

Trial Hearing
WITNESS: MLI-OTP-P-0104

(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 1
9 Wednesday, 16 September 2020
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:37] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:34:06](Interpretation) Court is in session.
15 Good morning to everybody.
16 Madam courtroom officer, could you please call the case.
17 THE COURT OFFICER: [9:34:16] Thank you, Mr President.
18 The situation in Mali, in the case of The Prosecutor versus Al Hassan Ag Abdoul Aziz
19 Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
20 For the record, we are in open session.
21 PRESIDING JUDGE MINDUA: [9:34:36](Interpretation) Thank you very much,
22 courtroom officer.
23 Once again, I would like to welcome everybody.
24 And we shall start, as usual, with the appearances with the Office of the Prosecutor,
25 please.

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1 MS HUCK: [9:34:54](Interpretation) Good morning, Mr President, your Honours.
2 For the Office of the Prosecutor today, we have Mr Gilles Dutertre, senior trial lawyer;
3 Mr Lucio Garcia, trial lawyer; and myself, Florie Huck, associate trial lawyer.

4 PRESIDING JUDGE MINDUA: [9:35:14](Interpretation) Thank you very much,
5 Prosecutor.

6 Let me turn now to the Defence. Ms Taylor.

7 MS TAYLOR: [9:35:21] Good morning, Mr President, your Honours. Good
8 morning, everyone in and out of the courtroom. My name is Melinda Taylor.
9 I'm appearing on behalf of Mr Al Hassan today with Ms Molly Thomas and
10 Ms Laura Ferri. Thank you.

11 PRESIDING JUDGE MINDUA: [9:35:43](Interpretation) Thank you very much,
12 Ms Taylor.

13 Now I'm turning to the Legal Representatives for Victims. Mr Kassongo.

14 MR KASSONGO: [9:35:51](Interpretation) Thank you, Mr President, your Honours.
15 Good morning. The Legal Representatives of Victims' team comprises today,
16 Madam Claire Laplace, who is assisting me, and myself, Mr Kassongo.

17 PRESIDING JUDGE MINDUA: [9:36:06](Interpretation) Thank you very much,
18 Mr Kassongo.

19 I note that there is nobody representing the Registry, and so let us move on swiftly to
20 our witness.

21 Good morning, Mr Witness, can you hear me?

22 WITNESS: MLI-OTP-P-0104

23 (The witness speaks French)

24 (The witness gives evidence via video link)

25 THE WITNESS: [9:36:23](Interpretation) Yes, indeed, good morning.

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1 Can you hear me? Maybe not.

2 PRESIDING JUDGE MINDUA: [9:36:29](Interpretation) I can hear you only too
3 well.

4 We do not have any image, Madam Prosecutor, because when we turn the screen on,
5 the image of the witness is reflected in my screen and can be seen by the public, and,
6 as such, for security reasons, because the witness is protected, we've requested that
7 the big screen be turned off.

8 Is that all right with you?

9 THE COURT OFFICER: [9:37:09](Interpretation) With your leave, Mr President, I
10 would invite the parties to connect on VTC1 on their consoles in order to be able to
11 see the witness.

12 PRESIDING JUDGE MINDUA: [9:37:22](Interpretation) There we have it. That's
13 perfect.

14 Madam Prosecutor, you have the witness before you.

15 Mr Witness, on behalf of the Chamber, I would like to welcome you. You shall be
16 testifying with a view to helping the Chamber shed light on the matter of

17 The Prosecutor v. Mr Al Hassan. Mr Witness, protective measures have been put in
18 place in order for your identity not to be revealed to the public.

19 Ms Taylor.

20 MS TAYLOR: [9:38:07](Microphone not activated)

21 MS HUCK: [9:38:11](Interpretation) We can still not see the image of the witness on
22 VTC1, I apologise.

23 PRESIDING JUDGE MINDUA: [9:38:20](Interpretation) Can't you see the witness?

24 Madam courtroom officer, could you please lend a hand.

25 Well, we have the image before us.

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1 THE INTERPRETER: [9:38:40] Says Judge Mindua.

2 PRESIDING JUDGE MINDUA: [9:38:45](Interpretation) Ms Taylor, do you have the
3 image?

4 (Speaks English) Do you have it?

5 MS TAYLOR: [9:38:47] No, Mr President. And when it appeared before, it was
6 pixelated.

7 (Pause in proceedings)

8 PRESIDING JUDGE MINDUA: [9:40:21](Interpretation) I am addressing you,
9 Mr Witness.

10 Every time you require to give -- you are required to give details that might divulge
11 your identity, we shall talk about this in closed session, or private session, and this
12 means that only those in the courtroom will be able to hear you.

13 I shall now read you the solemn undertaking under Rule 66(1).

14 Mr Witness, on your table before you, you should have a document.

15 Do you have one?

16 THE WITNESS: [9:41:05](Interpretation) Yes, indeed.

17 PRESIDING JUDGE MINDUA: [9:41:07](Interpretation) This is the solemn
18 undertaking by which you shall swear to tell the truth. And I would like to request
19 that you read it out, that you read out what is written on said document.

20 THE WITNESS: [9:41:26](Interpretation) I solemnly declare that I shall speak the
21 truth, the whole truth and nothing but the truth.

22 PRESIDING JUDGE MINDUA: [9:41:34](Interpretation) Thank you very much,
23 Mr Witness. You are now under oath. The VWS and the representatives of the
24 Office of the Prosecutor have already explained to you what this means.

25 Now, you should bear in mind that throughout the hearing, everything that is said in

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1 this courtroom shall be transcribed and simultaneously interpreted into a number of
2 interpreters -- into a number of languages by interpreters, so it is important for you to
3 speak clearly and slowly.

4 Only start speaking when the person who is questioning you has finished putting
5 their question to you. Count to three in your head and not out loud before
6 answering. This pause is essential for us to be able to hear what you have to say
7 correctly and for your statement to be correctly transcribed.

8 Of course, if you have any questions, please raise your hand to indicate that you
9 would like to intervene.

10 Have you understood correctly?

11 THE WITNESS: [9:43:23](Interpretation) Yes, yes, thank you.

12 PRESIDING JUDGE MINDUA: [9:43:28](Interpretation) Thank you very much.

13 We shall now hear your testimony. You shall be questioned by the parties and
14 possibly by the Chamber.

15 Now I shall hand the floor over to the Office of the Prosecutor for them to start their
16 questioning. And, in compliance with our decision 989 and in compliance with
17 Rule 68(3) of the Rules of Procedure and Evidence, the examination-in-chief will last
18 one hour.

19 Madam Prosecutor, over to you. The witness is all yours.

20 MS HUCK: [9:44:24](Interpretation) Thank you.

21 QUESTIONED BY MS HUCK: (Interpretation)

22 Q. [9:44:28] Good morning, Mr Witness.

23 A. [9:44:30] Good morning.

24 Q. [9:44:33] Good morning once again, because we saw each other this morning
25 during the courtesy meeting.

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1 So I would like, first of all, to remind you to speak slowly, to make brief sentences in
2 order to facilitate the work of the interpreters and the court reporters.

3 I would also ask you to tell me, or point out to me, whether one of my questions is not
4 clear and I shall try and rephrase it.

5 Is that all right with you?

6 A. [9:45:11] Yes, indeed, it is.

7 MS HUCK: [9:45:21] I'm now saying to the courtroom officer that all the documents
8 today are confidential in nature.

9 And I would now like to go into private session, please, Mr President, for identifying
10 questions to be put to the witness.

11 PRESIDING JUDGE MINDUA: [9:45:33](Interpretation) Private session, please,
12 courtroom officer, for the identification of the witness.

13 (Private session at 9.46 a.m.)

14 THE COURT OFFICER: [9:46:05] We're in private session, Mr President.

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- 20 (Open session at 10.02 a.m.)
- 21 THE COURT OFFICER: [10:03:02] We are in open session, Mr President.
- 22 PRESIDING JUDGE MINDUA: [10:03:06](Interpretation) My thanks, court officer.
- 23 Madam Prosecutor, please continue.
- 24 MS HUCK: [10:03:18](Interpretation)
- 25 Q. [10:03:18] So if I follow your evidence, you drafted a report for the Office of the

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1 Prosecutor; is that right?

2 A. [10:03:25] Yes.

3 Q. [10:03:33] So would you mind turning to tab 1, number MLI-OTP-0024-0537.

4 It's a confidential document.

5 A. [10:03:58] I have sighted that document.

6 THE INTERPRETER: [10:04:02] Says the witness.

7 MS HUCK: (Interpretation)

8 Q. [10:04:03] Do you recognise the document, Mr Witness?

9 A. [10:04:06] Yes, I do, very much so.

10 Q. [10:04:12] Would you mind turning to page 539, 0539.

11 Here, we see a signature. Whose signature is it, Mr Witness?

12 A. [10:04:31] It's mine. I can confirm that.

13 Q. [10:04:40] This report dates back to March 2015.

14 Can I ask you to look at tab 2 now, please. ERN MLI-OTP-0028-0586.

15 A. [10:05:12] I have sighted that document.

16 Q. [10:05:17] Do you recognise that report?

17 A. [10:05:22] Exactly, yes, I do.

18 Q. [10:05:29] At the bottom of the first page, I read:

19 This version was drafted in April and then July 2015.

20 Is that correct? The revised version of the previous report?

21 A. [10:05:44] Exactly so. That's exactly it, yes.

22 Q. [10:05:51] So can you tell the Court, Mr Witness, what was the purpose of that
23 report that was authored for the OTP?

24 A. [10:06:06] Its purpose primarily was to understand the cultural significance of
25 the mausoleums. There was a general introductory preamble, which detailed what

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1 the mausoleums consisted in, their history, generally speaking. And then for each
2 individual mausoleum, there was a sheet, a fact sheet per mausoleum, which detailed
3 the state of repair as far as possible before the destruction and its state of repair post
4 event. And in each case, a financial appraisal was conducted with a view to their
5 restoration and being rebuilt.

6 In support of that document, there were bird's eye photos that we retrieved after
7 strenuous efforts through UNESCO and the national cultural department in Mali.
8 One or two technical reports, which unfortunately were pretty thin on the ground in
9 terms of the content, and then samples taken by Mali architects from May 2013.

10 A specific assignment was put together by UNESCO to take, well, to basically
11 appraise, not samples, but appraise the state of damage, the debris, and to describe
12 very precisely the remains that were still on the ground that could be, could be seen,
13 the state of repair of the buildings.

14 Q. [10:07:59] So how did you gather that information, Mr Witness, for the purposes
15 of drafting your report?

16 A. [10:08:14] From 2012, as early as 2012, we'd done a huge amount of information
17 collection work on the mausoleums, the mausoleums that hadn't been really
18 addressed in a very structured hitherto. So we gathered that information and, then,
19 after that first round of information gathering, in May 2013, we had the UNESCO
20 mission. And immediately after that, UNESCO organised a Mali expert assignment
21 that made accurate appraisals in situ that I made mention of a moment ago. We had
22 a -- a historian, Salem Ould Elhadj, who was tasked to work on the oral traditions
23 surrounding the mausoleums. So we had -- that shed a better, a more instructive
24 light about what these mausoleums consisted in and we were able to use his material,
25 the documents he produced.

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1 And then subsequent to that, and, this is really why amendments were made, as the
2 assignments came and went, to try and schedule and then launch restoration work.
3 And on the ground, we garnered fresh information which provided greater accuracy
4 to the documents that I had already remitted.

5 So that information is more what dates to July 2015. So in each case, there was
6 a mission in situ and that yielded corrections, names that were wrong or clarifications,
7 two names, and sometimes names had been put the wrong way around and that
8 therefore shed light on documents that had been done hitherto.

9 Q. [10:10:18] Now, you talked about the significance of the mausolea for the
10 inhabitants of the city. Would you mind addressing that point concisely,
11 Mr Witness.

12 A. [10:10:38] One of the nicknames given to Timbuktu is the City of the 333 Saints.
13 Saints are scholars, people who deserve particular attention. So this report provides
14 a history of Timbuktu, and for some of these scholars, some of these saints are
15 acknowledged as being exceptional by virtue of what they've -- what they did during
16 their lifetime.

17 Ahmed Baba is a case in point, who doesn't actually have a mausoleum, but is
18 recognised as a saint and who lent his name to the major manuscript conservation
19 building in Timbuktu.

20 So these are eminent individuals to the extent that they talk about the prestigious
21 history sitting behind Timbuktu. And then, Sidi Yahya, who gave his name to the
22 main mosque. So he has a minaret of the mosque and the mausoleum, Sidi Yahya.
23 And then, the specific feature of Timbuktu and that could be -- can be seen in other
24 religions, in Catholicism, for example, you can talk to the saints rather than to god.

25 And one of the specific features of Timbuktu is the fact that the saints belong to ethnic

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1 groups that differ one to the next. So they also -- so they're also -- that reflects the
2 linguistic differences prevailing in Timbuktu. And when you go into the
3 mausoleums, you speak in your own language to impart your message to god. So
4 that's very important.

5 It's also a way of, of -- well, it is obviously of great interest to the local inhabitants.

6 We have translators in the courtroom, but the mausolea, if you will, is to receive
7 people and offer a translation for individuals who wish to address, in a specific
8 language, the divine.

9 If I could just add a further point: The mausolea are not arrogant edifices. They are
10 very simple. They are very modest in their architecture. They're not convoluted;
11 they are not overly decorous. There's a great deal of humility involved in the
12 building practices for producing a mausoleum.

13 Q. [10:13:31] All right. Well, since you mention that, a moment ago you said that
14 you returned to Timbuktu after its liberation. Can you provide a description of in
15 what state of repair the mausoleums were upon your return?

16 A. [10:13:57] Well, the mausoleums were destroyed. Not wholly destroyed, not
17 totally destroyed. These are structures whose walls are extremely thick and when
18 you demolish them, you fill an entire room, not more than one room. And as time
19 goes by, of course, the room fills up, and the underpinnings of the structure weren't
20 destroyed therefore.

21 So, of course, historically, the construction was made very differently from one age to
22 the next. But based on the volume of the roofing and the volume of the debris, well,
23 you can see therefore that there was not total destruction, because after cleaning,
24 about 10 or 15 per cent of the walls were still standing and which helped us
25 understand how we were going to work with a view to rebuilding these edifices by

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1 basing ourselves on the layouts that we had documented previous to the destruction.

2 Q. [10:15:24] Thank you. As a summary, in a summary fashion, as far as possible,

3 I would like to move back into private session.

4 PRESIDING JUDGE MINDUA: [10:15:33](Interpretation) Private session, please,

5 court officer.

6 (Private session at 10.15 a.m.)

7 THE COURT OFFICER: [10:15:52] We're in private session, Mr President.

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8 (Open session at 10.38 a.m.)

9 THE COURT OFFICER: [10:38:11] We are back in open session, Mr President.

10 PRESIDING JUDGE MINDUA: [10:38:17](Interpretation) Thank you very much,

11 Madam courtroom officer.

12 Madam Prosecutor, please continue.

13 MS HUCK: [10:38:25](Interpretation) I would like to ask for the authorisation of the

14 Chamber to put leading questions to the witness with regard to corrections that the

15 witness brought to the Office of the Prosecutor during the preparatory session?

16 PRESIDING JUDGE MINDUA: [10:38:46](Interpretation) Please go ahead, Madam

17 Prosecutor.

18 MS HUCK: [10:38:55](Interpretation)

19 Q. [10:38:55] So, Mr Witness, we are going to consult your report once again and

20 we are going to return to the corrections that we discussed during the preparatory

21 session. And I'm going to ask you to consult 0592, page 0592.

22 So that's 0028-0592.

23 A. [10:39:32] I am there.

24 Q. [10:39:37] You indicate that the study presented here is based on the

25 second -- well, at the second indentation you talk about abundant documentation that

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1 was furnished during and after the liberation. You indicated, in fact, that this was
2 a mistake and that it should read that it was produced before and then after the
3 liberation. Is that not true?

4 A. [10:40:24] I can confirm that.

5 Q. [10:40:32] Still on this very same page in the footnote number 4, it is indicated,
6 *inter alia*, one of the mausoleums still remains non-identified or unidentified, that is,
7 the Sidi El Mokhtar cemetery.

8 And you indicated to us that, in fact, this mausoleum was identified and that the
9 corresponding information can be found at page 0028-0781. Is that not true?

10 A. [10:41:18] Yes, indeed.

11 Q. [10:41:27] I should now ask you to consult 0599, page 0599.

12 A. [10:41:49] I am there.

13 Q. [10:41:50] It is indicated that on 30 June and 1 July 2012 the following six
14 mausolea were destroyed. In fact, it should read: The seven following mausolea
15 were destroyed.

16 Should it not?

17 A. [10:42:20] Yes, that is correct.

18 Q. [10:42:31] And lastly, at the sixth mausoleum that is indicated, Sheikh Sidi Amar
19 Ben Amar, it should read as Sheikh Sidi Ahmed Ben Amar Arragadi. Should it not?

20 A. [10:42:55] Yes, that is correct. It was one of the three mausoleums in the Three
21 Saints cemetery -- *cimetière des Trois Saints*.

22 Q. [10:43:23] So we have finished with revising this report or reviewing it, and I
23 would like you now to move on to tab number 3, ERN MLI-OTP-0033-0867.

24 A. [10:43:49] I have it before me.

25 Q. [10:43:51] There is a signature in the middle. Do you -- well, apologies, do you

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1 recognise this document?

2 A. [10:43:59] Yes, indeed.

3 Q. [10:44:05] And who does this signature in the middle of the document belong
4 to?

5 A. [10:44:11] It is my signature.

6 Q. [10:44:22] So this is an addendum to your revised report, is it not?

7 A. [10:44:30] Yes, that is correct.

8 Q. [10:44:37] So, Mr Witness, could you tell us whether the revised report,
9 MLI-OTP-0028-0586 and the addendum, MLI-OTP-0033-0867, with the corrections
10 that have been brought, are accurate?

11 A. [10:45:12] Yes, indeed. There have been changes of names in the mausoleums
12 that were -- that have been brought whilst bringing the corrections to the text.

13 Q. [10:45:27] Do you have any objection to your revised report and its addendum
14 being tendered into evidence?

15 A. [10:45:42] None whatsoever.

16 Q. [10:45:47] Thank you.

17 And I have now concluded my examination-in-chief, Mr President.

18 PRESIDING JUDGE MINDUA: [10:45:55](Interpretation) Thank you very much,
19 Prosecutor, Ms Huck.

20 Now this witness falls under Rule 68(3) of the Rules of Procedure and Evidence.

21 The Chamber is satisfied that the requisite proceedings or conditions for the
22 proceedings have been fulfilled under Rule 68(3).

23 I shall now turn to the Legal Representatives of Victims. Mr Kassongo, I note that on
24 10 September 2020, the Legal Representatives of Victims made an application to
25 question this witness. This is document bearing the reference 1043, filing 1043.

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1 The legal representatives would like to question the witness on the destruction and
2 extent of the destruction associated with any harm described by the victims.

3 Now, Mr Kassongo, having heard the examination-in-chief conducted by the Office of
4 the Prosecutor, I would like to ask you whether the Legal Representatives of Victims
5 maintain their request to question the witness.

6 MR KASSONGO: [10:47:41](Interpretation) Thank you, Mr President, your
7 Honours.

8 The Legal Representatives of Victims do maintain the request to question this very
9 precious witness with regard to those questions outlined.

10 PRESIDING JUDGE MINDUA: [10:47:58](Interpretation) Could you very briefly
11 describe what you would like to question the witness about.

12 MR KASSONGO: [10:48:06](Interpretation) (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 PRESIDING JUDGE MINDUA: [10:49:11](Interpretation) (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 MS HUCK: [10:49:30](Interpretation) (Redacted)

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- 1 PRESIDING JUDGE MINDUA: [10:49:31](Interpretation) (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 MS TAYLOR: [10:49:39] (Redacted)
- 6 (Redacted)
- 7 PRESIDING JUDGE MINDUA: [10:49:50](Interpretation) (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 MR KASSONGO: [10:50:00](Interpretation) (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 QUESTIONED BY MR KASSONGO: (Interpretation)
- 15 Q. [10:50:17] (Redacted)
- 16 (Redacted)
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10 PRESIDING JUDGE MINDUA: [10:56:41](Interpretation) One moment. Ms Huck?

11 MS HUCK: [10:56:45](Interpretation) I do apologise. It's just that there is some
12 information that could be identifying by the question. We did this in private session.
13 I think we might request that some items be redacted and request of the witness that,
14 to the extent possible, he does not furnish information that is over-identifying.

15 PRESIDING JUDGE MINDUA: [10:57:12](Interpretation) Mr Witness, you just
16 heard what the Prosecutor said. We are mindful of the fact that your identity should
17 not be disclosed. So in your response to this very important question put to you by
18 the Legal Representative of Victims, please speak in a manner that you do not expose
19 yourself -- i.e., that you do not disclose your identity to the extent possible.

20 Please go ahead, Mr Witness.

21 * THE WITNESS: [10:57:48](Interpretation) So, the mausoleums are characterised by
22 this aspect of very strong intangible culture, linked to the material aspects of the
23 construction. So these are two quite different aspects. Of course, it is always easier to
24 deal with the tangible part. So for the tangible part, we were able to (Redacted)

25 (Redacted)

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7 As to the management of the mausoleums, these are earth -- these are buildings made
8 of earth, which require some upkeep. Now, the entire population of the town would
9 come to conduct this upkeep. As for the mausoleums, it was really the families that
10 were in charge, certain families who were keeping these in a good state of repair.

11 So that -- those are the outstanding questions. So we are not certain one
12 hundred per cent that they can be reconstructed because there are aspects that are
13 social and cultural and some aspects are very complex.

14 MR KASSONGO: [10:59:53](Interpretation) Thank you, Mr Witness. I am done.

15 PRESIDING JUDGE MINDUA: [10:59:59](Interpretation) Thank you very much,
16 Mr Kassongo.

17 So I'm looking at the time in the courtroom. I can see that it is 11 o'clock and it is
18 time for us to take a break. So we shall rise for half an hour and reconvene at half
19 past 11 for the cross-examination of the witness on the part of the Defence. So I shall
20 suspend the proceedings, but I can see -- okay. Fine. Very good.

21 Court is suspended.

22 THE COURT USHER: [11:00:36] All rise.

23 (Recess taken at 11.00 a.m.)

24 (Upon resuming in open session at 11.34 a.m.)

25 THE COURT USHER: [11:34:35] All rise.

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1 Please be seated.

2 PRESIDING JUDGE MINDUA: [11:35:00](Interpretation) We have reconvened and
3 we are ready to hear the Defence's cross-examination.

4 Ms Taylor, I hand over the witness to you.

5 MS TAYLOR: [11:35:15] Thank you. I believe we will have to go into private
6 session to commence to address issues that might identify the witness.

7 PRESIDING JUDGE MINDUA: [11:35:33](Interpretation) How much time in private
8 session? Can you give me an idea and to give an indication to the public gallery?

9 MS TAYLOR: [11:35:44] I'll do my best to get the first section done in
10 approximately 15 minutes; although, some issues have just been brought to my
11 attention need to be in private session.

12 So I will try to address those at the end, so that there will be a block in-between in
13 public session.

14 PRESIDING JUDGE MINDUA: [11:35:59](Interpretation) Thank you very much.
15 Court officer, private session, please.

16 (Private session at 11.36 a.m.)

17 THE COURT OFFICER: [11:36:18] We are in private session, Mr President.

18 (Redacted)

19 (Redacted)

20 (Redacted)

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6 (Open session at 12.11 p.m.)

7 THE COURT OFFICER: [12:11:01] We are back in open session, Mr President.

8 PRESIDING JUDGE MINDUA: [12:11:05](Interpretation) Thank you very much.

9 Ms Taylor, please.

10 MS TAYLOR: [12:11:09]

11 Q. [12:11:09] Mr Witness, do you recall if the Prosecution suggested that you rely
12 on a report authored by Pietro Apollonj Ghetti?

13 And I'm probably horribly mispronouncing his name.

14 A. [12:11:42] It is possible. It's a well-known report. Apollonj Ghetti is an expert
15 in Italian heritage who did indeed draft a document on the mausoleums at the behest
16 of UNESCO.

17 Q. [12:11:59] And your report did, in fact, rely on Ghetti's drawing as evidence of
18 what the sites looked like and the elevation; that's correct? We can bring up, if it helps,
19 tab 2, on the Prosecution's list of exhibits. That's MLI-OTP-0028-0586 at 0704. It
20 should be in the list of documents you have at tab 2.

21 THE COURT OFFICER: [12:13:11](Via video link)(Interpretation) We have the
22 document before us.

23 MS TAYLOR: [12:13:16]

24 Q. [12:13:16] Mr Witness, is it correct that you relied on Mr Ghetti's drawing as
25 evidence of what the sites looked like and their elevation?

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1 If you look at pages 0704 and 0705. If you scroll down to the bottom. I think you
2 have the physical document, though.

3 A. [12:13:55] Yes. Mr Apollonj Ghetti's work was one of the sources that we
4 utilised. This is a visual document that's very easy to present, but as you can see, at
5 page 704, there are also photographs that could be found in the archives of the
6 national heritage centre. And these were pictures that we used for the dimensions of
7 the buildings.

8 The work of Mr Ghetti did have some shortcomings and were completed by
9 archaeological works where we were able to -- found the wall, the bases of the wall
10 and the foundations that were virtually intact, which enabled us to check all of the
11 data and to reconstitute the data that was lacking in some of the previous work or
12 documentation that had been provided.

13 Q. [12:15:07] Now, Mr Witness, these archives date from 2005, the one on page 0704.
14 And Mr Ghetti himself was not permitted to enter the mausoleums; that's correct?

15 A. [12:15:28] I do not recall specifically. But indeed the data that was retained
16 from Mr Ghetti's work were measurements that were made from outside of the
17 constructions I can confirm. So the work was done on the basis of complementary
18 information that was conducted by drawings provided by Malian architects.

19 Q. [12:15:59] And at the time you were asked to complete your report, it's correct
20 that you had not been able to examine all the mausoleums that were the subject of
21 your report?

22 A. [12:16:23] Well, not personally. I come to this work that was given over to
23 a Malian architect who was able to provide information on all of the mausoleums that
24 had been destroyed, and some of the material is contained in the document.

25 For example, at page 708, we can see the work that was undertaken after removal of

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1 all the debris that resulted from the destruction.

2 Q. [12:16:55] If we could bring up MLI-OTP-0028-0586 at 0781, this refers to
3 a mausoleum in the Sidi El Mokhtar cemetery.

4 Do you have that in front of you, Mr Witness?

5 A. [12:17:34] Yes.

6 Q. [12:17:36] (Overlapping speakers) And you acknowledge that no specific data
7 could be collected for this building. So you calculated the elevation of the
8 mausoleum on the basis of shadows seen on a 2011 Google Earth image and then you
9 compared it to a 2012 satellite image to a 2014 image.

10 Is that what you wrote at paragraph 2?

11 A. [12:18:12] Yes, indeed. What is more, to my knowledge, this mausoleum was
12 not reconstructed.

13 Q. [12:18:23] So the basis of your conclusion was it had been destroyed because you
14 saw traces of the destruction that were only slightly visible in the satellite image?
15 If you look at the second paragraph.

16 A. [12:18:58] Yes.

17 Q. [12:19:00] So would you accept that since you didn't examine the structure in
18 person, and it wasn't possible to see the extent of the destruction in the satellite image,
19 your conclusions are essentially a guesstimate?

20 A. [12:19:21] Yes, indeed. Indeed. And then we could say that there is a similar
21 architecture, so the buildings practically have, all have the same dimensions.

22 Q. [12:19:36] If I could bring up MLI-OTP-0028-0586 at pages 0596 to 0598, that's
23 tab 2 on the Prosecution's list of exhibits.

24 So, Mr Witness, you should have it in front of you.

25 And this is a section of your report where you set out your analysis of the significance

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1 and value of the monuments.

2 Now if I could take you to page 0596, the fourth paragraph.

3 In support of your findings concerning value of the structures, you refer to a few
4 sources, and, more generally, the tradition of Timbuktu.

5 Can you recall which authority you relied upon for your conclusions concerning the
6 tradition of Timbuktu?

7 A. [12:20:57] Most of the information on tradition were provided in the document
8 provided by Mr Salem Ould Elhadj, who is a well-known historian in Timbuktu, who
9 drafted a document that was then published subsequently a little bit later. But we
10 were able to get our hands on this study at the time when we were programming the
11 works, planning the works. So, most of the information comes from this traditional
12 historian.

13 Q. [12:21:40] If I could take you to page 0598, the fourth paragraph. This states
14 that the destruction of the mausoleums occurred despite the protests of the
15 population.

16 Can you recall which expert authority you relied upon for this conclusion?

17 A. [12:22:16] Well, I would admit that it is a little bit complicated for me to clarify
18 this. This was reported and some of the items included in this document reiterate
19 things that were drafted by UNESCO and that were reported to me. I do not have
20 this firsthand, so I cannot confirm it. I was not present and I cannot confirm that this
21 is how things unfolded. These are things that I repeated on the basis of other
22 documentation that was supplied to me.

23 Q. [12:22:56] Now, earlier today you testified that you can't recall discussing with
24 the Prosecution any specific criteria for determining value in terms of importance or
25 significance.

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1 Would you agree that your report also doesn't set out explicit criteria for attributing
2 value?

3 A. [12:23:35] Well, we are harking back to this issue of what a value is. This is
4 a complex issue that has always been discussed within the international community.
5 It's something that I cannot go into now. It's far too complex.

6 Q. [12:23:53] Could we bring up MLI-D28-0004-0478 at 0480. Are you familiar
7 with the criteria used by UNESCO for designating sites as World Heritage in
8 Timbuktu?
9 Tab 11 of the Defence list.

10 And for the document on your screen, if you could scroll down to the last paragraph:
11 "Criterion (ii): The mosques and holy places of Timbuktu have played an essential
12 role in the spread of Islam in Africa at an early period."
13 Are you familiar with its criteria?

14 A. [12:24:52] Yes, yes, of course. And it's widely recognised.

15 Q. [12:24:57] And if we could go to page 0481, paragraph 1: "Criterion (iv): The
16 three great mosques of Timbuktu, restored by the Qadi Al Aqib in the 16th century,
17 bear witness to the golden age of the intellectual and spiritual capital at the end of the
18 Askia dynasty."
19 You're familiar with this criterion?

20 A. [12:25:42] Yes, of course.

21 Q. [12:25:43] And at paragraph 2:
22 "Criterion (v): The three mosques and mausoleums are outstanding witnesses to the
23 urban establishment of Timbuktu, its important role of commercial, spiritual and
24 cultural centre on the southern trans-Saharan trading route, and its traditional
25 characteristic construction techniques."

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1 You're also familiar with this criterion, I imagine?

2 Sorry, Mr Witness, are you familiar with Criterion (v) at paragraph 2 in front of you?

3 A. [12:26:40] Yes, of course.

4 Q. [12:26:42] So UNESCO inscribed these sites for their role in spreading Islam in
5 Africa and as a witness to the urban establishment of Timbuktu and its traditional
6 characteristic construction techniques.

7 Did you apply these criterion in your report?

8 A. [12:27:13] Well, yes, of course.

9 Q. [12:27:17] So in your report you refer to the historical, cultural significance of
10 the entombed saints as the primary support of the historical, cultural value of the
11 mausoleums. That's correct, and we can bring up, if it helps, MLI-OTP-0028-0586 at
12 0596.

13 It's tab 2 of the Prosecution's list of evidence, so you have this physical document.

14 THE COURT OFFICER: [12:28:31](Via video link)(Interpretation) Yes.

15 THE INTERPRETER: [12:28:31] The courtroom officer at the remote location can
16 confirm that they do have the document before them.

17 MS TAYLOR: [12:28:35]

18 Q. [12:28:36] So Mr Witness, it's correct that you refer to the historical, cultural
19 significance of the entombed saints as a primary foundation of the historical or
20 cultural value of the mausoleums?

21 A. [12:29:00] Yes, yes, indeed.

22 Q. [12:29:03] So from that perspective, the value is attached to the saints in the
23 location of their resting place; that's correct?

24 A. [12:29:21] Yes, indeed.

25 Q. [12:29:22] So it's attached to the original tome and the location of the placement

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1 of the original tome; that's correct?

2 A. [12:29:38] Yes, indeed. As I explained at an earlier stage, the saints are often
3 individuals who have greatly contributed to spreading Islam effectively around
4 Africa. They are often scholars, imams, individuals who have translated the Koran
5 and these are part of the fundamental values that have been acknowledged and
6 criteria that have been retained when designating these sites as heritage site, World
7 Heritage Sites.

8 Q. [12:30:18] So using that criteria, which is tied to the original tomb of the saint,
9 that value doesn't automatically extend to the structures subsequently built on top of
10 the original tomb. Would you accept that?

11 A. [12:30:45] Well, practice has changed as time has gone by and that's what we
12 finally understood, depending on the particular period there was or not a mausolea
13 that indicated the location of the -- or the place of burial of the saint. So it wasn't
14 systematic. This was done for a certain number of saints, about 20 or so, if memory
15 serves. If you look at the smallest mausolea, well, these are tombs or kind of
16 a halfway house between a tomb and a construction.

17 Q. [12:31:24] Mr Witness, would you accept that the external structure, the more
18 recent outer casings on top of the tombs would need to have their own value? That
19 they are extrinsic to the original tombs?

20 A. [12:31:53] I'm just -- I've just returned to the contemporary concept, that has
21 changed with regard to monuments that are inscribed culturally, you can't separate
22 out intangible from material. And you can't understand one without the other.
23 They're intimately linked.

24 Now, to bear this out, some of the saints were, in actual fact, buried in their own
25 houses and the museum -- the mausolea, rather, you can see today, have probably

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1 changed as time has gone by where there have been episodes where repair work had
2 to be done. But these are constructions where the saint had his place of residence
3 when he was alive.

4 Q. [12:32:49] I'm turning now actually to this issue of repair work. If we could
5 bring up MLI-OTP-0028-0586 at 0592, it's the same document in front of you. At the
6 end of paragraph 4, you note the excavation on the three sites revealed original
7 structures found beneath a series of superimposed structures; that's correct?

8 A. [12:33:24] Yes, that's exactly right.

9 Q. [12:33:27] And can we bring on your screen MLI-D28-0004-0345.
10 And for the people in the courtroom, that's tab 7 on the Defence list of exhibits.

11 (Redacted)

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11 A. [12:36:18] (Redacted). Maybe something of -- that something worth
12 mentioning that isn't in the article, the same thing is true for the mosques. Work has
13 been done on the mosques between 2005 and 2010, if memory serves, and that work
14 was also done -- well, before or actually during that -- that work, archaeological
15 probes were done and remains were found. The Djinguereber mosque went down 5
16 metres below the surface.
17 So, yes, this is a cultural building practice where the buildings change. Buildings
18 change as time goes by. There are periods where there's repair works done and
19 everything's fine and there's trickier periods where maintenance work is less well
20 done.
21 It could be episodes where you're going to raise up or even extend the buildings or
22 you can fill up the, the ground with sand and so these buildings get higher up
23 above -- on the surface. And this is true for Timbuktu as a whole. And the housing
24 and the buildings in Timbuktu, the city rises up, but we're not very familiar with
25 this from a European perspective, but this is something very well known in Mali.

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1 But also you see this in other ancient cultures in the Middle East for that matter or
2 Egypt, where, where human dwellings or human buildings rise up. And there's, you
3 know, even you can reach 40 metres with singular examples. Thanks to
4 modifications and repair work, there's been -- that has been done as time has gone by.
5 And that's nothing therefore specific when you think about that phenomenon and
6 you expand it out from Timbuktu. It's not specific to Timbuktu. You can see it
7 elsewhere.

8 Q. [12:38:31] So, Mr Witness, given these cycles of modification, repair and
9 destruction and restoration, would it be correct that the people who originally built
10 the tomb and venerated the saints in the tomb, would not necessarily recognise the
11 site as it was in February 2012?

12 A. [12:38:59] Yes, yes, exactly, yes, and I stated that. Oral tradition says that saints
13 were buried in the entrance hall to their own homes. So, yes, of course, there can be
14 no resemblance. There was another additional practice, which sits aside this one,
15 and it's acknowledged as being beneficial to be buried not far away from the saint's
16 tomb.

17 And, I mean, it's not done now, but in former Timbuktu tradition, people were buried
18 as close as possible to the saints' tomb. And this is part and parcel of this idea of
19 raising a building above ground level, and with wind that drives the sand against the
20 building, and raises therefore the building, and you know, 50 or 60 centimetres
21 can -- buildings can be raised, and archaeological digs have borne this out.
22 And this is done regularly as time has gone by. And I would like to underscore the
23 fact that intangible is in keeping with material and you cannot understand
24 the building as a whole if you don't take into consideration these two dimensions,
25 intangible and material.

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1 Q. [12:40:33] With these cycles of evolution, raising the buildings and modifying
2 some of the platforms of the buildings, would you agree that the visible structures,
3 the outer shells, have evolved over time since the tombs were first constructed?

4 A. [12:41:04] Yes, yes, and it's well known, yes.

5 Q. [12:41:06] And successive generations may have different views on what these
6 visible structures should look like?

7 A. [12:41:24] Well, what you can see is that, yes, there were periods where, in all
8 likelihood, mausoleums were less well maintained than other periods of time where
9 they were maintained when upkeep was better. The same thing holds for the
10 mosques. So it's a bit difficult to talk very accurately about how mausoleums were
11 dealt with. Same holds for the mosques. But you see the same type of
12 archaeological stratification, be it with the mosques or with the mausoleums.

13 Q. [12:42:05] Mr Witness, if we could bring up MLI-OTP-0028-0586 at 0598, this is
14 tab 2 in the Prosecution's list of documents before you.

15 And if you could look at paragraph 3, where it's written that: Alterations funded by
16 the French colonial governor fundamentally changed the shape of Sidi Yahya mosque
17 into rectangular structures, using new construction materials, cement that are whole
18 stones, and it's altered the elevation well above the original structure. This
19 technique was subsequently used in all mausoleums as well, except Alpha Moya.

20 So, Mr Witness, would this mean that the original structures would have looked more
21 like Alpha Moya? Pyramids covered in mud?

22 A. [12:43:17] Well, with hindsight, I wouldn't be so assertive. There's been a lot of
23 debate actually around this very point and it strikes me that there are variations in
24 typology and construction than was initially anticipated.

25 So I would no longer be as assertive as this because knowledge has moved on since

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1 this was drafted, bearing in mind that we have ultimately, particularly in
2 archaeological digs for vertical structures, we've -- and this was, at the end of the day,
3 what was, what was -- the option that was retained for the reconstruction work, a
4 vertical elevation.

5 Q. [12:44:04] Well, Mr Witness, would you accept that the rectangular shape of the
6 buildings, the structures over the tombs were a 20th century development, built
7 during or after the French colonial rule?

8 And we can turn here as well to page 650 of your same report, which shows
9 a rectangular shape. And we can compare it to Alpha Moya at page 0689, which has
10 the more pyramidal shape.

11 A. [12:45:11] In 1939, things started then. The Sidi Yahya mosque was subject to
12 a double shell in stone, as you can see on the photo, and this was the model therefore
13 for subsequent work. The Djinguereber mosque was -- well, the north face was dealt
14 in that way. And the Sankoré mosque was dealt in a similar way, the eastern
15 face -- facade, so it is double shell.

16 So there's an additional envelope that was put on the original shell. So the initial
17 structure, if you will, the original structure is inside, which means that when you
18 have the steel envelope that's added on, well, it's not true for all mausoleum and not
19 for all facades, but anyway, this is something that was done on the basis that you
20 would have to do less upkeep because the earth mortar was more fragile.

21 So, so we have these cubic or rectangular shapes and in these pictures, these
22 monuments date back to the second half of the 20th century, to take things even
23 further, in fact. But the original structures are always -- are still, rather, inside,
24 underneath this external envelope.

25 Q. [12:46:48] And the construction techniques used for these mid-century

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1 structures, the use of stones and rectangles, that's not necessarily consistent with the
2 traditional characteristic construction techniques of using mud, is it?

3 A. [12:47:17] Yes, that's right. That's exactly right. There is a confusion
4 between -- well, regarding, rather, historical construction in Timbuktu. Much is
5 made about earthen construction, that's true. But historically, it was in both stone
6 and earth. And so stone was already there and from very remote times for
7 traditional construction work in Timbuktu.
8 And earthenware bricks - that you can see pretty much everywhere - is pretty recent.
9 But right, right from the beginning, it's -- we're more talking about earth and stone.
10 So there's a continuum of the usage of this stone since, therefore, what? 1939. And
11 the French masons that came on location and to help the local masons cut the stone
12 and so these types of constructions are rather different and they're -- they've evolved
13 recently.

14 But in Timbuktu, we're now building with this stone that is taken from a quarry 15
15 kilometres away locally. It's a limestone quarry. But historically, you know, these
16 practices, as I've laid out, were done in Timbuktu. So all that to say that, yes,
17 modifications have taken place, but they took place before the inscription on the
18 World Heritage List, which means that when the inscription did take place, it was
19 already acknowledged that these buildings had undergone some modification.
20 And let me now return to this central matter, there is a double shell, a stone external
21 shell that protects this stone and earth shell. But that means, therefore, that the
22 original structures are still there.

23 Q. [12:49:23] So, Mr Witness, are the original structures the tombs of the saints?
24 And these are the external carapace, in effect, that have evolved over time?

25 A. [12:49:49] The original structures have changed and it's for a simple reason:

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1 With the rising ground level and the need to build in greater elevations, you've got
2 mausoleums that are underneath and then, of course, as ground level rises, well, then
3 necessarily the construction rises in step with that with the level of foundations and
4 what have you.

5 So it's part and parcel of a continuum, a historical continuum. You can't just isolate
6 a recent period to say that that's less important than a previous period. With this
7 rationale of construction continuity and the changing faces of the original structures,
8 well, that has to be taken into consideration.

9 Q. [12:50:47] And, Mr Witness, in your report you refer to an evolving cycle of
10 renovation and rupture and changing periods, and changing visual identification of
11 the external structure. So are you in a position to say that the position of one
12 generation or one group of Timbuktu towards the external structures is any more
13 valuable than any other generation? Would you accept that different generations
14 may have different views on what the visible structures should look like?

15 A. [12:51:36] I'm totally incapable -- incapable of answering. I haven't done any
16 work to be able to answer. The only comparison that you can do towards the end of
17 the 19th century and the beginning of the 20th century, where you can see the state of
18 preservation using old photos and postcards as well that were around at the time, and
19 with this material you can see that at given points in time, you can see that the state of
20 preservation is rather disquieting, particularly the Djinguereber mosque.

21 In some photos - I think it is in the article, in fact, that you've referred us to - we can
22 see that the state of repair is very concerning. I mean, if an expert turned up, then
23 he'd find that very worrying.

24 Now, of course it's difficult to say -- well, you can't say that there's been a change,
25 a cultural change. A greater importance has been attached possibly, but a given

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1 point of time maybe there's been greater prosperity. Maybe that's an underlying
2 reason as times where families are finding it difficult financially maintaining
3 a mausoleum. There are lots of reasons. But we can only hypothesise.
4 It's very difficult to talk about this discontinuum in a cultural model. But you asked
5 a question about this earlier on. I'm not an historian - and, I wouldn't like to
6 substitute myself to an historian's work - who could provide more accurate
7 information and could therefore correlate what they know with what we've done in
8 archaeological digs.

9 Q. [12:53:19] If I could call up MLI-D28-0004-0345 at 0348, that's tab 7 on
10 the Defence list of exhibits.

11 You write, "that there were some specific families" --

12 This is the first paragraph, sorry, or the left, the first column.

13 "... there were some specific families responsible for looking after these structures ...
14 Traditionally, the regular maintenance is the responsibility of a dedicated family of
15 masons."

16 Do you agree with that?

17 THE COURT OFFICER: [12:54:04](Via video link)(Interpretation) If you just bear
18 with us, we're trying to find the page.

19 MS TAYLOR: [12:54:12] It's page 0348, and if you could focus on the first
20 paragraph on the left-hand side.

21 THE COURT OFFICER: [12:54:27](Via video link)(Interpretation) Yes, we can see
22 that. Thank you, Counsel.

23 MS TAYLOR: [12:54:34]

24 Q. [12:54:35] (Redacted)

25 (Redacted)

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1 (Redacted)

2 A. [12:54:51] (Redacted)

3 Q. [12:54:59] (Redacted)

4 A. [12:55:06] (Redacted). And to clarify things, there are a number of different
5 types of responsibilities. In some cases, there's always responsibility for ownership
6 and then one that is more technical. And the technical responsibility will be at the
7 door of a -- of a mason, which is connected to a family. And that's one level of
8 responsibility, technical, therefore, for maintaining the building.

9 Organising and funding the repair work, however, is incumbent either on the saint's
10 descendants, or upon the shoulders of the family who are understood as being the
11 servants of that scholar. So there is, if you like, an understanding as time goes by
12 and, therefore, that yields a variety of different scenario.

13 Q. [12:56:06] If I could take you to page 0347 of the same document. The
14 right-hand side, the first paragraph, it states: (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)

18 A. [12:56:50] Yes. It's the same thing about we were talking earlier on, it's the
19 doubling up of the shells. It's the same thing.

20 Q. [12:57:01] So to your knowledge, Mr Witness, was this doubling up of the shell,
21 this alteration subject to any rules or regulations or official approval or oversight?

22 A. [12:57:27] In principle, yes. The cultural Timbuktu mission has only been
23 around since 1994. So before '94, there was no genuine governmental control or
24 monitoring about what was being done at Timbuktu in terms of repair work. After
25 that date, after 1994, there was the cultural mission that was established and the
26 setting up of a head of mission whose responsibility it was to monitor and supervise

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1 what was going on with this -- with these mausolea. But in actual fact, it wasn't
2 necessarily the case, particularly with the mausoleums.

3 Q. [12:58:11] So do you know that if alterations are made, can anyone outside the
4 families responsible for the mausoleums make objections to this committee? Or is it
5 primarily the responsibility of the families?

6 A. [12:58:35] Well, those people who are primarily responsible are the family.

7 Q. [12:58:44] So if the families are primarily responsible, wouldn't the more recent
8 structures constitute family heritage, like a regular family grave site?

9 A. [12:59:08] Exactly. That's right. But because this holds for everywhere
10 you are on the planet, you own your -- what belongs to you to the extent that it is
11 significant to the community. A belonging that is inscribed as a cultural good
12 nationally - and, even more so, internationally - isn't fully, if you will, understood as
13 the ownership of any given individual.

14 So traditionally, responsibility lies with the family. But as UNESCO promotes, there
15 is a dialogue between the government authority representatives on site with the
16 family and UNESCO, so that there's a shared responsibility.

17 And that throws up a debate, who should be funding what? Who decides what?
18 But if something is inscribed as a cultural good, it doesn't fully belong anymore to its
19 original owners.

20 Q. [13:00:20] Mr Witness, I'm aware its now 1 o'clock. So I'd like to ask the
21 direction of the Presiding Judge if we should break?

22 PRESIDING JUDGE MINDUA: [13:00:37](Interpretation) Yes, you are entirely right,
23 Ms Taylor, that's just what I was going to suggest to you. It is 1 p.m. We shall now
24 suspend the hearing for the lunch break and we shall reconvene with the
25 cross-examination on the part of the Defence at 2.30 p.m., that is a one and a half hour

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- 1 lunch break.
- 2 Proceedings are suspended.
- 3 THE COURT USHER: [13:01:10] All rise.
- 4 (Recess taken at 1.01 p.m.)
- 5 (Upon resuming in open session at 2.30 p.m.)
- 6 THE COURT USHER: [14:30:42] All rise.
- 7 Please be seated.
- 8 PRESIDING JUDGE MINDUA: [14:31:09](Interpretation) The hearing recommences.
- 9 Good afternoon everybody.
- 10 We will continue with the cross-examination by the Defence.
- 11 But I see that the curtains are still closed.
- 12 (Pause in proceedings)
- 13 PRESIDING JUDGE MINDUA: [14:32:21](Interpretation) There seems to have been
- 14 a technical problem, but that's now been resolved. The curtains are once again open,
- 15 allowing the public to see us.
- 16 Ms Taylor, you may continue your cross-examination.
- 17 MS TAYLOR: [14:32:44]
- 18 Q. [14:32:46] Good afternoon, Mr Witness.
- 19 Now, the door to the Sidi Yahya mosque, it's affixed to a wall of the adjacent cemetery
- 20 and not the mosque itself; is that correct?
- 21 The one that was the subject of your report, I can take to you MLI-D28-0004-0345 at
- 22 0349, the last paragraph of the right column.
- 23 Tab 7 for those in the courtroom.
- 24 A. [14:33:40] I'm sorry, there was a break at the time you were asking the question.
- 25 Please, could you put the question again. Thank you.

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1 Q. [14:33:49] The door to the Sidi Yahya mosque - as described in your report,
2 which should be on the screen in front of you - that's affixed to a wall of the adjacent
3 cemetery and not the mosque itself; that's correct?

4 A. [14:34:08] Yes, that is correct.

5 Q. [14:34:15] And your report doesn't refer to the date of construction of the door,
6 does it?

7 A. [14:34:32] I don't know if the date of the door is included. I don't have that
8 information.

9 Q. [14:34:40] And you refer to the door as being mythical, but you don't refer to the
10 origins of this myth, do you?

11 *A. [14:34:58] It's a door that has the particularity of opening onto a cemetery
12 courtyard, and as I explained earlier about the surroundings of the mausoleums, we
13 find ourselves in the same situation with this cemetery courtyard, that the courtyard
14 had its level raised as the deceased were buried. This has been combined with erosion,
15 with the plastering, with the sandy wind that brings in the elements. And in fact,
16 today, this door no longer opens onto anything, since it opens onto the cemetery
17 courtyard, whereas the cemetery courtyard is 1.5 metres above the door, so you can
18 no longer enter through it, hence its somewhat mystical side. Furthermore, the
19 prohibitions around this door are quite relative in the sense that they are rather stories
20 that are told, and according to the latest information I was able to obtain, it is not so
21 mythical in fact. I don't have with me the information that was provided about this
22 door, so I don't have a precise memory of it, but it seems that this door is not so
23 mythical as rather a prohibition on children entering the cemetery, and that for that
24 reason, there were some myths that had been adopted just to scare children from

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1 going into the cemetery.

2 Q. [14:36:49] And if I could pull up MLI -- this isn't to be shown to the public,

3 MLI-OTP-0001-7150 at 7158, this is tab 6 in the Prosecution's list of exhibits.

4 This is a document authored in 2010 and there's two pages that refer to the Sidi Yahya

5 mosque, but it doesn't refer to the door, does it?

6 A. [14:37:50] I've got the document now. Please, could you repeat your question.

7 Q. [14:37:54] Yes, of course. This is two pages which refer to the Sidi Yahya

8 mosque. And take your time, but these two pages, they don't refer to the door, do

9 they?

10 A. [14:38:16] You're correct, it's a very short text and it doesn't enter into this level

11 of detail. There is no reference to the door. But there is a photo which does show it.

12 MS TAYLOR: [14:38:34] I'm afraid for the remainder, we are going to have to go into

13 private session.

14 PRESIDING JUDGE MINDUA: [14:38:46](Interpretation) Can we go into private

15 session, please, court officer.

16 (Private session at 2.39 p.m.)

17 THE COURT OFFICER: [14:39:00] We're in private session, Mr President.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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21 (Open session at 3.01 p.m.)

22 THE COURT OFFICER: [15:01:34] We are back in open session, Mr President.

23 PRESIDING JUDGE MINDUA: [15:01:40](Interpretation) Thank you very much.

24 Ms Taylor.

25 MS TAYLOR: [15:01:46]

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1 Q. [15:01:46] Now Mr Witness, on this list before you, at the top, the cost of
2 restoring Sidi Yahya is listed as 15 million CFA, isn't it?

3 A. [15:02:06] Sorry. Yes, yes. Yes.

4 THE COURT OFFICER: [15:02:08](Via video link)(Interpretation) We, we haven't
5 had the version in French.

6 THE INTERPRETER: [15:02:12] Says the court officer.

7 But the answer is "yes" says the witness.

8 MS TAYLOR:

9 Q. [15:02:23] If we could go to --
10 Is there a problem with the interpretation?

11 A. [15:02:30] Indeed, indeed.

12 Q. [15:02:33] Mr Witness, can you hear me through the French translation now?

13 A. [15:02:41] Yes.

14 Q. [15:02:44] If we could go to --

15 A. [15:02:46] Yes.

16 Q. [15:02:47] -- page 613 -- 0613 of the same document. This is the individual
17 section on Sidi Yahya. And in this section, you note that the mosque itself was not
18 destroyed in 2012, only the door. The cost of the door is listed as 500,000 CFA, but
19 then the entire cost is still listed as 15 million CFA; that's correct?

20 A. [15:03:51] So, the document states -- so, with regards to the diverse elements for
21 the building, it's complicated with regards to Sidi Yahya to separate the door from the
22 other aspects, other parts of the museum -- of the mausoleum. Sidi Yahya is, in fact,
23 under the minaret of the mosque of *le tombeau*.

24 So when it comes to the maintenance of the mosque, this was seen as part of the
25 overall work that needed to be carried out. And, indeed, it's not linked to the wilful

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1 destruction thereof, but it's more linked to the issues I mentioned before, to delays in
2 maintenance, which had been taken -- taken place for a long timing.

3 Now, taking into account that other people have stated that, this situation, the -- it
4 was a difficult economic situation in Timbuktu. There was a crisis prior to that,
5 which meant that there were economic difficulties in the town. During the
6 occupation, of course, there were these problems, and afterwards as well.

7 Q. [15:05:13] So would that mean, Mr Witness, that your assessment of 15 million
8 CFA is based on economic difficulties?

9 A. [15:05:32] This is the evaluation of the work that's necessary for the maintenance
10 of the building. And I can't say that it's linked to economic difficulties. What can
11 be said is that certain work was necessary, and, due to economic difficulties, it meant
12 that the traditional work on Sidi Yahya, the group of management on it
13 didn't -- weren't able to finance the work for a certain period of time. So there was
14 a delay. And it was proposed that this delay be made up for. And this isn't linked
15 to the destruction.

16 So there are lots of different elements which have to be taken into account.

17 Q. [15:06:23] Would you accept, Mr Witness, that your assessment of those
18 elements aren't set out in your report?

19 A. [15:06:39] I'm sorry, could you ask the question again, please. I'm not certain
20 that I understood it completely.

21 Q. [15:06:45] Would you accept, Mr Witness, that your assessment of the costs of
22 these elements, the hidden costs of maintenance not being done, that's not set out in
23 your report?

24 A. [15:07:08] That's not very clear for me. What I can say is that the costs, which
25 are indicated here, for all the costs were -- which were seen as necessary for the work

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1 to be carried out, and that was after the report of 2013/2014.

2 Q. [15:07:28] And were you aware that the Sidi Yahya door had a crack in it before
3 2012, which was clearly visible?

4 A. [15:07:46] I can't answer that question. I wasn't there at the time. You have
5 a very old door, whether it's got a crack, but that's not necessarily a problem. It's
6 not abnormal that an old structure has some cracks. Buildings have cracks. That is
7 something quite normal.

8 Q. [15:08:11] So would the estimated cost of restoration include restoration with or
9 without the crack?

10 A. [15:08:29] The costs include everything estimated as necessary to put
11 everything -- to put the whole mosque back into its original state, including the door.

12 Q. [15:08:44] Would that also include the damage that you refer to in your report
13 caused by an attack? I think there was a kamikaze bomber in September 2013. If
14 I can draw your attention to MLI-OTP-0028-0586 at 0614. Was that included in your
15 assessment?

16 * A.[15:09:21] The 2013 bombing took place close to the Djingareyber mosque, so the
17 Djingareyber mosque was most affected, but the blast affected the whole city. And
18 indeed, the Sidi Yahia mosque was subject to some vibrations which could have
19 increased a certain number of cracks. I don't have the exact answer to that. But it's
20 true that the whole city was affected, but in Sidi Yahia, we can't say that it was that
21 fragile. To clarify the evaluation, the Sidi Yahia mosque was renovated after this
22 event.

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

24 MR DUTERTRE: [15:10:14](Interpretation) Yes. Could the Defence please mention
25 the ERN of the document, which is about this attack, so it could be clear to everybody

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1 what the date is, what the source is.

2 PRESIDING JUDGE MINDUA: [15:10:30](Interpretation) Ms Taylor.

3 MS TAYLOR:[15:10:30] Yes, it was the document we were looking at,

4 MLI-OTP-0028-0586 at 0614. It's the witness's report.

5 PRESIDING JUDGE MINDUA: [15:10:54](Interpretation) Prosecutor, this is what we
6 have in tab 2 of your dossier.

7 MR DUTERTRE: [15:11:04](Interpretation) Yes, but I'm referring to the source which
8 Ms Taylor is basing herself on with regards to the documents communicated by the
9 Office of the Prosecutor.

10 PRESIDING JUDGE MINDUA: [15:11:22](Interpretation) Ms Taylor.

11 MS TAYLOR: [15:11:24] I'm not quite sure I understand. I'm referring to
12 the Prosecution's own report and the information is in the Prosecution's document as
13 authored by the witness. If we look at 0614, it refers to it explicitly.

14 PRESIDING JUDGE MINDUA: [15:11:51](Interpretation) Prosecutor, I also don't
15 understand, because on the page 0614, first paragraph, you have the information
16 which is given by the witness himself.

17 That's the case, is it not? And the Defence is using that as the basis.

18 MR DUTERTRE: [15:12:18](Interpretation) Yes, your Honour. We can continue.

19 PRESIDING JUDGE MINDUA: [15:12:24](Interpretation) Thank you very much.
20 Ms Taylor.

21 MS TAYLOR: [15:12:27] Thank you.

22 Q. [15:12:30] Mr Witness, would you agree that, in order to assess the cost of
23 restoration, it would be necessary to determine whether you're restoring it to the
24 original authentic state, its state as documented in 1996, or its state as presumed in
25 2012?

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1 A. [15:13:05] Well, this question was heavily debated by experts at national and
2 international level at different events UNESCO organised to say exactly which state
3 the monuments would be taken back to. As there were few prior studies, it was
4 subject to lots of discussions, and the idea was not to take it to the state of 2012, but to
5 a prior state. And you have to be precise in this regard, the date of 2012 was the
6 prior date, and then afterwards the -- there was cladding put on the walls with stone,
7 and then cement was used as well.

8 But the structure in '96 was -- the '96 structure was still intact, so it was chosen not to
9 put the cladding back, so that with regards to the cost evaluation, it was less
10 expensive.

11 Q. [15:14:29] Now if we could bring up MLI-D28-0004-0345 at 0349, this is tab 7 on
12 the Defence list of exhibits.

13 I think I'll have to go into private session to read this quote, and the subsequent
14 questions will also be in private session.

15 PRESIDING JUDGE MINDUA: [15:15:07](Interpretation) Ms Taylor, do you want us
16 to go into private session?

17 MS TAYLOR: [15:15:11] Yes. Yes, to be consistent with the redactions that were
18 ordered earlier.

19 PRESIDING JUDGE MINDUA: [15:15:25](Interpretation) Court officer, can we go
20 into private session?

21 (Private session at 3.15 p.m.)

22 THE COURT OFFICER: [15:15:39] We're in private session, Mr President.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 24 (Recess taken at 3.42 p.m.)
- 25 (Upon resuming in private session at 4.00 p.m.)

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- 12 (Open session at 4.02 p.m.)
- 13 THE COURT OFFICER: [16:02:33] We are in open session, Mr President.
- 14 PRESIDING JUDGE MINDUA: [16:02:38](Interpretation) Thank you, court officer.
- 15 Ms Taylor, you have the floor.
- 16 MS TAYLOR: [16:02:44]
- 17 Q. [16:02:45] Mr Witness, bearing in mind that we're in open session, I would just
- 18 ask you not to mention any names or identifying features of the persons we're
- 19 referring to.
- 20 Before we went into open session, we were discussing a document that was jointly
- 21 authored with another person. So I'm going to refer to the other person without
- 22 mentioning their name.
- 23 Is that clear to you? So if I refer to --
- 24 A. [16:03:20] Yes, that's fine.
- 25 Q. [16:03:21] -- "the other person", is it clear to you who I'm referring to?

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1 A. [16:03:29] Yes, indeed.

2 Q. [16:03:32] So before the break you were referring to collaboration in terms of the
3 participation of families in Timbuktu in a particular project. That's correct? Do you
4 recall that?

5 A. [16:04:06] Yes, I do. This was a programme for families in difficulty.

6 Q. [16:04:17] And the person I just referred to, did they work with you on this
7 project?

8 A. [16:04:33] Yes, it was a project carried out in collaboration with various
9 institutions to identify those families whose -- who were in difficulties with regard to
10 the condition of their dwellings, which had fallen into a state of disrepair.

11 Q. [16:05:00] To your knowledge, was this person involved in identifying the
12 families?

13 A. [16:05:17] Yes. A committee was done so that it would all be done
14 transparently. There was -- and it involved the participation of this person.

15 Q. [16:05:29] Are you aware of what criteria was used to determine which families
16 should benefit?

17 A. [16:05:47] Yes. The level of poverty. The difficulty in having an income, and
18 widows in particular were targeted. Also elderly ladies on their own whose
19 dwellings were in a poor state of repair and are directly affected by the events.

20 Q. [16:06:13] "By the events", just for the record, you mean 2012?

21 A. [16:06:29] Exactly. The situation of 2012 had a direct impact, direct and indirect
22 effect on the level of poverty and had a great effect for certain sectors of the
23 population in Timbuktu, particularly women who are alone, who are divorced,
24 widows. Many of those were in extreme difficulty and they were in this difficulty.
25 And, for example, the situation had a severe effect on the tourism industry and the

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1 handicrafts, for example, that go with that.

2 Q. [16:07:23] Earlier today, Mr Witness, you mentioned that there was a disparity
3 between the costs of local labour and local materials and the costs of international
4 experts and the logistics associated with international experts.

5 Now, in your assessments, would you be able to give a precise percentage of the
6 breakdown between the costs associated with international experts as compared to
7 local costs?

8 A. [16:08:04] It's difficult to distinguish because there was -- it was the will of
9 UNESCO to try and make as much use as possible of local skills, national skills, and
10 a certain degree of international cooperation for certain specific areas.

11 So the initial assessments were done -- the sites that we've been looking at since this
12 morning, to look at the cost of the work and the surroundings. The transport, that
13 was about a third of the overall costs of the reconstruction project.

14 Q. [16:09:01] Mr Witness, earlier today you testified that there was very little
15 documentation or price studies regarding the actual 2012 state; that's correct?

16 A. [16:09:25] Prior to 2012 or in 2012?

17 Q. [16:09:31] Prior to 2012.

18 * A. [16:09:39] Indeed, the documentation of the mausoleums was only partial until
19 very recently, it was only the occasion of the reconstruction program that much
20 more complete documentation of all the mausoleums could be drawn up.

21 Previously, the documentation was partial. However, from 2009, 2010, when the
22 management plan was drawn up, all the mausoleums were photographed and
23 documented in the archives of the National Directorate for Cultural Heritage, which
24 could therefore be used as a working tool by the reconstruction team.

25 Q. [16:10:30] And just to be clear, you have no or very little documentation as to the

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1 actual state of the mausoleums in 2012?

2 A. [16:10:48] Yes. The documentation was not complete. There is at least one
3 photograph of each mausoleum which shows some information, and from that photo
4 one can see, one can deduce the situation for the different types of mausoleum.
5 There are three different types, and one can deduce how they've been constructed.
6 So one can use logic from a photograph to reconstruct 95 per cent of what it was and
7 see what was destroyed.

8 Q. [16:11:30] And as part of this deduction process, you testified earlier that there
9 was a debate at the international and national level as to the state which they should
10 be restored to using this deduction process; that's correct?

11 A. [16:11:55] Yes. We -- as we said earlier, some of the mausoleums had been
12 subjected to this process of being covered with the alhore limestone from the local
13 area. And the question was, would one reconstruct the oldest parts and the outside
14 layer? And there was a decision to use the oldest version without the stone
15 cladding.

16 But in 2012 it was both parts, so the original existing part, plus the cladding, that was
17 destroyed. So looking at the videos closely, one can see quite clearly the two
18 separate parts of the wall.

19 Q. [16:13:05] So would you agree, Mr Witness, that your assessment of damage and
20 restoration is not based on an objective assessment as to the actual state of the
21 mausoleums in 2012, but a subjective determination as to what the mausoleums
22 should have looked like, including preventive measures?

23 A. [16:13:41] I don't think one could talk about it being subjective. It's an opinion
24 based on effective information from different sources, different sorts of information
25 we had in our possession. Oral sources, graphic sources. So I don't think it would

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1 be right to say that it would be subjective. It was discussed at great length before we
2 came to choose the solution we went for. The solution was also cheaper than
3 the -- reproducing the section in 2012, because there would not have been the
4 limestone alhore cladding.

5 Q. [16:14:39] But apart from the cladding, Mr Witness, would you accept that your
6 report does not take into account 16 years of negligence, 16 years of weather, and any
7 incidental damage that occurred, but is, rather, based on an assessment of the costs
8 required to bring these buildings to an idealised form of the buildings?

9 A. [16:15:17] These are words that are difficult for me to accept. We were in
10 a very -- a closely controlled system working for UNESCO, which is very keen on
11 authenticity. So, all the decisions that we took were based on observations of
12 evidence, which were verified. So I don't think we can talk about an idealised
13 solution. * This vocabulary is not acceptable given the scientific environment
14 conditions that were applied to this reconstruction project.

15 Q. [16:16:08] Can we say therefore that it's based on (Overlapping speakers)

16 A. [16:16:10] That said, we cannot talk about neglect for 16 years; it is no more
17 than 16 years than 100 years, 200 years, 300 years or 400 years. These mausoleums
18 have a history, some of 400 years, some of 300 years, some of 200 years, and some of
19 a hundred years.

20 So this whole history has to be taken into consideration, thinking of the various
21 transformations that have occurred.

22 The state of -- in 2012 -- in '96 was perhaps different. It's very difficult to be quite so
23 precise about the state of maintenance. When taking on this maintenance work I
24 think it's not really what one might call a standard process. It's very complicated.

25 But, as far as I know, the work is carried out when one has the resources to do so, and

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1 then one does what one needs to restore the mausoleum. It depends on their history.

2 We can't talk about a regular period of maintenance. When one has the resources to

3 do it, that's when the maintenance is carried out.

4 Q. [16:17:50] I apologise, Mr Witness, I just wanted to replace the word "idealised"

5 with "authentic". Would you accept that your assessment was based on your

6 determination, along with that of other experts, as to what you considered to be the

7 authentic state?

8 A. [16:18:14] The most authentic possible state, yes, that's the term.

9 Q. [16:18:20] Thank you. I have no further questions.

10 PRESIDING JUDGE MINDUA: [16:18:30](Interpretation) Thank you very much,

11 Ms Taylor.

12 Witness, the Chamber would like to reiterate its thanks to you for having helped us

13 by replying in a clear way to the questions that have been put to you, both by

14 the Prosecutor and by the Defence. Your testimony is now over.

15 (The witness is excused)

16 PRESIDING JUDGE MINDUA: [16:19:11](Interpretation) I would now like to

17 address the parties.

18 The fifth witness has now finished his testimony. I would like to remind you of the

19 terms of paragraph 34 of the instructions for the conduct of proceedings with regards

20 to tendering items into evidence, as you know.

21 I would just like to thank the parties, the participants, I would like to thank the court

22 reporters and the interpreters, and I don't forget the security officers. And, finally, I

23 would like to address the public, our public in the gallery, and our public outside this

24 courtroom, thank you very much.

25 We are now going to adjourn for this afternoon and we will be back tomorrow,

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- 1 17 September at 9.30 with the testimony of the sixth Prosecution witness.
- 2 This is correct, is it not, Prosecutor? Tomorrow at 9.30. Yes.
- 3 Thank you very much to you all. Have a good evening.
- 4 Court is adjourned.
- 5 THE COURT USHER: [16:20:44] All rise.
- 6 (The hearing ends in open session at 4.20 p.m.)