

Trial Hearing
WITNESS: MLI-OTP-P0057

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor vs Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia Mbe Mindua, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 1
9 Friday, 11 September 2020
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:36] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:31:11](Interpretation) Court is in session.
15 Madam courtroom officer, could you please call the case.
16 THE COURT OFFICER: [9:31:19] Thank you, Mr President, your Honours.
17 The situation in Mali, in the case of The Prosecutor versus Al Hassan Ag
18 Abdoul Aziz Ag Mohamed Ag Mahmoud.
19 We are in open session.
20 PRESIDING JUDGE MINDUA: [9:31:33](Interpretation) Thank you very
21 much, courtroom officer.
22 Good morning, everybody. I would like to welcome all of those who are
23 present in the courtroom this morning, also Mr Al Hassan, who is amongst us,
24 and all those who are following us from the public gallery or from further
25 afield.

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- 1 Of course, I would like to welcome the witness.
- 2 We shall start with the appearances as usual.
- 3 Is there any change to the teams, Mr Prosecutor?
- 4 MR DUTERTRE: [9:32:19](Interpretation) Good morning, Mr President.
- 5 Good morning, your Honours. This morning, there are just three people
- 6 representing the OTP, Elena Martin Salgado, Lucio Garcia and myself,
- 7 Gilles Dutertre. Thank you.
- 8 PRESIDING JUDGE MINDUA: [9:32:38](Interpretation) Thank you very
- 9 much, Mr Dutertre.
- 10 On the side of the Defence, Counsel Montefusco.
- 11 MS MONTEFUSCO: [9:32:47] Good morning, Mr President, your Honours.
- 12 Nicoletta Montefusco on behalf of Mr Al Hassan today, together with
- 13 Ms Taylor, Ms Sarah Marinier-Doucet and Ms Dolly Chahla.
- 14 PRESIDING JUDGE MINDUA: [9:33:05](Interpretation) Thank you very
- 15 much.
- 16 And for the Legal Representatives of Victims.
- 17 Mr Kassongo.
- 18 MR KASSONGO: [9:33:12](Interpretation) Thank you very much, your
- 19 Honours. The Legal Representatives for Victims comprises the same
- 20 individuals, myself, Maître Kassongo and Prisque Biyéké Dipanga.
- 21 PRESIDING JUDGE MINDUA: [9:33:26](Interpretation) Thank you very
- 22 much, Mr Kassongo.
- 23 This morning's session will be given over to the continuation of the
- 24 cross-examination on the part of the Defence.
- 25 I shall not repeat the Chamber's instructions for the conduct of proceedings.

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1 I believe they are clear and that everyone is aware of them. They are to be
2 found in the decision, decision number 789 and 1004.
3 Mr Witness, I would like to welcome you to the courtroom once again.
4 I would like to remind you that you are still under oath and that you should
5 tell the truth and nothing but the truth. Furthermore, I would like you to bear
6 in mind the practical considerations that I mentioned yesterday.
7 Please express yourself clearly and at a moderate pace. In fact, slow. Slowly,
8 in order to facilitate the work of the court reporters and the interpreters. Wait
9 a few seconds before answering any questions and please do not speak at the
10 same time as somebody else.
11 There we are.
12 Counsel Montefusco, over to you. The witness is all yours.
13 MS MONTEFUSCO: [9:35:15] Mr President, if I could have a moment?
14 Because I'm not hearing. We're trying to connect the headphones because I'm
15 not actually hearing the translation.
16 PRESIDING JUDGE MINDUA: [9:35:32](Interpretation) Yes, absolutely.
17 Could you please check all of this for us, Madam Courtroom Officer.
18 THE INTERPRETER: [9:35:53] This is the English booth. Can you hear me
19 now? English booth, can you hear me now?
20 THE COURT OFFICER: [9:36:15] (Overlapping speakers) Call the
21 interpreters.
22 THE INTERPRETER: [9:36:19] The English booth, can you hear me now?
23 Hello? Can you hear me on the English channel?
24 THE COURT OFFICER: [9:36:24] Could you please try one more time, please.
25 THE INTERPRETER: [9:36:27] Yes, no problem. Can you hear me now?

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1 Very well. Thanks.

2 PRESIDING JUDGE MINDUA: [9:36:35](Interpretation) Madam Courtroom

3 Officer, is everything all right?

4 There we are.

5 Counsel Montefusco, over to you.

6 MS MONTEFUSCO: [9:36:52] Good morning, thank you.

7 WITNESS: MLI-OTP-P-0057 (On former oath)

8 (The witness speaks French)

9 QUESTIONED BY MS MONTEFUSCO: (Continuing)

10 Q. [9:36:58] Good morning, Mr Witness.

11 A. [9:37:00] Good morning, Counsel.

12 Q. [9:37:01] Returning to yesterday's testimony, do you recall testifying that
13 not being able to know when the bank was locked was one of the difficulties
14 you encountered, but that you had noted some occasions, nonetheless, given to
15 you by the local authorities?

16 A. [9:37:34] Yes, indeed. Upon our arrival, I can confirm that the premises
17 were closed, but I could not ascertain at what moment in time those buildings
18 had been closed.

19 Q. [9:37:50] And before you arrived to the scene, you had also obtained
20 authorisation to enter the bank from local authorities, correct?

21 A. [9:38:05] Yes, indeed. * We had had a meeting with the *gouvernorat* of the
22 Timbuktu region, and the governor had authorized the opening of the *Banque*
23 *Maliennne de Solidarité*.

24 Q. [9:38:24] And did you ask him for the log of prior entries at the bank?

25 A. [9:38:42] I do not recall having heard or been aware of such things said.

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1 Q. [9:38:51] When you asked -- when you obtained authorisation to enter the
2 bank, did you ask for the identification of the person who would meet you to
3 unlock it?

4 A. [9:39:14] I do not recall having been given a specific name. It's seven
5 years ago now. What I do know is that an individual introduced themselves
6 as having been sent by the governor.

7 Q. [9:39:31] Now the other locally based authority you reported yesterday to
8 have been assisting with each site was Serval, yes?

9 A. [9:39:52] Yes, indeed. In terms of security, we were accompanied on all
10 of the sites by Serval, MINUSMA and FAMA.

11 Q. [9:40:04] And yesterday, you testified that it was also Serval who had set
12 up an external perimeter at the bank, yes?

13 A. [9:40:21] Yes, indeed. * When we conducted our examinations, since we were
14 inside the bank, the Serval forces had set up a security cordon around the bank.

15 Q. [9:40:35] So I'm going to ask that five photographs be put up for your
16 visioning and then I'll ask if you recognise each of them after you've had a
17 chance to see them.

18 The ERNs are first, MLI-OTP-0006-1465.

19 THE COURT OFFICER: [9:41:11] Evidence channel 1 for everyone.

20 MS MONTEFUSCO: [9:41:24]

21 Q. [9:41:25] The next one is MLI-OTP-0006-1466.

22 The third one is MLI-OTP-0006-1467.

23 The fourth one is MLI-OTP-0006-1442.

24 And the fifth one is MLI-OTP-0006-1460.

25 Do you recognise each of these?

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1 A. [9:43:23] Yes, indeed.

2 Q. [9:43:27] And did you take them?

3 A. [9:43:36] I believe that either it was I who took the photographs or my
4 colleague who also had a camera, but I do believe that of the five photos, I took
5 three of them. I'm sure of that.

6 Q. [9:43:52] Yesterday, you testified that one needs a lot of time to examine a
7 crime scene and that as a result of the electronic malfunctions that were
8 suffered on this mission, you had to spend more time to be able to take
9 photographs. Do you recall this?

10 A. [9:44:18] Yes, I do remember that series of questions and answers.

11 Q. [9:44:24] Thank you. In the photos that I've just had you look at
12 referencing MLI-OTP-0006-1442, this shows the rear entry to the bank, doesn't
13 it?

14 A. [9:44:50] It's not the rear entrance. It is, in fact, the main entrance to the
15 BMS, the entrance through which the clients would enter the *Banque Malienne*
16 *de Solidarité*.

17 Q. [9:45:08] And it is, in fact, padlocked?

18 A. [9:45:20] * These doors, yes. I think there was a padlock.

19 Q. [9:45:28] And I now see on the evidence screen 1 the MLI ending in 1442.
20 If we could call up the one ending in 1460.

21 No, excuse me. If we could go back to 1442.

22 Okay. The entry that we're looking at now has a left and a right set of doors,
23 yes?

24 A. [9:46:40] Absolutely.

25 Q. [9:46:43] Looking at the photo, the door to the right is padlocked still,

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1 yes?

2 A. [9:46:56] Indeed. When we conducted our recce, if my memory serves
3 me correctly, just the left-hand door was open. The right-hand door remained
4 closed throughout the examination we conducted.

5 Q. [9:47:13] And the left-hand door was opened in your presence?

6 A. [9:47:26] Indeed, the left-hand door was open or opened in our presence,
7 I believe. I remember that when we arrived, all of the entry points were
8 closed and so, yes, we were there when it was opened.

9 Q. [9:47:45] Referring you back to the first three photographs ending in 1465,
10 1466, and 1467, these are of what I would call the bank suite room, yes? Entry.

11 A. [9:48:14] This is the entrance to the reception area where the ATM, the
12 automatic teller machine was located. The bank can receive or welcome
13 clients in two geographically separated locations; that is to say, the ATM area,
14 where we can see an individual who is about to open the padlock; * and then
15 there's a public area, and from there you can see the counter inside the bank
16 itself.

17 Q. [9:48:55] So using your terminology, we'll refer to this room as the ATM
18 room for purposes of today's examination, the doors that we're looking at, for
19 clarification purposes.

20 A. [9:49:12] Yes, okay, Counsel.

21 Q. [9:49:16] Do you recall that in addition to taking these three photos, that
22 there were a total of nine photographs of just that ingress?

23 A. [9:49:37] That is possible. Well, here, I can see three photographs. I do
24 not recall how many photographs were taken of that location.

25 Q. [9:49:49] I can refer you to the series of photographs, starting with

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1 MLI-OTP-0006-1460, progressing through up until MLI-OTP-0006-1468.

2 A. [9:50:24] Yes, indeed, all of these photographs are relevant to the door
3 and the padlock that was placed on that door that gave access to the automatic
4 teller machine.

5 Q. [9:50:43] And yet, we have one or two photos of the other entries while
6 we have nine of just this entry; is that correct?

7 A. [9:51:08] I do not understand what you're driving at.

8 Q. [9:51:11] You took nine photographs of this particular entry. We've seen
9 one of the rear entry. One of the main entry. And in the series of
10 photographs, there are not nine photographs of the rear entry or of the front
11 entry or of the cutting of the padlock; is that correct?

12 A. [9:51:41] Yes, indeed, Counsel.

13 Q. [9:51:46] And do you also recall spending 30 minutes of the three hours
14 and 36 minutes spent at the bank photographing just what we're terming the
15 ATM room?

16 A. [9:52:07] Well, I do not recall the exact amount of time. What I do know
17 is that we found it difficult to open that padlock because the key to the padlock
18 that was supposed to be provided to us did not arrive. So we had to open the
19 chain or break the chain by harder methods using a bolt cutter, which of course
20 took time.

21 Q. [9:52:38] And yet, the person bringing the keys, brought the keys to the
22 front and rear entries and not this one particular room. Is that what I'm to
23 understand?

24 A. [9:53:00] I don't remember exactly how events unfolded. What I do
25 know is that the key to that padlock, well, I don't know whether it was absent

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1 or whether it was present and did not work, which is also possible if you think
2 of the residual dust and the usual degradation of the premises. But the
3 padlock, well, was not able to be opened by a key, so we had to use more
4 violent methods to open it.

5 Q. [9:53:36] So remaining still on just this one room of the bank, you had
6 reported that as you approached it, you could smell the scent of urine. Do
7 you recall reporting this?

8 A. [9:54:00] Yes, indeed, upon opening the door, when we wanted to gain
9 access to the area where the ATM was located, we noted -- there were a
10 number of us, my colleague who signed a number of the reports with me, also
11 smelt a strong smell of urine and I think we mentioned this on a number of
12 occasions in our written report.

13 Q. [9:54:30] In fact, you do. Do you recall identifying the smell as
14 dissipating from the yellow mat that was crumpled up on the floor in that cash
15 machine room?

16 A. [9:54:56] Inside that room, where the cash machine was located, there
17 were indeed a number of objects, including a mat, and when we unravelled it
18 because it was wrapped up, we had a greater smell of urine dissipating. But
19 the smell of urine was not necessarily located -- linked to the mat itself. There
20 were traces on the floor that could have been associated with urine, but the
21 odour was far more forthcoming, if you like, or strong from the mat.

22 Q. [9:55:43] Do you recall also then, as a result of this stronger odour,
23 extending the mat full length?

24 A. [9:56:03] Well, we didn't unfold the mat because of the odour itself, but
25 quite simply with a view to examining this element, that was one of the things

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1 to be found on the floor inside this cash room, this cash machine room.

2 Q. [9:56:23] Very well. But the scent of urine was stronger from that mat.

3 Is that what you've just said?

4 A. [9:56:39] Indeed, when we unravelled the mat, we had a stronger odour
5 coming from it. That might have been down to the fact that the material of
6 the mat was able to absorb more of this biological fluid, if you like.

7 Q. [9:57:03] And did you collect a sample of this mat to conduct -- to conduct
8 testing of your impressions?

9 A. [9:57:18] I do not believe that we took a sample of the mat or from the mat,
10 but I think, if my memory serves me correctly, we took the mat in its entirety, *I
11 may be mistaken, because we took quite a few things with us. But I do not
12 believe that we took a sample on or from the mat itself. I don't recall precisely
13 what that -- what became of that mat.

14 Q. [9:57:49] Let's talk for a moment in regards of the Hotel La Maison.
15 Yesterday, you testified to having found Arabic-language documents inside a
16 drawer set that you found at the Hotel La Maison. Do you recall that part of
17 your testimony?

18 A. [9:58:20] I can confirm, Counsel.

19 Q. [9:58:25] And can you also confirm sealing these in the evidence bag that
20 yesterday was put in a -- the ERN was mentioned as MLI-OTP-0005-0025?

21 And if we could call that ERN up again, please. And may I ask the Court to
22 enlarge or zoom in on the scraps of paper inside the evidence bag.

23 Is this the photo you recall from yesterday?

24 A. [9:59:40] I do not believe that we saw this document yesterday.

25 Q. [9:59:45] Yesterday, we referenced the evidence bag.

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1 A. [10:00:02] It is possible, but at this moment in time, I do not recall this
2 photograph.

3 PRESIDING JUDGE MINDUA: [10:00:13](Interpretation) Mr Prosecutor.

4 MR DUTERTRE: [10:00:14](Interpretation) Yes, indeed, thank you,
5 Mr President. It wasn't shown yesterday. *Even though it was mentioned.
6 Maybe we should scroll up for the witness to be able to see what is written on
7 the top of the seal.

8 PRESIDING JUDGE MINDUA: [10:00:32](Interpretation) Court officer.

9 MS MONTEFUSCO: [10:00:38]

10 Q. [10:00:39] Mr Witness, looking at this, having scrolled up to the seal, do
11 you see your name and now recognise this?

12 A. [10:00:49] * Yes indeed. I remember seeing this document being placed
13 inside the evidence bag.

14 Q. [10:01:07] And if you look closely at the zooming -- the zoomed version of
15 this photograph as it was originally put up on the screen, if we could scroll
16 down now to where you're able to see the pieces of -- great, thank you. If you
17 take a moment and look at what you're able to see on your screen, isn't there
18 also scraps of French-language documents in that evidence bag?

19 A. [10:01:50] Yes, indeed. I can see one document, which seems to include
20 inscriptions in a European language or even French. At least it is in the
21 Roman alphabet.

22 PRESIDING JUDGE MINDUA: [10:02:14](Interpretation) Mr Prosecutor.

23 MR DUTERTRE: [10:02:18](Interpretation) * Yes, Mr President, I think we
24 should scroll up to the top of the document so that the witness should be able
25 to see the name of the person who collected the documents and who sealed this

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1 bag. It would be fair to the witness to let him look at exactly, that we zoom in,
2 because the image is not very clear. So that he can see exactly what is written.

3 PRESIDING JUDGE MINDUA: [10:02:45](Interpretation) Counsel for the
4 Defence, please.

5 MS MONTEFUSCO: [10:02:52] If we could scroll up to the chain of custody
6 record.

7 Q. [10:03:16] Have you had a chance to look at the enlargement?

8 A. [10:03:25] Yes, and as I pointed out a short while ago, I was present when
9 these materials were sealed. However, I've never said that I was the one who
10 placed the materials under seal, Counsel.

11 Q. [10:03:48] But you were present when the materials were sealed, so you
12 knew what materials were being sealed. You were confirming the sealing of
13 these particular materials, correct?

14 A. [10:04:11] Yes. In fact, I was present when these materials were
15 discovered.

16 Q. [10:04:21] That's sufficient, thank you. I'll proceed to the next question.
17 So by looking through the evidence bag, you can acknowledge then that it's not
18 a homogeneous collection. There are different languages of scraps of paper in
19 that evidence bag that you were present for the sealing of; isn't that true?

20 A. [10:04:53] As I was about to say a short while ago, when these documents
21 were discovered - for those that were at least visible - we saw that they were in
22 the Arabic language. * We seized them all without sorting them out first. So it
23 is possible that there were documents in other languages. But when they
24 were placed ... when we saw them in that piece of furniture, we seized all of
25 them, without sorting them out first. We slipped them... well, they were

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1 slipped by the person who sealed them in the bag that we see in the
2 photograph on the screen.

3 Q. [10:05:50] So you did not keep a log of the exact order of the scraps in that
4 pile? What they were? What language they were in?

5 A. [10:06:12] No, we did not come out with a specific inventory. We did
6 not want to tamper with the documents in any way because they seemed to us
7 to be fragile. So we wanted to put them in the evidence bag without any
8 further formalities. And furthermore, we were under time constraints.

9 Q. [10:06:48] Shouldn't a forensic statement permit subsequent persons that
10 need access and review of evidence that is collected to be able to reverse
11 engineer the actual steps you took? In other words, shouldn't the subsequent
12 reviewer be able to determine at the time of the collection, based on your report,
13 exactly what you collected in exactly which order you collected it?

14 A. [10:07:33] * In the instant case, once again, we had limited time. The
15 documents were discovered in a single place, and so we could not look at them
16 in a reasonable amount of time or create an inventory in a reasonable amount
17 of time. So we took all the documents that were in the same place, in the same
18 drawer, we placed them in the evidence bag so that they could subsequently be
19 examined in the most technical and scientific manner possible.

20 Q. [10:08:31] Now, I want to return for a moment to the topic of yesterday
21 regarding the collaboration between France and the Prosecutor, under which
22 you were sent on mission in regards of the investigation in Mali.

23 At that time you knew that Serval was investigating terrorism in Mali, didn't
24 you?

25 A. [10:09:07] At that time I knew that Serval had intervened in order to assist

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1 the regular Malian army to reconquer the centre and north of the country. But
2 when it comes to intelligence gathering and the like, I had absolutely no
3 information on that.

4 Q. [10:09:41] In your position in France, you would have known of two cases
5 of national prosecutions based on arrests by Serval of persons being charged
6 with acts of terrorism or belonging to terroristic organisations.

7 Do you recall the case in March of 2013? So shortly before your mission, and
8 I'll try and pronounce this name as well as I can, Djamal ben Hamdi.

9 PRESIDING JUDGE MINDUA: [10:10:29](Interpretation) Mr Prosecutor.

10 MR DUTERTRE: [10:10:31](Interpretation) The question is much too general.
11 But more specifically, what is the relevance to the testimony of today's witness
12 who went to Timbuktu for a forensic examination and to produce a report?

13 * So what is the relevance? What is the link between the Defence's question and
14 the issues that we are now dealing with as part of the witness's testimony?"

15 PRESIDING JUDGE MINDUA: [10:11:03](Interpretation) What is the link?
16 That is the problem here.

17 MS MONTEFUSCO: [10:11:07] Mr President, to properly respond to the
18 objection, we'll need to enter into private session, please.

19 PRESIDING JUDGE MINDUA: [10:11:24](Interpretation) And should the
20 witness be allowed to listen in?

21 MS MONTEFUSCO: [10:11:27] I would like to ask the witness to be excused,
22 please, during this discussion.

23 PRESIDING JUDGE MINDUA: [10:11:40](Interpretation) Court officer,
24 please.

25 THE COURT OFFICER: [10:11:54] The witness will be escorted in a few

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1 minutes and then we're going to turn into private session.

2 PRESIDING JUDGE MINDUA: [10:13:09](Interpretation) Court officer, please
3 ensure that this happens quickly so as not to lose the time of the Court.

4 THE COURT OFFICER: [10:13:21](Interpretation) Yes, indeed, Mr President.

5 *I am relying on our VWS colleagues who have to come down from their
6 offices upstairs to lead the witness out, since they do not have permanent
7 assistance in the waiting room. I apologize for the delay; they should not be too
8 long, usually, I hope.

9 PRESIDING JUDGE MINDUA: [10:13:45](Interpretation) I think, maybe, they
10 do not have enough staff because of the pandemic.

11 (The witness stands down)

12 PRESIDING JUDGE MINDUA: [10:14:00](Interpretation) For the record, the
13 witness has just left the room.

14 So very briefly, Ms Montefusco -- and we are going to go into private session
15 right now.

16 (Private session at 10.14 a.m.)

17 THE COURT OFFICER: [10:14:18] We are in private session, Mr President.

18 PRESIDING JUDGE MINDUA: [10:14:22](Interpretation) Thank you very
19 much.

20 Ms Montefusco.

21 MS MONTEFUSCO: [10:14:26] To respond to the Prosecutor's objection, I'm
22 specifically asking of the witness his knowledge of Serval's investigation into
23 terrorism. The witness -- if I'm speaking too quickly, please let me know.
24 The witness is speaking -- has spoken to his interaction with Serval while on
25 this mission. That he was there on behalf of France's collaboration, being lent

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1 to the Prosecutor's office for purposes of this investigation.

2 He spoke with Serval clearly, while he was there. There were two prominent
3 arrests for crimes of terrorism that were published -- widely published in
4 France in regards of two specific individuals that were arrested, transferred to
5 France, tried in March and April. So shortly before he went on mission and
6 they were arrested by Serval.

7 And the reason that's relevant is because we are now at a point where viewing
8 the video, which was put on the Defence list of evidence, if we're considering
9 the relevancy of that in regards of paragraph 58 of decision 789, this is where
10 we enter that discussion.

11 PRESIDING JUDGE MINDUA: [10:16:04](Interpretation) Do you want to
12 respond, Mr Prosecutor?

13 MR DUTERTRE: [10:16:07](Interpretation) Yes, your Honours. Now, I'm
14 re-reading what the witness said at page 15, lines 22 to 27:

15 With everything relating to intelligence, I had absolutely no information on
16 that.

17 And he was talking about Serval. So that is clear. He had no information on
18 that.

19 But furthermore, this is irrelevant. We are far off from the testimony of the
20 witness, which deals with evidence collection, and I am also not clear about the
21 dates of March and April. * Some people were indeed arrested, but they were
22 convicted much later. I do not know what was published publicly at that time,
23 which is something that the witness knows about. So we are merely
24 speculating here.

25 * He has stated that he knows nothing about the intelligence activities of Serval,

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1 and we are going to push him to speculation if we go on this path. That will
2 not assist the Chamber in determining the truth in this case. Thank you.

3 PRESIDING JUDGE MINDUA: [10:17:25](Interpretation) Ms Montefusco, the
4 Chamber will deliberate on your approach, but please, kindly tell us, what are
5 you driving at? * Because the Prosecutor says that this is not relevant, and you,
6 you are persisting with your line of argument. Tell us what you are driving at
7 so that the Chamber can make its determination.

8 MS MONTEFUSCO: [10:17:54] The witness testified that he had no idea and
9 was not aware at all of the intelligence investigations referring to terrorism by
10 Serval. What I'm asking about are two prominent arrests by Serval of persons
11 that were then brought to France [REDACTED] [REDACTED]

12 [REDACTED], I wanted to know if he was aware of them or not, which is not
13 speculative. He either was or he wasn't. And they are important because
14 they were specifically arrests done by Serval for acts of terrorism.

15 The reason this is relative -- relevant is because it goes to the showing of the
16 video. In the video, and you see a large collection of documents, you also see
17 a Serval officer. That being said, this witness has testified that he was present
18 for the collection of, at least, scraps of papers and other documents and he was
19 also present when they were sealed in the evidence bag.

20 The issue of provenance of these documents that are being found by more than
21 one witness at this point -- also the witness who opened the trial, Mr Doornbos,
22 the provenance remains in question. And this video goes directly to a
23 possibility of the provenance of some of these documents that we are
24 contesting were actually found where they are said to have been found. Or
25 that they were actually there from the time of the events, clear to the visits of

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1 more than one person finding documents on more than one occasion
2 successively.

3 PRESIDING JUDGE MINDUA: [10:19:52](Interpretation) Very well, Counsel.
4 I have understood you and I will consult with my colleagues very very briefly.
5 (Trial Chamber confers)

6 PRESIDING JUDGE MINDUA: [10:21:09](Interpretation) Court officer, can
7 you have the witness brought back in, please.

8 Counsel, as you have seen, the Chamber has deliberated and we do not
9 think* this line of questioning is relevant. (Speaks English) Where is --

10 MS MONTEFUSCO: [10:21:37] Mr Al Hassan has taken just a few moments of
11 leave, Mr President. He will return quite quickly.

12 THE COURT OFFICER: [10:21:47] On the Registry side, the witness is being
13 escorted in again. Hopefully, it's not going to take more than one or two
14 minutes.

15 PRESIDING JUDGE MINDUA: [10:22:11](Interpretation) Ms Montefusco,
16 your client does not have the right to leave the courtroom without leave of the
17 Chamber. Do we agree on that?

18 MS MONTEFUSCO: [10:22:27] Yes, absolutely, your Honour. I apologise, I
19 wasn't aware that he was being escorted out. I do believe the purpose of the
20 exit is for use of the bathroom. I'll be sure and discuss this with him in
21 regards -- as we close this session. I apologise.

22 PRESIDING JUDGE MINDUA: [10:22:50](Interpretation) Very well, but this
23 should not happen again because while we were deliberating, the accused
24 stood up and the security officers accompanied him and that should not
25 happen without the leave of the Chamber.

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1 Isn't that correct, court officer?

2 THE COURT OFFICER: [10:23:18] (Interpretation) * Yes, Your Honour, we
3 are following the rules and the decisions of the Chamber, of course.

4 PRESIDING JUDGE MINDUA: [10:23:24](Interpretation) Ms Montefusco, the
5 Chamber has deliberated and determined that there is no relevance in
6 continuing with this particular line of questioning.

7 So we request that you move on to something else.

8 (The witness enters the courtroom)

9 PRESIDING JUDGE MINDUA: [10:23:48](Interpretation) Mr Witness,
10 welcome back to the courtroom.

11 And we are going to continue with the cross-examination.

12 Ms Montefusco, please.

13 MS MONTEFUSCO: [10:23:57]

14 Q. [10:23:59] So, Mr Witness, welcome back. We'll finish with the last few
15 questions of today's examination by myself. At this moment, in regards to the
16 other sites that you visited on your mission in Mali - so not the bank and not
17 Hotel La Maison, but the other sites - you reported in your statements that you
18 found some loose objects at some of those sites. Do you recall reporting that?

19 A. [10:24:44] * Indeed, when we arrived at the mausoleums, we found, of
20 course, some rubble, that is, the dried mud that had covered the walls. We
21 found stones and bricks, but also pieces of furniture because in all likelihood
22 there had been beds and sofas inside the mausoleums. And there were also the
23 doors to these mausoleums and the frames of the doors.

24 PRESIDING JUDGE MINDUA: [10:25:21](Interpretation) Ms Montefusco,
25 please?

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- 1 MS MONTEFUSCO: [10:25:24] Yes, your Honour?
- 2 THE INTERPRETER: [10:25:31] The microphone, please.
- 3 PRESIDING JUDGE MINDUA: [10:25:33](Interpretation) Are we continuing
- 4 in private session? Or we go back to open session.
- 5 MS MONTEFUSCO: [10:25:41] We can return to open session. I apologise,
- 6 your Honour.
- 7 PRESIDING JUDGE MINDUA: [10:25:49](Interpretation) Very well.
- 8 Court officer, open session, please.
- 9 (Open session at 10.25 a.m.)
- 10 THE COURT OFFICER: [10:25:56] We are back in open session, Mr President.
- 11 PRESIDING JUDGE MINDUA: [10:26:00](Interpretation) Thank you very
- 12 much, court officer.
- 13 Ms Montefusco, please.
- 14 MS MONTEFUSCO: [10:26:08]
- 15 Q. [10:26:09] Mr Witness, apologise for the confusion of a bit of order.
- 16 The loose objects that were found at these sites, it's true to say that you weren't
- 17 able to identify when they were left there, isn't it?
- 18 A. [10:26:34] The presence of those various items in the various mausoleums
- 19 were either on the rubble or sometimes partially covered by the rubble. * So
- 20 one can estimate that these items were there, I would say, contemporaneously
- 21 with the destruction of the buildings themselves.
- 22 Q. [10:27:15] But it's true to say that that is by supposition and not accuracy
- 23 as to their provenance? And this requires only a yes or no answer, please.
- 24 A. [10:27:29] It is impossible for me to answer by a yes or a no, Counsel.
- 25 Q. [10:27:43] Supposition cannot give you certainty; is that correct?

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1 PRESIDING JUDGE MINDUA: [10:28:02](Interpretation) Mr Prosecutor.

2 MR DUTERTRE: [10:28:07](Interpretation) I think what the witness means is
3 that in answer to such a question, he has to answer within a specific context
4 from a specific perspective and he cannot say just yes or no. *And so, we must
5 be fair to the witness and let him explain himself and give his answer. He's a
6 forensic witness and he is accustomed to crime scenes. He has the capacity to
7 give a logical and intelligible response beyond a yes or a no.

8 PRESIDING JUDGE MINDUA: [10:28:42](Interpretation) Ms Montefusco,
9 I think you should allow the witness to be able to explain himself.

10 MS MONTEFUSCO: [10:28:49] Mr President, if I could respond to the
11 Prosecutor's objection.

12 PRESIDING JUDGE MINDUA: [10:29:01](Interpretation) Very well. Please
13 respond.

14 MS MONTEFUSCO: [10:29:04] This witness is testifying as a fact witness. Not
15 as an expert witness. And that was clarified in the Chamber's decision on the
16 Prosecution's Rule 68 application. That being said, he's being asked to simply
17 confirm - yes or no - that supposition is supposition and that is not certainty of
18 provenance. They are two different aspects. Supposition is not certainty. So
19 he's being asked to confirm that he understands that as a fact witness having
20 viewed the scene. Not as an expert capable -- or here to draw expert
21 conclusions.

22 PRESIDING JUDGE MINDUA: [10:30:01](Interpretation) Ms Montefusco,
23 your question is very complex, so I cannot allow him to just answer with a yes
24 or a no. He has to explain. So please proceed.

25 MS MONTEFUSCO: [10:30:17]

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1 Q. [10:30:17] Mr Witness, were you able to determine exactly when the
2 objects might have been left at the scenes where you found them?

3 A. [10:30:36] As I said a few minutes ago, some of the objects were placed on
4 top of the rubble and, for those objects, indeed, one could not be certain what
5 you refer to as certain. It is possible that they were placed on top of the rubble
6 at a later stage or moved.

7 However, some of the elements that were under the rubble, well, it would
8 seem to me that their deposit would be more contemporaneous with the
9 destruction of the mausoleums. That would seem to me to be more logical
10 with regard to that situation.

11 THE INTERPRETER: [10:31:24] Microphone, please, Counsel.

12 MS MONTEFUSCO: [10:31:27]

13 Q. [10:31:28] Thank you for answering the question and clarifying your
14 perspective of the difference.

15 That concludes my examination for the day, Mr President and your Honours.
16 I'll close with that.

17 PRESIDING JUDGE MINDUA: [10:31:47](Interpretation) Thank you very
18 much, Counsel Montefusco.

19 So if I have understood you correctly, you have finished today? The Defence
20 has finished for today. Is that correct?

21 MS MONTEFUSCO: [10:32:02] Yes, Mr President, that is correct.

22 PRESIDING JUDGE MINDUA: [10:32:07](Interpretation) Thank you very
23 much.

24 I can see that there are no further requests for anybody to address the Court.

25 We shall then draw today's session to a close.

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1 Mr Witness, the Chamber would like to once again thank you for having
2 assisted it by answering very clearly to the questions that were put to you.
3 Your testimony has now come to an end.

4 (The witness is excused)

5 PRESIDING JUDGE MINDUA: [10:32:57](Interpretation) I am now turning to
6 the parties.

7 The third witness has now finished testifying and I would like to remind you
8 that, as it is indicated in paragraph 34 on the instructions for the conduct of
9 proceedings, the parties must, at the latest, by one day -- one working day after
10 the testimony of the witness, send an email specifying clearly what exhibits or
11 items they intend to tender into evidence in connection with the witness.

12 The other party will then have three working days to answer.

13 There we are. So we shall wait to receive the list of the documents associated
14 with this witness.

15 It remains for me to thank all the parties and participants for having
16 cooperated in such a harmonious manner during this session.

17 I would also like to thank the court reporters and the interpreters for their hard
18 work. I would like to thank the security officers and, of course, those present
19 in the public gallery and those further afield.

20 We shall now rise for today with a view to reconvening on Monday,
21 14 September 2020 at 9.30 in the morning.

22 I wish you all a nice weekend.

23 Court is adjourned.

24 THE COURT USHER: [10:34:51] All rise.

25 (The hearing ends in open session at 10.34 a.m.)

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1 CORRECTIONS REPORT

2 The following corrections, marked with an asterisk and not included in the
3 audio-visual recording of the hearing, are brought into the transcript.

4 Page 4 lines 21-23:

5 "We had a meeting with the *gouvernorat* of the -- of Timbuktu and we had
6 received authorisation for the *Banque Malienne de Solidarité* to be opened for
7 us."

8 Is corrected to

9 "We had had a meeting with the *gouvernorat* of the Timbuktu region, and the
10 governor had authorized the opening of the *Banque Malienne de Solidarité*."

11 Page 5 lines 13-14:

12 "When we conducted our examinations whilst we were inside the bank, the
13 Serval forces had set up a cordon outside of the bank."

14 Is corrected to

15 "When we conducted our examinations, since we were inside the bank, the
16 Serval forces had set up a security cordon around the bank."

17 Page 6 line 18

18 "These doors, yes. I think there were padlocks or a padlock."

19 Is corrected to

20 "These doors, yes. I think there was a padlock."

21 Page 7 lines 14-16:

22 "and then there's a public area that gives over to the public tellers if you like.
23 That's the public part of the bank itself."

24 Is corrected to

25 "and then there's a public area, and from there you can see the counter inside

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1 the bank itself."

2 Page 10 lines 11-12:

3 "because we took quite a few things with us. But I do not believe that we took
4 a sample on or from the mat itself."

5 Is corrected to

6 "I may be mistaken, because we took quite a few things with us. But I do not
7 believe that we took a sample on or from the mat itself."

8 Page 11 line 5

9 "It might have been mentioned."

10 Is corrected to

11 "Even though it was mentioned."

12 Page 11 lines 12-13:

13 "Yes, I remember seeing this document. It was placed inside the evidence
14 bag." is corrected to

15 "Yes indeed. I remember seeing this document being placed inside the
16 evidence bag."

17 Page 11 line 23 to page 12 line 2:

18 "Yes, Mr President, I think we should scroll up to the top of the document so
19 that the witness should be able to see the person who collected the materials
20 and who prepared this bag. Because it's not very clear for me. We need to
21 know who marked that bag." is corrected to

22 "Yes, Mr President, I think we should scroll up to the top of the document so
23 that the witness should be able to see the name of the person who collected the
24 documents and who sealed this bag. It would be fair to the witness to let him
25 look at exactly, that we zoom in, because the image is not very clear. So that he

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1 can see exactly what is written."

2 Page 12 line 22 to page 13 line 2:

3 "We seized them together and put them in one pile. So it is possible that
4 there were documents in other languages. So we did not sort out the
5 documents before putting them in the bag. So they were sealed in a pile as
6 they are in that evidence bag."

7 Is corrected to

8 "We seized them all without sorting them out first. So it is possible that there
9 were documents in other languages. But when they were placed ... when we
10 saw them in that piece of furniture, we seized all of them, without sorting them
11 out first. We slipped them... well, they were slipped by the person who sealed
12 them in the bag that we see in the photograph on the screen."

13 Page 13 lines 14-19:

14 "In the instant case, once again, we had limited time. There was a single pile
15 of documents in a particular place, so we could not create a logical inventory.
16 So we took all the documents present in the same cupboard, in the same
17 drawers, we placed them in the evidence bag and these were subsequently
18 examined in the most technical and efficient manner possible."

19 Is corrected to

20 "In the instant case, once again, we had limited time. The documents were
21 discovered in a single place, and so we could not look at them in a reasonable
22 amount of time or create an inventory in a reasonable amount of time. So we
23 took all the documents that were in the same place, in the same drawer, we
24 placed them in the evidence bag so that they could subsequently be examined
25 in the most technical and scientific manner possible."

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1 Page 14 lines 13-14:

2 "So what is the relevance? What is the link?"

3 Is corrected to

4 "So what is the relevance? What is the link between the Defence's question
5 and the issues that we are now dealing with as part of the witness's
6 testimony?"

7 Page 16 lines 1-4:

8 "I am relying on our VWU colleagues who have to lead the witness out. They
9 have somebody on standby and I hope that will happen in a few moments."

10 Is corrected to

11 "I am relying on our VWS colleagues who have to come down from their
12 offices upstairs to lead the witness out, since they do not have permanent
13 assistance in the waiting room. I apologize for the delay; they should not be too
14 long, usually, I hope."

15 Page 16 lines 21-24:

16 "I do not know what was published publicly at that time; so we are merely
17 speculating here." is corrected to

18 "Some people were indeed arrested, but they were convicted much later. I do
19 not know what was published publicly at that time, which is something that
20 the witness knows about. So we are merely speculating here."

21 Page 16 line 25 to page 17 line 2:

22 "He has stated that he knows nothing about the intelligence activities of Serval
23 and we are going to push him to speculation if we go on this path."

24 Is corrected to

25 "He has stated that he knows nothing about the intelligence activities of Serval,

1 and we are going to push him to speculation if we go on this path. That will
2 not assist the Chamber in determining the truth in this case. Thank you.”

3 Page 17 lines 5-7:

4 “Following your reasoning, what is really what you are driving at so that the
5 Chamber should be able to make its determination in full knowledge of the
6 facts?”

7 Is corrected to

8 “Because the Prosecutor says that this is not relevant, and you, you are
9 persisting with your line of argument. Tell us what you are driving at so that
10 the Chamber can make its determination.”

11 Page 18 line 9:

12 “this line of questioning is relevant.” is translated and added.

13 Page 19 lines 2-3:

14 “Yes, this is in accordance with the rules of the Chamber.” Is corrected to

15 “Yes, Your Honour, we are following the rules and the decisions of the
16 Chamber, of course.”

17 Page 19 lines 19-23:

18 “A. [10:24:44] Yes. When we arrived on the mausoleums, we met some
19 rubble, dried mud, stones and broken furniture because there were beds and
20 sofas and there were also doors and door frames that were broken.”

21 Is corrected to

22 “A. [10:24:44] Indeed, when we arrived at the mausoleums, we found, of
23 course, some rubble, that is, the dried mud that had covered the walls. We
24 found stones and bricks, but also pieces of furniture because in all likelihood
25 there had been beds and sofas inside the mausoleums. And there were also the

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1 doors to these mausoleums and the frames of the doors.”

2 Page 20 lines 19-21:

3 “So one can suppose that these items were created there contemporaneously
4 with the destruction of the buildings themselves.” Is corrected to

5 “So one can estimate that these items were there, I would say,
6 contemporaneously with the destruction of the buildings themselves.”

7 Page 21 lines 4-7:

8 “He's a forensic witness and he has the capacity to give a logical and
9 intelligible response beyond a yes or a no.”

10 Is corrected to

11 “And so, we must be fair to the witness and let him explain himself and give
12 his answer. He's a forensic witness and he is accustomed to crime scenes. He
13 has the capacity to give a logical and intelligible response beyond a yes or a
14 no.”