

Trial Hearing  
WITNESS: MLI-D28-P-0605

(Open Session)

ICC-01/12-01/18

1 International Criminal Court  
2 Trial Chamber X  
3 Situation: Republic of Mali  
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag  
5 Mahmoud - ICC-01/12-01/18  
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and Judge  
7 Kimberly Prost  
8 Trial Hearing - Courtroom 3  
9 Wednesday, 24 August 2022  
10 (The hearing starts in open session at 9.36 a.m.)  
11 THE COURT USHER: [9:36:37] All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE MINDUA: [9:36:56](Interpretation) Court is in session.  
15 Good morning to everyone.  
16 Court officer, please call the case.  
17 THE COURT OFFICER: [9:37:34] Good morning, Mr President, your Honours.  
18 This is the situation in the Republic of Mali, in the case of The Prosecutor versus Al  
19 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.  
20 And for the record, we are in open session.  
21 PRESIDING JUDGE MINDUA: [9:37:57](Interpretation) Thank you very much,  
22 Court Officer.  
23 As we always do, we shall start with the appearances.  
24 First of all, the Office of the Prosecutor.  
25 Prosecutor.

1 MR DUTERTRE: [9:38:13](Interpretation) Good morning, your Honour,  
2 your Honours. The Office of the Prosecutor this morning is composed of  
3 Madam Yayoi Yamaguchi, on my left at the back; Mr Mousa Allafi, on my left; and  
4 Lucio Garcia behind me; and myself, Gilles Dutertre. Thank you. And I greet  
5 everybody in the courtroom, including the new members of the Defence team.

6 PRESIDING JUDGE MINDUA: [9:38:46](Interpretation) Thank you very much,  
7 Prosecutor Dutertre.

8 I now turn towards the Defence.  
9 Counsel.

10 MS GERRY: [9:38:53] Good morning, Mr President, good morning, your Honours.  
11 I'm Dr Felicity Gerry, Queen's Counsel. I'll introduce my team. Melinda Taylor,  
12 behind me; counsel for Mr Al Hassan; Leila Abid to my right; and Mohamed Youssef  
13 to my right. And Mr Al Hassan is at the back of court with us today.  
14 Thank you.

15 PRESIDING JUDGE MINDUA: [9:39:24](Interpretation) Thank you very much,  
16 Counsel.

17 I'd also like to take this opportunity to welcome Mr Al Hassan who is in the  
18 courtroom.

19 I now turn towards the Legal Representative of Victims.  
20 Counsel. I see Maître Doumbia from afar.

21 MR DOUMBIA: [9:39:43](Interpretation) The LRV this morning is represented by  
22 Madam Tovia Vila and myself Mr Doumbia.  
23 Thank you very much.

24 PRESIDING JUDGE MINDUA: [9:39:59](Interpretation) Thank you very much,  
25 Maître Doumbia.

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1 I turn towards the counsel of the witness, with regard to Rule 74. Counsel?

2 MS TERZIEVA: [9:40:18] Honourable Judges, colleagues, Vessela Terzieva  
3 independent counsel appointed to Witness D-0605 by the Registry pursuant to a Trial  
4 Chamber decision of 15 August 2022. Thank you.

5 PRESIDING JUDGE MINDUA: [9:40:46](Interpretation) Thank you very much,  
6 Counsel Terzieva.

7 Now, I turn towards the witness.

8 Good morning, Witness, can you hear me?

9 It would seem that there is a problem with the interpretation or with the connection.

10 We are going to hear the Witness D-0605, and I was wondering if the witness can hear  
11 me?

12 WITNESS: MLI-D28-P-0605

13 (The witness speaks Arabic)

14 (The witness gives evidence via video link)

15 THE WITNESS: [9:41:34](Interpretation) Yes, I can hear you.

16 PRESIDING JUDGE MINDUA: [9:41:39](Interpretation) Very well. Witness, on  
17 behalf of the Chamber, I would like to welcome you. You are going to testify with a  
18 view to aiding the Chamber establish the truth in the case concerning Mr Al Hassan.

19 THE WITNESS: [9:42:11](Interpretation) Yes, I will testify.

20 PRESIDING JUDGE MINDUA: [9:42:15](Interpretation) Thank you very much,  
21 Witness.

22 Protective measures have been put in place such that your identity will not be  
23 revealed to the public. Whenever you have to give details which could reveal your  
24 identity, we will speak in private session. As such, nobody outside this courtroom  
25 will be able to hear you.

1 Witness, I shall now proceed with your solemn undertaking under Rule 66(1) of the  
2 Rules of Procedure and Evidence. According to the solemn undertaking, you have  
3 to swear to tell all the truth. Please, could you repeat after me aloud, I solemnly  
4 declare that I will tell the truth --

5 THE WITNESS: [9:44:00](Interpretation) I solemnly declare that I will say the  
6 truth --

7 PRESIDING JUDGE MINDUA: [9:44:07](Interpretation) All the truth --

8 THE WITNESS: [9:44:10](Interpretation) The whole truth --

9 PRESIDING JUDGE MINDUA: [9:44:21](Interpretation) And nothing but the truth.

10 THE WITNESS: [9:44:23](Interpretation) And nothing but the truth.

11 PRESIDING JUDGE MINDUA: [9:44:28](Interpretation) Thank you very much,  
12 Witness.

13 Witness, you are now under oath. The representatives of the Victims and Witnesses  
14 Unit as well as the representatives of the Defence have already explained to you what  
15 that means. I'm therefore not going to come back on that.

16 Witness, you have your counsel, Maître Terzieva, who was appointed according to  
17 the Chamber's decision with regard to Rule 74, which protects the witness when  
18 giving testimony with regards to their own incrimination; so you are already aware of  
19 all that and your counsel has explained that to you.

20 So I have some advice of a practical nature for you.

21 You should always bear in mind throughout your testimony that everything that is  
22 said in this courtroom is transcribed by court reporters and it is simultaneously  
23 interpreted into several languages by interpreters. It's therefore important to speak  
24 clearly and slowly. Do not start speaking until the person who is putting the  
25 question to you has finished putting their question. You therefore have to mark

1 a pause between the question and the answer. This pause is essential for your  
2 testimony to be duly recorded. Of course, if you have a question, please raise your  
3 hand in order to indicate that you wish to intervene.

4 Have you understood that well?

5 THE WITNESS: [9:47:20](Interpretation) Yes.

6 PRESIDING JUDGE MINDUA: [9:47:29](Interpretation) You will have questions put  
7 to you by the parties, the Defence for the examination-in-chief, and the Office of the  
8 Prosecutor for the cross-examination, possibly by the Legal Representative of the  
9 Victims and perhaps by the Chamber itself.

10 Before starting your testimony, I would like to give you some advice, but in private  
11 session.

12 Court officer, please take us into private session.

13 (Private session at 9.48 a.m.)

14 THE COURT OFFICER: [9:48:15] We are in private session, Mr President.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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12 (Redacted)

13 (Open session at 9.51 a.m.)

14 THE COURT OFFICER: [9:51:38] We are back in open session, Mr President.

15 PRESIDING JUDGE MINDUA: [9:51:51](Interpretation) Thank you very much,

16 Madam Court Officer.

17 Witness, as I said, we are going to start with your testimony. You will first have

18 questions put to you by the Defence.

19 Counsel, you have the floor, please.

20 QUESTIONED BY MS GERRY:

21 Q. [9:52:10] Mr Witness, we are in open session at the moment, public session, at  
22 the moment, I just want to check that you are comfortable and ready to give evidence?

23 A. [9:52:26] Yes, I am.

24 Q. [9:52:28] I heard that there was a problem with your expenses.

25 Have you been able to eat and rest?

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- 1 A. [9:52:36] What do you mean?
- 2 Q. [9:52:50] Have you been able to eat and rest before giving evidence today?
- 3 A. [9:52:58] Yes, yes.
- 4 Q. [9:53:01] And I know that you like translation in classic Arabic.
- 5 Are you comfortable with the translation that is taking place?
- 6 A. [9:53:11] Yes, I am.
- 7 Q. [9:53:17] Thank you.
- 8 Mr President, may we now go into private session, please.
- 9 PRESIDING JUDGE MINDUA: [9:53:28](Interpretation) Indeed. Court officer,
- 10 please take us into private session.
- 11 (Private session at 9.53 a.m.)
- 12 THE COURT OFFICER: [9:53:37] We are in private session, Mr President.
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
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1 (Redacted)

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4 (Open session at 10.07 a.m.)

5 THE COURT OFFICER: [10:07:33] We're back in open session, Mr President.

6 PRESIDING JUDGE MINDUA: [10:07:38](Interpretation) Thank you very much,  
7 court officer.

8 Counsel Gerry.

9 MS GERRY: [10:07:44]

10 Q. [10:07:44] Mr Witness, can you describe the situation for the Tuareg people in  
11 Mali before 2012.

12 A. [10:07:54] The Tuaregs in Mali, prior to 2012, were a people of the desert  
13 attached to their traditions and culture, their Islamic culture. There was no school  
14 nor public schools or hospitals, and these people led a life of Bedouins, and there  
15 were only the Koranic schools. And they also had recourse to the sages who  
16 governed the villages and the places inhabited by these people.

17 THE INTERPRETER: [10:09:03] Comment from the interpreter: Could the witness  
18 please get closer to the microphone. Certain things are not heard well.

19 PRESIDING JUDGE MINDUA: [10:09:13](Interpretation) I would ask the team -- the  
20 technical team in the field to advise the witness appropriately to redress this situation.  
21 Thank you very much.

22 Counsel, go on.

23 MS GERRY: [10:09:41]

24 Q. [10:09:41] Mr Witness, you told us that there were no schools or hospitals before  
25 2012. Can you help us to understand what services were like for the people of Mali

1 before 2012?

2 A. [10:10:06] Prior to 2012, I cannot speak of all the people of Mali, but I can speak  
3 of the Tuaregs to whom I belong and --

4 Q. [10:10:26] Can you help us as to the services of the Tuareg people, please.

5 A. [10:10:36] The Tuaregs are a people who are Bedouins and had no services in  
6 their village. They did not enjoy any services in the desert or in the village.

7 Q. (Overlapping speakers) Sorry.

8 A. [10:10:55] In the big villages we could find some schools, but in small villages  
9 there were neither schools nor hospitals.

10 Q. [10:11:10] And what about services like water or electricity? Can you help us  
11 to understand whether those services were available to the Tuareg people, please.

12 A. [10:11:28] Those services were not well known to the Tuareg people. There  
13 was no electricity. With regard to water, there were wells, wells that had been dug  
14 manually; so wells on the surface, in the Bedouin regions and in the big cities.

15 Q. [10:11:56] Can you help us to understand the racist measures before 2012?

16 A. [10:12:17] The racist measures --

17 MR DUTERTRE: [10:12:25](Interpretation) I would like to know what the basis of  
18 this question is. I heard the adjective related to the coup d'état -- coup d'état and  
19 what was discussed earlier, but not prior to 2012. So it is a leading question, it's  
20 a suggestive question, and I would like my colleague to ask open questions rather  
21 than putting words into the witness's mouth. And here, the wrong has already been  
22 done.

23 PRESIDING JUDGE MINDUA: [10:12:55](Interpretation) Counsel, here, I fully agree  
24 with the Prosecutor. This was a leading question indeed. So please be careful.

25 MS GERRY: [10:13:04] The problem is that that phrase was -- comes from the

1 previous session. The normal way in which one would ask a question is to refer  
2 back to what a witness has said. I didn't want to refer back because that was  
3 a private session, but those particular words were used by the witness in the private  
4 session. So I can certainly rephrase the question to be non-leading. I apologise, I  
5 was simply trying to avoid the link to the private session.

6 So I will use the words "racist measures" because those were his words, but I will  
7 rephrase it to be non-leading. I hope that's acceptable to you, Mr President.

8 PRESIDING JUDGE MINDUA: [10:13:56](Interpretation) There are no objections  
9 from the Prosecutor?

10 MR DUTERTRE: [10:14:02](Interpretation) No, it's just in a specific context prior to  
11 2012. Again, we must not put words into the witness's mouth. We have to proceed  
12 with open questions.

13 PRESIDING JUDGE MINDUA: [10:14:16](Interpretation) Thank you for that  
14 appreciation.

15 Counsel, you have heard the appreciation of the Prosecutor, please go ahead as  
16 suggested.

17 MS GERRY: [10:14:27]

18 Q. [10:14:27] Mr Witness, you used the words "racist measures". Can you help us  
19 as to when you say those racist measures were occurring, please.

20 A. [10:14:52] These measures were applied when there was a rebellion, and the  
21 victim was always the Tuareg people that was paying the price for the entire rebellion  
22 movement. Even in the big cities, one could see racist measures against the Tuareg  
23 and against Arabs, people of light skin. You're always treated as an undesirable  
24 person, a persona non grata, or as a person who's suspect all the time. All the time.  
25 And you feel that you don't belong to that society. And the society considers you as

1 a foreigner, and you always feel uncomfortable somewhere.

2 Q. [10:15:57] I don't believe there is any dispute that there was a coup d'état in  
3 March of 2012.

4 Mr Witness, can you help us to understand if the racist measures that you have  
5 described were happening in the lead-up to March 2012 or not?

6 A. [10:16:34] These measures were applied after independence, but there were  
7 periods where these measures were clearer or more common. During certain  
8 periods -- during certain periods, we experienced this type of provocation and  
9 measures, and I myself was a victim of this at certain times.

10 Q. [10:17:12] So that we can understand you correctly, can you help us to  
11 understand what you mean by "racist measures", please.

12 A. [10:17:25] Racist behaviour. Behaviour is the most accurate term. Racist  
13 behaviour.

14 Q. [10:17:48] You told us that you can't speak for all of the people of Mali, but you  
15 can describe the situation for the Tuareg people.

16 To your knowledge, and in your experience in your life, were the Tuareg people  
17 treated equally or not?

18 A. [10:18:23] As far as I know, no. The Tuaregs indeed were not able to benefit  
19 from any services -- basic services, humanitarian services in any of their villages.  
20 There were no paved roads even that led to the big cities. There were no hospitals,  
21 no mosques in their regions. And what I want to say when I speak of hospitals, I'm  
22 talking about a big hospital for treatment, and I'm talking about big cities. I'm not  
23 even talking about villages.

24 Likewise for water and electricity. The Tuaregs would drink rainwater in the desert,  
25 and those who could would dig wells in order to have a supply of water.

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1 Q. [10:19:35] Are you able to help us understand the governing of Mali before  
2 2012?

3 PRESIDING JUDGE MINDUA: [10:20:05](Interpretation) Mr Prosecutor.

4 MR DUTERTRE: [10:20:08](Interpretation) Not only this -- this is not in the witness  
5 summary, but, and especially, these are very general questions. And we don't see  
6 how the answers of the witness would help the Chamber, and we don't know if the  
7 witness is qualified to answer this type of question.

8 So there's a question of the ability of the witness to answer these questions, the  
9 usefulness, and we didn't even know -- when she talks about government, what are  
10 we talking about? Politics? Administration? I myself don't understand the  
11 question.

12 MS GERRY: [10:20:50] I accept -- I accept the direction.

13 I'll rephrase the question.

14 PRESIDING JUDGE MINDUA: [10:20:56](Interpretation) Very well.

15 MS GERRY: [10:20:58]

16 Q. [10:20:58] Mr Witness, are you able to describe the conduct of the Malian army  
17 before 2012?

18 A. [10:21:16] The behaviour of the Malian army prior to 2012 was -- well, to face all  
19 movements, all rebellions. And it is the Tuareg people, innocent people, who were  
20 its victims. They were attacked, imprisoned. They were targeted. And that was  
21 even after 2012.

22 THE INTERPRETER: [10:21:56] The interpreter does not hear the witness very well.  
23 He has again become too distant from the microphone, so the last part was not clear.

24 PRESIDING JUDGE MINDUA: [10:22:08](Interpretation) Witness, could you please  
25 get closer to the microphone so you can be well heard by the interpreters.

1 Thank you very much.

2 So, Counsel Gerry, go ahead.

3 MS GERRY: [10:22:23]

4 Q. [10:22:23] Mr Witness, try and be as loud as me, then everybody can hear you.

5 A. [10:22:29] (No interpretation)

6 Q. [10:22:30] You told us that the Tuaregs --

7 A. [10:22:34] Yes.

8 Q. [10:22:35] -- were targeted by the Malian army. Can you give us some  
9 examples of the type of targeting that there was by the Malian army to the Tuareg  
10 people, please.

11 A. [10:22:51] Yes. The Tuaregs were targeted every time there was a movement or  
12 a rebellion, and not just the Tuaregs, but Arabs as well. The Malian army had  
13 targeted people depending on the colour of their skin and not due to their actions.  
14 For example, I had heard of events -- and I even was a witness to events that were  
15 filmed. The director of the school - where I was studying - was liquidated. I saw  
16 videos of this. He was liquidated during the events of 2012.

17 Q. [10:23:47] Just pause there for a moment. May --  
18 Sorry.

19 A. [10:23:47] A person, a sage, as well --

20 Q. [10:23:54] Sorry. Please let the witness finish.

21 A. [10:24:07] Yes. So there was a man who was part of the notable Arabs of  
22 Timbuktu, Ali Khoubayb, who was also executed in 2013, and other people who were  
23 arrested, some in villages, others in the desert. Ibrahim Bin Abdoullahi, who was  
24 arrested and tortured, and who lost an eye after the torture.

25 These are examples that I remember, but I had not remembered this when you asked

1 me the question at the beginning, but now these events have come back to me.  
2 And there were other events as well, which took place prior to 2012, in the 1990s, in  
3 the Wadi Ashraf (phon) village, a village that was completely razed in the Gao region.  
4 I wasn't a witness to these events, but I heard about them.  
5 There were also other people, Rharous, who were executed. Over 60 men, Tuaregs,  
6 were executed, merely because they are Tuaregs -- because they were Tuaregs. And  
7 this happened in the 1990s, according to the information that I received.

8 Q. [10:26:02] Thank you for your answer, Mr Witness.

9 I'm now going to go back over that information and try and put it in chronological  
10 order with you. May I start with the events that you told us about in the 1990s.  
11 You told us that you were not present at those events in the 1990s, but you heard  
12 about them. I don't need to know anyone's name, but were you -- can you help us as  
13 to who told you about those events. At the moment, I'm not asking any names, but  
14 can you help us as to the relationship to you of those persons.

15 A. [10:27:12] The elders of my family were witnesses to the events of the 1990s.  
16 The elders, some themselves saw with their own eyes these events. Others saw the  
17 results of these events and heard statements of eyewitnesses. And as I've said, these  
18 people -- these people were -- let's say, they were over 60, the men, members of my  
19 family, and these were part of the elders, without giving any names.

20 Q. [10:27:56] You mentioned that 60 men were executed. And you have just told  
21 us about 60 members of your community, are they the same 60 people? Was it those  
22 people that were executed or some other group?

23 A. [10:28:21] It -- I'm talking about the same people.

24 THE INTERPRETER: [10:28:30] Says the witness.

25 THE WITNESS: [10:28:32](Interpretation) I'm talking about the same people,

1 madam.

2 MS GERRY: [10:28:37]

3 Q. [10:28:38] Thank you.

4 I understand this would be distressing, but I need to ask you about this information.

5 Can you describe to us what you heard about what happened in the 1990s to those 60  
6 people.

7 A. [10:29:05] According to what I learned or heard, these -- among these 60 men,  
8 there was a person who was coming back from the Hajj, from the pilgrimage, and  
9 many people - Bedouins and members of the community - had gone to his place.  
10 This was a peaceful person who had no problem, and I heard it said that he had given  
11 a document to the police patrol, and the police tore up the document and shot at him,  
12 and shot at all the people present. He was killed with another person who was  
13 elderly and ill, who was also killed. And God is my witness and peace to their souls.

14 Q. [10:30:23] You have just told us about the death of two people. Are you able to  
15 describe the execution of the 60 Tuareg people that you mentioned before, please?

16 A. [10:30:42] I do not know the details of their execution, but according to the  
17 information that I received, they were killed. People shot at them. But I did not get  
18 any details of the people who were related to those who had been executed. I just  
19 know that the Malian army opened fire on these people, and they were executed.

20 Q. [10:31:25] And I think you said before that the people who were executed were  
21 Tuareg. Have I understood you correctly or not?

22 A. [10:31:35] Yes.

23 Q. [10:31:42] Thank you.

24 You told us that you were a witness to some events that were filmed. Can you tell  
25 us when those events occurred.

1 A. [10:32:03] In Timbuktu.

2 Q. [10:32:06] Sorry, I said "when". When did the events occur that were filmed,  
3 please?

4 A. [10:32:19] In 2013.

5 Q. [10:32:23] When you say you were a witness to the events that were filmed,  
6 were you present when the events were happening or did you see them on the films?

7 A. [10:32:43] No, I was not present. I saw them through the films, through the  
8 social media.

9 Q. [10:32:56] What year were you watching those films on the social media?

10 A. [10:33:09] In 2013.

11 Q. [10:33:13] What social media were you watching?

12 A. [10:33:32] On WhatsApp. Some of them on Facebook.

13 Q. [10:33:43] And are you able to say who did the filming or where the filming  
14 came from?

15 A. [10:33:55] One of those videos was filmed on France 24 channel, and this is the  
16 Ali Khoubayb event. The second one was filmed and pervasive on the social media.

17 Q. [10:34:23] Starting with the Ali Khoubayb event that you saw on film on France  
18 24, can you tell us what you saw.

19 A. [10:34:42] I saw Ali Khoubayb when he was leaving his house, accompanied by  
20 some men. After that, he arrived to the military barrack, and he was kicked out from  
21 the barrack. He was considered as a persona non grata. And after that, his video  
22 was seen in the video. His son and his wife said that their father was taken by an  
23 army vehicle. And then after that, the man has disappeared. After that, it was  
24 known that he was killed.

25 I did not see in the video his corpse. I also did not see anything related to the killing

1 in that video. But as far as his sons said, they said he was killed.

2 Q. [10:35:45] Did you have any personal knowledge of Ali Khoubayb?

3 A. [10:36:01] I used to know him in a very shallow way. I knew him as a person  
4 from Timbuktu.

5 Q. [10:36:13] And did you have any understanding of his status in the community  
6 in 2013?

7 A. [10:36:25] He was one of the sheikhs, the Berabiche tribe sheikhs. He was one  
8 of the seniors of the Berabiche tribe.

9 Q. [10:36:44] And did you have any knowledge of his role as a senior in that tribe?

10 A. [10:36:59] No.

11 Q. [10:37:00] You told us about a second film that you watched that was posted on  
12 social media. Can you -- in relation to events in Timbuktu in 2013, that you were  
13 watching in 2013, can you tell us what you saw, please.

14 A. [10:37:23] I saw people exhuming a burial place or digging a hole in which there  
15 was a dead person. After that, they found out that this is the director of the school  
16 where I was studying and his name is Mohamed Lamine.

17 Q. [10:38:00] Can you tell us what you saw happen to Mohamed Lamine, please.

18 MR DUTERTRE: [10:38:20](Interpretation) I'm a bit lost because there was  
19 a question about relevance, which isn't very clear, with regards to the charges against  
20 the accused. Furthermore, we're speaking about videos. We've got comments on  
21 videos, but we're not shown the videos. I'm not sure what we're talking about in  
22 reality.

23 So if there are videos, we have to be shown so the witness can see them. These are  
24 things that are public from France 24. So I don't see where we are going with all of  
25 this, and, in particular, with regard to the use of the very precious time of the

1 Chamber.

2 And with regards to the expeditiousness of proceedings, perhaps we could -- given  
3 that all these different questions are not mentioned in the witness summaries,  
4 perhaps -- well, there might be new elements as well. I'm not opposed to that, but  
5 there's a whole line of questioning that we've had for an hour, which is not unnoticed  
6 and which manifestly is not relevant and so -- it's not supported by the documentary  
7 evidence either.

8 PRESIDING JUDGE MINDUA: [10:39:32](Interpretation) Counsel, on behalf of the  
9 Chamber, please wait a minute.

10 As far as the Chamber is concerned, I don't want to often have to intervene because I  
11 don't know your strategy. I don't know your line of questioning and where it goes.  
12 So at the start, I hesitate to intervene. However, for a certain amount of time here,  
13 you have been putting questions which are concerning me with regards to the  
14 judicious use of the Court's time and with regard to the principle of expeditious  
15 proceedings, which the accused should benefit from.

16 You are talking about videos. The witness has said that the -- there's a France 24  
17 video, but we don't know the link between this witness and this video. There's no  
18 basis to raise this video.

19 There's also the issue of relevance because we have charges against the accused  
20 brought by the Office of the Prosecutor. And what you are currently saying with  
21 regards to the witness -- of course, I don't know your strategy, but we do not see the  
22 relevance thereof, so please reflect and try to see if it is possible to accelerate and to  
23 focus and concentrate. This is what you are meant to do. Thank you.

24 MS GERRY: [10:41:22] Mr President, the context of my questions, to assist you to  
25 understand our strategy, arises from the witness's evidence that he gave today that

1 the Malian army were attacking the Tuareg people. He has given two examples so  
2 far, a period in the 1990s, and what he saw in 2013. Those, in effect, are either side of  
3 the months that Ansar Dine were in Timbuktu and demonstrate the context - in our  
4 submission, for the Tuareg people before and after - that will be relevant when my  
5 questions come on to the period of time that Ansar Dine are in Timbuktu.

6 In my submission, he is entitled to give evidence of what he saw personally or what  
7 he heard. And in relation to the events that he has listed so far, he has listed the  
8 events in the 1990s - the events that he saw on film relating to a Mr Khoubayb,  
9 a Mr Lamine and Mr Abdoullahi, and he also mentioned a sage - in my submission,  
10 they are highly relevant to the issues that the Court has to decide.

11 And those are the questions that I would wish to ask.

12 PRESIDING JUDGE MINDUA: [10:42:51](Interpretation) I'm sorry, Counsel - I've  
13 understood well - once again, it's your strategy. But I also have to ensure that the  
14 Chamber's time is well used. What I would suggest to you, is to summarise this part,  
15 such that you can keep the proportion with the time that we really must devote to the  
16 charges.

17 Please go ahead, but try to summarise, if you will be so kind

18 MS GERRY: [10:43:29] I'm grateful for the assistance. I will focus on those names  
19 that I've identified. Khoubayb is done. Next is Lamine and Abdoullahi, and then I  
20 will ask about the sage and then we can progress. Thank you.

21 PRESIDING JUDGE MINDUA: [10:43:49](Interpretation) Please continue.

22 MS GERRY: [10:43:51]

23 Q. [10:43:51] Mr Witness, you mentioned Mr Lamine.

24 Did you see what happened to Mr Lamine personally or on a film?

25 A. [10:44:02] I saw that on a film and I did not recognise him had he not mentioned

1 his name, and then he said that -- that -- that it was not said that he was this person, I  
2 wouldn't have recognised him. I recognised him only from his name and the  
3 information that were said about him.

4 Q. [10:44:33] From that film, tell us what you saw happened to -- or heard  
5 happened to Mr Lamine, please.

6 A. [10:44:48] What I saw and heard in that film was that there were -- people went  
7 to exhume the burial place. It was a woman accompanied by a man. They dugged  
8 this hole and they took out a body from the hole and when he was taken out of the  
9 hole, his wife recognised him and he was the director of the school in Timbuktu.  
10 And his wife started to grieve. This is what I remember from that film.

11 Q. [10:45:37] Thank you. You also mentioned a man called Ibrahim Abdoullahi.  
12 Did you see what happened to Ibrahim Abdoullahi personally or did you see that on  
13 a film?

14 A. [10:45:59] As concerns Ibrahim Abdoullahi, I heard about what happened to  
15 him and I also saw his eye that was taken out. This eye became blind.

16 Q. [10:46:13] What did you hear had happened to Mr Abdoullahi?

17 A. [10:46:23] I heard that the Malian army came to the village and they arrested  
18 him. They took him as a prisoner. He was tortured and beaten until he lost one of  
19 his eyes and God knows what else. And then they saw that his eye -- he had one eye,  
20 but he was still alive.

21 Q. [10:47:03] You mentioned a sage.

22 Can you tell us whether you saw what happened to the sage or you -- personally?  
23 Or you saw a film?

24 A. [10:47:22] I heard that the sage was arrested and tortured. After that, he was  
25 released by one of the seniors of the Tuareg tribe, however, I cannot mention his

1 name now.

2 Q. [10:47:52] Thank you.

3 Were Arabs living in Timbuktu before 2012 or not to your knowledge?

4 A. [10:48:09] Yes, there were Arabs residing in Timbuktu before 2012.

5 Q. [10:48:16] You have told us how the Tuaregs were treated by the Malian army.

6 Can you tell us how the Arabs were treated by the Malian army, please.

7 A. [10:48:29] The Malian army (speaks Arabic).

8 MS GERRY: [10:48:58] I'm afraid that wasn't translated into English for me. I hope

9 it's coming.

10 THE INTERPRETER: [10:49:06] The last -- the answer of the witness, do you mean?

11 (Overlapping microphones)

12 MS GERRY: [10:49:09] Yes, please.

13 PRESIDING JUDGE MINDUA: [10:49:20](Interpretation) You can move on.

14 (Counsel confers)

15 MS GERRY: [10:49:22] I've had a translation. Thank you. I will. Thank you very

16 much.

17 Q. [10:49:26] Did people follow Islam in Timbuktu before 2012 or not?

18 A. [10:49:36] Yes, people were Muslims before 2012 and they were very attached to

19 their customs. All their -- all their courts, they were in the villages. All the schools

20 were Islamic schools. All the children of the Tuareg and Arabs - as I say, if I mention

21 "Tuareg", I mean also Arab and vice versa - in the north of Mali, they were considered

22 one people and nothing would set them apart.

23 They had the same traditions, the same customs, the same colour of skin and the same

24 suffering. They were all Muslims and they were all attached to their Muslim religion,

25 even in their cases -- all their cases would go to the sheikhs. They would adjudicate

1 on the cases. They were also -- they had also Koranic schools.

2 Q. [10:50:53] You told us that cases would go to the sheikhs. Can you help us out  
3 to understand what role the sheikhs played before 2012?

4 A. [10:51:16] The sheikhs and the Arabs and Tuaregs cases, they were the judges.  
5 They would adjudicate on the cases. They were also -- they would provide guidance.  
6 All the Tuareg and Arabs in Northern Mali before 2012, they were all -- they were  
7 all -- all referred to them. They were -- they used to refer to those sheikhs. They  
8 would adjudicate on their cases and they -- those judges would decide who would  
9 pay the *diyya* - or, blood money, or who would be punished or who would need  
10 to -- compensate. Themselves, they -- they used to decide on the cases so those cases  
11 would -- they would refer to the Koran in their cases.

12 Q. [10:52:19] You have told us that the -- those judges would refer to the Koran.  
13 Were you aware of what type of law was being applied by those judges before 2012?

14 A. [10:52:33] They used to apply the Sharia, the Islamic law and the tradition -- the  
15 traditions and the customs at the time. Everything that was mentioned in the Koran  
16 and all the customs.

17 Q. [10:53:02] You mentioned cases.

18 Were you aware of what type of cases went before these Islamic judges before 2012?

19 A. [10:53:14] All types (Overlapping microphones)

20 MR DUTERTRE: [10:53:15] *Monsieur le Président.*

21 (Overlapping microphones)

22 PRESIDING JUDGE MINDUA: [10:53:16] *Monsieur le Procureur.*

23 (Overlapping microphones)

24 MR DUTERTRE: [10:53:17] (No interpretation)

25 THE INTERPRETER: [10:53:59] Apologies from the interpreter, the line was

1 blocked.

2 Could the Prosecutor repeat what was just said.

3 PRESIDING JUDGE MINDUA: [10:54:01](Interpretation) Maître Gerry, the question  
4 that the Prosecutor raises is very relevant because we have to pay attention to our  
5 vocabulary. When we speak about this person, it's not the Islamic judge when we  
6 talk about the sheikh when it comes to the application of the law; so please pay  
7 attention.

8 The second objection of the Prosecutor concerns the knowledge of this witness.

9 Now, the Prosecutor ...

10 I think that obviously our witness isn't a specialist in law, but generally as with  
11 regards to these issues, he can say approximately what disputes the sheikh would  
12 decide upon.

13 Maître Gerry, you have the floor.

14 Mr Duterte said he spoke about the sheikh and not the Islamic judge. So to each  
15 question, there are words used, which don't -- which do not refer to what the witness  
16 said and that does not give an exact vision of the things -- outside the fact that the  
17 basis of the knowledge of the witness on all the event -- on all these events has been  
18 not been established.

19 THE INTERPRETER: [10:55:21] That was a sight translation from the transcript.

20 MS GERRY: [10:55:23] Mr President, my learned friend from the Prosecution is  
21 helpful, but not quite correct because the witness's evidence was that the sheikhs were  
22 the judges. I understand that we need to be clear about terminology, so I will ask the  
23 witness to be clear about his terminology, and, that, I hope, will be helpful.

24 PRESIDING JUDGE MINDUA: [10:55:50](Interpretation) Indeed, Counsel, indeed.

25 MS GERRY: [10:55:57]

1 Q. [10:55:59] Mr Witness, can you --

2 MR DUTERTRE: [10:56:02](Interpretation) Your Honour, just to be precise, we  
3 followed the Arabic. The word "judge" was not used, nor "Islamic judge". Perhaps  
4 with regards to the English interpretation, there was an approximation used, but it  
5 wasn't said in Arabic, just to help my colleague.

6 PRESIDING JUDGE MINDUA: [10:56:18](Interpretation) Indeed, Prosecutor.

7 Maître, you can see that on the Prosecutor's team, there are people who speak Arabic;  
8 so the Prosecutor has to be vigilant.

9 MS GERRY: [10:56:26] Mr President, may I assist in that there are also members of  
10 our team that speak Arabic and we have checked the transcript and the word "judges"  
11 was used. I'm just checking the paragraph.

12 And would you give me a moment to double-check that with Ms Taylor. Just one  
13 second, if you don't mind.

14 PRESIDING JUDGE MINDUA: [10:56:50](Interpretation) Indeed.

15 (Counsel confers)

16 MS GERRY: [10:56:53] Thank you. And there's a paragraph number.

17 Mr President, page 31, line 7, in French, the word "judge" was used, and I'm also told  
18 that the word "judge" was indeed used in the Arabic. So that is available to this  
19 Court and that was what I was proceeding upon. It has nothing to do with the  
20 English translation.

21 But I am content to clarify with this witness the terminology he would use, if that's  
22 appropriate for the Chamber.

23 PRESIDING JUDGE MINDUA: [10:57:29](Interpretation) Prosecutor, the Defence  
24 proposes putting the question again, and I'm in agreement therewith.

25 Counsel Gerry, please check with the witness what exactly was this about.

1 MS GERRY: [10:57:49]

2 Q. [10:57:49] Mr Witness, you told us about sheikhs who decided cases on Sharia  
3 law.

4 Did they have a title?

5 A. [10:58:11] Yes, the sheikhs -- there are sheikhs that are also judges. Not all the  
6 sheikhs are judges, however, every judge has to be a sheikh. The judges are  
7 specialised in the Sharia or the Islamic law. There are -- there are like Tuareg and  
8 Arab tribes, the sheikhs can be judges and they would decide or adjudicate on cases.  
9 There are also sheikhs who would -- they would decide on minor cases.

10 Each region would have its own sheikh and he would be called "sheikh", but he can  
11 be a sheikh or a judge at the same time; so the term "sheikh" would be given to any  
12 person who -- or -- who would have a broad knowledge, he would be called  
13 a "sheikh". After that, he would be called the so-and-so sheikh, the judge of the  
14 so-and-so region.

15 I hope I would -- I have clarified my information.

16 Q. [10:59:40] Thank you.

17 I just want to break that down a little further to make sure that we are clear.

18 You told us that some sheikhs were judges and some sheikhs were not judges.

19 Did I understand you correctly?

20 A. [10:59:57] Yes, this is true.

21 Q. [11:00:03] The sheikhs who were not judges, did you use the word "mufti"?

22 A. [11:00:15] Yes, they are muftis.

23 Q. [11:00:18] So if I use the terminology sheikhs who were judges and sheikhs who  
24 were muftis, will that help you to understand that when I'm talking about the two  
25 different types of sheikhs?

1 A. [11:00:37] If we say "sheikh," this would be any person who had a broad  
2 knowledge. He might be -- he might be a judge, and he might not be a judge. But  
3 when we say "mufti", we would mean by mufti, that is someone who would give  
4 opinion, but he does not judge.

5 Q. [11:01:09] You told us that there were cases that went to some of the sheikhs and  
6 those cases were judged.

7 Did I understand you correctly?

8 A. [11:01:23] Cases were brought before those sheikhs and they would adjudicate  
9 on them. This might be frequent and they also -- they might or might not happen.

10 Q. [11:01:48] And you told us that those sheikhs that adjudicate on those cases  
11 would apply Sharia law.

12 Did I understand you correctly?

13 A. [11:02:00] Yes, it's true.

14 Q. [11:02:03] Are you aware from your personal knowledge whether there was  
15 a particular type of Sharia law or jurisprudence that was applied by those sheikhs  
16 when they were adjudicating on cases?

17 PRESIDING JUDGE MINDUA: [11:02:27](Interpretation) Prosecutor.

18 MR DUTERTRE: [11:02:28](Interpretation) Your Honour, I'm aware of the time, just  
19 to mention it to my colleague, but these questions are extremely general and I don't  
20 see how the witness can usefully answer them. And what is his knowledge thereof  
21 and on what basis? Is he from the region? He does know some things about it, but  
22 he's not a specialist on these matters. And we are talking about questions, which are  
23 not at all in the witness summary, so we have to go back over different elements,  
24 which are at the heart of the testimony. And we have to be aware of the precious  
25 time of the Chamber.

1 PRESIDING JUDGE MINDUA: [11:03:14](Interpretation) So, Counsel Gerry, as you  
2 know -- as we know, there is an authorisation to object when there's a very general  
3 question. And in the opinion of the Prosecutor, we are talking in generalities here.  
4 I do believe -- I fear it is the case.  
5 Moreover, I think you're going now into the legal field and I don't know if this  
6 witness has the capacity -- the technical capacity to answer all these questions.  
7 I will let you think about this during the break.  
8 We will start back up at 11:35.  
9 The hearing has now been suspended.  
10 THE COURT USHER: [11:04:03] All rise.  
11 (Recess taken at 11.04 a.m.)  
12 (Upon resuming in open session at 11.37 a.m.)  
13 THE COURT USHER: [11:37:44] All rise.  
14 Please be seated.  
15 PRESIDING JUDGE MINDUA: [11:38:05](Interpretation) The hearing has now  
16 resumed.  
17 Now, the Defence still has the floor.  
18 So Counsel Gerry, I hope that over the break you have looked over your notes. And  
19 I would simply like to remind you that we must conduct a trial that is rapid for the  
20 benefit of the accused. That's the first point - that is, the promptness of the  
21 proceedings. This is something that's important.  
22 Second point, you know that among the modes of objections is the generality of  
23 questions. When questions are too general, they can object to them; so be careful  
24 with respect to this.  
25 And finally, I would like to point out that this witness is relatively young and -- was

1 relatively young in the 1990s. So endeavour to not have -- overdo -- recourse to  
2 hearsay, what others would have said. Hearsay sometimes in certain cases can be  
3 accepted, but generally it can be grounds for an objection. So Counsel Gerry, please  
4 be careful with this.

5 You have the floor.

6 MS GERRY:

7 Q. [11:39:58] (Overlapping microphones)... hear me clearly?

8 A. [11:40:09] Yes, yes. Yes, I hear you.

9 Q. [11:40:12] Good.

10 Before the break, you were telling us about the sheikhs who adjudicated cases using  
11 Sharia law before 2012. Can you help us as to where those sheikhs were  
12 adjudicating cases using Sharia law in Mali.

13 A. [11:40:38] This was happening in the north of Mali in villages and in the desert,  
14 Kiwa -- in Gao, Timbuktu, in all the desert regions and in villages, and, here, I'm  
15 talking about Timbuktu --

16 Q. [11:41:15] And to your understanding (Overlapping speakers)

17 A. [11:41:15] -- from where I come and which I know well.

18 Q. [11:41:18] Sorry. Thank you.

19 To your understanding, before 2012, was this a normal or not normal method of  
20 adjudication for those parts of Mali?

21 PRESIDING JUDGE MINDUA: [11:41:48](Interpretation) Prosecutor?

22 MR DUTERTRE: [11:41:52](Interpretation) I don't know what "normal" or not  
23 "normal" is in terms of judicial proceedings, but this is a very general question. This  
24 witness is not a legal expert, is not a specialist of application of Sharia by courts or  
25 anything.

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1 Once again, this is a line of questioning which is not related to what had been said.  
2 Perhaps this has been discussed during the preparation, which lasted 11 hours, but  
3 we have a summary that's very brief, and if, during witness preparation, it was  
4 discussed, I would invite the Defence to give us the log of this preparatory session.  
5 But we are not within the framework of what we should be doing here. I would ask  
6 that the Chamber ask that we have the testimony of this witness for what's relevant  
7 and not go beyond that scope.

8 MS GERRY: [11:42:54] Mr – I'm sorry.

9 PRESIDING JUDGE MINDUA: [11:42:54](Interpretation) Go ahead. Respond.

10 MS GERRY: [11:42:57] Mr President, I'm very grateful that my learned friend for the  
11 Prosecution says that he does not know what is "normal" or not "normal" because of  
12 course that was the phrase that he used yesterday. He tried to separate Islamic  
13 courts by saying that they were not normal courts. I chose the word from the  
14 questions that he asked of the witness yesterday. It is absolutely relevant to this trial  
15 for this Chamber to understand the normality of Islamic judiciary being in place in  
16 Mali in 2012.

17 So the word "normal", comes from his very own mouth and I'm grateful that he  
18 indicates he did not know what it meant. In my submission, "normal" is an ordinary  
19 word and it is perfectly within the scope of any ordinary Tuareg person to help us as  
20 to the normality of cases being adjudicated upon --

21 (Overlapping speakers)

22 PRESIDING JUDGE MINDUA: [11:44:00] *Oui, Maître* --

23 MS GERRY: [11:44:00] -- by Islamic judges --

24 (Overlapping speakers)

25 PRESIDING JUDGE MINDUA: [11:44:01] (Interpretation) Yes, Counsel --

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1 (Overlapping speakers)

2 MS GERRY: [11:44:00] -- before 2012.

3 PRESIDING JUDGE MINDUA: [11:44:03] (Interpretation) Counsel, I'm sorry for  
4 interrupting you, but you are saying that the Prosecutor or the Office of the  
5 Prosecutor used the word "normal" yesterday. But yesterday, wasn't the same  
6 witness, and the qualifications of the witness are not the same -- the witness's  
7 yesterday are not the same as today's. So I don't think this witness is qualified to  
8 give a legal opinion as to what's normal and not normal in legal affairs.

9 And the Prosecutor is complaining because the questions that you are putting today  
10 have not been notified to the Prosecution.

11 And, had they been notified -- were they notified to the Prosecutor to avoid  
12 objections?

13 MS GERRY: [11:44:54] Yes, in our submission, the contents of the summary does  
14 deal with these types of arrangements; so the Prosecution are on notice. I simply  
15 developed the questions as a result of the witness's answers today because the  
16 witness gave us the information about two different types of judges. Firstly, the  
17 judges who adjudicated on cases using Sharia law; and separately, he said that there  
18 were some cases that did not reach the courts. That's the language that this witness  
19 has used today.

20 So I was simply trying to assist the Chamber in understanding the different types of  
21 cases that go to different types of judges and whether that was the normality in Mali  
22 before 2012.

23 PRESIDING JUDGE MINDUA: [11:45:43](Interpretation) Yes, Mr Prosecutor.

24 MR DUTERTRE: [11:45:46](Interpretation) We -- if we're going to continue this, we'll  
25 have to cut the sound because the witness can hear us. And indeed, I'm repeating

1 that we have no notice. What my colleague is saying, this is not true, and I would  
2 reaffirm that there -- that this witness has no specific competence to speak on these  
3 issues and -- given especially, his age at the time of the facts -- of the events.

4 So we reiterate our objection to a continuation of this line of questioning, which is not  
5 useful for the proceedings.

6 PRESIDING JUDGE MINDUA: [11:46:27](Interpretation) Thank you, Prosecutor.  
7 Counsel Gerry -- you don't have to cut the sound, I think we are going to go on to  
8 other things because the problem of this Islamic judge and sheikh is one that has  
9 already been settled. And the information given by the witness on the period when  
10 he was young, that's something we've understood.

11 So let's go on to something else.

12 MS GERRY: [11:47:01] I understand, Mr President. May I just clarify one point.  
13 Would you like to ask -- would you like me to ask what types of cases went to the  
14 judges who adjudicated using Sharia law and what types of cases went to the others?  
15 Or would you like me to move on?

16 PRESIDING JUDGE MINDUA: [11:47:24](Interpretation) I think we have already  
17 understood. We can go on to other things.

18 MS GERRY: [11:47:30] Thank you.

19 Q. [11:47:35] Mr Witness, were you aware before 2012, of a group called the  
20 National Movement for the Liberation of Azawad, known as MNLA?

21 A. [11:48:01] Yes.

22 Q. [11:48:02] Did you join --

23 A. [11:48:02] This movement was present --

24 Q. [11:48:08] Sorry.

25 A. [11:48:09] This movement was present in 2010 and was called MNA. And then

1 the name was changed and became MNLA after 2012. And it's a movement that's  
2 well known.

3 Q. [11:48:33] Did you join MNLA?

4 A. [11:48:42] No.

5 Q. [11:48:47] Why not?

6 A. [11:48:50] I did not join it because I was not convinced by its methods.

7 Q. [11:49:01] What was your understanding of the methods of MNLA?

8 A. [11:49:17] As far as I understood its methods, I saw a somewhat racist method.  
9 It was based on discrimination and I abhor -- I hate discrimination and I flee such  
10 type of discrimination.

11 Q. [11:49:46] In March of 2012, were you aware of the coup d'état?

12 A. [11:50:01] Yes. Yes, I became aware of it. But I do not remember in what  
13 month I became aware of it.

14 Q. [11:50:11] Did you play any role in those events at all?

15 A. [11:50:17] I was a student at the time when this coup d'état took place. I don't  
16 know in which month. I was a student and my only goal -- my only focus was to  
17 complete my studies, receive a diploma and live my life. But unfortunately, I did  
18 not manage to do that. The circumstances and events prevented me from doing so.

19 Q. [11:50:52] In 2012 were you aware of a group called Ansar Dine in Timbuktu?

20 A. [11:51:04] Yes. I learned about the presence of this group.

21 Q. [11:51:20] Was the MNLA the same as or different from Ansar Dine?

22 A. [11:51:37] Ansar Dine was a national group made up of Tuaregs and Arabs,  
23 inhabitants of the region, and it had an Islamic characteristic and MNLA was secular.  
24 That was the only difference between the two.

25 Q. [11:52:13] To your knowledge, did some members of MNLA join Ansar Dine or

1 not?

2 A. [11:52:21] Yes. Some members of the MNLA joined Ansar Dine when MNLA  
3 was kicked out of -- ousted from Timbuktu in 2012.

4 Q. [11:52:52] Do you know why some members of MNLA joined Ansar Dine?

5 A. [11:53:00] Some were forced to join Ansar Dine, others were convinced by  
6 Ansar Dine's line and methods.

7 Q. [11:53:25] What did you understand Ansar Dine's line and methods to be?

8 A. [11:53:36] What I understood is that the Ansar Dine movement was a national  
9 movement of Islamic nature - like all Islamic parties in all Muslim or Islamic  
10 states - and it was a movement that wanted to impose Islamic laws in the traditions  
11 and customs of the region, without having to have recourse to foreign laws, which  
12 were not very familiar to the Tuareg, Azawad and Arab peoples.

13 Q. [11:54:33] You told us that before 2012, the situation for the Tuareg people  
14 included no basic services, no humanitarian services and discrimination.

15 When Ansar Dine was in Timbuktu in 2012, did people -- were those services still  
16 absent or not?

17 A. [11:55:24] No. On the contrary -- on the contrary, in 2012, with respect to  
18 health care services, medication was available and accessible to everyone. Everyone  
19 could benefit from also electricity in big cities; it was free. Water as well. And so  
20 was medication. There were no taxes levied on inhabitants; so the people -- the  
21 inhabitants had a -- they could enjoy a lot of security for their lives, for their children  
22 because they could also teach the -- the school curriculum that they chose, Islamic  
23 manuals et cetera, without having to move from one region to another.

24 Q. [11:56:36] You told us that before 2012, there were racist methods and  
25 discrimination. When Ansar Dine was in Timbuktu in 2012, was there still racist

1 methods and discrimination or not?

2 A. [11:56:56] As far as I know - and given what I saw with my own eyes - there was  
3 no discrimination or racism or anything similar to that during the presence of  
4 Ansar Dine in Timbuktu. All people could have their rights respected, whether they  
5 had light skin or dark skin, irrespective of their race, gender or even religion.  
6 Each person could enjoy their rights.

7 Q. [11:57:50] When Ansar Dine were in Timbuktu in 2012, did people seem to be  
8 treated equally or not by Ansar Dine?

9 PRESIDING JUDGE MINDUA: [11:58:15](Interpretation) Prosecutor?

10 MR DUTERTRE: [11:58:15](Interpretation) I object. The questions have to be much  
11 more precise. These are generalities about discrimination. When we talk about  
12 discrimination against women, what are we talking about in fact? So we can always  
13 ask general questions, have general answers, but this will not serve our purpose for  
14 the judgment of the Chamber. Let's be precise. Let us also establish the period  
15 when the witness was in Timbuktu. We don't know. So what is -- what are the  
16 grounds, what's his knowledge? What's this all about?

17 So I think my colleague should take things in order, establish the grounds and then  
18 ask questions that are not just generalities, which I would qualify as  
19 unhelpful -- useless.

20 PRESIDING JUDGE MINDUA: [11:59:10](Interpretation) Counsel Gerry, I do not  
21 want to repeat what the Prosecutor...

22 ... have heard, you followed what was said. So what would you respond to that?

23 MS GERRY: [11:59:20] Mr President, I don't accept the objection. Nor the terms in  
24 which it was made. The language of "useless", I think, is really rather rude.

25 However, I am prepared to move on with the questions, give my learned friend some

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1 understanding of the real situation in Ansar Dine from this witness. I can reframe  
2 my questions, and I'm sure he'll understand the issues of equality and inequality  
3 before 2012 and during 2012, if he doesn't understand them already.

4 May I continue?

5 PRESIDING JUDGE MINDUA: [12:00:02](Interpretation) Okay. I don't want to  
6 reject the objection of the Prosecutor. Well, I don't agree with the tone -- the word  
7 "useless". It's not a matter of it being useless, but I do agree when he says that the  
8 questions are general.

9 When you talk about discrimination, try to be more precise, and, especially, what  
10 exact periods are you talking about, given -- and taking into account the presence of  
11 the witness's presence in the city. Go ahead.

12 MS GERRY: [12:00:40] Thank you.

13 Q. [12:00:41] Mr Witness, did you join Ansar Dine in 2012?

14 A. [12:00:52] Yes.

15 Q. [12:00:55] There is no dispute in this case that there was a coup d'état in March  
16 of 2012. Do you know by reference to that date, when it was that you joined  
17 Ansar Dine?

18 A. [12:01:18] No.

19 Q. [12:01:24] Is it possible for you to give an approximation of weeks or months or  
20 days or not?

21 A. [12:01:36] I joined Ansar Dine for four months. And -- and as concerns to the  
22 period that Ansar Dine spent in Timbuktu, that was eight months. However, I did  
23 not spend -- I did not join Ansar Dine for the whole eight months. I spent with them  
24 around four months, plus or minus. I cannot remember the date exactly.

25 Q. [12:02:10] Thank you.

- 1 Mr President, may we go into private session, please?
- 2 PRESIDING JUDGE MINDUA: [12:02:19](Interpretation) Yes, of course.
- 3 Court officer, please take us into a closed session.
- 4 (Private session at 12.02 p.m.)
- 5 THE COURT OFFICER: [12:02:31] We are in private session, Mr President.
- 6 (Redacted)
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22 (Open session at 12.11 p.m.)

23 THE COURT OFFICER: [12:11:18] We are back in open session, Mr President.

24 PRESIDING JUDGE MINDUA: [12:11:23](Interpretation) Thank you very much,  
25 court officer.

- 1 MS GERRY: [12:11:26] Apologies for the over enthusiasm.
- 2 PRESIDING JUDGE MINDUA: [12:11:29](Interpretation) Very well. You have the  
3 floor.
- 4 MS GERRY: [12:11:33] Thank you.
- 5 Q. [12:11:33] Where were you when you joined Ansar Dine, Mr Witness?
- 6 A. [12:11:41] I was in Timbuktu. I was in Timbuktu.
- 7 Q. [12:11:49] Why did you join Ansar Dine?
- 8 A. [12:11:57] Because I was convinced of their methodology.
- 9 Q. [12:12:02] Can you help us to understand what methodology you were  
10 convinced by. Be as specific as you can.
- 11 A. [12:12:09] The methodology of which I was convinced, it was a movement.  
12 First, an Islamic movement, and, at the same time, it was of a national character. It  
13 was non-racist. I do -- I do not know if you can say a national and non-racist, but  
14 this is what I understood.
- 15 Q. [12:12:45] When you joined Ansar Dine, were you aware of who was in charge  
16 of Ansar Dine?
- 17 A. [12:12:59] As far as I heard --
- 18 THE INTERPRETER: [12:13:07] Sorry, the interpreter did not get the name.
- 19 MS GERRY: [12:13:13]
- 20 Q. [12:13:14] Let's take it in stages, Mr Witness. First of all, were you aware of  
21 who was in charge, and, secondly, are you able to name that person?
- 22 A. [12:13:29] As far as I heard, the responsible, he was Iyad Ag Ghaly at that time.
- 23 Q. [12:13:42] To your knowledge, did other local people join Ansar Dine or not?
- 24 A. [12:13:50] If -- if not all of -- I cannot say all of them, but many of the locals.
- 25 Q. [12:14:06] At the time, in 2012, did you have any knowledge as to why other

1 local people joined Ansar Dine?

2 A. [12:14:16] Everyone has its own reason. However, the majority wanted to  
3 defend -- was to defend. And some people thought they had specific characteristics  
4 they would not find somewhere else. It was a national -- it was a national movement.  
5 We are Muslims, and everything that has to do with Muslims would appeal to people.  
6 And this movement was of an -- of an Islamic and a national character, and it has no  
7 discrimination, neither at the racist or -- at the racist level.

8 Q. [12:15:20] You told us that before 2012, some people lived in fear of being  
9 targeted by the Malian army. Did people live in fear of being targeted by  
10 Ansar Dine in the same way or not?

11 PRESIDING JUDGE MINDUA: [12:15:44](Interpretation) Prosecutor?

12 MR DUTERTRE: [12:15:46](Interpretation) Objection. One, this is leading; and,  
13 secondly, it's speculative with regards to what's in the head of everybody. And he's  
14 not able to answer that question, he can't say what's in everybody's minds.

15 PRESIDING JUDGE MINDUA: [12:16:03](Interpretation) Yes.

16 Counsel Gerry.

17 MS GERRY: [12:16:05](Overlapping speakers) In part -- in part I accept the objection.  
18 It wasn't leading because it was an optional question. But I accept the objection in  
19 relation to the generality of people. So I'll make it more specific.

20 Q. [12:16:17] Mr Witness --

21 MS GERRY: [12:16:18] May I continue? Sorry.

22 Thank you.

23 Q. [12:16:23] Mr Witness --

24 PRESIDING JUDGE MINDUA: [12:16:25](Interpretation) Indeed, please go ahead.

25 MS GERRY: [12:16:27]

1 Q. [12:16:27] -- did you live in fear of Ansar Dine in Timbuktu in 2012?

2 A. [12:16:40] I did not fear them and I don't -- do not know any person who was in  
3 fear of them. However, every -- every person has its own way of thinking and  
4 knows what he wants.

5 Q. [12:17:00] You told us that the MNLA asserted the -- had a name which asserted  
6 the liberation of the Azawadi region.

7 To your knowledge, when you were in Timbuktu in 2012, did Ansar Dine represent  
8 Azawadi interests or not?

9 A. [12:17:25] Yes, Ansar Dine used to represent some of the Azawadi interests.  
10 And some of the Azawadi used to see in them a movement -- some used to see it as  
11 the legislative representative of the Azawadi without discrimination.

12 Q. [12:17:57] Were you aware of a group called Al Qaeda in Timbuktu when you  
13 were in Timbuktu in 2012?

14 A. [12:18:04] Yes, I heard of them.

15 Q. [12:18:14] Did you join Al Qaeda?

16 A. [12:18:21] No.

17 Q. [12:18:24] When you were in Timbuktu in 2012, to your knowledge, were there  
18 members of Al Qaeda also in Timbuktu in 2012 or not?

19 A. [12:18:39] Yes, there were members of Al Qaeda there.

20 Q. [12:18:44] When you were in Timbuktu in 2012, were you aware of who was in  
21 charge of Al Qaeda?

22 A. [12:18:57] As far as I heard, Abdelhamid Abou Zeid. It was Abdelhamid Abou  
23 Zeid.

24 Q. [12:19:13] To your understanding, when you were in Timbuktu in 2012, was  
25 Al Qaeda the same as or different from Ansar Dine?

1 A. [12:19:26] As far as I know, Al Qaeda was there by name. But they did not mix  
2 with the locals and no one would distinguish them, unless you were one of them or if  
3 you were an expert in those matters. You might hear of some persons, but you  
4 would not distinguish them because they might be undercover.

5 Q. [12:20:20] To your knowledge, were some members of Ansar Dine also members  
6 of Al Qaeda?

7 PRESIDING JUDGE MINDUA: [12:20:32](Interpretation) Yes, Prosecutor.

8 MR DUTERTRE: [12:20:33](Interpretation) The witness has just said that you have to  
9 be an expert on this subject to be able to speak about them, and, clearly, he manifestly  
10 says that he does not have particular knowledge with regards to that.

11 So I object with the continuation of this line of questioning.

12 PRESIDING JUDGE MINDUA: [12:20:59](Interpretation) Counsel Gerry, I accept  
13 this objection because the witness has already answered this question. Please move  
14 on.

15 MS GERRY: [12:21:08] Mr President, in my submission, the question is the same as  
16 the question that I asked before in relation to the MNLA. The question was whether  
17 members of the MNLA joined Ansar Dine or not, and that was essentially the  
18 question that I was asking here.

19 I can rephrase it, but I would prefer to ask the question and receive an answer. It  
20 isn't a matter of expertise as my friend for the Prosecution suggests; it's this witness's  
21 knowledge as to whether there was any overlap between the two separate  
22 organisations.

23 In my submission I ought to be allowed to ask whether - to his knowledge - members  
24 of Ansar Dine were also members of Al Qaeda, but I could rephrase it to, Was he  
25 aware as to whether members of Al Qaeda joined Ansar Dine.

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1 If the second rephrasing is more acceptable, I'm happy to do that.

2 PRESIDING JUDGE MINDUA: [12:22:10](Interpretation) Very well. Please  
3 reformulate for a last time and then we'll move on.

4 MS GERRY: [12:22:16] Thank you. I'll make sure it's in the same words as I asked  
5 for MNLA. If you just give me a moment.

6 Q. [12:22:28] To your knowledge, did some members of Al Qaeda join Ansar Dine  
7 or not?

8 A. [12:22:43] Yes, some of the Qaeda members have joined Ansar Dine. They  
9 were -- they had joined Ansar Dine.

10 Q. [12:22:56] I don't think there's any dispute that there was a structure called the  
11 Islamic tribunal in Timbuktu in 2012 in this case. To your knowledge, was any  
12 member of Al Qaeda also a member of the Islamic tribunal?

13 PRESIDING JUDGE MINDUA: [12:23:24](Interpretation) Yes, Prosecutor.

14 MR DUTERTRE: [12:23:25](Interpretation) Here, we're putting the cart before the  
15 horse. We're asking questions with regards to the Islamic tribunal. It's not  
16 contested that there was an Islamic tribunal in Timbuktu, but what is the knowledge  
17 of the witness with regard to the Islamic tribunal outside what the witness might have  
18 in their head?

19 What is necessary is to have a basis -- a foundation to the questions. Things have to  
20 be put in order. Rather than starting with the final question, you have to take things  
21 step by step. I'm not going to teach my colleague how to put questions, but you can't  
22 go directly in this manner.

23 PRESIDING JUDGE MINDUA: [12:24:12](Interpretation) Yes, Maître Gerry.

24 MS GERRY: [12:24:14](Overlapping speakers) I don't think he can teach me at all. I,  
25 again, am rather offended by the suggestion.

1 But may I say this, the topic under consideration now is the membership of Al Qaeda  
2 in the context of the presence of Ansar Dine in Timbuktu in 2012. It is totally  
3 relevant to know whether those members were members of the Islamic tribunal, the  
4 security group, *Hesbah*, or the police, and there is no dispute in this case that those  
5 four structures existed. It is perfectly proper to deal with undisputed matters with a  
6 witness in order to save the Court's time. It would be a nonsense for me to ask this  
7 witness to establish whether there was an Islamic tribunal when we all know there  
8 was one.

9 So I've shortened matters by making it clear. There's no dispute that there was an  
10 Islamic tribunal. Was any Al Qaeda member a member of that tribunal? It's a very  
11 short way of dealing with things in a way that is perfectly acceptable as to the rules of  
12 evidence.

13 PRESIDING JUDGE MINDUA: [12:25:21](Interpretation) Please wait, Prosecutor.  
14 Counsel, there's nobody contesting the fact that there was the Islamic tribunal, but the  
15 link has to be made between the tribunal and this witness by way of a basis.  
16 And the second point, the witness said that it's difficult for him to distinguish  
17 between members of Al Qaeda and other groups. He didn't have the technical  
18 knowledge of that. And that's the reason why the Prosecutor has said there needs to  
19 be a basis and it needs to be step by step, starting with the Islamic tribunal: What is  
20 the knowledge of this witness with regard to the Islamic tribunal? Please.

21 MS GERRY: [12:25:58] Mr President, in my submission, the -- I can ask it in this way,  
22 if I may. I'll continue. I'll ask it in this way. I hope it's helpful. May I continue?

23 PRESIDING JUDGE MINDUA: [12:26:19](Interpretation) Please do.

24 MS GERRY: [12:26:21]

25 Q. [12:26:21] Mr Witness, when you were in Timbuktu in 2012, were you aware of

1 the Islamic tribunal?

2 A. [12:26:33] Yes.

3 Q. [12:26:35] Mr Witness, when you were in Timbuktu in 2012, were you aware of  
4 the security group?

5 A. [12:26:42] Yes.

6 Q. [12:26:48] Mr Witness, when you were in Timbuktu in 2012, were you a  
7 member -- were you aware of a group called *Hesbah*?

8 A. [12:26:58] Yes.

9 Q. [12:27:00] Mr Witness, in 2012, when you were in Timbuktu, were you ware of  
10 the Islamic police?

11 A. [12:27:10] Yes.

12 Q. [12:27:11] Mr Witness, to your knowledge, was any member of Al Qaeda in the  
13 Islamic tribunal?

14 PRESIDING JUDGE MINDUA: [12:27:22](Interpretation) Prosecutor.

15 MR DUTERTRE: [12:27:23](Interpretation) I object. I am aware that there's  
16 a *Cour de Cassation* in France, but that doesn't mean that I know the names of the  
17 people in the *Cour de Cassation* or their background, but I do know that there is  
18 a cassation court, there is a *Cour d'État*, there's a *Cour des comptes*. But what has not  
19 been established is the knowledge of the witness with regards to the tribunal and  
20 what is the basis, what is the foundation. Did he know members? How did he  
21 know the members et cetera.

22 So you can't directly ask him, Was this person or that person a member of Al Qaeda  
23 when he even said himself previously that he couldn't make a distinguish -- he  
24 couldn't distinguish between them. And that's why I would invite my colleague to  
25 do things in the proper order, starting with the foundation of his knowledge, and,

1 thereafter, asking the questions. Having heard that he can't -- having heard that he  
2 can't distinguish between one group and another, you have to wonder as to the utility  
3 here.

4 PRESIDING JUDGE MINDUA: [12:28:41](Interpretation) I'm waiting for the  
5 interpretation because I can see that there's still a red light on.

6 So Ms Gerry, you've heard the Prosecution's objection. I am not going to repeat it.  
7 Please try to proceed in a step-by-step basis or phase-by-phase basis.

8 MS GERRY: [12:29:01] Would you just give me a moment. I believe I'm getting  
9 a message from behind. Excuse me for a moment.

10 PRESIDING JUDGE MINDUA: [12:29:09](Interpretation) Indeed.  
11 (Counsel confers)

12 MS GERRY: [12:29:41] I do apologise. If you would just give me one moment, I  
13 want to make sure I answer you accurately.

14 (Counsel confers)

15 PRESIDING JUDGE MINDUA: [12:30:16](Interpretation) Counsel Gerry, go ahead.

16 MS GERRY: [12:30:22]

17 Q. [12:30:23] Mr Witness, for the benefit of those in court, I'm just going to seek to  
18 clarify the answer on page 54, line 18. Mr Witness, when I was asking you questions  
19 about Al Qaeda, you gave an answer that it was not possible to distinguish unless you  
20 were part of it.

21 Can you help us to understand what you meant, please.

22 A. [12:31:16] What I said -- perhaps, I did not understand your question, but what I  
23 said is that Al Qaeda was operating somewhat behind the window of Ansar Dine, so  
24 we -- you could not distinguish between the two, unless you knew the members of  
25 the two groups. Some could distinguish between the members of Al Qaeda and

1 Ansar Dine. You had to be an expert in the matter, and you had to be a member of  
2 one of the groups or someone from that region.

3 Q. [12:32:06] You told us that you did not join Al Qaeda. Were you able to  
4 distinguish between people who were Al Qaeda as opposed to people who were  
5 Ansar Dine?

6 PRESIDING JUDGE MINDUA: [12:32:23](Interpretation) Prosecutor.

7 THE INTERPRETER: [12:32:31] The interpreter did not hear what the Prosecutor  
8 said.

9 PRESIDING JUDGE MINDUA: [12:32:36](Interpretation) The Prosecutor says that  
10 the answer to the question has already been given.

11 But, Counsel Gerry, I would like to know -- perhaps you should ask the witness if the  
12 witness knew members of the tribunal. So only if he knew members of the tribunal,  
13 if they were members of Al Qaeda, and I doubt that because he said it was difficult,  
14 unless one is an expert.

15 So is he an expert to decide on the matter?

16 Perhaps a last question, and then we will go on to something else.

17 MS GERRY: [12:33:19] Mr President, if I may take you back to the beginning of  
18 when my learned friend's first objection was made. My question was:

19 Was anyone from Al Qaeda in the Islamic tribunal?

20 It couldn't have been clearer. And in my submission, it would be simplest if I simply  
21 asked that question. Then he can be -- the witness can then be clear as to what knew  
22 and what he didn't know. Otherwise, we would be making assumptions that he  
23 didn't know. In my submission, it is likely to be clear if I ask that question.

24 PRESIDING JUDGE MINDUA: [12:33:56](Interpretation) No. If you will proceed  
25 in that way, that would be premature because we didn't even know if this witness

1 knows the members of the Islamic tribunal; so how can he know if there are any  
2 members of Al Qaeda among them?

3 Go ahead. Reword it one last time, that way we can go on to something else.

4 MS GERRY: [12:34:22] I'm going to move on.

5 Q. [12:34:23] Mr Witness, I'd like to ask you about the Islamic tribunal.

6 Do you recall when the Islamic tribunal started in Timbuktu?

7 A. [12:34:45] Yes, I remember. I remember that.

8 Q. [12:34:53] Do you remember when it was?

9 A. [12:34:59] Yes, I remember when this Islamic tribunal began its work in  
10 Timbuktu. Do you want me to go on or not?

11 Q. [12:35:15] Can you just be clear as to what year.

12 A. [12:35:27] The tribunal, the Islamic tribunal began in 2012, but Islamic tribunals  
13 in the region, I don't know how far back their creation or activities go. Since I was  
14 born, I know that there is a judge that takes decisions on disputes in the  
15 (indiscernible) -- in the region.

16 Q. [12:35:54] When the Islamic --

17 Sorry, I'll just make ...

18 In relation to the Islamic tribunal in Timbuktu in 2012, are you aware of  
19 when -- which month that started?

20 A. [12:36:15] I do not know in which month exactly, but I know what the first case  
21 was that was dealt with at this tribunal -- for which this tribunal was created to settle  
22 this dispute.

23 Q. [12:36:39] Can -- can you tell us what that case was, please.

24 A. [12:36:48] It was a dispute between two tribes, a Tuareg and Arab tribe. There  
25 was a crime, a murder. So this tribunal was created and composed of the two

1 regions, and it was decided to pay a *diyya*, a financial indemnity to the tribe to whom  
2 the murdered person belonged.

3 And that's how this case was settled, according to what I heard -- by hearsay.

4 Q. [12:37:47] Thank you.

5 You told us that since you were born, tribunals made decisions. To your knowledge  
6 and understanding, was the Islamic tribunal in Timbuktu the same as or different  
7 from those Islamic tribunals that had been around since you were born?

8 PRESIDING JUDGE MINDUA: [12:38:38](Interpretation) Prosecutor.

9 MR DUTERTRE: [12:38:39](Interpretation) The witness had said that there had been  
10 some failures, and on page 62, he said he did not know when it had been created.  
11 He said that there were judges that were settling disputes in the region, but to know  
12 whether in 2012, this tribunal was continuity of another one, there's no grounds for  
13 this. And this witness doesn't have the expertise to that answer that.

14 PRESIDING JUDGE MINDUA: [12:39:16](Interpretation) Counsel Gerry.

15 MS GERRY: [12:39:18] Mr President, unfortunately, we have to be careful of cultural  
16 relativism here. It is perfectly plain from the witness's answer that tribunals are  
17 created to deal with particular disputes. My learned friend is proceeding on the  
18 basis that a tribunal sits all the time as it may do in France, and we're not in France.  
19 We're in Mali.

20 This witness has created the basis for the question by giving evidence that a tribunal  
21 was created in order to decide a dispute, and he has earlier given evidence that judges  
22 decided disputes. In my submission, the question was perfectly proper. It's highly  
23 relevant to the decision that this Chamber has to make, and the witness really, ought  
24 to be given an opportunity to give his evidence without the sorts of interruptions that  
25 this witness is receiving. It will reduce the flow of the witness's evidence and he is

1 plainly trying to assist this Chamber.

2 In my submission, that was not a proper objection.

3 And I ought to be able to explore with this witness the comparisons that he is aware  
4 of - of the tribunals that were created during 2012 and the tribunals that were created  
5 before 2012 - to include later on in my questioning, the types of disputes that were  
6 resolved, absolutely core to this trial, for this Chamber to understand the continuity  
7 and normalcy of the Islamic tribunals.

8 PRESIDING JUDGE MINDUA: [12:40:59](Interpretation) Okay. Okay, we will try  
9 to move forward. I remember in the French I heard -- in the French interpretation,  
10 that the witness said that in 2012, an Islamic tribunal was created, but there were  
11 other Islamic tribunals in the past. That is our situation.

12 So you will ask your questions.

13 Go ahead then.

14 MS GERRY: [12:41:22]

15 Q. [12:41:24] Mr Witness, just to be clear, you have told us that an Islamic tribunal  
16 was created in 2012 to decide a dispute, and you have told us that before 2012, there  
17 were Islamic judges who decided disputes.

18 To your knowledge, was the Islamic tribunal that was in Timbuktu in 2012 created in  
19 the same way as the tribunals with the judges that made decisions on cases before  
20 2012? Dealing solely with creation at the moment, and then I'll make the structure  
21 clear.

22 PRESIDING JUDGE MINDUA: [12:42:21](Interpretation) Prosecutor.

23 MR DUTERTRE: [12:42:23](Interpretation) So the witness has heard the entire  
24 conversation, so he knows why this is being asked. So Counsel Gerry should have  
25 cut the sound.

1 PRESIDING JUDGE MINDUA: [12:42:40](Interpretation) Well, it's too late for that.

2 Let us then have the answer. We will see what the witness will say.

3 So Witness, please answer the question.

4 THE WITNESS: [12:42:51] (Interpretation) Yes, the Islamic tribunal created in 2012  
5 was made up of sheikhs who -- or some of the sheikhs who were practising the  
6 profession of judge in some villages, and some imams, namely, from Timbuktu itself.

7 PRESIDING JUDGE MINDUA: [12:43:44](Interpretation) Counsel Gerry.

8 MS GERRY: [12:43:47] I was just waiting to make sure he'd finished.

9 Q. [12:43:48] Mr Witness, are you able to name who was in charge of the Islamic  
10 tribunal that was created in Timbuktu in 2012?

11 A. [12:43:59] The head, as far as I know, was Mr Houka Houka, who was the head  
12 of the Islamic tribunal in 2012. He was in Timbuktu. He was a known sheikh. He  
13 was a mufti and a judge in his own region.

14 Q. [12:44:31] Mr Witness, are you able to name any of the other judges working at  
15 the Islamic tribunal that was created in Timbuktu in 2012?

16 A. [12:44:53] I know some of the names. I will give you a few, but not all, and I  
17 will reserve the right to give other names. So Sheikh Mohamed Houka Houka, and  
18 Sheikh Al-Amin Ould Ahmed. There's also Sheikh Daoud -- Daoud Maiga and the  
19 sheikh -- another Daoud, one of the imams of Timbuktu. I don't remember his  
20 family name or his father's name.

21 Those are the names I know.

22 Q. [12:45:41] Thank you.

23 You have given us four names. Were any of those four also sheikhs adjudicating on  
24 cases before 2012?

25 A. [12:46:06] Yes. Two among them were judges in their regions and they settled

1 disputes and Mohamed Houka Houka, and, even up to today, he's a mufti and  
2 a judge in his region. And Mohamed Al-Amin Ould Ahmed, peace to his soul, was  
3 a judge in his region.

4 The other two were major imams in the city of Timbuktu. They were known for  
5 their extensive knowledge as erudite people and they are still sheikhs in their region.

6 Q. [12:46:48] Mr Witness, I might be asked to be precise, so I just want to be clear.

7 Of -- you gave us four names, I'm hoping someone has written them down for me. I  
8 can have them to hand. One was Mr Daiga (phon). Is Mr Daiga a Timbuktu -- or  
9 was he from the region?

10 MR DUTERTRE: [12:47:22] "Maiga", to help my --

11 MS GERRY: [12:47:22] Maiga, sorry.

12 MR DUTERTRE: [12:47:23] Not "Daiga".

13 MS GERRY: [12:47:24] I do apologise. Thank you very much.

14 Q. [12:47:32] So Mr Witness, starting with Mr Maiga --

15 A. [12:47:45] (No interpretation)

16 Q. [12:47:45] I apologise. I'll start again and make it clear.

17 And I'm grateful for the assistance on the pronunciation of the name.

18 Starting with Daoud Maiga, can you help us as to whether Maiga was a Timbuktu  
19 judge or a regional judge before 2012?

20 A. [12:48:08] No, Daoud Maiga was not a judge in Timbuktu or the region. He  
21 was a sheikh. He was an erudite person. He had a lot of integrity and was known  
22 for his honesty.

23 Q. [12:48:31] You mentioned another judge called "Daoud." Can you help me to  
24 understand the name of the other judge called "Daoud," I think you said he was an  
25 imam in Timbuktu?

1 A. [12:48:47] Yes, indeed. He was an imam in the Bellafarandi neighbourhood in  
2 the Timbuktu.

3 Q. [12:49:05] And was he in that role before 2012?

4 A. [12:49:14] No. But he was also erudite and a sheikh who joined this tribunal to  
5 help the other members to take decisions. But prior to 2012, he was not a judge.

6 Q. [12:49:40] You also mentioned Mohamed Al-Amin Ould Ahmed?

7 A. [12:49:53] Yes.

8 Q. [12:49:57] Was that person a judge -- a sheikh before 2012?

9 A. [12:50:05] Yes, he was a sheikh, judge and mufti before 2012 and after 2012, up  
10 until his death.

11 MS GERRY: [12:50:23] Mr President, I apologise, just one minute, I need to check  
12 something.

13 PRESIDING JUDGE MINDUA: [12:50:29](Interpretation) Okay.

14 (Counsel confers)

15 MS GERRY: [12:50:32] Thank you.

16 Q. [12:50:38] Are you able, from your knowledge, to describe the role of the Islamic  
17 tribunal in Timbuktu in 2012?

18 A. [12:51:05] I will endeavour to explain the role of this tribunal. As far as I know,  
19 this Islamic tribunal had as its role: Settling disputes or major cases - such as, issues  
20 of conflict, vengeance, inheritance, divorce, marriage et cetera; other matters that arise  
21 in daily life of the inhabitants.

22 Q. [12:51:40] You told us earlier that the sheikhs who adjudicated on this -- on cases  
23 before 2012, using Sharia law -- used Sharia law. Are you able - from your own  
24 personal knowledge - to compare the role of those sheikhs with the role of the Islamic  
25 tribunal that was in Timbuktu in 2012?

1 MR DUTERTRE: [12:52:28](Interpretation) Mr President?

2 PRESIDING JUDGE MINDUA: [12:52:30](Interpretation) Yes.

3 MR DUTERTRE: [12:52:31](Interpretation) This is a very technical, complicated and  
4 general question. I don't know how we can be asking this witness to engage in this  
5 exercise. This is very broad. We don't know whether the witness had any  
6 knowledge of what was going on in -- among the sheikhs of the north. He is not the  
7 suitable person to be asking this type -- answering this type of question.

8 So I think we have to go on to other things because he does not have the expertise to  
9 answer this question.

10 PRESIDING JUDGE MINDUA: [12:53:07](Interpretation) Prosecutor, as a citizen or  
11 inhabitant of Timbuktu, the witness - according to you - cannot describe briefly or in  
12 general the role of this tribunal. Is that what you mean?

13 MR DUTERTRE: [12:53:28](Interpretation) I want to say that the region is very, very  
14 vast. We don't know if he has any specific knowledge, if he's been involved in any  
15 dispute before a tribunal, and we are asking him a very general and theoretical  
16 question, to which, as far as I can see, he is not in a position to answer.

17 PRESIDING JUDGE MINDUA: [12:53:55](Interpretation) Very well.

18 Counsel Gerry, you've heard the Prosecutor's objection, this witness is not an expert.  
19 What do you answer?

20 MS GERRY: [12:54:04] I accept he's not an expert. I asked my question very  
21 carefully as to whether he can give us his personal knowledge. It may be we get one  
22 answer or another. The question -- first of all, the proper basis for any further  
23 questions is whether he is able to give us a comparison between the role of the  
24 sheikhs compared with the Islamic tribunal. I'm not going to now say what his  
25 answer might be, but it is a perfectly proper foundational question for him to give us

1 an answer as to his personal knowledge as a citizen, as you -- as you rightly observed.

2 PRESIDING JUDGE MINDUA: [12:54:45](Interpretation) Okay.

3 Prosecutor, we will try, we will see how the witness answers.

4 Counsel Gerry, proceed. You've already asked the question. Now we are awaiting  
5 the answer from the witness, are we not?

6 MS GERRY: [12:55:02] Would you like me to repeat the question again?

7 PRESIDING JUDGE MINDUA: [12:55:08](Interpretation) Yes, please repeat the  
8 question.

9 MS GERRY: [12:55:09] It's scrolled up. I just want to make sure I get the exact  
10 words and the machine is scrolling up, so would you just give me a moment.

11 Q. [12:55:28] Mr Witness, are you able - from your own personal knowledge - to  
12 compare the role of those sheikhs with the role of the Islamic tribunal that was in  
13 Timbuktu in 2012?

14 A. [12:56:03] Yes. As far as I know, there is no big difference between the two,  
15 except that the judges at the Islamic tribunal in Timbuktu in 2012 had broader  
16 prerogatives and they only had one seat where they were working. It was a known  
17 place and it's not like in the past. Every judge was in a region between the tents, in  
18 these desert areas, and every judge was alone and had no help, no assistance.  
19 The tribunal is made up of a number of judges coming from different regions and  
20 from different strata of the population, but they were all within one structure. That's  
21 the only difference that I can see -- that I can observe.

22 Q. [12:57:27] You told us that you were aware of the Islamic police in Timbuktu in  
23 2012. In terms of structure, to your personal knowledge, was the Islamic tribunal  
24 higher or lower than the Islamic police?

25 A. [12:58:07] As far as I know, the Islamic tribunal was the supreme authority, it

1 was above all other structures. It was the supreme authority; so above the police,  
2 *Hesbah* and all other structures.

3 Q. [12:58:33] To your knowledge, if the Islamic tribunal made a decision and that  
4 decision had to be implemented, was it possible to refuse to implement that decision?

5 A. [12:59:11] No. That was not possible.

6 Q. [12:59:20] As a citizen of Timbuktu in 2012, how did you consider the role of the  
7 Islamic tribunal in Timbuktu?

8 A. [13:00:03] I personally considered that it was an ordinary normal role. This is  
9 not something unknown to me because I came from the desert, from the same society;  
10 so it was not something that was foreign to me, but rather familiar to me.

11 MS GERRY: [13:00:29] I believe it's lunchtime. Thank you.

12 PRESIDING JUDGE MINDUA: [13:00:36](Interpretation) Indeed, you're right. It is  
13 one o'clock. We will interrupt for the lunch break and we will resume at 2.30 p.m.  
14 So we will suspend the hearing.

15 The hearing is now adjourned.

16 THE COURT USHER: [13:00:54] All rise.

17 (Recess taken at 1.00 p.m.)

18 (Upon resuming in open session at 2.31 p.m.)

19 THE COURT USHER: [14:31:18] All rise.

20 Please be seated.

21 PRESIDING JUDGE MINDUA: [14:31:43](Interpretation) The hearing is now  
22 resumed, so good afternoon to everyone.

23 The Defence has the floor for the continuation of the examination-in-chief.

24 Counsel Gerry.

25 MS GERRY: [14:32:01] (Microphone not activated)

1 PRESIDING JUDGE MINDUA: [14:32:10] *Microphone.*

2 MS GERRY: [14:32:13] Thank you. Good job -- good job someone's on the ball.

3 Q. [14:32:17] Mr Witness, before the break, you told us how you considered the role  
4 of the Islamic tribunal in Timbuktu as a citizen of Timbuktu.

5 Do you remember me asking that question and you giving the answer?

6 A. [14:32:36] Yes.

7 Q. [14:32:46] Thank you.

8 In Timbuktu, in 2012, were you able to assess how the people -- other citizens of  
9 Timbuktu considered the Islamic tribunal? Were you able to assess that?

10 A. [14:33:08] Yes. I can speak of myself -- or for myself, personally, and for those  
11 close to me, but I cannot talk on everyone's behalf. Everyone has his or her own  
12 vision of things, has his or her own impression, but from what I've heard, I never  
13 heard of a complaint or that anyone had heard of any transformation or change, at  
14 least with respect to those close to me, around me.

15 And if I did not get wind of this type of complaint or information, well, that's because  
16 I am part of the inhabitants of Timbuktu and I was within Ansar Dine, I was  
17 a member of Ansar Dine. But all those people who were not from Ansar Dine and  
18 were from Timbuktu, well, I didn't hear anything in the way of a complaint or I never  
19 heard that they had observed a change of any kind.

20 Q. [14:34:56] When you were in Timbuktu in 2012, did you have any personal  
21 knowledge of the Islamic tribunal's decision-making process?

22 A. [14:35:23] No. I myself personally did not have any information on the  
23 decision-making process within the tribunal. But what I know, it's something that's  
24 public knowledge and all Muslims -- all citizens know, that is that the decisions taken  
25 within the Islamic tribunal are based on Sharia and on the holy scriptures, and are

1 also based on the Maliki school, which is very widespread.

2 This is the doctrine that's most widespread in the region.

3 Q. [14:36:09] Okay. I just want to make sure that I understand your terminology.

4 So as far as the Islamic tribunal that was in Timbuktu in 2012 is concerned, your  
5 knowledge was that decisions were made according to Sharia law. Have I  
6 understood you correctly?

7 A. [14:36:39] Yes.

8 Q. [14:36:44] And you also told us that those decisions were made using holy  
9 scriptures. Do they have a name? Do the holy scriptures have a name like  
10 the -- you've mentioned the Koran before, is there a name for the holy scriptures,  
11 please?

12 A. [14:37:10] In Islamic terminology, when we speak of "scriptures", we mean the  
13 Koran. Even if we don't say it, when we speak of books or holy scriptures, we mean  
14 the Koran. Always.

15 Q. [14:37:29] Thank you. I wanted to make sure that I understood you properly.

16 You also mentioned the Maliki school. Can you explain to us what the Maliki school  
17 is, please.

18 A. [14:37:49] The doctrine or Maliki school -- or doctrine is an interpretation of  
19 Islam, of the provisions and the principles of Islam. It is an interpretation that makes  
20 it possible for a person who has not done in-depth religious studies. It enables such  
21 peoples to understand religion -- this religion because it is based on the principles of  
22 the Islamic Sharia.

23 In Islam, the book, the sunna and the hadiths of the Prophet, in the interpretation of  
24 the ulamas -- ulama, these are the three pillars of -- of the Maliki School. The first  
25 two are the sunna and the book.

1 Q. [14:39:19] Again, I want you to help me with terminology, to make sure that I  
2 understand your evidence.

3 In your evidence you said the word "sunna". Can you help me to understand what  
4 "sunna" means?

5 A. [14:39:54] The sunna-isms -- or a sunna, is all the decisions and orders of the  
6 Prophet, but also all his acts. So it's a set of traditions and words. We also call the  
7 hadith, words, that is, everything that the Prophet has said and all the orders that he  
8 has given, but also his behaviour -- behaviour, his life. The life of the Prophet -- it's  
9 all that, the sunna.

10 PRESIDING JUDGE MINDUA: [14:40:46](Interpretation) I would like to ask the  
11 representative of the Registry who is in the field to ensure that there is not too much  
12 noise because we hear some noise through the headsets. We hear some noise where  
13 the witness is.

14 There you go. Thank you very much.

15 Counsel Gerry, please go ahead.

16 MS GERRY: [14:41:16] Thank you.

17 Q. [14:41:16] I'm sorry if this is very obvious, but I want to make sure that I've dealt  
18 with all the terminology.

19 You mentioned the Prophet. Who is the Prophet?

20 A. [14:41:40] The Prophet Mohamed. In the Islamic religion, when we talk about  
21 the Prophet, we're talking about Mohamed, prayers of God to him.

22 Q. [14:41:58] Thank you.

23 You also mentioned - I hope I pronounce it correctly - *qiyas*.

24 A. [14:42:23] Yes.

25 Q. [14:42:24] Can you tell us what *qiyas* is, please.

1 A. [14:42:35] *Al-qiyas* means the evaluation of the erudite people on things of life.

2 Q. [14:42:46] And then you mentioned - again, I apologise if I don't  
3 pronounce (inaudible). Yes, "*ijma*." You said that word.

4 A. [14:43:07] *Al-ijma* are the points on which all the erudite people and the *ijma* are  
5 unanimous. So *ijma* is -- means unanimity. So these are questions on which they  
6 are all unanimous in agreement.

7 Q. [14:43:35] And, finally, you told us about the Maliki school, which you said was  
8 an interpretation of the principles of Islam, and I think you told us that was the  
9 interpretation that the Islamic tribunal used.

10 I'm sure I'll be corrected if I'm wrong about that.

11 Have I understood you correctly?

12 A. [14:44:01] Could you please repeat the question.

13 Q. [14:44:11] You mentioned the Maliki school. Did you tell us that it was the  
14 Maliki school of interpretation that the Islamic tribunal in Timbuktu in 2012 used?

15 A. [14:44:29] I did not say that exactly, but something close to that. I said that the  
16 principles of *fiqh* or of Islamic jurisprudence was based on the Maliki doctrine, which  
17 was very widespread in the western and northern parts of Africa.

18 So I wanted to say -- I meant that the conclusions of the Malik imam constitute the  
19 Maliki doctrine. And they have all the -- the -- it's the comprehension, the  
20 understanding of the religion and its principles that are integrated into the Maliki  
21 doctrine.

22 Q. [14:45:42] (Microphone not activated) ... we started this line of questioning -- I  
23 do apologise.

24 Mr Witness, I'm going to start again because I forgot to put the microphone on. I'm  
25 sorry.

1 Mr Witness, we started this line of questioning with me asking you about your  
2 personal knowledge of the Islamic tribunal decision-making process, that is, the  
3 Islamic tribunal that was in Timbuktu in 2012.

4 Can you help me to understand whether there is any connection between the Maliki  
5 school and the Islamic tribunal.

6 MR DUTERTRE: [14:46:42](Interpretation) Mr President?

7 PRESIDING JUDGE MINDUA: [14:46:44](Interpretation) Yes, Mr Prosecutor.

8 MR DUTERTRE: [14:46:46](Interpretation) In English, in the transcript of today,  
9 page 73, line 35 -- no, this is in the French, sorry --

10 "No, I personally did not have information on the decision-making process within  
11 that tribunal."

12 So I object to this question being asked because the witness said that he did not know  
13 how decisions were made in the -- at the Islamic tribunal, and especially in 2012.

14 MS GERRY: [14:47:23] I said that -- I'm confident that the witness said something  
15 about Maliki, and I'm just having that checked, and I can rephrase the question. I  
16 just want to make sure I don't miss a piece of the evidence at the appropriate moment.  
17 I wonder if you'd give me a moment just to have that checked.

18 PRESIDING JUDGE MINDUA: [14:47:43](Interpretation) Go ahead.

19 (Counsel confers)

20 MS GERRY: [14:48:06] Thank you.

21 Q. [14:48:07] Mr Witness, you told us this afternoon that something that's public  
22 knowledge and -- all Muslims and citizens - known, is that the decisions taken within  
23 the Islamic tribunal are based on the Sharia and on the holy scriptures and also based  
24 on the Maliki school, which is very widespread. That is the doctrine that is most  
25 widespread in the region.

Trial Hearing  
WITNESS: MLI-D28-P-0605

(Open Session)

ICC-01/12-01/18

1 Do you remember telling us that?

2 A. [14:48:47] Yes.

3 Q. [14:48:50] This morning you told us about judges who would adjudicate on  
4 disputes in Mali before 2012.

5 A. [14:49:09] Yes.

6 Q. [14:49:11] To your personal knowledge, did those judges, before 2012, use the  
7 same school or a different school?

8 I think I'll stop there.

9 The same school or a different school?

10 PRESIDING JUDGE MINDUA: [14:49:42](Interpretation) Prosecutor?

11 MR DUTERTRE: [14:49:45](Interpretation) Thank you, President.

12 It's a bit confused, all this. And, secondly, it's very general. Of what judge are we  
13 speaking? in a village? Is this in Mali? Is this a specific village?

14 It's very general, so the answer cannot be very edifying for the Chamber.

15 Thirdly, I come back to the issue of judges, chiefs. And, once again, when the  
16 witness had spoken -- the first time, he never spoke of judge or Islamic judge in  
17 Arabic.

18 So in sum, it's very general, and I don't think it can help the Chamber make any  
19 decision on the charges.

20 PRESIDING JUDGE MINDUA: [14:50:36](Interpretation) Counsel Gerry, what  
21 would you respond to that?

22 MS GERRY: [14:50:41] Mr President, it's not general at all. My learned friend for  
23 the Prosecution may not like the progress the Defence is making to assist this  
24 Chamber on the function of Islamic tribunals in Mali. But it is a perfectly clear  
25 question, linking this witness's personal knowledge of before 2012 to his personal

1 knowledge during 2012, of a school of Islam that he can give evidence about, as  
2 a Muslim, who was in Mali at both of those times and who has demonstrated that he  
3 has some knowledge - albeit not as an expert - as a Muslim should.

4 In our submission, it is a perfectly proper question for this witness to give his  
5 personal knowledge of what school was used before 2012, as he has been able to help  
6 us with the school that was used during 2012.

7 In my submission, the clear question --

8 PRESIDING JUDGE MINDUA: [14:51:44](Interpretation) Okay.

9 MS GERRY: [14:50:45] -- was it the same school, is important.

10 PRESIDING JUDGE MINDUA: [14:51:48](Interpretation) Okay, Counsel Gerry, but  
11 the problem for the Prosecutor and even for the Chamber is that -- well, first of all, we  
12 do not know exactly what is the technical or legal capacity of this witness, hence all  
13 these technical problems. And when you ask about his feelings or his knowledge,  
14 this school of thought or jurisprudence used -- that was used as the basis by the  
15 judges in 2012, well, the thing is, we don't know -- is this throughout the country, in  
16 a few villages, or in the desert, among the Bedouin? How is the witness to answer?  
17 It's a very vast field. Prior to 2012, judges, well, they would take a decision on these  
18 disputes.

19 So be more specific or go on to something else.

20 MS GERRY: [14:53:07] Mr President, I will do my best to be more specific.

21 Q. [14:53:13] Mr Witness, as a Muslim and someone who is educated in a Koranic  
22 school, did you understand the schools of jurisprudence in Islam or not?

23 A. [14:53:50] Yes, I studied in a Koranic school. I understand some of this  
24 jurisprudence, but I am not an erudite person -- or even to understand all the types of  
25 jurisprudence or all the schools of thought of Islam, I am but a mere student. I have

1 some information, I have some knowledge but today I am speaking of something that  
2 is public knowledge. Not me personally, but everyone knows this and everyone  
3 applies this.

4 For instance -- for instance, I will go beyond the framework of this question. If you  
5 ask a citizen in a given state, if you ask that citizen, on what basis this tribunal -- on  
6 what basis does the tribunal base its questions? And -- the answer is, the  
7 constitution.

8 So this person can answer with regard to the basis, but cannot say for each case or  
9 each dispute on what the tribunal had based itself. So I cannot say this, but I can talk  
10 about what's public knowledge, what everyone knows.

11 Q. [14:55:18] Just for a moment, going back to the sheikhs who adjudicated on  
12 disputes that you were personally aware of before 2012, can you help us at all as to  
13 the school of Islamic principles that those sheikhs who adjudicated upon disputes  
14 used.

15 A. [14:55:54] The Maliki school -- it was the Maliki school.

16 Q. [14:56:13] To your personal knowledge, in Timbuktu, in 2012, did the people  
17 respect the decisions of the Islamic tribunal or not?

18 MR DUTERTRE: [14:56:40](Interpretation) I object. This is very general. What do  
19 they respect -- the force? What does this question mean? This question has to be  
20 specified as such. It is not acceptable, and so I object.

21 MS GERRY: [14:56:53] (Overlapping speakers) And I accept the objection.

22 PRESIDING JUDGE MINDUA: [14:56:57](Interpretation) Okay --

23 MS GERRY: [14:57:04] I accept the objection.

24 PRESIDING JUDGE MINDUA: [14:57:04] (Interpretation) -- Counsel Gerry. I  
25 would like to make a comment. Let's cut the communication with the witness.

1 Court officer, please cut the communication with the witness.

2 THE COURT OFFICER: [14:58:17] The audio to the witness has been disconnected.

3 Thank you.

4 PRESIDING JUDGE MINDUA: [14:58:24](Interpretation) Thank you very much,

5 court officer.

6 Counsel Gerry, I will -- had suspended the sound because the Office of the Prosecutor

7 is always objecting in terms of the nature of the questions that you are asking because

8 they seem general. But this witness has told us that he is a student; that he has

9 studied at the Koranic school but he's not a legal specialist, legal expert. And here,

10 he spoke with regard to the comparison between the judges and the sheikhs prior to

11 2012, who had meted out justice, and then he spoke of the tribunal created in 2012,

12 and, if I understand correctly, you are trying to compare the two types of

13 jurisdictions.

14 But the witness had said this morning that the tribunal in -- created in 2012 had more

15 prerogatives, but he did not explain which ones. And now he has just said that this

16 Islamic tribunal created in 2012, as the judges and the sheikhs prior to 2012 used

17 jurisprudence -- the Maliki jurisprudence or the Maliki school, so it's becoming a bit

18 confusing.

19 As I hear it -- and as we've been following the debates here in this hearing, we saw

20 that the judges of these Islamic tribunals could pronounce a judgment that -- and

21 a sentence that could be carried out by the police, such as, floggings and other

22 punishment. And these judges and sheikhs prior to 2012, did they have these

23 competencies? Well, the witness has not been able to say so.

24 I think we're wasting our time because he does not have the ability to say

25 so -- because you don't agree.

1 MS GERRY: [15:00:56] Mr President, taking your points in order, if I may.  
2 Firstly, the fact that my learned friend for the Prosecution has objected a lot does not  
3 mean that his objections were valid. He has said that my questions were general,  
4 you have ruled that many of them were not.  
5 Secondly, in our submission, the information is not confusing. It gives this Chamber  
6 an understanding of the governance structure in Mali at the time; that arises from the  
7 way in which this witness has given his personal knowledge so far of Ansar Dine and  
8 the Islamic tribunal. But I'm very grateful for the reminder about the prerogatives  
9 and I will deal with that next.  
10 Thirdly, you suggested that it is our approach to compare the two types of judicial  
11 systems. One consideration for this Chamber may well be, as we go forward, is  
12 whether there are two types or merely one within Mali at the time. That is a  
13 question that we are exploring and is a relevant question for this trial.  
14 Your fourth point on confusion is the confusion of the Court. It is very important  
15 that we understand the Muslim witnesses in this trial because these questions may  
16 not be confusing to a Muslim. So I will try and keep my questions as specific as I  
17 believe they have been thus far.  
18 In our submission it is very important not to reduce Islamic law to mere punishments.  
19 It's a century's old tradition that Muslim people understand, and, that, in our  
20 submission, is helpful to this Chamber.  
21 But all of that said, in fact, that broad question that I accepted the objection from was  
22 the last one on the Islamic tribunal topic. I have to ask about two pieces of  
23 terminology and then I'm moving on to the security group.  
24 So if I may ask firstly about the prerogatives and then one other terminology, we will  
25 then be moving on to the security group. I hope that's helpful.

1 May I continue?

2 PRESIDING JUDGE MINDUA: [15:03:19](Interpretation) Thank you very much.

3 So take into account the objections of the Prosecutor and what I said, and try to finish  
4 this chapter because, as you can see, you spent a lot of time on it.

5 MS GERRY: [15:03:32] Yes, I have.

6 May we reconnect with the witness, please.

7 PRESIDING JUDGE MINDUA: [15:03:47](Interpretation) Court officer, transmission,  
8 please.

9 UNIDENTIFIED SPEAKER: [15:04:30] (Interpretation) The sound is back.

10 THE COURT OFFICER: [15:04:37] The sound to the witness has been reconnected.

11 PRESIDING JUDGE MINDUA: [15:04:43](Interpretation) Thank you very much,  
12 court officer.

13 Maître Gerry.

14 MS GERRY: [15:04:48](Overlapping speakers) Thank you, Mr President.

15 Q. [15:04:48] Mr Witness, you told us earlier on in your evidence that the Islamic  
16 tribunal in Timbuktu in 2012 had more prerogatives. Can you please help us to  
17 understand what you meant by "more prerogatives"?

18 A. [15:05:14] The tribunal is made up of judges and it is the judges who take  
19 decisions, who decide where it concerns the different sentences in Islam, such as  
20 marriages, divorces and so on. There is no superior authority than the judges  
21 because these are ulema, these are erudite scholars who have the required and  
22 necessary knowledge in order to decide. And according to Sharia, they have the  
23 word of God. The ulema of the religion are competent to take decisions and nobody  
24 else can have more prerogatives than them. Here, I'm speaking of the sheikhs and  
25 the judges within the tribunal.

- 1 PRESIDING JUDGE MINDUA: [15:06:37](Interpretation) Prosecutor?
- 2 MR DUTERTRE: [15:06:38](Interpretation) Thank you, your Honour. I'm listening  
3 to the original and I clearly heard *hudud et ta'zir* and that wasn't in the answer.  
4 Perhaps we have to ask the witness to go over that point.
- 5 PRESIDING JUDGE MINDUA: [15:06:57](Interpretation) You are listening to the  
6 original in Arabic or Tamasheq?
- 7 MR DUTERTRE: [15:07:01](Interpretation) In the language of the witness, the  
8 original on the channel; so when you speak at the same time -- so I did hear the word  
9 "*ta'zir*". It wasn't in French. I think it's quite (Overlapping speakers)
- 10 PRESIDING JUDGE MINDUA: [15:07:14](Interpretation) Indeed, it's very important.  
11 So what are we going to do? I think that the interpreters have understood -- it has to  
12 be corrected in the transcript. Is that what we're going to do?  
13 We don't need to repeat everything, Prosecutor.
- 14 MR DUTERTRE: [15:07:34](Interpretation) I don't know. Perhaps we could clarify.  
15 If there are follow-up questions, it might be a bit complicated.
- 16 PRESIDING JUDGE MINDUA: [15:07:42](Interpretation) Maître Gerry, could you  
17 try and clarify this.
- 18 MS GERRY: [15:07:45] Of course. There were three words that will need  
19 clarification in my submission. If I can assist any further, I will.
- 20 Q. [15:07:54] Mr Witness, you used the word "ulama" or "ulema". Can you  
21 explain it to us, firstly, the pronunciation, and secondly, tell us what an ulema is.
- 22 A. [15:08:19] The ulema are the wise people, the sheikhs. The judges are ulema,  
23 sheikhs are ulema. And when you say "ulema", this is a generic term which includes  
24 sheikhs, judges, people who are competent in that domain. That's what you mean  
25 when you say "ulema".

1 Q. [15:08:46] Thank you.

2 Mr Witness, it is thought that you also said the word *ta'zir*.

3 A. [15:08:50] (Overlapping speakers)

4 Q. [15:08:56] Just pause before you answer. Just confirm that you used that word,  
5 please.

6 A. [15:09:05] The term "*ta'zir*", means a decision admitted by the tribunal against  
7 a person. For example, a sentence of imprisonment. So you issue a *ta'zir*,  
8 a punishment or a sentence. I don't know if I have explained that well, but a *ta'zir* is  
9 a decision of the tribunal outside the *hududs* and outside the sentences prescribed by  
10 the Sharia. You have compensation or other decisions, apart from *hudud*, that's *ta'zir*,  
11 or you have discretionary decisions of the judges.

12 Q. [15:10:23] It is thought that you also -- well, you have used the word "*hudud*".  
13 Can you explain the word "*hudud*" to us as well, please.

14 A. [15:10:42] There is a slight difference between a *hudud* and *ta'zir*. *Ta'zir* is the  
15 decision of the judge or the decision of the tribunal against any person. As regards  
16 a *hudud*, nobody can set it. These are sentences which are set in the Koran, before the  
17 judges and their existence on earth. When you say, for example, the crime or the  
18 *hadd* of murder or theft, as that -- these are punishments or *hudud*, which are  
19 prescribed by the Koran, you can't change them.

20 Q. [15:11:34] Thank you.

21 Next, I want to ask you about the security group. You told us that -- this morning,  
22 that you were aware of the security group in Timbuktu in 2012.

23 A. [15:12:03] (No interpretation)

24 Q. [15:12:04] Are you able to help us as to whether members of Ansar Dine were  
25 acting in the security group or not?

1 A. [15:12:23] I know some people, some security people -- such as, Talha,  
2 Khoubayb.

3 Q. [15:12:44] And were they members of Ansar Dine?

4 A. [15:12:50] They were members of Al Qaeda -- Talha and Khoubayb and Adam,  
5 they were members of Al Qaeda.

6 Q. [15:13:18] Are you able to name who was in charge of the security group?

7 A. [15:13:29] Talha was responsible for security -- or the security group, to be  
8 precise.

9 Q. [15:13:39] And was Talha a member of Ansar Dine or not?

10 PRESIDING JUDGE MINDUA: [15:13:51](Interpretation) Prosecutor.

11 MR DUTERTRE: [15:13:52](Interpretation) Your Honour, I think that the witness has  
12 already answered this question. It was a leading question, which we allowed to pass,  
13 but then he clearly said that - and this is on page 88, line 3, in English - that Talha,  
14 Khoubayb and Adam were members of Al Qaeda. The answer is on the transcript.

15 MS GERRY: [15:14:23] I asked "Ansar Dine", I didn't ask Al Qaeda. My learned  
16 friend's made a mistake. I specifically asked Ansar Dine, I did not ask Al Qaeda.  
17 So I'd like to ask the question again.

18 I asked, "Were they members of Ansar Dine?"

19 PRESIDING JUDGE MINDUA: [15:14:43](Interpretation) Yes.

20 MR DUTERTRE: [15:14:43](Interpretation) It was a leading question, and,  
21 furthermore, he's already answered the group to which Talha were, and it's clearly in  
22 the record of this case, they were in Al Qaeda.

23 PRESIDING JUDGE MINDUA: [15:14:56](Interpretation) Maître Gerry, I think that  
24 the witness has already answered this question.

25 MS GERRY: [15:15:00] He hasn't. He has not answered whether Talha was

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1 a member of Ansar Dine, which is page 88, at line 8. My friend for the Prosecution is  
2 dangerously attempting to equate Al Qaeda with Ansar Dine. In our submission, I  
3 ought to be allowed to ask that question and to clarify. The next question would be  
4 in relation to Al Qaeda. It is not fair for that question not to be answered.

5 PRESIDING JUDGE MINDUA: [15:15:37](Interpretation) Prosecutor.

6 MR DUTERTRE: [15:15:37](Interpretation) But the question was already put in the  
7 same terms. On page 87, lines 20 to 23: (Speaks English)

8 "Are you able to help us as to whether members of Ansar Dine were acting in the  
9 security group or not."

10 End of quotation.

11 (Interpretation) Excuse me for the accent.

12 The answer was they are Al Qaeda.

13 So the question was put and the answer's been had.

14 PRESIDING JUDGE MINDUA: [15:16:05](Interpretation) Are you convinced now,  
15 Maître Gerry?

16 MS GERRY: [15:16:08] No, because that's not a clear answer. It doesn't answer the  
17 question that I asked; so I am not clear at all. In my submission, it is very important  
18 that the witness gives a specific answer in relation to Talha, who is a person that he  
19 has identified as to his personal knowledge of Talha's membership of either of those  
20 two organisations.

21 You've asked me to be specific, I'm being specific to Talha.

22 PRESIDING JUDGE MINDUA: [15:16:40](Interpretation) Please put an open  
23 question and we'll see.

24 MS GERRY: [15:16:48]

25 Q. [15:16:49] Mr Witness, focusing on Talha, was Talha a member of Ansar Dine or

1 not?

2 That's an optional question, it's not leading. I can see my learned friend on his feet.

3 It doesn't -- it gives the witness an option.

4 PRESIDING JUDGE MINDUA: [15:17:19](Interpretation) Yes, Prosecutor.

5 MR DUTERTRE: [15:17:23](Interpretation) This is leading. It's not an open  
6 question. Was he -- an open question would be, Was he a member of another group?

7 PRESIDING JUDGE MINDUA: [15:17:30](Interpretation) Yes. This is a leading  
8 question.

9 MS GERRY: [15:17:31] But it isn't. A leading question is one that demonstrates the  
10 answer --

11 PRESIDING JUDGE MINDUA: [15:17:34] *Non* --

12 MS GERRY: [15:17:34] -- either yes or no, and this one has options. It is not  
13 a leading question to give a witness options. To -- not to specify, would be  
14 confusing for the witness. It's very important that this witness is given the  
15 opportunity to differentiate between Ansar Dine and Al Qaeda. It may be that some  
16 people are members, one way or another, but this witness needs to be given the  
17 opportunity to answer, in my submission.

18 PRESIDING JUDGE MINDUA: [15:18:05](Interpretation) You could have asked  
19 what groups the person was a member of, for example.

20 MS GERRY: [15:18:13] And that would be a general question to which my learned  
21 friend would object; so we go around in circles.

22 PRESIDING JUDGE MINDUA: [15:18:20](Interpretation) Because there ...

23 MS GERRY: [15:18:22] Once we have an answer to one, I would need to ask the  
24 question in relation to the other. It very much needs to be differentiated, given the  
25 answers that the witness gave before, that some were members of Al Qaeda and some

1 were not - I appreciate that's my summary - this witness needs to have the  
2 opportunity to be specific about his personal knowledge. Earlier, he was unable to  
3 help us with knowledge about Al Qaeda; so we must be clear.

4 And in my submission, an optional question is not leading. It gives this Court an  
5 opportunity to assess the truth of the membership of the security group.

6 PRESIDING JUDGE MINDUA: [15:19:08](Interpretation) You think that with this  
7 question, the witness has options.

8 What are the options?

9 MS GERRY: [15:19:14] The question that I asked was:

10 Was Talha a member of Ansar Dine or not? He can chose either of those options.

11 The follow-up question would be: Was he a member of Al Qaeda or not.

12 That gives the witness options. I'm not suggesting either option. Therefore, it's not  
13 a leading question.

14 Those, in my submission, are proper questions and I ought to ask them about Talha,  
15 Khoubayb and Adam because those are three people that he has mentioned.

16 PRESIDING JUDGE MINDUA: [15:19:50](Interpretation) Very well. Put your  
17 questions like that and we'll save time.

18 Please go ahead.

19 MS GERRY: [15:19:55]

20 Q. [15:19:56] Mr Witness, was Talha a member of Ansar Dine or not?

21 A. [15:20:03] To the best of my knowledge, Talha was a member of Al Qaeda. I  
22 don't know if he was a member of Ansar Dine. He was a member of Al Qaeda.

23 Q. [15:20:17] Thank you.

24 Focusing on Biyibe (phon), was Biyibe (phon) a member of Ansar Dine or not?

25 MR DUTERTRE: [15:20:33](No interpretation)... "Khoubayb."

1 MS GERRY: [15:20:35] Khoubayb. Khoubayb. I apologise.

2 Thank you. Thank you very much. I've been corrected by everyone.

3 Q. [15:20:37] Was Khoubayb a member of Ansar Dine or not?

4 A. [15:20:49] As far as I know, he was not a member of Ansar Dine, but rather  
5 a member of Al Qaeda.

6 Q. [15:21:02] And thirdly, you mentioned Adam. Was Adam a member of  
7 Ansar Dine or not?

8 A. [15:21:12] Same for Adam, he was a member of Al Qaeda and not Ansar Dine to  
9 the best of my knowledge.

10 Q. [15:21:25] You told us that Talha was in charge of security and that  
11 Khoubayb -- Khoubayb also worked in security, in the security group. What about  
12 Adam? Where did Adam work?

13 A. [15:22:02] Adam was the leader of the Islamic police, he was chief of the Islamic  
14 police.

15 THE INTERPRETER: [15:22:19] And the interpreter didn't hear the rest of the  
16 answer because the witness was speaking with a low voice.

17 PRESIDING JUDGE MINDUA: [15:22:25](Interpretation) Witness, please repeat  
18 your answer.

19 THE WITNESS: [15:22:29] (Interpretation) Adam was the chief of the Islamic police  
20 and afterwards, he worked in security.

21 MS GERRY: [15:22:45]

22 Q. [15:22:47] Thank you.

23 Did members of the security group wear a uniform or not?

24 A. [15:23:05] I don't remember that.

25 Q. [15:23:09] Was the security group higher or lower than the Islamic police?

1 A. [15:23:36] I don't know. But as far as I know or as far as my understanding  
2 goes, I think that this security group is higher because they had weapons and they  
3 assured security -- the entries to the town. So they had more power or they were in  
4 a higher position to the Islamic police.

5 Q. [15:24:11] From your personal knowledge when you were in Timbuktu in 2012,  
6 are you able to describe the functions of the security group?

7 A. [15:24:32] As I said previously, their work consisted of ensuring the supply in  
8 weapons, security of the town, and that's it.

9 Q. [15:24:51] The next structure I want to ask you about is *Hesbah*, please.  
10 And you've told us that in 2012, you were aware of a group known as *Hesbah* in  
11 Timbuktu. Are you able to name who was in charge of *Hesbah* in 2012?

12 A. [15:25:21] In charge of *Hesbah*, Abou Bacar Al Chinguetti, and when I was in the  
13 *Hesbah*, there was a person called Chadi; he was also a member of the *Hesbah*.

14 THE INTERPRETER: [15:25:55] The interpreter did not get the name correctly.

15 PRESIDING JUDGE MINDUA: [15:26:01](Interpretation) Witness, could you repeat  
16 the names, please, of the people in charge.

17 THE WITNESS: [15:26:07](Interpretation) I said -- I mentioned Abou Bacar Al  
18 Chinguetti. And when I was in the *Hesbah*, at the end, it was Chad -- Chadiani  
19 (phon).

20 THE INTERPRETER: [15:26:31] And the interpreter repeated that phonetically.

21 MS GERRY: [15:26:40]

22 Q. [15:26:41] Do you remember if -- I'm sorry?

23 MR DUTERTRE: [15:26:47](Interpretation) Your Honour?

24 PRESIDING JUDGE MINDUA: [15:26:49](Interpretation) Yes, Prosecutor.

25 MR DUTERTRE: [15:26:51](Interpretation) Could we ask the witness to repeat the

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1 name, because he said a name, which I'm not going to repeat, but "the Chadian".

2 There was -- it would be good if we had the full name on the transcript.

3 PRESIDING JUDGE MINDUA: [15:27:07](Interpretation) Do you remember the  
4 name of the Chadian?

5 THE WITNESS: [15:27:12](Interpretation) Abou Walid, the Chadian. Abou Walid  
6 Al Chadi (phon), in Arabic.

7 PRESIDING JUDGE MINDUA: [15:27:26](Interpretation) Thank you very much.

8 THE INTERPRETER: [15:27:30] Abou Walid, the Chadian. Abou Walid Al Chadi  
9 (phon), in Arabic.

10 PRESIDING JUDGE MINDUA: [15:27:32](Interpretation) Maître Gerry.

11 MS GERRY: [15:27:34]

12 Q. [15:27:36] Do you remember if Mr Chinguetti - I apologise for my  
13 pronunciation - had a title in *Hesbah*?

14 A. [15:27:58] I don't remember the person Al Chinguetti within the *Hesbah*.

15 Q. [15:28:12] I'll ask the question again because I'd shortened the name.

16 Do you know if Abou Bacar Al Chinguetti had a title when he was in charge of  
17 *Hesbah*?

18 A. [15:28:35] Abou Bacar Al Chinguetti was the first person to lead the *Hesbah*, the  
19 first person responsible for the *Hesbah*.

20 Q. [15:28:58] Did the members of *Hesbah* wear a uniform?

21 A. [15:29:21] In general, they did wear a uniform.

22 Q. [15:29:27] Are you able to describe that uniform for us, please?

23 A. [15:29:50] It was a uniform on which *Hesbah* was written. It was the institution  
24 for the prevention of vice and the promotion of virtue.

25 Q. [15:30:08] Was *Hesbah* higher or lower than the Islamic police?

1 MR DUTERTRE: [15:30:16](Interpretation) Your Honour?

2 PRESIDING JUDGE MINDUA: [15:30:20](Interpretation) Prosecutor.

3 MR DUTERTRE: [15:30:22](Interpretation) Elsewhere, in what terms? In the  
4 number of persons? In the number of ammunition, amount of weapons, the number  
5 of sanctions inflicted? In what number? And so what is the capacity of this witness  
6 to judge that, furthermore?

7 MS GERRY: [15:30:42] We accept the objections.

8 MR DUTERTRE: [15:30:22](Interpretation) It calls for an opinion.

9 THE INTERPRETER: [15:30:53] Overlapping speakers.

10 PRESIDING JUDGE MINDUA: [15:30:54](Interpretation) Very well. Please  
11 reformulate.

12 MS GERRY: [15:30:57]

13 Q. [15:30:57] From your personal knowledge in Timbuktu in 2012, are you able to  
14 assist us to understand the functions of *Hesbah*?

15 A. [15:31:15] The *Hesbah* is the commission for the promotion of virtue and  
16 prevention of vice of Mali.

17 Q. [15:31:28] Next I want to ask you about the Islamic police -- Oh, I'm sorry. He  
18 has not finished. I do apologise.

19 A. [15:31:47] As I've already said, *Hesbah* is involved -- responsible for the  
20 commission of -- or for promotion of virtue and prevention of vice and banning of  
21 things that are prohibited by the religion to prevent them in public places and in the  
22 street. Among its functions, imposing modesty upon people and prohibiting all  
23 prohibited acts under the religion; namely, in public places and in the street.

24 Q. [15:32:32] Next I want to ask you about the Islamic police. In 2012, when you  
25 were in Timbuktu, are you able to name who was in charge of the Islamic police?

1 A. [15:33:03] At the beginning, it was Adam who was head of the Islamic police.  
2 Then there was Abu Zhar, and then, chronologically, Al Hassan. And then Adam  
3 was replaced by Khaled and then Abu Zhar and then Al Hassan.

4 Q. [15:33:41] When Adam was in charge of the Islamic police, did Adam have  
5 a title?

6 A. [15:33:50] No, he did not have a title. Adam did not have a title, but everyone  
7 knew he made the law with regard to the Islamic police or at the Islamic police.

8 Q. [15:34:26] If it was suggested that Mr Al Hassan was in charge of the Islamic  
9 police, would that be correct or not?

10 MR DUTERTRE: [15:34:52] (No interpretation) *Monsieur le Président?*

11 PRESIDING JUDGE MINDUA: [15:34:53] (No interpretation) *Oui.*

12 MR DUTERTRE: [15:34:54](Interpretation) Mr President, I don't know why ... This  
13 question had been already asked. There -- this is a suggestive question, and it's  
14 something that's already been asked. So this is not a cross-examination of the  
15 Defence.

16 PRESIDING JUDGE MINDUA: [15:35:16](Interpretation) Counsel Gerry, I think that  
17 the Prosecutor is right. We've already had an answer to this question; so go on to  
18 other things, please.

19 MS GERRY: [15:35:25] I agree, it's -- but it's a -- I agree we've had an answer. I  
20 checked my note that he -- his evidence was, Adam, followed by Zhar, followed by  
21 Mr Al Hassan. So I'm grateful for the intervention; although I don't accept it was an  
22 improper question, but that's perhaps otiose now.

23 Q. [15:35:46] From your knowledge, Mr Witness, when you were in Timbuktu in  
24 2012, can you describe the functions of the Islamic police.

25 A. [15:36:04] Yes. Under the leadership of Adam, who was the director or the

1 chief of police, he had absolute authority. Nobody could make decisions without  
2 him being informed of it and without an order emanating from him. And, in his  
3 absence, Abu Zhar would replace him. No one could act without his orders and his  
4 consent.

5 When Adam was not there and when Abu Zhar was not there either, Al Hassan could  
6 replace them, but he did not have broad prerogatives, and he did not have the  
7 authority to act without Adam and Khaled -- later, when Khaled replaced him.

8 Q. [15:37:03] From your knowledge, when you were in Timbuktu in 2012, are you  
9 able to describe the sort of work that the Islamic police force did?

10 A. [15:37:38] The work and functions of the Islamic police were the work of all  
11 police forces in all states everywhere. The police arrest criminals, arrest people who  
12 violate the law, who rape women, major bandits. All people who commit crimes,  
13 whether they be moral, who violate traditions and violate religion. The police also  
14 provide security in villages and heighten awareness of inhabitants to what is  
15 prohibited and also make them aware of what is authorised.

16 Q. [15:38:31] Thank you.

17 Mr President, may we go into private session, please.

18 PRESIDING JUDGE MINDUA: [15:38:43](Interpretation) Yes.

19 Court officer, please take us into a private session.

20 (Private session at 3.38 p.m.)

21 THE COURT OFFICER: [15:38:54] We are in private session, Mr President.

22 (Redacted)

23 (Redacted)

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- 16 (Open session at 3.44 p.m.)
- 17 THE COURT OFFICER: [15:44:54] We are back in open session, Mr President.
- 18 PRESIDING JUDGE MINDUA: [15:45:07](Interpretation) Thank you very much,
- 19 court officer.
- 20 So I see the Prosecutor standing up.
- 21 Prosecutor, go ahead.
- 22 MR DUTERTRE: [15:45:17](Interpretation) Thank you, Mr President. Just
- 23 for a -- for a clarification, in French, it was said that -- in French it was a "Wilaya of the
- 24 province." In English, it was just "Wilaya."
- 25 Could we have a clarification on this?

1 PRESIDING JUDGE MINDUA: [15:45:37](Interpretation) Yes, of course.

2 Counsel Gerry, you have the floor.

3 MS GERRY: [15:45:42]

4 Q. [15:45:42] Mr Witness, we are in public session, but I'm only going to ask you  
5 about a location, nothing to identify you. You have used the word "Wilaya" as  
6 a location for the Islamic police at one stage.

7 Can you help us to understand what "Wilaya" means or where "Wilaya" was?

8 A. [15:46:25] Yes. The Wilaya is the *Gouvernorat* in Arabic. It means *gouvernorat*  
9 in Arabic. As we would say, in French, *gouvernorat*. So it is where the government  
10 has its headquarters.

11 Q. [15:46:48] Just to be clear -- I have a suspicion everybody will know the answer  
12 to this question, but just to be clear, was that the same building or a different building  
13 from BMS?

14 A. [15:47:11] No, it's different. The police had its headquarters at the BMS, and,  
15 then, subsequently, it was transferred to the *Gouvernorat* -- to the headquarters of the  
16 *Gouvernorat*, and then the *Hesbah* was transferred from the building beside the  
17 military barracks to the BMS.

18 Q. [15:47:39] Thank you.

19 I want to go back to Adam. You told us that Adam was in charge of the Islamic  
20 police and you told us that the Islamic police did the work of any ordinary police  
21 force - arrests, investigations and interrogations in relation to -- I think you said,  
22 crimes and disputes between people.

23 I may have got that slightly wrong, I apologise.

24 A. [15:48:22] (No interpretation)

25 Q. [15:48:25] Just so that we are clear --

1 A. [15:48:28] Yes.

2 Q. [15:48:29] -- can you tell us the difference between an investigation and an  
3 interrogation? Or I could ask it in a --

4 A. [15:48:42] (Overlapping speakers)

5 Q. [15:48:42] -- I could ask it in a better way.

6 What do you understand an investigation to be and what do you understand an  
7 interrogation to be? Just so that we're clear before I ask you questions.

8 A. [15:48:54] An investigation is the quest for truth, wherever that truth may be.

9 The interrogation -- well, that is the fact of asking questions of the accused or the  
10 person who is before you -- I'm sorry, whether it be the accused or whether it be  
11 a criminal. Someone else may hold the truth, members of that person's family or  
12 their acquaintances. You have to seek out the truth everywhere.

13 Interrogations mean answering -- asking questions and that person answering you.

14 Q. [15:49:50] Thank you.

15 To your knowledge, did Adam carry out arrests or not?

16 MR DUTERTRE: [15:50:18] *Monsieur le Président* --

17 PRESIDING JUDGE MINDUA: [15:50:19] *Oui, Monsieur le Procureur.*

18 MR DUTERTRE: [15:50:20](Interpretation) -- I would -- Mr President, I would like  
19 questions to be asked impersonally. These are very leading questions asking about  
20 the police in this way.

21 PRESIDING JUDGE MINDUA: [15:50:33](Interpretation) Counsel Gerry --

22 MS GERRY: [15:50:36] They're not leading questions. They are questions that  
23 allow for an option, but I -- but they are not leading questions. It's basic advocacy.

24 MR DUTERTRE: [15:50:41](Interpretation) The question is suggesting the answer.

25 So the questions have to be open, as, Who was proceeding to make arrests within the

1 police or *Hesbah*?

2 That type of question.

3 MS GERRY: [15:51:02] I'm afraid my learned friend is wrong. When you're asking  
4 about a specific person and the topic is arrests, investigations and interrogations, it's  
5 very important to identify which of those three things that an individual person did.

6 The only way to ask that question is to give options. It would be a compound  
7 question to say, "Did Adam arrest, investigate or interrogate?"

8 So it would be very -- in my submission ...

9 I'm still on my feet, Mr Prosecutor.

10 In my submission an optional question, "Did he arrest or not?" is a perfectly proper  
11 question.

12 PRESIDING JUDGE MINDUA: [15:51:42](Interpretation) Yes, Counsel Gerry, you  
13 know, that it's quite complicated. But here, it depends on the context because here  
14 we are talking about an individual. The witness has described the police and its  
15 missions. Now you can ask the question, "Who proceeded to make arrests within  
16 this police team?" when you cite a specific person. This is a suggester of a leading  
17 question; that's why I agree with the Prosecutor.

18 So try to use open questions to give the witness more possibilities to answer your  
19 questions.

20 MS GERRY: [15:52:30]

21 Q. [15:52:31] Mr Witness, who carried out arrests in the Islamic police to your  
22 knowledge in Timbuktu in 2012?

23 A. [15:52:42] As I've already said, within the Islamic police, the absolute authority  
24 belonged to Adam. He is the one who gave the order to arrest anybody. He is the  
25 one who said that this person would be sent before a court or to release someone

1 before they would have to appear before court. And if Adam was absent, then Abu  
2 Zhar would replace him. If Abu Zhar was absent, then Al Hassan would carry out  
3 the orders that Adam or Abu Zhar would have given him. And that's as far as I  
4 know.

5 Q. [15:53:38] Mr Witness, who carried out the investigations in the Islamic police in  
6 Timbuktu in 2012, to your knowledge?

7 A. [15:53:50] The investigations were conducted by Adam, but also Abu Zhar, and  
8 it could also be conducted by Al Hassan under the orders of Adam.

9 Q. [15:54:17] Mr Witness, who carried out --  
10 (Overlapping speakers)

11 A. [15:54:18] But Al Hassan --

12 Q. [15:54:19] Oh, sorry.

13 A. [15:54:19] -- could not conduct an investigation alone, of his own accord.  
14 Did you hear the second part or the follow-up part to my question -- to my answer?

15 Q. [15:54:43] We did. Thank you very much.

16 Mr Witness, who carried out the interrogations in Timbuktu in 2012, in the Islamic  
17 police?

18 A. [15:55:10] As I've already said - and, I repeat - the authority and absolute  
19 prerogative was Adam. He is the one who made the law. And it was either Khaled  
20 who was the chief after him or there was Abu Zhar who replaced him.  
21 And no one else could act unless Abu Zhar was there or they could act under the  
22 orders of Adam.

23 MR DUTERTRE: [15:55:56](Interpretation) Mr President, a translation or  
24 interpretation issue. I think that the witness said, "After Adam had been removed."  
25 We know that he had been removed in June.

1 PRESIDING JUDGE MINDUA: [15:56:16](Interpretation) Counsel Gerry.

2 MS GERRY: [15:56:18] I'm going to ask those questions. I see that we're coming up  
3 to the break. Do you want me to continue, or do you want to have the break?

4 PRESIDING JUDGE MINDUA: [15:56:29](Interpretation) For now, there is no break  
5 because the Prosecutor wants us to specify this in the transcript, what's missing. So  
6 please check this with the witness.

7 MS GERRY: [15:56:42] It's not missing, I'm coming to it. I'll keep to my order of  
8 questions, if I may.

9 Q. [15:56:48] So when Adam was in charge of the Islamic police, Mr Witness, who  
10 carried out the interrogations?

11 A. [15:57:08] I told you, Adam is the one who conducted the investigation -- rather,  
12 the interrogations, or Abu Zhar, or anybody who had been authorised to do so by  
13 Adam. And, subsequently, after Adam had been removed, all the prerogatives were  
14 in Khaled's hands.

15 Q. [15:57:35] You told us that Adam stopped being the director and was replaced  
16 by Khaled.

17 A. [15:57:46] (No interpretation) *Na'am*.

18 Q. [15:58:00] When Khaled was in charge of the Islamic police, who carried out the  
19 arrests?

20 A. [15:58:13] It was Khaled or Abu Zhar or any person who had received the order  
21 to do so, that is, an order from Khaled.

22 Q. [15:58:29] When Khaled was in charge of the Islamic police, who carried out the  
23 investigations?

24 A. [15:58:38] Khaled or Abu Zhar or any person who had been ordered by Khaled  
25 to do so. Sometimes Al Hassan, but it was always under Khaled's order or Abu

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1 Zhar's order.

2 Q. [15:58:58] When Khaled was in charge of the Islamic police, who carried out the  
3 interrogations?

4 A. [15:59:12] Khaled or Abu Zhar or any other person who had been ordered by  
5 Khaled or Abu Zhar to do so.

6 Q. [15:59:28] You mentioned earlier in your evidence a Chadian. What did the  
7 Chadian do?

8 A. [15:59:52] The Chadian, as I've told you, was the last chief of the *Hesbah*. I do  
9 not remember of a Chadian within the police. I don't -- I've already told you, I don't  
10 remember seeing the Chadian within the Islamic police. Perhaps there's someone  
11 who resembles him, but not him.

12 MS GERRY: [16:00:30] Is that a convenient moment for a break, Mr President?

13 PRESIDING JUDGE MINDUA: [16:00:34](Interpretation) Yes, indeed, Counsel  
14 Gerry.

15 Mr Witness, we are coming to the end of our day. On behalf of the Chamber, I  
16 would like to thank you very sincerely for having answered the questions that have  
17 been put to you.

18 It is the first day for you. I can imagine that it has been quite arduous, but things  
19 will go better tomorrow. So tomorrow, you will continue your deposition.

20 Between now and then, do not forget that you are not allowed to talk about your  
21 deposition to anyone, nor to members of the family or friends should you be in  
22 contact with them this evening.

23 Have you understood what I've told you, Mr Witness?

24 THE WITNESS: [16:01:51](Interpretation) Yes, of course. To protect my own safety,  
25 I will not talk to anyone about that.

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1 PRESIDING JUDGE MINDUA: [16:02:01](Interpretation) Thank you very much,  
2 Mr Witness.

3 So on the other request of the Defence, we will not begin at 9.30 as usual, but we will  
4 begin at 11.30. 11.30. We will have two sessions, the first from 11.30 to 1 o'clock, 1  
5 p.m., and the second from 2.30 p.m. to 4 p.m. That's what is requested.

6 I'm looking at the Defence.

7 Counsel Gerry.

8 MS GERRY: [16:02:41] I just wanted to say thank you for the courtesy of the timing  
9 tomorrow before we break. Thank you very much, indeed.

10 PRESIDING JUDGE MINDUA: [16:02:52](Interpretation) You're most welcome,  
11 Counsel Gerry.

12 So before adjourning for the day, I would like to express all my gratitude to the  
13 parties and the participants, to the court reporters and the interpreters, to our security  
14 officers, and to the public in the gallery and those who are here remotely. I would  
15 like to wish you all a very nice evening.

16 And so we will meet back tomorrow at 11.30.

17 The hearing has now been adjourned.

18 THE COURT USHER: [16:03:32] All rise.

19 (The hearing ends in open session at 4.03 p.m.)