

1 International Criminal Court
2 Trial Chamber VIII
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi - ICC-01/12-01/15
5 Presiding Judge Raul Pangalangan, Judge Antoine Kesia-Mbe Mindua and
6 Judge Bertram Schmitt
7 Trial Hearing - Courtroom 1
8 Tuesday, 23 August 2016
9 (The trial hearing starts in open session at 9.04 a.m.)
10 THE COURT USHER: [9:04:16] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE PANGALANGAN: [9:04:39] Good morning. Good morning,
14 everyone. Welcome back to the courtroom.
15 Welcome again, Mr Witness.
16 I think the first order of the day is we're starting with open session.
17 And, Mr Prosecutor, what is your wish?
18 MR BLACK: [9:05:06] Yes, your Honour, we can remain in open session.
19 PRESIDING JUDGE PANGALANGAN: [9:05:08] Okay. Thank you. Thank you,
20 Mr Prosecutor.
21 MR BLACK: [9:05:12] And before we start the witness, I believe lead counsel may have
22 a couple of issues to raise.
23 MR DUTERTRE: [9:05:21] (Interpretation) Good morning, Mr President, good
24 morning, your Honours. Two very quick points: The first being that the court usher
25 has informed us that so far we have used 4 hours 38 of the 12 hours that were allotted to

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1 us. And the second point is that this morning I distributed to those in the courtroom,
2 Chamber, Defence and Victims, a copy of the interactive presentation that I made
3 yesterday. Thank you, Mr President.

4 PRESIDING JUDGE PANGALANGAN: [9:05:59] Thank you. We note that, Counsel.

5 MR BLACK: [9:06:04] May I proceed, your Honour.

6 PRESIDING JUDGE PANGALANGAN: [9:06:06] Yes, please.

7 MR BLACK: [9:06:08] Thank you very much.

8 Before we restart the questions if I could, with the usher's assistance, hand back to the
9 witness the same binder he had at the witness stand yesterday.

10 Thank you, sir.

11 WITNESS: MLI-OTP-P-0182 (On former oath)

12 QUESTIONED BY MR BLACK: (Continuing)

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

14 A. [9:06:35] Good morning.

15 Q. [9:06:36] Thank you for being here this morning. As you recall yesterday we
16 discussed a number of topics, including some information about the armed groups and
17 the institutions and primarily the investigation that you and your team conducted. Our
18 last topic, we began to discuss the September 2015 interview of Mr Al Mahdi which you
19 led.

20 This morning I'm going to ask you to look at some specific passages from the transcript of
21 that interview. And you can find the entire transcript at tab 7 to 34 of your binder. Now
22 that's more than 800 pages of transcript, as you know. Obviously I won't ask you about
23 everything in the interview, instead I'll pick just a very few select portions.

24 In some instances -- well, in fact most of the time I'll try to put the most relevant part of
25 the transcript on the screen so the public can follow along, but I think for you it would be

1 best to try to follow in the transcript. And sometimes in fact I'll ask you to look at three
2 or four pages and it will be easier for you on the hard copy than on the screen. Does that
3 seem to be a good way to proceed?

4 A. [9:07:59] That's good. Thank you.

5 Q. [9:08:02] And for the court officer, just a reminder we'll be using the laptop so I
6 think we need evidence 2 for the broadcast.

7 Thank you.

8 Witness, please turn first to tab 10 of the binder. And we'll start at the bottom of page
9 MLI-OTP-0037-0362. And when I refer to pages in the transcript I'll just use the last four
10 digits of the ERN usually.

11 And if you -- starting at line 940, if you could just read to yourself that part of the page
12 and on to the next page.

13 THE COURT OFFICER: [9:09:06] Mr Black, I'm sorry to interrupt, but I need the level
14 of confidentiality of the document, please.

15 MR BLACK: [9:09:12] This should all be confidential, please. But again, the pages that
16 I will show will not reveal any non-public information.

17 Q. [9:09:32] Witness, do you recall this portion of the interview?

18 A. [9:09:36] Yes, I do.

19 Q. [9:09:39] A couple of questions to help us follow the transcript: Who is
20 interviewer 1?

21 A. [9:09:47] That is myself.

22 Q. [9:09:51] And when we see the interpreter speaking English, he's translating the
23 Arabic language answers of Mr Al Mahdi into English; is that correct?

24 A. [9:10:03] That's correct.

25 Q. [9:10:06] And so where it says "interpreter" those are, in effect, Mr Al Mahdi's

1 answers translated into English?

2 A. [9:10:14] Yes.

3 Q. [9:10:15] Okay. On the screen to help you see the portion that I'm focused on I've
4 highlighted lines 940 to 948. Let me see if I can make them bigger.

5 According to the interview, when did Mr Al Mahdi say that he considered himself to be a
6 member of the Hisbah?

7 A. [9:10:45] Sorry, you're asking when he was a member of the Hisbah or a member of
8 the group?

9 Q. [9:10:50] Sorry, both.

10 A. [9:10:52] Okay. If we talk about this specific portion of the interview what we're
11 discussing here is -- my question is about whether there was a specific point when
12 Mr Al Mahdi joined the Ansar Dine.

13 Q. [9:11:08] Correct.

14 A. [9:11:10] And we had discussed this before, during the interview, and
15 Mr Al Mahdi had said -- had said how he expressed his willingness to be a part of this
16 movement. There was no official procedure to become a member, but in his own mind it
17 was at the point in April when he was appointed head of Hisbah that he himself, and
18 when he accepted to join -- to join the Hisbah that he himself felt that he became a
19 member of the Ansar Dine.

20 Q. [9:11:50] And in this same portion of the interview Mr Al Mahdi also explained
21 how he was asked to establish the Hisbah; is that correct?

22 A. [9:12:03] That's correct.

23 Q. [9:12:05] If you please look at page 0365, starting at line 1023 and following on to
24 the next page up to line 1047, and again I'll bring this up on the screen, who was it who
25 gave Mr Al Mahdi the task of creating the Hisbah?

1 A. [9:12:44] That was Abdelhamid Abou Zeid.

2 Q. [9:13:01] Thank you, sir. Please turn to tab 13 of the binder and have a look
3 specifically at page 0443 and the following several pages up to 0450. Just take a moment
4 to look through them, you don't need to read every word but familiarise yourself with
5 those passages.

6 Perhaps a point of clarification for the court officer and the Judges while he's reading.

7 These pages of the transcript can be shown in the public gallery also. And I'd ask that
8 when we do show things in the public if it could be from evidence 2 only, because that
9 way I'll control what's shown and what's not.

10 Witness, in this part of the interview did Mr Al Mahdi describe the duties and
11 responsibilities of the Hisbah?

12 A. [9:14:57] That's correct. And he -- he did it both in a more theoretical way, but
13 also to some extent the way it was implemented in Timbuktu.

14 Q. [9:15:10] On page 0444 he refers to two sort of complementary aims or
15 complementary missions of the Hisbah, what were those?

16 A. [9:15:26] Those are the prevention of vice and promotion of virtue.

17 Q. [9:15:33] And did he go on to give some examples of the kind of things that the
18 Hisbah was supposed to do?

19 A. [9:15:45] That is correct.

20 Q. [9:15:48] If you could look at page 0449, starting at line 254 to line 269, and I'll
21 highlight this portion on the screens as well, what is Mr Al Mahdi discussing in this
22 portion of the transcript?

23 A. [9:16:20] Here he describes how the -- how it would be prohibited to -- to worship
24 anything else than God. And this is how people should not pray to the graves and also
25 that you should not ask for anything in exchange -- in exchange for money, and this is in

1 relation to the fact that people in Timbuktu would have -- would have worshiped the
2 dead people in the graves.

3 Q. [9:17:04] In line 263 he talks about building a dome over the tomb. What is he
4 referring to when he uses the word "dome" or when the interpreter uses the word "dome"?

5 A. [9:17:23] Yeah, this was a point that was discussed at several times during the
6 interview, also because of the issue of translation as you -- as you point out, to make clear
7 that there were different parts of the -- of what was a shrine as a whole and the tomb is
8 referred to -- refers to the grave itself while the dome is the mausoleum built on top of it.

9 Q. [9:17:52] And here he's talking about the local population's religious practices at
10 the mausoleums; is that correct?

11 A. [9:18:04] That's correct.

12 Q. [9:18:08] And he considers that practice to kind of fall within the competence of the
13 Hisbah?

14 A. [9:18:20] To prevent that practice, yes.

15 Q. [9:18:23] Thank you.

16 Please look also at page 0450, so the next page, at lines 281 to 288. Here Mr Al Mahdi
17 mentions Friday sermons. Was there a sermon delivered the Friday before the
18 destructions, immediately preceding the destructions in this case?

19 A. [9:19:05] Yes, there was.

20 Q. [9:19:09] And did that sermon address the, let's say the religious rationale for the
21 destructions, for the need to destroy the mausoleums according to the groups?

22 A. [9:19:28] Correct. It -- as it, the way it was explained was that it explained the
23 prohibition to build anything over the graves and also the just -- it gave justification for
24 the destruction of them.

25 Q. [9:19:48] Unfortunately I don't have the page number handy, but did Mr Al Mahdi

1 in this interview say who drafted that particular sermon delivered the Friday just before
2 the destructions?

3 A. [9:20:05] Mr Al Mahdi said that he drafted it himself.

4 Q. [9:20:13] Please look at tab 14 of your binder, starting at page 473 up to 478, sorry,
5 0473 to 0478.

6 Witness, does this portion of the interview relate to the question, and I guess it's really
7 two questions as you just suggested, of whether in the view of the leaders of the armed
8 groups it was prohibited to construct mausoleums over graves and then a related but for
9 them distinct question of whether they should be, the mausoleums should be destroyed?

10 A. [9:22:00] That's correct.

11 Q. [9:22:02] Look please at page 0474, starting at line 166. And here Mr Al Mahdi
12 identifies two issues. He uses the word "answer" or the interpreter uses the word
13 "answer." But there are two distinct issues. The first, that they should not build
14 anything over the graves, and then the second, the idea of destroying the mausoleums; is
15 that right?

16 A. [9:22:42] Correct.

17 Q. [9:22:43] And what was Mr Al Mahdi's, what did he say was his position on the
18 first issue, whether or not it was prohibited to build over graves?

19 A. [9:23:03] Yes, in this particular part or section of the interview it comes across as if
20 Mr Al Mahdi talks about what his idea was. But over the -- over the section of the
21 interview it was clear that he based his view on jurisprudence, so on texts and references,
22 and he came to a conclusion which he says there was no -- no argument about which was
23 that it was prohibited to -- to build mausoleums over the graves.

24 Q. [9:23:36] And did he explain in fact that he conducted essentially kind of legal
25 research into this question? You referred to jurisprudence, and he looked back at

1 religious texts and jurisprudence to see if there was information on this question; is that
2 right?

3 A. [9:23:56] Correct. He talked about using up to 160 references where -- where this
4 was -- was made clear. And this was an important point that this was in particular what
5 Al Mahdi saw that the lead -- the leaders of the groups appreciated him for and took his
6 input for, for being able to read and interpret jurisprudence.

7 Q. [9:24:29] So that's the first issue, whether or not it's acceptable to build
8 constructions over graves. The second issue he refers to as a matter of Sharia policy.
9 And that's the issue of whether existing constructions such as the mausoleums should be
10 destroyed; is that right?

11 A. [9:24:54] Yes. And my understanding of why it is a matter of Sharia policy is
12 because he could not find jurisprudence on this matter.

13 Q. [9:25:09] And did he address in the interview whether who was the appropriate
14 person or body to make policy decisions? Was that something that fell within his
15 competence or was that for someone else?

16 A. Mr Al Mahdi explained very clearly that this was out of his competence and that it
17 was something for leaders even above the judicial authorities, so it's the -- it was
18 something for the main leaders.

19 Q. [9:25:44] Nevertheless, did he have himself a position on this second issue of
20 whether or not the mausoleums should be destroyed?

21 A. [9:26:00] The way it came across to me during the interview was that he had a view
22 which was based on the situation at the time, which -- which could either be a matter of
23 timing or possible reaction from the population. He at some point, I think it's even in
24 this section, he says that he was not asked for his opinion on this. But he did not have a
25 view on whether it should be done or not, but he had an opinion that it should not have

1 been done at that point.

2 Q. [9:26:45] Please have a look at pages 0476 to 0477. And I think perhaps this
3 addresses what you were just discussing. Is this on the same topic, these two issues, the
4 sort of legal issue of whether you could construct over graves as opposed to the second
5 issue, the policy issue of whether they should be destroyed?

6 A. [9:27:27] That's correct.

7 Q. [9:27:28] And at line 274 of the transcript to line 275, he says, "I told them, quote,
8 'At this stage I don't recommend you do it because it might ... hurt people's feelings.'
9 End quote.

10 How did you understand that? Whose people's feelings was he addressing there?

11 A. That would be the population of Timbuktu.

12 Q. [9:28:13] In the same tab please turn to page 0478, starting at line 306 and in fact
13 continuing on to the next page, up to line 339.

14 Is Mr Al Mahdi referring here to the mausoleums of Timbuktu and again to the local
15 religious practice of praying at the tombs?

16 A. [9:29:02] That's correct.

17 Q. [9:29:05] And I'll just highlight on the screen lines 322 to 330 where Mr Al Mahdi,
18 is it not correct, he refers to these people buried in the tombs as very prominent scholars
19 from the past and he refers to them as holy saints?

20 A. [9:29:34] Correct.

21 Q. [9:29:38] And then at line 329 he explains that according to Islamic Sharia, it is
22 prohibited to ask these dead persons for something.

23 A. [9:29:51] Correct.

24 Q. [9:29:54] On the same page, starting at line 344, just read to yourself up to line 349.
25 What is this passage referring to?

1 A. [9:30:26] This is about -- about what was just discussed before, the practice of
2 going -- of the population going to pray to the -- to the graves and how Abou Zeid had
3 asked Mr Al Mahdi to -- or, he gave him a task to prohibit people from doing that and
4 he -- he did it by going to these people, going to the cemeteries and what he -- the way this,
5 the term is translated at least is to sensitise them about this practice, and the fact that he
6 did this for -- for nearly one month, which I think in the context of the whole interview is
7 the month before the destructions.

8 Q. [9:31:28] Okay, thank you.

9 Still in tab 14 -- or, actually yeah, still in tab 14, please look at page 484.

10 At line 517 you asked Mr Al Mahdi about his role in the destructions. And from there,
11 from line 522 up to line 531 on the next page, what does he say in response? Paraphrase
12 it.

13 A. [9:32:25] Yes. What is discussed here is what -- what happened after the decision
14 had been taken that the mausoleums would be destroyed, and how from there on
15 Mr Al Mahdi takes on the responsibility because it is to be carried out in the framework of
16 Hisbah, which he was at this point the head of.

17 He also here, an important point that is discussed not only here but also in other parts of
18 the interview is that even it's the prevention of visible vice when -- and that's how when
19 we said earlier that one of the tasks of Hisbah is the prevention of vice, this was a specific
20 prevention of visible vice.

21 And he goes on to explain how the Hisbah as an institution was the one to take charge of
22 the individuals' tools and support to carry out this operation.

23 Q. [9:33:37] Still in tab 14, turn to page 0488.

24 THE COURT OFFICER: [9:33:56] Mr Black, your microphone is not activated.

25 MR BLACK: [9:33:59] Thank you. Sorry about that.

- 1 Q. [9:34:01] Please turn to page 0488, still in tab 14.
- 2 Witness, I've highlighted three separate sections on the screen here. The first one from
- 3 line 633 to 638, Mr Al Mahdi again explains that he was using Al Hisbah funds to cover
- 4 the expenses and to buy more tools and things like that; is that correct?
- 5 A. [9:34:31] Correct, this is the practical execution of what we just -- what he had just
- 6 described as his responsibility.
- 7 Q. [9:34:41] Then at line 642 to 643 he says that the emirs are the leaders, Yahia and
- 8 Abdelhamid came to supervise the destruction.
- 9 Again, what's another name for Abdelhamid? How is he known?
- 10 A. [9:35:03] His full name is Abdelhamid Abou Zeid.
- 11 Q. [9:35:10] And did Mr Al Mahdi, perhaps at other points in the interview, clarify at
- 12 which sites and on which occasions the leaders came? We don't have to go through
- 13 those specifically but was it a few, some or all?
- 14 A. [9:35:28] This was not fully clear but it was several of them. It was not clear if it
- 15 was at each and every, but definitely on several of the locations.
- 16 Q. [9:35:41] Then from lines 651 to 666 Mr Al Mahdi explains that he didn't personally
- 17 take the decision to destroy the sites, but he was responsible, as he says, for dividing the
- 18 work between the different individuals.
- 19 Who were the individuals that he was organising or which institutions did they come
- 20 from?
- 21 A. [9:36:25] There was -- there were members of -- of various institutions taking part
- 22 in the destruction. Mr Al Mahdi had his -- had his own subordinates from -- from the
- 23 Hisbah, then a large resource was from -- were individuals from the training centres that
- 24 were -- that were sent to -- to take part, there was also members of the Islamic police and
- 25 the security battalions.

1 Q. [9:37:04] And is it your understanding based on the interview that all these
2 different individuals from different -- different institutions, they were under the
3 supervision of Mr Al Mahdi for the purpose of implementing these destructions?

4 A. [9:37:23] That's correct.

5 Q. [9:37:29] Turn please to the next page, 0489, and look at lines 693 and then up
6 actually to line 704, which is on the next page. What is being discussed at this portion of
7 the interview?

8 A. [9:38:10] Here I'm asking Mr Al Mahdi how it was decided which -- which -- now
9 I'm using the wrong word here, "tomb", actually, but I think we clarified it. It was the
10 question of in which order the mausoleums would be destroyed and -- and who took the
11 decision. Mr Al Mahdi says that it was his decision and that they, first of all, this is not in
12 this part, but -- but we discussed before about the sensitisation, he said that he selected the
13 cemeteries based on where -- where most of what were translated to me as transgression
14 had taken place during his sensitisation project during that month for them to be -- for
15 them to be the best examples, and from those that he had selected they decided to start
16 from the north and move towards the south.

17 Q. [9:39:17] Thank you. Very briefly, on page 490 from lines 732 to 735, he refers to
18 explaining the religious basis for decisions to journalists at the site. During the interview
19 did the accused recognize himself on a number of open-source videos actually giving such
20 explanations to the media?

21 A. [9:39:51] Yes, he did.

22 Q. [9:39:56] Look now please at tab 16 of the binder. And turn to page 0538, starting
23 at line 636 and up to line 666 on the next page, and I think this addresses a point that you
24 just mentioned. Let's see there, at the top of 0539 he says:

25 "I noticed that most of the Sharia infringements were carried out in these particular three

1 cemeteries ..."

2 Is that what you were referring to just a moment ago where he visited the various
3 cemeteries and sort of monitored the activities of the local population to see where the
4 prayers and other prohibited activity was taking place?

5 A. [9:41:08] That's correct. And of course again we have to remember that this is
6 translation, here is the word "infringement" and on line 644 the interpreter says
7 "transgression". I think it refers to the same thing.

8 Q. [9:41:20] Okay. Which three cemeteries was he referring to, if you recall?

9 A. [9:41:44] I'm trying to look at how the binder is divided at this point. If I
10 remember correctly we were early on in the interview here. Mr Al Mahdi had been
11 asked in an open way about -- about the number of cemeteries, which cemeteries were
12 attacked. And at this point he was talking about three -- he remembered that it was three
13 cemeteries that had been -- that had been subject to these destructions or attacks. I
14 believe it's on the following day when we returned to the interview that he says that he
15 had given it some thought and he remembered that there was actually four cemeteries.
16 So here he's still talking about the totality of three cemeteries which was in his head at that
17 time.

18 Q. [9:42:39] Thank you for that, that clarification, and that raises an interesting point:
19 During the interview were there in fact times when Mr Al Mahdi on his own sort of
20 instigation said, you know, I've been thinking about things and I recall this is slightly
21 different, or he corrected things that he'd said maybe a previous day as his memory was
22 refreshed?

23 A. [9:43:09] That's correct and it's something very typical in these type of interviews
24 with discussing issues from the past. And while discussing the witness will remember
25 how things actually developed, so the transcript needs to be looked at as a whole and not

1 pick out piecemeal parts of it.

2 Q. [9:43:31] And was it your impression that he was --

3 MR GILISSEN: [9:43:36] (Interpretation) Your Honour, your Honour, I'm sorry but
4 we don't have any French interpretation. The French interpretation is no longer coming
5 to us. Thank you very much.

6 PRESIDING JUDGE PANGALANGAN: [9:43:46] Yes, can we ask if that problem can
7 be solved.

8 It works now? Good. Thank you so much.

9 You can now proceed. Perhaps, counsel, you can move along on this point. I think you
10 have spent quite some time on the point of the participation by the accused and this is
11 actually covered in the agreement. Please move along.

12 MR BLACK: [9:44:30] Thank you, your Honour. I'm grateful for the guidance there.

13 Q. [9:44:50] Witness, if you look at tab 25 in your binder, and please look at page 0843.

14 I'm just going to ask you a very quick question.

15 At line 1032, Mr Al Mahdi identifies someone on a video taken at one of the sites and in
16 fact identifies himself; is that right?

17 A. [9:45:39] Yeah, that's correct.

18 Q. [9:45:42] And I won't go through them, but is it correct that during the interview
19 Mr Al Mahdi was shown a number of videos of the destruction or of statements made of
20 the destruction and he -- he placed himself, he identified himself at the destruction sites
21 for several of the mausoleums, the door of the Sidi Yahia mosque and also the two
22 mausoleums outside of the Djingareyber mosque?

23 A. [9:46:13] That's correct. And he -- of course before that he had -- he had placed
24 himself at these locations in his narrative and the videos he -- on top of that he recognized
25 himself on the videos.

1 Q. [9:46:31] Thank you. One final portion before we conclude with the transcript:
2 Please look at tab 33, starting at page 1104.
3 And if you start really at line 741, please read to yourself the rest of that page and the first
4 part of the next page. This is basically the end of the interview, and I believe you're
5 wrapping up. And you ask Mr Al Mahdi in line 743 if he thinks there's anything else that
6 should be added to the interview. What was his response?

7 A. [9:47:42] Well, Mr Al Mahdi expresses that he -- that through the process he's, like
8 we just said before, he's remembered a lot of things by discussing them. He does not
9 express that he has anything specific to add. However, I believe at a later point, he -- it
10 is -- it is clear that the more you talk the more you could remember, but he makes it clear
11 here that he has -- that he has -- he does not feel that there is anything that needs to be
12 added to this about what has been discussed.

13 Q. [9:48:33] Witness, do you think it's fair to say that during this interview
14 Mr Al Mahdi to a significant degree accepted responsibility for his own role in the war
15 crime of destroying buildings dedicated to religion and historic monuments?

16 A. [9:48:52] That's correct.

17 Q. [9:48:57] Would you say that during this interview he cooperated with your
18 investigation?

19 A. [9:49:07] Yes, he did.

20 Q. [9:49:12] And has the information that he provided during that interview assisted
21 in the investigation of this and other crimes in Mali?

22 A. [9:49:27] Yes, that's correct.

23 Q. [9:49:30] Thank you very much.

24 MR BLACK: [9:49:32] Thank you for your patience, your Honours. No further
25 questions.

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- 1 PRESIDING JUDGE PANGALANGAN: [9:49:35] Thank you very much, Counsel.
2 Any questions from the Defence?
- 3 MR AOUINI: [9:49:43] (Interpretation) Thank you, Mr President. I have a couple of
4 questions to raise to the witness, to ask to the witness and I won't be long. I will only
5 limit myself to 10 minutes.
- 6 PRESIDING JUDGE PANGALANGAN: [9:50:08] Yes, please proceed.
- 7 MR AOUINI: [9:50:13] (Interpretation) Thank you, Mr President, your Honours.
- 8 QUESTIONED BY MR AOUINI: (Interpretation)
- 9 Q. [9:50:21] Good morning, Mr Witness.
10 In your statement we heard that you conducted investigations with Mr Al Mahdi; is this
11 true? Can you confirm this? Can you confirm that you personally conducted the
12 investigations with Mr Al Mahdi?
- 13 A. [9:50:53] Yes, your Honours. Perhaps it's a translation issue. If you're talking
14 about conducting the interview with Mr Al Mahdi, that's correct.
- 15 Q. [9:51:12] Thank you. I would like to ask from you some clarifications. In
16 particular, I would like to know if during the interview you conducted with Mr Al Mahdi,
17 if the latter was cooperative and was truthful in what he said?
- 18 A. [9:51:53] Yes. During the interview -- sorry, I'm getting Arabic in my ears.
- 19 MR BLACK: [9:52:03] Your Honour, we were getting Arabic language on the English
20 channel I believe.
- 21 PRESIDING JUDGE PANGALANGAN: [9:52:08] That is correct, counsel, same here.
- 22 THE WITNESS: [9:52:30] When --
- 23 PRESIDING JUDGE PANGALANGAN: [9:52:31] Well, I'm sorry, so it works now.
24 Thank you so much, court officer.
- 25 And, Mr Witness, can you just repeat the last answer so that the Court -- the record will

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1 reflect the answer in English.

2 THE WITNESS: [9:52:43] The answer to the previous question?

3 PRESIDING JUDGE PANGALANGAN: [9:52:46] To the last question.

4 THE WITNESS: [9:52:48] Okay, this one I think I didn't start yet.

5 PRESIDING JUDGE PANGALANGAN: [9:52:52] Okay.

6 So please proceed.

7 THE WITNESS: [9:52:56] Thank you, your Honour.

8 Mr Al Mahdi undoubtedly cooperated throughout the interview and it was very helpful
9 to us. I want to make clear that what we've been talking about here yesterday and today,
10 even though I have made statements about what I believe to be a conclusion, I've talked
11 about what the collected evidence show.

12 What Mr Al Mahdi told us during the interview to a large extent corroborated what we
13 knew from before and also specified and corrected -- or not corrected, but specified and
14 clarified certain issues.

15 When it comes to -- to truthfulness, I don't want to comment on that, but it comes across
16 as he replied in an honest manner.

17 MR AOUINI: [9:54:05] (Interpretation)

18 Q. [9:54:06] Thank you, Mr Witness. Can you confirm that throughout the interview
19 Mr Al Mahdi told you that he did not deliberately write Friday's sermon or preach to
20 circulate it to the scholars and imams, but it is Mr Abdallah Al Chinguetti who asked him
21 to do so, to write the preach or the sermon to distribute it to the imams and to the
22 scholars?

23 A. [9:54:56] It's possible that I would need to go back to see the exact passage of the
24 interview, but what I remember is that there was -- there was these discussions going on
25 where -- and where Sheikh Abdallah, who was an -- Al Mahdi considered as a superior,

1 was the one who suggested that -- that the mausoleum should be destroyed.
2 Abdallah Al Chinguetti had written a document that -- that provided the argument and
3 the justification for it. And Mr Al Mahdi used this after the decision had been taken,
4 Mr Al Mahdi used this document for the purpose of drafting the Friday sermon.

5 Q. [9:55:55] Thank you, Mr Witness. This is indeed what I wanted to come to, that is
6 that Mr Abdallah Al Chinguetti, after the emirs had taken the decision of destruction, he
7 personally gave Mr Al Mahdi this statement, including the issues or the points based on
8 which Mr Al Mahdi had drafted Friday's sermon and circulated it to the preachers.

9 Thank you for the clarifications, Mr Witness.

10 Last question to the witness: During the interview, did you have a feeling that in the
11 intonation of Mr Al Mahdi, did you have a feeling that Mr Al Mahdi was remorseful for
12 what he had done? Did you feel this remorse in the pitch of his voice and the way he
13 was answering your questions? Did you feel that Mr Al Mahdi had regrets for what he
14 did?

15 A. [9:57:31] The main feeling and understanding I got from -- from the totality of the
16 interview with Mr Al Mahdi was that we felt very appreciate -- it was appreciated and
17 respectful from Mr Al Mahdi that he owned up to what he had done, he was honest about
18 what had taken place and he explained why it had happened. And he took
19 responsibility for his own deeds.

20 He was very interested in understanding the Rules of the International Criminal Court,
21 even though he did not know them from when we first met him. And he understood
22 that in certain jurisdictions what he did would be considered a crime.

23 I must say I appreciate if -- if through this process Mr Al Mahdi feels remorse or
24 remorseful, but it was not the main feeling I got from the interview. I felt that he
25 was -- he took responsibility for what he had done.

1 Q. [9:58:53] Thank you. I have a last question for more details and clarification.
2 Because I had attended the interview from the beginning to its end, and since I am in the
3 Defence party, I had a feeling that Mr Al Mahdi while answering your questions wished
4 to assume the responsibility and to acknowledge all the acts alleged and directed to him.
5 And in his answers he was trying to convey to you and later on to the Court that by
6 saying the truth, he wanted indeed to contribute to the reconciliation because at some
7 point he mentioned Timbuktu, his parents and his relatives in Timbuktu, the inhabitants
8 of Timbuktu, he wanted in some way to help us reach the truth and national reconciliation
9 in Mali.

10 Did you have this feeling? Because I had a feeling that he was remorseful, he was
11 truthful. And through the words he chose, he selected, because he was speaking Arabic,
12 I felt that he was seeking to tell everybody, to tell you first and everybody later on and the
13 Court as well that by saying the truth he wished to contribute to reach justice because he
14 wanted to assume the responsibility of what he had done and contribute to national
15 reconciliation in Mali. Thank you.

16 PRESIDING JUDGE PANGALANGAN: [10:01:12] There was a question somewhere
17 there. If you recall, do you recall the question, Mr Witness, please reply to the question.

18 THE WITNESS: [10:01:21] Thank you, your Honour. I believe I should not try to
19 guess or estimate what went on inside Mr Al Mahdi's head and how this has developed.
20 I would make a difference between or a distinction between the truth telling, taking
21 responsibility on one hand and being remorseful on the other hand.
22 Perhaps in understanding his language you may have a different understanding of what
23 his feeling was. At the end of the interview, Mr Al Mahdi said that he did what he did
24 with good -- with good intent and that's what -- what it was about at the time when
25 he -- when he -- when these destructions took place. Now I appreciate that and it's for

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1 you and Mr Al Mahdi to say whether he feels remorse, but I don't want to take a stand on
2 that.

3 MR AOUINI: [10:02:32] (Interpretation) Thank you, Mr Witness.

4 And I'd like to thank the Court as well.

5 PRESIDING JUDGE PANGALANGAN: [10:02:36] Thank you. Thank you as well,
6 Counsel.

7 And will the Prosecution wish to ask questions in re-direct?

8 MR BLACK: [10:02:44] No questions, your Honour. Thank you.

9 PRESIDING JUDGE PANGALANGAN: [10:02:46] Thank you, Counsel.

10 Mr Witness, the Court thanks you for answering the questions put to you this morning
11 and yesterday and in assisting this Chamber. This concludes your testimony. You are
12 now excused and we thank you.

13 THE WITNESS: [10:03:12] Thank you, your Honours.

14 (The witness is excused)

15 PRESIDING JUDGE PANGALANGAN: [10:03:35] Mr Black, are you ready with your
16 next witness?

17 Mr Dutertre, are you ready with your next witness?

18 MR DUTERTRE: [10:03:43] (Interpretation) Yes, your Honour. I'm just going to
19 switch places here and we will then be ready to begin with the next witness.

20 PRESIDING JUDGE PANGALANGAN: [10:03:53] Yes, please. Thank you so much.
21 (Pause in proceedings)

22 (The witness enters the courtroom)

23 MR DUTERTRE: [10:06:02] (Interpretation) Your Honour -- oh, yes, indeed, I see.
24 That was the point I was about to address.

25 PRESIDING JUDGE PANGALANGAN: [10:06:19] Let us now begin Mr Dutertre. We

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1 will --

2 MR DUTERTRE: [10:06:27] (Interpretation) If you will just allow me a moment,
3 your Honour, I just need to get the transcript up and running on the screen.

4 PRESIDING JUDGE PANGALANGAN: [10:06:35] Yes, of course.

5 MR DUTERTRE: [10:07:19] (Interpretation) I shall now begin, your Honour.

6 PRESIDING JUDGE PANGALANGAN: [10:07:27] We now proceed to the testimony
7 of Witness P-151, Mr Francesco -- please tell me if I'm pronouncing this
8 correctly -- Bandarin or Bandarin?

9 THE WITNESS: [10:07:47] It's Bandarin, Mr President.

10 PRESIDING JUDGE PANGALANGAN: Bandarin. Welcome to the Court,
11 Mr Bandarin.

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13 THE WITNESS: [10:07:51] Thank you, your Honour.

14 PRESIDING JUDGE PANGALANGAN: [10:07:53] A UNESCO representative has been
15 authorised to attend the hearing, and may I ask the representative to identify himself for
16 the record.

17 MR GIUDICI: [10:08:00] Good morning, your Honour, my name is Esteban Giudici, I
18 work for the Office of International Standards and Legal Affairs of UNESCO.

19 PRESIDING JUDGE PANGALANGAN: [10:08:06] Thank you.

20 Mr Bandarin, we now proceed to the solemn undertaking under Rule 66(1) of our Rules.
21 There should be a card in front of you with a solemn undertaking to tell the truth. Please
22 read it out.

23 THE WITNESS: [10:08:25] Thank you, your Honour. I solemnly declare that I will
24 speak the truth, the whole truth and nothing but the truth.

25 PRESIDING JUDGE PANGALANGAN: [10:08:32] Thank you, Mr Bandarin.

1 I will just read out the conditions for the testimony of Mr Bandarin.
2 Upon the request of the Prosecution and at the behest of the UNESCO, the Chamber has
3 permitted you to testify under certain conditions today. These conditions were set out in
4 decision 145, but the Chamber will repeat them now.
5 First, your testimony shall be limited to the procedures, legal framework, effects and
6 consequences of the inscription of sites on the UNESCO World Heritage List and their
7 implementation. Under those terms you are not to be asked questions on the manner in
8 which the sites were destroyed or the persons responsible.
9 Second, a representative of UNESCO has been authorised to attend the hearing and he has
10 identified himself for the Court, and to consult with, with you or be consulted by you and
11 make submissions with leave of the Chamber. So please ask for leave been you intervene
12 later. Any intervention by the UNESCO representative will be subject to prior
13 authorisation by the Chamber at each point.
14 And this one is addressed to Mr Bandarin, if you feel like a question goes beyond the
15 terms of these conditions or if you wish to speak to the UNESCO representative, please
16 inform the Chamber accordingly.
17 Further, the Chamber notes that the Prosecution intends for this witness to provide expert
18 testimony on UNESCO's roles and mission, including in Mali, the system, importance and
19 meaning of World Heritage, the process of listing a property on the World Heritage List,
20 the consequences, as well as the meaning of World Heritage in Danger as a term.
21 Does the Defence, and I address this to Mr Aouini, does the Defence object to this witness
22 giving expert testimony on these topics?
23 MR AOUNI: [10:10:55] (Interpretation) Thank you, Mr President. We do not object
24 to this.
25 PRESIDING JUDGE PANGALANGAN: [10:11:02] Thank you. Thank you so much,

1 Counsel.

2 The Chamber thus permits this witness to testify as an expert.

3 Now a few practical matters. Everything you say here, Mr Witness, is written down and
4 interpreted into French and English. It is important for you to speak clearly and at a
5 moderate or rather slow pace. We want to make sure that your words are well
6 understood by the interpreters and by the rest of us. Please speak into the microphone
7 and start speaking only when the person asking you the question has finished. To allow
8 for the interpretation, everyone has to wait a few seconds before starting to speak. I
9 recommend to you when the lawyer has asked his or her question please count in your
10 head to three and only then to give your answer. If you have any questions yourself just
11 raise your hand so we know you wish to speak and the Court will give you a chance to
12 speak. That is clear to you, I hope, Mr Witness?

13 Thank you. And Mr Dutertre, please proceed with your questions.

14 MR DUTERTRE: [10:12:12] (Interpretation) Thank you, your Honours.

15 And just to be effective and expeditious, we are not going to raise the issue of the actual
16 destruction of the buildings. I will be addressing a number of points not covered by the
17 agreed facts so that way we will be able to proceed expeditiously.

18 PRESIDING JUDGE PANGALANGAN: [10:12:47] Thank you.

19 MR DUTERTRE:

20 QUESTIONED BY MR DUTERTRE:

21 Q. [10:12:52] Good morning, Mr Bandarin. We met very briefly yesterday at a
22 courtesy meeting, and I believe that was the case for all the parties, and you're well this
23 morning?

24 A. [10:13:08] Very well.

25 Q. [10:13:10] Thank you. Mr Expert Witness, now, currently you are assistant

1 director general at UNESCO; is that not the case?

2 A. [10:13:36] Yes.

3 Q. [10:13:38] More specifically, as part of your duties you are responsible for all
4 aspects of UNESCO's work relating to culture?

5 A. [10:13:47] Yes.

6 Q. [10:13:51] Would it be correct to say, sir, that UNESCO is the largest international
7 organisation that deals with cultural matters throughout the world?

8 A. [10:14:04] Yes, I think we can affirm that, because this is the specific mandate of the
9 organisation within the UN system.

10 Q. [10:14:12] Thank you.

11 Now, within UNESCO the branch that handles culture specifically is called the Centre for
12 World Heritage -- correction, World Heritage Centre; isn't that the case?

13 A. [10:14:40] It's actually a bit different. The organisation that deals with culture is
14 this culture, sector of culture, which I direct. And within the sector of culture we have
15 different bodies, one of them is the World Heritage Centre, the centre that deals with the
16 World Heritage Convention, the secretariat of the World Heritage Convention that deals
17 with the listing of UNESCO protected sites. But the culture sector also includes other
18 departments that deal with other types of heritage, for instance, intangible heritage and
19 other programmes and conventions. In fact, the culture sector in UNESCO manages all
20 the six international treaties concerning culture.

21 Q. [10:15:29] Could you mention these various treaties that come under your area?

22 A. [10:15:34] Yes, okay. We have the first international convention called
23 the Hague Convention, the 1954 convention for the protection of heritage in case of armed
24 conflict; then we have the Paris Convention, the 1970 convention, for the fight against
25 illicit traffic of cultural heritage; then the World Heritage Convention, the convention for

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1 the protection of cultural and natural heritage in 1972; then we have the 2003
2 Intangible Heritage, a convention for the safeguard of intangible heritage; also the 2001
3 convention for underwater archaeological heritage; and finally the 2005 Convention on
4 the Protection and Promotion of the Diversity of Cultural Expressions. These are the six
5 conventions that we manage and in fact these are the only six international conventions
6 concerning cultural heritage.

7 Q. [10:16:39] Now amongst the six conventions what is the standing or the role
8 played by the Paris Convention you mentioned, the convention for the protection of
9 world cultural and --

10 THE INTERPRETER: [10:17:01] Overlapping speakers.

11 THE WITNESS: [10:17:03] Yes. We call it shortly there, World Heritage Convention.
12 This is among the sixth, the most, say, ratified convention. I will not use the term most
13 important because that's judgmental, but certainly the one that is more ratified. We have
14 193 member states that have signed this convention and probably the most popularly
15 known international treaty in this area of culture globally. It is, as I mentioned in my
16 witness statement, one of the, perhaps the most known programmes of the entire
17 organisation. In the world UNESCO's very often known mostly for the protection of
18 sites of culture and national heritage.

19 PRESIDING JUDGE PANGALANGAN: [10:17:44] May I just remind the counsel and
20 the witness both to pace the -- their speaking --

21 THE WITNESS: [10:17:50] Yes.

22 PRESIDING JUDGE PANGALANGAN: [10:17:51] -- for the interpreters.

23 THE INTERPRETER: [10:17:53] Many thanks from the interpreters.

24 MR DUTERTRE: [10:17:59] (Interpretation)

25 Q. [10:18:02] Sir, could you explain, and then I will turn to your CV, but for the time

1 being could you explain why the 1972 convention was so successful, why so many
2 countries ratified it?

3 A. [10:18:23] Yes, I think this -- it's an important, say, change in our recent evolution,
4 social evolution. Heritage, I can say, has become a very important item in public policy
5 in the past 50 years. We have witnessed and perhaps even promoted this change from
6 something that was more, say, limited to an elite, to something. Heritage today is really
7 within the reach and within the interest of large masses of people. Obviously this
8 has -- has to do also with the societal changes around the world, greater education of
9 course, greater interest for the traditional heritage and the components of -- in the history
10 of society.

11 I also believe that the growth of global tourism has added to this success because people
12 have realised that the world is full of very important heritage pieces, both in culture and
13 nature, and that these pieces not only play an important role in the societies where they
14 are placed, but also belong to a greater, say, understanding of the beauty and relevance of
15 heritage in our world.

16 It is, therefore, we are quite satisfied with the results of this project -- or, this programme.
17 Probably as I said one of the most ratified conventions in, treaties in the world, something
18 that in a way member States support that people in the -- the different societies recognize,
19 and in a way a beacon of the activities that UNESCO has conducted in the past 70 years
20 since its creation.

21 I think we -- we could elaborate this further if you -- if you so wish, but in a world
22 UNESCO's been one of the, say, components of the creation of a very important idea that
23 heritage that belongs to one society can also belong to the world.

24 Q. [10:21:05] I think you've already answered my next question, at least in part.

25 From a historical point of view, why is it that States agreed to this convention in 1972?

1 What were the grounds or the justification for establishing this convention which sets
2 out --

3 A. [10:21:33] Well, the history of the, say, birth of the 1972 convention is quite -- quite
4 interesting and quite important I would say because in a way it represents the merging of
5 two main streams of heritage preservation ideas, one linked to cultural heritage and I
6 would say that it was mostly originated in this continent in Europe in the last century
7 more or less and the other one concerning natural heritage. Perhaps at that time it was
8 mostly in the Americas where the principle of natural heritage conservation was -- was
9 established.

10 In the 1960s these two streams of thought developed the idea of creating an international
11 convention. In fact, at the beginning there were two projects, two separate projects, one
12 for culture and one for nature.

13 It was at that time the US administration literally the White House that tried to merge
14 these two streams of thought, and during a number of meetings that took place in 1970
15 and '71 at the White House in Washington the idea of creating a unique, say, joint
16 international treaty for culture and nature came about and this later developed into the
17 World Heritage Convention.

18 Let me also state that this is the only international treaty that covers both culture and
19 nature. We have, as you heard, a number of cultural heritage treaties at UNESCO and
20 there are of course a number of treaties that protect natural heritage, not managed by
21 UNESCO but by other bodies, but this is the only one that actually puts these two types of
22 heritage within the same system of protection and listing, and I think this gives the World
23 Heritage Convention a central role in the world of heritage preservation.

24 Q. [10:24:03] I have one question about your CV and the convention: How many
25 sites have been registered on the world heritage -- (Overlapping speakers)?

1 A. [10:24:12] Well, just after the recent meeting of the World Heritage Committee
2 which took place in Istanbul a month ago, we reached 1051. That's the final figure.

3 Q. [10:24:30] Thank you. We have seen the role of UNESCO and the various bodies
4 within UNESCO and the various conventions, including the 1972 convention that
5 UNESCO is holding or -- so perhaps I'll ask you this question, perhaps you'll understand
6 better if I put it this way: Could you describe in greater detail the various functions that
7 you carried out as assistant director general of UNESCO responsible for culture?

8 A. [10:25:12] Yes, thank you. Yes, but first of all, as I said, I'm responsible for the
9 organisation of the conduction of these six treaties which are, of course, a large part of
10 my -- my work because most of the activities in the culture sector runs around the
11 management of the treaties.
12 Managing the treaties means essentially ensuring a very effective delivery of the services.
13 We are the secretariat of all these six treaties and therefore we have to serve the member
14 States for all the functions that are related to the lives of the conventions. For instance,
15 we organise the annual meetings of the -- the different committees, we implement their
16 decisions, we manage during the period between one meeting and the other all the
17 activities that are -- you know, that have been given to us following the instructions and
18 the decisions of the committees and so on, and then we try to also expand the conventions
19 by doing the fundraising in order to acquire resources for -- for the different activities, and
20 of course, you know, conducting missions and conducting meetings that are relevant and
21 pertinent for them.

22 Clearly, this is not all of what we do because we also have a number of activities that are
23 not related to the conventions. Some of them are somehow, let's call it, prospective
24 activities which we try to identify new areas of work where UNESCO can assert a role.
25 Others are projects that are negotiated with member States and then we implement

1 through -- directly through our services at headquarters or one of the -- or 75 offices that
2 we have in the rest -- in the field.

3 We also have to deal with this relationship with the field offices, which is rather, say,
4 intensive and complex because we have to ensure coherence in the management of the
5 different programmes and we have to offer support to the field offices in their activities.
6 So there is a lot of this.

7 I also in my tasks, of course I have, you know, the administrative tasks. I'm managing
8 the staff of the sector. We have about 160 people at headquarters and about 50, 60 in the
9 field that I have to supervise, so I'm responsible for the performance, evaluation and
10 management of all these personnel.

11 I have to of course do a lot of representation of the organisation both when requested by
12 the director general and in -- you know, as head of the culture sector. So I, you know, of
13 course I take a lot of -- I undertake a lot of missions in the field and so on. Very often I
14 represent the director general at headquarters or in the field when requested.

15 And of course any other thing that, you know, requires -- is required by the situation.
16 For instance, in recent times we had to work a lot on the issue of security because after the
17 Paris attacks, you know, we had to change a lot our security, so I'm also responsible as
18 part of the SMT, the senior management team, of the security of the staff and as a proper
19 implementation of the security regulations and instructions.

20 Q. [10:29:20] Thank you. That was a very fulsome response. I gather that you
21 retired shortly -- a while ago, but before that you had been assistant director general
22 from 2010 to 2014. Could you explain to us why it was that you were retired but then
23 called back to service?

24 A. [10:29:52] Yes, thank you for the question. I -- in fact I retired from the position of
25 assistant director general in June 2014 and I resumed my previous position as professor

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1 of -- of planning at the University School of Architecture in Venice.

2 A year after, in October 2015, the director general informed me that my successor had
3 decided to resign and she asked me whether I could take an interim position in order to
4 ensure transition, so I accepted to take the interim function that I fulfil right now.

5 Now, this interim position has been extended now to the end of the year and I presume as
6 the mandate of the director general will end in November 2017 that she will also extend
7 my position as interim ADG until the end of her mandate for the simple reason that it
8 makes little sense to recruit somebody that will of course have to leave at the moment that
9 she will leave because all the ADGs are leaving with her.

10 Q. [10:31:03] Thank you. So as a matter of fact you have been in this position for five
11 years?

12 A. [10:31:17] Yes. Up to -- up to now, yes.

13 Q. [10:31:19] Do you remember having been interviewed by the investigators of the
14 OTP in 2015? Do you remember that you provided them with a CV of about 20 pages?

15 A. Yes, yes.

16 MR DUTERTRE: [10:31:31] (Interpretation) Mr President, I would like this document
17 to be displayed, it is a document that can be displayed publicly, document 0029-0864,
18 which is in tab 2 of your binder.

19 PRESIDING JUDGE PANGALANGAN: [10:31:56] Yes, please proceed.

20 MR DUTERTRE: [10:32:03] (Interpretation)

21 Q. [10:32:04] Mr Witness, please press evidence 2, that button, if you can see it.

22 A. [10:32:10] I don't see it, but -- oh, yes, yes. But no page is available. It doesn't
23 matter, I have it here on paper.

24 MR DUTERTRE: [10:32:57] (Interpretation) Court officer, please could you assist and
25 display it on evidence 2, please.

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1 Q. [10:33:17] While this technical issue is being addressed, Mr Witness, I would urge
2 you to be patient and to answer after a few seconds following my question; is that fine?

3 A. D'accord. Excusez-moi.

4 THE COURT OFFICER: [10:33:34] You do have the floor, you only need to release the
5 document.

6 MR DUTERTRE: [10:33:48] (Interpretation) What we are asking is for the court officer
7 to kindly display the document herself.

8 THE COURT OFFICER: [10:33:59] It will then be displayed on the evidence 1 channel.

9 MR DUTERTRE: [10:34:17] (Interpretation)

10 Q. Mr Witness, do you recognize this document?

11 A. Yes.

12 Q. Is it your CV, the CV you handed to the OTP?

13 A. Yes.

14 THE INTERPRETER: [10:34:29] Overlapping speakers.

15 THE WITNESS: [10:34:31] It is. It is.

16 MR DUTERTRE: [10:34:34] (Interpretation) Court officer, could you please go to page
17 0870.

18 Q. [10:35:16] Do you see? Are you there, Mr Witness?

19 A. [10:35:22] Yes, I see it.

20 Q. [10:35:23] On that page we have a list of the various initiatives that you took and
21 followed up during your term of office in 2010 to 2014 in your capacity as assistant
22 director general for culture.

23 As we go to the bottom of the page, the penultimate bullet point, you would see the
24 following in English:

25 (Speaks English) "Promotion of activities for the celebration of the 40th anniversary of

1 the World Heritage Convention in 2012."

2 (Interpretation) Mr Witness, could you explain to the Court the significance of that
3 celebration and its impact?

4 A. [10:36:17] Yes. Of course, we use anniversaries to celebrate the results of the
5 convention, but also to call for the attention of the public. In fact, as you may have
6 noticed from my CV, I was the director of World Heritage Centre for 10 years before being
7 the ADG and I was in charge of the 30th anniversary of the convention, which was a very,
8 very successful event.

9 So when the 40th anniversary approached, we started preparing a number of activities
10 that would have, you know, enhanced the visibility of the convention. This included
11 publications, events in many parts of the world. In fact, we launched a campaign for
12 member States to organise events around the world, and we also organised an important
13 international conference which took place in Kyoto, Japan.

14 Now, the importance of this anniversary is linked to some of the initiatives that are listed
15 above because we tried, and I would say that we were successful in this attempt, to stress
16 the importance of the World Heritage Convention as a tool for human social and
17 economic development, which in a way was a new approach.

18 The convention in its first 40 years was more like focused on the individual sites and the
19 protection of sites. It was essentially a technical tool for listing sites and protecting them.
20 And all the activities that were developed during the first three decades of the convention
21 were essentially aimed at this kind of developing the tools, internal tools for an effective
22 protection of the sites.

23 But as, you know, the United Nations in the past decade have discussed quite extensively
24 on the new international development agenda, the one that was adopted a few months
25 ago, in September last year, and it is called Agenda 2030, we thought that it would have

1 been important for this, say, relevant international tool to also address the issue of
2 development. So we termed the -- we actually gave the title to the 40th anniversary of
3 the World Heritage Convention to development. It was called, you know, developing
4 local communities, you know, and bringing benefits to local communities. So I think it
5 was not only an anniversary, but it was a very significant policy reorientation of the
6 treaty.

7 Q. [10:39:33] Would the court officer please kindly go to the next page, 0871. And
8 here we're still looking at the initiatives that you took during your mandate in 2013/2014
9 as assistant director general for culture at UNESCO.

10 The third paragraph reads as follows in English:

11 (Speaks English) "Coordination of the actions to prevent damage to cultural heritage in
12 conflict countries (notably Libya, Syria, Yemen) and of the international convention for the
13 protection of cultural heritage in the event of armed conflict, The Hague Convention,
14 1954."

15 (Interpretation) Can you explain to us, Mr Witness, why it is that you took this initiative
16 to coordinate these activities with a view to preventing damage to cultural heritage?

17 A. [10:40:46] Well, of course we manage this treaty, The Hague Convention, which as
18 I said earlier is called the Convention for the Protection of Cultural Heritage in Case of
19 Armed Conflict. And as you can see it is the first and the oldest of all our system of
20 treaties.

21 Already at that time, many conflicts had erupted in areas that are indicated. And of
22 course Mali followed right after. And therefore we decided, I mean, the director general
23 took this orientation to strengthen the two treaties that were specifically related to conflict
24 zones, I would say of course The Hague Convention, but also the 1970 convention for a
25 fight against illicit traffic. As you can imagine, when there is an armed conflict, when

1 governments lose control of their territory, looting happens, illicit traffic and illicit
2 excavation in archaeological sites as we unfortunately see in many of these scenarios.
3 So we tried to boost both conventions. These conventions are, in our view, very
4 important, very close to the mandate of the organisation. But they suffer a little bit some
5 limitations. Very simple, one limitation is the fact that not all the member states have
6 signed these conventions. In fact, the 1954 convention has 127 member states, which
7 means that one-third of the constituency of UNESCO has not signed the convention.
8 And the 1970 convention has just passed the two-thirds mark and has 131 member States.
9 Again, it means that almost a third of constituency is not there, which is I think a
10 limitation of a clear -- a clear limitation because we would need a much, say, broader
11 constituency to be effective.

12 In this respect, if I can add, we have recently launched a campaign. The director general
13 has written to all member states in their highest representation to invite them to sign these
14 two conventions.

15 The other thing that we do is not only to promote the convention in their image and so on
16 in the media, but also to strengthen them in terms of the resources that are available for
17 them and to somehow promote international cooperation.

18 The 1954 convention is essentially based on the mobilisation of resources from member
19 States. And some member States have taken this seriously and they have developed
20 activities within their military to train people, to develop a, say, protection of sites and do
21 exercises. And this has been very, very effective because many governments and many
22 states have been able to help other states that are, you know, weaker in the protection of
23 heritage in quite an effective way.

24 The Hague Convention is very important but unfortunately belongs to a series of, a long
25 series I would say of international treaties that started back in the 19th century aimed at

1 protecting heritage in case of armed conflict, but in a very, say, let's say, classical form,
2 you know, where wars were essentially international wars. Now in the past 50 years,
3 most of the conflict that we are witnessing are essentially internal conflicts. Therefore,
4 this convention is less effective than we would hope because of the nature of the conflict.
5 However, it is the only one that the international community has in terms of a tool and,
6 therefore, we are trying to use it also as a tool for, you know, increasing and improving
7 the capacities of the different forces, the military, the police forces, the customaries and so
8 on to -- custom officers to protect heritage in the event of armed conflict.
9 If I can add, because of these limitations, UNESCO has recently taken a new initiative in
10 November of last year, the general conference of UNESCO has adopted a document,
11 which is called the Strategy for the Reinforcement of the Protection of Cultural Heritage in
12 Case of Armed Conflict. Of course it builds on the principles of The Hague Convention,
13 but essentially it tries to mobilise additional resources and to somehow deal with this new
14 form of conflict that we witness today.

15 Q. [10:45:59] Thank you, Mr Witness, for a very exhaustive answer which depicts
16 UNESCO's efforts towards mobilising all legal instruments for the protection of heritage.
17 I have a few more questions for you relating to your activities. You indicated that prior
18 to becoming the assistant director general, you had served as the director of the World
19 Heritage Centre at UNESCO for a 10-year period.
20 I would like us to now look at page 0872 of the CV, court officer, which outlines a list of
21 the activities undertaken by the witness during his tenure at the World Heritage Centre.
22 I would like to go to what is at the bottom of the page, and there you can see that you
23 participated in the promotion of the, in English, (Speaks English) preservation of the
24 historical centre of Timbuktu, Mali.
25 (Interpretation) Mr Witness, can you tell the Court what this entailed?

1 A. [10:47:32] Yes, I can elaborate a little bit. Timbuktu is a site that is located in a
2 very difficult region in terms of, you know, climatically and also it is very remote.
3 Sometimes Timbuktu is almost associated to the idea of remoteness.
4 Therefore, since its inscription in the World Heritage List in 1988, that is the day of -- date
5 of inscription, we always had a number of problems in the management in the
6 conservation and preservation of the site. These problems were essentially linked to
7 climatic factors.
8 In the winter very often the region, which is an arid region in the Sahel, is hit by torrential
9 rains. Sometimes these rains can, you know, last two, three, four days, and maybe
10 during those three, four days the entire, say, rain of the year, precipitation of the year falls,
11 which of course this has a very strong, it's a very strong eroding factor of these buildings
12 that are made essentially of mud bricks.
13 Then during other times of the year, especially in the spring, you have another
14 phenomena which is also very, say, damaging of the buildings, which are the wind of the
15 Sahara. During the period of in the spring essentially, you have very often wind storms,
16 very heavy wind storms that bring to the area a huge amount of sands -- sand, which
17 sometimes fills completely the city and fills the buildings of sand.
18 So the maintenance of these sites is extremely complex and requires a constant attention
19 and consistent resources. So we were trying since 1988 to address these issues because
20 these climatic factors endangered the integrity of the site and threaten the survival of the
21 mosques of Timbuktu, which are the constituent of the World Heritage Site.
22 All throughout the time from 1988 all the -- until recently actually, we actually provided
23 technical assistance in form of, say, financial resources and technical missions. I would
24 say that we have done, I don't -- I don't have the exact number, but at least a dozen of
25 these technical assistance programmes and projects and missions all throughout.

1 In 1988 when the site was described in the World Heritage List, the situation was so
2 critical that the committee decided to put it in the special list they call, it's called the List of
3 World Heritage in Danger. And the site remained in this list for a long time, so in
4 the -- for about 10 years or something like this.

5 In the midst of the first decade of the century the situation had improved. The local
6 authorities, especially the imams of the different mosques had found ways of maintaining
7 the mosques, removing the sand, huge quantities of sand, ensuring a regular maintenance
8 of the -- of the plastering of the mosques. So at that point the committee decided to take
9 the site off the list in danger. That's when I decided to actually go to Timbuktu, I had
10 visited Timbuktu in 2005 to discuss of course this situation with -- with the local
11 authorities and the imams, and at that time we were able to -- not only to verify, check on
12 the situation which, as I said, was very positive, but also launch an activity for a complete
13 survey of the monuments of Timbuktu, which we did. In fact, UNESCO did a complete
14 architectural survey of the monuments which turned out to be extremely useful and very
15 important for the reconstruction of the monuments after they were destroyed.

16 Q. [10:52:18] You raised a number of points which I would like to revisit, but we can
17 summarise what you have said is that UNESCO and the Malian authorities deployed
18 significant efforts to ensure that the various sites were mentioned, that is the sites enlisted
19 on the World Heritage List; is that correct?

20 A. [10:52:47] Yes. Yes, this is the case.

21 Q. [10:52:51] Could you please repeat your answer.

22 A. [10:52:57] Sorry. Yes, yes, that is correct. That is the case.

23 Q. [10:53:09] Your answer is yes. And again I would please plead with you to
24 observe a little pause before answering. Please try to do that.

25 A. Excusez-moi, oui.

1 Q. You went to Timbuktu in 2005 as you testified. How many times in total have you
2 travelled to Timbuktu?

3 A. [10:53:30] In fact, that was my only visit.

4 Q. [10:53:32] Okay. You were made an honorary citizen of the town; is that correct?

5 A. [10:53:41] Yes, I received this honour. I am an honorary citizen of Timbuktu.

6 Q. [10:53:49] Can you explain the circumstances in which you were made honorary
7 citizen of Timbuktu?

8 A. [10:53:54] Well, it was in fact during that mission where we were able to celebrate
9 the fact that Timbuktu was off the list in danger and at that time the local administration
10 organised a ceremony to -- to receive us, receive me and my team, and on that occasion,
11 and I think it was a -- considered more an honour for UNESCO than for me, they -- they
12 gave me a certificate of an honorary citizen of Timbuktu and of course we had a seminar
13 not to discuss the situation of -- of the site.

14 We had many encounters at that time. I remember very well visiting all the sites and
15 meeting the imams of the mosque and in particular the imam of the Djingareyber mosque,
16 who is a person that we have always kept a connection with all throughout the time,
17 before and during the occupation of the Ansar Dine and also after, afterwards he also
18 came to UNESCO at least once or twice to testify, you know, the situation of the city.
19 So we had developed -- used also the opportunity to develop a connection with the local
20 authorities to strengthen their capacities, to see what were the needs and as I said earlier
21 to launch this very important architectural survey of the monuments in order to have
22 complete and very detailed understanding of the structures that composed the site.

23 Q. [10:55:42] We still have a few minutes and I would like to put a question in
24 follow-up to your answer: What did you observe, what were your feelings during that
25 visit to Timbuktu in relation to the population's attachment to its heritage, particularly to

1 the heritage that is enlisted on the World Heritage List?

2 A. Well, very simply --

3 Q. And please just observe the pause again.

4 A. [10:56:26] Very simply I would say that the population is extremely attached to its
5 heritage, both in terms of physical heritage, the mosques and the mausoleums, but also
6 the -- what we call more the intangible heritage or, you know, represented more by the
7 manuscripts, which as you know are one of the great richness of Timbuktu.

8 During my visit in fact I could witness a very spectacular event because they were doing
9 at that time the -- what's called the crépissage in French, the -- essentially the plastering of
10 the mosque. They took the mosque of Sankore, one of the three mosques, and they did
11 the crépissage, the plastering of the -- of the mosque during the time of the visit. And
12 this is essentially a collective effort. It's not done by specialists, it's done by the
13 population. The women stay at the bottom of the mosque and prepare some -- the balls
14 of clay. The clay is taken of course from places where there is a good quality, it's brought
15 to the city and this clay is made up into balls and then the balls are passed on to the males
16 which are all, you know, hanging in the different sides of the -- of the mosques.

17 If you have seen a picture of this mosque you would notice that there are some poles that
18 protrude out of the -- of the building, these poles are essentially the ladders for people to
19 stand during the crépissage.

20 So these balls of clay are passed on, like a very -- in a very, you know, athletic way, very
21 quickly up to the top of the building and then manually they are stuck to the building and
22 they are -- you know, they form the new layer of plaster which is needed because as I said,
23 you know, every year the climatic events, you know, somehow erode the plastering. It's
24 very important to do the plastering every year because that's a -- ensures the preservation
25 of the underneath structures.

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1 So what I could see was essentially a collective effort is done on a voluntary basis, not
2 retributed or paid, and it is something almost like a festive event, you know, that involves
3 all the population and all their capacities, as I said, women, elderly at the bottom and the
4 young people on the top to do this -- this plastering which has, of course, a functional but
5 also a very highly symbolic value.

6 MR DUTERTRE: [10:59:25] (Interpretation) One last document to be displayed before
7 the break and this will take only one second.

8 Document, public document 0029-1075.

9 Q. [10:59:52] Mr Witness, please be brief in your answer. And the picture that you're
10 looking at, does that depict the process you have just described whereby the population is
11 involved in the renovation exercise?

12 A. [11:00:04] Yes. It is an exact effect. It's a picture I took at that time and that's
13 exactly what I was describing.

14 MR DUTERTRE: [11:00:12] (Interpretation) Thank you, Mr President. This might be
15 a good time for the break.

16 PRESIDING JUDGE PANGALANGAN: [11:00:17] Thank you, Mr Duterte.

17 Before we take the break may I just ask for planning purposes your estimate and how
18 much longer you would wish to ask questions to the witness?

19 MR DUTERTRE: [11:00:36] (Interpretation) I will need about an hour, not more, and
20 then we could call the next witness in the next session.

21 PRESIDING JUDGE PANGALANGAN: [11:00:43] Thank you. Thank you so much.

22 So we take a break and we resume at 11.30.

23 THE COURT USHER: [11:00:49] All rise.

24 (Recess taken at 11.00 a.m.)

25 (Upon resuming in open session at 11.33 a.m.)

1 THE COURT USHER: [11:33:51] All rise.

2 Please be seated.

3 PRESIDING JUDGE PANGALANGAN: [11:34:12] Mr Witness, if I would just remind
4 you before we resume that we have to speak a bit more -- you have to speak a bit more
5 slowly for the benefit of the interpreters.

6 And, Mr Duterte, please resume your questioning.

7 MR DUTERTRE: [11:34:30] (Interpretation) Thank you very much, your Honour.

8 And I would say that I will also take drastic measures myself and I will wait for my case
9 manager to efficiently indicate to me that the verbal translation has finished before I ask a
10 question. And I will make a sign to the witness when I've finished asking my question as
11 to when he can commence.

12 Q. [11:35:06] Now, we were talking about Timbuktu and I would like you to explain
13 to the Chamber today what's the importance of the town of Timbuktu from a
14 historical/cultural/commercial and religious perspective?

15 A. [11:35:33] Thank you for this question. It's very important to -- to stress the role
16 of Timbuktu in history because this will reveal the importance of the heritage that we are
17 protecting or trying to protect.

18 Well, Timbuktu was essentially, you know, a centre of trade, but it became very quickly
19 an important intellectual centre in the 15th and 16th centuries. The origins of Timbuktu
20 go back perhaps to earlier times. Estimates are that, in fact, a village was created and
21 established around the 12th century to provide services to the traffic of caravans
22 throughout the Sahara. This village, which was called Buktu, and Timbuktu means the
23 place of Buktu, was gradually developed into a very important trade centre. If you look
24 at the map you realise why. This is essentially the only important city in a very, very vast
25 area of desert, and it is also a city that it is located at the border of the Sahelian region and

1 the Saharan region, so it really is a corner, I mean a hub for commerce of different goods.
2 Which were the goods at that time? The goods at that time that made the fortune of
3 Timbuktu were gold, it was trafficked from parts of Africa to the north and so on.
4 Salt, near Timbuktu, in the surroundings about 50 miles from Timbuktu there is a very
5 important salt mine, which in fact is still used for -- to mine -- to mine salt. The salt is cut
6 in very large slabs and the slabs are put on camels and the camels are transferring the salt
7 to the destinations. Now, salt at that time was a very important and rich commodity, so
8 this made -- made the fortune of the city.
9 Salt, gold, probably slaves also at that time, made of Timbuktu not only a caravan hub but
10 also a very important city in terms of its wealth and so on.
11 Now this wealth supported the creation of a very important, perhaps one of the most
12 important intellectual centres in that region, which attracted scholars, intellectuals, of
13 course religious people and so on, and the creation of the -- these mosques was a -- was
14 possible due to or thanks to the riches of the city.
15 Now, the apogee of Timbuktu was during the kingdom of the Askia, which -- it's a
16 kingdom that lasted for about one century from the end of the 15th century, 1493, to the
17 end of the 16th century, 1591, which is the date in which Timbuktu and the Askia
18 kingdom were conquered by the Moroccan kingdom. So that actually put an end to the
19 autonomous, say, life of Timbuktu as part of the Askia kingdom.
20 But during that century most of the mosques that we know today, the Djingareyber,
21 Sankore, Sidi Yahia, were built and therefore we look at the heritage that was created
22 during this golden age of the city.
23 Now, of course that city continued its life, but in fact after the conquest of the Moroccans
24 it started a long decline. Practically, the memory of Timbuktu was lost, at least in the
25 west. It was only rediscovered in the 19th century with the explorers that went to the

1 region.

2 One important dimension of this heritage is the collection of manuscripts. Perhaps
3 they're not under the protection of world heritage, so, you know, it's up to you to decide
4 whether, you know, you want to have more information on this, but the manuscripts are
5 really very important heritage. They are very large in numbers and they represent a
6 collection of the Arabic knowledge of the time, which still is, you know, to be studied.

7 The manuscripts of Timbuktu are largely in private property, belongs to families that have
8 their own libraries, and only a very small component, a small part has been studied, has
9 been documented, has been classified, has been scanned and so on. They were also, you
10 know, part of the, say -- certainly they are part of the heritage of Timbuktu and certainly
11 they were one of the heritage items most threatened during the occupation of the Ansar
12 Dine.

13 Q. [11:41:23] Could I ask you to go back into certain points, particularly to go back
14 into the role that this town had at an academic level, and also with regards to the
15 expansion of Islam in Africa.?

16 A. [11:41:49] Yes. Well, during that time of the golden age, let's say the apogee, a
17 number of schools were created that represented, you know, the best of -- or, actually
18 were able to, say, teach the best of the Arabic knowledge. Arabs -- Arab -- as you know,
19 the Arab world was the inheritant of the classical world. The knowledge of the classical
20 world reached Europe during the middle ages through the Arab world, so it was the Arab
21 world that actually preserved the great philosophical works of Aristotle, Plato, et cetera,
22 et cetera. And all the manuscripts that you find there are -- you know, reflect this
23 incorporation, let's say, of the classical culture. But more than that, this represents also
24 the creation of the Islamic culture, so the Quranic studies and so on. So this was a mix of
25 say philosophical, technical and religious teaching that took place in Timbuktu

1 during -- during the apogee.

2 Now because of the location of Timbuktu it was the perfect hub for the transmission of
3 Islamic culture, and I would say in general culture to -- to the region of the Sahel. So
4 therefore it is very, very -- we played a very important role in the expansion, intellectual
5 expansion of Islam in the Sahelian region.

6 Q. [11:43:32] And could we sum up by saying that Timbuktu ultimately was an
7 intellectual capital and a religious capital within this region of the world?

8 A. [11:43:46] Yes. I think we can say that Timbuktu was matching the roles that
9 perhaps Florence played in the Renaissance in Europe as a centre of intellectual life,
10 religious life and teaching.

11 Q. [11:44:14] And so during this period there were the mosques and mausoleums, the
12 manuscripts as well which you mentioned, but it was the mosques and mausoleums
13 which we're dealing with today. Now, could you indicate to us what the value is of
14 these mausoleums for the people of Timbuktu today?

15 A. [11:44:45] Yes. Of course the mausoleums, which are sometimes associated to the
16 mosques, represent a focal point for the religious life of the -- of the inhabitants, and I
17 would say also the region, and they are a focus for very extensive pilgrimage. Now,
18 these mausoleums signify the virtues of man that were -- for their wisdom, for their
19 knowledge, for their, you know, religious commitment, you know, where it exemplified
20 the, you know, the ideal life. And most of them lived in that period. There are different,
21 say maybe some difference between the mausoleums of the different personalities, but
22 most of them are from the 15th/16th century and they are -- have represented for
23 Timbuktu a very important, you know, religious and symbolic I would say focal point.
24 They still represent that. They are, you know, not only people show their great
25 attachment to this area, to these mausoleums as symbols of these men, but also they

1 attract a lot of pilgrimages, as I said, from the entire region. So they represent very
2 important value of the heritage site.

3 Q. [11:46:29] Before the break we talked about the mosques, I'm going to come back to
4 them. There are a lot of mosques in Timbuktu, but there's the Djingareyber and Sidi
5 Yahia mosques. Is it true that these are the most known, most important mosques in
6 Timbuktu?

7 A. [11:46:58] Yes, I think it's correct, but I would like also to add that the
8 Sankore mosque, because in fact these three represent the heritage site that was inscribed
9 in the World Heritage List, I would say that they are equally important.

10 Q. [11:47:25] I'm now going to go into the process of registration with the
11 World Heritage List and to see how it is applied, or how it was applied to Timbuktu and
12 the heritage therein. I'll ask you a series of questions which will be quite short and I
13 would ask if you could also reply in a brief manner.

14 So on the basis of the convention '72 which establishes the list of world heritage, it's the
15 State which takes the initiative to ask for a building to be registered on the list?

16 A. [11:48:20] Yeah, that is correct. The proposal for nomination comes from the
17 Member State, yeah.

18 Q. [11:48:32] So the State has to submit a detailed dossier which it has to submit to the
19 Centre of World Heritage, one of the UNESCO organs; is that correct?

20 A. [11:48:42] Yes, that is also correct. We receive the nomination proposal from the
21 Member States.

22 Q. [11:48:52] The role of the World Heritage Centre is to examine if the dossier is
23 complete. If it is -- well, if not they'll send it back to the State, and if it is they will send it
24 to an advisory body. We'll come back to that afterwards.

25 A. [11:49:12] Yes, that corresponds to the process, yes.

1 Q. [11:49:20] Now, where it concerns the buildings, this advisory body is ICOMOS,
2 that is to say the International Council on Monuments and Sites; is that correct?

3 A. [11:49:34] Yes.

4 Q. [11:49:37] Could you tell us who that is made out of or who are the representative
5 part --

6 A. [11:49:43] Yes. ICOMOS is an international organisation of professionals. It's an
7 NGO that has its headquarters in Paris, secretariat in Paris, and about 110 national
8 chapters. Essentially it is composed of heritage professionals ranging from architects to
9 archaeologists to historians and restorers, I mean these different types of specialties and
10 skills, and it is organised through a system of international committees which deal each
11 one with a different theme; for instance, there is a committee for historic cities, one for
12 monuments. There are about 28 of these committees and this constitutes the life of the
13 organisation.

14 On top of this they are the advisory body of the World Heritage Convention, therefore the
15 body that evaluates the nomination dossier.

16 Q. [11:50:46] So we're going to come back to that in a few minutes. So ICOMOS and
17 their intervention is envisaged by the convention of '72. They have missions to the field
18 to look at the interest or the importance of the building as wished by the State?

19 A. [11:51:09] Yes. Once they receive the nomination dossier, they prepare an
20 evaluation, and part of the evaluation is a mission to the place to verify what the situation
21 and conditions of the sites that has been proposed, yes.

22 Q. [11:51:31] So if I understand well, there are four types of recommendation that
23 ICOMOS can give: One to be registered, and we know what that means; one a
24 recommendation for it to be rejected, we know what that means. There are also a
25 deferral or a referral recommendation. Could you explain to us what a deferral is and a

1 referral if you would be so kind?

2 A. [11:52:00] Yes. In the evaluation process, ICOMOS analyses the different criteria
3 and conditions that are required for the inscription. If they feel that the site does not
4 fulfil yet the criterias that are established by the convention, they can ask for a deferral,
5 means that essentially the site is given back the nomination, the proposal is given back to
6 the member state for a reformulation in terms of, you know, the nature of the site, for
7 instance, its perimeter or its composition, or very often for what concerns the management
8 structures. You know, a site cannot be inscribed in the World Heritage List unless it is
9 properly managed. And very often this dimension is lacking, so ICOMOS can propose a
10 deferral.

11 Now, a deferral means that essentially the state has to reformulate entirely the nomination
12 dossier and come back in the following cycle.

13 Where else, if you allow me, a referral is, you know, an indication that the site has reached
14 a very good level of completeness in terms of the description of its value and the
15 management, the procedures and so on, but still some elements are lacking. Normally,
16 for instance, we have problems with the perimeters, not indication of the borders of the
17 site, whether there are some elements that are missing and so on, so things that can be
18 fixed in a relatively short time.

19 And therefore the referral, unlike the deferral, does not imply the, say, a new cycle.

20 Essentially it is sent to the following meeting of the committee the following year, and that
21 gives the member state the time to fix the missing part.

22 Q. [11:54:16] Thank you. That was very clear.

23 Deferral, if it's been completed for the next cycle, so the dossiers been completed for the
24 next cycle, does this happen a lot that a deferral takes place?

25 A. [11:54:34] Yes, it is actually quite frequent. You know, the nomination dossier are

1 complex, becoming even more complex because of the requirements that have been, you
2 know, developed along the years. So on average I would say that half the sites that are
3 discussed every year in fact are requested for deferral.

4 Q. [11:55:03] So ICOMOS can make these four recommendations, rejection,
5 registration, deferral, referral, and then that's sent to the committee, the World Heritage
6 Committee that's created by the convention of '72?

7 A. [11:55:20] Yes, the World Heritage Committee is the governing body of the
8 convention and it is the decision-making body. In fact, the dossier is sent to them for the
9 discussion and the final decision. A committee can or cannot accept the recommendation
10 of the advisory body.

11 Q. [11:55:49] Could you explain briefly who is on the committee?

12 A. [11:55:56] Yes. The committee as the governing body of the convention is elected
13 by the general assembly of the convention. So every two years about half of the
14 committee is renewed. The body is made up of 21 member states. As I said they
15 change every two years, half of the body change every two years, and so every two years
16 there is an election for half of the committee.

17 In recent times there has been a reorganisation of the process, so we have established
18 regional seats so that every region is properly represented, because there was a moment in
19 which the free system of election left some regions without representation.

20 Q. [11:56:51] And all this process, how much time does it take on average?

21 A. [11:56:55] The process takes about a year and a half because the dossier has to
22 arrive at the World Heritage Centre the 1st February of every given year and then it is
23 discussed by the committee in the session of the following year, so it is about one and a
24 half years.

25 Q. [11:57:19] So all of that seems to be a very formal rigorous process.

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1 A. [11:57:26] It is quite regulated by the operation guidelines which, by the way, is
2 one of the documents that has been transmitted to the Court by UNESCO. It's included
3 in your file.

4 Q. [11:57:50] I'm now going to go on to the criteria to be registered on the World
5 Heritage List. We've talked about the process, but I'd now like us to go into the process
6 itself.

7 And, court officer, if you'd be so kind so as to show the public document 0029-0889 and
8 specifically page 0912. It's public.

9 Please excuse me, I wanted to go to page 0906.

10 Do you see the document, witness?

11 A. [11:59:40] (Microphone not activated)

12 Q. [11:59:40] Now, on this page you have the quote of Article 1 of the Convention of
13 '72 on world heritage, which is written as follows:

14 "So for the present convention the following are considered as cultural heritage:

15 Monuments, architectural works, sculpture, monumental painting, structures or elements
16 of an archaeological nature, inscriptions, caves, other elements which have a universal
17 and exceptional value from the point of view of history, art or science."

18 Now my question is as follows, Mr Witness: Could you explain to us or explain to the
19 Chamber what we understand by exceptional universal value, which is one of the
20 conditions of registration on the list?

21 A. [12:01:10] Yes. In fact, the concept of outstanding universal value, valeur
22 exceptionnelle universelle, is the key concept in the World Heritage Convention. To be
23 in the World Heritage List a site has to be declared possessing the outstanding universal
24 value; if it doesn't, it will never be inscribed. So it is the key concept.

25 Of course there are other criteria that come into play. I mentioned for instance the level

1 of protection and the criteria, authenticity and integrity, which I can also explain if
2 needed, but without this definition it will never be inscribed, so it is a key concept.
3 Now what it means essentially is it may seem a bit tautologic, but that's the definition of
4 the convention, a site that has such an exceptional value in that it goes beyond the local
5 dimension.
6 How to reach this definition is the task of the evaluation process and it is done essentially
7 through a comparative system. Of course we don't derive the concept of outstanding
8 universal value from an abstract principles, but we try to compare a site with sites of
9 similar nature or of similar value.
10 So a fundamental component of the evaluation process is in fact the comparative analysis
11 which is done by the member states in the composition, in the drafting of the dossier, and
12 very often integrated by ICOMOS.
13 I must say that because of the importance of this comparative analysis, very often this is
14 the weak point of the nomination dossier, and very often ICOMOS defers the nomination
15 because the comparative analysis is not sufficient.
16 Now, through the comparative analysis the member states and the evaluator, ICOMOS,
17 can assess whether the value of the site goes beyond the local or national level and
18 whether this site deserves, therefore, to be considered for an inscription in the World
19 Heritage List.
20 Q. [12:03:48] Thank you for that explanation.
21 Madam court officer, if we could please now move to another page, 0912, which I
22 mentioned a few moments ago, and if we could zoom in and move downwards on the
23 screen.
24 Witness, now, on this document we find a list of criteria for the assessment of exceptional
25 universal value and it says that the candidate, so to speak, must meet one of the following

1 criteria: It must represent a masterpiece of human creativity, it must bear witness to a
2 considerable influence over a period of time or over a determined cultural area, or it must
3 provide or represent a unique form of testimony or bear witness to a living or ancient
4 cultural tradition or civilisation, it must be an eminent example of a particular kind of
5 building or architecture or technology, or finally, it must be an eminent example of
6 traditional human -- traditional human establishment or settlement.

7 And there are other criteria on the following page.

8 This is taken from a document dated 8 July 2015, but would it be correct to say that these
9 criteria were also used in the past when Mali was a candidate for this designation and
10 these were indeed the criteria that the World Heritage Committee followed to assess the
11 exceptional universal value of a particular building?

12 A. [12:06:52] Yes. As I explained earlier, the outstanding universal value which is
13 established through a comparative system has to be anchored to one of the criteria. You
14 read five out of the six criteria for cultural heritage, then there are four other criteria for
15 natural heritage.

16 So essentially it has -- these criteria help in the description of the reason why the site is
17 considered for inscription in the World Heritage List in a way giving a characterisation to
18 the nature of the site. So one criteria alone is sufficient, sometimes sites are ascribed for
19 more than one criteria, but one criteria alone is sufficient but at least one has to be
20 identified.

21 Q. [12:07:53] I would now like to move directly to the case of Mali. Mali ratified the
22 1972 convention before the events of 2012, which we are familiar with. Could you
23 confirm that indeed the first application for this designation was submitted and that was
24 in 1979 and, in that particular case, the committee recommended deferral because there
25 was a lack of information about the buildings in question. The ICOMOS

1 committee -- (overlapping speakers)?

2 A. [12:08:43] Yes. In fact when the member State proposed the nomination of
3 Timbuktu for the first time, it was found by ICOMOS that their dossier was lacking some
4 important elements and therefore they proposed for a deferral of the site.

5 Q. [12:09:10] And then there was a second application or a second file was submitted
6 later.

7 A. [12:09:19] That is correct. The member States came back a few years later with
8 this new dossier which at that time included the entire historic city of Timbuktu.

9 MR DUTERTRE: [12:09:54] (Interpretation) My microphone was switched off, I
10 apologise. Excessive enthusiasm, no doubt.

11 I'd now like to draw your attention to tab 21 in the binder. And could the court officer
12 display publicly 0013-3541, and then if she could kindly move on to page 3543 once the
13 document is up. Reference number 0013-3541 at page 3543.

14 Q. [12:10:48] Witness, can you see this document?

15 A. [12:10:51] Yes, I see it.

16 Q. [12:10:57] Is this the second application from Mali for designation of these
17 buildings?

18 A. [12:11:04] Yes, that is the nomination dossier received in 1987.

19 Q. [12:11:17] If we could now move on to page 3562.

20 Witness, can you confirm that the Djingareyber mosque is specifically mentioned in this
21 application?

22 A. [12:11:55] Yes, I confirm that.

23 Q. [12:12:07] If we could now move to page 3584.

24 Could you confirm that the Sidi Yahia mosque is mentioned?

25 A. [12:12:57] Yes, I confirm.

1 Q. [12:12:58] If we could now move to page 3592 just to conclude our review of this
2 particular document.

3 Witness, the various mausoleums are listed here.

4 A. [12:13:41] Yes, that's correct.

5 Q. [12:13:42] Thank you. What recommendation was issued by the committee after
6 this second candidacy, the ICOMOS committee?

7 A. [12:13:51] As I just said, the nomination dossier included the entire historic city of
8 Timbuktu but ICOMOS was not convinced that the conservation measures that were
9 proposed were sufficient for their preservation of the site in its entirety and therefore
10 ICOMOS recommended to limit the nomination to the three mosques Djingareyber, Sidi
11 Yahia and Sankore, and to the mausoleums, so only to the monuments of the city and not
12 to the entire perimeter of the historic city.

13 Q. [12:14:37] And finally, what was the decision by the World Heritage Committee?

14 A. [12:14:41] Well, at that time in 1988, during its 12th session the committee
15 approved the recommendation of ICOMOS and inscribed the site, as I just said, as a
16 combination of the three mosques and the sixteen mausoleums.

17 Q. [12:15:07] Mr Witness, now off the top of your head, could you list those
18 mausoleums, or would you prefer with authorisation of the Chamber for me to refresh
19 your memory with your statement?

20 A. [12:15:23] I think I know a few of them but not all of the 16, but of course I
21 remember a few of them.

22 Some of them are grouped. The mausoleums are -- sometimes are annexed to the
23 mosques. For instance, the Djingareyber mosque has two of them. Sometimes
24 are -- they are placed in what the -- they're called cemeteries or cimetières, cemeteries. So
25 there are in the city a number of cemeteries. For instance, there is one called the

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1 cemeteries of the Three Saints which has three, the important mausoleums. If I'm not
2 wrong, the Sheikh Abdoul Kassim Attouaty was one of them, the Sheikh Sidi El Micky
3 and the Sheikh Sidi Ben Amar Arragadi. These are the three saints.
4 Then there are -- there is another cemetery called the cemetery of the babies, cimetièrè des
5 enfants where it has other mausoleums, for instance, the one of Mohamed Boukkou.
6 And then there is an area called the Kabara that has also three mausoleums, the
7 Sheikh Nouh, Sheikh Ousmane, Mohamed Al Fulane.
8 So as you see, they are in different parts. Sometimes they are isolated, for instance,
9 the -- one of the biggest one which is the Alpha Moya mausoleum is isolated, and
10 scattered in different parts of the city, sometimes just outside and so on.
11 So this creates, you know, a difference. You know, some of them are very close to the
12 mosque, other are parts of cemeteries, but in the World Heritage nomination only the
13 individual monuments have been inscribed, not the areas, not the cemeteries.
14 However, the cemeteries enjoy a national level of protection, they are listed under
15 national law, so is in fact the city of Timbuktu as an historic city. The entire city is listed
16 in the national laws as a heritage but not in the World Heritage List.

17 Q. [12:17:45] Thank you, Mr Witness.

18 You mentioned a number of mausoleums that were protected and which were not
19 included in the charge. Just to be perfectly clear for the transcript and the case record I
20 would like to ask the Chamber for leave to show part of our expert witness's statement,
21 which includes a list of protected buildings just so that he can recognize and confirm this
22 particular list.

23 PRESIDING JUDGE PANGALANGAN: [12:18:34] Yes, please proceed.

24 MR DUTERTRE: [12:18:38] (Interpretation)

25 Q. [12:18:42] I draw your attention to tab 1, and this contains the statement 0029-0843.

1 And if we could go directly to page 0861 and if we could zoom in on paragraphs 99 and
2 100, paragraphs 99 and 100.

3 Now this page can be shown publicly, but the rest of the document must remain
4 confidential.

5 Mr Witness, at paragraph 99 we see the following:

6 (Speaks English) "The following sites are protected as World
7 Heritage:

8 Sidi Yahia Mosque; Sidi Mahmoud Ben Omar Mohamed Aquit; Sheikh Sidi Ahmed Ben
9 Amar Arragadi; Sheikh Abdoul Kassim Attouaty; Sheikh Muhammad El Micky; Sheikh
10 Sidi Mokhtar Ben Sidi Mouhammad Ben Sheikh Al Kabir; Alpha Moya; Djingareyber
11 Mosque and the two tombs attached."

12 The next paragraph mentions the two particular tombs in question Bahaber Babadié and
13 Ahamed Fulane. Could you confirm that all these monuments, be they mosques or
14 mausoleums, are indeed on the World Heritage List?

15 A. [12:21:03] Yes, I -- I confirm that these elements as listed are inscribed in the World
16 Heritage List, but allow me to say also that this list is incomplete because it was built on
17 my personal memory, but we have also included in your -- in your files the official list
18 issued by the government of Mali, it's annex 12, which, you know, is the one that should
19 be the reference for this case.

20 Q. [12:21:46] Yes, indeed there is a list in a document dating back to 2015 and that list
21 mentions all the other sites that have been recorded on the World Heritage List, and that
22 particular list is broader than the list that was provided in the charge. But I do thank you
23 for pointing out that detail. It was very helpful.

24 Mr Witness, now once a monument has been recorded or placed on the World Heritage
25 List, could you explain to the Bench what the consequences are, what are the obligations

1 and duties of UNESCO and States to preserve and maintain these buildings?

2 A. [12:22:50] Yes. Once the site is inscribed it -- the government has taken a certain
3 number of obligations. These obligations are normally described in the decision that the
4 committee takes at the time of inscription, and of course they are referred to the
5 appropriate preservation and maintenance of the site. So the responsibility for the
6 conservation of the site belongs to the government. UNESCO plays a role of control and
7 watch. We essentially observe the situation. If we find that there is no problem, we
8 don't have -- no need to intervene. If we find on the contrary that the State has not
9 complied with the obligations or some other factor has affected the conservation and the
10 preservation of the site, then we try to intervene. We normally warn the State, through,
11 you know, communications that we feel that there is a matter of concern and we inform
12 the committee through a system which is called the state of conservation reports, which
13 we transmit every year to the World Heritage Committee. These documents are based
14 on information that we receive from the Member States on the situation of the site, or in
15 case of lacking information we can send a mission, or even, you know, obtain information
16 through other forms, through experts and so on. So we try to identify the issues that
17 affect the site, we inform the committee, and the committee during its yearly session
18 examines all the state of conservation reports and issues its own recommendations which
19 we are now then implementing during the following year.

20 Q. [12:25:00] You said that in 2005 you travelled through Timbuktu, and that reminds
21 me of something. There was a preservation plan, the 2006-2010 conservation plan; am I
22 correct? What was the respective role of UNESCO and the Malian authorities when it
23 came to implementing this plan?

24 A. [12:25:30] In fact, my mission was preliminary to the preparation of this plan. We
25 issued technical assistance. You know, we have a fund, it was called the

1 World Heritage Fund. It's not a big fund but it supports technical assistance
2 programmes, so we issued support to the Member State, and during the following year
3 through the -- with the help of international consultants, some of them were with me in
4 fact during my visit, we were able to complete this management plan.
5 Now, the management plan is a very fundamental tool, in fact it's one of the requirements
6 for inscription. Not all the sites have it because sometimes, especially in old inscriptions
7 like these ones, you know, these requirements were not so strict. But nowadays, you
8 know, no site will be allowed into the World Heritage List without a management plan.
9 So the management plan was completed in 2006 and it became the reference document for
10 the activities for the conservation of the site involving the responsibilities both of the
11 government, the central government and the local governments and the local actors, in
12 particular the imams of the mosque.

13 Q. [12:27:01] My last question to you, sir: Let us set aside Timbuktu and I'll ask you
14 a general question now that has nothing to do with the 2012 events. I would like to ask
15 you to explain in general terms what is the impact of the destruction of a building or
16 monument that has been placed on the World Heritage List; in other words, let us not
17 delve into the actual events, but rather, generally speaking, what is the impact when a
18 monument or building is destroyed?

19 A. [12:27:42] I will answer, if you allow me, also with some examples because it is
20 important to -- to look at what happens. Well, the destruction of a site in whatever forms,
21 whether voluntary or by natural disasters, is a very major event in our -- in the conduction
22 of the convention. The convention is supposed to extend an international protection to
23 the sites, so if a site is destroyed because of an act of war or conflict or because of a natural
24 disaster we have the obligation to intervene and to try to help the situation.

25 I would like to recall, for instance, the deliberate destruction of the Bamiyan Buddhas

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1 in 2001, which was a, you know, a major shock I would say in international cultural
2 affairs. This destruction led to a very important intervention of UNESCO in the
3 following years to consolidate the site of the niches of the Buddhas and so on, and to
4 direct reorganisation of the local capacities for -- for conservation.
5 Today, nowadays we witness many destructions. You know that recently we had very
6 severe damages to important World Heritage sites like Palmyra in Syria and Aleppo and
7 many others. And I must say that this has become the core of our concerns.
8 Of course we deal with all the sites and we deal with all the situations, but the deliberate
9 destruction of cultural heritage has become, unfortunately, a very important dimension of
10 our work.
11 We also, as I said, intervene in case of natural disasters. For instance, we have recently
12 done important activities in Nepal, which was hit by a quake last year. And Haiti, and
13 many other places I can give you a number of examples. But certainly the deliberate
14 destruction and the destruction of heritage during conflict has become -- also because of
15 the large amount of and the vastity of the front that we have to deal with has become a
16 major element of activity of UNESCO.

17 Q. [12:30:12] I thank you, Mr Witness. I have no further questions for you.

18 MR DUTERTRE: [12:30:22] (Interpretation) And I now turn to the Chamber for
19 guidance regarding the next phase of our trial.

20 PRESIDING JUDGE PANGALANGAN: [12:30:32] Thank you, Counsel.

21 Before I proceed to the next phase I would like to ask Mr Aouini if he has questions for
22 this witness?

23 MR AOUINI: [12:30:45] (No interpretation)

24 PRESIDING JUDGE PANGALANGAN: [12:30:58] I am waiting for the interpretation.

25 MR AOUINI: (Interpretation) We have no questions for the witness, Mr President.

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1 Thank you.

2 PRESIDING JUDGE PANGALANGAN: [12:31:05] I just now received the English
3 translation.

4 Well, thank you. Thank you so much, Mr Aouini.

5 Let me just now consult with the Chamber on the process for shifting from the open
6 session with this witness and to the next witness, but we will hang on to the witness for
7 the moment.

8 (Trial Chamber confers)

9 PRESIDING JUDGE PANGALANGAN: [12:32:40] Judge Mindua will have some
10 questions for the witness.

11 JUDGE MINDUA: [12:32:47] (Interpretation) Mr President, I have just one question,
12 not many questions.

13 Mr Expert Witness, I would like to avail myself of your unchallenged experience in this
14 area to seek some small clarification on a small matter arising from the last question put to
15 you by the Prosecutor in relation to the impact arising from the loss of a monument or
16 building that is listed on the World Heritage List.

17 You talked about the Bamiyan Buddhas and the destruction in the ancient city of Palmyra.

18 Now my question is in relation to the damage that may be felt or experienced, so to speak,

19 by humanity in general. Can you please address the two aspects of this question: The
20 monuments and buildings are protected, or should I say listed by UNESCO. What, to
21 your mind, is the damage suffered by UNESCO and what would be the damage suffered
22 by humanity itself when it comes to the Bamiyan Buddhas and to the case of Palmyra?

23 Can you assess that there is damage or prejudice suffered at one level or at two levels?

24 Thank you.

25 THE WITNESS: [12:34:33] Thank you, your Honour, for this very important question.

1 And obviously the destruction of heritage, it's something that, you know, concerns both
2 UNESCO and those who believe in the international system for protection of heritage.
3 For UNESCO it is, let's say -- you said, you used the word prejudice, damage or
4 something like this because, you know, we are supposed to protect these sites. The
5 international law is there for the protection of sites. Whenever this protection fails, of
6 course, you know, we are suffering, you know, or damaged because we show the limits of
7 the international system of protection. This is why we are so active in trying to do
8 prevention. This is why we are so active in trying to intercept all the possible threats that
9 affect sites.

10 But in some cases we are in a situation of -- we are unable to give a proper response. You
11 mentioned the Buddha of Bamiyan that I referred to, but during that case, I remember
12 very well because I was already director of the World Heritage Centre, during that case
13 we mobilised all the international opinion, public opinion, and directly the most
14 important imams of the Islamic world, they issued, especially the Al Azhar mosque in
15 Cairo, they issued declarations asking the Taliban not to proceed with the destruction of
16 the Buddhas.

17 We tried to even -- we sent an envoy that was trying to discuss with the Talibani
18 government this issue and trying to -- he spent over two months in the country just trying
19 to convince them.

20 When we failed and the Buddhas were destroyed, the system of international protection
21 suffered the damage because we were showing the limits of it.

22 Similar is the case of Palmyra. This is a world heritage site. It has been, you know, one of
23 the most important heritage archaeological sites in the world, over 100 years of research
24 and excavations and so on, a symbol, an icon of world heritage. When this site was
25 destroyed, of course we are suffering because we show that our system has limits.

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1 Obviously we can't change the history, but that's the situation.

2 For the public that are interested in world heritage, as I said this is now becoming -- has
3 become a major convention in the world. World Heritage sites are very, very
4 well-known and people recognize them as part of modern culture. So when a site is
5 destroyed, you must have noticed that destruction of Palmyra, for instance, raised huge
6 reactions from the public opinion, from institutions, cultural institutions around the
7 world, the big museums and so on, when a site is destroyed deliberately, I think the entire
8 community that believes that heritage is a fundamental component of cultural, modern
9 cultural life, it's suffering. So it is really a wound that is sometimes very hard to heal.

10 JUDGE MINDUA: [12:38:22] (Interpretation) Thank you very much, expert witness,
11 for your very clear explanation.

12 PRESIDING JUDGE PANGALANGAN: [12:38:31] Judge Schmitt, would you have
13 some questions?

14 There are no more questions from the Chamber, Mr Witness.

15 And in behalf of the Chamber and of the Court, I thank you for appearing before us today
16 and for answering all the questions put to you. Thank you and you're now excused.

17 THE WITNESS: [12:38:51] Thank you.

18 (The witness is excused)

19 PRESIDING JUDGE PANGALANGAN: [12:38:52] Let me now turn to the schedule,
20 Mr Dutertre, for the next witness. It is now 40 minutes past 12. The court officer has
21 advised me that they will need time to shift for the protective measures for the next
22 witness, and so the Court will now take a break. We will resume -- I need help with the
23 math here -- we will resume at quarter past 2.

24 Let's break now. Thank you.

25 THE COURT OFFICER: [12:39:38] All rise.

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1 (Recess taken at 12.39 p.m.)

2 (Upon resuming in open session at 2.20 p.m.)

3 THE COURT USHER: [14:20:45] All rise.

4 Please be seated.

5 PRESIDING JUDGE PANGALANGAN: [14:21:11] The Prosecution is ready with the
6 next witness? Thank you.

7 We will now hear Witness P-431.

8 Mr Witness, good afternoon and welcome, welcome to the Court. You're going to testify
9 before the International Criminal Court, Mr Witness, and we will now ask you to make
10 the solemn undertaking under Rule 66(1). There is a card in front of you with a solemn
11 undertaking to tell the truth. Please read out the card for the Court.

12 Please read it aloud, Mr Witness.

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14 (The witness speaks French)

15 THE WITNESS: [14:22:24] (Interpretation) I solemnly declare that I will tell the truth,
16 the whole truth and nothing but the truth.

17 PRESIDING JUDGE PANGALANGAN: [14:22:40] Thank you so much, Mr Witness.

18 As a preliminary point, the Chamber notes that the Prosecution presents this witness to
19 provide expert testimony on Mali's cultural heritage.

20 Does the Defence object to this witness giving expert testimony on these topics?

21 MR AOUINI: [14:23:09] (Interpretation) No, your Honour. In principle we have no
22 objection to the witness giving his testimony. Thank you, President.

23 PRESIDING JUDGE PANGALANGAN: [14:23:21] And thank you as well, Counsel.

24 The Chamber accordingly permits this witness to testify as an expert.

25 Let me now explain to you, Mr Witness, the protective measures that have been put in

1 place by the Chamber granted in decision 133.

2 Mr Witness, we have put in place the following measures for your protection:

3 Number one, face and voice distortion, meaning that no one outside this courtroom can

4 see your face or hear your real voice during your testimony;

5 Second, there will also be the use of a pseudonym. Accordingly, you will be referred to

6 only as "Mr Witness" to make sure that the public does not know your name.

7 When you answer questions that -- when you answer questions that will not give away

8 who you are we will do so in open session, which means that the public can hear what is

9 being said in the courtroom.

10 When you are asked to describe anything that relates specifically to you or are asked to

11 mention facts that might reveal your identity, for example any locations where you live or

12 persons close to you, we will do this in private session. As I've already explained to you,

13 in private session there is no broadcast and no one outside the courtroom can hear your

14 answer.

15 If, Mr Witness, you are ever unsure if the hearing is in open or private session, please do

16 not hesitate to ask.

17 If ever anything gets said during open session which should have been said in private

18 session we will do our best to protect this information. Your testimony will be broadcast

19 on a delay, and we can remove any such remarks from the broadcast before they are

20 heard by the public and from the public transcript of the proceedings.

21 The Chamber recognizes that your security and well-being is important. If at any point

22 you feel that you would like a brief break from giving your testimony, or if you feel

23 unwell, please do not hesitate to say.

24 I now turn, Mr Witness, to a few practical matters. Everything we say here in the

25 courtroom is written down and interpreted into English and French. It is therefore

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1 important to speak clearly and to speak at a moderate or rather slow pace. We want to
2 make sure that your words can be well understood by the interpreters and by the rest of
3 us.
4 Please speak into the microphone and only start speaking when the person asking you the
5 question has finished. To allow for the interpretation, everyone has to wait a few
6 seconds before starting to speak. So I recommend to you that when your lawyer has
7 asked -- when the lawyer has asked his or her question please count in your head to three
8 and only then give your answer.
9 If you have questions yourself, just raise your hand so we know that you wish to say
10 something and we will give you the opportunity to speak.
11 I hope, Mr Witness, that that is all clear to you? It is clear, Mr Witness?
12 THE WITNESS: [14:26:57] (Interpretation) Yes.
13 PRESIDING JUDGE PANGALANGAN: [14:26:59] Thank you so much.
14 THE WITNESS: [14:27:01] (Interpretation) Yes, it is very clear up to now.
15 PRESIDING JUDGE PANGALANGAN: [14:27:04] Thank you, Mr Witness.
16 Then I give the floor to the Prosecution.
17 THE INTERPRETER: [14:27:10] Request from the interpreter: Could the microphone
18 be put closer to the speaker's mouth, please. Thank you very much.
19 PRESIDING JUDGE PANGALANGAN: [14:27:18] I'm sorry, before you begin, the
20 interpreter has requested, I imagine that it is the microphone of the witness. Yes, please.
21 Mr Witness, can you draw the microphones closer to your lips.
22 THE WITNESS: [14:27:40] (Interpretation) I think that will do it.
23 PRESIDING JUDGE PANGALANGAN: [14:27:45] Thank you so much, Mr Witness.
24 Counsel, please proceed.
25 MR MUNEEAMY: [14:27:51] I'm grateful, your Honour.

1 QUESTIONED BY MR MUNEEESAMY:

2 Q. [14:27:58] Mr Witness, before starting my examination, let me remind you that we
3 are in public session. And before asking the questions I will just give you an overview of
4 the different topics we will cover during today's examination.

5 The first topic will deal with your academic and professional background; the second
6 topic will be looking at your role during the occupation of Timbuktu; the third topic will
7 look at the importance of Malian cultural heritage, especially that of Timbuktu; the fourth
8 topic will look at the legal regimes of protection concerning the cultural heritage of
9 Timbuktu; and the last topic will deal with the reactions of the local and international
10 community in relation to the destructions of the sites of Timbuktu.

11 Was I clear, Mr Witness, in the description of different topics?

12 A. [14:29:37] Indeed. Yes, it is clear for me.

13 MR MUNEEESAMY: [14:29:40] Your Honours, to deal with the first two topics I will ask
14 that we move into private session.

15 PRESIDING JUDGE PANGALANGAN: [14:29:48] And counsel may I ask do you have
16 any time estimate for how long we will be in private session?

17 MR MUNEEESAMY: [14:29:52] Roughly around 20 minutes, your Honour.

18 PRESIDING JUDGE PANGALANGAN: [14:29:55] Yes.

19 Okay, court officer, we go into private session.

20 (Private session at 2.30 p.m.)

21 (Redacted)

22 (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0431

(Private Session)

ICC-01/12-01/15

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21 (Open session at 3.17 p.m.)

22 THE COURT OFFICER: [15:17:11] We are back in open session, Mr President.

23 PRESIDING JUDGE PANGALANGAN: [15:17:28] Thank you.

24 MR MUNEEESAMY: [15:17:29] May I proceed, your Honour?

25 PRESIDING JUDGE PANGALANGAN: [15:17:31] Yes.

1 MR MUNEEESAMY: [15:17:33]

2 Q. [15:17:34] Mr Witness, let me remind you we're now back into public session, so I
3 would ask you to be careful not to reveal any information pertaining to your identity.

4 Now, you mentioned earlier that the Malian cultural heritage is important because of its
5 diversity and quality. Now, my next question, which is a follow-up question from this
6 remark, pertains to the social functions of the Malian cultural heritage. Can you tell us
7 what they are?

8 A. [15:18:36] If one were to talk about the social functions of Mali's cultural heritage,
9 one would say that the cultural heritage, broadly speaking, is part of the education of the
10 upcoming generations. It also contributes to providing social ethics and etiquette as well
11 as educating the people on their history.

12 Heritage, cultural heritage in one word is part of the socialisation of the people. So for
13 each of the items of a people's cultural heritage you can always find a relation, a
14 relationship to the community, a link to ethics with a link to cultural identity as it emerges
15 from within a people.

16 Cultural heritage also is a vehicle through which the values of a community can be
17 recognized. Therefore, heritage is of genuine importance when one considers how
18 societies function, to the extent that it contributes to the socialisation of a people, to the
19 people's identity and to the furtherance of the values and value systems of people
20 touching on matters such as ethics, education, history and what have you. Therefore,
21 each aspect of the cultural heritage can be seen to function along the lines I have just
22 described.

23 But when you contact communities and you ask them about what the social functions and
24 values could be, you are likely to get these types of answers.

25 Q. [15:21:52] Where does Timbuktu fit in the Malian cultural heritage?

1 A. [15:22:19] Timbuktu is at the very centre of the story of Mali's cultural heritage, it
2 holds a distinguished position insofar as it is listed on the World Heritage List of
3 UNESCO, it also is reflected in the national classification of heritage. And various
4 explorers and travellers to that area discovered the mythical and other dimensions of the
5 city in terms of how attractive it was to various persons and travellers and, therefore,
6 Timbuktu holds a place of choice, so to speak, over and above other areas of Mali. All
7 people are proud of Timbuktu and of its renown, as well as of the role that the city played
8 in the history of Mali, including the place that Timbuktu now holds at the international
9 level.

10 For all these reasons, Timbuktu is an emblematic city and an integral part of the cultural
11 heritage of Mali.

12 Q. [15:24:27] Can you tell us what role Timbuktu played in the spread of Islam in the
13 region?

14 A. [15:24:53] Timbuktu played a role in the dissemination of Islam in the region can
15 be said simply to have been a very important role. You see, at some point in history,
16 Timbuktu crystallised a high level of dissemination of Islam because it had universities in
17 the early times of history and became a centre for training and education in Islam.
18 Timbuktu was also a trade centre and a centre from which Islam was to spread through
19 the efforts of various scholars who taught Islam and its culture. Most of those scholars
20 were saints. They were the ones who spread Islam throughout the West African region.
21 Timbuktu, therefore, played and, by the way, continues to play that role through the rich
22 documentary material that was left by the scholars, and I'm referring here to the various
23 manuscripts. In that regard, therefore, Timbuktu played a central role as a trade centre
24 and as a city from which Islam would spread and where the manuscripts were produced.
25 It was also the city that hosted a number of saints. And today the products of their work

1 is still attracting a lot of attention, and I'm referring to the mausoleums of the saints in
2 which these saints have found rest today.

3 Q. [15:28:09] I'll come back to the mausoleums in my next question, but first, just to
4 have it on record, in 2006 Timbuktu was named the capital of Islamic culture and backed
5 by the Islamic organisation for education, sciences and culture. Do you confirm this?

6 A. [15:28:46] Yes, I can confirm that. And earlier on I was saying that this is part of
7 the reason for which we held the national week of heritage, the National Heritage Week in
8 Timbuktu in order to celebrate that recognition, by revisiting Timbuktu's history and also
9 recognising its role as a city that contributed to the spread of Islam and also recognising
10 its contribution in earthly items that have become part of the UNESCO World Heritage
11 List.

12 Q. [15:29:44] Thank you. Now, you spoke of mausoleums. Tell us what are those
13 mausoleums and who are the saints?

14 A. [15:30:11] What are those mausoleums and who are the saints? Well, let me say in
15 general terms is that mausoleums are the tombs of saints, tombs of people who played an
16 important role in spreading the Islamic culture. As I said before, these were people who
17 during their lifetime were scholars, they were academics who explored all areas of
18 knowledge.

19 At the end of their lives, these saints were buried in mausoleums which were
20 sometimes -- which sometimes would also contain some disciples who were linked to
21 those saints.

22 So what one can say is that the saints are resting in the mausoleums. The question then is
23 who are these saints?

24 We might be able to provide some very brief information about some of the saints,
25 particularly those whose mausoleums figure on the National Heritage List and on the

1 UNESCO World Heritage List. However, there is still ongoing research to gather more
2 information regarding these saints.

3 As I have said before, there is some information about the saints whose mausoleums
4 appear on the World Heritage List, but when it comes to conservation we need to gather
5 more information to substantiate what already exists. But in any event, each mausoleum
6 has a name and it has some information relating to the saints, as required for such to be
7 documented and entered on the UNESCO World Heritage List.

8 Q. [15:33:22] Can you tell us what do these mausoleums represent for the local
9 community?

10 A. [15:33:46] For the people of Timbuktu, these mausoleums are of great importance.
11 First of all, the mausoleums in Timbuktu reveal or display the presence of the saints who
12 lie in those tombs, reflected in the physical structures. The mausoleums also reflect part
13 of Timbuktu's history, its role in the expansion and spread of Islam. The mausoleums
14 also reflect all aspects of life in Timbuktu to the extent that, from the time of their creation
15 to this day, the mausoleums continue to have the same importance and to elicit the same
16 attachment and admiration from the communities.

17 Furthermore, the mausoleums also are a reflection of life in Timbuktu because they are a
18 reflection of the people's commitment to Islam. The communities of Timbuktu consider
19 the mausoleums as places of prayer and they provide psychological safety nets for the
20 people, to the extent that the people perceive them as protection.

21 In a nutshell, what I am saying is that the mausoleums are important at several levels.
22 First of all, as a testimony to the past history and religion of a people that continues to
23 shine in the minds of the people of Timbuktu.

24 The mausoleums also play the role of protectors of the city. One could say even that
25 these aspects are a reflection of life itself in Timbuktu and that is why the mausoleums are

1 such an important testimony of the life of Timbuktu as a centre for Islamic culture and as
2 a place where the scholars who now repose in those areas played in the expansion of
3 Islam and relations with other communities. So it also played -- they also play a
4 psychological role, to the extent that they provide protection for the city.

5 Q. [15:38:28] Before I ask my next question, again I'll just remind you that we're in
6 public session and in answering the next question just try to avoid to reveal the identity of
7 anyone. So the question is: you mention that the mausoleums were used for prayers.
8 Have you witnessed this yourself?

9 A. [15:39:13] (Redacted)
10 (Redacted)

11 there came a time when I saw one of my colleagues stop to pray at the site of one of the
12 mausoleums that we were visiting. This means, therefore, that, quite frankly, prayer was
13 a practice that I saw with my own eyes when we conducted our activities in that area.

14 Q. [15:40:25] Thank you.

15 MR MUNEESEAMY: [15:40:28] Your Honour, we seem to have -- can we move to go
16 into private session, your Honour, and I will explain the problem in private session.

17 PRESIDING JUDGE PANGALANGAN: [15:40:39] Okay, thank you.
18 Please, let's go into private session, court officer.

19 (Private session at 3.40 p.m.)

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11 (Open session at 4.06 p.m.)

12 THE COURT OFFICER: [16:05:46] We're back in open session, Mr President.

13 PRESIDING JUDGE PANGALANGAN: [16:06:04] Thank you. Thank you so much.

14 So please proceed with your questions.

15 MR MUNEEESAMY: [16:06:09] I'm grateful, your Honour.

16 Q. [16:06:11] Mr Witness, can you tell us how you personally reacted when you heard
17 of the destruction of the mausoleums of Timbuktu?

18 A. [16:06:39] My reaction, my personal reaction when I heard about the destruction of
19 the mausoleums in Timbuktu, first of all, I was concerned, I was concerned about the
20 integrity of Timbuktu's heritage which was coming under attack. Because the
21 classification in national heritage, and on the UNESCO list of World Heritage sites as well,
22 means that the building is kept in its entirety, in its whole state, and when part is
23 destroyed this whole entirety is destroyed and this takes away the universal exceptional
24 value of it. The reason why the building figured on the UNESCO list on the first place.
25 So my reaction was immediately, well, what has to be done in order to get this entirety

1 of the building together again? And this was the reaction that I had. How can it be
2 restored in its entirety faced with the destruction of the mausoleums? If one part is
3 attacked it is no longer complete and, therefore, risks -- there's a -- it risks putting its
4 registration as a world heritage site at risk and so the first thing is to re-establish its
5 completeness, its entirety.

6 Q. [16:08:59] And how did the local population react to the destruction of the
7 mausoleums?

8 A. [16:09:18] As regards the information that we've had the local population protested,
9 they protested against the destruction of mausoleums. They protested in the sense that it
10 was their property, their buildings, as we mentioned, all the cultural meaning that goes
11 along with them. They protested about that. And with regards to certain pictures that
12 you could see at the time, we felt this protest and a refusal to see these mausoleums being
13 destroyed.

14 Q. [16:10:28] Mr Witness, in your statement, and if I may read and lead on this, and I
15 will read in French, you said:

16 (Interpretation) "The best way to kill somebody is to do it at a cultural level with regard to
17 everything that that person has that is of importance."

18 (Speaks English) Why did you say this?

19 A. [16:11:14] The reason why I said this was because we were in a war context and in
20 that war context everything that could harm the enemy was what often happened. And
21 when it came to the destruction of the Timbuktu mausoleums, this was indeed a matter of
22 an activity of war to psychologically kill the people of Timbuktu, destroying the property
23 or buildings for which they had an effective attachment. So everything happens that by
24 destroying the mausoleums you attack the affection of Timbuktu because -- well, it affects
25 Timbuktu, the town is attacked. And from the cultural and religious perspective it is

1 known that it is one of the means that's used during war, that is, to harm the other person
2 in regards to that person's deepest inner self. And everything is done, such as
3 destruction of mausoleums in Timbuktu, it comes from that war practice. It consists of
4 killing the enemy in that person's soul through such type of activity.

5 Q. [16:13:47] Now, you told us about your personal reaction, you told us about the
6 reaction of the communities living in Timbuktu. Are you aware of the reaction of the
7 Malian population in general?

8 A. [16:14:15] With regards to the population in Mali I've already said that Timbuktu is
9 a source of pride for all Malians, it's a reference for the whole of Mali. The population,
10 faced with the destruction of mausoleums was, to speak quite simply, they were
11 indignant to see these acts of destruction of national heritage and world heritage take
12 place. There was protests. It was condemned, such acts were condemned. And that
13 was it.

14 Q. [16:15:13] Let's move to the international reaction. Are you aware of a conference
15 taking place in Saint Petersburg, the World Heritage Committee meeting?

16 A. [16:15:37] Yes, I do know that there was a meeting of the World Heritage
17 Committee in Saint Petersburg.

18 Q. [16:15:48] (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0431

(Open Session)

ICC-01/12-01/15

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6 MR MUNEEESAMY: [16:22:23] Your Honour, I'm conscious of the time. I will be
7 another 10 minutes, not more.

8 PRESIDING JUDGE PANGALANGAN: [16:22:32] I'm just looking at the clock. And
9 after that you terminate your questions. Okay, please.

10 MR MUNEEESAMY: [16:22:39] Yes, your Honour. Thank you.

11 Q. [16:22:42] Mr Witness, I will now show you a photograph.

12 And I would ask that the photograph only be shown in the courtroom and not outside, so
13 it is confidential level.

14 Your Honour, I'm referring to the photograph, the first photograph at tab 6 of your
15 binders. The ERN of the photograph is MLI-OTP-0037-0140 -- sorry, 0139 and the page is
16 0140.

17 Now, Mr Witness, I'll remind you we're in public session and I will ask you not to reveal
18 the identity of anyone.

19 Can you tell us what you see in the photograph on your screen?

20 A. [16:23:55] This photograph here on the screen depicts someone who is still praying
21 before a mausoleum that has been destroyed. So this means that the mausoleum is still
22 important to the person because of the location, because the inhabitants of Timbuktu can
23 come here to express their faith, to pray, as they did in the past before the mausoleum had
24 been destroyed. So this is a demonstration of faith before -- in front of the mausoleum
25 which has been destroyed.

Trial Hearing
WITNESS: MLI-OTP-P-0431

(Open Session)

ICC-01/12-01/15

1 THE COURT OFFICER: [16:25:10] I have a message for the French booth.

2 MR MUNEEESAMY: [16:25:20]

3 Q. [16:25:20] Mr Witness, can you tell us of the current state of the mausoleums of
4 Timbuktu?

5 A. [16:25:46] Well, the current state of the mausoleums in Timbuktu is as follows:

6 Thanks to the people of Timbuktu coming together and taking action, thanks to the
7 international community which has also come together and taken action, and thanks to
8 everything that the culture ministry has been able to undertake, the mausoleums have
9 been rebuilt.

10 Q. [16:26:22] How did the population of Timbuktu react to the reconstruction of the
11 mausoleums?

12 A. [16:26:44] The people were overjoyed. Immediately the community
13 reappropriated the mausoleums and continue to go to these buildings as they did in the
14 past. So I would say that the rebuilding of the mausoleums was greeted with joy,
15 particularly since there was quite a pressing need to rebuild the mausoleums because they
16 were part of the life of the city that part -- and that part of the city's life had been
17 destroyed, taken away, and so people were full of joy once the mausoleums had been
18 rebuilt.

19 MR MUNEEESAMY: [16:27:51] (Microphone not activated) I am done with the
20 examination of the witness.

21 PRESIDING JUDGE PANGALANGAN: [16:27:59] Thank you. Thank you so much,
22 Counsel.

23 We now turn to Defence counsel, Mr Aouini. Will you have any questions for this
24 witness?

25 MR AOUINI: [16:28:10] (Interpretation) Thank you, President. We do not have any

1 questions to the witness. Thank you.

2 PRESIDING JUDGE PANGALANGAN: [16:28:21] Thank you, Mr Defence Counsel.

3 I think Judge Mindua has a question.

4 Judge Mindua, please proceed.

5 JUDGE MINDUA: [16:28:37] (Interpretation) Yes, yes, indeed, I do have a question to
6 put to the witness.

7 Mr Expert Witness, I'd like us to hark back to the mausoleums in Timbuktu. And you
8 said that they were under guard, so to speak, and that there were specific families that
9 would maintain the mausoleums. So you said that these families would use special
10 masons who had specific expertise in maintaining these buildings. And I would imagine
11 that the masons were paid.

12 So I have two questions, in fact. First of all, now, a family that maintains a mausoleum
13 and is responsible for it, has custody of it, so to speak, does this family get any financial
14 advantage, any income because they have taken on responsibility for a mausoleum?
15 Because this responsibility does mean that masons must be hired, so I'd like to know if
16 these families receive any money and, if so, who pays the money? That is my first
17 question.

18 THE WITNESS: [16:30:17] (Interpretation) We do not have any knowledge to the
19 effect that the masons associations receive money for their work. I must stress that these
20 masons, as I said earlier this afternoon, belong or are part of the community. These
21 masons have ties to the families in question. For example, they build houses for these
22 families, they also build other buildings for the families.

23 So it's more of -- I would say it's more of a community way of life that goes beyond a
24 definition. It's not a matter of paying wages or anything like that. It's also a family
25 thing, masons hand down the trade from father to son. And the lives of these people are

1 governed by a system of living together. And if someone can pay a mason for work -- as
2 for the mausoleums, I think we need to say that these are public buildings. To our
3 knowledge, I really -- I wouldn't say that the masons are paid to rebuild the mausoleums.
4 And the same thing holds true for the conservation of mosques. Contributions to the
5 conservation of mosques is a demonstration of faith, the faith of the people who take part
6 in these conservation activities. Thus, you see, these are public buildings. As I said
7 earlier, these people are primary stakeholders, so to speak, and I don't really think that the
8 issue is viewed in financial terms, how much should one pay a mason or an association of
9 masons for their work. The work is done for the community. That is what I can tell you
10 about that aspect of the question.

11 JUDGE MINDUA: [16:33:40] (Interpretation) Thank you very much for your reply.
12 Now, if I've understood you, you are telling us that the masons are not really paid because
13 they're working for the general community.

14 And the families that are responsible for the mausoleums, do they receive anything? I
15 don't think you've answered.

16 THE WITNESS: [16:34:08] (Interpretation) The families that are responsible for the
17 mausoleums, if you put it in those terms, well, I think -- I think we are outside the system,
18 so to speak. The mausoleums operate within a system, an integrated system and a
19 system that is inclusive within this system, there's no sort of special responsibility or
20 custody of mausoleums, the mausoleums are simply there, known or not known, and they
21 are places where people go to pray, they are a form of protection, they are seen as a place
22 where one is protected, everyone.

23 Furthermore, they are places that people can -- they have a special link or tie, it's as if they
24 can almost communicate or commune with the building. The people show trust. And
25 these are places of tranquillity. When one goes by a mausoleum, one stops, one prays.

1 So these are places that the people of Timbuktu want to experience within their own lives
2 no matter where they may be, thus when you ask this question and you put it in terms of
3 responsibility or having custody of a mausoleum, you are outside of the integrated system
4 of living with these mausoleums the way that people in the community live and
5 experience these historic places. Everyone feels a certain sense of responsibility and
6 everyone feels trust in relation to the mausoleums.

7 JUDGE MINDUA: [16:37:07] (Interpretation) Thank you very much. My last
8 question: Now, these families that are responsible for the mausoleums are they made up
9 of descendants of the saints in question, or can any family acquire the right to maintain a
10 mausoleum or the right to have responsibility or custody of it because you mentioned that
11 these families are entrusted with the mausoleums? Thank you.

12 THE WITNESS: [16:38:01] (Interpretation) Generally speaking the families have a
13 relationship with the mausoleums. What do I mean by that? Well, they have a certain
14 link or tie to the saint who is at rest in the mausoleum and this link with the saint who is
15 resting there, this link with the family is to the family and then there is a link to the
16 masons who are responsible for conserving the buildings and any other person who can
17 show an interest in being responsible for a mausoleum or taking care of one, someone
18 who wants to show his or her faith in relation to the mausoleum.

19 In any event, these are common or public places and everyone feels a certain
20 responsibility towards these places. And since these sites have been put on a heritage list,
21 you also must consider that the state is responsible for some of this and must assist the
22 population, help the local people take care of these mausoleums on an ongoing basis.

23 JUDGE MINDUA: [16:39:52] (Interpretation) Thank you very much indeed.

24 PRESIDING JUDGE PANGALANGAN: [16:39:59] Well, thank you so much for the
25 questions, Judge Mindua.

Trial Hearing
WITNESS: MLI-OTP-P-0431

(Open Session)

ICC-01/12-01/15

1 At this point, Mr Witness, on behalf of the Chamber, I thank you for coming here today to
2 assist the Court and for answering the questions put to you. This concludes your
3 testimony. At the close of this hearing you will be excused.

4 Now that the Prosecution has completed its questions for the presentation of this witness,
5 we will resume tomorrow at 9 a.m. for the Prosecution, if it has any further submissions
6 within the time limits it has been granted to them, and then proceed to the submissions by
7 the Defence and if at all possible also receive submissions within the time limit for the
8 Legal Representative for Victims.

9 On that point, we close today's hearing and we resume tomorrow at 9 o'clock. Thank
10 you.

11 THE COURT USHER: [16:41:25] All rise.

12 (The witness is excused)

13 (The hearing ends in open session at 4.41 p.m.)