

Trial Hearing
MLI-OTP-P-0055

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Wednesday, 1 September 2021
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:16] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:31:41](Interpretation) The hearing shall now
15 begin. Good morning, everyone.
16 Courtroom officer, kindly call the case.
17 THE COURT OFFICER: [9:31:52] Good morning, Mr President, your Honours.
18 This is the situation in the Republic of Mali, in the case of The Prosecutor versus Al
19 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case number ICC-01/12-01/18.
20 And for the record, we are in open session.
21 PRESIDING JUDGE MINDUA: [9:32:15](Interpretation) Thank you very much,
22 courtroom officer.
23 As is the case every morning, we will now proceed to presentations, beginning with
24 the OTP.
25 Mr Prosecutor.

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1 MR ALLAFI: [9:32:28](Interpretation) Good morning, your Honours. The OTP is
2 represented today by Paola Sacchi, Gilles Dutertre, Lucio Garcia and myself,
3 Mousa Allafi. Thank you.

4 PRESIDING JUDGE MINDUA: [9:32:55](Interpretation) Thank you, very much,
5 Mr Allafi.

6 And now the Defence.

7 Counsel.

8 MS TAYLOR: [9:32:59] Good morning, Mr President. Good morning your
9 Honours. Good morning to everyone in the courtroom and around. The Defence
10 by Mr Al Hassan is represented today by Ms Molly Thomas and myself, Melinda
11 Taylor. Thank you.

12 PRESIDING JUDGE MINDUA: [9:33:12](Interpretation) Thank you very much,
13 Ms Taylor.

14 And now the Legal Representatives of Victims.

15 Counsel.

16 MR KASSONGO: [9:33:17](Interpretation) Thank you, your Honour. Good
17 morning, your Honours. Good morning, everyone. The victims are represented
18 today by Ms Claire Laplace, who is assisting me, and myself, Mr Kassongo. And I
19 thank you.

20 PRESIDING JUDGE MINDUA: [9:33:41](Interpretation) Thank you very much,
21 Mr Kassongo.

22 And now this morning we will continue with the hearing of testimony from the
23 Prosecution Witness P-055. I now address the witness.

24 Good morning, Mr Witness. Can you hear me?

25 PRESIDING JUDGE MINDUA: [09:34:11](Interpretation) Courtroom officer, we

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- 1 have not heard from the witness.
- 2 THE COURT OFFICER: [9:34:18] Could we have the witness try again. Thank you.
- 3 PRESIDING JUDGE MINDUA: [9:34:27](Interpretation) Good morning, Mr Witness.
- 4 Can you hear me?
- 5 WITNESS: MLI-OTP-P-0055 (On former oath)
- 6 (The witness speaks French)
- 7 (The witness gives evidence via video link)
- 8 THE WITNESS: [9:34:34](Interpretation) Yes, I can hear you. Good morning, your
- 9 Honours.
- 10 PRESIDING JUDGE MINDUA: [9:34:42](Interpretation) Thank you very much,
- 11 Mr Witness. We can now hear you as well.
- 12 Mr Witness, once again I welcome you, and I would like to remind you that you are
- 13 still under oath and that you must tell the truth, the whole truth, and nothing but the
- 14 truth.
- 15 I would also like to remind you of my practical instructions yesterday regarding your
- 16 testimony. Please remember that we must leave a bit of a pause between question
- 17 and answer so that the court reporters and interpreters can do their jobs properly.
- 18 Now, this morning, we continue with cross-examination by the Defence.
- 19 I will now call upon Ms Taylor for continuation of the cross-examination.
- 20 Ms Taylor.
- 21 QUESTIONED BY MS TAYLOR: (Continuing)
- 22 Q. [9:35:51] Good morning, Mr Witness. Now --
- 23 A. [9:35:56] Good morning, Counsel.
- 24 Q. [9:35:57] Now, yesterday, you were testifying about a mission you took to
- 25 Timbuktu on 6 June with UNESCO.

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1 Now, after you returned to Bamako from this mission, did you stay in Bamako or did
2 you return to The Hague before your mission with the Prosecution?

3 A. [9:36:44] After that mission, which was quite a short one, we only remained a
4 few hours in Timbuktu and in Bamako as well. After that, I went back to The Hague
5 to continue preparations, the logistics and the like, for the upcoming mission, the
6 mission that was to be conducted later.

7 Q. [9:37:05] Now, speaking of your mission with the Prosecution, I have a logistical
8 question. Where was your hotel?

9 A. [9:37:17] I'm sorry, I no longer recall. We were housed in various hotels during
10 our time in Bamako. I really couldn't tell you where it was. I would imagine that
11 the mission report for the OTP might have that information.

12 Q. [9:37:53] And speaking specifically of Timbuktu, did you stay in a hotel or at
13 the -- at a base?

14 A. [9:38:03] If I've understood your question correctly, because the sound cut out at
15 the end of your question, I -- we stayed in Timbuktu with the Serval French forces,
16 and they were based at the airport and they were basically occupying the control
17 tower. So we were on the first floor, or possibly the second floor, of the control
18 tower there.

19 Q. [9:38:44] When you were present in Timbuktu for the Prosecution mission, was
20 there another fact-finding mission in Timbuktu at this time?

21 A. [9:39:06] I haven't understood your question. You're asking me if there was
22 another mission, and then there was something that I didn't hear. It was inaudible.
23 But to my knowledge, there was no other mission going on in Timbuktu, at least not
24 at the airport, not to my knowledge.

25 Q. [9:39:29] Now, yesterday at page 54 of the transcripts, you said that you did not

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1 think that MINUSMA had been established at this time. So did you have any
2 briefings with AFISMA, the African-led International Support Mission to Mali?

3 A. [9:40:02] Once again, your question -- the sound cut out briefly. There were
4 some representatives from the United Nations. But to my knowledge there were
5 also -- correction -- there was not yet any MINUSMA at the airport. There was a
6 detachment from Burkinabé, and they were in the lobby or the main entrance of the
7 airport. But at that time, I don't believe they had a mandate. But that would have
8 to be checked. I don't have any particular recollection of that.

9 During the briefings -- correction -- the debriefings after the mission, there were UN
10 representatives. No doubt MINUSMA was being prepared. But they were there
11 for the purposes of gathering information.

12 Q. [9:41:01] Mr Witness, I'm not sure if it came through in the interpretation. Did
13 you have any interactions with anyone from AFISMA, that's A-F-I-S-M-A, the
14 African-led International Support Mission to Mali?

15 A. [9:41:24] Yes, indeed, I didn't understand that particular acronym that you just
16 mentioned. There were no interactions at my level personally with that particular
17 mission.

18 Q. [9:41:43] And did your delegation interact with that mission?

19 A. [9:42:01] I spoke to you about the four people who were part of the OTP
20 mission.

21 Q. [9:42:06] Yes. Did any of these four people meet or interact with AFISMA?

22 A. [9:42:33] Not to my knowledge. In any event, I don't recall. If you don't mind
23 my adding something, the only contacts that we had at that time were with the Serval
24 forces.

25 Q. [9:42:42] Now, turning to your -- your site visit of the BMS, do you recall what

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1 time of day you visited it on 20 June?

2 A. [9:43:08] I don't remember the exact time of day. I do know the first activity of
3 the day -- well, we started quite early, given the heat, which obliged us to stop
4 working midday.

5 Q. [9:43:26] Mr Witness, you just said that you know the first activity of the day.
6 What was the first activity of the day on the 20th?

7 A. [9:43:39] I think that information is in my report, and I would have to refer to it.
8 As I was telling you, this is eight years ago and I don't remember the exact schedule
9 of our activities that day. I know that the first site that we visited was the BMS.

10 Q. [9:44:20] Now, speaking of the ATM room, was there a locked metal gate?

11 A. [9:44:45] Once again, the sound cut out, so I didn't hear the entire question. I
12 think you were asking whether there was a metal gate in front of the glass door
13 leading into the room where the ATM was. Was that your question?

14 Q. [9:45:16] Yes, Mr Witness.

15 A. [9:45:18] Indeed, there was a metal gate that was locked with a chain. The links
16 of the chain were quite thick and it was padlocked.

17 Q. [9:45:28] Mr Witness, you referred to a glass door. Was the glass door shut
18 when you arrived?

19 A. [9:45:35] It was shut and locked. I don't remember.

20 Q. [9:45:56] If I could bring up OTP tab 19 and if it could be shown to the witness.
21 It's in the Prosecution's binder. It's MLI-OTP-0039-0607 at 0612.

22 Mr Witness, do you have that in front of you?

23 A. [9:46:31] Your Honour, I think I can look at the binder that was given to me by
24 the OTP.

25 PRESIDING JUDGE MINDUA: [9:46:49](Interpretation) Quite so, Mr Witness.

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1 Quite so.

2 MS TAYLOR: [9:46:52]

3 Q. [9:46:53] And, Mr Witness, to assist, it's page 6 of that report. And just to recall,
4 it's the tab 19.

5 A. [9:47:09] Which tab number, please?

6 Q. [9:47:12] Tab 19.

7 And if it could be shown on evidence 1 as well.

8 I believe it's on evidence 1 as well, Mr Witness.

9 A. [9:47:36] Yes. You are asking me to turn to page 6 I believe?

10 Q. [9:47:46] Yes, Mr Witness. And you can also see this on the laptop, I believe.

11 There should be a photo in front of you. There's two photos. The top photo is of a
12 padlock, underneath that photo there's a photo of a metal gate. And can you tell me
13 when you can see that photo.

14 A. [9:48:08] Yes, exactly.

15 Q. [9:48:11] Mr Witness, can you see the metal gate?

16 Was there a glass door with the words "BMS" written on them behind the metal gate?

17 A. [9:48:22] Yes, that's correct.

18 Q. [9:48:35] I'd like to bring up Defence tab 8. This is MLI-OTP-0001-7299.

19 And if this could be provided to the witness.

20 A. [9:49:17] Yes, I have it here.

21 Q. [9:49:19] Mr Witness, this is a photo taken in February 2013. Is this the same
22 ATM room? Do you recognise it?

23 A. [9:49:40] I wasn't present when this photograph was taken. But comparing the
24 metal gate and the kind of padlock, indeed it would seem to be the same room.

25 There is one difference, namely, the aluminium and glass door behind is partially

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1 open.

2 Q. [9:50:16] So, Mr Witness, did you ask the local authorities if anyone had
3 accessed this room before your visit?

4 A. [9:50:36] As you know, we had an investigator and a trial lawyer with us. As
5 far as I am concerned, the answer is no, I didn't ask any such question to the local
6 authorities. My role was restricted to examination of the building.

7 Q. [9:50:51] So, Mr Witness, looking at this photo, the one before you, would it
8 appear that sand, rain, and liquid could get into the room through this metal grille?

9 A. [9:51:05] You're not asking me to report on facts, so I can't answer your question.
10 I don't have any information about the weather conditions or the wind between the
11 two dates of the * two dates of the photographs that you have shown. So, by my faith,
12 I think that the Court and
13 the parties can answer that question.

14 As for myself, it's not my role to give opinions about things that have nothing to do
15 with me.

16 MS TAYLOR: [9:52:02] I'd like to play a video without sound. It's Defence tab 24.
17 It's MLI-OTP-0012-2071. I'm going to play it from the 40-second mark until the end
18 of the video. And we'll be playing it on evidence 2.

19 (Viewing of the video excerpt)

20 MS TAYLOR: [9:52:56]

21 Q. [9:52:56] Mr Witness, do you recognise this building?

22 A. [9:53:00] Could you repeat the question. You were invisible for a few
23 moments.

24 Q. [9:53:21] Do you recognise this building, Mr Witness?

25 THE INTERPRETER: [9:53:40] Overlapping speakers.

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1 PRESIDING JUDGE MINDUA: [9:53:43](Interpretation) Prosecution.

2 MR ALLAFI: [9:53:45](Interpretation) We didn't see the video at first, but now we
3 see it.

4 PRESIDING JUDGE MINDUA: [9:53:49](Interpretation) Very well.

5 Ms Taylor, please go ahead.

6 MS TAYLOR: [9:54:01]

7 Q. [9:54:01] Mr Witness, do you recognise this building?

8 A. [9:54:05] The video is quite poor quality. You'd have to compare the various
9 shots of this building to the photographs that we took. It may be the BMS, but I'm
10 not an expert when it comes to buildings and I don't want to give a definitive answer
11 in this regard.

12 Q. [9:54:36] So, Mr Witness, just looking at screenshot 0.42, there appears to be an
13 open window. During your inspection, did you check if the windows of the BMS
14 could be opened?

15 A. [9:55:00] When we were on site, all the windows were closed.

16 Q. [9:55:19] Did you try opening them?

17 A. [9:55:23] Myself, I didn't try. You should ask my former colleague, P-0057, as
18 well as the other two members of the team.

19 Q. [9:55:38] Now, Mr Witness, in this shot, again timestamp .42, there's a black sign
20 on the facade. Was this black sign present during your visit?

21 A. [9:55:56] The answer is no, we didn't see any such sign.

22 Q. [9:56:13] Now, you were informed that the BMS was the Islamic police station.
23 That's correct?

24 A. [9:56:23] Yes, that's correct.

25 Q. [9:56:33] Who told you that?

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1 A. [9:56:34] The OTP's investigation team.

2 Q. [9:56:48] Did the OTP investigations team tell you anything about an entity
3 called *Hesbah* or the moral brigade?

4 A. [9:57:02] No, we didn't have that information when we left.

5 Q. [9:57:18] Now, apart from the ATM room, did you take any photos inside the
6 other rooms of the BMS? You yourself.

7 A. [9:57:30] Indeed you do have the list of photographs, so I think you can refer to
8 them. You have all the ERN numbers corresponding to the photographs I took. So
9 I think the answer is to be found there on that list and the items of evidence that are
10 on that list.

11 Q. [9:58:06] Did you go inside -- did you go inside any of the rooms, other than the
12 ATM room?

13 A. [9:58:16] Yes, absolutely. I went with my colleague, P-0057, into all the rooms
14 to have a look at them.

15 Q. [9:58:38] Now I'd like to refer to OTP tab 18. This is MLI-OTP-0029-1138 and
16 turning specifically to page 1144.

17 And if that could be shown to the witness on site. And I believe it could also be
18 shown on evidence 1.

19 A. [9:59:25] Which page are you referring to, Counsel?

20 Q. [9:59:29] It's page 7 of the report. That's MLI-OTP-0029-1144.

21 A. [9:59:53] Yes, I'm at that page.

22 Q. [9:59:56] Now, according to this page, you visited the Hotel La Maison on 19
23 June; is that correct?

24 A. [10:00:12] Yes, that's correct.

25 Q. [10:00:12] Did you make a video of your visit to the Hotel Maison?

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1 A. [10:00:30] No, there wasn't a video, to the best of my knowledge.

2 Q. [10:00:33] Did you take any contemporaneous notes?

3 A. [10:00:38] I would remind you that in this report, there's an error when it
4 concerns the activities. I would like to refer to another report concerning the specific
5 visit to Hotel La Maison. We went to Hotel La Maison and then to the Malian Bank
6 of Solidarity. But, for us, this was a reconnaissance visit. So I would have to refer
7 to other reports which were communicated by the Office of the Prosecutor with a
8 view to looking at the precise agenda of the examinations that were carried out
9 during this mission.

10 Q. [10:01:34] Mr Witness, I can check, but I do believe it's the same agenda as all the
11 reports, or the same date provided in all the reports.

12 But if I could also bring up ...

13 PRESIDING JUDGE MINDUA: [10:01:55](Interpretation) Prosecutor.

14 MR ALLAFI: [10:01:58](Interpretation) I'm sorry to interrupt, but I think that
15 Ms Taylor wanted to do the same thing. Perhaps the witness should have the
16 possibility to check if there -- to see whether they're the same dates or not.

17 PRESIDING JUDGE MINDUA: [10:02:08](Interpretation) Indeed, Prosecutor.

18 Ms Taylor, did you follow?

19 MS TAYLOR: [10:02:16] Yes, Mr President. If the witness can be shown OTP tab 2,
20 and it's page 0426 of that -- or page 6 of that tab. Sorry, page 0431, page 6. We have
21 the itinerary. And on this one we have 19 June, 2019, *Banque Malienne de Solidarité*,
22 Hotel La Maison. So it's the same date provided in this report as well.

23 Q. [10:03:02] Mr Witness, do you have that in front of you?

24 A. [10:03:07] Yes, indeed, I have it in front of me. But I would point out to
25 you - and this is something that was mentioned yesterday - that the dates are missing

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1 of the 20th and the 21st on the report which is in tab 18.

2 Q. [10:03:26] Mr Witness, on this page, page 6, we have the 20th and the 21st. Do
3 you have that in front of you?

4 A. [10:03:33] Yes, I do.

5 Q. [10:03:42] So what is your position, Mr Witness? Did you visit the Hotel
6 Maison on the 19th or did you visit a different day?

7 A. [10:03:52] I have to check. There's an annex, I think, which concerns the visit to
8 Hotel La Maison.

9 Do you understand this date? It's eight years ago. I can't remember exactly what
10 happened eight years ago.

11 Q. [10:04:25] Mr Witness, perhaps if we can go through the evidence collected.

12 A. [10:04:29] I need to refer to the report. I think that's understandable.

13 Q. [10:04:35] Certainly, Mr Witness. I've just referred you to the itinerary in the
14 other report.

15 And if we can go to OTP tab 22, that's another report that you authored. And if we
16 go to page 8 of tab 22, we have another itinerary. This is a report you authored
17 with -- Dr Eric Baccard. It's Mr B and Mr A. So your co-inspector and the
18 investigator authored this report. And you have another itinerary on page 8.

19 Do you have that in front of you?

20 And if it could be shown perhaps on evidence 1. It's MLI-OTP-0060-1920 at 1927.

21 A. [10:05:57] Yes, indeed.

22 Q. [10:06:00] So all three reports provide the same date; is that correct?

23 A. [10:06:09] Yes, indeed. Once again, I have to refer to the report to be able to see
24 exactly because, otherwise, I can't remember exactly what was the truth.

25 Q. [10:06:26] I'd like to bring up OTP tab 10. That's MLI-OTP-0005-0025.

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1 If it could be shown on evidence 1 and if it could be given to the witness on site.

2 Mr Witness, do you have that in front of you?

3 A. [10:07:10] Which document?

4 Q. [10:07:20] Perhaps if the --

5 A. [10:07:21] What tab?

6 Q. [10:07:22] Perhaps if the court officer on site could assist the witness. It's tab 10
7 in the Prosecution binder. That's MLI-OTP-0005-0025. And it's showing on the
8 laptop.

9 A. [10:07:48] Yes.

10 Q. [10:07:50] Is this the evidence bag of documents collected at the Hotel La
11 Maison?

12 A. [10:07:59] Indeed it would seem to be, but I have a page in A4 format and the
13 photograph is really very small. But I seem to be able to distinguish the writing of
14 Mr B on a document. No, I can't read it, the item. And I see "La Maison", "at La
15 Maison".

16 Q. [10:08:56] Perhaps if the Registrar could zoom in.

17 It says at the bottom of this document, "[Sealed] or produced by Dr Baccard."

18 Did you seal this bag, Mr Witness?

19 PRESIDING JUDGE MINDUA: (Overlapping speakers)

20 MR ALLAFI: [10:09:22](Interpretation) * Your Honour, thank you. Could we enlarge
21 the picture for him, but also give him the time to read this document in its entirety; at
22 least the passage where there's information on the sealed documentation.

23 Thank you.

24 PRESIDING JUDGE MINDUA: [10:09:40](Interpretation) Indeed.

25 MS TAYLOR: [10:09:42] Mr President, I believe it might be helpful for the Registrar

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1 to zoom in, and, if the witness looks on the screen, they can see it in larger text.

2 PRESIDING JUDGE MINDUA: [10:10:04](Interpretation) You're right, Ms Taylor.

3 Court officer in the field, try to help the witness, please.

4 THE WITNESS: [10:10:22](Interpretation) Yes. Yes, I can see my name, "Seized by
5 Dr Baccard."

6 MS TAYLOR: [10:10:29]

7 Q. [10:10:30] So, Mr Witness, did you give these documents to Mr B yourself?

8 A. [10:10:35] Yes.

9 Q. [10:10:37] Did you collect them on 19 June?

10 PRESIDING JUDGE MINDUA: [10:10:50](Interpretation) Prosecutor.

11 MR ALLAFI: [10:10:53](Interpretation) We just have to be fair to the witness and
12 show the details that are written on the sealed bag. Give him the chance to properly
13 view what is written on the document.

14 PRESIDING JUDGE MINDUA: [10:11:06](Interpretation) Can the -- can the witness
15 see everything that is written on the document?

16 Court officer in the field, could you let us know.

17 THE WITNESS: [10:11:31](Interpretation) I can show you what I have. So what I'm
18 being asked to read is -- well, it's about 10 centimetres on a surface -- well, it's 10 by 10
19 centimetres. So I think I can make out a date, the 19/6/2013, and maybe a time in
20 front of it, which would be -- well, I think that, Ms Taylor, you can see it and you can
21 see the time yourself.

22 I don't remember the time of this type of detail eight years after the event.

23 PRESIDING JUDGE MINDUA: [10:12:15](Interpretation) Ms Taylor, the witness
24 says that he doesn't remember because it was eight years ago. And here, we are
25 reading what is marked on the item. So what is the interest of this procedure?

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1 MS TAYLOR: [10:12:33] Mr President, this was a Prosecution exhibit which this
2 witness testified he was ascertaining the truth of its contents when it was admitted
3 yesterday. He is now saying he can't even read it. So I think we should be able to,
4 at least, at the very least, put questions to the witness about exhibits that have been
5 tendered through him.

6 Now, if they're too small, that's not our fault because this is indeed a Prosecution
7 exhibit. Now, it's on the screen. I'm perfectly entitled - this is a chain of custody
8 witness - to put questions to this witness about what he may recall. If he doesn't
9 recall anything, I can't see the point of the Prosecution even calling him.

10 PRESIDING JUDGE MINDUA: [10:13:23](Interpretation) Well, I can see the
11 Prosecutor on his feet.

12 Prosecutor.

13 MR GARCIA: [10:13:28](Interpretation) Yes, if you would allow me.

14 Thank you for giving me the floor. The witness wrote a report, which is dated a
15 certain time ago; so it's quite normal that the witness should be able to read the report.

16 But it's also normal that the questions that are put by the Defence in
17 cross-examination, that they should have a precise aim. You can't just go back into
18 documents with questions which are of a fishing nature and to ask. If the Defence
19 has precise questions with regards to the chain of custody, then they have to be done.
20 The Defence can suggest questions, but, here, we are - for five minutes or ten minutes
21 sometimes - we're going around the issue to see if the witness is able to see it, if it's
22 difficult to see.

23 But questions need to be put directly. There has to be a precise aim, and the witness
24 can't just be asked to go and look for dates and times eight years after the event.

25 PRESIDING JUDGE MINDUA: [10:14:30](Interpretation) Thank you, Prosecutor, for

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1 your observation.

2 Ms Taylor, what the Prosecutor says and what I've just mentioned is what I just
3 mentioned a few moments ago. The witness says that he no longer remembers
4 exactly the day, and you have to refer to the document. And we have the document
5 in front of us. We have the item with the date and the time. So please ask your
6 question directly to the witness.

7 What is your point?

8 MS TAYLOR: [10:15:00] Thank you, Mr President. I'm very happy to put questions
9 to the witness if I'm given the opportunity to do so. And I'm trying to establish
10 information which is not in the report.

11 Q. [10:15:10] Now, Mr Witness, I'm trying to establish the chain of custody of these
12 documents. Did you yourself collect these documents in the Hotel Maison?

13 A. [10:15:24] Contrary to what you announced, Counsel, I didn't say that I
14 remembered nothing. You didn't faithfully report my words. That's the first point.
15 Secondly, I now have an enlargement on the screen of this evidentiary item, and I
16 recognise the writing of my former colleague, B. And indeed, this is an evidence bag
17 containing evidence of documents and items. However, I see "Fr upstairs" in the
18 writing. But it was collected at Hotel La Maison the 19/6/2013 and the time that was
19 indicated is 9 o'clock. That's the writing of my former colleague, B. And I recognise
20 this evidence bag and I know what it contained.

21 I can't reply anything else. You have to refer to my report and to the photographs.

22 Q. [10:16:52] Mr Witness, was Mr B with you at the moment when you found the
23 documents at the Hotel La Maison?

24 A. [10:17:02] * Yes, he was certainly on duty... You have to know how a mission
25 works: people enter and exit a room, and it's not a crime scene, where a log is kept of

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1 who is present and the entrance and exit times of the various participants. My
2 colleague... My ex-colleague was present, and, indeed, we gave him the documents
3 that were seized. But this isn't a crime scene where there's a log which is taken of the
4 presence and entries and exits of colleagues, of different parties.

5 Q. [10:17:48] Now, after the documents were put in this bag and the date of 19 June
6 was written on it, was this bag opened again while you were in Timbuktu?

7 A. [10:17:58] The answer is no, not to the best of my knowledge. And this
8 document was under another guard.

9 THE INTERPRETER: [10:18:21] Was under our guard, corrects the interpreter.

10 MS TAYLOR: [10:18:27]

11 Q. [10:18:27] Now, according to P-57 - and I'm referring here to transcript 21, page
12 60, lines 17 to 19 - when shown a picture of the -- a room in the Hotel La Maison, he
13 said:

14 "These were the drawers, the furniture in the room of the first floor where we found
15 the Arabic language documents that were taken out and handed over."

16 Were you present with P-57 when Arabic language documents were taken out of
17 drawers?

18 MR ALLAFI: [10:19:15](Interpretation) Well, we don't have the reference, your
19 Honour.

20 PRESIDING JUDGE MINDUA: [10:19:18](Interpretation) Prosecutor.

21 MR ALLAFI: [10:19:19](Interpretation) We just want to have the reference to be able
22 to follow the question where it concerns the transcript of Witness 57.

23 PRESIDING JUDGE MINDUA: [10:19:26](Interpretation) Can you give the reference,
24 please, Ms Taylor.

25 MS TAYLOR: [10:19:32] Mr President, it's in the English transcript - and it may be

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1 helpful for the Prosecutor to have both transcripts up as we do - but I'm happy to give
2 it again. It was transcript 21, page 60, lines 17 to 19.

3 Q. [10:19:46] Now, Mr Witness, were you present with P-57 when documents were
4 taken out of the drawers? The Arabic language documents.

5 A. [10:20:07] * I see which room you're referring to and which piece of furniture,
6 because there wasn't much furniture, I think it was the only piece of furniture left in
7 the hotel. P-0057 and I were next to each other. I remember very well, because I was
8 the one who wrote the inventory and who got this document so -- out of it. So the
9 answer is yes.

10 Q. [10:20:41] So, Mr Witness, P-57 refers to documents being taken out and handed
11 over. So was someone else present handing over the documents?

12 MR ALLAFI: [10:21:01](Interpretation) Thank you, your Honour. We'd like to have
13 the reference with regards this passage which has just been mentioned. Thank you.

14 PRESIDING JUDGE MINDUA: [10:21:07](Interpretation) Ms Taylor.

15 MS TAYLOR: [10:21:09] It's the same passage I read out before, Mr President. It's
16 exactly the same passage.

17 He said: "These were the drawers, the furniture in the room of the first floor where
18 we found the Arabic language documents that were taken out and handed over."

19 PRESIDING JUDGE MINDUA: [10:21:37](Interpretation) Thank you, Ms Taylor.
20 Thank you. Please continue.

21 MS TAYLOR: [10:21:40]

22 Q. [10:21:41] Mr Witness, did you hear my question? Was someone else present
23 handing over documents?

24 A. [10:21:50] I think I already replied to this question. Indeed, Mr B, investigator
25 B, was present with us. When it came to examining the different exhibits, that was

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1 done in his presence. That was the person to whom these documents were
2 provided.

3 Q. [10:22:18] Mr Witness, there may be an issue of interpretation. My question
4 was not who did you provide the documents to. P-57 says: "We found Arabic
5 language documents that were taken out and handed over."

6 Was it your delegation that took out the documents or was someone else, who was
7 not from your delegation, present?

8 PRESIDING JUDGE MINDUA: [10:22:48](Interpretation) Prosecutor.

9 MR ALLAFI: [10:22:49](Interpretation) Your Honour, I object to this question
10 because it's already been asked and answered by the witness previously. Thank
11 you.

12 PRESIDING JUDGE MINDUA: [10:22:58](Interpretation) Ms Taylor, it would seem
13 to me that the witness has already answered this question.

14 MS TAYLOR: [10:23:03] Thank you, Mr President. But, in fact, I haven't put the
15 question to the witness as to whether anyone outside their delegation was present.
16 It was not put to him; so it can't have been answered. He has not been asked
17 whether anyone, apart from Mr A or B, was present at the time.

18 PRESIDING JUDGE MINDUA: [10:23:32](Interpretation) Very well. Please go
19 ahead.

20 MS TAYLOR: [10:23:34]

21 Q. [10:23:35] Mr Witness, apart from Mr A, B, or C, your co-investigator and
22 your -- the other OTP investigator and the trial attorney, was anyone else present in
23 the room when these documents were found?

24 A. [10:24:04] The answer is clearly no. There was nobody else. The Serval forces
25 were outside on the terrace and on the ground floor, and they were outside the hotel.

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1 But there was nobody else. We were the only ones. A group of three persons,
2 expert 57, myself, and the investigator B, were permanently in the room. We visited
3 it together, and the senior trial lawyer - I don't remember if he's C or D - he came
4 intermittently in order to assist and to see what had been found, to see himself what
5 had been found.

6 Q. [10:25:01] Did you take out all of the items that were in the drawers at this
7 point?

8 A. [10:25:07] The answer is yes. There weren't just documents, there were
9 also -- and this is something that made me think that these evidentiary items would
10 have clear value to the investigation, there were also other amulets. I don't
11 remember the exact number of them. But they were leather, in the form of a square,
12 and they were also stocked in a drawer. And I had information from my
13 investigator colleagues that the judge -- Sharia judges who were sitting in this place
14 confiscated amulets, and, as such, we immediately thought that these documents
15 would be of interest.

16 So the answer is yes, there ... Everything was seized.

17 Q. [10:26:16] Did you make a record or inventory as concerns which items were in
18 which drawer?

19 A. [10:26:25] No.

20 Q. [10:26:40] Did you put the items from different drawers in different bags?

21 A. [10:26:45] I would have to refer to it here, but there was an evidence bag which
22 was used, but that was something that would have to be checked with the list of
23 evidentiary items.

24 Maître, I understand the sense of your questions and the spirit in which these
25 questions are put, but these are small details which, eight years later, are things that I

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1 can't remember. So if you wish to have a certain degree of precision in response to
2 your questions, then you can refer to the report and to the photographs and to the list
3 of evidentiary items, which were provided to the Registry and the Office of the
4 Prosecutor when we returned.

5 Q. [10:27:46] Did you visit the Hotel La Maison again on 20 June?

6 A. [10:27:53] I would need to refer to the report. I think there were two visits to
7 the BMS and perhaps one visit -- well, you'd have to refer to my report.

8 Q. [10:28:17] I'm afraid your report is silent on this.

9 But if I could bring up OTP tab 58. It's MLI-OTP-0006-2086. If we could show this
10 on evidence 1, and then we can show the original version of the photo.

11 PRESIDING JUDGE MINDUA: [10:28:48](Interpretation) Prosecutor.

12 MR ALLAFI: [10:28:49](Interpretation) Yes, your Honour. I object to the form of
13 this question. It's not up to the Defence to plead saying that the report is silent on
14 this point. This comment should be avoided. And of course the witness should be
15 allowed to consult with all freedom this report before answering the question.

16 PRESIDING JUDGE MINDUA: [10:29:17](Interpretation) Ms Taylor, I think the
17 Prosecutor's right. The conclusion should be reserved for the pleadings or
18 submissions.

19 Please continue.

20 MS TAYLOR: [10:29:29] Mr President, I have no objection to the witness having the
21 report in front of him. But given our time, if the report doesn't refer to something, it
22 might be more efficient to refer to something that does, which is what I'm about to do.
23 And if we bring up OTP tab 58, it can be shown on evidence 1 - I think it is - and if it
24 can be shown to the witness. This is MLI-OTP-0006-2086.

25 Q. [10:30:14] Mr Witness, do you recognise these drawers?

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1 A. [10:30:18] Yes.

2 Q. [10:30:19] Is this -- are these the drawers in the Hotel La Maison?

3 A. [10:30:26] Yes.

4 Q. [10:30:31] Now we're just going to switch to evidence 2 so you can see the
5 metadata of these photos.

6 Now, Mr Witness, according to the metadata, this photo was taken on 20 June 2013 at
7 8.43.

8 If we could bring up OTP tab 59. That's MLI-OTP-0006-2087. We see the metadata
9 on evidence 2. The metadata states that it was taken on 20 June at 8.43.

10 So, Mr Witness, did you go to the Hotel La Maison on 20 June?

11 A. [10:32:28] I no longer recall.

12 Q. [10:32:36] If I could bring up OTP tab 215. That's MLI-OTP-0006-2089. If it
13 could be shown on evidence 2.

14 Now, according to this metadata, this photo was taken on 20 June 2013.

15 Now, Mr Witness, is it correct that there's items in this drawer?

16 A. [10:33:32] * Your question is based on using the metadata to determine the date
17 on which the photographs were taken. Metadata is data that does not necessarily
18 reflect the date, but the last manipulation, and that's a question to ask my former
19 cyber colleagues in particular. When pictures have been transferred, the metadata
20 shows the last modification.

21 I'm sorry, I'm not a specialist. I may be wrong, but I just refer to my report, not to
22 * the metadata, which are not available to me. With regard to your question, you are
23 in a position to see that there are photographs in the drawer. You can see them, just
24 like I can and as can other people present at this hearing.

25 PRESIDING JUDGE MINDUA: [10:34:29](Interpretation) Ms Taylor, I think we can

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1 move on regarding 19 and 20 June, the witness has already given his opinion several
2 times.

3 As for the metadata, the witness's observations are quite correct. We have experts in
4 this field. So I think try to move on.

5 MS TAYLOR: [10:35:02]

6 Q. [10:35:03] If I could bring up Defence tab 19. This is MLI-OTP-0006-1871.

7 Can the -- does the court officer in the field have this document? Did they print
8 them? Otherwise, if it could be shown on evidence 1 or evidence -- evidence 2, I
9 think, would be easier actually, since it's an Excel sheet.

10 And looking specifically at rows 1111 -- 111 to 258.

11 A. [10:36:53] Yes.

12 Q. [10:36:54] Now, Mr Witness, can you see on this Excel sheet that the date of 20
13 June is given for all of these photos taken by you?

14 PRESIDING JUDGE MINDUA: [10:37:10](Interpretation) Prosecution.

15 MR ALLAFI: [10:37:13](Interpretation) Once again I object, your Honour. This is a
16 question for which an answer has already been given by the witness. You yourself,
17 your Honour, made a remark about this point and now, once again, we're back to the
18 same -- a question that has already been answered.

19 I think we need to move forward.

20 PRESIDING JUDGE MINDUA: [10:37:37](Interpretation) Thank you, Mr Prosecutor.

21 Ms Taylor, the Prosecution is correct. The witness has already answered this
22 question.

23 MS TAYLOR: [10:37:46] Mr President, I'm trying to establish the times. As you can
24 see here, there's actual times, and the times are in the morning. So I'm trying to
25 establish when the witness was at the Hotel Maison by time.

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1 Now, if we can't rely upon Prosecution evidence, then I think that's highly concerning.

2 If they're arguing that their own evidence has been manipulated, then that's even
3 more concerning.

4 PRESIDING JUDGE MINDUA: [10:38:21](Interpretation) Since the witness has
5 already answered all these questions, perhaps you could cut to the chase.

6 What is your intent? What are you driving at?

7 MS TAYLOR: [10:38:32] Mr President, the time for these photos is between 7.08 in
8 the morning and 8.53; that's what I'm trying to establish, the time in the morning
9 when the witness was at the Hotel La Maison.

10 PRESIDING JUDGE MINDUA: [10:39:02](Interpretation) I don't know how you are
11 planning to get to that reply. The witness has already replied and he said that eight
12 years have gone along and he can't answer with accuracy.

13 So what is the end point of this approach you're taking? What do you want?

14 MS TAYLOR: [10:39:24] Perhaps if we can go to rows 4 to 22, which concern the
15 photos taken at the BMS by the same witness.

16 Q. [10:39:34] Now, Mr Witness, according to the metadata, these photos were taken
17 on 20 June 2013 between 10.01 and 10.13 in the morning. So does this correspond to
18 when you were at the BMS?

19 PRESIDING JUDGE MINDUA: [10:39:54](Interpretation) Prosecution.

20 MR GARCIA: [10:39:58](Interpretation) Thank you. I don't know if there's a
21 misunderstanding, but it seems to me the Bench has already ruled and the witness
22 has already answered. So the third time the counsel is trying to return to this matter
23 through the backdoor.

24 * The Defence states that it is simply about knowing the time; we are coming back to
25 the date again. The witness has already spoken about the date, we already have that

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1 information. So, if it is about the time in the morning, he should be asked that
2 question, knowing what he has said already, if he remembers what time in the
3 morning they went, if that is really the question. We're coming back to the date again
4 PRESIDING JUDGE MINDUA: [10:40:39](Interpretation) Ms Taylor, I think that the
5 Chamber is sufficiently edified in this regard. Move on to something else, please.

6 MS TAYLOR: [10:40:49] Thank you, Mr President. We do note our concern that
7 we're being prevented from putting questions to the witness, which go to the heart of
8 the reliability of the chain of custody of these documents, and that is a matter of great
9 concern to the Defence.

10 I'd like to bring up Defence tab 16. That's MLI-OTP-0006-1466. And if it's shown
11 on evidence 2.

12 PRESIDING JUDGE MINDUA: [10:41:18](Interpretation) Ms Taylor, for the
13 integrity of these proceedings, it is not fair to say that we are keeping you from
14 putting questions. You have put all the questions, all the questions to the witness
15 having to do with the dates of 19 and 20 June, and the witness has answered several
16 times.

17 As for the metadata, the witness has also replied. And the Chamber specified that
18 we have heard experts who came to explain all the difficulties and all the concerns
19 having to do with these scientific data. The Chamber has been edified and is now
20 asking you to move on to something else. You cannot say that we are keeping you
21 from putting questions.

22 Are we in agreement? Let us --

23 MS TAYLOR: [10:42:24] Thank you, Mr President. In light of our right to a
24 reasoned opinion, I'd be grateful if the Chamber could specify these scientific experts
25 who have testified on this matter concerning these photographs. I'm not aware of

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1 anything in the record concerning these photographs that would suggest any lack of
2 reliability regarding the metadata.

3 Mr President, the Defence has a right to try to either refresh the witness's memory or
4 put contradictory evidence to him. It's not simply a matter of putting questions to
5 him. If the witness can't remember things, we are perfectly -- or should be entitled to
6 put evidence to the witness that has more specificities. And that is exactly what
7 we're being prevented from doing; in that I was putting a question to the witness as to
8 whether these times, whether he could -- whether this seemed to be the same time
9 that he was at the BMS.

10 He can say yes or no, but we should be entitled to put that to him.

11 PRESIDING JUDGE MINDUA: [10:43:33](Interpretation) Quite so. Quite so. I'm
12 just waiting for the interpretation. Quite so, Ms Taylor. You are entitled to do that
13 and you have put questions.

14 Now move on to something else. Let us move somewhere.

15 MS TAYLOR: [10:43:52] Thank you.

16 I'm going to bring up Defence tab 16. It's MLI-OTP-0006-1466. If it could be shown
17 on evidence 2.

18 Q. [10:44:31] Now, Mr Witness, this is a photo taken by P-57. And, according to
19 the metadata, it was taken at 20 June 2013 at 8.32. So I'm going to ask you,
20 Mr Witness, if you were present at the Hotel La Maison when the doors to the ATM
21 room were opened.

22 A. [10:45:02] Yes.

23 Q. [10:45:05] So is it correct then, that P-57 was not with you at the Hotel La Maison
24 in the morning?

25 A. [10:45:17] No, that is incorrect.

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1 Q. [10:45:25] So, Mr Witness, can you explain how it's possible that P-57 was taking
2 a photo of the doors to the ATM at a time when you were taking a photo at the Hotel
3 La Maison.

4 PRESIDING JUDGE MINDUA: [10:45:57](Interpretation) Prosecution.

5 MR ALLAFI: [10:46:00](Interpretation) Thank you very much, your Honour. The
6 Defence -- we object to this line of questioning. Once again, the Defence is putting
7 information to the witness basing themselves on metadata. And the witness has
8 clearly responded, has already responded, regarding the time and the date and the
9 metadata.

10 Now the Defence is trying to confront the witness with the metadata. The witness is
11 not an expert in this area. The witness has already given his reply. And, once
12 again, they're attempting to go through the backdoor to put the same question.

13 PRESIDING JUDGE MINDUA: [10:46:58](Interpretation) Ms Taylor, I think that the
14 Prosecution is correct. We are becoming repetitive. The witness has already
15 answered this question. Try to move on to something else, please.

16 MS TAYLOR: [10:47:14]

17 Q. [10:47:14] Mr Witness, I'd like you to look at tabs 214 to 223 of the Prosecution
18 binder. Do you have that in front of you?

19 Mr Witness, do you have the Prosecution binder in front of you with tabs 214 to 223?

20 A. [10:47:44] No, I don't.

21 MS TAYLOR: [10:48:03] Could the court officer in the field ...

22 THE INTERPRETER: [10:48:09] Overlapping.

23 MR ALLAFI: [10:48:11](Interpretation) * Yes, indeed. I'm sorry... we didn't print all
24 500 photos for the witness. We printed a few. And this is not one of them. The witness
25 is right. Thank you.

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1 PRESIDING JUDGE MINDUA: [10:48:20](Interpretation) Thank you for that
2 observation.

3 Ms Taylor.

4 MS TAYLOR: [10:48:27] Okay. That would have been helpful to know. This will
5 take a bit longer as a result.

6 Now I'd like to bring up Defence tab MLI-OTP-0001-7604. If it could be displayed on
7 evidence 1 and if the court officer in the field could assist the witness.

8 THE COURT OFFICER: [10:49:02] Would counsel kindly confirm what tab number
9 that is. Thank you.

10 MS TAYLOR: [10:49:06] Tab 11, Defence tab 11.

11 Q. [10:49:16] Mr Witness, can you confirm when you have this document in front
12 of you.

13 A. [10:49:31] Yes, I have it.

14 Q. [10:49:33] Now, Mr Witness, according to P-7, these are drawers in a room in the
15 Hotel La Maison. When you were there, did you see these books?

16 A. [10:50:06] * I can't answer that question. You have the items of evidence that
17 were contained in the sealed bag. The bag remained intact for four years I believe, and
18 then it was opened and each item was dispatched and put in other sealed bags.

19 But I can't answer your question about all the documents that were in that piece of
20 furniture. You say it's the same piece of furniture. I have no idea. I can't answer
21 that question. It's not reasonable.

22 Q. [10:50:49] Do you recall whether you saw any typed judgments?

23 A. [10:50:55] I would give you the same answer. Most of the documents, if I recall
24 correctly, were in Arabic. And no one within our group spoke Arabic. So the
25 content of these items, these documents that we seized, I can't give you an answer

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1 about the content.

2 I had access to translations that, going by the date of the sealed bags, that
3 would -- translations that were prepared after my departure, so I have no idea if they
4 were judgments. I just thought that the documents could be of interest for the
5 inquiry.

6 Q. [10:52:01] Was there a rug in the room with the drawers when you were there?

7 A. [10:52:08] You asked whether there was a rug? Was that the question?

8 Q. [10:52:24] Yes, Mr Witness.

9 A. [10:52:26] I don't remember. I don't think so, but I'm not a hundred per cent
10 sure of my answer. I don't think there was a rug.

11 Q. [10:52:54] Did you check the drawers for fingerprints?

12 A. [10:52:59] * I would remind you that it was a reconnaissance visit, and we did
13 not have the equipment to take fingerprints.

14 Q. [10:53:13] Now, as head of the forensic section, when you returned to The
15 Hague, did you propose that the documents or bag you collected be tested for DNA
16 traces or fingerprints?

17 A. [10:53:26] We registered the items with the information and evidence unit. The
18 investigation team, the joint team was informed of the fact that we had taken such
19 documents from the hotel, Hotel La Maison. And I had no further news until four
20 years later on, the year 2017.

21 The main point of the visit was the mausoleums and, then later, we added the BMS
22 and the Hotel La Maison.

23 Q. [10:54:29] I'd like to bring up Defence tab 29. It's MLI-OTP-0033-0840.

24 Now, this is an investigation note concerning a meeting or a conversation that
25 included two members of your delegation, 

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1 and it was a meeting with two individuals, P-7 and P-9. And at page 0842, P-7 told
2 the members of your delegation that he and P-9 had found various documents in
3 Timbuktu, that they had taken some, photographed others, and left them behind.

4 Now, my question, Mr Witness, is: Did either Mr -- the investigator or the senior
5 trial attorney brief you in relation to their interactions with P-7 and P-9?

6 A. [10:56:11] The tab you're referring to is not up on the screen and I don't
7 remember any such meeting. It is possible that it was mentioned. But in any event,
8 we were not present, neither P-57 nor I.

9 Q. [10:56:30] Now, Mr Witness, in the Gbagbo case - this is Defence tab 49. It's
10 transcript 201. That's MLI-OTP-0078-6745 at 6779 - you testified that -- at page 35,
11 lines 22 to 24, that:

12 "We meet among our investigators, lawyers and senior trial attorneys in order to be
13 given the background to the case, so we cannot just move when things are not clear
14 when we don't have that background information."

15 So were you given background information before you went to Timbuktu by the trial
16 attorney and investigator who were travelling with you?

17 PRESIDING JUDGE MINDUA: [10:57:33](Interpretation) Prosecution.

18 MR GARCIA: [10:57:34](Interpretation) * Mr President, just on the point of
19 procedure, just to make sure we're quite clear, to be fair to the witness. He is being
20 read out something he said in another trial about other facts. We don't know the exact
21 context in which he made this statement to another Chamber. And then he's being
22 asked to explain whether that had an effect on his conduct in this case. So we need to
23 be fair to the witness. If he's being asked a question about a previous transcript
24 (inaudible), the context must be clear. Here it is plucked out of nowhere and the
25 witness has to remember, to answer. I find that, Your Honour, a somewhat

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1 inappropriate way of dealing with this witness.

2 PRESIDING JUDGE MINDUA: [10:58:22](Interpretation) Ms Taylor, I think that
3 your reference to the Gbagbo trial here is not very fair to the witness because we don't
4 have the context.

5 MS TAYLOR: [10:58:39]

6 Q. [10:58:41] Mr Witness, do you recall testifying in the Gbagbo case in relation to
7 the procedures you took before going on mission?

8 A. [10:59:03] I remember testifying as an expert witness in the Gbagbo case, yes.

9 That particular point was raised. That's quite possible. But once again, that was a
10 while ago and I would need to have an opportunity to see when I might have said
11 that because I don't have the context.

12 Q. [10:59:29] Well, if we can show Defence tab 49 to the witness. It's

13 MLI-OTP-0078-6745 at 6799 -- 6779.

14 Mr Witness, it's a transcript from 11 October 2017. The page in question is page 35.

15 And you were asked, before you travelled to Abidjan, what information you had
16 regarding the case.

17 So your response that I just read out is in response to that question. That is, at line 20,
18 when you were asked, who was present in a meeting that you had before traveling to
19 Abidjan, you said:

20 "I believe that Mr Eric MacDonald was present. I think, I think -- I didn't keep a clear
21 memory of that particular meeting, but ordinarily that is how we proceed. We meet
22 among our investigators, lawyers and senior trial lawyers in order to be given the
23 background to the case, so we cannot just move when things are not clear when we
24 don't have that background information."

25 Now, according to this transcript you said "ordinarily this is how we proceed". Is

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1 that correct? Ordinarily you would meet with the senior trial attorney and the
2 investigators to get background?

3 A. [11:01:45] First of all, the transcript is in English. And if I recall correctly, I
4 testified in French. The answer is obvious. You don't go off without any
5 information about the events that occurred in the location that you have to investigate.
6 That's obvious. And we had an investigator from the joint team and the senior trial
7 lawyer who was in charge, but there were preparatory meetings naturally in
8 The Hague for this mission.

9 MS TAYLOR: [11:02:41] Mr President, I see it's just after 11.

10 PRESIDING JUDGE MINDUA: [11:02:47](Interpretation) Indeed, Ms Taylor. It is
11 11.02. So we're going to interrupt there for half an hour and we will be back at 11.30.
12 Court is suspended.

13 THE COURT USHER: All rise.

14 (Recess taken at 11.03 a.m.)

15 (Upon resuming in open session at 11.30 a.m.)

16 THE COURT USHER: [11:30:29] All rise. Please be seated.

17 PRESIDING JUDGE MINDUA: [11:30:52](Interpretation) Court is in session.

18 Ms Taylor, you have the floor.

19 MS TAYLOR: [11:31:13]

20 Q. [11:31:16] Now, Mr Witness, at transcript 123 - that's from yesterday - page 47,
21 lines 8 to 12, you stated:

22 "[...] we were locating things specifically in Timbuktu, namely, the Banque Malian de
23 Solidarite, which was the location of the Islamic police and the Hotel La Maison
24 where the Islamic Court would sit. So that was the information [that] we had before
25 we left."

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1 Now, Mr Witness, before you left, were you told or given any briefing about the fact
2 that journalists had identified documents in the Hotel La Maison?

3 A. [11:32:15](Inaudible)

4 MS TAYLOR: [11:32:22] I don't have any audio.

5 PRESIDING JUDGE MINDUA: [11:32:32] Court officer.

6 THE WITNESS: [11:32:38](Interpretation) I was saying no. I didn't have this
7 information. At least, I don't remember it.

8 THE INTERPRETER: [11:32:41] Says the witness.

9 MS TAYLOR: [11:32:45]

10 Q. [11:32:46] I'd like to bring up Defence tab 4. It's MLI-D28-0005-6959.

11 Now, Mr Witness, this is an article by a journalist called Rukmini Callimachi.

12 And if I could turn, in particular, to page 6960 of this document - and, I'll read it
13 out - the journalist describes --

14 A. [11:33:37] Could you state ...

15 THE INTERPRETER: [11:33:38] The interpreter didn't get the rest because of
16 extraneous noises.

17 THE WITNESS: [11:33:42](Interpretation) Could you state the page. Is it the first,
18 second or third, fourth, fifth, sixth page? Because the number of order was cut off or
19 that wasn't printed.

20 THE INTERPRETER: [11:33:59] Says the witness.

21 MS TAYLOR: [11:34:00]

22 Q. [11:34:01] It's page 6960. It's the second page, third paragraph. And I'll read it
23 out.

24 PRESIDING JUDGE MINDUA: [11:34:15](Interpretation) Prosecutor.

25 MR ALLAFI: [11:34:17](Interpretation) Your Honour, thank you. We're following

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1 the procedure. When a document is shown, you should be shown the date as well.

2 Thank you.

3 PRESIDING JUDGE MINDUA: [11:34:30](Interpretation) Ms Taylor.

4 MS TAYLOR: [11:34:32] Thank you, Mr President. The date of the article is -- I

5 can't really see it. I think it's 8 March 2016. But I'm referring on page 2 to a

6 description of a trip that occurred in 2013.

7 PRESIDING JUDGE MINDUA: [11:35:04](Interpretation) Please go ahead,

8 Ms Taylor.

9 MS TAYLOR: [11:35:07] I'll read it out. It's the third paragraph for the interpreters.

10 This is a journalist who was present in February 2013, and she writes:

11 "Other than Hurricane Katrina, I don't think I've ever seen so many journalists as I did

12 then in Timbuktu. We were all traipsing around the city doing similar stories, so I

13 started asking the local people if they could show me the buildings where the group

14 had been. They took me first to a bank that had acted as the Islamic police center,

15 and they took me to a hotel that had been turned into a Sharia court, and they took

16 me to a tax building that had been the jihadists' administrative office. In each of

17 these buildings, I noticed dozens and dozens of loose papers on the ground that were

18 written in Arabic -- even though Mali is largely a French-speaking country. Because

19 I couldn't read them, I didn't think they were very important. The next day I

20 realized, 'Oh my God, that must be the stuff the jihadists left behind.' So I went back

21 with a bunch of trash bags, and I just went building by building, at least 10 in all, and

22 scooped up every single thing that I could find. People were calling me the trash

23 lady of Timbuktu. I started to translate the documents in my hotel with a

24 translator."

25 Q. [11:36:41] Now, Mr Witness, my question, this journalist has said that they

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1 scooped up every document in Arabic they could find. So the documents you found
2 at the Hotel La Maison, they weren't hidden, were they?

3 MR GARCIA: [11:37:09](Interpretation) I object, your Honour.

4 PRESIDING JUDGE MINDUA: [11:37:10](Interpretation) Yes, Prosecutor.

5 MR GARCIA: [11:37:12](Interpretation) This is unjust towards the witness. I don't
6 even see why we are putting a statement in an article made by a third party when
7 we're indirectly asking the witness to speak about the credibility of this witness and
8 what allegedly a journalist would have said.

9 So if a question is to be put, well, this is argumentative. We're going back on a
10 particular point, and we're redebating the point with the witness.

11 PRESIDING JUDGE MINDUA: [11:37:37](Interpretation) Ms Taylor, the Prosecutor
12 is right. This article from this journalist is not going to be put to the witness. This
13 journalist isn't there to be cross-examined. I don't understand. Put your question
14 to the witness, and then we'll move on.

15 MS TAYLOR: [11:37:58]

16 Q. [11:37:58] Mr Witness, the documents you found, were they hidden?

17 A. [11:38:16] Maître, are you referring to the documents that we found at the
18 Malian bank of solidarity or the documents that we found at Hotel La Maison?
19 Because indirectly, I can answer your first question where it concerns ...

20 THE INTERPRETER: [11:38:30] Overlapping speakers.

21 MS TAYLOR: [11:38:32]

22 Q. [11:38:32] I was talking about the Hotel La Maison.

23 PRESIDING JUDGE MINDUA: [11:38:36](Interpretation) Prosecutor.

24 MR ALLAFI: [11:38:39](Interpretation) Your Honour, thank you very much. The
25 witness is making a commentary, and I think that he has to be allowed to speak.

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1 Thank you.

2 PRESIDING JUDGE MINDUA: [11:38:50](Interpretation) Yes. Of course. When
3 the witness speaks, we allow the witness to speak, Ms Taylor.

4 So, Witness, please finish your answer, and we'll make progress.

5 THE WITNESS: [11:39:03](Interpretation) Yes. So to aid the Court understand, and
6 aid the different assistants -- participants in the hearing understand, where it concerns
7 the BMS, we left documents because we were in the room -- the first room that we
8 visited inside the premises. Not where the ATM was, but the room where there
9 were the forms, the laissez-passer, which were printed and which had the Islamic
10 police stamp on them. And a large part of these documents were blank. They
11 hadn't been used. So they were there. As well, we left what wasn't relevant.

12 With regards to the documents collected from La Maison, the situation was very
13 different. The documents that we took were not hidden, although "hidden" implies
14 that you know the intention of the person who had stocked them in the furniture.
15 They were more prosaically, they were arranged in this piece of furniture. There
16 were two columns in the drawers, in two drawers. So some were closed up. And
17 what we took were all the documents that we had collected from this piece of
18 furniture. And, to the best of my knowledge, there were no other documents on the
19 date of our visit in June 2013, so three years before the date that this article was
20 drafted that you mention. And after we departed, there were no other documents in
21 Hotel La Maison.

22 MS TAYLOR: [11:40:57]

23 Q. [11:40:58] Now, Mr Witness, you've said that you took from the BMS the
24 documents you thought were relevant.

25 How did you know what was relevant, given that you don't speak Arabic?

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1 A. [11:41:17] * That's to say we took what was written, documents with
2 handwriting on them. We left what had been printed, such as laissez-passer forms to
3 be used by the Islamic police. But here I am getting ahead of myself, I am not an
4 investigator. We left them because if not, we would have come back with kilos of
5 documents. But we checked that all those documents had not been written on, that
6 they contained nothing in handwriting, and they were printed documents.

7 Q. [11:41:52] And so just to be clear, for the BMS, did you find all these documents
8 in the ATM room?

9 A. [11:42:10] No. And this is all in the report. And in the evidence bags, it's
10 mentioned where these documents were collected from. And I think there was even
11 an additional report at the request of Mr Gilles Dutertre, which clearly specifies
12 certain points.

13 What I'm referring to here, are documents which were found and collected inside the
14 BMS premises because the ATM room was outside. It was part of the building, but
15 there was no internal communication with it, apart from the distributing ATM.

16 Q. [11:42:57] Now, speaking of the Hotel La Maison, you said some of the drawers
17 were closed.

18 They weren't locked, were they?

19 A. [11:43:16] No. No. They were closed, and they'd been pushed back, and some
20 of them were open. But none of them were locked. I don't know, furthermore, if
21 there were even locks on these drawers. I no longer remember. We'd have to look
22 at the photograph.

23 Q. [11:43:31] I'd like to bring up Defence tab 3. This is MLI-D28-0005-6941. This
24 is an article by a American journalist called Jon Lee Anderson.

25 A. [11:43:56] Maître, can you ...

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1 THE INTERPRETER: [11:43:57] Says the witness.

2 THE WITNESS: [11:44:05](Interpretation) Maître, would you be so kind as to repeat
3 what you said.

4 MS TAYLOR: [11:44:08]

5 Q. [11:44:08] Mr Witness, this is at Defence tab 4. It's an article by a American
6 journalist called Jon Lee Anderson. It's dated 24 June 2013. It's titled: "STATE OF
7 TERROR". *"What happened when an Al Qaeda affiliate ruled in Mali."*

8 And, at page 6948, the second paragraph, he speaks of going to Timbuktu --

9 A. [11:44:44] Maître, can I interrupt you. The article at tab 4, this is the one that
10 you've just referred to previously. And that concerns another article by a journalist
11 written on 8 March 2016.

12 Very well, I'm there.

13 Q. [11:45:21] And at page 6498 -- and I'm only referring this -- to this for the date,
14 the second paragraph, the journalist says:

15 "Two weeks after its liberation, Timbuktu was subdued and wary." So that's just to
16 situate the date of his visit.

17 Returning specifically to page 6950 --

18 A. [11:45:46] Counsel, I'm sorry to interrupt you. I'm showing you, the -- the
19 reference that you've given is not visible because the documents were not printed.
20 So if you could give me the numbers of the pages -- first, second, third page -- that
21 would make it possible to find it.

22 But otherwise, I'll have to ask you at the end of your intervention to repeat the entire
23 question.

24 Q. [11:46:10] Mr Witness, I'm not actually providing a question. If you could
25 listen to the interpretation, I'm reading out the relevant sections to you so you will

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1 have it in in French.

2 PRESIDING JUDGE MINDUA: [11:46:26](Interpretation) Ms Taylor, we risk falling
3 into the case of the first article. The witness didn't write the article. So you are
4 going to read this and present it to him. Ask him a direct question, if there is one,
5 and let's move forward.

6 MS TAYLOR: [11:46:48] Mr President, again, we should be entitled to put evidence
7 to this witness. This journalist provides a description of a room. What I'm trying to
8 ascertain is whether the description corresponds to what this witness saw. I should
9 be entitled to put this to this witness. It's a chain-of-custody witness. We should be
10 put -- entitled to put questions which go directly to the integrity of the -- the scene. I
11 would hope that the Chamber is interested in that.

12 PRESIDING JUDGE MINDUA: [11:47:31](Interpretation) The Prosecutor, Mr Garcia,
13 is standing up.

14 MR GARCIA: [11:47:36](Interpretation) I'm sorry, your Honour. Perhaps our
15 intervention isn't necessary. But there's a risk of going back into the same exercise as
16 we did with the first article. And, if the exercise of the Defence is just to verify
17 whether a certain description reminds something to the witness, then he should be
18 led it without referring to the article, given that it's not necessary and the witness will
19 answer. And with regards to the rest, that's for the submissions. They -- they
20 complete what they want at the end of the day. This procedure should show an
21 article that -- well, he hasn't written this article. He's not the author of this article,
22 and it's becoming very long. And at the end of the day, it's not helping the case with
23 regards to what the Defence claims to want to do.

24 PRESIDING JUDGE MINDUA: [11:48:26](Interpretation) Thank you, Prosecutor.
25 Ms Taylor, in order to save time, put your question to the witness directly. Perhaps

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1 in summarising the article, it's not necessary to read the whole thing.

2 MS TAYLOR: [11:48:38] I'm not intending to read the whole thing. I was intending

3 to read the description of the room to see if it corresponds.

4 Now, I should be entitled to do that because it goes directly to the integrity of the

5 scene.

6 Now, this journalist describes a particular room with two rugs on the floor, a chest of

7 drawers used to store evidence. He also describes a short coil of rope that had been

8 left behind.

9 Q. [11:49:14] Now, Mr Witness, when you were there, did you see a short coil of

10 rope?

11 A. [11:49:22] I don't remember. I think you're referring still to the room which

12 had the furniture in it with the two columns of drawers.

13 Are we still talking about Hotel La Maison?

14 Q. [11:49:50] Yes, Mr Witness.

15 Did you see a short coil of rope in this room when you were there?

16 A. [11:49:57] Well, my memory is quite precise when it concerns the chest of

17 drawers that we saw in the photo. But where it concerns the carpet and the rope, I

18 * don't remember having seen them. Which doesn't mean that they weren't there, just

19 that my colleague and I did not find it relevant to remove them.

20 Q. [11:50:37] I'd like to bring up OTP tab 231. It's MLI-OTP-0006-2105.

21 Mr Witness, do you see that on evidence 1?

22 A. [11:51:20] Yes.

23 Q. [11:51:22] Does this refresh your memory? Do you recall seeing this while you

24 were there?

25 A. [11:51:30] It's possible, but it's not possible to state precisely the -- an exhaustive

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1 list of everything that was contained in these drawers.

2 Q. [11:51:54] That's regrettable.

3 Now, apart from this rope in this drawer, do you recall seeing any other ropes that
4 were there in the room?

5 MR ALLAFI: [11:52:09](Interpretation) Your Honour, thank you very much. This
6 is the second time that I have to rise for an inappropriate comment. Thank you.

7 PRESIDING JUDGE MINDUA: [11:52:19](Interpretation) Ms Taylor, the Chamber is
8 in agreement with the Prosecutor. This comment, according to which the -- with this
9 inappropriate answer to the witness is not right. Please go ahead.

10 MS TAYLOR: [11:52:36]

11 Q. [11:52:36] Mr Witness, apart from this rope in this drawer, did you see any other
12 pieces of rope when you were there?

13 A. [11:52:46] I'm sorry. I can't answer your question. The list of what we saw is
14 in the report, and I would ask you to refer to that report.

15 Q. [11:53:05] When you got back to The Hague, did you perform any forensic tests
16 on this piece of rope or string?

17 A. [11:53:14] The answer is negative. The bags, the photos of which you have,
18 were provided to the information and evidence unit. And when I saw them again,
19 that was four years later when Mr Gilles Dutertre asked us to put them into separate
20 bags -- to put the contents that they contained into separate bags under seal.

21 Q. [11:54:02] Now, in the article I just read, the journalist says that he "... went there
22 with [...] a local man who had been arrested by jihadis and held for three days. [And]
23 when we arrived, a caretaker wordlessly brought out great old-fashioned keys and
24 allowed us into [the] dusty downstairs room, with furniture stacked up [...]"

25 My question is: When you were there, was there a caretaker for the hotel?

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1 A. [11:54:52] There was somebody who came to open the door.

2 Q. [11:55:01] And was this somebody from Timbuktu?

3 A. [11:55:05] I couldn't answer that. I didn't know that person's identity. That
4 was something that was managed by my investigator/colleague and the senior trial
5 lawyer.

6 Q. [11:55:25] Do you know if anyone from your delegation interviewed this
7 somebody?

8 A. [11:55:30] I don't know that. I didn't ask any questions to this person, and I
9 think that my colleague 0057 also did not put any questions either.

10 Q. [11:55:54] Now, Mr Witness, under Article 54(1) of the Statute, the Prosecutor
11 has a duty to search for exculpatory information.

12 Did you discuss before your mission what might constitute "exculpatory information"
13 in Timbuktu?

14 A. [11:56:12] * No. This specific point, which is a legal approach, did not come up
15 in the discussions. What came up in the discussion was a scientific approach: to make
16 findings and possibly to seize relevant materials. Whether they are incriminating or
17 exculpatory is something that arises at a later stage. At the scientific level, experts in
18 criminology, forensic medicine or the forensic police collect evidence, and this
19 evidence is later construed as incriminating or exculpatory, but this is alien to the
20 scientific approach, it is something legal.

21 Q. [11:57:28] And in discussing this scientific approach, was there any discussion of
22 the need to preserve all the steps taken for the information of a future Defence team?

23 A. [11:57:51] I'm sorry. Could you add to the interpretation. There was part of it
24 which I couldn't understand.

25 Q. [11:57:58] In discussing the scientific approach you would take in relation to this

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1 mission, was there any discussion of the need to preserve or make a record of all the
2 different steps that were taken during this mission for the -- for the interest or for the
3 review of a future Defence team?

4 A. [11:58:44] With regards to the meetings that we had at the preparatory phase of
5 the mission, this concerned essentially the destroyed mausolea and the institute, as
6 well as the mosques that had been damaged. Because at that time, this was the main
7 object of the mission. But if we had the time, it was -- we would look at the Malian
8 bank of solidarity and Hotel La Maison. And, as such, with regards to the locations,
9 some of them were not -- did not have the priority as much as the mausoleums.

10 Now, when it concerns your remark, we also systematically obey -- when we examine
11 crime scenes, we follow a procedure, which is accepted at international level.

12 And here, I would remind you, this was a reconnaissance mission; so it was limited to
13 taking photographs and describing the items that we saw and seizing and retaining
14 relevant elements. Because we didn't know whether we would be able to return to
15 the scene afterwards as it was a country which was still very unstable. Fighting was
16 continuing in the north, and we also had to limit our time of presence on the site at
17 the request of the SERVAL forces responsible for our security.

18 So we had to limit the time to what was strictly necessary and this is mentioned, I
19 think, in one of the reports.

20 THE INTERPRETER: [12:00:33] And previously, the witness mentioned the Ahmed
21 Baba institution in his answer.

22 MS TAYLOR: [12:00:39]

23 Q. [12:00:39] Now, Mr Witness, given that you were aware that you might not be
24 able to return to this site, who made the decision that you would have a
25 reconnaissance mission of the BMS and the Hotel La Maison?

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1 A. [12:01:09] Could you repeat the question. I just got part of the interpretation.

2 Only part came through.

3 Q. [12:01:15] Mr Witness, who was responsible for making the decision that you
4 would only have a reconnaissance mission of the BMS and Hotel La Maison?

5 A. [12:01:27] That was discussed in The Hague at Court headquarters. And I
6 remember that the trial -- senior trial lawyer in charge of the file was there and -- at
7 the time of the visit to the BMS and the La Maison hotel.

8 Q. [12:02:04] And during these preparatory meetings, did you discuss the
9 possibility of investigating or examining sites where the Malian army had allegedly
10 committed crimes?

11 A. [12:02:30] The answer is no. That subject was not part of the mission. And,
12 furthermore, we were not sufficiently involved in the discussions of the joint team to
13 tackle that particular issue during meetings.
14 During the meetings we had with the joint -- with the joint team, those meetings were
15 only focused on the Timbuktu mission. I reiterate: The visits to the cemeteries, the
16 destroyed mausoleums, the ... Baba Institute, the Arsène ... museum, the Jewish
17 cemetery, which, in actual fact, was a Christian cemetery. Our mission was
18 restricted to those locations.

19 Q. [12:03:36] So for completeness, Mr Witness, did you have any discussion
20 regarding examining sites or investigations concerning crimes allegedly committed
21 by the MNLA in Timbuktu?

22 A. [12:04:04] No. The discussion had to do with a number of sites with
23 geographical locations. We were given a list of sites -- the mausoleum, the Three
24 Saints cemetery, the Djingareyber mosque. But we didn't know who the
25 perpetrators had been. We were told about jihadists groups. But we didn't know if

1 it was the MNLA, AQMI, Ansar Dine, MUJAO. We were not investigators. We are
2 scientists. And the request was a request for scientific services.

3 Q. [12:04:57] Mr Witness, you just said: "We were given a list."

4 Who were you referring to when you say "we"?

5 A. [12:05:12] To us, the members of the mission and myself personally. We
6 received a list of sites to visit and this was a list drawn up temporarily. The list was
7 added to later on. When we were in Timbuktu, a number of other sites were added
8 to the list, a mausoleum, which we had not -- which, ultimately, we were not able to
9 locate.

10 So I was the recipient of the list, but also investigator B and senior trial lawyer. With
11 that list, that must have been sent to the SERVAL forces before the mission began so
12 that they could make the necessary arrangements in terms of logistics and security.

13 Q. [12:06:14] Who drew up the list?

14 A. [12:06:17] I think it was the joint team or the joint team leadership. There was a
15 meeting with someone from the Prosecution division, the head of the investigation
16 team, and the representative of the JCCD.

17 Q. [12:06:42] Mr Witness, do you recall when Xavier Laroche joined the forensic
18 science unit at the ICC?

19 A. [12:07:02] I can't remember the exact date. I'm not entirely sure. I know that
20 with Xavier Laroche, the following year, we conducted another mission to Timbuktu.
21 We were supposed to leave, the two of us. But owing to illness, I was not able to
22 travel to Timbuktu, and he went there alone. But to tell you which year he joined the
23 unit, no. I think it would be quite easy to find that detail if you were to ask him or if
24 you were to ask the person who is in charge of the forensic section.

25 Q. [12:07:49] Now, Mr Witness, you're referring to Mr Laroche traveling to

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1 Timbuktu on a mission.

2 Are you referring to a mission he conducted in 2014 to examine the mausoleums?

3 A. [12:08:04] I think it was that mission. Yes.

4 Q. [12:08:19] And since you yourself had visited these sites, did you brief him
5 before he left?

6 A. [12:08:27] What kind of briefing? He had access to the first findings that we
7 made in 2013. I went with him because I too was supposed to go to Timbuktu the
8 following year. But owing to food poisoning, I remained ill in Bamako. And he
9 went on and went all the way to Timbuktu.

10 Q. [12:09:09] Did you give him any items of evidence that might be forensically
11 relevant to his mission?

12 A. [12:09:20] What do you mean by "items"? I gave him information of course
13 because he was a forensic officer in the section. I was on -- in contact with him on an
14 ongoing basis. I traveled with him. So I did give him information. But to give
15 him actual items, he had access like any other employee of the OTP by way of the
16 system, TRIM, I think was the name of that system. He had access to those
17 documents or those -- or photographs by way of that system.

18 Q. [12:10:20] Mr Witness, can you turn to tabs 20 and 21 of the Defence binder.
19 That's MLI-OTP-0007-0211. And MLI-OTP-00[0]7-2 -- 0215.

20 A. [12:10:49] No. Those documents are not amongst the ones. There are no
21 documents under 20 or 21. I see 18 and so on, but I don't see 20 or 21.

22 MS TAYLOR: [12:11:12] Well, they were provided to the court officer on site.
23 Is the court officer on site able to assist with this?

24 THE COURT OFFICER: [12:11:27] Your Honours --

25 MS TAYLOR: [12:11:28] I understand they're not printed. If they could be

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1 shown on evidence -- if tab 20 can be shown on evidence 1.

2 Q. [12:12:12] Mr Witness, this is a report concerning degradation to different
3 cultural heritage caused by a kamikaze attack on 28 September in Timbuktu.

4 MS TAYLOR: [12:12:29] And if it could be made smaller so the witness could see the
5 entire page.

6 PRESIDING JUDGE MINDUA: [12:12:37](Interpretation) Prosecution.

7 MR ALLAFI: [12:12:40](Interpretation) * I see on the cover page of this report the
8 day and month are specified but not the year. Please could you tell us exactly which
9 year it was and give the proof that it happened on that day, month and year. Thank
10 you.

11 PRESIDING JUDGE MINDUA: [12:13:03](Interpretation) Indeed. Here we read, 28
12 September, but the actual year is not mentioned.

13 MS TAYLOR: [12:13:10] Well, perhaps then we can turn to page -- tab 21, which has
14 the year on it. It's MLI-OTP-0007-0215. And this refers to the attack, specifically, 28
15 September 2013.

16 I don't know why the Prosecutor is standing up.

17 Q. [12:13:52] Mr Witness, can you see that on the screen?

18 Mr Witness, can you see that on your screen?

19 A. [12:14:15] Yes, I can. But it is illegible.

20 MS TAYLOR: [12:14:23] If the Registrar could perhaps assist.

21 Q. [12:14:27] Mr Witness, can you see it now?

22 A. [12:14:31] It's a bit better, but the actual body of the report is still blurred. If it
23 could be expanded a bit. This is not an HD television or screen. So it's a bit
24 difficult.

25 Q. [12:15:01] Can you see it now, Mr Witness?

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1 A. [12:15:04] Yes.

2 Q. [12:15:07] Now Mr --

3 A. [12:15:12] Yes, but even ...

4 Q. [12:15:23] Sorry, Mr Witness. I don't think I heard you, the end of your answer.

5 You said, "Even ..."

6 A. [12:15:33] I was saying I can see it. I can make it out, but it's still blurry because

7 the television or the -- in this room, these are not high-definition televisions in the

8 room. I can read. I can sort of make out what it says.

9 Q. [12:16:00] Well, Mr Witness, it's not necessary to read this in detail because I

10 only have one question about it. It's a report from UNESCO -- MINUSMA, and it

11 concerns the attack, an explosion that occurred on 28 September 2013.

12 Now, Mr Witness, do you recall receiving these reports, specifically on 30 October

13 2013?

14 A. [12:16:42] No. I've never seen these reports.

15 Q. [12:16:44] Mr Witness, if I were to put to you that your name is in the chain of

16 custody, would that refresh your memory?

17 A. [12:16:53] Absolutely not. I have no recollection of this report, and I would be

18 curious to see the chain of custody and at what time I might have had possession of

19 this.

20 THE INTERPRETER: [12:17:22] Correction: Might have had knowledge of this.

21 MS TAYLOR: [12:17:25]

22 Q. [12:17:25] Well, Mr Witness, we can see if we can bring up the chain of custody.

23 I'll ask my colleague to search for that while I ask on a different topic so that you can

24 see them.

25 MS TAYLOR: [12:17:38] So we're going to see if we can get screenshots that can be

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1 shown to the witness.

2 In the meantime, I'll move on to a different series of questioning.

3 Q. [12:17:47] Now, Mr Witness, if we could refer to tab 18 in the Prosecution binder.

4 That's MLI-OTP-0029-1138.

5 A. [12:18:22] Yes.

6 Q. [12:18:24] Now, this is the first report you prepared concerning your mission to

7 Timbuktu.

8 Are you in a position to explain why you did not include the BMS and Hotel La

9 Maison in this report?

10 A. [12:18:41] No doubt because we were not asked to do so. I believe those were

11 covered in a separate report.

12 Q. [12:19:23] If I could turn to Defence tab 32. It's MLI-OTP-0038-0891. And if

13 we could turn to page 0898.

14 Now, Mr Witness, this is the report that was drafted by P-57. And if you see on page

15 0899, it's signed 22 October 2016. And turning specifically to page 0898 in paragraph

16 3, do you have that in front of you, Mr Witness?

17 A. [12:20:33] Which tab number, please?

18 Q. [12:20:35] It's Defence tab 32.

19 A. [12:20:48] Ah, from the Defence office.

20 PRESIDING JUDGE MINDUA: [12:20:51](Interpretation) Prosecution?

21 MR ALLAFI: [12:20:58](Interpretation) * Just a correction Your Honour: in the

22 French transcript the year 2016 has been transcribed as 2013, in fact September 2013. I

23 think that it's September 2016.

24 PRESIDING JUDGE MINDUA: [12:21:11](Interpretation) Yes. Yes. Duly noted.

25 MS TAYLOR: [12:21:19] I'll just repeat the date again. It was signed 22

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1 October 2016. But we're referring on page 0898 to the third paragraph.

2 Q. [12:21:35] Mr Witness, can you confirm if you have that in front of you.

3 A. [12:21:39] That I have what?

4 Q. [12:21:51] Page 0898, and are you looking at the third paragraph starting with:

5 "Les premiers examens [...]"?

6 A. [12:22:10] Yes.

7 Q. [12:22:14] Now, P-57, the independent member of the delegation, writes --

8 (Interpretation): "The first examinations were of the ATM room. The only access to

9 that room was through a door that had a metal grid and then through another door

10 that was on a jamb. It was aluminium and glass. Inside there were several objects,

11 such as a mat, some containers, and some sheets of paper printed in Arabic. The

12 ATM itself seemed to be undamaged. The various elements were seized."

13 Now, it's correct, isn't it, Mr Witness, that P-57 does not mention any smell of urine in

14 this report that he drafted in 2016?

15 A. [12:23:20] * Yes. He didn't mention that. Nevertheless, when we entered the

16 room, we all noted the same thing, and that is something that at a medical level I can

17 certify 100 percent. But you can ask him this question.

18 Q. [12:23:58] Did you review P-57's report before he signed it?

19 A. [12:24:06] Before I?

20 Q. [12:24:11] Did you review the contents of P-57's report before he signed it and

21 finalised it?

22 A. [12:24:26] This was a preliminary report, which actually -- I believe Mr Dutertre

23 then asked for a report with the examination of the Malian solidarity bank and the La

24 Maison hotel. So the drafters, if I recall correctly, P-57 drafted the report on the

25 examination of the BMS site. And I handled the part having to do with the hotel.

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1 * We then put the two reports together in response to the mission that was entrusted
2 to us, to the mission letter entrusted to us.

3 Q. [12:25:16] And why did you divide it in that manner?

4 A. [12:25:21] To share the work equally. I was leading a section that was quite
5 busy, and I was working on several situations at the same time. And we agreed that
6 we would share the task of drafting the report. And we each reviewed the part
7 written by the other one. We came to an agreement, and we prepared this report
8 having to do with the two sites. And this was done jointly. And, furthermore, this
9 was a preliminary report which I did not see.

10 Q. [12:26:17] When you reviewed the section on the BMS in the joint report, did
11 you provide any suggestions or corrections?

12 A. [12:26:27] There was one version approved by the two people, yes.

13 Q. [12:26:47] Was it your suggestion for it to include a reference to the smell of
14 urine?

15 A. [12:26:57] I can't tell you, Counsel, who said what, what corrections were made.
16 You'd have to look at the initial draft of the report, and then you would see what
17 changes were made. But the odour of urine, that is an objective finding from the
18 people who went inside the ATM room.

19 Q. [12:27:46] Would you agree that contemporaneous documentation is an
20 important safeguard in crime scene investigations?

21 A. [12:27:55] I have no specific comment. It depends on the value of the
22 documents and the number of errors it might contain. So that would be something
23 you would judge on a case-by-case basis.

24 Q. [12:28:26] Your joint report was finalised in 2017, four years after the mission.
25 Are you in a position to explain the delay?

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1 A. [12:28:49] Because at that time there were several situations that required us to
2 be present -- missions, expert reports, and in light of the nature -- well, with the little,
3 the few staff we had in the section, we had to set some priorities amongst the various
4 cases that had been given to us by the director. And it did take a lot of time, and I
5 regret that.

6 Q. [12:29:32] Now, after you finalised this 2017 joint report, is it correct you were
7 asked to do another report in 2017?

8 A. [12:29:49] Is it correct that we -- that another report was requested? Is that
9 what you're asking?

10 Sometimes the interpretation cuts out and I don't get some words. So that's why I'm
11 asking you to repeat your question several times.

12 Yes, there was another report. There were additional issues -- or rather, additional
13 questions asked by Mr Dutertre.

14 Q. [12:30:24] And this additional report was completed by you, P-57, and Mr B.
15 That's correct?

16 A. [12:30:34] Yes. That's correct.

17 Q. [12:30:39] What was Mr B's role in drafting this third report on the BMS and
18 Hotel La Maison?

19 PRESIDING JUDGE MINDUA: [12:30:58](Interpretation) Prosecutor.

20 MR ALLAFI: [12:31:00](Interpretation) Thank you, your Honour.

21 I'm objecting to the form of the way this question is put. A lot of questions have
22 been put on different reports. At least the number of the report should be given so
23 it's possible to follow and, furthermore, for the witness to follow and -- and the -- and
24 the Chamber as well to follow.

25 And we need to know what's being talked about. And with regards to the last report,

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1 which report is it exactly? And the witness has to be able to read it.

2 PRESIDING JUDGE MINDUA: [12:31:32](Interpretation) Yes, Ms Taylor. We need
3 precisions with regards to this document.

4 MS TAYLOR: [12:31:38] Thank you, Mr President. I do believe that the witness
5 understood because he said that he referred to it. He said, "Oui, c'est exact." So he
6 knows what I'm referring to. And the information I'm eliciting is not in the report.
7 Now, under the code of the decision ...

8 And, please, let me finish my sentence.

9 Under the decision on the conduct of the proceedings, it specifies we are to put
10 questions to the witness first, ask them to answer those questions on the basis of their
11 memory, before going to a document.

12 Now, that document will not elucidate the role of Mr B in drafting the report. Only
13 this witness can elucidate that. So rather than wasting our time and complicating
14 issues, we do believe we should be allowed to cross-examine and put questions to this
15 witness, given that the Prosecution has called him.

16 PRESIDING JUDGE MINDUA: [12:32:40](Interpretation) Yes. You're right,
17 Ms Taylor. So the question needs to be put to the witness and then refresh his
18 memory with the report. But here, we don't even know what report is being talked
19 about.

20 MS TAYLOR: [12:32:54]

21 Q. [12:32:56] Mr Witness, do you recall preparing a report concerning Hotel
22 Maison and the BMS with P-57 and Mr B?

23 A. [12:33:19] The answer is yes.

24 Q. [12:33:20] And what was the role of Mr B in the preparation of this report?

25 A. [12:33:26] Mr B was mentioned in the mission letter addressed by Mr Gilles

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1 Dutertre. So he was also associated with the drafting of this report. I don't
2 remember exactly what the contribution of P-57 and mine was respectively, but the
3 different versions of this report were systematically reviewed with annotations,
4 which were considered relevant by each of the persons designated by the mission
5 letter of Mr Gilles Dutertre. Now, with -- being able to tell you what exactly the
6 nature of the contribution was almost eight years later, I can't know now exactly what
7 Mr B did. But he participated in the drafting of the report. He participated in the
8 discussions. He gave his point of view. I think, furthermore, with the signature, it's
9 even more difficult because at that time, he was in a mission in the DRC.

10 Q. [12:35:01] Now, Mr Witness, the report is at OTP tab 22, if you wish to look at it
11 to refresh your memory.

12 A. [12:35:16] Yes. I've now got it in front of me, and I've answered you. And
13 that's where I saw that Mr B had signed putting that he was in Bunia.

14 Q. [12:35:30] So, Mr Witness, why was Mr B involved in this report and not the
15 earlier reports?

16 A. [12:35:45] Well, I think this is a question which should be put to the senior trial
17 lawyer who gave us the mission, probably because he was present. But when it
18 comes to the production of evidence, this wasn't something that was within the
19 framework of his investigative field. What was done was essentially forensic,
20 scientific.

21 Otherwise, the question needs to be put to Mr Gilles Dutertre. He appointed the
22 three of us because the perspective of each was relevant it would seem.

23 Q. [12:36:28] Now, if we can turn to OTP tab 23. That's MLI-OTP-0050-0437. If it
24 could be shown on evidence 1.

25 Mr Witness, do you have it in front of you? That's OTP tab 23.

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- 1 A. [12:37:22] Yes. Yes, I do.
- 2 Q. [12:37:26] So the date of the instruction letter is 14 November 2017. That's
- 3 correct?
- 4 A. [12:37:33] Yes.
- 5 Q. [12:37:41] If we could turn to Defence tab 50. This is MLI-OTP-0050-0431.
- 6 A. [12:37:59] Which Defence tab?
- 7 Q. [12:38:00] Tab 50.
- 8 A. [12:38:17] Yes. I've got it.
- 9 Q. [12:38:18] Do you have this note in front of you, Mr Witness, as well in hard
- 10 copy?
- 11 A. [12:38:25] Yes, I do.
- 12 Q. [12:38:29] Do you recall having a meeting on 15 November with Mr Dutertre
- 13 and the investigation's team leader to discuss the creation of 3D images of sites in
- 14 Timbuktu?
- 15 A. [12:38:45] The date is the 14th, not the 15th. But indeed, with regards to my
- 16 memory of this meeting, I remember having discussed carrying out this imagery,
- 17 images, for Timbuktu.
- 18 Q. [12:39:12] And was it decided to conduct another mission to Timbuktu to collect
- 19 information?
- 20 A. [12:39:18] It's the first time that I see this note. So I'm taking the time to read it.
- 21 Yes. What -- what's the question?
- 22 Q. [12:39:56] My question was: Was it discussed as to whether it was necessary to
- 23 conduct another mission to collect information or photographs regarding these sites?
- 24 A. [12:40:08] Yes.
- 25 Q. [12:40:21] And was that because the information you had was not sufficient?

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1 A. [12:40:37] So I think this is a question to be put to the joint team leadership. If
2 they mentioned carrying out this mission in order to complete the imagery, this is
3 something that they would have needed. That's it.

4 Q. [12:40:59] Do you recall whether Xavier Laroche conducted a mission to
5 Timbuktu to photograph sites in June 2018?

6 A. [12:41:19] I can't reply to that with certainty. I would -- I would say yes, but I
7 can't remember all the -- I can't remember all the missions that were carried out
8 during the year 2018.

9 Q. [12:41:39] If we can refer to Defence tab 46. It's MLI-OTP-0063-0037.

10 A. [12:42:02] (Speaks English) 46? 45?

11 Q. [12:42:05] 46.

12 A. [12:42:06] (Interpretation) Yes, but I don't have it.

13 Q. [12:42:12] If it could be brought up on evidence 1. And if we could turn to
14 page 0038 so we can see the table of contents.

15 Now, Mr Witness, does this refresh your memory? Do you recall Xavier Laroche
16 traveling to Timbuktu and taking photographs of various sites in Timbuktu in
17 June 2018?

18 A. [12:43:01] I don't remember that precisely. I don't know -- I'm not sure that I
19 saw this report. But I don't know when the report is dated.

20 Q. [12:43:27] It's dated September 2018. My question is: As his supervisor, did
21 you play any role in discussing this mission with Xavier Laroche?

22 THE INTERPRETER: [12:43:42] Overlapping speakers.

23 THE WITNESS: [12:43:44](Interpretation) Yes. That's quite likely.

24 MS TAYLOR: [12:43:49]

25 Q. [12:43:51] Your joint report was finalised on 20 July 2018. That's correct?

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1 A. [12:43:59] The joint report?

2 Q. [12:44:08] The report you did with P-57 and Mr B concerning the BMS and Hotel
3 La Maison.

4 A. [12:45:01] I don't have the exact date.

5 Q. [12:45:05] Well, I do believe it's in the chain of custody. It's on the exhibit list as
6 well, even if the date wasn't provided in the report.

7 But does it sound correct that you finalised it in July 2018?

8 A. [12:45:27] Yes, it's possible. But you have the possibility to check it; whereas I
9 don't because I don't have any access to the archives.

10 Q. [12:45:49] Did you have any discussions with Xavier Laroche concerning the
11 dimensions of the BMS or the Hotel La Maison before you finalised your report?

12 A. [12:46:01] No. To the best of my knowledge, not.

13 Q. [12:46:05] Now, if I could turn to OTP tab 22. It's MLI-OTP-0060-1920, turning
14 specifically to page 1978.

15 A. [12:46:34] Could you give the page number again, please.

16 Q. [12:46:37] It's page 1978.

17 A. [12:47:01] Yes.

18 Q. [12:47:02] And it states:

19 (Interpretation) "On the telephone instruction of Mr Gilles Dutertre, senior trial
20 lawyer (24 May 2018), we clarify that the documents and diverse items which were in
21 the seal ERN MLI-OTP-0005-0025 were seized in the chest of drawers which was in
22 the room which was the subject of the above photograph."

23 (Speaks English) Now, Mr Witness, why was this not included in your earlier report
24 on the BMS?

25 A. [12:48:16] I don't understand the question. Why?

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1 Q. [12:48:18] Now, Mr Witness, according to your report, your joint report, it says
2 that you -- that telephone instructions were given by Mr Dutertre asking that you
3 specify that these objects were seized from a specific room and from the piece of
4 drawers in this photograph.

5 A. [12:48:44] Yes.

6 Q. [12:48:45] And this is in the report that you did with Mr P-57 and Mr B.

7 A. [12:48:58] Yes.

8 Q. [12:48:58] My question is: Why were you being asked by the senior trial
9 attorney to include this detail?

10 PRESIDING JUDGE MINDUA: [12:49:10](Interpretation) Yes, Prosecutor.

11 MR GARCIA: [12:49:12](Interpretation) Just so that there's no confusion with regard
12 to the instructions, the Defence lawyer is speaking about instructions that would have
13 been given by the senior trial lawyer. It has to be clear. These aren't instructions in
14 the way that the Defence counsel is saying. It's just about stating precisely the place
15 or location.

16 PRESIDING JUDGE MINDUA: [12:49:38](Interpretation) Yes, Prosecutor. But on
17 the document we can read "telephone instructions", so (Overlapping speakers)

18 MR DUTERTRE: [12:49:49](Interpretation) Yes, I'm the person concerned and the
19 question that was put was to where. There was no indication of anything in
20 particular. There was -- it wasn't leading. It wasn't directing. The idea was to
21 find out where the photographs were taken.

22 PRESIDING JUDGE MINDUA: [12:50:09](Interpretation) Thank you.

23 Ms Taylor.

24 MS TAYLOR: [12:50:11] Mr President, that's highly inappropriate. If Mr Dutertre
25 wants to testify, he has to sit on the stand. He can't testify from the Prosecution

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1 bench, and he certainly can't do so in front of this witness who I'm crossing.

2 So that's highly prejudicial and highly inappropriate.

3 Now, I'm reading. There was a text. It says "*sur instructions téléphoniques*". I
4 should be entitled to put questions to this witness and not to Mr Dutertre, unless
5 Mr Dutertre wants to go under oath, and we'll be quite happy to cross-examine him.

6 PRESIDING JUDGE MINDUA: [12:50:50](Interpretation) Please go ahead,
7 Ms Taylor. But I did state that on the document we see the word "on the telephone
8 instructions". So the Chamber is following. Please go ahead.

9 MS TAYLOR: [12:51:04]

10 Q. [12:51:04] Mr Witness, were these instructions communicated to you?

11 A. [12:51:18] Once again, the intention of ...

12 The interpreter -- well, you were cut off. So you have to ...

13 THE WITNESS: [12:51:23](Interpretation) Could you repeat the interpretation
14 without there being any missing words. So that's a message for the interpreter.

15 MS TAYLOR: [12:51:39]

16 Q. [12:51:40] Mr Witness, you have the document in front of you. It refers to
17 telephone instructions for Mr Gilles Dutertre, which you have in front of you. Were
18 these instructions communicated to you?

19 A. [12:51:59] Mr Gilles Dutertre, by telephone, he clarified that it was necessary to
20 mention the numbers of the sealed bags and the place where these sealed bags -- or
21 where these items were seized. And that was in the report. What we didn't have
22 was the ERN numbers.

23 Q. [12:52:37] So is it your position that the instruction only concerned ERN
24 numbers?

25 A. [12:52:46] Counsel, if you refer to the report. I can't guess what was thought at

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1 the time or say what the objective of the phone call was, the advice given.

2 Everything is true in the paragraph. I don't see how it can be criticised.

3 Q. [12:53:26] And if everything in this paragraph is true, why did you not include it
4 in earlier reports?

5 A. [12:53:40] We were speaking about the ERNs.

6 Q. [12:53:43] I'd like to turn to Defence tab 47. It's MLI-OTP-0069-8559.

7 I don't think it's been printed for the witness. But if it can be shown on evidence 1.

8 MR GARCIA: [12:54:08](Interpretation) Your Honour.

9 PRESIDING JUDGE MINDUA: [12:54:10](Interpretation) Prosecutor.

10 MR GARCIA: [12:54:12](Interpretation) Just a note for the case record. It's quite
11 important that a question was put to the witness. Now, with regards to the last
12 question, the answer of the witness was a question from the witness. So I think
13 there's no ambiguity afterwards at the end with regards to the submissions, it has to
14 be clarified.

15 And furthermore, I would note that the question of the Defence on page 71, lines 11
16 and 12, ignores the answer of the witness that was given at page 71, lines 6 to 10,
17 where he speaks about the ERNs.

18 So I just don't want there to be any confusion about this.

19 THE WITNESS: [12:55:15](Interpretation) If I may make a comment, your Honour.

20 The question of Ms Taylor was why the ERN numbers did not feature in the report.

21 But the photographs that we put in the annex did have an ERN number and we didn't
22 enumerate them in the report. This was a reconnaissance report. We didn't put
23 them all in the report. Normally they're under the photograph. But we have to
24 check if this was indeed the case. I have nothing to add to that.

25 PRESIDING JUDGE MINDUA: [12:55:44](Interpretation) Thank you very much for

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1 this clarification, Witness.

2 Ms Taylor.

3 MS TAYLOR:

4 Q. [12:55:49] Mr Witness, can you recall if, in your earlier reports, you had
5 mentioned finding the documents, these specific documents in the drawers?

6 A. [12:56:12] Obviously this is mentioned in the previous report, that documents
7 were seized. And afterwards, we had photographs of the evidence bags. And
8 there's the whole chain of custody which accompanies these documents which are
9 contained in these particular sealed evidence bags.

10 Q. [12:56:36] I'd like to turn to Defence tab 47. That's MLI-OTP-0069-8559.

11 A. [12:56:51] No, I don't have it.

12 Q. [12:56:52] It's going to be shown on evidence 1.

13 It shouldn't be shown to the public.

14 Mr Witness, can you see the name of the person who prepared this report?

15 A. [12:57:19] Yes.

16 Q. [12:57:22] If -- if we could turn to page 8561, if that could be shown on evidence

17 1. It states:

18 "On 1 August 2018 I was requested by Gilles Dutertre, Senior Trial Lawyer within the
19 Office of the Prosecutor, in consultation with Eric Baccard, Head of Forensic Science
20 Section, to process evidence that was contained in a sealed bag linked to the
21 Pre-Registration Form."

22 Do you recall that?

23 A. [12:58:36] Yes.

24 Q. [12:58:38] Why was this task given to a doctor?

25 A. [12:58:49] Because these were simple tasks that could be carried out by an

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1 administrative person. But taking into account the absence of volunteers, we were
2 the ones who were put in charge of this.

3 PRESIDING JUDGE MINDUA: [12:59:17](Interpretation) We've only got two
4 minutes before the end of this session. I'm starting to be concerned, Ms Taylor.
5 When do you intend to finish your cross-examination?

6 MS TAYLOR: [12:59:27] Mr President, I believe we can -- if we're allowed to perhaps
7 continue for another 15 to 20 minutes, we can finish. Or I can come back over the
8 break and it will be about 30 minutes.

9 PRESIDING JUDGE MINDUA: [12:59:48](Interpretation) I've heard that you've
10 already used four hours and six minutes.
11 So, Court Officer.

12 THE WITNESS: [13:00:00](Interpretation) Excuse me.

13 MS TAYLOR: [13:02:00] So we have 24 left.

14 THE INTERPRETER: [13:00:04] Overlapping speakers.

15 THE WITNESS: [13:00:07](Interpretation) Can we go into private session?

16 PRESIDING JUDGE MINDUA: [13:00:10](Interpretation) Yes.

17 Court officer, please take us into private session.

18 (Private session at 1.00 p.m.)

19 THE COURT OFFICER: [13:00:22] We're in private session, Mr President.

20 PRESIDING JUDGE MINDUA: [13:00:24](Interpretation) Thank you, courtroom
21 officer.

22 Yes, Mr Witness. You wanted to say something.

23 THE WITNESS: [13:00:29](Interpretation) Yes, your Honour. Yesterday I
24 mentioned [REDACTED] I must admit that I'm becoming
25 exhausted by these two days, and I would like not to extend this afternoon. [REDACTED]

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1 [REDACTED] and you can
2 decide whether to summon me later. But it's up to you. Otherwise, we can
3 continue for another 10 minutes, but I don't think I can come back this afternoon.
4 PRESIDING JUDGE MINDUA: [13:01:11](Interpretation) Ms Taylor, you see why I
5 was beginning to worry?
6 So the witness has told us about his individual circumstances. He cannot come back
7 this afternoon. I could go along with another 10 minutes and then that will be that.
8 Are we in agreement?
9 MS TAYLOR: [13:01:31] I'm not sure if we're being given an option, Mr President.
10 We do have 24 minutes left. I will do my best to finish very quickly, and I believe to
11 do so it would be helpful not to have unnecessary interruptions. And we believe we
12 can conclude quite speedily, if we're allowed to do so. We certainly don't have any
13 wish to come back in the afternoon.
14 PRESIDING JUDGE MINDUA: [13:01:56](Interpretation) Very well. Very well. I
15 believe everyone has been warned. You try, and the OTP will try, and we will finish
16 in 10 minutes. Go ahead.
17 Open session, please, courtroom officer.
18 (Open session at 1.02 p.m.)
19 THE COURT OFFICER: [13:02:19] We're back in open session, Mr President.
20 PRESIDING JUDGE MINDUA: [13:02:22](Interpretation) Thank you, courtroom
21 officer.
22 Ms Taylor.
23 MS TAYLOR: [13:02:25]
24 Q. [13:02:27] If I could turn to OTP tab 25. That's MLI-OTP-0056-0026. Turning
25 specifically to page 0034.

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- 1 A. [13:02:47] Which tab?
- 2 Q. [13:02:48] Tab 25.
- 3 A. [13:03:02] Yes.
- 4 Q. [13:03:04] Turning to page 0034.
- 5 A. [13:03:17] Yes.
- 6 Q. [13:03:19] Now, Mr Witness, if we look at row 27, we see reference to evidence
- 7 bags. Now, when you collected the evidence in the Hotel La Maison --
- 8 A. [13:03:38] Yes.
- 9 Q. [13:03:40] -- did you make an inventory of each item that was put in these bags?
- 10 A. [13:03:53] You've already asked me that question and I told you no, we were not
- 11 in a position to draw up an inventory because Serval forces were asking us to be
- 12 * quick. So we collected all the contents of the drawers and there was no inventory.
- 13 You have already asked this question.
- 14 Q. [13:04:15] Now, Mr Witness --
- 15 A. [13:04:20] You've already put that question to me.
- 16 Q. [13:04:23] -- if we look at rows 26 and 27, it refers to a bag with the reference of
- 17 BM00335769. Are you in a position to explain what the significance of the initials
- 18 "BM" are?
- 19 A. [13:04:43] There must be a photograph. I think that you should look at the
- 20 photograph. It likely corresponds to something written on the evidence bag. I
- 21 don't know where.
- 22 Q. [13:05:29] Were you the person who gave the bags these numbers, or was it
- 23 someone else?
- 24 A. [13:05:37] Which tab corresponds to the photograph of the bag?
- 25 Q. [13:05:42] Mr Witness, my question -- I'm not able to answer that in shorthand,

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1 but my question is simply about the reference number that was given to the evidence
2 bags.

3 Did you give these reference numbers, or was it someone else? We're looking at the
4 same document. That's OTP tab 25. And we're looking at page 34, which refers to
5 reference numbers.

6 A. [13:06:30] I've understood. I was not the one who gave that number. Could
7 someone tell me where the photograph is of the bag in question because that may
8 match something that was written on the evidence bag.

9 Q. [13:06:54] Mr Witness, we'll look for that. But in the time being, I'll ask you
10 some other questions while my colleague looks for it.

11 Before we had a question about chain of custody, and we've located the chain of
12 custody and we can play it or show it on evidence 2, of those reports concerning the
13 attack in Timbuktu. So if we can show it on evidence 2.

14 Mr Witness, can you see this? Can you see that in the chain of custody it says, 30
15 October 2013 from UNESCO to Eric Baccard? This is corresponding to the ERN of
16 MLI-OTP --

17 A. [13:07:57] Yes.

18 * THE WITNESS: [13:08:01](Interpretation) Yes. I didn't remember that report, but,
19 well, I think that...

20 MS TAYLOR: [13:08:14] I'm just --

21 THE INTERPRETER: [13:08:15] Overlapping.

22 MS TAYLOR: [13:08:20]

23 Q. [13:08:20] Mr Witness, we have to avoid having overlapping speakers. And I
24 need to read out the ERN for the record.

25 It refers to MLI-OTP-0007-0211. And we can show the chain of custody of the other

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1 report, again on evidence 2. This is ERN MLI-OTP-0007-0215. The chain of custody
2 is 30 October 2013 from UNESCO to Eric Baccard.

3 Mr Witness, can you recall receiving these reports concerning attacks on sites in
4 Timbuktu from UNESCO in October 2013?

5 A. [13:09:39] I don't remember. It is possible. I think that the chain of custody
6 must take the form of a document that was signed.

7 Q. [13:09:56] Do you recall whether you brought the contents of these reports to the
8 attention of Xavier Laroche before he conducted his mission in Timbuktu in 2014?

9 A. [13:10:07] I don't remember, no. But it doesn't mean that that wasn't the case.

10 Q. [13:10:28] As chief of forensic science unit, did the Mali investigations team ever
11 discuss with you issues concerning the medical or psychological condition of
12 individuals being interviewed by the Prosecution?

13 A. [13:10:46] (No interpretation)

14 THE INTERPRETER: [13:11:06] Inaudible.

15 THE WITNESS: [13:11:09](Interpretation) -- image. And I'm afraid the sound cut
16 out. I didn't hear the interpretation. There's no more image.

17 MS TAYLOR: [13:11:17] I'll repeat my question.

18 Q. [13:11:18] As chief of the forensic science unit, did the Mali investigations team
19 ever discuss with you issues concerning the medical or psychological condition of
20 individuals being interviewed by the Prosecution?

21 A. [13:11:45] * Not directly, I think. Perhaps it was touched upon, but informally,
22 since there was a specialised unit within the Investigation Division, the GCU, Gender
23 and Children Unit, that was specifically in charge of such issues.

24 MS TAYLOR:

25 Q. [13:12:16] Were you ever informed, either officially or informally, of medical

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1 and psychological concerns expressed by Mr Al Hassan during the course of
2 Prosecution interviews in 2017 and 2018?

3 A. [13:12:50] Of Mr Al Hassan, you mean the charged person?

4 Q. [13:12:55] Yes, Mr Witness.

5 A. [13:12:58] No. The answer is no.

6 Q. [13:13:07] This is my final question. It's going back to a document you asked to
7 see, Mr Witness. If you could turn to OTP tab 52. It's MLI-OTP-0055-0055.

8 A. [13:13:49] Yes.

9 Q. [13:13:51] And we seem to have a larger bag with other bags in them. And we
10 have references to numbers, so if you can see the (Overlapping speakers)

11 THE INTERPRETER: [13:14:14] Inaudible.

12 THE WITNESS: [13:14:15](Interpretation) -- the response to your earlier question.

13 MS TAYLOR:

14 Q. [13:14:23] I don't believe we heard your answer. I heard "inaudible".

15 A. [13:14:29] I was saying, with that photograph, you have your answer to your
16 earlier question. BM and the series of numbers, that is something that is printed on
17 this particular bag. It's actually a number printed by the manufacturer. These are
18 breathable bags that allow moisture to get out of the bag, and the manufacturer
19 prepare them with a bar code and a serial number, which is unique, I believe.

20 MS TAYLOR: [13:15:16] Thank you, Mr Witness. I don't have any further
21 questions.

22 PRESIDING JUDGE MINDUA: [13:15:19](Interpretation) Thank you very much.
23 Thank you very much, Ms Taylor, for your cross-examination.

24 Now, I would imagine that there are no additional questions from the OTP.

25 Mr Prosecutor.

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1 MR ALLAFI: [13:15:38](Interpretation) Yes, I can confirm, no further questions from
2 us. Thank you.

3 PRESIDING JUDGE MINDUA: [13:15:40](Interpretation) Thank you very much,
4 Mr Prosecutor.

5 So, Mr Witness, ultimately we have come to the end of your testimony. I am
6 particularly pleased that we do not have to call you back in the future.

7 So on behalf of the Chamber, I would like to, once again, thank you very sincerely for
8 assisting us by answering very clearly and specifically, and with a great deal of
9 goodwill, given your specific personal situation. Thank you for answering all the
10 questions that were put to you. Your testimony has now come to an end and I thank
11 you once again.

12 (The witness exits the video-link room)

13 PRESIDING JUDGE MINDUA: [13:16:57](Interpretation) Court officer.

14 THE COURT OFFICER: [13:17:06] Your Honours, this may indeed take some time to
15 resolve and it's unclear how long it will take. Thank you.

16 PRESIDING JUDGE MINDUA: [13:17:14](Interpretation) Yes, indeed. Quite so. I
17 was just thanking the witness. I believe he has understood that his testimony has
18 come to an end.

19 We shall now conclude. Oh, yes, yes, courtroom officer.

20 THE COURT OFFICER: [13:17:33] We do have the two screenshots that were
21 displayed by the Defence that would need to be assigned REG numbers. With your
22 leave, I will read them out at this stage. MLI-OTP-0007-0211 will be assigned
23 reference number MLI-REG-0001-020 -- 0209, whereas MLI-OTP-0007-0215 will be
24 assigned a reference number MLI-REG-0001-0210. Thank you.

25 PRESIDING JUDGE MINDUA: [13:18:08](Interpretation) Thank you very much.

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1 That is duly noted for the purposes of the transcript.

2 As I was saying, we shall now adjourn. But before, I would like to once again thank
3 the parties and the participants, the stenographers and interpreters, the security
4 officers, and our public. We have finished for today.

5 And tomorrow, I now look to the OTP.

6 We have our next witness at what time?

7 MR DUTERTRE: [13:18:44](Interpretation) I believe at the usual time, 9.30, I believe,
8 going by the usual schedule of the Chamber. Witness P-603.

9 PRESIDING JUDGE MINDUA: [13:18:59](Interpretation) Yes. Yes. I was just
10 waiting for a moment because I could see the courtroom officer moving.

11 So tomorrow, 9.30, we have P-0603. That is indeed the case.

12 We shall now adjourn. The hearing is now adjourned.

13 THE COURT USHER: All rise.

14 (The hearing ends in open session at 1.19 p.m.)

15 CORRECTIONS REPORT

16 The following corrections, marked with an asterisk (*) and not included in the
17 audio-visual recording of the hearing, are brought into the transcript

18 Page 8 line 11-13:

19 "two dates of the two photographs you mentioned. I think that the Court --

20 THE INTERPRETER: [9:51:49] Inaudible.

21 THE WITNESS: [9:51:52](Interpretation) -- could answer that question."

22 is corrected to:

23 "two dates of the photographs that you have shown. So, by my faith, I think that the
24 Court and the parties can answer that question."

25 Page 13 line 20-23:

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1 "MR ALLAFI: [10:09:22](Interpretation) Your Honour, thank you. Could we show him
2 the picture, but also give him the time to read this document and view this document
3 in its entirety; at least the passage where there's the information on the sealed bag."
4 is corrected to:

5 "MR ALLAFI: [10:09:22](Interpretation) Your Honour, thank you. Could we enlarge
6 the picture for him, but also give him the time to read this document in its entirety; at
7 least the passage where there's information on the sealed documentation. Thank you."
8 Page 16 line 24 - Page 17 line 2:

9 "A. [10:17:02] Yes, he was there. You know, when you have a mission, people get an
10 evidentiary item. There's a log with the presence -- there isn't a log of people's
11 different entries and exits. My former colleague was present and, indeed, we
12 provided him with a with the items that were seized."

13 is corrected to:

14 "A. [10:17:02] Yes, he was certainly on duty... You have to know how a mission works:
15 people enter and exit a room, and it's not a crime scene, where a log is kept of who is
16 present and the entrance and exit times of the various participants. My colleague...
17 My ex-colleague was present, and, indeed, we gave him the documents that were
18 seized. "

19 Page 18 line 5-7:

20 "A. [10:20:07] I can see the item that you refer to and the furniture. I don't think that
21 there was a lot of furniture. There was only one piece of furniture which was still
22 present in the hotel. I was next to where P-57 was, and I remember it very well"

23 is corrected to:

24 "A. [10:20:07] I see which room you're referring to and which piece of furniture,
25 because there wasn't much furniture, I think it was the only piece of furniture left in

1 the hotel. P-0057 and I were next to each other. I remember very well,"

2 Page 22 line 16-19:

3 "A. [10:33:32] Your question is to be used to establish the time at which and the date
4 on which the photograph was taken. These dates and times represent the last time
5 that the image was manipulated, so perhaps you should ask my colleague who is in
6 charge of imaging and the like."

7 is corrected to:

8 "A. [10:33:32] Your question is based on using the metadata to determine the date on
9 which the photographs were taken. Metadata is data that does not necessarily reflect
10 the date, but the last manipulation, and that's a question to ask my former cyber
11 colleagues in particular. When pictures have been transferred, the metadata shows
12 the last modification. "

13 Page 22 line 21-22:

14 "the metadata, which are not available to me. So that is my answer to your question.
15 You are in a position to see that there are photographs in the drawer."

16 is corrected to:

17 "the metadata, which are not available to me. With regard to your question, you are in
18 a position to see that there are photographs in the drawer. "

19 Page 24 line 24 - Page 25 line 1:

20 " Once again, we are looking at dates. An explanation has been given. The counsel
21 should simply put her question and ask the witness what time they went, if that's the
22 question. But instead, once again, we are focusing on these dates. "

23 is corrected to:

24 "The Defence states that it is simply about knowing the time; we are coming back to
25 the date again. The witness has already spoken about the date, we already have that

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1 information. So, if it is about the time in the morning, he should be asked that
2 question, knowing what he has said already, if he remembers what time in the
3 morning they went, if that is really the question. We're coming back to the date
4 again."

5 Page 27 line 23-24:

6 "MR ALLAFI: [10:48:11](Interpretation) We did not print out the 500 photographs for
7 the witness."

8 is corrected to:

9 "MR. ALLAFI: [10:48:11] Yes, indeed. I'm sorry... we didn't print all 500 photos for the
10 witness. We printed a few. And this is not one of them. The witness is right. Thank
11 you."

12 Page 28 line 16:

13 "A. [10:50:06] I can't answer that question. The items of evidence in the sealed bag,"
14 is corrected to:

15 "A. [10:50:06] I can't answer that question. You have the items of evidence that were
16 contained in the sealed bag."

17 Page 29 line 12:

18 "A. [10:52:59] No. I remember that this was a reconnaissance mission and we did"
19 is corrected to:

20 "A. No. I would remind you that it was a reconnaissance visit, and we did"

21 Page 30 line 18-25:

22 "MR GARCIA: [10:57:34](Interpretation) Just on the point of procedure, just to make
23 sure we're quite clear, he is being read out something he said in another trial about
24 other matters without any background or context. And then he's being asked to
25 explain whether that had an effect on his conduct in this trial. I think we need to be

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1 fair to the witness. If he's being asked a question about a transcript, about what he
2 said earlier elsewhere, it has to be -- there has to be some background. The witness
3 has to remember. This is a somewhat inappropriate way to deal with this witness"
4 is corrected to:

5 "MR GARCIA: [10:57:34](Interpretation) Mr President, just on the point of procedure,
6 just to make
7 sure we're quite clear, to be fair to the witness. He is being read out something he said
8 in another trial about other facts. We don't know the exact context in which he made
9 this statement to another Chamber. And then he's being asked to explain whether that
10 had an effect on his conduct in this case. So we need to be fair to the witness. If he's
11 being asked a question about a previous transcript (inaudible), the context must be
12 clear. Here it is plucked out of nowhere and the witness
13 has to remember, to answer. I find that, Your Honour, a somewhat inappropriate way
14 of dealing with this witness."

15 Page 37 line 1-6:

16 "A. [11:41:17] That's to say we took what was written, which -- which where
17 documents where there was handwriting on them. We left what was printed, like
18 forms, a laissez-passer, which had to be used by the Islamic police. But I'm not an
19 investigator. We left them because if not, we would have come back with kilos of
20 documents. But we checked that all those were blank virgin documents, as it were,
21 without handwriting on them. And they were printed documents."

22 is corrected to:

23 "A. [11:41:17] That's to say we took what was written, documents with handwriting
24 on them. We left what had been printed, such as laissez-passer forms to be used by
25 the Islamic police. But here I am getting ahead of myself, I am not an investigator.

1 We left them because if not, we would have come back with kilos of documents. But
2 we checked that all those documents had not been written on, that they contained
3 nothing in handwriting, and they were printed documents."

4 Page 40 line 18-19:

5 "don't remember having seen whether they were there or not. I -- my colleague and I,
6 well, we didn't see ... If there were other things, they didn't appear relevant."

7 is corrected to:

8 "don't remember having seen them. Which doesn't mean that they weren't there, just
9 that my colleague and I did not find it relevant to remove them."

10 Page 42 line 14-22:

11 "A. [11:56:12] No. On this specific point, this is a legal approach, but this didn't arise
12 in the discussions. What appeared in the discussion was a scientific approach: to
13 report -- carry out a report and to seize materials which were relevant, exonerating
14 and exculpatory. This is something that's legal. But at a scientific level, at a forensic
15 level, we correct (sic) evidence -- evidentiary items. And afterwards, it's seen whether
16 these evidentiary items should be interpolated as incriminating or exonerating. So it's
17 a scientific approach as -- it's a scientific approach as opposed to a legal approach.

18 That's different."

19 is corrected to:

20 "A. [11:56:12] No. This specific point, which is a legal approach, did not come up in
21 the discussions. What came up in the discussion was a scientific approach: to make
22 findings and possibly to seize relevant materials. Whether they are incriminating or
23 exculpatory is something that arises at a later stage. At the scientific level, experts in
24 criminology, forensic medicine or the forensic police collect evidence, and this
25 evidence is later construed as incriminating or exculpatory, but this is alien to the

1 scientific approach, it is something legal."

2 Page 47 line 7-10:

3 "MR ALLAFI: [12:12:40](Interpretation) I see on the cover page of this report that
4 there is a date, well, a partial date, a month and -- a month and a date, but not an
5 actual year. Perhaps we could determine what year it was."

6 is corrected to:

7 "MR ALLAFI: [12:12:40](Interpretation) I see on the cover page of this report the day
8 and month are specified but not the year. Please could you tell us exactly which year
9 it was and give the proof that it happened on that day, month and year. Thank you."

10 Page 49 line 21-22:

11 "MR ALLAFI: [12:20:58](Interpretation) Correction. French transcript, 2016 was
12 recorded as 2013 on the French transcript."

13 is corrected to:

14 "M. ALLAFI : [12:20:51] Just a correction Your Honour: in the French transcript the
15 year 2016 has been transcribed as 2013, in fact September 2013. I think that it's
16 September 2016."

17 Page 50 line 15-17:

18 "A. [12:23:20] Yes. He didn't mention that. All the same, when we got into that room,
19 everyone saw the -- or, rather, smelled the same thing, and everyone was 100 per cent
20 sure of it. But you could -- you should ask him the question."

21 is corrected to:

22 "A. [12:23:20] R. [12:23:28] Yes. He didn't mention that. Nevertheless, when we
23 entered the room, we all noted the same thing, and that is something that at a medical
24 level I can certify 100 percent. But you can ask him this question. "

25 Page 51 line 1-2:

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1 "We then put the two parts together in response to the mission that was entrusted to
2 us; namely, what was set out in the mission letter."

3 is corrected to:

4 "We then put the two reports together in response to the mission that was entrusted
5 to us, to the mission letter entrusted to us."

6 Page 64 line 12-13:

7 "quick. So we collected all the contents of the drawers and there was no inventory
8 drawn up."

9 is corrected to:

10 "quick. So we collected all the contents of the drawers and there was no inventory.

11 You have already asked this question."

12 Page 65 line 18-19:

13 "THE INTERPRETER: [13:08:00] Overlapping speakers.

14 THE WITNESS: [13:08:01](Interpretation) -- of this report, but --"

15 is corrected to:

16 "THE WITNESS: [13:08:01](Interpretation) Yes. I didn't remember that report, but,
17 well, I think that... "

18 Page 66 line 21-25:

19 "A. [13:11:45] Not directly, I think. Perhaps it was touched upon, but informally, since
20 there was a specialised unit within the investigations division, gender and --

21 THE INTERPRETER: [13:12:06] Inaudible.

22 THE WITNESS: [13:12:07](Interpretation) -- unit that was specifically in charge of
23 such issues."

24 is corrected to:

25 "A. [13:11:45] Not directly, I think. Perhaps it was touched upon, but informally, since

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- 1 there was a specialised unit within the Investigation Division, the GCU, Gender and
- 2 Children Unit, that was specifically in charge of such issues."