

ANNEX

PUBLIC REDACTED VERSION

Questions to parties and participants for the purposes of the confirmation hearing

A. General question

1. What happened to the staff of the local administration of the police and the judiciary in Timbuktu with the arrival of AQIM and Ansar Dine forces? Did these Malian civil servants flee, or were they dismissed and/or driven out?

B. Questions about specific crimes

(a) Sexual violence

2. Why does the Document Containing the Charges ("DCC") characterize the cases of certain victims ([REDACTED]), alleged victims of rape in detention, as "other inhumane acts" or "outrages upon dignity", but not as "rape"?
3. Regarding Witness [REDACTED], does the Prosecutor include the alleged rape in detention under the head of ill-treatment, which is given the characterization of inhumane acts and outrages upon dignity? See DCC, paragraphs 628 and 634 referring to [REDACTED].
4. What was the "[TRANSLATION] women's prison", the BMS or the former prison located in the camp of the *Garde Nationale* [National Guard]?
5. Does the Prosecutor consider that the acts of rape, sexual slavery and forced marriage formed part of the common plan from the outset of the attack on Timbuktu, or were they included in the common plan afterwards? In the latter case, as from what date, in her view, did the acts become an integral part of the common plan?
6. What would be the evidence which establishes the fact that, as stated by the Legal Representatives of Victims in paragraphs 34 and 38-40 of the "Observations of the Legal Representatives of Victims", the victims were singled out (and thus targeted) by the armed groups on the basis of their schools and certain neighbourhoods in Timbuktu, including Bella-Farandi, which translates as a "quarter traditionally allotted to the 'Bella' slaves"?

7. How can the Prosecutor's statement that forced marriages were used "[TRANSLATION] to create a '*new generation*' of jihadists which would merge with the local population" (DCC, paragraphs 767, 790) be reconciled with [REDACTED]? What differences (culture, practices, etc.) are there between traditional Malian marriages and the marriages said to have been imposed by the armed groups at the material time?
8. How do the victims perceive their alleged status of "wife/spouse" of members of the armed groups?
9. Could further information be provided about the stigma that victims might have suffered – as distinct from the harm suffered as a result of the alleged sexual violence itself – during or after their alleged forced marriage to members of the armed groups?
10. As pointed out by the Legal Representatives of Victims in paragraphs 61-66 of "Observations of the Legal Representatives of Victims", what are the long-term consequences for the women who are allegedly victims of forced marriage and for the resulting children?

(b) Sentences

11. What evidence is there to establish to the requisite standard of proof that, *concurrently* with their judicial duties, the judges of the Islamic Court performed other duties, in particular in the executive arm of government (DCC, paragraph 426)?
12. How does Houka Houka's presence at certain events (DCC, paragraph 425) prove that, as a judge of the Islamic Court, he was biased?
13. Give the provenance of the documents whose stated source is the Forensic Science Section of the Office of the Prosecutor. See for example: [REDACTED].
14. Could the Prosecutor state the facts contained in [REDACTED].
15. The Chamber notes that [REDACTED]. On what basis [REDACTED]?
16. The Chamber notes that Document [REDACTED]. On what basis [REDACTED]?

(c) Torture

17. The Chamber notes that for some cases (e.g. P-0565 and P-0557), in the summary of the charges (see DCC, paragraphs 1048-1049), the Prosecutor rehearses a set of factual allegations (whipping, in addition to detrimental prison conditions). Is the Prosecutor moving the Chamber to confirm this set of factual allegations under the single characterization of “torture” (DCC, paragraph 1058) or, in the alternative, to confirm it under a different characterization (e.g. inhumane acts)? Or is the Prosecutor instead moving the Chamber to characterize only the alleged whipping as torture and to separately characterize the alleged detrimental prison conditions, for example, as inhumane treatment?

18. As to the amputation of Dédéou Maiga’s hand, if the facts are established, should they not be given the legal characterization of “mutilation” within the meaning of article 8(2)(c)(i) of the Statute and 8(2)(c)(i)-2 of the Elements of Crimes? Why did the Prosecutor not opt for this legal characterization?

19. Considering the French and the English versions of articles 7(1)(f) (torture) and 7(1)(k) (other inhumane acts) in the Elements of Crimes, what differences are there between the constituent elements of the two crimes in terms of the requisite degree of suffering?

C. Questions about the suspect’s alleged responsibility

20. The Chamber notes that in paragraph 241 of the DCC the Prosecutor lists the members of the common plan but then in paragraph 242 she adds that “[TRANSLATION] [t]he co-perpetrators also included other members of the Organization who were involved in the crimes committed and supported the Organization’s course of action”. Then, in paragraphs 243-259, the Prosecutor sometimes characterizes an individual’s contribution as “[TRANSLATION] essential” although not consistently so.

20.1. Who are the individuals who made an essential contribution to the common plan and who may therefore be characterized as direct/indirect co-perpetrators within the meaning of article 25(3)(a) of the Statute? Kindly state the evidence that supports your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

20.2. Did Mr Al Hassan have the “capacity to frustrate” the commission of the crimes for which he is charged as a direct and an indirect co-perpetrator within the meaning of article 25(3)(a) of the Statute? If so, in what way? Kindly state the evidence that supports your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

20.3. From what point in time could Mr Al Hassan be characterized as a co-perpetrator within the meaning of article 25(3)(a), having regard to the essential character of his alleged contribution? Kindly state the evidence that supports your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

21. From the judgment on the appeals in *Bemba et al.*,¹ the Prosecutor concludes that “[TRANSLATION] it is not necessary to prove that Mr Al Hassan intentionally contributed to each of the individual crimes or to each of the criminal offences which were committed in accordance with the common plan” and that, “[TRANSLATION] [b]y intentionally contributing to the common plan, [Mr] Al Hassan has made himself amenable to prosecution for all of the crimes committed (footnote 659 of the DCC citing ICC-01/05-01/13-2275-Conf, paragraphs 812, 821, 1029, 1307). What is the position of the Defence and the Legal Representatives of

¹ “Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled ‘Judgment pursuant to Article 74 of the Statute’”, 8 March 2018, ICC-01/05-01/13-2275-Conf.

Victims on the Prosecutor's interpretation of the relevant passages of the judgment on the appeals in *Bemba et al.*?

22. The Chamber notes that the Prosecutor uses the characterization "indirect perpetrator" in paragraph 398 of the DCC, but not elsewhere. Was it used in error?

23. What were the specific dates/periods when the various entities (Islamic Police, Islamic Court, Islamic Security or "[TRANSLATION] Security Battalions" etc.) of the "Organization" were set up? At what point did the Islamic Security and the Islamic Police become operational? What is the difference between these two entities? Kindly state the relevant evidence to support your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

24. Did the various entities of the "Organization" (the Islamic Police, the Islamic Security or the Security Battalions, the Islamic Court, etc.) act in a coordinated manner as a matter of routine? Kindly state the evidence in support of your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

25. To what degree did the Islamic Police contribute to the alleged repression of the civilian population of Timbuktu? Kindly state the evidence in support of your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

26. What was the specific date/period when "Oumar Ould Mohamed Gulam Al Ghalawi", alias "Adam", who the Prosecutor claims was the first Emir of the Islamic Police, was replaced by "Khaled Abou Souleymane", who the Prosecutor claims was the second Emir of the Islamic Police? Kindly state the evidence to support your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

27. In paragraph 367 of the DCC, the Prosecutor writes: "[TRANSLATION] Abou Dhar also reported to the Emir of the Police". Where did "Abou Dhar" rank in the

Islamic Police hierarchy and in comparison to Mr Al Hassan? Kindly state the relevant evidence to support your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

28. When were preparations for [REDACTED] made?² Kindly state the relevant evidence to support your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

29. In paragraph 282 of the DCC, the Prosecutor states that Mr Al Hassan could give and transmit orders to members of the Islamic Police “[TRANSLATION] when he was organizing the work and assigning tasks”. Did Mr Al Hassan have the power to give orders only as part of the assignment of tasks? Could you provide one or more examples along with references to the relevant evidence, illustrating specific orders given by Mr Al Hassan to members of the Islamic Police and the execution of those orders. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

30. Aside from the duties which the Prosecutor alleges he had in relation to organizing Islamic Police patrols, did Mr Al Hassan have other duties as part of organizing the work of the members of the Islamic Police? Kindly provide specific examples along with relevant evidence in support of your claims. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

31. In paragraph 309 of the DCC, the Prosecutor states that Mr Al Hassan had “[TRANSLATION] the power to act as arbiter and to decide disputes”. Could you provide examples that are more specific as to Mr Al Hassan’s deciding a dispute *on his own* and provide the relevant evidence in support. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

32. The Prosecutor states in paragraph 284 of the DCC that “[TRANSLATION] [Mr] Al Hassan could [...] take action against members of the Islamic Police for offences

² [REDACTED].

involving them.” Did Mr Al Hassan have disciplinary power over the other members of the Islamic Police? Kindly provide specific examples and evidence in support of your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

33. Could you provide one or more specific examples, supported by relevant evidence, of Mr Al Hassan deciding *on his own* the outcome of a case or to refer a case to the Islamic Court. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

34. In paragraph 300 of the DCC, the Prosecutor writes that “[TRANSLATION] [o]f note is that all the signed police reports collected by [the Prosecutor] bear only [Mr] Al Hassan’s signature except for one which is also signed by Adama as a witness”. Was Mr Al Hassan the only person who wrote such documents? State the relevant evidence to support your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

35. The Prosecutor states in paragraph 278 of the DCC that Mr Al Hassan had the power to “[TRANSLATION] t[ake] decisions on his own about those tasks”. What degree of autonomy did Mr Al Hassan have over the organization of his daily work? Illustrate the response with a concrete example supported by evidence. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

36. The Prosecutor states in paragraphs 290 *et seq.* of the DCC that Mr Al Hassan investigated cases. What investigative powers did Mr Al Hassan have? What does the Prosecutor mean by the term “to investigate”?

37. The Prosecutor states in paragraph 27 of the DCC that Mr Al Hassan “[TRANSLATION] took part in high-level meetings”. Kindly provide specific examples with relevant evidence in support of “[TRANSLATION] high-level meetings” in which Mr Al Hassan took part (aside from the facts given in

paragraphs 27 and 339 of the DCC, *viz.*, that Mr Al Hassan allegedly travelled “[TRANSLATION] to see Abdelhamid Al Turki when summoned by Iyad Ag Ghaly” and in paragraph 273, *viz.*, that Mr Al Hassan allegedly acted as an interpreter for Abou Zeid during a meeting with the crisis committee at the Islamic Police). The Defence and the Legal Representatives of Victims may also submit observations in this regard.

38. The Prosecutor states in paragraph 27 of the DCC that Mr Al Hassan travelled “[TRANSLATION] to see Abdelhamid Al Turki when summoned by Iyad Ag Ghaly”. If possible, specify the period, supported by evidence, when this would have happened. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

39. The Prosecutor states in paragraph 27 of the DCC that “[TRANSLATION] [Mr] Al Hassan clearly enjoyed the trust and support of the hierarchy of the organization”? Kindly specify the parts of the “hierarchy” to which that sentence refers and provide specific examples along with relevant evidence showing the trust and support manifested by the hierarchy vis-à-vis Mr Al Hassan (apart from the analysis of telephone calls which has already been presented in the DCC³). Also kindly provide the telephone number referred to in the phrase: “[TRANSLATION] [...] and the second Islamic Police number that he used [...]”, in paragraph 27 of the DCC. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

40. The Prosecutor states in paragraph 27 of the DCC that Mr Al Hassan “[TRANSLATION] was in constant communication with senior officials throughout the occupation”. Kindly state who are the “senior officials” mentioned in that phrase and provide specific examples along with relevant supporting evidence illustrating the “constant communication” (in addition to the analysis of telephone

³ [REDACTED].

calls already presented⁴). The Defence and the Legal Representatives of Victims may also submit observations in this regard.

41. Was Mr Al Hassan in direct contact with “Iyad Ag Ghaly”, “Abou Zeid” and “Yahia Abou Al Hammam”? Provide concrete examples and relevant evidence in support of your response. The Defence and the Legal Representatives of Victims may also submit observations in this regard.

42. According to the Prosecutor, the scope of the “common purpose” within the meaning of article 25(3)(d)(i) and (ii) “[TRANSLATION] is the same as that of the common plan” (DCC, paragraph. 418). What is the position of the Defence and the Legal Representatives of Victims on this interpretation?

43. Does article 25(3)(d) of the Statute require the Prosecutor to show that the suspect contributed to each incident?

⁴ [REDACTED].