

Trial Hearing
Witness: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor vs Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia Mbe Mindua, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 1
9 Tuesday, 17 November 2020
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:42] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:32:06](Interpretation) Hearing is in session.
15 Good morning, everyone.
16 Court officer, please would you call the case.
17 THE COURT OFFICER: [9:32:17](Interpretation) Good morning, your
18 Honour, your Honours.
19 The situation in Mali, in the case of The Prosecutor versus Mr Al Hassan -- Al
20 Hassan, reference ICC-01/12-01/18.
21 And we are in open session.
22 PRESIDING JUDGE MINDUA: [9:32:34](Interpretation) Thank you, court
23 officer.
24 For the transcript, we are going to go with the appearances, starting with the
25 Office of the Prosecutor.

1 MR DUTERTRE: [9:32:46](Interpretation) Good morning, your Honour.

2 Good morning, your Honours. The Prosecution -- good morning, Witness,

3 and everybody else. The Prosecution today is represented by Madam

4 Sarah Coquillaud, Mr Garcia, and myself, Gilles Dutertre. Thank you.

5 PRESIDING JUDGE MINDUA: [9:33:06](Interpretation) Thank you,

6 Prosecutor.

7 And now turning to the Defence.

8 Ms Taylor.

9 MS TAYLOR: [9:33:10] Good morning, Mr President. Good morning, your

10 Honours. The Defence for Mr Al Hassan is represented today by

11 Kirsty Sutherland, Molly Thomas, Dolly Chahla and myself, Melinda Taylor.

12 And I note for the record that again, Mr Al Hassan is quarantined in the

13 detention unit because of COVID. Thank you.

14 PRESIDING JUDGE MINDUA: [9:33:37](Interpretation) Thank you,

15 Ms Taylor.

16 The Legal Representatives of Victims now.

17 Mr Kassongo.

18 MR KASSONGO: [9:33:46](Interpretation) Good morning, your Honour, your

19 Honours. The team of the representatives this morning is represented by

20 Madam Claire Laplace, who's assisting me, and myself, Maître Kassongo.

21 Thank you.

22 PRESIDING JUDGE MINDUA: [9:34:02](Interpretation) Thank you, Maître

23 Kassongo.

24 I confirm of course that the accused is not present in the courtroom. He is

25 following us from the detention centre.

1 Good morning, Witness. Can you hear me?

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

3 (The witness speaks Arabic)

4 THE WITNESS: [9:34:21](Interpretation) Good morning. I can hear you very

5 clearly.

6 PRESIDING JUDGE MINDUA: [9:34:24](Interpretation) Thank you very

7 much.

8 I would like to welcome you and to thank you for your availability. I would

9 like to remind you that you are still under oath and that you must tell the truth,

10 the whole truth and nothing but the truth. I would also like to remind you of

11 my instructions regarding taking the floor.

12 Today, we will continue with the hearing of the 16th Prosecution witness with

13 the cross-examination of the Defence, that's Witness P-0065, with the

14 cross-examination conducted by the Defence.

15 Ms Taylor, before giving you the floor for your cross-examination, I have

16 certain oral instructions to be rendered to you.

17 Firstly, we have noted during the hearing yesterday morning that you were

18 reading entire paragraphs into the transcript; MLI-OTP-0074-1890, paragraph

19 35 thereof, you didn't do that, but the Chamber would like you to do it today

20 so that the record can be complete. That's the first thing.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Unfortunately for the Chamber, this relevance is still not clear and not

25 established.

1 In future, you therefore should clearly explain the relevance of them when that
2 is asked of you. You can, if necessary, do so without the presence of the
3 witness. Because when I ask you what the link or the relevance is, if you don't
4 explain it to me, then the debates that we have here, that is for clarification of
5 the Chamber. If the Chamber doesn't understand, there's no point.
6 Thirdly, there was an issue raised by the Defence at the end of the hearing
7 yesterday concerning a lag or a difference between -- a difference between the
8 Arabic interpreting and the English. The Chamber would like to remind the
9 parties that if there is a question which was discussed in private session, in
10 principle, the correction must also be raised in private session. Because
11 yesterday we had a discussion in private session and, Ms Taylor, you
12 explained it again.
13 Finally, the Chamber notes that yesterday we spent a major part of the hearing
14 in private session. By way of consequence, the Chamber wishes to remind
15 counsel of the instructions which were reiterated on Wednesday in the record,
16 number 45, concerning the need that there is to comply as far as possible with
17 the principle of the publicity of proceedings and the responsibility of parties to
18 organise the questions in accordance with that principle.
19 I said that it was desirable to group the questions for private session such that
20 they could be put at the beginning or end to make it possible to have a trial in
21 public. It is not my intention to have a closed trial.
22 I hope that I am well understood.
23 And we shall continue with the cross-examination.
24 Ms Taylor, you have the floor.
25 MS TAYLOR: [9:40:21] Thank you, Mr President.

1 Now I believe that we will have to start in private session, with your
2 authorisation, to continue the line of cross-examination which will address one
3 of the points that you just raised.

4 PRESIDING JUDGE MINDUA: [9:40:46](Interpretation) I'm certainly in
5 agreement. What happened yesterday in the last session, when you start
6 something in private session, and I'm going to ask you, "Can we now go into
7 open session?" and you're going to say, "Yes, there's just a video that I'm going
8 to show." And we show the video and for a long time. And when I ask,
9 "Now can we go into open session?" You're going to say, "There's another
10 video" and the whole session was in private session. We cannot continue like
11 that.

12 Now, you're going to make your intervention in private session, taking into
13 account what we've already said on many occasions. Please go ahead.

14 Court officer, if you would be so kind as to take us into private session.

15 (Private session at 9.41 a.m.)

16 THE COURT OFFICER: [9:41:44] (Interpretation) We're in private session,
17 your Honour.

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22 (Open session at 10.27 a.m.)

23 THE COURT OFFICER: [10:27:24] (Interpretation) We are back in open
24 session, Mr President.

25 PRESIDING JUDGE MINDUA: [10:27:27](Interpretation) Thank you very

1 much, court officer.

2 Ms Taylor.

3 MS TAYLOR: [10:27:32]

4 Q. [10:27:33] Now, Mr Witness, we're now in open session, so with that in
5 mind I'm going to show you a document and then address certain questions
6 regarding the foundation of the document afterwards in private session.

7 So if you could turn to tab 213 on the Defence binder. That's

8 MLI-D28-0004-3564. It's tab 203.

9 THE COURT OFFICER: [10:28:39](Interpretation) The document is on
10 evidence channel 1.

11 MS TAYLOR: [10:28:45] And just to confirm to the witness, it's not going to be
12 shown publicly.

13 THE COURT OFFICER: [10:28:53] (Interpretation) Yes, indeed. The default
14 position is for documents to be confidential. Only upon special request would
15 it be otherwise. So there is no need to be concerned. This document will not
16 go beyond the bounds of this courtroom.

17 MS TAYLOR: [10:29:18]

18 Q. [10:29:18] Mr Witness, are you familiar --

19 A. [10:29:25] I am very sorry, but I need two minutes, I need to leave the
20 room for a brief bit. I can't concentrate any further.

21 PRESIDING JUDGE MINDUA: [10:29:42](Interpretation) Madam court
22 officer, could you please escort the witness from the room. Thank you.

23 THE WITNESS: [10:29:53](Interpretation) Thank you.

24 (The witness exits the courtroom)

25 THE COURT OFFICER: [10:30:29](Interpretation) For the record, the witness

1 is currently outside the courtroom.

2 (Pause in proceedings)

3 THE COURT OFFICER: [10:31:50](Interpretation) Your Honour, we're still
4 available to you if you wish to consult the witness, of course, to shorten the
5 time, if necessary.

6 PRESIDING JUDGE MINDUA: [10:32:04](Interpretation) Please could you
7 check. Thank you.

8 THE COURT OFFICER: Court clerk

9 MS TAYLOR: [10:32:14] The Defence also wouldn't object to having a break
10 now if that's more convenient.

11 THE COURT OFFICER: [10:32:36](Interpretation) It would seem that the
12 witness is behind the door.

13 (Speaks English) Court clerk, could you confirm that Mr Witness is ready.

14 Yes. He is currently coming back to the courtroom, for the record.

15 (The witness enters the courtroom)

16 PRESIDING JUDGE MINDUA: [10:32:54](Interpretation) Witness, can you
17 continue? Are you ready?

18 THE WITNESS: [10:32:59](Interpretation) Yes, I'm very sorry. It was for a
19 reason completely independent of my own will.

20 PRESIDING JUDGE MINDUA: [10:33:09](Interpretation) Ms Taylor, we can
21 continue.

22 MS TAYLOR: [10:33:21]

23 Q. [10:33:22] Mr Witness, if you feel like you need a break or you're tired,
24 please do not hesitate to let us know.

25 A. [10:33:32] No, I'm fine. I'm very well. I have all my concentration

1 faculties and I'm fine.

2 Q. [10:33:45] It's been a long three weeks.

3 Mr Witness, are you familiar with an organisation called the Congr s pour la
4 justice dans l'Azawad?

5 A. [10:34:06] Yes.

6 Q. [10:34:07] Can you tell the Court what you know about this organisation?

7 A. [10:34:12] CJA, that's an idea that some people came up with and this
8 congress became the armed organisation of the Ansar tribe and their allies.
9 They are the allies of the Malian government and they are the primary target of
10 Al-Qaeda in Timbuktu.

11 Q. [10:34:58] So would it be fair to say that it's not a terrorist association?

12 A. [10:35:05] It's rather the target of terrorists. It was created with the
13 government of Mali, which is at war against terrorism.

14 Q. [10:35:24] Without giving any identifying information, are you familiar
15 with the name Hama Ag Mahmoud?

16 A. [10:35:38] Hamad Ag Mahmoud? I think the name's not correct.

17 Q. [10:35:49] It's possible I'm mispronouncing it, or it might be spelt different
18 ways, Hama Ag Mahmoud or Hama Ag (Overlapping speakers)

19 A. [10:36:02] Yes, I know it. I heard Hamad. No, it's "Hama Al
20 Mahmoud". Yes, I know it well.

21 Q. [10:36:13] And is this someone who was involved in the CJA?

22 A. [10:36:21] Yes. He was the president of the congress when it started.

23 Q. [10:36:30] And to your knowledge, does this person have any affiliation
24 with Al-Qaeda?

25 A. [10:36:40] Not at all. Not at all.

1 Q. [10:36:46] Are you aware of a split occurring in the CJA between, on the
2 one hand Nasser, and Hama, at about December 2016?

3 A. [10:37:04] Yes, there was internal conflict and divisions as well.

4 Q. [10:37:13] And to your knowledge, did the faction associated with Hama
5 have any affiliation with Al-Qaeda?

6 A. [10:37:34] I don't know. I don't have any information about a possible
7 relationship with Al-Qaeda.

8 Q. [10:37:48] Based on their previous politics and objectives, would it have
9 been a continuation -- I'll rephrase that.

10 You've referred to the CJA as being an ally of the Malian government and
11 being the target of attacks by Al-Qaeda. So would it follow that the faction
12 under Hama would be the same?

13 A. [10:38:22] Yes, the CJA is one single entity. The conflict and internal
14 division reflects its own membership and composition. They are allies of the
15 Mali government and Al-Qaeda attacked them on several occasions and
16 targeted some of their members.

17 Q. [10:38:52] I have some follow-up identifying questions that would need to
18 be asked in private session.

19 PRESIDING JUDGE MINDUA: [10:39:03](Interpretation) Court officer, if you
20 would be so kind as to take us into private session.

21 THE INTERPRETER: [10:39:11] The interpreter would like to point out that it
22 is the CJA, not the CGA.

23 (Private session at 10.39 a.m.)

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Trial Hearing
Witness: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

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3 (Open session at 11.00 a.m.)

4 THE COURT OFFICER: [11:00:50](Interpretation) We are in open session
5 again.

6 PRESIDING JUDGE MINDUA: [11:00:56](Interpretation) Thank you, court
7 officer.

8 Court usher.

9 Witness, you wished to leave the courtroom precipitously, but I have assigned
10 you a task. So during the break which we're going to take, you will finish
11 reading the chat that we discussed this morning.

12 As regards the Defence, I would like to say, when we return in 30 minutes we
13 will only have one hour, so please group your questions such that that hour
14 can be in public as far as possible. And we will have the lunch break an hour
15 and a half and then we will do the same thing, such that the questions in
16 private session can be put either at the start of the session or at the end thereof.
17 That is what I wish to ask of you.

18 We shall therefore suspend our hearing for a half hour and we will be back at
19 11.30.

20 The hearing is now suspended.

21 THE COURT OFFICER: [11:02:44](Interpretation) All rise.

22 (Recess taken at 11.02 a.m.)

23 (Upon resuming in open session at 11.31 a.m.)

24 THE COURT USHER: [11:31:02] All rise.

25 Please be seated.

- 1 PRESIDING JUDGE MINDUA: [11:31:30](Interpretation) The Court is in
2 session. We will continue with the Defence cross-examination.
3 Ms Taylor, you have the floor.
- 4 MS TAYLOR: [11:31:45] Thank you, Mr President.
5 And I believe we were in private session.
- 6 THE COURT OFFICER: [11:31:55](Interpretation) We have started again
7 (Speaks English) We are still in open -- we are in open session. We resumed
8 in open session.
- 9 PRESIDING JUDGE MINDUA: [11:32:01](Interpretation) Do you wish now to
10 go to private session?
- 11 MS TAYLOR: [11:32:05] Yes, because my line of questioning is the same.
- 12 PRESIDING JUDGE MINDUA: [11:32:13](Interpretation) Court officer,
13 private session, please.
14 (Private session at 11.32 a.m.)
- 15 THE COURT OFFICER: [11:32:24] We're in private session.
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7 (Open session at 12.33 p.m.)

8 THE COURT OFFICER: [12:33:37] (Interpretation) We are in public session,
9 your Honour.

10 PRESIDING JUDGE MINDUA: [12:33:45](Interpretation) Thank you very
11 much, court officer.

12 We will now break for about an hour and we will start again at 13.30.

13 The hearing is suspended.

14 THE COURT USHER: [12:34:05] All rise.

15 (Recess taken at 12.34 p.m.)

16 (Upon resuming in open session at 1.30 p.m.)

17 THE COURT USHER: [13:30:43] All rise.

18 Please be seated.

19 PRESIDING JUDGE MINDUA: [13:31:09](Interpretation) Court is in session
20 once again.

21 We shall continue with the cross-examination on the part of the Defence.

22 Ms Taylor, over to you.

23 MS TAYLOR: [13:31:21] Thank you, Mr President. And I believe we'll need
24 to go into private session to continue the same line of questioning.

25 PRESIDING JUDGE MINDUA: [13:31:33](Interpretation) Madam courtroom

- 1 officer, private session, please.
- 2 (Private session at 1.31 p.m.)
- 3 THE COURT OFFICER: [13:31:44] (Interpretation) We are in private session,
- 4 Mr President, your Honours.
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15 (Open session at 3.02 p.m.)

16 THE COURT OFFICER: [15:02:31] (Interpretation) We are in open session,
17 Mr President.

18 PRESIDING JUDGE MINDUA: [15:02:36](Interpretation) Thank you very
19 much, madam courtroom officer.

20 There we are. We are coming to the end of today's hearing and to the end of
21 the third session of today.

22 Ms Taylor, I would like to address you once again. At the end of the first
23 session this morning I had requested the witness to go away and read the
24 document that he had before him before the end of the session and I had asked
25 you to make an effort, as the Prosecutor had done, to group your questions in

1 such a manner as to enable the second session of the day, the second hearing
2 that would be one length in duration, for it to be able to have some open
3 session phases and some private session phases. And I had also specified that
4 the third session of today would be one and a half hours in duration and that I
5 also wanted to have some parts of it in open session and some parts of it in
6 private session.

7 I have already said on a number of occasions that this witness is difficult to
8 question and to cross-examine by dint of his personal situation, but I have also
9 said on a number of occasions that it was not my intention to conduct a trial in
10 private session.

11 So you see that generally speaking I intervene to ask whether we are going into
12 open or private session, but for today's second session and for today's third
13 session I did not intervene. I just wanted to see how far you would go. Now
14 I realise that you are neglecting the instructions that I have given.

15 Were I to be in your position, I would make an effort, just in order to please the
16 Bench, and foresee a number of questions in open session. Because I have the
17 responsibility to protect the witness but also to respect the rules of procedure
18 for my hearings not to be in private session in their entirety.

19 So tomorrow we shall try again. I would ask you to choose some subject
20 material that will be broached in private session and other subject material that
21 shall be broached in open session. What is more, some of the questions that
22 you put this afternoon could have been put in open session, as the Prosecutor
23 did. You know, we quote an item and we know that identifying items should
24 not be given in open session and we make an effort to put questions, which is
25 what you failed to do in the second and third sessions of today. So bear that

1 in mind.

2 Mr Witness, I'd like to thank you once again for your patience and your
3 availability. As you will have noted, we have finished for today and I would
4 request once again that you be here tomorrow morning at 9.30. In the
5 meantime, as you know, and as you know it is a ritual of mine to remind you,
6 you will not speak to anybody about your testimony.

7 It is now time to say thank you and goodbye to all the parties, to the
8 participants, thank you for your cooperation. To the court reporters and to
9 the interpreters, I would like to renew my gratitude to you. And I shall not
10 forget, of course, our security officers and the members of the public who are
11 very patient. Thank you to all and have a good evening. See you tomorrow
12 at 9.30.

13 Court is adjourned.

14 THE COURT USHER: [15:07:29] All rise.

15 (The hearing ends in open session at 3.07 p.m.)