

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 vs 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 Wednesday, 11 November 2020
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:23] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:30:52](Interpretation) Court is in session.
15 Good morning to everyone.
16 Madam courtroom officer, could you please call the case.
17 THE COURT OFFICER: [9:31:04] 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: [9:31:26](Interpretation) Thank you very much,
22 madam courtroom officer.
23 As every morning, we shall now deal with the appearances, starting with the Office of
24 the Prosecutor.
25 Mr Duterte, please.

11.11.2020

Page 1

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 MR DUTERTRE: [9:31:39](Interpretation) Good morning, Mr President, good
2 morning, your Honours. The Office of the Prosecutor is represented this morning by
3 Sarah Coquillaud, Lucio Garcia and myself, Gilles Dutertre. Thank you.
4 PRESIDING JUDGE MINDUA: [9:31:51](Interpretation) Thank you very much.
5 Now, I turn to the -- oh, the Defence.
6 Ms Taylor.
7 MS TAYLOR: [9:31:57] Good morning, Mr President. Good morning, your
8 Honours. Good morning to everyone in the courtroom. The Defence for
9 Mr Al Hassan is represented by Kirsty Sutherland, Molly Thomas, Dolly Chahla and
10 myself, Melinda Taylor. Thank you.
11 PRESIDING JUDGE MINDUA: [9:32:16](Interpretation) Thank you very much,
12 Ms Taylor.
13 Now, Legal Representatives for Victims.
14 Maître Kassongo.
15 MR KASSONGO: [9:32:24](Interpretation) Good morning, thank you, Mr President.
16 Good morning, your Honours. The team of the Legal Representatives for Victims
17 this morning comprises still, Madam Claire Laplace, who is assisting me, and myself,
18 Mr Kassongo, and we would like to thank you.
19 PRESIDING JUDGE MINDUA: [9:32:42](Interpretation) Thank you very much,
20 Mr Kassongo.
21 Today we shall continue with the questioning of the 16th Prosecution Witness P-0065.
22 And the Defence shall continue with its cross-examination.
23 Good morning, Mr Witness, can you hear me?
24 WITNESS: MLI-OTP-P-0065 (On former oath)
25 (The witness speaks Arabic)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 THE WITNESS: [9:33:22](Interpretation) Good morning, Mr President, I can hear
2 you very well.

3 PRESIDING JUDGE MINDUA: [9:33:29](Interpretation) Very well.

4 I was just waiting for the French interpretation.

5 So I would like to welcome you once again, and I would like to renew my gratitude
6 for your patience and remind you that you are still under oath. As a result, you
7 should speak the truth, the whole truth and nothing but the truth.

8 I will make the most of this opportunity to also remind you of my advice with regard
9 to when you take the floor.

10 Now, I will now hand the floor over to Ms Taylor.

11 QUESTIONED BY MS TAYLOR: (Continuing)

12 Q. [9:34:06] Good morning, Mr Witness.

13 A. [9:34:08] Good morning.

14 Q. [9:34:13] Yesterday I was questioning you in private session, so we will need to
15 continue in private session.

16 PRESIDING JUDGE MINDUA: [9:34:26](Interpretation) Ms Taylor, you know my
17 position with regard to private session. Of course we have the duty of protecting the
18 witness, but we also have to respect the principle of the publicity of the proceedings.
19 So I would request that you be careful and try and shorten the duration of your
20 cross-examination spent in private session, please.

21 MS TAYLOR: [9:34:59] Certainly, Mr President. But these questions cannot be put
22 in open session.

23 PRESIDING JUDGE MINDUA: [9:35:10](Interpretation) Yes, I understand only too
24 well.

25 Just for the members of the public, how long will your private session last,

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 approximately?

2 MS TAYLOR: [9:35:20] Mr President, given the nature of this testimony, it's very
3 difficult to go into open session. What I would suggest - I believe that this is a
4 practice that was adopted in the Katanga case - is that, after the end of each day, we
5 go through and we identify which sections of the transcripts can then be lesser
6 classified. In that way, there's less risk to the witness from inadvertent disclosures.

7 PRESIDING JUDGE MINDUA: [9:36:10](Interpretation) I don't know whether I've
8 understood you correctly.

9 I was asking you the question with regard to the public that is following us, so that
10 they be forewarned how long you will be spending now in private session, the private
11 session that we're going to announce.

12 MS TAYLOR: [9:36:29] Mr President, I'm very loath to give an estimate because it
13 may depend on the witness's answers.

14 PRESIDING JUDGE MINDUA: [9:36:44](Interpretation) Should I understand from
15 that that we might be coming and going into and out of private session and open
16 session?

17 MS TAYLOR: [9:36:53] Yes, exactly, because of the nature of the materials that will
18 be used.

19 PRESIDING JUDGE MINDUA: [9:37:02](Interpretation) Very well.
20 Courtroom officer, private session, please.

21 (Private session at 9.37 a.m.)

22 THE COURT OFFICER: [9:37:19] We are in private session, Mr President.

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 (Redacted)

2 (Open session at 10.06 a.m.)

3 THE COURT OFFICER: [10:06:22] We're in open session, Mr President.

4 PRESIDING JUDGE MINDUA: [10:06:28](Interpretation) Thank you very much,
5 court officer.

6 Ms Taylor.

7 MS TAYLOR: [10:06:34]

8 Q. [10:06:37] Mr Witness, I think -- I believe my last question to you was about the
9 MNLA entering Timbuktu and whether some of them pillaged after the Arab militias
10 entered Timbuktu.

11 A. [10:07:00] When the Malian army left Timbuktu, the Arab militias were already
12 present with the Malian army. They did not enter the city. They were already in
13 the city, but MNLA - led by Mohamed Najim - were besieging the city from different
14 directions. I was not in the city on that day, but the people concurred each other
15 when they relayed this to me, when they told me that it was total chaos because there
16 was pillaging. There was also breaking and destruction of property in an arbitrary
17 and irresponsible way.

18 This is what the inhabitants relayed to me.

19 Q. [10:08:07] Now, Mr Witness, if you could turn to paragraph 73, just to situate the
20 question. We were talking previously about the Arab groups entering the army
21 barracks and taking a large quantity of weapons. And at paragraph 73, it says that
22 you told the Prosecution that:

23 "The population also used" this "opportunity and took its share."

24 Is that correct?

25 A. [10:08:41] The city was in total chaos. And since the Arab groups were with

Trial Hearing

(Open Session)

ICC-01/12-01/18

WITNESS: MLI-OTP-P-0065

1 the Malian army and they even oversaw the departure of the Malian army from the
2 city, because there was coordination with MNLA outside and there was coordination
3 with the Malian army and this double role was supported, so they were the first to
4 reap the fruit of that departure and they were the first to make their way to the
5 barracks of the Malian army. And, of course, the local people did do looting. And
6 whenever there was a lack of security control, that happened. It happened when the
7 Malian army left and it happened when Ansar Dine also left the city.

8 The local people, I could say, roughly destroyed all the shops that belonged to
9 fair-skinned people. They looted their homes. And that -- so that happened twice.

10 Q. [10:09:50] I'll be asking you some questions on that at a later stage, but just to be
11 clear for the record, did the population enter the army barracks and take weapons?

12 A. [10:10:06] I don't think so. But I don't know. I do not have precise
13 information. What I know is that the Arab militias did go to the store houses and,
14 I think, there were weapons all over the place. I remember two children playing
15 with an IED, and it exploded, and one of them had his leg cut off. The other died.
16 And that shows how much chaotic it was. How much the takeover of the weapons
17 was chaotic, these weapons that were in Malian army barracks.

18 Q. [10:10:58] Now, Mr Witness, this morning you've described people protesting
19 because they didn't want Ansar Dine to leave because they preferred them to the
20 MNLA, and you've also described the Ansar Dine promoting equality amongst the
21 population.

22 Would it be fair to say that in April and May 2012, Ansar Dine was the least worst
23 option for ensuring security and stability in Timbuktu?

24 A. [10:11:42] First of all, that is true. The people in Timbuktu did favour the
25 group Ansar Dine to Arab militias and to MNLA, as they expressed in protests when

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 there was a rumour that Ansar Dine were about to leave the city.

2 Q. [10:12:11] For the purposes of the transcript, I will now be asking a question
3 concerning paragraph 51 of the statement before you, where you told the Prosecution
4 that Ansar Dine is not linked to Al-Qaeda in terms of ideology. Within Ansar Dine
5 there were many who were not fundamentalists. And that most people in Ansar
6 Dine have tribal goals, they try to look like Islamists but most of them do not pray.
7 They would hide and smoke in secret.

8 Is it correct that you said this to the Prosecution in 2014?

9 A. [10:13:11] Yes. Look, Ansar Dine has two components. There is the radical
10 component, the extremist one, that is a copy of Al-Qaeda. And that does include
11 local people, most of whom are Tuareg and Arabs. And there is another component
12 that joined after Ansar Dine and Al-Qaeda's takeover. Of course the first component
13 did help in achieving that takeover, part of it did help in that. So after Ansar Dine
14 and Al-Qaeda took control of the major cities in northern Mali, particularly Timbuktu,
15 and after expelling the national movement from Timbuktu, and that movement
16 having no longer any role in managing that part of the country, there were -- there
17 was a tribal kind of decisions that recognised the reality that these people are now in
18 charge, that MNLA has withdrawn, and that the only way for us is to be with these
19 people to protect ourselves and to protect our interests.

20 So there came about a new component in Ansar Dine that holds the banner of Ansar
21 Dine, but that's only on the facade. Ideologically speaking, they were not connected
22 to them. Actually, they hated each other, because one component was extremist,
23 who refused that anyone would hold a banner without embracing the ideology. The
24 other component, who saw the first one as an internationally condemned terrorist
25 component who would put them in a difficult situation when they called for their

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 rights. And that's how they saw things.

2 And at the same time, each wanted to reap some benefit from the other. The
3 national Ansar Dine members thought they were using the power and control of the
4 other Ansar Dine for them to have power. Also, the radical side of Ansar Dine
5 thought that, under the pretexts of having a local Ansar Dine organisation, they were
6 able to be in control of everything without being in the picture, but instead put the
7 local people in the picture as if they were the ones in control.

8 Q. [10:16:16] Now, turning to, for the record, paragraph 166 of the same statement,
9 is it correct that at the beginning in Timbuktu, Iyad met local leaders and religious
10 leaders and told them to join Ansar Dine? And by "Iyad" I meant Iyad Ag Ghaly.

11 A. [10:16:52] Yes, there was a big meeting attended by tribunal representatives,
12 dignitaries and military leaders, including people from MNLA. Most of them
13 actually was -- were from MNLA. Iyad Ag Ghaly asked them to join Ansar Dine and
14 they told him: We're ready to be with you, we trust you, and we're fully ready to
15 stand behind you, as long as you guarantee that we have no relationship to Al-Qaeda.
16 Iyad didn't give them guarantees. He told them: Your relationship is with me, not
17 with Al-Qaeda, but -- and that everyone would work under the banner of Ansar Dine.
18 And for the sake of precision, I was not present in the meeting but this is what I heard
19 from different sources and different people I met who attended the meeting.

20 MS TAYLOR: [10:17:51] Can we go into private session very briefly?

21 PRESIDING JUDGE MINDUA: [10:18:06](Interpretation) Private session, please.

22 (Private session at 10.18 a.m.)

23 THE COURT OFFICER: [10:18:20] We are in private session, Mr President.

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 (Redacted)

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11 (Open session at 10.19 a.m.)

12 THE COURT OFFICER: [10:19:29] We are back in open session, Mr President.

13 PRESIDING JUDGE MINDUA: [10:19:36](Interpretation) Thank you very much.

14 Ms Taylor.

15 MS TAYLOR: [10:19:41] For the purposes of the record, my next question relates to
16 paragraph 193 of the same statement.

17 Q. [10:19:50] Is it correct, Mr Witness, that the idea of the Ansar Dine leaders was
18 that Al-Qaeda was supposed to leave after the takeover in Timbuktu, leaving
19 Ansar Dine in charge under the command of Ibrahim Benna?

20 A. [10:20:16] Yes. That's the information spread among the people and what we
21 heard. It was -- there was an agreement with Al-Qaeda to help take control of the
22 major cities in general. And following that control, Al-Qaeda ought to withdraw to
23 the mountainous areas where it has been before 2012. And Timbuktu be left to the
24 local Ansar Dine under the leadership of Colonel Ibrahim Benna, a colonel from the
25 Malian army, who was from Kidal.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 Q. [10:21:07] And it's correct that, notwithstanding that understanding, Al-Qaeda
2 decided to stay?

3 A. [10:21:24] Yes, Al-Qaeda decided to stay, and I think there were negotiations on
4 that matter held in Timbuktu in secret with representatives from Kidal with Al-Qaeda
5 in Timbuktu, but Al-Qaeda refused to leave Timbuktu.

6 Q. [10:21:52] And the people taking decisions in Timbuktu from that point were
7 Yahya, Nabil, Abou Zeid, and Abdallah Al Chinguetti?

8 A. [10:22:07] What is sure here is -- or the people are certain to have been involved
9 were Nabil, before we died in a car accident, also Yahya Abou Al Hammam, and
10 Abdelhamid Abou Zeid. These were the ones who were in control of the Timbuktu
11 region indeed.

12 Q. [10:22:34] And for the purposes of the record, just referring you now to
13 paragraph 194 of the same statement, it's correct, isn't it, that these persons in charge
14 would not necessarily consult with Iyad Ag Ghaly?

15 A. [10:23:07] At the time I don't think there was -- I don't think there was anything
16 done, either within -- whether within Ansar Dine or Al-Qaeda without consultation
17 with Iyad Ag Ghaly.

18 Q. [10:23:22] Mr Witness, could you turn to paragraph 194 of your statement.

19 A. [10:23:44] Where exactly?

20 Q. [10:23:46] It's paragraph 194 --

21 A. [10:23:53] Which binder?

22 Q. [10:23:54] It's the one you were looking at previously.

23 So it's tab 239 on the Defence list.

24 And for those in the courtroom, it's tab 1 of the Prosecution list, MLI-OTP-0020-0019
25 at (Overlapping speakers)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 A. [10:24:13] The reference number.

2 Q. [10:24:14] The reference number is, for the Arabic, is tab 239,
3 MLI-OTP-0068-3201 and it's page 3240.

4 A. [10:24:33] The page number?

5 Q. [10:24:35] The page number is page 3240 and the paragraph number is 194.

6 A. [10:24:58] 104? Here I have a binder that starts with 200.

7 Q. [10:25:07] Mr Witness, it's tab 239.

8 PRESIDING JUDGE MINDUA: [10:25:21](Interpretation) Court officer, could the
9 witness kindly be assisted?

10 THE WITNESS: [10:25:36](Interpretation) I have it now, but I just need the page
11 number.

12 MS TAYLOR: [10:25:45]

13 Q. [10:25:46] The page number is page 3240 and if we could look at paragraph 194.

14 A. [10:26:37] And which paragraph? Is it 194?

15 Q. [10:26:41] Yes, Mr Witness.

16 And in the English it says "I do not think that Al-Qaeda would consult Iyad on all
17 decisions" at the beginning of the sentence?

18 A. [10:26:55] Yes.

19 Q. [10:26:58] So, Mr Witness, is it correct that the persons I mentioned, Yahya,
20 Nabil, Abou Zeid, Al Chinguetti, that they would not necessarily consult with
21 Iyad Ag Ghaly on all decisions?

22 A. [10:27:17] It's difficult to be specific on that. What I can assure you of here is
23 that Iyad Ag Ghaly founded Ansar Dine and he is the commander-in-chief of
24 Ansar Dine or the supreme leader of Ansar Dine. * And what turned out to be the
25 case later was that Droukdel, the commander of *Al-Qaeda in the Islamic Maghreb,

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 did give him special prerogatives whereby the Al-Qaeda emirs would listen to him
2 and would consult with him on everything. And as far as I heard, these prerogatives
3 given to Iyad by Al-Qaeda were the reason Mokhtar Belmokhtar dissented from
4 Al-Qaeda and joined MUJAO, because he believed it was him who founded Al-Qaeda
5 in northern Mali and therefore it was not acceptable for him *to have a Tuareg giving
6 him orders or instructions, *as the rumours said.

7 Q. [10:28:35] Mr Witness, you say in the same paragraph that when Iyad was in
8 Timbuktu he had influence, but he wasn't in Timbuktu often, was he?

9 A. [10:28:51] Yes, Iyad's presence in Timbuktu was only for -- happened only three
10 times, as the people in Timbuktu know, except if he had secret visits that no one was
11 aware of. And this was -- that these three times when they first took control of
12 Timbuktu, the second time was when he finished negotiations with MNLA, before
13 signing the agreement or the protocol of the agreement, and the third time was when
14 he came to provide equipment for the army that was going to head south.

15 Q. [10:29:41] I'm going to ask you a question about the possibility of secret visits,
16 but to do so I need to go into private session, that's with the authorisation of the
17 Presiding Judge.

18 PRESIDING JUDGE MINDUA: [10:29:58](Interpretation) Prosecutor.

19 MR DUTERTRE: [10:30:00](Interpretation) Yes, your Honour.

20 I would need some clarification with the witness in the transcript.

21 In the French and English transcript they speak about Ansar Dine, the commander of
22 Ansar Dine in the Islamic Maghreb gave him prerogatives, and it's the same in the
23 English transcript. Is it Ansar Dine in the Islamic Maghreb or -- that the witness is
24 speaking about, or something else?

25 And at the same time, as I have the floor, on page 18, line 7 in French there's a

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 reference to a paragraph, it's not the right paragraph, perhaps the Defence could come
2 back to correct it.

3 PRESIDING JUDGE MINDUA: [10:30:47](Interpretation) I also noted that
4 confusion.

5 Ms Taylor, could you also get some clarification with this part with the witness,
6 please.

7 MS TAYLOR: [10:30:59] Mr President, this is Defence cross-examination. The
8 Prosecution's had their turn. If there's a need for me to obtain clarification, I'll do so.
9 Thank you.

10 PRESIDING JUDGE MINDUA: [10:31:17](Interpretation) You are right, Ms Taylor.
11 But a statement by the witness that we haven't understood well. So you could put
12 the question and the witness could clarify it for the transcript.

13 MS TAYLOR: [10:31:30] Certainly, I will do so after the break. Thank you.

14 PRESIDING JUDGE MINDUA: [10:31:39](Interpretation) Ms Taylor, we don't have
15 the break now. We continue to 11 o'clock.

16 MS TAYLOR: [10:31:44] Yes, I'm aware, Mr President.

17 PRESIDING JUDGE MINDUA: [10:31:50](Interpretation) Do you want us to go to
18 private session, is that what you've asked for, or do we continue in open session?

19 MS TAYLOR: [10:32:02] I had actually asked to go into private session before the
20 Prosecution stood up.

21 PRESIDING JUDGE MINDUA: [10:32:09](Interpretation) Very well. Madam
22 courtroom officer, private session, please.

23 (Private session at 10.32 a.m.)

24 THE COURT OFFICER: [10:32:18] We're in private session.

25 (Redacted)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 (Redacted)

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17 (Open session at 10.38 a.m.)

18 THE COURT OFFICER: [10:38:43] We're in open session, Mr President.

19 PRESIDING JUDGE MINDUA: [10:38:48](Interpretation) Thank you very much.

20 Ms Taylor.

21 MS TAYLOR: [10:38:51]

22 Q. [10:38:53] Now, for the record, my next question concerns the same statement

23 we were looking at earlier, that's tab 239 of the Defence binder, in Arabic, and tab 1 on

24 the Prosecution's binder, the Arabic reference being MLI-OTP-0068-3201 at 3239,

25 paragraph 188, and the English being MLI-OTP-00-0019 at 0059, again paragraph 188?

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 A. [10:40:16] Yes.

2 Q. [10:40:19] Do you recall telling the Prosecution that there's no doubt in my mind
3 that Timbuktu was under the control of Al-Qaeda and that Ansar Dine had only a
4 symbolic presence?

5 A. [10:40:36] I do.

6 Q. [10:40:40] So if Al-Qaeda was in control and decisions were being taken by
7 members of Al-Qaeda, it would follow, wouldn't it, that the role of some of the local
8 Ansar Dine members would have been symbolic or administrative?

9 A. [10:41:02] Yes.

10 Q. [10:41:05] If I could turn you to tab 11 of the Prosecution list. And for the
11 Arabic it's actually tab 10 of the Prosecution's binder and the references are, for the
12 Arabic, it's MLI-OTP-0020-0017, and for the English it's MLI-OTP-0078-9744
13 at 9745 to 9746.

14 And I believe we'll have to go into closed -- private session for this.

15 PRESIDING JUDGE MINDUA: [10:42:01](Interpretation) Private session, please,
16 madam courtroom officer.

17 (Private session at 10.42 a.m.)

18 THE COURT OFFICER: [10:42:27] We're in private session.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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16 (Open session at 11.04 a.m.)

17 THE COURT OFFICER: [11:04:19] We are back in open session, Mr President.

18 PRESIDING JUDGE MINDUA: [11:04:22](Interpretation) Thank you very much,
19 court officer.

20 It's now 11.05. We need to have a 30-minute pause to allow the cleaning services to
21 do their job, so we are going to take a break and come back at 11.35.

22 The hearing is now suspended.

23 THE COURT USHER: [11:04:47] All rise.

24 (Recess taken at 11.04 a.m.)

25 (Upon resuming in open session at 11.37 a.m.)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 THE COURT USHER: [11:38:01] All rise.

2 Please be seated.

3 PRESIDING JUDGE MINDUA: [11:38:30](Interpretation) Court is now again in
4 session.

5 Ms Taylor, you have the floor for the follow-up of your cross-examination.

6 MS TAYLOR: [11:38:42] Thank you, Mr President.

7 Just on the issue that arose before the break concerning the transcript, it is our
8 understanding that the answer of the witness was clear in the Arabic, and we are
9 verifying that with the interpreter so the necessary corrections can be made to the
10 English and the French transcripts.

11 PRESIDING JUDGE MINDUA: [11:39:12](Interpretation) But in French it wasn't
12 clear even for me. Perhaps it would be better to ask the question to the witness so
13 the witness can answer the question, and in that way I would also be able to hear it in
14 French and my colleagues could hear it in English.

15 MS TAYLOR: [11:39:30]

16 Q. [11:39:32] Mr Witness, before when you were referring to Droukdel, were you
17 saying that he was a commander of -- (Overlapping speakers)

18 PRESIDING JUDGE MINDUA: [11:39:41](Interpretation) We're in open session, is it
19 open session? Yes.

20 The court officer is, she wants to check.

21 Could it be done in open session?

22 Please go ahead, ask your question.

23 MS TAYLOR: [11:40:03]

24 Q. [11:40:05] Mr Witness, I apologise, there appears to be a word confused in the
25 English and French transcripts.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 Earlier, when you referred to Droukdel as being a commander, can you clarify
2 whether he was commander of Al-Qaeda in the Maghreb?

3 A. [11:40:31] Droukdel is * Abu Musab Abdel Wadoud, the Algerian. He was the
4 supreme emir of what is the called Al-Qaeda in the Islamic Maghreb.

5 MS TAYLOR: [11:40:54] I believe that's clear now.

6 PRESIDING JUDGE MINDUA: [11:41:10](Interpretation) We've received the
7 interpretation.

8 Prosecutor.

9 MR DUTERTRE: [11:41:14](Interpretation) Yes, it was in the interest of having the
10 immediate clarification, but at the time I don't think it was Droukdel, we were talking
11 about the person who had given competencies to somewhere else. I think you have
12 to go to somewhere earlier in the transcript.

13 PRESIDING JUDGE MINDUA: [11:41:32](Interpretation) Yes, the question was who
14 gave instructions or orders, was it Al-Qaeda or Ansar Dine, if I remember correctly.

15 MS TAYLOR: [11:41:41] (Overlapping speakers) Mr President, it's entirely clear in
16 the transcript, in the Arabic it was clear, and we are now in open session. The
17 transcript will be corrected at the end of the day. In the Arabic the words were
18 heard accurately and clearly at the time the witness gave his answer.

19 PRESIDING JUDGE MINDUA: [11:42:12](Interpretation) Prosecutor.

20 MR DUTERTRE: [11:42:13](Interpretation) Yes, the transcript indicates subsequently,
21 ultimately the commander of Al-Qaeda gave the prerogatives by mail and -- the
22 commander of Ansar Dine in the Maghreb.

23 THE INTERPRETER: [11:42:33] Corrects the interpreter.

24 MR DUTERTRE: [11:42:35](Interpretation) And that's something that has to be
25 looked at.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 PRESIDING JUDGE MINDUA: [11:42:42](Overlapping speakers)

2 MS TAYLOR: [11:42:42] It might be that there's an issue between the English and the

3 French, because the English, it's clear that it's the person I was just mentioning.

4 In any case, we're in open session.

5 PRESIDING JUDGE MINDUA: [11:43:07](Interpretation) We're going briefly into

6 private session to put the question to the witness such that we have the interpretation

7 in French and in English.

8 Court officer, please take us into private session.

9 (Private session at 11.43 a.m.)

10 THE COURT OFFICER: [11:43:29] We're in private session, Mr President.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
- 2
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
- 2
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- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
- 2
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- 24
- 25

Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1
- 2
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Page redacted – Private session.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

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4 (Open session at 12.29 p.m.)

5 THE COURT OFFICER: [12:29:37] We're in open session, Mr President.

6 PRESIDING JUDGE MINDUA: [12:29:42](Interpretation) Thank you very much,
7 courtroom officer.

8 Ms Taylor, you can see that I'm very preoccupied. We have just spent
9 approximately one hour in private session. I know that it's very difficult to question
10 or cross-examine this witness because of his personal situation. However, however,
11 the Chamber would like to recall the principle that has already been formulated
12 during a previous hearing with regard to the publicity of the proceedings. As the
13 Chamber has already indicated, it behoves the parties to make a clear distinction
14 between those questions that go to the merits of the case and those questions that
15 need to be -- that -- put in public from those questions that are linked or associated
16 with the identity of the witness.

17 So, Ms Taylor, the Chamber would request that you kindly structure your
18 questioning to the extent possible, with a view to respecting this instruction from the
19 Chamber. And more specifically, the Chamber would strongly suggest to you that
20 you group the questions that need to be put in private session and group the
21 questions that can be put in open session. And, if possible, I would advise you to
22 put those questions in private session at the beginning or end of each session. I
23 know it's difficult, but we need to try.

24 The Chamber would also suggest to you that you assess whether it is possible for you
25 to put your questions in public session whilst not broadcasting the documents as we

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 tried to do with the Prosecutor.

2 I'm trying to be fair. It's very difficult, but we need to try because I don't want to
3 carry on like this for an entire session in private session.

4 Unfortunately, I would like your lunch break to be a laborious one because you're
5 going to need to be hard at work grouping these questions together. I do thank you
6 for your understanding.

7 So we are going to rise and we shall reconvene after an hour and a half of break, and
8 that is to say at 2 p.m.

9 Court is suspended.

10 THE COURT USHER: [12:33:36] All rise.

11 (Recess taken at 12.33 p.m.)

12 (Upon resuming in open at 2.01 p.m.)

13 THE COURT USHER: [14:01:06] All rise.

14 Please be seated.

15 PRESIDING JUDGE MINDUA: [14:01:34](Interpretation) Court is in session again.

16 Ms Taylor, you have the floor for the follow-up of the cross-examination.

17 MS TAYLOR: [14:01:50] Thank you, Mr President. And following the Chamber's
18 directive we did spend our lunch time restructuring the questions, and I've thought of
19 a system which should - inshallah - allow me to ask all but one question in open
20 session.

21 PRESIDING JUDGE MINDUA: [14:02:16](Interpretation) I would like to thank you
22 enormously, Ms Taylor. Thank you so much.

23 Please go ahead if you'd be so kind.

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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16 (Redacted)

17 PRESIDING JUDGE MINDUA: [14:04:41](Interpretation) Court officer, we're going
18 to private session very briefly.

19 (Private session at 2.04 p.m.)

20 THE COURT OFFICER: [14:04:55] We are in private session, Mr President.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
- 2
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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15 (Open session at 2.09 p.m.)
16 THE COURT OFFICER: [14:09:54] We are back in open session, Mr President.
17 PRESIDING JUDGE MINDUA: [14:09:56](Interpretation) Thank you very much.
18 Ms Taylor.
19 MS TAYLOR: [14:10:04] I'm going to play a video. It's on tab 238 on the Defence
20 list and tab 254 on the Prosecution's list. It's MLI-OTP-0020-0003 at 39:55:06 to 40:08.
21 For the interpreters, the transcript is tab 255 on the Prosecution's list, that is
22 MLI-OTP-0069-2955 and it shouldn't be shown to the public. So we're playing
23 without sound to start with.
24 (Viewing of the video excerpt)
25 MS TAYLOR: [14:11:20] Continue a couple more seconds.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 (Viewing of the video excerpt)

2 MS TAYLOR: [14:11:41] And for the record, we're stopping at 50 -- 40:26:22.

3 Q. [14:12:01] Mr Witness, does this -- are you familiar with these images, without
4 saying how?

5 A. [14:12:19] Yes.

6 Q. [14:12:19] And what time period does this correspond to?

7 A. [14:12:25] The intervention of French forces into Timbuktu.

8 Q. [14:12:35] And, Mr Witness, in the crowds that you saw on the streets, did you
9 see any Tuaregs or Arabs from Timbuktu?

10 A. [14:12:53] No, I didn't remark that. I saw none.

11 Q. [14:13:01] And would that have been because they would have fled at that
12 point?

13 A. [14:13:10] Yes. To be more precise, I would say I didn't see or observe in this
14 video any Tuareg or any light-skinned Arabs, but it's certain that there were Tuareg
15 who also have brown or dark brown skin.

16 Q. [14:13:41] Thank you for that clarification.

17 Now, the light-skinned Tuaregs and Arabs that would have fled, would -- this would
18 have been because they were concerned about being attacked or arrested because of
19 their skin colour?

20 A. [14:13:58] Nobody thought that they would be safe if the Malian army entered
21 into the town. That's the reason why a lot of refugees from the camps fled towards
22 Timbuktu. But once the French army and the Malian army started to go towards
23 Timbuktu, there was a second wave of movement towards the camps. So in the
24 other direction a second time.

25 MS TAYLOR: [14:14:54] Could we briefly go into private session?

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 PRESIDING JUDGE MINDUA: [14:15:00](Interpretation) Private session, if you
2 would be so kind, madam court officer.

3 (Private session at 2.15 p.m.)

4 THE COURT OFFICER: [14:15:11] We are in private session.

5 (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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8 (Open session at 2.30 p.m.)

9 THE COURT OFFICER: [14:30:49] We are in open session, Mr President.

10 PRESIDING JUDGE MINDUA: [14:30:56](Interpretation) Thank you very much.

11 Ms Taylor.

12 MS TAYLOR: [14:30:58] If we can play the same video from before, from

13 40:15 minute until 41:37 minute, and I believe we can play it with sound to speed

14 things up.

15 THE COURT OFFICER: [14:31:20] You indicated earlier that the video was

16 confidential, so we cannot play it with sound in open session.

17 MS TAYLOR: [14:31:29] Then we'll have to go into private session.

18 PRESIDING JUDGE MINDUA: [14:31:37](Interpretation) Private session, please,

19 court officer.

20 (Private session at 2.31 p.m.)

21 (Redacted)

22 THE COURT OFFICER: [14:32:00] We're in private session, Mr President.

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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- 19 (Redacted)
- 20 (Open session at 2.51 p.m.)
- 21 THE COURT OFFICER: [14:51:05] We're in open session, Mr President.
- 22 PRESIDING JUDGE MINDUA: [14:51:16](Interpretation) Thank you very much.
- 23 Ms Taylor.
- 24 MS TAYLOR: [14:51:19]
- 25 Q. [14:51:21] Just to be clear, none of these posts will be shown to the public,

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 Mr Witness.

2 Now if we could turn to tab 33 on the Defence binder. It's MLI-D28-0004-2926, that's
3 the Arabic for you, Mr Witness. And the English is tab 34 on the Defence binder,
4 that's MLI-D28-0004-2928. Do you have it in front of you, Mr Witness?

5 A. [14:52:23] Yes, I do.

6 Q. [14:52:25] Can you write down on the page, piece of paper next to you the
7 person who authored.

8 Perhaps we can go briefly into private session for that to be read out.

9 PRESIDING JUDGE MINDUA: [14:52:51](Interpretation) Private session, please,
10 court officer.

11 (Private session at 2.52 p.m.)

12 THE COURT OFFICER: [14:53:01] We're in private session, Mr President.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

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2 (Redacted)

3 (Redacted)

4 (Open session at 2.55 p.m.)

5 THE COURT OFFICER: [14:55:28] We're in open session, Mr President.

6 PRESIDING JUDGE MINDUA: [14:55:33](Interpretation) Thank you very much.

7 Ms Taylor.

8 MS TAYLOR: [14:55:36]

9 Q. [14:55:37] Mr Witness, without reading out what's in front of you, can you
10 explain to the Court what this post is about?

11 A. [14:55:49] It relates to certain persons who have been imprisoned by the Malian
12 army who wants a ransom in order to free them.

13 Q. [14:56:16] And what time period is this?

14 A. [14:56:21] Thirteen, if I recall correctly.

15 Q. [14:56:30] And the month?

16 A. [14:56:38] 24 September 2013.

17 Q. [14:56:47] Can you explain what is meant by violations?

18 A. [14:57:01] Violations such as torture, all sorts of torture, killings, murders, and
19 imprisoning a person because of the colour of their skin and accusations aimed at him,
20 for example, that he was a terrorist. And the ransom that's been requested for the
21 liberation, (Redacted)

22 (Redacted).

23 Q. [14:57:56] Mr Witness, if we could now go to tab 35 on the Defence list, that's
24 MLI-D28-0004-2931. And the English is tab 36, that's MLI-D28-0004-2932.

25 A. [14:58:39] Yes. This was written by the same person.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 Q. [14:58:47] Can you explain what the contents of the post concern?

2 A. [14:59:01] This post talks of the entry of the Malian army into the Ashl market,
3 which is a weekly market west of Goundam, and the Malian army entered, arrested a
4 number of Tuaregs and people with light-coloured skins and they stole their money.

5 Q. [14:59:40] Can we now move to tab 43 on the Defence list, it's
6 MLI-D28-0004-2952 is the Arabic. And the English is tab 44, that's
7 MLI-D28-0004-2955.

8 A. [15:00:17] 34 in the same binder or a different binder?

9 Q. [15:00:21] Tab 43.

10 A. [15:01:07] Yes, this was written by the same person.

11 Q. [15:01:10] Can you explain what the post concerns.

12 A. [15:01:17] Yes. The person that we see in the photo wrote that he's together
13 with people who are wounded and this person is explaining the history of the story.
14 These are people who were arrested by the Malian army who tortured them, flogged
15 them for a whole day without giving them either food or water.

16 Q. [15:02:03] To your knowledge, was this ever investigated, these incidents ever
17 investigated by the Malian authorities?

18 A. [15:02:16] No, not to the best of my knowledge. There was no investigation
19 about any of these events.

20 Q. [15:02:27] If we can turn to tab 213 of the Defence binder, that's the Arabic, that's
21 MLI-D28-0004-3590. And the English is tab 214, that's MLI-D28-0004-3597.

22 A. [15:03:40] Yes. That was written by the same person.

23 Q. [15:03:48] I'm going to play a video. It's MLI-D28-0004-3185, without sound.

24 (Viewing of the video excerpt)

25 THE WITNESS: [15:04:27](Interpretation) Yes.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 MS TAYLOR: [15:04:28]

2 Q. [15:04:29] Are you familiar with these images?

3 A. [15:04:36] Yes. These are pictures of Arab people in Gao with light skin who
4 were burnt.

5 (Redacted)

6 A. [15:05:10] Yes.

7 Q. [15:05:16] Are you able to explain what happened to these people?

8 PRESIDING JUDGE MINDUA: [15:05:27](Interpretation) Prosecutor.

9 MS TAYLOR: (Overlapping speakers)

10 MR DUTERTRE: [15:05:28](Interpretation) Your Honour, the Prosecution has a
11 question with regard to the relevance of these images in Gao with the facts in
12 question in 2013 in Timbuktu.

13 PRESIDING JUDGE MINDUA: [15:05:47](Interpretation) Ms Taylor, what is the
14 relevance?

15 MS TAYLOR: [15:05:51] I believe I would have to put questions to the witness first.
16 I'm in the process of establishing the relevance.

17 PRESIDING JUDGE MINDUA: [15:06:05](Interpretation) Please go ahead,
18 Ms Taylor.

19 MS TAYLOR: [15:06:09]

20 Q. [15:06:10] Mr Witness, are you able to explain what happened to these
21 individuals?

22 A. [15:06:24] They were burnt. And it wasn't the only time when this happened.
23 One month before, an Arab person who belonged to the same Arab tribe had been
24 burnt. And this could have caused problems and conflicts. But afterwards, I did
25 not hear anyone speak about a sanction that was imposed on these people who burnt

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 the young people. If you look at the person, that person is a minor, not even an
2 adult. That person was burnt alive, if my memory serves me well.

3 Q. [15:07:22] So, Mr Witness, for the last two incidents you said that no one
4 investigated these incidents. Would it be correct that these victims didn't have
5 anyone to protect them?

6 A. [15:07:42] Where it concerns these practices of burning people, I didn't hear
7 about somebody who was sanctioned. But where it concerns the other events, the
8 arrests, torture, murders on the part of Malian army in the west of Timbuktu and also
9 the arrests or kidnappings for a ransom, I am sure that nobody was found guilty and
10 there was no investigation into these events.

11 Q. [15:08:27] Mr Witness, you said that the persons in these images were minors.
12 To your knowledge, were any minors killed in Timbuktu in 2012?

13 A. [15:08:48] I do not remember currently.

14 MS TAYLOR: [15:09:02] If I could ask one question in private session before going
15 back into open session.

16 PRESIDING JUDGE MINDUA: [15:09:13](Interpretation) Private session, please,
17 court officer.

18 (Private session at 3.09 p.m.)

19 THE COURT OFFICER: [15:09:19] We're in private session, Mr President.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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14 (Open session at 3.11 p.m.)

15 THE COURT OFFICER: [15:11:31] We are back in open session, Mr President.

16 PRESIDING JUDGE MINDUA: [15:11:39](Interpretation) Thank you very much.

17 Ms Taylor.

18 MS TAYLOR: [15:11:42]

19 Q. [15:11:44] If we could turn to tab 241 of the Defence list of evidence, that's the

20 Arabic version. That's MLI-OTP-0077-1653 at page 1682, paragraph 136. And the

21 English is MLI-OTP-0040-3863 at paragraph 136, this is tab 17 on the Prosecution's

22 binder.

23 THE COURT OFFICER: [15:13:01] Ms Taylor, could you please repeat the ERN

24 number of the first page of the English version, please.

25 MS TAYLOR: [15:13:07] Certainly. It's MLI-OTP-0040-36 -- 0368 - my eyes are

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 failing me - at paragraph 136, at page 0396, paragraph 136. And for the Arabic it's
2 page 1682, paragraph 136, and it's tab 241 in the Defence binder.

3 THE WITNESS: [15:14:05](Interpretation) Yes.

4 MS TAYLOR: [15:14:10]

5 Q. [15:14:11] Do you recall the Prosecution asking you about allegations about
6 sexual abuse of women in detention?

7 A. [15:14:28] Yes.

8 Q. [15:14:32] And in your view were these allegations correct?

9 A. [15:14:46] I don't think so. According to the information that I had available to
10 me and according to what I was able to know about Timbuktu, this was impossible.
11 The secret of the discipline of the Islamic groups was in their scrupulous respect for
12 instructions and it was also in the fact that sanctions, punishment was inevitable and
13 that's the reason why these individuals respected the instructions and orders given.
14 They were very disciplined and they were rigorous in their respect of law and of rules.
15 And the question of sexual abuses is one of the most serious violations.

16 Q. [15:15:51] In terms of this issue of discipline, was a member of *Hesbah*
17 disciplined for alleged rape?

18 A. [15:16:11] Yes, I remember an incident like that. It wasn't proved that it was
19 true. A young girl claimed that an individual from Ansar Dine, I don't know if he
20 was Islamic police or *Hesbah*, she claimed that he had raped her or sexually abused
21 her. However, the person that she accused said that he had her consent and that he
22 promised the young woman that he would pay her for it, but he didn't pay. And so
23 I think that he was flogged. *It is undoubtable that he was flogged. And I also
24 think that he was deported from the town and excluded from the Ansar Dine group.

25 Q. [15:17:16] If we could turn to paragraph 138.

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 MS TAYLOR: Perhaps we could go into private session for this.

2 PRESIDING JUDGE MINDUA: [15:17:33](Interpretation) Private session, if you
3 would be so kind, madam court officer.

4 (Private session at 3.17 p.m.)

5 THE COURT OFFICER: [15:17:46] We're in private session, Mr President.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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- 25

Page redacted – Private session

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1
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Page redacted – Private session

(Open session at 3.39 p.m.)

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 THE COURT OFFICER: [15:39:50] We're in open session, Mr President.

2 PRESIDING JUDGE MINDUA: [15:39:55](Interpretation) Thank you, court officer.

3 Mr Witness, we have reached the end of your testimony for today. We have reached
4 our time limit. Unfortunately, we are going to ask you to be patient yet further
5 because we have not completed discussing your testimony. Tomorrow and Friday,
6 unfortunately the Chamber will not sit as the judges will be on a retreat. Therefore,
7 we will see you again here on Monday, 16 November at 9.30. Have you understood?

8 THE WITNESS: [15:40:47](Interpretation) Yes.

9 PRESIDING JUDGE MINDUA: [15:40:50](Interpretation) Thank you very much.

10 So, as usual, of course you will discuss your testimony with no one. I would now
11 ask you to be escorted from the room because the Chamber is going to discuss further
12 with the parties and participants. I hope you will have the opportunity to rest and
13 we will see you here again next week.

14 Obviously I would like to thank you once more.

15 (The witness exits the courtroom)

16 PRESIDING JUDGE MINDUA: [15:41:46](Interpretation) Mr Prosecutor, the witness
17 has left and we are in open session. You have the floor.

18 MR DUTERTRE: [15:41:53](Interpretation) Thank you, your Honour. I will be
19 brief.

20 We realise that we are in the middle of the cross-examination, and that the
21 cross-examination can discuss the points that Defence wishes, but at the same time
22 one can't take a little bit from here and a little bit from there because what is being
23 sought here is really the truth. And it's a question also of fairness for the witness.
24 And when we go from a bit of paragraph 154 to paragraph 158, the way the Defence
25 is approaching things don't allow the Chamber to get an overall picture of what is

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 being said by the witness.

2 And mentioning also that in 154, (Speaks English) the main source of pressures were
3 two, poverty and power, and they were perceived as the rulers. (Interpretation)
4 These are evidence which even in a cross-examination one can't sort of cut and pick
5 from the paragraphs. I mean, if you take the paragraph you must take the whole
6 information -- all the information that it contains.

7 That's what I wanted to have recorded in the transcript, your Honour.

8 PRESIDING JUDGE MINDUA: [15:44:02](Interpretation) Thank you, Mr Prosecutor.

9 What you say is clear but I see that the Defence would like to take the floor.

10 Ms Taylor.

11 MS TAYLOR: [15:44:14] Yes.

12 These interjections from the Prosecution are unacceptable. They're doing so
13 repeatedly in the presence of the witness and it's interfering our ability to put our
14 case.

15 Now the Prosecution had by my count about 20 hours to question this witness, and if
16 we are to talk about picking and choosing, that's exactly what the Prosecution did.

17 They did not pose a single question to this witness about this section. They chose
18 not to do so within their 20 hours. They cannot now stand up in the middle of our
19 cross-examination and try to correct their own examination strategy. The witness's
20 statement has not been admitted through Rule 68(3). He is testifying now on the
21 stand. He has the statement in front of him. He can answer my questions freely.

22 We are in the middle of doing a train of questions. We may come back to things
23 later, as did the Prosecution when the witness attempted to explain his position on
24 certain issues.

25 But what cannot and should not happen is for the Prosecutor to attempt to hijack our

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 own cross-examination and to verbally testify and read out the contents of a
2 statement that's not in evidence.

3 Thank you.

4 PRESIDING JUDGE MINDUA: [15:45:47](Interpretation) Very well. Thank you,
5 Ms Taylor, for your response.

6 With regard to time, the Prosecutor had 20 hours, you said, and you have been told
7 by the Chamber that you will have the time you require to carry out your
8 cross-examination, so please no need to be concerned about that.

9 This is a viva voce witness and therefore, on the basis of his statements, you can put
10 your questions. However, I also agree with the Prosecutor because -- this is what it
11 is, everything, every text outside this text is -- if a text is taken out of context, it's a
12 pretext, therefore we need to avoid chopping things up into little pieces to give what
13 we want to the witness.

14 So it's difficult to fix rules without appealing to your sense of cooperation, which you
15 have proven until now. You say that the Prosecutor keeps interrupting, we try to
16 stop this as much as possible, limit the objections, and so I appeal to your sense of
17 responsibility. So I think we agree, we cannot just say whatever we want to the
18 witness, when it is the turn of one party, one should respect that fact.

19 I think we will bring this to a close now and we will meet again on Monday to
20 continue.

21 I would like to thank, as usual, the parties, the Prosecution, Defence, Legal
22 Representative of Victims, I would like to thank our court reporters and our
23 interpreters. And let's not forget the security officers and our public, our public who
24 are always very patient. I wish you all a very pleasant evening. It's a little early to
25 say have a good weekend, it being Wednesday, but nevertheless we will see each

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 other again on Monday.
- 2 The hearing is adjourned.
- 3 THE COURT USHER: [15:48:43] All rise.
- 4 (The hearing ends in open session at 3.48 p.m.)