

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and
7 Judge Kimberly Prost
8 Trial Hearing - Courtroom 1
9 Tuesday, 10 November 2020
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:15] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:30:44](Interpretation) The hearing is opened.
15 Good morning to everyone.
16 Court officer, please call the case.
17 THE COURT OFFICER: [9:30:53] Thank you, Mr President.
18 The situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan
19 Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
20 And for the record, we are in open session.
21 PRESIDING JUDGE MINDUA: [9:31:15](Interpretation) Thank you, court officer.
22 For the record, we will start, as usual, with the introductions, starting of course with
23 the Office of the Prosecutor.
24 Mr Duterte.
25 MR DUTERTRE: [9:31:33](Interpretation) Good morning, your Honours.

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1 The Prosecution is represented here today by Mousa Allafi, Sarah Coquillaud,
2 Lucio Garcia, and myself, Gilles Dutertre.

3 And I would like to say, Mousa Allafi will be replaced by Marie-Jeanne Sardachti for
4 the second session.

5 PRESIDING JUDGE MINDUA: [9:31:59](Interpretation) Thank you, Mr Prosecutor.
6 Defence, Ms Taylor.

7 MS TAYLOR: [9:32:05] Good morning, Mr President, good morning, your Honours.
8 The Defence for Mr Al Hassan is represented today by Kirsty Sutherland,
9 Molly Thomas, Dolly Chahla, we'll be joined after the break by Ms Sarah
10 Marinier-Doucet, and myself, Melinda Taylor. Thank you.

11 PRESIDING JUDGE MINDUA: [9:32:29](Interpretation) Thank you, Ms Taylor.

12 I turn now to the Legal Representative of Victims, Mr Kassongo.

13 MR KASSONGO: [9:32:37](Interpretation) Thank you, your Honours. Good
14 morning. I will present our unchanged team for the Legal Representative of Victims,
15 Madam Claire Laplace, and myself, Mr Kassongo. Thank you.

16 PRESIDING JUDGE MINDUA: [9:32:51](Interpretation) Thank you, Mr Kassongo.

17 And now I turn to Witness.

18 Good morning, Mr Witness, do you hear me?

19 WITNESS: MLI-OTP-P-0065 (On former oath)

20 (The witness speaks Arabic)

21 THE WITNESS: [9:33:05](Interpretation) Good morning, I hear you very clearly.

22 PRESIDING JUDGE MINDUA: [9:33:12](Interpretation) Thank you, Mr Witness.

23 Of course, good morning to you and welcome, as usual. And I would like to remind
24 you that you are still under oath and that you should tell the truth, the whole truth
25 and nothing but the truth.

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1 As I would also remind you of my advice relating to taking the floor.

2 Mr Prosecutor, we will continue to hear your 16th witness, P-0065 and the Chamber
3 had granted you the opportunity to ask two final questions as part of your
4 examination-in-chief.

5 I do hope it will be just two questions, but we shall see.

6 Please go ahead.

7 MR DUTERTRE: [9:34:14](Interpretation) Thank you, your Honour.

8 QUESTIONED BY MR DUTERTRE: (Continuing) (Interpretation)

9 Q. [9:34:21] Well, Mr Witness, good morning. I hope you are well this morning.

10 A. [9:34:33] Good morning. I'm doing very well.

11 Q. [9:34:39] Mr Witness, yesterday you said -- and perhaps I can move into private
12 session, your Honour.

13 PRESIDING JUDGE MINDUA: [9:34:49](Interpretation) Private session, please,
14 court officer.

15 (Private session at 9.34 a.m.)

16 THE COURT OFFICER: [9:35:00] We're in private session, Mr President.

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14 (Open session at 9.44 a.m.)

15 THE COURT OFFICER: [9:44:37] We are in open session, Mr President.

16 PRESIDING JUDGE MINDUA: [9:44:42](Interpretation) Thank you, court officer.

17 Mr Prosecutor, you have confirmed that you have now concluded your

18 examination-in-chief?

19 MR DUTERTRE: [9:44:53](Interpretation) Yes, I have indeed.

20 And I would like to thank Mr Witness for his patience and for the information that he

21 has provided to us in such detail.

22 PRESIDING JUDGE MINDUA: [9:45:06](Interpretation) Thank you very much for

23 your examination-in-chief.

24 I turn now to the Legal Representative of Victims.

25 Mr Kassongo, in your note of 5 October you expressed your intention to question

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1 the witness. Today, having heard the examination-in-chief, the Chamber would like
2 to know whether you maintain your wish to question the witness?

3 MR KASSONGO: [9:45:41](Interpretation) Thank you, Mr President, your Honours.
4 The Legal Representative would like to question the witness briefly. And we would
5 also like to take this opportunity to ask the Chamber for enough time to - which will
6 not be long - to ask Mr Witness my questions.

7 PRESIDING JUDGE MINDUA: [9:46:17](Interpretation) Clarification on my part.
8 On what subject do you intend to question the witness and how many minutes?
9 How much time do you require?

10 MR KASSONGO: [9:46:28](Interpretation) Thank you, your Honour.
11 The questions relate to the impact of the occupation on the daily life of our victims,
12 including the population of Timbuktu, and what actually happened in terms of the
13 different acts we are examining here, and, and certain points which are not very, very
14 linked to confidential elements.
15 So five minutes of -- we have five lines of questioning, which will of course include
16 sub-questions and which can have short answers and it will depend on the time it
17 takes for interpretation.

18 And, of course, time will also depend on the answers given by the witness. I'm
19 thinking 30 to 45 minutes and we will -- we are in your hands, Mr President.

20 PRESIDING JUDGE MINDUA: [9:47:49](Interpretation) Thank you, Mr Kassongo,
21 we will just briefly consult.

22 (Trial Chamber confers)

23 PRESIDING JUDGE MINDUA: [9:48:50](Interpretation) Prosecutor, you heard
24 the request. Do you have any objection?

25 MR DUTERTRE: [9:48:58](Interpretation) Prosecution has no objection,

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1 your Honour.

2 PRESIDING JUDGE MINDUA: [9:49:02](Interpretation) Thank you.

3 Ms Taylor or Ms Sutherland? That's up to your internal organisation, of course.

4 MS SUTHERLAND: [9:49:10] Thank you, your Honour.

5 No objection. Although we ask that in view of the very board nature of the Legal
6 Representative for Victims' request, that he strictly stick to open, neutral questioning.

7 And in the event that the questioning strays from that, that we be afforded
8 the opportunity to object, as and when.

9 PRESIDING JUDGE MINDUA: [9:49:46](Interpretation) Very well.

10 Mr Kassongo, we grant your request and we also are in agreement with the time that
11 you have requested, 30 to 45 minutes is fine.

12 The witness is yours.

13 Mr Witness, the Legal Representative of Victims is going to ask you some questions as
14 well. We ask you to be patient, please.

15 MR KASSONGO: [9:50:20](Interpretation) Thank you, your Honour.

16 I would first like to turn to Mr Witness, whom I shall call, Mr Witness.

17 THE WITNESS: [9:50:41](No interpretation)

18 QUESTIONED BY MR KASSONGO:

19 A. [9:50:42] Good morning.

20 Q. [9:50:45] I am Mr Kassongo, the Legal Representative of Victims, and I have
21 with me my colleague and assistant, Claire Laplace, and there are others also listening
22 to you today, and we would like to thank you for your input and for your patience in
23 this testimony.

24 You were in Timbuktu in 2012. Can you describe to us, briefly, the impact of
25 the occupation of the presence of new masters that you observed, so the impact on

1 the local population, without however giving details which might be -- without
2 giving any details which might identify anybody.

3 A. [9:52:20] Certainly. First of all, there is no doubt that there has been a negative
4 impact on the city's economy in general, because the state disappeared. Utilities
5 disappeared. Most of the population, composed of merchants, disappeared. And
6 also homes.

7 There was also another negative impact. The people felt they were truly under
8 occupation. There were foreigners willing to impose their control and their laws on
9 them, which were entirely new to the city.

10 Q. [9:53:15] Thank you, Mr Witness.

11 Can you, from this angle, tell us about the fate of those who worked in local
12 administration, by which I mean those who worked -- or the fate of the services
13 providing necessities and also public services on a regional basis, in electricity, for
14 example.

15 In other words, what happened to the agents who headed these services when
16 the new masters arrived, if you observed it yourself or had occasion to do so?

17 A. [9:54:30] Most of the civil servants fled the city, even -- some of them even
18 before the advent of the groups to the city and some of them after the groups' arrival.
19 Hospitals, water, electricity continued to be available and I believe that CESR
20 continued to provide those services by providing fuel to them. And electricity
21 was -- would come and go and is not available all the time, but it was free, and so was
22 water also free.

23 Q. [9:55:22] Thank you, Mr Witness.

24 When in 2012 you were in contact with the population, what did you hear? What
25 sort of terms did you hear people use to discuss the change? What were

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1 the sort of words that the population were using, even if it wasn't in response to direct
2 questioning?

3 A. [9:56:16] I was a local inhabitant in Timbuktu and I can tell that among those I
4 got mixed -- I mingled with, they were complaining against the situation and they
5 wanted to hold firm to their city and stay there because some of them believed they
6 had nowhere else to go to. And some others said they will not leave the city
7 whatsoever.

8 But more important than anything else was the bad economic situation in the city.

9 Q. [9:57:09] Thank you, Mr Witness.

10 From this angle, you were with, or exactly, you were in prayer sites, services which
11 one could call a mosque. You were in mosques.

12 Thank you, court officer.

13 How was the new message passed on or how did the new preaching take place in
14 the mosque? Could you, as briefly as possible, give us an indication of the
15 orientation of the new preaching being spread in the mosque by the new masters.

16 A. [9:58:15] To put it simply, it was a call for Sharia, Islamic Sharia, its enforcement.
17 Because the country is composed of Muslims whose faith has been taken away from
18 them and the Sharia has been taken away from them because of the secular law
19 imposed by western countries and that the population of the city had to go back to
20 the origins, which is to apply Islamic Sharia. And that was the dominant headline
21 across sermons.

22 Q. [9:59:04] Thank you, Mr Witness.

23 And on that occasion, what did you observe among the population affected on
24 location when this message was passed in sermons?

25 A. [9:59:30] The local population are -- can be seen in different categories of people.

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1 There are those who are Sufists and they totally reject that discourse. Some who
2 were a minority were a Wahhabist, and this was their discourse.

3 But this new discourse was stronger than what they were used to.

4 Q. [10:00:12] Thank you, Mr Witness.

5 Along the same lines, could you tell us, in summary, what happened to the usual
6 religious leaders from the mosques in question? For example, what happened to
7 the usual imam? What happened to a muezzin for other mosques or for other
8 houses of prayer? What happened to them when the new discourse was introduced?

9 A. [10:01:07] When it comes to prayer, prayer is not a controversial subject.

10 The disagreement concerns matters of belief and not matters of jurisprudence like
11 prayer and so on and so forth. I think that the imams had an excellent time under
12 Islamic control of the region, because according to available information and shared
13 among the people it was that the imams were receiving monthly wages that they did
14 not have beforehand, especially from the *Hesbah*, because the *Hesbah* wanted
15 the imams to assist in convincing the people with this new project. This was what
16 people talked about, that they received wages and money in a very generous way.

17 Q. [10:02:12] Thank you very much, Witness. Thank you very much, Witness.

18 Could you also tell us about the dress code according to the new masters and more
19 concretely describe to us the type of garments that they would wear.

20 A. [10:02:51] There is no colour or type or brand specific in the dress code. But
21 women were required to cover all, the entire body, except hands and face. But as for
22 men, they needed to shorten their pants and there was -- they would not -- and this
23 was not compulsory for men, it's just a requirement. As for women, they were
24 indeed forced to cover their bodies in full with whatever clothes they wanted. What
25 mattered is that the whole body would be covered, except hands and face.

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1 Q. [10:03:50] Thank you very much, Witness.

2 In this regard, could you tell us the times of the day when the women were at home
3 doing domestic charges when they did not have to respect this code. What I mean
4 by that is, did this code apply, or should it be respected when they were carrying out
5 household tasks at home or by the water, or were there exceptions thereto?

6 A. [10:04:50] There was no one intervening in domestic affairs. Domestic affairs
7 belonged to families. But the only interference happens on the street and
8 the requirement on the street is to respect a dress code, whether you put on a dress or
9 something else. What mattered is for the whole body to be covered. And I don't
10 think that in any way impeded women in going about their lives in any way.

11 Q. [10:05:30] Thank you very much, Witness.

12 When there were patrols, when they were set up by the new masters who were in
13 place, were there precise locations other than markets to look at the lack of respect or
14 breaches of the dress code, or was it only in the streets and in the markets?

15 A. [10:06:22] There were patrols all over the city and all streets. And women did
16 observe the rules. Women did not openly, as far as I saw, challenge the system.
17 Sometimes I saw things, as an example, things women were not used to, things were
18 only imposed in 2012, especially in the last part of 2012. Sometimes you see
19 a women who had put her headscarf on -- by her side when she would sit in the street,
20 because women sit in the street beside their homes. So when a woman sees a patrol
21 coming her way when she -- and she is not covered, she hasn't covered her head, she
22 would be panicking that the patrol is coming so she would rush to put on
23 the headscarf or would rush inside her home out of fear.

24 Q. [10:07:41] Thank you very much, Witness. We've followed you attentively.
25 Speaking about women, did the code apply in the same way to adolescents?

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1 A. [10:08:03] When it comes to teenager girls who have reached physical adulthood
2 or have become biologically adult, they are, as per Sharia, considered women. But
3 I don't think that anything was imposed on children, not that I remember.

4 Q. [10:08:39] Thank you very much, Witness.

5 Continuing on the issue of patrols, when there was a breach of the code in its general
6 sense, was somebody interviewed or questioned in the place where the questioning
7 would be carried out or where the violation was noted, or was that person taken
8 somewhere else in order -- that is to say, where would that -- in order for that
9 punishment -- before the punishment would take place?

10 A. [10:09:57] I do not recall any example where a woman was detained because she
11 did not put on the full attire. I also do not remember seeing a woman challenge
12 the dress code rules and I do not have any examples in that regard.

13 Q. [10:10:25] Thank you very much, Witness.

14 Now, speaking about trade you mentioned at the start of our conversation this
15 morning, what happened to the stock of goods that was considered to be in violation
16 of or against Sharia that was seized?

17 A. [10:11:05] They were burned and that applied to alcohol, tobacco and narcotics.

18 Q. [10:11:23] Thank you, Witness.

19 Could you tell us if in 2012 the hairdressers, their salons, and other points of sale of
20 female -- of products for women continued with their activities? Of products or
21 services for women.

22 A. [10:12:02] I do not recall any beauty salon for women in Timbuktu working in
23 2012 during the control of the city.

24 Q. [10:12:28] The Legal Representatives thank you very much, Witness, for your
25 patience and also for a few other questions.

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8 Q. [10:14:00] Thank you very much, Witness.

9 Our team heard -- or has heard your historic and cultural knowledge on the buildings
10 that were destroyed and that's the reason why we're going to ask a question or
11 a series of questions concerning these buildings.

12 Now, you spoke about these buildings as being cultural and historic heritage, what
13 do you mean by that?

14 A. [10:14:48] If we're talking about the Djinguereber mosque, which is the oldest
15 mosque and the -- actually the oldest Islamic university in the whole region for which
16 Timbuktu is well known, and if we're talking about the Alkyama gate, it was also
17 a -- it's an historic gate and it's a touristic destination and its significance for attracting
18 tourists is as important as its history that goes back to five centuries. These places
19 are, are all classified as World Heritage sites.

20 Q. [10:15:53] Thank you very much, Witness.

21 In the same vein, you stressed the specific nature of the architecture in Timbuktu,
22 the building of buildings in Timbuktu, their construction. Why is it different to
23 other towns? What makes it different?

24 A. [10:16:30] There is a kind of stones that Timbuktu masons would dig and make
25 available and it's called in the local language *Al-hore and it's used to build

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1 the facades of buildings. And that's specific to Timbuktu only. I haven't seen that
2 anywhere else.

3 Q. [10:17:13] Thank you very much, Witness.

4 In this case, without going back to what you've already mentioned, what was
5 the visible impact of this destruction, or the destruction of this heritage, this historic
6 heritage among the population concerned? And, more precisely, among those who
7 lived close to the buildings, what was the impact on them of this damage? What was
8 the visible impact? How did the population feel it?

9 A. [10:18:23] Look, Timbuktu -- well, to answer your question I need to give you
10 twofold answers. First, Timbuktu is a historic city and people there take pride in
11 the city because of the originality of the city. That originality goes back to its rich
12 history, old history, and the Djinguereber mosque stands as a symbol of that.
13 The second part concerns the spiritual aspect. The majority of the people in
14 Timbuktu were Sufists and these Sufists hold spiritual bonds that are difficult to
15 explain briefly or in simple terms. They have spiritual bonds to the saints on whose
16 tombs they built these shrines and these shrines make these tombs stand out. Given
17 these deep spiritual considerations, this is so much so, especially for the tombs that
18 are close to the Djinguereber mosque which holds a special place in the minds of the
19 people of Timbuktu.

20 Q. [10:20:02] Thank you very much, Witness, for these clarifications.

21 I have a question about the mausolea, these buildings that suffered the attacks.

22 What happened to some of the marabout of Timbuktu?

23 A. [10:20:39] There were some sheikhs who had a special place within the Sufist
24 framework and their role was to write down amulets, and these were forbidden and
25 they were burned in Timbuktu. These people were accused by the groups, they

1 were considered by them as heretics and most of them left the -- left the cities when
2 the jihadists arrived.

3 Q. [10:21:30] Thank you very much, Witness, for these clarifications.

4 Now, you spoke passionately about the originality of the Timbuktu architecture. Do
5 you know the neighbourhood or place called Sankoré, and could you tell us about it
6 from a historical perspective, about Sankoré?

7 A. [10:22:11] I cannot speak about the Sankoré mosque as -- from a historical
8 standpoint, because simply, I am not a historian, but it is one of the most important
9 mosques historically speaking and it's a mosque that holds a special place for
10 the people of Timbuktu.

11 Q. [10:22:44] Thank you, Witness.

12 In order to help the Legal Representatives understand certain points, could you tell us
13 why a neighbourhood of Timbuktu was called Bellafarandi?

14 A. [10:23:04] Bellafarandi is a neighbourhood inhabited by black-skinned Tuaregs
15 and the word "Bella" is used to refer to those believed to have been slaves in ancient
16 times. And I think that Bellafarandi is the most important neighbourhood in
17 Timbuktu at the moment in terms of its social organisation, its significance, and it is
18 even said that those -- that it was them who founded Timbuktu.

19 Q. [10:24:01] Thank you very much, Witness, for these clarifications.

20 What was the general situation for the livestock breeders in Timbuktu in 2012? Had
21 nothing changed for them or was there something remarkable or particular that
22 happened?

23 A. [10:24:37] No, I did not notice anything new when it comes to farmers or
24 livestock breeders.

25 Q. [10:24:55] Thank you very much, Witness.

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1 The Legal Representatives have finished with their questions and it would like to
2 thank you on behalf of our team for having kindly agreed to provide answers to our
3 questions and we would like to thank you again.

4 MR KASSONGO: (Interpretation) I have finished, your Honour, your Honours,
5 with the series of questions for the witness.

6 PRESIDING JUDGE MINDUA: [10:25:32](Interpretation) Thank you very much,
7 Maître Kassongo. The Chamber is grateful and you kept your word.

8 It is now time to go to the cross-examination of the Defence. And because we have
9 the time to do so, it is right to start immediately, Ms Taylor.

10 I see the Prosecutor is standing up. Certainly he would like to make a remark on our
11 conduct, conduct of proceedings.

12 MR DUTERTRE: [10:26:14](Interpretation) Absolutely, your Honour.

13 And perhaps it would be useful if it could be done without the presence of
14 the witness so the witness is not influenced by the points that I'm going to mention.

15 PRESIDING JUDGE MINDUA: [10:26:33](Interpretation) You are perfectly right.
16 Witness, I'm going to ask the Registry to escort you outside the courtroom for a few
17 minutes so that we can resolve some housekeeping issues.

18 (The witness exits the courtroom)

19 PRESIDING JUDGE MINDUA: [10:27:10](Interpretation) Prosecutor, the witness is
20 outside the courtroom.

21 MR DUTERTRE: [10:27:13](Interpretation) Thank you, your Honour.

22 And we'll try to deal with that as quickly as possible.

23 Now, just a few points which I'd like to mention. We have examined the list of
24 documents that the Defence intends to use for the cross-examination, more than 200
25 documents, and we note and there are certain points that we would like to raise.

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1 The first is with regard to the relevance of a certain number of documents which are
2 on this list, the relevance to this case. And here I'm thinking of document 55 and we
3 don't see the relevance of that with regards to the criminal code of Mauritanian, so we
4 don't see its relevance.

5 And I'm also thinking of document 45. This seems to be -- or 47, which seems to be
6 a Facebook exchange about the cartoons of the prophet. I don't see that link with
7 Timbuktu either.

8 But that's also the case of document about genital mutilation, that's document 167,
9 I don't see the relevance of that for the charges in Timbuktu.

10 So these are issues of relevance that we would put.

11 There are also questions of reliability and here I'm referring to documents 1 and 2,
12 namely the document on internet, Twitter, so we just see the extract. And secondly,
13 we don't know who's speaking or writing, we don't know what that person's
14 profession is. They are talking about whipping. There is no reliability of this
15 person. And furthermore, the witness is not a forensic expert. I don't know what
16 could be said in this regard, so that's not the right witness to be shown this type of
17 document.

18 And thirdly, there are other documents that we don't see such as -- we don't see how
19 the witness could comment usefully on them, which there's a document, for example,
20 which comes from the CEDAW convention on women. I don't see how that person
21 is an expert to talk about that.

22 And without being exhaustive, there are documents 48, there's no translation thereof.
23 For the rest, we will see how the documents are presented to the witness and on what
24 basis.

25 I will stop there for the moment.

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1 PRESIDING JUDGE MINDUA: [10:30:50](Interpretation) Thank you very much,
2 Prosecutor. You have seen that the Chamber has taken good note of your comments.
3 So with regards to these Defence documents, there are 200 of them on the list and you
4 mention there are issues of relevance for 55, 47, 167, issues of reliability for 1 and 2,
5 and there are certainly documents which are difficult for the witness to comment on,
6 such as document 48. I'm just making a summary here, to not lose any time.
7 I would ask the Defence to answer and then the Chamber will take its decision.
8 Ms Taylor.
9 MS TAYLOR: [10:31:39] Thank you, Mr President.
10 Now, in terms of relevance, throughout the examination of both the Prosecution and
11 the Legal Representatives for Victims, a variety of questions was posed to the witness
12 concerning life in Timbuktu before 2012 and during 2012. He was asked about
13 almost every aspect of the day-to-day life of persons in Timbuktu. He was asked for
14 his views concerning who did punishments, *tazir* punishments, the interpretation and
15 application of Sharia law. He was asked for his views concerning the religious
16 position of the various groups and individuals in Timbuktu.
17 That's a wide panoply of information that was elicited from him and it's our right to
18 pose questions to him in cross-examination on these very subjects.
19 Now, the exhibits the Prosecution has referred to refer to Sharia law and how it's
20 interpreted and applied. That is why we included the Mauritanian code and that
21 the relevance of that document will be apparent through our lines of
22 cross-examination, bearing in mind the number of persons in Timbuktu that
23 the witness has identified as coming from Mauritania.
24 The same holds true for articles and photographs which speak to the religious views
25 of individuals and groups in Timbuktu, and in particular the Twitter post concerning

1 a recent protest in Timbuktu shows an individual who was present and involved in
2 the activities in 2012 and who was named by the witness in his testimony.
3 In terms of issues concerning reliability, the Prosecution is putting the cart before
4 the horse. We have a submission system of evidence. We are not required to
5 demonstrate in full these elements before we tender them. We can demonstrate that
6 through the witness's testimony. In particular, it will turn on the extent to which
7 the witness can comment and meaningfully testify in relation to the contents of
8 the documents, but those are issues that we can put to him, and he is very well placed
9 to respond to that, (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 Now, finally, on issues concerning the rights of women, again, a variety of questions
15 have been put to him concerning how women were treated in Timbuktu, both before
16 2012, during 2012. That document will go to that issue and, in particular, it will go
17 to the issue as to whether he is indeed in a position to provide testimony on issues.
18 Bearing in mind that the Chamber at one point characterised him as an expert, it is
19 our right to actually put questions to him as towards the extent of his knowledge and
20 whether he can meaningfully provide a full portrait of the lives of women in
21 Timbuktu and any changes that might or might not have been imposed.
22 Finally, an issue that we have raised previously is that if the Prosecution has any
23 questions on exhibits, they are of course always welcome to approach the Defence,
24 and they have not done so in this instance, to ask for internet links or any further
25 information, which we are willing to provide, as is always the case.

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1 Thank you.

2 PRESIDING JUDGE MINDUA: [10:36:39](Interpretation) Thank you very much,
3 Ms Taylor.

4 You have rebutted the arguments of the Prosecution with regard to the relevance of
5 the documents. You said there is no problem with relevance and that reliability
6 means putting the cart before the horse, and that the document from Mauritania, for
7 example, or other countries will allow you to give explanations to the Court or
8 the tribunal with regard to the diversity of nationalities of the people involved.
9 We will consult, very briefly, and we will give you our decision.

10 (Trial Chamber confers)

11 PRESIDING JUDGE MINDUA: [10:39:56](Interpretation) Thank you.

12 Prosecutor and Ms Taylor, we always take your concerns very seriously, as you will
13 have noted. With regard to the Prosecution's objections, I think that the Defence is
14 right, Mr Prosecutor, because with regard to the relevance of the documents, as you
15 raise the issue, or even their reliability, at this stage it is difficult for the Chamber to
16 accept your objections. The Chamber will authorise the use of the documents by
17 the Defence and, if necessary, on a case-by-case basis. If you hear a question which
18 you believe not to be relevant, then you can raise the matter.

19 With regard to the reliability, the Chamber will be able to evaluate these things and to
20 decide on the weight to be given to the testimony.

21 So, in order not to lose any further time, we will leave it at that.

22 The witness is not an expert witness, Ms Taylor, it's a witness of the facts, what he has
23 seen, and he has observed these facts among his compatriots, so that gives him
24 the right to intervene.

25 Court officer, could you please bring the witness back into the court.

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1 Ms Taylor.

2 MS TAYLOR: [10:41:43] I apologise for interrupting. There's two things. One, we
3 need to give the binder to the witness. The other thing is that our client has
4 indicated he needs a short break for the bathroom.

5 PRESIDING JUDGE MINDUA: [10:42:02](Interpretation) Court officer, please come
6 back, court officer.

7 Ms Taylor, if the witness returns we can't do what you've just asked. So could you
8 please explain what does the accused want? We have no need to suspend
9 the hearing, you just wish for permission for the accused to leave for 10 minutes; is
10 that correct?

11 MS TAYLOR: [10:42:50] I would imagine it would be less.

12 PRESIDING JUDGE MINDUA: [10:43:01](Interpretation) Court officer, please
13 proceed.

14 (Pause in proceedings)

15 (The accused exits the courtroom)

16 PRESIDING JUDGE MINDUA: [10:43:44](Interpretation) Court officer, we can now
17 bring the witness back to the courtroom.

18 (The witness enters the courtroom)

19 PRESIDING JUDGE MINDUA: [10:44:43](Interpretation) Ms Taylor, have you
20 distributed the documents, as was requested?

21 MS TAYLOR: [10:44:55] Yes, Mr President, it's my understanding that it's being
22 done.

23 PRESIDING JUDGE MINDUA: [10:45:05](Interpretation) Thank you very much.
24 I think you're not going to start just yet. I think we will wait; is that correct?

25 MS TAYLOR: [10:45:26] Yes. Thank you.

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1 (Pause in proceedings)

2 (The accused enters the courtroom)

3 PRESIDING JUDGE MINDUA: [10:46:16](Interpretation) The accused has now
4 returned to the courtroom, so all is now well.

5 And we can now commence the cross-examination by the Defence.

6 The floor is yours, Ms Taylor, please go ahead.

7 QUESTIONED BY MS TAYLOR:

8 Q. [10:46:43] Good morning, Mr Witness.

9 A. [10:46:47] Good morning.

10 THE INTERPRETER: [10:46:49] The witness does not have his microphone switched
11 on. Now he does.

12 A. [10:46:57] Good morning.

13 MS TAYLOR:

14 Q. [10:46:58] My name is Melinda Taylor and I think I met you on the first day of
15 your testimony with my colleague, Ms Kirsty Sutherland. It must feel like a lifetime
16 ago since then.

17 So I will be putting questions to you and my colleague, Ms Sutherland, will be
18 questioning you after me.

19 Now, to start with, I will be asking some questions about your earlier life, so we
20 should go into closed session.

21 PRESIDING JUDGE MINDUA: [10:47:38](Interpretation) Court officer, private
22 session, please.

23 (Private session at 10.47 a.m.)

24 THE COURT OFFICER: [10:47:51] We are in private session, Mr President.

25 (Redacted)

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15 (Open session at 11.00 a.m.)

16 THE COURT OFFICER: [11:00:34] We are in open session, Mr President.

17 PRESIDING JUDGE MINDUA: [11:00:43](Interpretation) Thank you, court officer.

18 If I understand correctly, after the break we're about to take, Ms Taylor, you're going
19 to continue asking -- questioning the witness in closed session.

20 How long will you need? I would like the information for our public.

21 MS TAYLOR: [11:01:18] I have about three pages of questions, all concerning his
22 personal life, which can't be asked in open session. I can then move into a section
23 where I would be dealing with questions which would have to go from public to open,
24 but part of that could be in open.

25 So I would anticipate that it would be 30 to 40 minutes, potentially.

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- 1 PRESIDING JUDGE MINDUA: [11:01:52](Interpretation) Thank you, Ms Taylor, for
2 this clarification.
- 3 We're going to take our 30-minute break. We will start again at 11.30 and Ms Taylor
4 will continue in private session for approximately half an hour for some questions
5 which could identify the witness.
- 6 The hearing is suspended.
- 7 THE COURT USHER: [11:02:18] All rise.
8 (Recess taken at 11.02 a.m.)
9 (Upon resuming in open session at 11.31 a.m.)
- 10 THE COURT USHER: [11:31:55] All rise.
11 Please be seated.
- 12 PRESIDING JUDGE MINDUA: [11:32:24](Interpretation) Court is now in session
13 again.
- 14 Ms Taylor, you will have noted that the witness is not there. That's because
15 the Chamber wanted to address you in the absence of the witness.
- 16 Ms Taylor, given the questions that you asked the witness prior to the break,
17 the Chamber wonders about the relevance of a certain number of them. And, in
18 particular, those which refer essentially to the private past life of the witness and
19 which do not seem, in the perspective of the Chamber, to have a link with the case, or
20 even with the credibility of the witness.
- 21 Before continuing, the Chamber would therefore like you to explain the relevance of
22 this line of questioning and, if necessary, in private session, if you so wish.
23 What is your answer thereto?
- 24 MS TAYLOR: [11:34:05] Thank you, Mr President.
25 I don't believe it will be necessary to go into private session, but it is necessary from

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1 our perspective to create a clear timeline of the witness's movements in certain
2 locations and countries, and that is what I am doing right now.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 His earlier life will also be apparent from my next line of questioning, which concerns
9 certain affiliations. These are questions that we're putting to the witness because
10 they weren't drawn out in any of the earlier witness statements, they weren't drawn
11 out in examination-in-chief and, as the Chamber is aware, we didn't have the time
12 and opportunity to meet with the witness before his testimony. So we are thus
13 compelled to, in a sense, conduct our own enquiries through cross-examination. But
14 I do believe that it is both pertinent and relevant to pose questions that would allow
15 us to establish a clear timeline of movements, leading up in particular to 2012, and to
16 geolocate those movements.

17 PRESIDING JUDGE MINDUA: [11:36:11](Interpretation) Thank you very much,
18 Ms Taylor.

19 Your concern to know the chronology of the life of the witness and the witness's
20 geolocation, I am of the opinion that the cross-examination is a difficult exercise and
21 each team, the Defence in the case in point, has its strategy.

22 However, the Chamber has the obligation to ensure that the questions are relevant
23 with regard to the case in point. The Chamber also has to ensure that the witness is
24 effectively protected, not only just changing the witness's voice or giving a
25 pseudonym, but I think - and I think you will be in agreement - that we also want to

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1 avoid questions that are intrusive into the private life of the witness.
2 This is a question of balance that has to be respected and I really call upon your
3 attention and vigilance thereto. But the Chamber will not hesitate to intervene and
4 to call you to order such that you remain fixed on the case in point and on
5 the relevance of the questions and on the protection of the witness.

6 We are all in agreement. We shall recall the witness.

7 Court officer, if you would be so kind as to recall the witness.

8 (The witness enters the courtroom)

9 PRESIDING JUDGE MINDUA: [11:39:13](Interpretation) Good afternoon -- or, good
10 morning again, Witness. The Chamber would like to thank you for your patience.
11 Now you are available to the Defence to continue with the cross-examination.

12 Ms Taylor.

13 MS TAYLOR: [11:39:32] Thank you, Mr President.

14 Can I receive confirmation that we are in private session?

15 Can we please move into private session.

16 PRESIDING JUDGE MINDUA: [11:39:42](Interpretation) Madam (Overlapping
17 speakers)

18 THE COURT OFFICER: [11:39:44] We are (Overlapping speakers)

19 PRESIDING JUDGE MINDUA: [11:39:48](Interpretation) Yes, we are in open
20 session, but we are now going into private session, if you would be so kind.

21 (Private session at 11.40 a.m.)

22 THE COURT OFFICER: [11:40:03] We are in private session, Mr President.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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22 (Open session at 12.30 p.m.)

23 THE COURT OFFICER: [12:30:53] We are in open session, Mr President.

24 PRESIDING JUDGE MINDUA: [12:30:59](Interpretation) Thank you very much,
25 court officer.

26

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1 So it is now 12.30. We are going to have our lunch break, which will be one and
2 a half hours, and we will recommence at 2 o'clock.

3 The hearing is suspended.

4 THE COURT USHER: [12:31:19] All rise.

5 (Recess taken at 12.31 p.m.)

6 (Upon resuming in open session at 2.03 p.m.)

7 THE COURT USHER: [14:03:07] All rise.

8 Please be seated.

9 PRESIDING JUDGE MINDUA: [14:03:33](Interpretation) Court is in session once
10 again.

11 And I think I have understood that the Prosecutor would like to address
12 the Chamber.

13 Mr Prosecutor, please.

14 MR DUTERTRE: [14:03:49](Interpretation) I thank you very much, Mr President,
15 your Honour.

16 I would require two minutes in closed session, please.

17 PRESIDING JUDGE MINDUA: [14:03:59](Interpretation) Madam courtroom officer,
18 could we go into private session, please. And may I point out that the witness is not
19 present in the hearing -- in the courtroom.

20 (Private session at 2.04 p.m.)

21 THE COURT OFFICER: [14:04:13] We're in private session, Mr President.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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5 (Open session at 2.43 p.m.)

6 THE COURT OFFICER: [14:43:18] We are in open session, Mr President.

7 PRESIDING JUDGE MINDUA: [14:43:24](Interpretation) Thank you.

8 Ms Taylor.

9 MS TAYLOR: [14:43:28] If we can play the same video from 44:15 to 44:26, with
10 sound.

11 (Viewing of the video excerpt)

12 MS TAYLOR: [14:44:25] (Inaudible)

13 (Viewing of the video excerpt)

14 MS TAYLOR: [14:44:42]

15 Q. [14:44:42] Now, the documentary refers to an alleged practice of divide and rule
16 instigated by French colonial powers amongst the Tuaregs. Can you explain what
17 that means?

18 A. [14:45:09] I don't have any examples that come to mind to explain this at the
19 moment.

20 Q. [14:45:20] Well, if we could turn to tab 3 on the Prosecution's list, that's
21 MLI-OTP-0020-0019 at 0030, paragraph 52 for the English.

22 And, Mr Witness, for the Arabic, it's in the Defence binders, tab 239, and that's
23 MLI-OTP-0068-3201 at 3212 to 3213, paragraph 52.

24 Did you find paragraph 52?

25 A. [14:46:49] (No interpretation)

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1 Q. [14:46:50] Do you recall explaining --

2 A. [14:46:53] Yes.

3 Q. [14:46:54] Do you recall explaining to the Prosecution that when Amadou Ami
4 (phon) Touré became president of Mali, he tried to control the north by promoting
5 rivalries between Tuareg tribes, supporting the Imghad against the Ifoghas?

6 A. [14:47:23] Yes. That's not a secret. Some tribes had control of the province of
7 Kidal, these were Tuareg tribes, and these were the origin of revolution of '63 and the
8 '80s and the revolution which was during the mandate of the president
9 Amadou Touré, and this had an influence on the course of developments of
10 the events in the north of Mali. So of course the president of Mali, when he took
11 power, tried to find an alternative to these tribes, where others -- partners, other allies
12 who would be loyal to his government.

13 Q. [14:48:34] And in order to pursue this policy, is it correct that he appointed
14 Colonel El-Hadj Gamou as his general commander and this commander repressed
15 the Ifoghas on his behalf?

16 A. [14:49:03] Yes. The whole army and all the military forces are under
17 the control of the president and General El-Hadj Gamou was under the authority of
18 the president. And it was the army that faced down these rebellions over years and
19 El-Hadj Gamou was fighting against these groups, so it was normal that if -- that
20 Bamako did not like Iyad, and therefore they found somebody in the Mali army who
21 was hostile to Iyad and who gave these people the military institution to put in their
22 place.

23 Q. [14:50:14] And when Colonel Gamou was pursuing this policy, this divide and
24 role policy, did he commit atrocities against Tuaregs?

25 A. [14:50:35] For a certain -- during a certain period there were Tuareg women

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1 being arrested, women who had a certain position, certain importance in Kidal. And
2 these women were arrested. That was at the time a violent reaction. El-Hadj
3 Gamou accused these women of having tried to poison the food, so he took his
4 revenge on them by arresting them, but we don't know whether that was true.

5 Q. [14:51:33] Mr Witness, earlier today you referred to ethnic cleansing. Was
6 Colonel Gamou involved in ethnic cleansing?

7 A. [14:51:56] I don't think so. El-Hadj Gamou was a soldier in the name of the
8 state. Of course, there was a lot of hostility and there were conflicts with the tribal
9 leaders, but I don't think that he did what you mentioned.

10 Q. [14:52:28] So, apart from Colonel Gamou, based on what you know and what
11 you heard, did the Malian army commit ethnic cleansing against the Tuaregs
12 before 2012?

13 A. [14:52:50] Yes, during the 1990s. At that time there was no media on the side of
14 the Tuaregs and the person killed by the Malian army were civilians in a number of
15 towns, a number of towns which have more or less been exterminated. Having
16 a light skin, whether you were a man, woman or a child was enough to be executed
17 en masse by the Malian military. And this was the reply to the Tuareg rebellion
18 against the government and the Malian army.

19 Q. [14:53:44] We're going to play the same video as before, that's
20 MLI-OTP-0015-0495, and we can play it without sound at the minute 44:33 to 44:51.
21 (Viewing of the video excerpt)

22 MS TAYLOR: [14:54:27]

23 Q. [14:54:27] Now, Mr Witness, without saying how, are you familiar with these
24 images?

25 A. [14:54:44] I recall having seen these images, but I don't remember any details

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1 about them.

2 MS TAYLOR: [14:54:56] We can play the same with sound.

3 (Viewing of the video excerpt)

4 MS TAYLOR: [14:55:44]

5 Q. [14:55:44] Mr Witness, we just saw a shot of a skull which was allegedly used to
6 scare Tuaregs in criminal proceedings. Can you explain the significance of this?

7 A. [14:56:08] I've no example in mind and I've got no information about this at all.

8 Q. [14:56:16] Did you ever hear that this was supposed to be the skull of a Tuareg
9 leader from the 1990s?

10 A. [14:56:32] I have no information on this subject.

11 MS TAYLOR: [14:56:40] If I can go into private session.

12 PRESIDING JUDGE MINDUA: [14:56:49](Interpretation) Private session, please,
13 court officer.

14 (Private session at 2.56 p.m.)

15 THE COURT OFFICER: [14:56:59] We are in private session, Mr President.

16 (Redacted)

17 (Redacted)

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21 (Open session at 3.29 p.m.)

22 THE COURT OFFICER: [15:29:59] We are in open session, Mr President.

23 PRESIDING JUDGE MINDUA: [15:30:05](Interpretation) Thank you very much,
24 courtroom officer.

25 Mr Witness, it is now half past 3 and I suppose that you must be quite tired because

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- 1 you have been patiently and clearly answering the questions that have been put to
- 2 you, and I would like to thank you for that.
- 3 We shall now rise for the day and you shall continue answering questions tomorrow.
- 4 In the meantime, as you know, you shall not speak to anybody of your testimony.
- 5 There we are.
- 6 So now I would like to thank the parties and the participants, the court reporters and
- 7 the interpreters. I would also like to thank the security officers and our public and
- 8 wish everybody a very nice evening.
- 9 We shall reconvene tomorrow morning at 9.30. I shall now adjourn the hearing.
- 10 Court is adjourned.
- 11 THE COURT USHER: [15:31:23] All rise.
- 12 (The hearing ends in open session at 3.31 p.m.)