crimes (section IV).

⁸⁸⁵ See the section above on the role of the Islamic Police and the *Hesbah*. *See also*, Section 7.2.3.4.1 of the DCC (“*Sanctions et sévices imposés par la police*”). [REDACTED]

⁸⁸⁶ See section VIII below on gender persecution. *See also* Section 8.1.2.1 of the DCC; [REDACTED] about the women’s march; “*Abu Turab: Nous organisons des patrouilles à Tombouctou pour nous assurer que les femmes observent bien une certaine pudeur hors de leurs maisons*”, *Sahara Media*, 28 September 2012, [REDACTED].

⁸⁸⁷ [REDACTED]

See sections 7.2.3.1, 7.2.3.3.1 and 7.2.3.3.6 and 7.2.4.5 of the DCC.

267. Similarly, evidence of his position and activities with the Islamic Police, his interactions with the *Hesbah*, and his physical presence at the BMS and at the *Gouvernorat* will show that Al HASSAN was well aware of the conditions in which women and girls were detained and of their vulnerability whilst in detention, especially as they were kept overnight.

[REDACTED]
[REDACTED], [REDACTED]
[REDACTED]

268. The Prosecution will also present evidence that Al HASSAN knew about the practice of forced marriages in Timbuktu due to his personal participation in mediating and financing certain “marriages” and his knowledge about the coercive environment in which they were concluded.⁸⁹¹ Notably, the evidence will show that:

- [REDACTED] many such “marriages” took place during the Occupation,⁸⁹² [REDACTED] some were very brief;⁸⁹³
- Due to his permanent contact with members of the Islamic Police and other organs, Al HASSAN must have known the conditions in which members of the Organisation, particularly members of the Islamic Police, were looking for a “wife”⁸⁹⁴ (including the involvement of leaders in certain “marriage” negotiations⁸⁹⁵);

⁸⁸⁹ See, e.g., [REDACTED] (« Q : [REDACTED]
[REDACTED] ;
[REDACTED] : («
[REDACTED] »), and [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

See sections 7.2.4 and 8.5.3 of the DCC

⁸⁹² [REDACTED] See also the Prosecution’s submissions at paragraph 845 of the DCC.

⁸⁹³ [REDACTED]
⁸⁹⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See also,

- Due to his daily interactions with the population, and in the context of occupation of the city by the Organisation, he must have known that women and their relatives were not free to consent to those “marriages”, and that some were punished for refusing to do so.⁸⁹⁶ Notably, insiders will explain that, in the context of the Occupation, these marriages necessarily were forced.⁸⁹⁷

VIII. Persecution (count 13)

A. Introduction

269. The evidence will show that Al HASSAN committed and contributed to the crime of persecution against the civilian population of Timbuktu and its region, in particular its women and girls, through various discriminatory acts based on religious and/or gender grounds during the relevant period, as charged in count XIII.

270. The persecutory campaign of the Organisation against the population of Timbuktu, and its women and girls in particular, consisted of the application of the Organisation’s own ideological and religious visions, and related prohibitions, enforced through violence and the threat of violence. The Organisation’s rules applied to all aspects of the population’s lives.⁸⁹⁸

271. The Organisation targeted the civilian population of Timbuktu, in particular its women and girls, because they were perceived as not adhering to the Organisation’s religious ideology.⁸⁹⁹

272. The members of the Organisation targeted the population on religious and/or gender grounds and severely deprived them of fundamental rights contrary to international law, including: the right of freedom of religion, thought and conscience, right to private life, right

_____ ; _____

⁸⁹⁷

See Confirmation Decision, para. 183; DCC, para. 5, 147, 175, 200, 270, 888, 893-898, 960; _____

Press article, _____, _____

Confirmation Decision, para. 688, 697.

to physical and mental integrity, right to be free from torture, inhumane and degrading treatment, right to be free from sexual slavery, right to physical liberty, right to marry for every person (also minors) and to build a family, right of freedom of reunion, association and manifestation, right of movement and circulation, right to a fair trial and to have access to a tribunal acting independently and with impartiality, right to security, right to health, right to free education, right to human dignity, and right to autonomy.

B. Types of evidence to be presented

273. To prove the *actus reus* of persecution, the Prosecution will present the Trial Chamber with witness testimony from, *inter alia*, victims, eye witnesses, insiders, journalists, and members of civil society. It will also submit documentary and physical evidence such as policy documents, propaganda documents, seized amulets, video interviews, audio documents and photographs. In particular, to prove the persecutory acts, the Prosecution will present *inter alia* witness testimony,⁹⁰⁰ [REDACTED],⁹⁰¹ Islamic Tribunal judgments,⁹⁰² reports by the Islamic Police,⁹⁰³ videos,⁹⁰⁴ [REDACTED],⁹⁰⁵ NGO and UN reports⁹⁰⁶ and press articles.⁹⁰⁷

274. As regards discriminatory intent, it can be inferred from the acts themselves but will also be proven through *inter alia* [REDACTED] the testimony of [REDACTED] witnesses.

C. Inception of the persecutory campaign

275. Several items of evidence will show the inception of the persecutory campaign in the early stages of the Organisation's period of control over Timbuktu. On 2 April 2012, a

⁹⁰⁰ [REDACTED]
⁹⁰¹ [REDACTED]
⁹⁰² [REDACTED]

See, e.g. Video, [REDACTED], Transcripts, [REDACTED], Translation, [REDACTED].

See, e.g. "Mali: Islamist Armed Groups Spread Fear in North", *Human Rights Watch*, 25 September 2012, [REDACTED]; *Rapport de la Haut-Commissaire des Nations Unies aux droits de l'homme sur la situation des droits de l'homme au Mali*, 7 January 2013, [REDACTED], para. 44.

⁹⁰⁷ *See, e.g.* Press article, [REDACTED]; Press article, [REDACTED].

meeting was held at the Sankoré mosque between Ansar Dine members (led by Iyad Ag GHALY) and the population, where they explained their mission to apply “*la charia islamique*” in the region.⁹⁰⁸ In a meeting held at Hotel Bouctou on 4 April 2012, reiterated via a speech on Radio Bouctou,⁹⁰⁹ Iyad Ag GHALY explained the objectives of the Organisation, including the forcible imposition of the Organisation’s ideology upon those who were perceived as not adhering to it.⁹¹⁰

276. Many witnesses also attest to different meetings held with *notables*, imams, scholars, teachers and other influential people to implement their religious ideology.⁹¹¹ These witnesses will explain that the Organisation was not offering its rules and ideology as an option or a recommendation to the population. Rather, they openly stated their intention to impose those rules and ideology by force as necessary.

277. The persecutory campaign was visible everywhere, for example, through billboards in the city,⁹¹² or flags bearing religious writings.⁹¹³ The Organisation took control of radio stations and spread propaganda,⁹¹⁴ broadcasting religious programming on Radio Bouctou.⁹¹⁵ They were giving public sermons and preaching in the streets,⁹¹⁶ to correct alleged ‘vices’, some of which consisted of Timbuktu’s long-standing customs and religious and social practices.⁹¹⁷ Armed members of the Organisation were present everywhere. They carried out patrols in the streets, and even entered people’s homes.⁹¹⁸

⁹⁰⁸ “*Message porté*”, [REDACTED]

⁹⁰⁹ Press article, [REDACTED]

⁹¹⁰ [REDACTED]

Video, [REDACTED]

⁹¹⁴ [REDACTED]

See [REDACTED]

⁹¹⁸ See DCC, para. 128; *see, e.g.* [REDACTED]

D. Targeting of the population perceived as not adhering to the Organisation’s religious ideology, including women and girls, on religious and/or gender grounds

278. The evidence will show that the population of Timbuktu, especially women and girls from Timbuktu, were targeted by members of the Organisation on the basis of religious and/or gender grounds. This will flow from all the evidence cited above showing that the perpetrators intended to apply (and applied) to the population of Timbuktu their own discriminatory and restrictive visions of religion and the role of women in society.

279. In addition, video-recorded statements by Organisation members during the charged period will show what the Organisation intended to achieve, namely, forcing the population to adopt the Organisation’s thoughts and beliefs instead of their own. The Organisation also considered that many of the population’s practices and beliefs were more *akin* to polytheism.⁹¹⁹ Documents authored by the Organisation will demonstrate that the targeted population was seen as “miscreant” or “ignorant of the religion”.⁹²⁰

280. The discriminatory intent of the perpetrators, including Al HASSAN, and their adherence to the Organisation’s own ideology can be inferred from the commission of the crimes charged in counts 1 to 12 and other human rights violations that took place. Moreover, the Trial Chamber will hear statements of [REDACTED],⁹²¹ and [REDACTED],⁹²² demonstrating this as well. For instance, [REDACTED], [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Video, [REDACTED]
[REDACTED] See also, [REDACTED]
[REDACTED] Video, *France 2*, [REDACTED], 12 April 2012, 00:00:33:00 to 00:02:10:00, Transcript, [REDACTED], Translation, [REDACTED].

See General Instructions for the Islamic Jihadist Project in Azawad/Al-Qaeda in the Islamic Maghreb, 20 July 2012, [REDACTED], [REDACTED]

[REDACTED]
Video [REDACTED]
[REDACTED] p. 0355; Video, *France 2*, [REDACTED], 12 April 2012, 00:00:33:00 to 00:02:10:00, Transcript, [REDACTED], Translation, [REDACTED]; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

██████████ the Organisation are destroying the door of the Sidi Yahia mosque.⁹²³ In other videos, perpetrators explain why they are destroying statuettes, bars, and cigarettes.⁹²⁴ In all of these statements, the discriminatory religious basis for the conduct is readily apparent.

281. Testimonial and documentary evidence will show the targeting of women and girls in particular. For example, the Trial Chamber will see a video showing Abou Al BARAA preaching in a mosque, publicly explaining prohibitions and obligations imposed upon women and girls. *“They must not speak seductively and softly. And they must not make tinkling sounds when they walk. And they must not embellish themselves. And they must wear clothes that cover their bodies completely”*.⁹²⁵ ██████████

██████████

██████████

██████████

██████████

██████████⁹²⁶ ██████████

██████████⁹²⁷.

282. Evidence about the women’s protest march in Timbuktu,⁹²⁸ also shows that women felt that they were targeted. The women of Timbuktu decided to march in protest *“contre ce qu’on nous imposait”*.⁹²⁹ ██████████ explained: *“les islamiques dépassaient les bornes. Chaque matin, ils annonçaient une nouvelle sharia”*⁹³⁰, *“les femmes souffraient trop”*.⁹³¹ In a symbolic way, ██████████⁹³².

⁹²³ Video, ██████████
 ██████████ See also ██████████
 Video, France 2, ██████████, 12 April 2012, 00:00:33:00 to 00:02:10:00, Transcript, ██████████
 ██████████, Translation, ██████████; Video, ██████████
 ██████████ Video, ██████████
 Video, ██████████, Transcript, ██████████, Translation, ██████████
 ██████████; Video, ██████████, 00:07:14:00 from 00:08:25:00; See DCC, para. 952.

⁹²⁶ Press article ██████████
⁹²⁷ ██████████

⁹²⁹ ██████████
⁹³⁰ ██████████
⁹³¹ ██████████
⁹³² ██████████

283. Policy documents authored by leaders of the Organisation will further demonstrate the persecutory campaign. For example, the instructions from Abou ZEID to the police, the *Hesbah* and “all soldiers”⁹³³ prescribed that if a woman was found to be “unveiled in public”, the “man” who accompanied her had to “impose the wearing of the veil upon her”. In the case of repeated resistance, the “guardian” had to be notified, and if she were to reoffend, “the discretionary penalty is to be applied”.

284. [REDACTED]
[REDACTED]
[REDACTED]:⁹³⁴ It shows how the Organisation intended to impose a dress code on women and girls and applied specific gender norms to them. [REDACTED]
[REDACTED] the evidence will show that members of the Organisation physically and morally harassed women who did not submit to the dress code.⁹³⁵

285. In furtherance of this persecutory aim, the evidence will establish that members of the Organisation, including Al HASSAN, committed and facilitated the commission of various persecutory acts against the population of Timbuktu, in particular women and girls. In particular, they committed the crimes of torture, other inhumane acts, cruel treatment, passing of sentences, sentencing without due process, attacking protected objects, forced marriage as other inhumane act, sexual slavery and rape as charged in counts 1 to 12, as well as the additional acts of persecution described below.⁹³⁶

E. Underlying acts of persecution

286. The evidence will demonstrate numerous acts which individually and/or cumulatively⁹³⁷ constituted serious violations of fundamental rights. Those persecutory acts generally fall into the following categories:

⁹³³ [REDACTED]
[REDACTED]
[REDACTED]
⁹³⁵ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Confirmation Decision, para. 672-685; DCC, para. 909-972.

⁹³⁷ Confirmation Decision, para. 672; Amendment Decision, para. 163.

Acts causing physical and mental suffering,⁹³⁸ such as:

- Floggings;⁹³⁹
- Infliction of inhumane treatments;⁹⁴⁰
- Arbitrary arrests;⁹⁴¹
- Detention in inhumane conditions;⁹⁴²
- Forced marriages and/or sexual slavery;⁹⁴³ and
- Rape in detention [REDACTED] and [REDACTED]
[REDACTED].⁹⁴⁴

Acts infringing upon individual freedoms,⁹⁴⁵ including:

- Prohibition of traditional and cultural practices:
 - Prohibition of celebrations such as the Maouloud or Tabaski;⁹⁴⁶
 - Prohibition of practices qualified as “sorcery” (use of talismans, magic);⁹⁴⁷
- Control of religious and cultural practices:
 - Prohibition of prayers before mausoleums;⁹⁴⁸
 - Change in the way people should pray⁹⁴⁹ or celebrate marriages;⁹⁵⁰

⁹³⁸ This violated a number of fundamental rights, including *inter alia*, the rights to be free from sexual slavery, torture, inhumane and degrading treatment, and arbitrary arrest; right to physical liberty and to one’s own physical and mental integrity, right to private life and family life.

⁹³⁹ See section IV. See also [REDACTED]

See section IV including the new evidence of [REDACTED], [REDACTED]

⁹⁴¹ See section V including the new evidence of [REDACTED] and [REDACTED], [REDACTED], [REDACTED].

⁹⁴² See section IV.

⁹⁴³ See section VII including the new evidence of [REDACTED], [REDACTED], [REDACTED].

⁹⁴⁴ See section VII, including the new evidence of [REDACTED], [REDACTED].

⁹⁴⁵ This violated a number of fundamental rights, including, *inter alia*, fundamental rights such as the right to freedom of religion, thought and conscience; right to private and family life; right to freedom of association and manifestation; right to freedom of movement and circulation; right to human dignity; right to education; right to health; right to personal liberty and autonomy.

⁹⁴⁶ [REDACTED]

See [REDACTED]

- Obligation to go to the mosque;⁹⁵¹
- Prohibition of music and dance;⁹⁵²
- Prohibition of the portrayal of human faces and even animal heads;⁹⁵³
- Prohibition of statuettes, amulets, and masks;⁹⁵⁴
- Destruction of manuscripts and forbidding Western literature;⁹⁵⁵
- Control of freedoms related to education:
 - Closing of public secular schools;⁹⁵⁶
 - Forbidding mixed gender in classes;⁹⁵⁷
- Control of freedom of speech, expression:
 - Control of media such as radio;⁹⁵⁸

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Video, [REDACTED], August 2012, 00:08:43:15 to 00:09:25:09, Transcript, [REDACTED].

[REDACTED] Statement of the UN Special Rapporteur in the field of cultural rights and of the UN Special Rapporteur on freedom of religion and belief, 10 July 2002, [REDACTED]; Press article, [REDACTED]; Press article, [REDACTED]. As a consequence, musicians had to leave Timbuktu. [REDACTED] Video, *Al Aan News*, 25 January 2013, [REDACTED].

Video, “How The Islamists Took Timbuktu”, *Journeyman Pictures*, 28 May 2013, [REDACTED] 00:01:00:00 to 00:01:39:00, Transcript, [REDACTED], Translation, [REDACTED].

Judgment of the Islamic Tribunal, [REDACTED]
Judgment of the Islamic Tribunal, [REDACTED]

Video, [REDACTED], 00:02:16:00 to 00:02:28:15, Transcript, [REDACTED], Translation, [REDACTED]; Audio coming from [REDACTED].

81.

⁹⁵⁵ Video, *Eye on the World*, 29 January 2013, [REDACTED], 00:00:11:24 to 00:00:48:01, Transcript, [REDACTED]; See [REDACTED].

[REDACTED] 122; Press article, [REDACTED]; Video, “Fighters in Timbuktu announce Islamic state”, *Al Jazeera*, 13 April 2012, [REDACTED], 00:01:44:00 to 00:01:59:00, Transcript, [REDACTED], Translation, [REDACTED].
⁹⁵⁷ Videos, [REDACTED].

Press article, [REDACTED]

- Forbidding television;⁹⁵⁹
- Imposition of restrictions on freedom of association and circulation:
 - Limiting public gatherings;⁹⁶⁰
 - Forbidding men and women to mingle in public;⁹⁶¹
 - Forbidding sexual relations and having children outside marriage;⁹⁶²
- Acts causing destruction or seizure of goods;⁹⁶³
- Control of other individual freedoms:
 - Imposition of a code of conduct: prohibition of drinking and smoking;⁹⁶⁴
 - Dress code: women had to wear a veil, gloves, and socks.⁹⁶⁵ They could not sell at the market without gloves.⁹⁶⁶ They could not wear jewellery.⁹⁶⁷ Men had to wear a beard and their trousers could only extend to above their ankles;⁹⁶⁸
 - Constant patrols in the streets to monitor the population and punish the alleged offenders.⁹⁶⁹

287. All of these acts constitute a severe violation of one or several fundamental rights, identified earlier, contrary to international law.⁹⁷⁰ These fundamental rights⁹⁷¹ are encompassed in various international instruments.⁹⁷²

[REDACTED]; Press article, [REDACTED]; [REDACTED]
[REDACTED]; Press article, [REDACTED];
[REDACTED]; Press article, [REDACTED];
[REDACTED]; Press article, [REDACTED];
[REDACTED]
⁹⁶² See, e.g., [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
⁹⁶⁴ See [REDACTED].
⁹⁶⁴ See, e.g., [REDACTED]
[REDACTED]
⁹⁶⁵ See, e.g., [REDACTED] “Mali: Civilians bear the
brunt of the conflict”, Amnesty International, 20 September 2012, [REDACTED].
⁹⁶⁶ See, e.g. Press article, [REDACTED]; Press article, [REDACTED].
⁹⁶⁷ See [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Press article, [REDACTED]; “Mali: Five Months of Crisis”, Amnesty International, 2012,
[REDACTED]

⁹⁷⁰ See sections II.G.1. and II.G.2; see also [REDACTED]
⁹⁷⁰ See Confirmation Decision, para. 664, 707; DCC, para. 942, 971, 972.

288. To understand the extent of the violation of fundamental rights, the Prosecution will present evidence describing life before occupation, and the context⁹⁷³ in which these alien rules, prohibitions and sanctions were imposed. Witnesses such as [REDACTED] and [REDACTED] will explain that these rules were foreign to the population of Timbuktu and the fear and stress that the imposition of the new rules, and the harsh punishments for violations of the rules, caused to the local population.

289. For example, the Organisation forced a civilian to adopt the Organisation's own ideology and beliefs, and by doing so, severely infringed upon his rights, *inter alia*, to freedom of religion, expression and thought, right to security of person, physical integrity, private life, right to property, dignity and to be free from torture and inhumane and degrading treatment. [REDACTED].⁹⁷⁴ He was arrested by the Islamic Police and Al HASSAN wrote the police report.⁹⁷⁵ [REDACTED] was charged with [REDACTED].⁹⁷⁶ He was tried and found guilty of this conduct, considered criminal by the Organisation.⁹⁷⁷ The Islamic Tribunal decided to make the accused [REDACTED].

290. In another example, [REDACTED] was personally threatened by a member of the Organisation who was posted [REDACTED].⁹⁷⁸ The member of the Organisation would harass him every time he [REDACTED].⁹⁷⁹ [REDACTED].⁹⁸⁰ This shows how [REDACTED], an inhabitant of Timbuktu, has been impacted by the rules imposed by the Organisation during the relevant period. His rights to freedom of

⁹⁷¹ List of fundamental rights which were violated: right of freedom of religion, thought and conscience, right to be free from sexual slavery, right to private life, right to its own physical and mental integrity, right to be free from torture, inhumane and degrading treatment, right to physical liberty, right to marry for every person (also minor) and to build a family, right of freedom of reunion, association and manifestation, right of movement and circulation, right to a fair trial and to have access to a tribunal acting independently and with impartiality, right to security, right to health, right to free education, right to human dignity, right to autonomy.

⁹⁷² The Pre-Trial Chamber cited for instance in its footnote 1821 (Confirmation Decision, p. 305) to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, Pacts, the African Charter, the American Convention on Human rights and the European Convention on Human Rights. *See also* footnote 1823, page 306.

⁹⁷³ *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeal Judgment, 28 February 2005, para. 321, 325; Confirmation Decision, para. 691; DCC, para. 896.

⁹⁷⁴ Judgment of the Islamic Tribunal, [REDACTED].
⁹⁷⁵ *See* Islamic Police report, [REDACTED]. [REDACTED] concluded that the signature on this Islamic police report was "consistent (identical)" with that of Al HASSAN.

⁹⁷⁶ *See* Islamic Police report, [REDACTED].

⁹⁷⁷ Judgment of the Islamic Tribunal, [REDACTED].

⁹⁷⁸ [REDACTED].

⁹⁷⁹ [REDACTED].

⁹⁸⁰ [REDACTED].

religion, expression and thought, his right to security of person, physical integrity, private life, and to dignity have been severely infringed.

291. The victimisation of [REDACTED] will illustrate the gender-based persecution against women in Timbuktu. [REDACTED] will testify that she was arrested by members of the Organisation for not being covered enough, flogged [REDACTED] [REDACTED].⁹⁸¹ [REDACTED] [REDACTED].⁹⁸² These acts severely infringed upon her rights of freedom of religion, thought and conscience, right to private life, right to her own physical and mental integrity, right to be free from torture, inhumane and degrading treatment, right to physical liberty, right to human dignity, and her right to personal autonomy.

292. [REDACTED] and [REDACTED] were also detained [REDACTED] [REDACTED]. [REDACTED] will testify that she was arrested and detained at the Islamic Police [REDACTED] [REDACTED].⁹⁸³ [REDACTED] saw that another woman in detention with her [REDACTED] was also taken by armed men. [REDACTED] [REDACTED] [REDACTED].⁹⁸⁴

293. As discussed above in section VII on sexual and gender-based crimes, these were not isolated incidents or exceptions to the rule. It is the Prosecution's case that such acts and related mistreatment were committed on a discriminatory basis and resulted from the various controls and coercive environment imposed (including the arbitrary arrests, and inhumane conditions of detention).

F. Al HASSAN's contributions to the persecutory campaign

294. Al HASSAN contributed to the Organisation's persecutory campaign in Timbuktu in multiple ways, pursuant to article 25(3)(d).⁹⁸⁵ He shared and endorsed the Organisation's ideology.⁹⁸⁶ For instance:

⁹⁸¹ [REDACTED]

⁹⁸² [REDACTED]

⁹⁸³ [REDACTED]

⁹⁸⁴ [REDACTED]

⁹⁸⁵ The Pre-Trial Chamber confirmed Al HASSAN's criminal responsibility under article 25(3)(d) of the Statute for the crime of persecution. *See* Confirmation Decision, para. 1009-1010. [REDACTED]

See above section III.C.

- He investigated cases of alleged violations of the Organisation’s rules, arresting or summoning suspects, drafting police reports and transmitting them to the Islamic Tribunal, thereby sanctioning civilians who had a different way of living and/or expressing their faith;⁹⁸⁷
- He directly perpetrated acts of persecution such as at least two floggings for breach of code of conduct imposed by the Organisation;⁹⁸⁸
- He carried out and organised patrols in the streets of Timbuktu, looking for civilians who allegedly contravened their rules, including their religious and gender-based ideology.⁹⁸⁹ For instance, he detained the [REDACTED] [REDACTED] [REDACTED] imposed by the Organisation;⁹⁹⁰
- He mediated disputes amongst the local population, for instance pressuring women to remain with unwanted husbands,⁹⁹¹ and ‘negotiating’ marriages between subordinates and local women and organising dowries for their ‘marriages’,⁹⁹² in furtherance of their religious and gender ideology.

295. These acts show that Al HASSAN was an active and key member of the Organisation and, through his role at the Islamic Police, had an impact on the daily life of the population of Timbuktu perceived as not adhering to the religious ideology of the Organisation, particularly women and girls.

296. The evidence will show that Al HASSAN made these contributions with discriminatory intent.⁹⁹³ Al HASSAN’s own persecutory intent to target those who violated

⁹⁸⁷ See section III.C.

⁹⁸⁸ See section IV.D.1.

⁹⁸⁹ See section III.C.2.

⁹⁹⁰ [REDACTED]

⁹⁹¹ See DCC, para. 348; *See also e.g.* [REDACTED] [REDACTED] *See also e.g.* Islamic Tribunal judgments where women were forced to remain with their husbands: Judgment of the Islamic Tribunal, [REDACTED] Islamic Police report on this case: [REDACTED]

[REDACTED] *See also*, Judgment of the Islamic Tribunal, [REDACTED] Judgment of the Islamic Tribunal, [REDACTED]

The Pre-Trial Chamber found that Al HASSAN did not act with a specific intent to discriminate on religious and gender grounds, nor “for the purpose of facilitating” the commission of persecution (Confirmation Decision, para. 936). First, it is not required for liability for persecution under article 25(3)(c) of the Statute for an accused to have discriminatory intent; it suffices that an accused is aware that the direct perpetrator’s crime would occur in the ordinary course of events. Nevertheless, and although not strictly required when the perpetrators have

the Organisation's rules is evidenced by, for instance, [REDACTED] his agreement to the punishments of those who violated the Organisation's views on religion and females.⁹⁹⁴

[REDACTED]

[REDACTED]⁹⁹⁵ [REDACTED]

[REDACTED]

[REDACTED]⁹⁹⁶.

297. Al HASSAN's own persecutory intent is also shown by his participation in the imposition of the Organisation's ideology, including by mediating in "marriages" between members of the Islamic Police and local females (and obtaining funds for dowries for them),⁹⁹⁷ and investigations and prosecutions of violations of the Organisation's own vision of religion and views regarding females, especially:

- conducting investigations,⁹⁹⁸
- questioning suspects,⁹⁹⁹
- preparing investigation reports,¹⁰⁰⁰
- mediating and deciding upon cases (including instances where women were forced to remain with their husbands),¹⁰⁰¹
- referring cases to the Islamic Tribunal;¹⁰⁰² and

persecutory intent, the Prosecution submits that Al HASSAN also had discriminatory intent. Second, under article 25(3)(c) there is no need to establish that an accused specifically intended the commission of the crime of persecution, since the term "purpose" relates only to the accused's facilitation of the crime. Al HASSAN lent his assistance at a minimum with the aim of facilitating the crime of persecution.

⁹⁹⁴ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

See section III.C.3.

⁹⁹⁹ *See* section III.C.3.

¹⁰⁰⁰ *See* section III.C.3.

¹⁰⁰¹ *See* DCC, para. 348. *See also e.g.* [REDACTED]

[REDACTED] Judgment of the Islamic Tribunal, [REDACTED]
 Islamic Police report on this case: [REDACTED]

[REDACTED] *See also* Judgment of the Islamic Tribunal, [REDACTED]
 [REDACTED] Judgment of the Islamic Tribunal, [REDACTED]

See section III.C.3.

- personally flogging persons found to have contravened the Organisation's rules.¹⁰⁰³

IX. Conclusion

298. The Prosecution submits that the facts and evidence outlined above will prove beyond reasonable doubt that Al HASSAN is guilty as charged.



Fatou Bensouda, Prosecutor

Dated this 18th of May 2020

At The Hague, The Netherlands

¹⁰⁰³ See section IV.D.1.