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Trial Hearing
MLI-OTP-P-0004

(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, 8 December 2021
10 (The hearing starts at 9.31 a.m.)
11 THE COURT USHER: [9:31:05] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA [9:31:22](Interpretation) Court is in session.
15 Good morning to all.
16 Madam Courtroom Officer, could you please call the case.
17 THE COURT OFFICER: [9:31:48](Interpretation) Good morning, Mr President,
18 your Honours.
19 Situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan Ag
20 Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
21 And we are in open session.
22 PRESIDING JUDGE MINDUA: [9:32:06](Interpretation) Thank you very much,
23 Madam Courtroom Officer.
24 As every morning, we shall start with the appearances, starting with the Office of the
25 Prosecutor.

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1 Mr Prosecutor.

2 MR DUTERTRE: [9:32:23](Interpretation) Good morning, Mr President. Good
3 morning, your Honours Good morning.

4 The Office of the Prosecutor is still represented this morning by Maître Marie-Jeanne
5 Sardachti, by Maître Lucio Garcia, and by myself, Gilles Dutertre. And I'd like to
6 welcome all in and around the courtroom.

7 PRESIDING JUDGE MINDUA: [9:32:40](Interpretation) Thank you very much, Mr
8 Prosecutor Dutertre.

9 I'm now turning to Defence.

10 Counsel

11 MS TAYLOR: [9:32:51] Good morning, Mr President. Good morning,
12 your Honours Good morning to everyone in the courtroom and around the
13 courtroom. Good morning, Mr Witness.

14 The Defence for Mr Al Hassan is represented today by Maître Mohamed Youssef and
15 myself, Melinda Taylor. Thank you.

16 PRESIDING JUDGE MINDUA [9:33:11](Interpretation) Than you very much, Ms
17 Taylor.

18 Now I'm turning to the Legal Representatives of Victims.

19 Maître.

20 MR LUVENGIKA [9:33:18](Interpretation) Good morning, Mr President. Good
21 morning, your Honours.

22 The victims are represented today at this hearing by Madam Anouk Kermiche and by
23 myself, Fidel Nsita Luvengika. And I'd like to make the most of this opportunity to
24 greet everyone in this courtroom. Thank you.

25 PRESIDING JUDGE MINDUA: [9:33:23](Interpretation) Thank you very much,

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1 Maître Nsita.

2 So this morning, we shall be continuing the testimony of witness - Prosecution

3 Witness P-0004.

4 So I'm turning to the witness now.

5 Good morning, Mr Witness. How are you this morning?

6 WITNESS: MLI-OTP-P-0004 (On former oath)

7 (The witness speaks French)

8 (The witness gives evidence via video link)

9 THE WITNESS: [9:33:49](Interpretation) Good morning. I'm well.

10 PRESIDING JUDGE MINDUA [9:33:51](Interpretation) Thank you very much

11 On behalf of the Chamber, I'd like to once again greet you and thank you for your

12 availability

13 THE WITNESS: [9:34:06](Interpretation) Thank you. Good morning.

14 PRESIDING JUDGE MINDUA [9:34:10](Interpretation) I'd like to remind you that

15 you are still under oath and that you should speak the truth, the whole truth, and

16 nothing but the truth.

17 THE WITNESS: [9:34:18](Interpretation) Yes.

18 PRESIDING JUDGE MINDUA [9:34:20](Interpretation) And, finally, I would like to

19 remind you of my practical advice with regard to addressing the Court. We shall be

20 continuing with the cross-examination on the part of the Defence.

21 So I shall now hand over, without further ado, to Ms Taylor.

22 Ms Taylor.

23 MS TAYLOR: [9:34:49] Thank you very much, Mr President.

24 QUESTIONED BY MS TAYLOR: [9:34:51](Continuing)

25 Q. [9:34:54] Good morning, Mr Witness.

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1 How are you this morning?

2 A. [9:34:57] I am well.

3 Q. [9:34:59] Good to hear.

4 Mr President, would it be possible to go into private session, briefly?

5 PRESIDING JUDGE MINDUA: [9:35:08](Interpretation) Certainly.

6 Madam Courtroom Officer, private session, please.

7 (Private session at 9.35 a.m.)

8 THE COURT OFFICER: [9:35:23](Interpretation) We are in private session,

9 Mr President, your Honours.

10 PRESIDING JUDGE MINDUA [9:35:26](Interpretation) Thank you

11 Ms Taylor.

12 MS TAYLOR: [9:35:29] Thank you very much.

13 Q. [9:35:31] Now, Mr Witness, yesterday, at transcript 166, English, page 105, lines
14 5 to 13, you testified as follows "And it's correct, isn't it, that the young man went to
15 the police to complain about the fact that the parents were opposed?

16 Answer: "Yes, but in actual fact, I heard that the young man was a friend of Adama,
17 and he suggested that he go there [...] to make this matter public and to find a
18 solution.

19 Question: "[...] how did you hear that?

20 Answer

21 A. [9:36:28](Interpretation [REDACTED] a friend from the neighbourhood
22 who told me about this. *He lives [REDACTED]

23 Q. [9:36:41] Thank you for that clarification.

24 Since we're in private session, are you able to give us the name of that - that
25 neighbour or friend?

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- 1 A. [9:36:58] [REDACTED]
- 2 MS TAYLOR: [9:37:06] Thank you. I believe we can go into open session now.
- 3 PRESIDING JUDGE MINDUA: [9:37:10](Interpretation) Madam Courtroom Officer,
- 4 open session, please.
- 5 (Open session at 9.37 a.m.)
- 6 THE COURT OFFICER: [9:37:29](Interpretation) We are in open session, Mr
- 7 President, your Honour.
- 8 PRESIDING JUDGE MINDUA: [9:37:31](Interpretation) Thank you.
- 9 Ms Taylor.
- 10 MS TAYLOR [9:37:34]
- 11 Q. [9:37:35] Now, speaking of Adama, it's correct that he had many friends with
- 12 the local population, isn't it?
- 13 A. [9:37:43] Yes.
- 14 Q. [9:37:46] And I'd like to play a video It's OTP tab 94 It's MLI-OTP-0018-0148.
- 15 And we'll be playing it without sound, and we'll be going to timestamp 2:46. We're
- 16 playing it on evidence 2.
- 17 (Viewing of the video excerpt)
- 18 MS TAYLOR: [9:39:23] Now, for the record, we're at 2:46:09.
- 19 Q. [9:39:32] Now, Mr Witness, are you in a position to say who this individual is,
- 20 the one with the white turban?
- 21 A. [9:39:43] I do not know him.
- 22 Q. [9:39:47] Do you recall the Prosecution showing you this video in 2015?
- 23 A. [9:39:53] I do recall.
- 24 Q. [9:40:03] And it's correct, isn't it, that during that interview as well you told the
- 25 Prosecution that you didn't know who this person was?

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1 A. [9:40:10] Yes.

2 Q. [9:40:17] And it's correct that you said that you didn't know what his role was
3 either.

4 A. [9:40:24] I do not know.

5 Q. [9:40:32] And it's correct that you said that you saw him at the Islamic police a
6 lot, that he was always with the police?

7 A. [9:40:51] Yes.

8 Q. [9:40:53] Now, transcript 164, page 117, you were asked about provocations.

9 And you said:

10 "[...] I can give you the example of the first month of Carême, which I understand to
11 be Ramadan, "when they asked those who were roasting meat not to do that during
12 the day and to wait for the afternoon.

13 And I'm going to read to you the testimony from another Prosecution witness.

14 That's P-641 He testified at transcript 138, pages 68 to 69 - this is lines 6 to 24 - and
15 he's speaking about [REDACTED]

16 "Yes, the day it happened I was away. And when I came, I was told, and I

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24 This is a question from the Prosecution:

25 "Who said there [REDACTED]

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1 Answer: "Ahmed Al Faqi.

2 Question from the Prosecution:

3 "And, Mr Witness, why did you go to first see Al Hassan? You said:

4 (Interpretation) 'I left to find Al Hassan [...] I explained to him that I'd been asked [REDACTED]

5 [REDACTED]

6 Answer: "Yes. As I went there, I thought they were all working together, but he
7 told me there [are] different divisions Each person have their task. He could do
8 nothing about it. Other people had taken the decision, and that's how it went. He
9 couldn't go and see the people who had taken the decision.

10 Now, Mr Witness, this Prosecution witness, P-641, testified that Ahmed Al Faqi was
11 the one who made the decision concerning [REDACTED] and it
12 was his division in charge of that

13 Now, Mr Witness, if you don't know the answer, that's fine, but were you aware that
14 it was Al Faqi and his division that were responsible for policing this particular
15 provocation?

16 A. [9:44:27] I do not know.

17 Q. [9:44:29] Is it correct

18 PRESIDING JUDGE MINDUA [9:44:32](Interpretation) Ms Taylor, are we still
19 saying in private session?

20 MS TAYLOR: [9:44:36] I believe we're in open session.

21 THE COURT OFFICER: [9:44:41](Interpretation) We are in open session,
22 Mr President.

23 PRESIDING JUDGE MINDUA: [9:44:44](Interpretation) I do apologise. Thank you.
24 Let's carry on.

25 MS TAYLOR: [9:44:48]

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1 Q. [9:44:49] Mr Witness, is it correct that in 2015, you told the Prosecution that you
2 were only aware of three sections: Preachers, the Islamic police, and fighters or
3 jihadists?

4 MR DUTERTRE: [9:45:13](Interpretation) Mr President.

5 PRESIDING JUDGE MINDUA: [9:45:15](Interpretation) Yes, Mr Prosecutor.

6 MR DUTERTRE: [9:45:17](Interpretation) Could Ms Taylor provide us with the
7 reference. That would be very practical. And the same with the video. I didn't
8 have - we weren't given the reference, and I spent 10 minutes trying to find it.

9 PRESIDING JUDGE MINDUA: [9:45:29](Interpretation) Ms Taylor.

10 MS TAYLOR [9:45:31] Thank you, Mr President I'm happy to give the reference
11 for both. But, normally, before going to someone's statement, we do need to ask
12 them first So, again, the Prosecution's putting the cart before the horse in asking for
13 statement references before the witness has actually answered my question.

14 Now, the reference for the video was MLI-OTP-0018-0148 It was OTP tab 94 It
15 was on the Prosecution's own list of evidence.

16 Now, the other reference is actually the Prosecution's, again, list of reference Tab 6,
17 MLI-OTP-0025-0127, at 0140, paragraph 59. And that's the witness's second
18 statement.

19 And with your leave, Mr President, if I may, continuing...?

20 PRESIDING JUDGE MINDUA: [9:46:39](Interpretation) Yes. Please go ahead,
21 Ms Taylor.

22 MS TAYLOR: [9:46:46]

23 Q. [9:46:47] Now, Mr Witness, I do believe it might be necessary for me to repeat
24 my question as there's been quite a lot of interchange in the interim.

25 Now, Mr Witness, it's correct, isn't it, that in 2015, you told the Prosecution that you

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1 were only aware of three sections: Preachers, the Islamic police, and fighters or
2 jihadists?

3 PRESIDING JUDGE MINDUA: [9:47:15](Interpretation) Mr Prosecutor.

4 THE INTERPRETER: [9:47:18] Overlapping speakers.

5 THE WITNESS: [9:47:20](Interpretation) Yes, without saying that it was watertight.

6 PRESIDING JUDGE MINDUA: [9:47:26](No interpretation)(Overlapping speakers)

7 *Oui, Monsieur le Procureur.*

8 MR DUTERTRE: [9:47:27](Interpretation) Yes, Mr President. Maybe we could cut
9 off the feed to the witness for a second.

10 PRESIDING JUDGE MINDUA [9:47:32](Interpretation) Madam Courtroom Officer,
11 could we please cut off the feed to the witness.

12 THE COURT OFFICER: [9:47:41](Interpretation) It has been done, Mr President

13 PRESIDING JUDGE MINDUA: [9:47:43](Interpretation) Thank you.

14 Mr Prosecutor.

15 MR DUTERTRE: [9:47:49](Interpretation) Yes. Thank you, Mr President.

16 I think that the nuances and distinctions are important here. There are two things
17 that I would like to underscore here on that subject, the first being that in the
18 statement 0025-0127, page 0140, paragraph 59, if we read specifically, as
19 my learned friend just did, the witness says that he is not only aware of three groups,
20 he speaks of three groups.

21 So the notion that he is only aware of three groups is not contained in this statement.

22 He's talking about three groups in general. That doesn't exclude that in his mind
23 there might be others.

24 And, secondly, we're talking about groups, not institutions or organs. So the words
25 have a meaning here, and one should not be misleading with the witness by putting

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1 words in his mouth. Word-for-word here is important.

2 PRESIDING JUDGE MINDUA: [9:49:10](Interpretation) Thank you very much,

3 Mr Prosecutor.

4 Ms Taylor, so here we are once again up against the precision of quotations of what

5 the witness said

6 MS TAYLOR: [9:49:26] Mr President, with the greatest respect, I did not quote from

7 this statement. I am following the direct instructions of this Chamber to first ask

8 questions to the witness based on what he recalls and what he knows. And only if

9 he doesn't recall, then we go to the statement.

10 Now, I put a question to the witness. He answered that question. It's the

11 Prosecution who's going to the contents of the witness statement, not me. And

12 they're introducing an artificial and entirely, I would say, misconceived distinction.

13 The witness clearly says here in the statement, if we're going to talk about the

14 wording, "Within the occupiers, there were different groups. He then lists those

15 different groups. These are the only groups that he lists.

16 Now, unless we're going to get the OTP investigator on the stand and unless we're

17 going to get the recordings from the statement, it's entirely inappropriate for the

18 Prosecution to testify that they believe that this was actually an open-ended or

19 non-exhaustive list. That's not something that can be read from the plain face of this

20 statement. And I'm entirely entitled to question this witness. These needless

21 interruptions are simply a guise for the Prosecution to make submissions.

22 I followed the Court's directives. I should be entitled to proceed with my

23 questioning without constant disruptions because the Prosecution doesn't like the

24 answers.

25 We do hope we can finish before lunch but it looks like, if we're going to have

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1 constant objections as soon as we touch on something the Prosecution doesn't like,
2 that that's not going to be possible. And that's regrettable.

3 PRESIDING JUDGE MINDUA: [9:51:18](Interpretation) Very well, Ms Taylor.

4 Mr Prosecutor.

5 MR DUTERTRE: [9:51:22](Interpretation) Mr President, it will be entirely possible if
6 the Defence follows the rules of procedure. Now, the Defence didn't put a general
7 question. She went straight to what the witness said in that paragraph without
8 quoting it word for word, contrary to paragraph 52 of the instructions of the Chamber
9 and in annex to decision, 789. Whether it is exhaustive or not, that is up to the
10 witness to clarify. But Ms Taylor indicated that it was exhaustive. That's the issue

11 PRESIDING JUDGE MINDUA: [9:51:58](Interpretation) Well, Ms Taylor, we need to
12 be able to continue

13 What I would like to say is that it's not up to the parties to argue here.

14 Secondly, when you put your question to the witness, you need to avoid having him
15 say things that he did not say. We need to be prudent in terms of the vocabulary
16 that we use. "Group" is a group. It's not an organ. When we say that a number of
17 groups were seen, that does not mean that there were not other groups. So we are
18 not going to fly in the face of our rules which the Prosecutor has merely reminded us
19 of.

20 Please continue, Ms Taylor.

21 MS TAYLOR: [9:52:52] Thank you, Mr President.

22 But I put a question to the witness. I didn't read a quote. I think that's clear from
23 the transcripts, and I am concerned that that's being misconstrued now. But I can
24 read it out to him. I will read out this entire paragraph.

25 If we can have the sound established.

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1 PRESIDING JUDGE MINDUA: [9:53:31](Interpretation) Madam Courtroom Officer,
2 sound, please.

3 THE COURT OFFICER: [9:53:35](Interpretation) The witness can hear us once again.

4 PRESIDING JUDGE MINDUA: [9:53:43](Interpretation) Thank you very much.
5 Ms Taylor.

6 MS TAYLOR: [9:54:09]

7 Q. [9:54:10] Now, Mr Witness, I do believe that you answered my question,
8 although the transcript has not captured it. But I'll read you a quote. And my
9 understanding was that you said: "Yes.

10 Now, this is paragraph 59 of your statement, the second statement and it says
11 "Within the occupiers, there were different groups. One was the group of preachers,
12 another one was the Islamic Police and there was also a group composed of fighters
13 or jihadists. I think the person on this video was part of the last group.

14 Do you recall saying that to the Prosecution?

15 A. [9:54:52] Yes, I do recall.

16 Q. [9:54:59] And were these the groups you remembered at the time

17 A. [9:55:15] Yes. Those were the ones that I recalled.

18 Q. [9:55:19] Now, is it correct that you also didn't know what Talha's role or
19 position was?

20 A. [9:55:44] Whose role?

21 Q. [9:55:46] An individual called Talha.

22 Is it also correct that you didn't know the role or position of an individual called
23 Talha?

24 A. [9:55:59] No, I did not know which position he occupied.

25 Q. [9:56:11] Would it be fair to say that given the number of people in Timbuktu

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1 that arrived, you found it difficult to know the specific roles and positions of different
2 people in the groups that arrived?

3 A. [9:56:28] Yes, indeed.

4 Q. [9:56:39] And was that particularly the case for foreigners that arrived?

5 A. [9:56:46] It was the same case.

6 Q. [9:56:58] Now, transcript 165, page 35, you testified in relation to a town hall
7 meeting between [REDACTED] which took
8 place [REDACTED] and this was to discuss the
9 concerns the crisis committee had concerning certain actions that had been committed
10 against the population.

11 Now, Mr Witness, it's right, isn't it, that Abou Zeid, when he learned of these actions,
12 stated that these actions had not been taken in his name, that he was opposed to
13 them?

14 A. [9:57:45] Indeed He did say that

15 Q. [9:57:59] And did he also indicate that it was his position that the group should
16 first apply a period of observation and explanation before sanctions should be
17 imposed?

18 A. [9:58:15] Indeed one spoke of observation and awareness raising.

19 Q. [9:58:36] Now, at transcript 165, page 49, lines 12 to 14, you testified:

20 "When the list was provided, we had evidence from the people affected Abou Zeid
21 asked for information. Abou Zeid asked " and "provided gifts. There were
22 apologies.

23 You mentioned gifts and apologies. It's correct, isn't it, that Abou Zeid apologised in
24 person to the families of the victims and gave them money?

25 A. [9:59:21] That is what we were told because I was not one of those people.

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1 Q. [9:59:30] Is this something you learned about because this is something the
2 whole town spoke about?

3 A. [9:59:39] Not only because the whole town was speaking about it, but there was
4 also a report at the level of the crisis committee.

5 MS TAYLOR: [9:59:58] I'd like to show Defence tab 52. This should not be shown
6 to the public. It's [REDACTED] And this is a synthesis of a mission
7 conducted by COPAM to the north of Mali. And it's dated 30 August 2012; that
8 could be shown on evidence 1.

9 Q. [10:00:55] Now, Mr Witness, bearing in mind we're in open session, can you
10 recall this mission for the *Coalition pour le Mali* and that they travelled to the north of
11 Mali and met various groups in August 2012?

12 Please let me know if you want to have time to read through it.

13 If we can scroll down for the witness. If we can turn to, perhaps, page 0505.

14 We see here a list of persons that were met by this delegation in Timbuktu.

15 Does this refresh your memory, or would you like to have more time to look through
16 the document?

17 A. [10:03:07] I have looked at it for the most part.

18 Q. [10:03:21] Now, is it correct that a person that we've referred to as Mr X met
19 with this mission along with the crisis committee?

20 A. [10:03:33] That is correct.

21 MS TAYLOR: [10:03:45] If I can turn to page 0503 -- I apologise, 0502 - oh, no, 0503.

22 Sorry, it's confusing. It's at the bottom then twice. And if that could be shown for
23 the witness. If we could focus on section "4- La charia". If we can scroll down to
24 see the paragraph starting with "Le porte-parole..." and, with the permission of the
25 Presiding Judge, if my colleague, Maître Youssouf, can read out that paragraph.

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- 1 PRESIDING JUDGE MINDUA: [10:04:32](Interpretation) Mr Youssef, please go
2 ahead.
- 3 THE INTERPRETER: [10:04:36] Sight translation.
- 4 MR YOUSSEF: [10:04:37](Interpretation)
- 5 "The spokesperson of Ançardine in Timbuktu informed the delegation of the
6 Coalition that his organisation had apologised to the people for the abuse and
7 violence committed in the name of Sharia law. He informed our *emissaries that
8 punishments had been meted out to new members of Ançardine who had been guilty
9 of abuses. End of quote.
- 10 THE INTERPRETER: [10:05:17] End of sight translation.
- 11 MS TAYLOR: [10:05:18]
- 12 Q. [10:05:18] Mr Witness, is this consistent with what you yourself heard at the
13 time?
- 14 A. [10:05:38] It corresponds to what I heard at the time.
- 15 Q. [10:05:41] And did you hear from locals in the Abaradjou neighbourhood that
16 the persons that they believed to be the offenders weren't present afterwards, that
17 they appeared to have been sent away?
- 18 A. [10:06:21] I heard that.
- 19 MS TAYLOR: [10:06:22] Now, I'd like to bring up a video. It's Defence tab 39. It's
20 MLI-OTP-0018-0014. It's a video dated 9 October 2012. We'll play the first 30
21 seconds without sound on evidence 2.
- 22 (Viewing of the video excerpt)
- 23 MS TAYLOR: [10:07:17]
- 24 Q. [10:07:17] Now, Mr Witness, is it correct that you were not present during this
25 meeting, this meeting on 9 October 2012?

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1 A. [10:07:35] I think so

2 Q. [10:07:37] Were you away [REDACTED] at the time?

3 A. [10:07:42] I don't remember.

4 MS TAYLOR: [10:07:50] I'd like to play from 26 seconds and then stop at the
5 28-second mark without sound.

6 (Viewing of the video excerpt)

7 MS TAYLOR: [10:08:09] We're stopping at 27:04.

8 Q. [10:08:11] Mr Witness, do you know this individual? The one whose face is not
9 covered.

10 A [10:08:22] I don't remember

11 Q. [10:08:27] Are you able to recognise what organ he worked for?

12 A. [10:08:35] I don't know.

13 Q. [10:08:45] Now, a Prosecution witness, P-65, was shown this video and testified
14 in relation to this person at this time stamp, 27:04, he said -- he was asked: "Who
15 was that person in the middle whose face can be seen?

16 And his response was: "I think that this was the last president or emir of the Islamic
17 police in Timbuktu. I think his name is Khalid and that he was or is a Mauritanian.

18 PRESIDING JUDGE MINDUA [10:09:26](Interpretation) Mr Prosecutor

19 MR DUTERTRE: [10:09:29](Interpretation) First of all, if I could have the reference,
20 please. We have been in this trial for a year and a half, and it's always the same
21 request.

22 Secondly, the witness has just answered saying he doesn't know who this person is,
23 so I don't really see the relevance of this question.

24 PRESIDING JUDGE MINDUA: [10:09:48](Interpretation) Ms Taylor, in addition to
25 the matter of the reference, the witness has already answered. He has said that he

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1 does not know the person.

2 MS TAYLOR: [10:10:00] That wasn't my question that I was going to put to him.

3 My question was, did he - does he know an individual called Khalid?

4 PRESIDING JUDGE MINDUA: [10:10:16](Interpretation) Very well. Go ahead.

5 MS TAYLOR: [10:10:20]

6 Q. [10:10:20] Mr Witness, do you know an individual called Khalid?

7 A. [10:10:31] No.

8 Q. [10:10:31] Mr Witness, would it be correct or fair to say that you had more

9 interactions with the Islamic police and Al Hassan when they were at the BMS as
10 compared to when they were at the *gouvernorat*

11 A. [10:10:51] That is correct.

12 Q. [10:11:03] Did you know the names and positions of the various foreign
13 members of the Islamic police?

14 A. [10:11:10] No

15 Q. [10:11:24] And in general, in terms of your interactions with the group, did you
16 find it easier to approach local members that you knew, such as Al Hassan?

17 A. [10:11:36] In fact, I would make contact with the people depending on who was
18 available. When we we wouldn't ask to see someone in person, but we
19 would - well, if there was a problem, we would talk to whoever received us.

20 Q. [10:12:20] Based on what you saw and heard at the time, do you know if other
21 locals would speak to Al Hassan because they knew him and he spoke local
22 languages?

23 MR DUTERTRE: [10:12:38](Interpretation) Your Honour?

24 PRESIDING JUDGE MINDUA: [10:12:41](Interpretation) Mr Prosecutor.

25 MR DUTERTRE: [10:12:44](Interpretation) Objection. Speculative question.

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1 PRESIDING JUDGE MINDUA: [10:12:50](Interpretation) Mr Prosecutor,
2 because - this is truly speculation? Because the witness has interacted with the
3 police, and he was able to see what was going on.

4 MR DUTERTRE: [10:13:15](Interpretation) That is true. He did interact with the
5 police, but we can't ask him to put himself in the mind of others. So this question
6 really is calling upon the witness to speculate.

7 PRESIDING JUDGE MINDUA: [10:13:34](Interpretation) Ms Taylor, if you could
8 rephrase.

9 MS TAYLOR: [10:13:37] Thank you, Mr President. I'll ask another question.

10 Q. [10:13:43] Mr Witness, based on what you saw and heard at the time, is it correct
11 that Mr Al Hassan was liked by the population, that he was spoken of as being open?

12 A. [10:14:05] I don't know.

13 Q. [10:14:09] Did you -- based on what you heard, did people describe him in
14 positive terms?

15 A. [10:14:17] I don't know. I didn't really listen to rumours.

16 Q. [10:14:32] I'd like to move on to the crisis committee meetings

17 It's correct, isn't it, that the crisis committee only needed to ask for authorisation to
18 conduct a general assembly or larger town hall meetings

19 A. [10:14:57] Yes. It was absolutely necessary to ask for permission.

20 Q. [10:15:12] But for the weekly meeting [REDACTED] didn't ask permission [REDACTED]?

21 A. [10:15:18] [REDACTED] an [REDACTED]

22 [REDACTED] normal meetings.

23 Q. [10:15:41] And it's correct, isn't it, that as concerns these larger general assembly
24 or town hall meeting [REDACTED] told that the group needed to be informed in case
25 disagreements arose between you, so as a general security issue?

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1 A. [10:16:05] Indeed. That's what they said.

2 Q. [10:16:12] Now, at transcript 164, page 87, you described the members of the
3 crisis committee and their ethnicities.

4 Now, it's correct, isn't it, that there were no Arab members of the crisis committee?

5 A. [10:16:25] There weren't any.

6 Q. [10:16:37] And based on what you saw or heard at the time, is it correct that the
7 Arab community would interact with Ansar Dine through their *chef de faction*?

8 A. [10:17:02] That's what people said.

9 Q. [10:17:03] Now, at transcript 164, page 37, lines 19 to 20, speaking about
10 March 2012, you said that "... the Arabs were really in charge of the economy of the
11 area ...

12 Did that continue to be the case throughout 2012?

13 A. [10:17:33] Indeed. That did continue in the course of the year 2012.

14 Q. [10:17:42] And is it the case that there were many Arab shopkeepers in
15 Timbuktu in 2012?

16 A. [10:17:48] There were some.

17 Q. [10:18:03] I'd like to turn to January 2013.

18 Now, after the Malian and French army defeated the Islamists at Konna, did many of
19 the lighter-skinned residents start to flee from Timbuktu?

20 A. [10:18:22] I couldn't say.

21 MS TAYLOR: [10:18:44] I'd like to turn to Defence tab 34. It's MLI-D28-0005-8284.

22 If that could be shown on evidence 1 for the witness.

23 It's an article dated 15 January 2013 titled: (Interpretation) "Out of fear of violence
24 amongst the communities, residents flee Timbuktu.

25 (Speaks English) And we have a photograph. And underneath the photograph, it's

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1 written that this was a (Interpretation) "Demonstration Monday 14 February in
2 Timbuktu to call for peace in Mali.

3 Q. [10:20:00] (Speaks English) Now, Mr Witness, do you recall a demonstration by
4 members of the Arab community who were opposed to the bombing?

5 A. [10:20:33] What period of time?

6 Q. [10:20:35] 14 January 2013. This is after the Islamists were defeated at Konna
7 and after it would appear that the French and the Malian army were moving towards
8 Timbuktu.

9 A. [10:20:54] Yes.

10 Q. [10:20:56] And is it correct that the Arab community were worried about the
11 possibility of civilian casualties and reprisals?

12 A. [10:21:08] Yes That's what they said.

13 Q. [10:21:21] Now, it's correct, isn't it, that the crisis committee didn't participate in
14 this protest

15 A. [10:21:36] That is correct.

16 Q. [10:21:40] And did that anger or upset the representatives of the Arab
17 community?

18 A. [10:21:47] Yes, I think so.

19 Q. [10:21:56] Now, it's correct at this point that the Arab traders were worried
20 about looting reprisals and things being taken from their stores?

21 A. [10:22:08] That is what they said.

22 Q. [10:22:25] And did they threaten to take steps or take matters into their own
23 hands if something wasn't done to protect them?

24 A. [10:22:37] There was talk of that, but differently, in a different way.

25 Q. [10:22:53] Now, you've spoken about a meeting in January 2013 at the town hall

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1 involving the Islamists, the crisis committee and the Arab traders. And I'm going to
2 read an extract from the testimony of P-654. And it's transcript T-135. It's page 44,
3 lines 8, to page 45, line 18. And I'll read it out in its entirety before putting questions
4 to you. And I'll be going slowly, Mr Witness, for the interpreters. So just because I
5 pause, it doesn't mean I'm finished. It just means I'm giving a break to the
6 interpreters.

7 So at this meeting



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18 I'm continuing the quote

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3 Now, that's correct, isn't it, that at the end of this meeting, it was decided to distribute
4 messages calling for calm and that the locals - the youths should not take measures
5 that would disrupt things?

6 A. [10:27:02] Just to say ... it was a matter of interpretation, because it seems to me
7 tha [REDACTED] So, in actual fact, there were threats. [REDACTED]

8 A representative of the Arab community had asked this: "If people come, and -- are
9 we authorised to shoot at them? And we told them that they were authorised to do
10 so But afterwards, they asked for messages - or appeals, rather, for calm

11 MS TAYLOR: [10:28:11] I'd like to turn to Defence tab 31. This is

12 MLI-D28-0005-8264. It's an article dated 21 January 2013 If it could be put on
13 evidence 1 for the witness.

14 Q. [10:28:53] Now, this is an article by an individual called El hadj Baba Haïdara dit
15 Sandy.

16 Mr Witness, do you know this individual?

17 A. [10:29:11] Yes. I know this person.

18 Q. [10:29:19] Is he a notable from Timbuktu?

19 A. [10:29:22] He is a notable person and, to be specific, a -- a member of the
20 parliament elected from Timbuktu.

21 MS TAYLOR: [10:29:46] Could we turn to page 8269.

22 With the permission of the Presiding Judge, if my colleague, Maître Youssef, can read
23 out the paragraph.

24 PRESIDING JUDGE MINDUA: [10:30:16](Interpretation) Mr Youssef, please go
25 ahead.

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1 THE INTERPRETER: [10:30:20] Sight translation.

2 MR YOUSSEF: [10:30:21](Interpretation)

3 "The white-skinned people, as soon as there was talk about rebellion, the
4 white-skinned people fled because they said to themselves that the Malian army
5 would be on its way. That, had to be avoided. Thus it was necessary to avoid
6 something that was applied by Malians, the Malian army. Especially this year,
7 they were accompanied by foreign armies that were not familiar with the field, who
8 were not able to distinguish between people. So if the Malians did not make a
9 distinction, they wouldn't make a distinction. It was necessary to be extremely
10 careful, especially about the army. A person who has taken up arms, shoot them
11 down. A person who has not taken up arms, even if he is an accomplice, turn him
12 over to the justice system. It would be better than hasty justice. As for the
13 population, denouncing the guilty is a good thing, but denouncing people for
14 personal reasons or others just to hurt people, that is not worthy of us and our
15 religion. The population this year has seen people having their hands cut off and
16 their feet cut off and has - the people have been deprived of their freedom. The
17 people want revenge. What to do? By - by harming a person or his property, that
18 is guaranteed opposition between black people and white people. That is what we
19 fear. And this civil war, even if it hasn't happened, will we have to be - we have
20 to expect such a thing, and we have to face it tomorrow. We, the elected people, we
21 have a role to play. That is why we are preparing the way for reconciliation
22 immediately. May everyone keep a cool head and see reason.

23 MS TAYLOR: [10:33:28]

24 Q. [10:33:29] Now, Mr Witness, it's correct, isn't it, that the author is calling for
25 calm and he's calling for people to avoid making reprisals against property or other

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1 persons To avoid clashes between different groups or ethnicities?

2 A. [10:33:47] Yes, that is what he said.

3 Q. [10:34:08] Now, it's correct, isn't it, that at 22nd of January, the French started
4 bombing targets in Timbuktu?

5 A. [10:34:18] Yes. That is correct.

6 Q. [10:34:27] And during this bombing, it's correct that a fuel depot was hit which
7 led to a large fire

8 A. [10:34:43] I do not recall.

9 MS TAYLOR: [10:34:50] If I could bring up Defence tab 33. It's MLI-D28-0005-8276
10 (sic) If we can turn to page 8276 This is an article dated 22 January 2013, and it's
11 speaking specifically of the bombardment of Timbuktu, including various positions of
12 AQMI And if we scroll down, we can see that it says (Interpretation) "A fuel
13 depot of the organisation was hit, giving rise to an immense fire, according to
14 testimony.

15 Q. [10:36:17] Does this refresh your memory? Do you recall this happening.

16 A. [10:36:21] To my knowledge, no fuel depot was bombed

17 Q. [10:36:30] Mr Witness, is it correct that there was an incident concerning the
18 death of the son of Chauffeur Abdou after this, around 23 January

19 A. [10:36:44] Yes. That is correct.

20 Q. [10:36:52] And he was caught stealing fuel?

21 A. [10:37:06] That is correct.

22 Q. [10:37:06] Now, is it correct that after he was killed, the Islamists went to his
23 family and apologised?

24 A. [10:37:13] Yes. Not only to apologise but to pay for the - the price of the soul.

25 Q. [10:37:34] And when they went to see the family, did they say that he'd been

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1 killed unintentionally?

2 A. [10:37:44] That is what they said.

3 Q. [10:37:53] Now, just turning to the various locations in Timbuktu during 2012,
4 it's correct, isn't it, that the Islamic tribunal was based at the Hotel Maison?

5 A. [10:38:16] That is correct. That is where it was located.

6 Q. [10:38:21] And is it correct that when they were not sitting there for judgments,
7 there was no one living there?

8 A. [10:38:29] That is also correct.

9 Q. [10:38:44] Mr Witness, do you recall an individual called Abou Darda who was
10 involved with Radio Bouctou during the occupation?

11 A. [10:38:55] Yes, I do recall.

12 Q. [10:39:04] Is it correct that you did not hear him speak on the radio

13 A. [10:39:11] I never heard him speak over the radio.

14 MS TAYLOR: [10:39:26] Mr President, if I may address the next questions in private
15 session.

16 PRESIDING JUDGE MINDUA [10:39:33](Interpretation) Madam Courtroom Officer,
17 please.

18 (Private session at 10.39 a.m.)

19 THE COURT OFFICER: [10:39:45](Interpretation) We are in private session,
20 Mr President.

21 PRESIDING JUDGE MINDUA: [10:39:48](Interpretation) Thank you very much,
22 Madam Courtroom Officer.

23 Ms Taylor.

24 MS TAYLOR: [10:39:53] If we can bring up OTP tab 2, MLI-OTP-0003-0062. If that
25 could be shown on evidence 1. Tab 2. I'm not going to go into the contents, but I

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1 need to show tab 2 specifically

2 Mr President, it's possible I could do this in open session. It just depends if the

3 Prosecution has an issue I'm not going to go into content. It's just the fact that this

4 witness has made notes. So if that's not identifying, I can ask these questions in open

5 session. I will have to ask some questions in private session, but that's a little bit

6 further on.

7 PRESIDING JUDGE MINDUA: [10:41:35](Interpretation) Yes, indeed, Ms Taylor.

8 Madam Courtroom Officer, we are in open session, are we not?

9 THE COURT OFFICER: [10:41:48](Interpretation) No. We have moved into private
10 session, Mr President

11 PRESIDING JUDGE MINDUA: [10:41:52](Interpretation) So Ms Taylor would like
12 for us to move into open session.

13 MS TAYLOR: [10:41:58] I apologise. That was my fault for going into private
14 session.

15 (Open session at 10.42 a.m.)

16 THE COURT OFFICER: [10:42:04](Interpretation) We are back in open session,
17 Mr President.

18 PRESIDING JUDGE MINDUA [10:42:08](Interpretation) Thank you very much,
19 Madam Courtroom Officer.

20 MS TAYLOR: [10:42:12]

21 Q. [10:42:13] Now, Mr Witness, this is not going to be shown to the public. But if
22 we look at the cover page of this "BLOC" of notes, we can see that it was a notebook of
23 150 pages.

24 That's correct

25 A. [10:42:28] Yes.

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1 Q. [10:42:37] Now, when you gave these to the Prosecution, they were numbered.

2 That's correct? So we can see number "1" on this page. And if we turn to page

3 0152

4 MR DUTERTRE: [10:43:19](Interpretation) Mr President, if I may. Number 1 on

5 this first page - there is a second notebook. So this is notebook number 1 and not

6 the number of the page, just to be of assistance to my learned friend.

7 That had been elicited in examination-in-chief.

8 PRESIDING JUDGE MINDUA: [10:43:41](Interpretation) Yes, indeed, Ms Taylor.

9 We have two notebooks. This is notebook number 1.

10 MS TAYLOR [10:43:49] I'm afraid that gives us less pages. Let's go to page 0064.

11 I'm not sure this helps the Prosecution. If we turn to page 0064, we can see a number

12 "2". So each of these pages have been numbered. And if we turn to page 0152, we

13 can see a number "90.

14 Q. [10:44:37] So it's correct, isn't it, Mr Witness, that the pages we have, we have far

15 less pages than the 150 pages which were originally in this notebook?

16 A. [10:45:01] Yes

17 Q. [10:45:02] So is it correct that pages were taken out before it was given to the

18 Prosecution?

19 A. [10:45:08] No. I wanted to take some pages out, but I was told not to. And I

20 didn't necessarily write all the way to the end of a page. I might take a page to write

21 upon whilst there were blank pages.

22 Q. [10:45:39] So, Mr Witness, do you have an explanation as to why we only have

23 90 or 91 pages from a 150-page notebook?

24 A. [10:45:53] It is because it's not an entirely new notebook. Pages had already

25 been ripped out. But when I started taking my notes, there were some pages that

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1 had nothing to do with the events that I was noting down, and I was asked not to rip
2 them out. But when I started my diary, it was not a new notebook. There were
3 blank pages that were already missing from it.

4 Q. [10:46:32] And what about the second notebook you gave to the Prosecution?
5 Was that a new notebook?

6 A. [10:46:50] Yes. The second one was a new one.

7 Q. [10:46:52] Okay. Let's turn to that one.

8 If we can go to tab 4.

9 Actually, before doing so - I apologise - if we could turn page 0150 of the
10 previous - of the document we were looking at. If we could bring that up.

11 Now, Mr Witness, I'm not going to go into detail because we're in open session. But
12 these are minutes from a meeting on 10 May 2012, and it's at the very end of the
13 notebook.

14 Can you explain why this is at the end of your notebook.

15 A. [10:48:13] The only explanation I can provide is that, when I was taking notes, I
16 didn't necessarily respect the - the pages in a sense that I don't wait for it to be full for
17 me to move on to another one. I just take the page that appears in front of me.

18 MS TAYLOR: [10:48:41] If we could turn to tab 4. That's MLI-OTP-0003-0154

19 Q. [10:49:25] Now, Mr Witness, you said that you had a new notebook. It's correct
20 that this has "90 SHEETS" written on it

21 A. [10:49:37] Yes.

22 Q. [10:49:40] And if we can turn to page 0156, we can see that this page at the top,
23 which is not going to be shown to the public, we can see it's numbered number "1.

24 A. [10:50:12] Yes.

25 Q. [10:50:14] And if we turn to page 0192, we can see that this is numbered "72.

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1 A. [10:50:44] Yes.

2 Q. [10:50:46] So is it correct, Mr Witness, that there were pages in this notebook that
3 were not given to the Prosecution?

4 A. [10:50:56] Could you please repeat the question.

5 Q. [10:51:06] Mr Witness, this was a 90-page notebook, and we only have 72
6 numbered pages.

7 Is it correct that there were pages that were taken out before it was given to the
8 Prosecution?

9 A. [10:51:23] No page was taken out. The ones that I did want to take out, because
10 there was information that had nothing to do with the diary, I was answered -- I was
11 asked to hand them over and give them numbers.

12 Q. [10:51:47] So, Mr Witness, are you in a position to explain why there appears to
13 be 18 missing pages? It might be plus or one minus, a little bit different, 16 to 18.

14 A. [10:52:08] As I said to you, it is not necessarily a new notebook. I must have
15 ripped some of them out, some pages out, before I used it.

16 MS TAYLOR: [10:52:23] I'd like to turn to OTP tab 92, [REDACTED] If we
17 could turn to page 1215 and 1221.

18 And I believe, Mr President, that I'll need to ask these questions in private session.

19 PRESIDING JUDGE MINDUA: [10:52:50](Interpretation) Madam Courtroom Officer,
20 private session, please

21 (Private session at 10.52 a.m.)

22 THE COURT OFFICER: [10:52:55](Interpretation) We are in private session,
23 Mr President.

24 PRESIDING JUDGE MINDUA: [10:53:03](Interpretation) Thank you very much.
25 Ms Taylor.

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1 MS TAYLOR: [10:53:13]

2 Q. [10:53:14] Now, Mr Witness, at page 1215, we have a minutes from [REDACTED]

3 [REDACTED]

4 Do you recognise the handwriting? Are you in a position to say who wrote this?

5 A. [10:53:31] It is not up on the screen.

6 Q. [10:54:18] Mr Witness, are you able to identify the handwriting?

7 Perhaps if we could scroll back so he could see the whole page.

8 A. [10:54:33] Yes.

9 Q. [10:54:36] And who wrote this?

10 A [10:54:38] [REDACTED]

11 Q. [10:54:43] Are you in a position to explain why you didn't mention this earlier in
12 your testimony?

13 MR DUTERTRE: [10:55:03](Interpretation) Maybe we could cut the sound off to the
14 witness for a moment.

15 PRESIDING JUDGE MINDUA: [10:55:07](Interpretation) Madam Courtroom Officer,
16 could you please cut off the feed to the witness.

17 THE COURT OFFICER: [10:55:11](Interpretation) The sound has been cut off.

18 PRESIDING JUDGE MINDUA [10:55:14](Interpretation) Thank you.

19 Mr Prosecutor.

20 MR DUTERTRE: [10:55:16](Interpretation) Thank you, Mr President. Two points.

21 Firstly, during the testimony I did not draw his attention particularly to this
22 document, so he cannot be reproached *for not having broached this during his
23 testimony [REDACTED]

24 [REDACTED]

25 [REDACTED]

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- 1 PRESIDING JUDGE MINDUA: [10:56:01](Interpretation) Thank you, Mr Prosecutor.
2 Ms Taylor, did you follow this reaction?
3 MS TAYLOR: [10:56:06] Yes, Mr President. And it's not so much the witness that
4 would be reproached, so much as the Prosecution who has given us a bundle of
5 documents saying that they were all written by one author
6 Now, the Prosecution - they've put on the chain of custody, Assoura Albadia.
7 They've put across in their arguments that this was written by Assoura Albadia.
8 Now, this Prosecution met with this witness in preparation sessions to go through
9 these documents. The Prosecutor is an independent minister of justice who is
10 obliged, not asked, but obliged to search for the truth with a view not to just assisting
11 the Chamber, but also to assisting the Defence, to avoid these instances where, at the
12 very end of a cross-examination, we get information of a crucial matter that should
13 have been disclosed before this witness testified, not at the very end.
14 Now, this flies in the face of key statutory rights, Mr President. We have a right to
15 know this. We have a right to know who authors a document before the witness
16 testifies; particularly if it's the witness on the stand.
17 Now, that clearly impacts upon our preparation. It impacts upon our
18 cross-examination. It can't be that we are forced to investigate matters that the
19 Prosecution itself is obliged to investigate since it's the one purporting to tender these
20 documents.
21 Now, if it's the Prosecution's case that these documents are not all authored by the
22 same person, then that really is a matter that the Prosecution should have explored
23 with this
24 Please don't stand up when I'm still going.
25 This is a matter that the Prosecution was obliged to explore with this witness before

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1 submitting them into evidence. This is a shoddy job, to put it simply We've been
2 given a batch of papers with no indication as to who wrote what. And quite frankly,
3 it's not acceptable. This is a case that's been investigated for several years; whereas,
4 we have an extremely short period of time to do our case. They met this witness in
5 2013.

6 PRESIDING JUDGE MINDUA: [10:58:29] Ms Taylor, what are you driving at?
7 What is the remedy, according to you?

8 MS TAYLOR: [10:58:35] Mr President, the Trial Chamber is obliged to uphold the
9 fairness of the proceedings. That's not an empty promise. It means that steps need
10 to be taken and enforced to ensure that we're in a position to do our job, and we
11 haven't been.

12 Now, this clearly has to impact on any weight you give documents, given that we
13 have not been informed in a timely, clear and prompt manner of crucial details
14 concerning these documents. And it's not enough for the Prosecution to simply
15 stand up and say, "Oh, well, we didn't need to put it to the witness", given that there's
16 a clear indicia that there was an issue [REDACTED]

17 So that really begs the question as to why the Prosecution did not explore this with
18 this witness during the preparation session. I thought that was the purpose of the
19 preparation session to be quite frank, that we wouldn't be ambushed on the stand.
20 And yet that is what's happening again and again.

21 PRESIDING JUDGE MINDUA: [10:59:49](Interpretation) So according to you, you
22 have been ambushed.

23 Mr Prosecutor.

24 MR DUTERTRE: [10:59:55](Interpretation) Yes, Mr President. There is no ambush.
25 Now, firstly, these documents were disclosed a long time ago. I don't have the

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1 precise date but, by memory, in 2018.

2 Secondly, the burden of the proof is upon us. And if there is any prejudice, it will be

3 upon us.

4 Thirdly, the Defence has not answered what I raised, namely, the partially misleading

5 nature of its questioning. We can't reproach him for not speaking about this because

6 I did not have the time in examination-in-chief to do so.

7 Fourthly, we never indicated that [REDACTED] would be the only script of

8 these documents. Never did we do so. You only need to look, and, on occasion,

9 the handwriting is different. However, what we did do, was, when we presented a

10 document on each occasion, we asked who the handwriting belonged to.

11 Fifthly or sixthly - I no longer recall - the witness preparation session is strictly

12 regulated. It is not a moment in time at which one is supposed to be investigating.

13 One is merely checking whether the witness is in a position to comment on

14 documents. And we respected both the letter and the spirit of the orders of the

15 Chamber with regard to preparation sessions.

16 And lastly and finally, the Defence can indeed use all of this without being

17 misleading for the witness. So she has all the manoeuvrability that she desires to use

18 this document whilst being mindful of the fairness of the rules of the Chamber. And

19 if she deems that there is no probative value, well, then why question the witness on

20 it?

21 PRESIDING JUDGE MINDUA: [11:02:33](Interpretation) Thank you, Mr Prosecutor.

22 Ms Taylor, I think we're going to wrap up on this discussion. You heard what the

23 Prosecution said. You have the latitude to use these documents and to draw your

24 own conclusions. But the Prosecutor was not necessarily obliged to raise these

25 matters with the witness. We know that on each occasion the Prosecutor asked who

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1 authored which report and we followed that here.

2 So please go ahead.

3 MS TAYLOR: [11:03:08] Thank you, Mr President.

4 Now, I note that the Prosecutor has said that this is an issue of prejudice, and I do

5 hope that prejudice is going to be taken into account by the Chamber as guardians of

6 fairness.

7 Now, I have a few questions, and I do believe if Mr Duterte doesn't insist on popping

8 up, that I could finish and we could release the witness. If I'm permitted to actually

9 finish.

10 PRESIDING JUDGE MINDUA [11:03:51](Interpretation) Mr Prosecutor, we have

11 dealt with the matter.

12 MR DUTERTRE: [11:03:53](Interpretation) Yes, but Ms Taylor may have

13 misunderstood the interpretation into English, but I think that she has put words in

14 my mouth. I did not say that there was ...

15 PRESIDING JUDGE MINDUA: [11:04:04](Interpretation) We agree. It is 11.

16 THE INTERPRETER: [11:04:11] Correction: Five minutes after 11

17 PRESIDING JUDGE MINDUA: [11:04:16](Interpretation) We will now adjourn for

18 our break

19 THE INTERPRETER: [11:04:20] Correction: Suspend for our break.

20 MS TAYLOR: [11:04:22] Mr President, I was saying I could actually finish, if it

21 would mean that we could release the witness.

22 PRESIDING JUDGE MINDUA: [11:04:33](Interpretation) I'm sorry. I did not quite

23 understand with the interpretation.

24 What were you saying exactly?

25 MS TAYLOR: [11:04:39] That I have, simply, thre [REDACTED] to put to the witness for

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1 authentication purposes, and I believe we could do it quite rapidly if it would mean
2 that the witness could finish, which I think is desirable for everyone. It's our last day
3 in court. If that would be acceptable to the Chamber.

4 PRESIDING JUDGE MINDUA: [11:05:07](Interpretation) Very well. Of course.

5 It's already - always best to release the witness earlier than expected, if that is
6 possible. You may proceed. But first, I believe we need to re-establish the audio
7 feed.

8 Court officer, if you could.

9 THE COURT OFFICER: [11:05:28](Interpretation) The witness can now hear us.

10 PRESIDING JUDGE MINDUA [11:05:34](Interpretation) Thank you, court officer
11 Ms Taylor.

12 MS TAYLOR: [11:05:37] If we could bring up - and we're in open session, I believe.

13 It shouldn't be shown to the public, but I can deal with this in public. It's defence tab
14 66.

15 THE COURT OFFICER: [11:05:55](Interpretation) We're still in private session
16 (Overlapping speakers)

17 MS TAYLOR: [11:05:56] If we can go into public. If we can go into public.

18 PRESIDING JUDGE MINDUA: [11:06:00](Interpretation) Court officer, open session,
19 please.

20 (Open session at 11.06 a.m.)

21 THE COURT OFFICER: [11:06:04](Interpretation) We are back in open session.

22 PRESIDING JUDGE MINDUA: [11:06:17](Interpretation) Thank you.

23 Ms Taylor.

24 MS TAYLOR: [11:06:19] If we could bring up Defence tab 56 It's

25 MLI-D28-0005-8328. If it could be shown on evidence 1, but not broadcast to the

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1 public. If we scroll up to the top, you can see a date of 3 December 2021. And since
2 this is referring to yesterday, that would make it 2 December 2021.

3 Q. [11:07:06] Now, Mr Witness, we're in open session, but do you recognise this
4 document?

5 A. [11:07:29] Yes, I do.

6 Q. [11:07:31] Was it posted by Mr X?

7 A. [11:07:33] Yes, indeed it was.

8 Q. [11:07:35] And is this a photograph of a particular location in Timbuktu?

9 A. [11:07:40] Could you repeat your question?

10 MS TAYLOR [11:08:05] I believe it has to be scrolled down for the witness to see I
11 apologise. Sorry.

12 Q. [11:08:09] Is this a photo of a particular location in Timbuktu?

13 A. [11:08:14] Indeed it is.

14 Q. [11:08:16] And which location is that?

15 A. [11:08:23] This is a cemetery called Djaman Hana.

16 Q. [11:08:30] And to your knowledge, was Mr X expressing concern about the
17 cultural heritage of Timbuktu being in peril?

18 A. [11:08:43] Indeed That is what Mr X is stressing here because the cemeteries of
19 Timbuktu are deemed to be UNESCO heritage, and the - and should have a security
20 permit -- perimeter, which is not the case.

21 Q. [11:09:13] So speaking of the security perimeter, are unauthorised buildings
22 within the security perimeter a problem?

23 A. [11:09:23] No. I'm talking about the - the entrance to this place, to the
24 cemetery, not the inside. Inside it's a cemetery.

25 Q. [11:09:46] Certainly. But in terms of the area surrounding it, is it a problem

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1 that people have been erecting shops and stalls and various structures?

2 A. [11:10:04] It truly is a problem. As I've said, UNESCO

3 THE INTERPRETER: [11:10:17] Correction

4 THE WITNESS: [11:10:19](Interpretation) Heritage sites should not be occupied.

5 There should be a security perimeter, ideally 40 metres.

6 MS TAYLOR: [11:10:26]

7 Q. [11:10:27] And based on what you know and what you have heard in your
8 experience, is neglect a problem?

9 A. [11:10:36] Indeed. It truly is a problem.

10 MS TAYLOR [11:10:56] I have one last document It's Defence tab 7,

11 [REDACTED] And perhaps, to deal with this issue, we should deal with it in
12 private session It's my last document

13 PRESIDING JUDGE MINDUA: [11:11:26](Interpretation) Court officer, private
14 session, please.

15 (Private session at 11.11 a.m.)

16 THE COURT OFFICER: [11:11:31](Interpretation) We are in private session.

17 PRESIDING JUDGE MINDUA: [11:11:43](Interpretation) Thank you.

18 Ms Taylor.

19 MS TAYLOR: [11:11:44] If we could scroll down.

20 Q. [11:12:02] Mr Witness, are you able to see this photograph?

21 A. [11:12:06] Yes. I can see it just fine.

22 Q. [11:12:14] Now, this photograph refers to an individual called Gigla.

23 Do you know this individual?

24 A. [11:12:22] Yes, I do know this person.

25 Q. [11:12:28] And what is this individual's name, if you happen to know it?

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1 A. [11:12:34] [REDACTED]

2 Q. [11:12:47] [REDACTED]

3 A. [11:12:59] I beg your pardon?

4 Q. [11:13:01] I apologise.

5 [REDACTED]

6 A. [11:13:03] [REDACTED]

7 Q. [11:13:03] [REDACTED]?

8 A. [11:13:07] [REDACTED]

9 [REDACTED]

10 Q. [11:13:29] To your knowledge, has this individual played a role in helping
11 victims of the occupation?

12 A. [11:13:46] Yes This person was very active as a [REDACTED]

13 Q. [11:13:52] Do you know what his role involved?

14 A. [11:13:57] I couldn't tell you exactly.

15 Q. [11:14:09] Okay.

16 Mr Witness, thank you very much for your patience and for your testimony. That
17 concludes my questioning.

18 PRESIDING JUDGE MINDUA [11:14:20](Interpretation) Thank you very much,
19 Ms Taylor.

20 Court officer, we are in private session, aren't we?

21 THE COURT OFFICER: [11:14:37](Interpretation) Yes, indeed.

22 PRESIDING JUDGE MINDUA: [11:14:40](Interpretation) Well, then, we should
23 return to open session.

24 (Open session at 11.14 a.m.)

25 THE COURT OFFICER: [11:14:45](Interpretation) We are back in open session.

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1 PRESIDING JUDGE MINDUA: [11:15:02](Interpretation) Thank you.

2 Once again, I thank Ms Taylor for concluding her cross-examination, and I thank her
3 for being so efficient.

4 I now turn to the OTP.

5 Are there any additional questions?

6 MR DUTERTRE: [11:15:22](Interpretation) I have one or two questions very quickly
7 and a clarification for which we will not need the witness. It is more a matter that
8 has to do with an objection that I did not make, but which I do need to make for -- just
9 to ensure that the record is crystal clear.

10 PRESIDING JUDGE MINDUA [11:15:47](Interpretation) Ms Taylor, I see that you
11 have risen. Please go ahead.

12 MS TAYLOR: [11:15:52] Yes That you very much, Mr President. Now, for the
13 Prosecution to put questions in re-examination, obviously, they would need to
14 identify things that arose uniquely out of cross-examination which were not raised
15 during examination-in-chief. So I believe that before putting questions to this
16 witness, the sound should be cut off and the Prosecution shall identify the specific
17 areas they wish to put to this witness.

18 I also don't believe it's appropriate for the Prosecution to ask for the floor to simply
19 reply to a past objection. This is not the place for submissions. And we've tried to
20 make our intervention brief. We've tried to finish early to let the witness go. And I
21 believe we'll lose time.

22 PRESIDING JUDGE MINDUA: [11:16:46](Interpretation) Thank you.

23 Mr Prosecutor, Ms Taylor has reminded me of the principle. Redirect must have to
24 do with the cross-examination.

25 MR DUTERTRE: [11:17:02](Interpretation) Absolutely.

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- 1 PRESIDING JUDGE MINDUA: [11:17:03] The witness can hear us. Should we cut
2 the feed?
- 3 MR DUTERTRE: [11:17:16](Interpretation) No, not necessarily. I -- I can put the
4 question, and if Ms Taylor is not happy, she can make an objection.
- 5 PRESIDING JUDGE MINDUA: [11:17:21](Interpretation) Very well. Go ahead
- 6 MR DUTERTRE: [11:17:30](Interpretation) Can the witness hear us?
- 7 PRESIDING JUDGE MINDUA: [11:17:47](Interpretation) What is going on?
- 8 THE COURT OFFICER: [11:17:49](Interpretation) I have to cut the
- 9 PRESIDING JUDGE MINDUA: [11:17:51](Interpretation) No, no, no.
- 10 THE COURT OFFICER: [11:17:54](Interpretation) Very well
- 11 PRESIDING JUDGE MINDUA: [11:17:56](Interpretation) Go ahead, Mr Prosecutor.
12 We are in open session, and the audio feed has been re-established with the witness
13 Go ahead.
- 14 QUESTIONED BY MR DUTERTRE:
- 15 MR DUTERTRE: [11:18:07](Interpretation)
- 16 Q. [11:18:07] Mr Witness, before the occupation of Timbuktu by the Ansar Dine
17 and AQIM armed groups, which stopped on - started on 1 April 2012, beginning of
18 April, before the occupation of Timbuktu, having recourse to the cadì was something
19 optional, wasn't it?
- 20 A. [11:18:32] Yes.
- 21 Q. [11:18:34] Could the cadì - before that period, could the cadì - before that time
22 that Ansar Dine and AQIM occupied Timbuktu, could the cadì send someone to
23 prison in Timbuktu?
- 24 A. [11:18:51] No, not at all.
- 25 MR DUTERTRE: [11:18:55](Interpretation) Thank you. That was all, your Honour.

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1 And I believe the witness is not necessary for this last matter.

2 PRESIDING JUDGE MINDUA: [11:19:07](Interpretation) Very well.

3 Ms Taylor, did you want to respond

4 MS TAYLOR: [11:19:12] Yes, Mr President.

5 QUESTIONED BY MS TAYLOR:

6 Q. [11:19:16] Mr Witness, now, the Prosecution has just asked you if the role - or

7 going to the *cadi* was optional before 2012.

8 Now, isn't it the case that in some cases, and, in some communities, the formal justice

9 system wasn't functioning and, as such, the only option for justice was to go to the

10 *cadi*

11 MR DUTERTRE: [11:19:45](Interpretation) Your Honour.

12 PRESIDING JUDGE MINDUA [11:19:52](Interpretation) Let the witness

13 THE INTERPRETER: [11:19:57] Correction

14 PRESIDING JUDGE MINDUA [11:19:59](Interpretation) Let the Defence

15 THE INTERPRETER: [11:20:02] Overlapping speakers.

16 MR DUTERTRE: [11:20:04](Interpretation) What is the time frame This is a very

17 general question.

18 PRESIDING JUDGE MINDUA [11:20:10](Interpretation) There has been a request

19 for a more specific time frame.

20 MS TAYLOR: [11:20:15] I'm responding to a very general question on the part of the

21 Prosecution, and I believe that my question was just as general as his, which was the

22 period before 2012.

23 Q. [11:20:33] Now, Mr Witness, I'm speaking about the importance of the role of

24 the *cadi* and traditional justice.

25 Is it the case that in relation to some issues that arose before 2012, in reality, the *cadi*

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1 was the only option due to the absence of functioning justice systems in the north?
2 To put it plainly, that if someone wanted justice, the cadi was the only real option in
3 some cases.

4 A. [11:21:12] I'm not in a position to know that. I could talk about cases I know of
5 in Timbuktu because the justice - because the modern justice system did exist. So
6 other than that, I don't know.

7 Q. [11:21:39] Now, Mr Witness, is it correct that after April 2012, there were no
8 judges in Timbuktu? That is, the formal justice system was not functioning at all.

9 A. [11:21:56] That is correct.

10 Q. [11:22:03] Thank you

11 PRESIDING JUDGE MINDUA: [11:22:09](Interpretation) Thank you very much,
12 Ms Taylor.

13 Now, Mr Prosecutor, you wanted to say something without the witness being
14 present?

15 MR DUTERTRE: [11:22:24](Interpretation) Well, with the audio feed cut off.

16 PRESIDING JUDGE MINDUA [11:22:28](Interpretation) Very well.

17 Court officer, cut the audio feed.

18 THE COURT OFFICER: [11:22:34](Interpretation) The feed has been cut off.

19 PRESIDING JUDGE MINDUA: [11:22:40](No interpretation)(Overlapping speakers)

20 THE INTERPRETER: [11:22:40] Overlapping

21 MS TAYLOR: [11:22:41](Overlapping speakers)...if I may respectfully suggest that
22 the witness be allowed to leave, if his presence isn't required.

23 MR DUTERTRE: [11:22:58](Interpretation) If what I'm about to say leads *to a
24 reaction on the part of the Defence, there is every interest in keeping the witness, but
25 as long as he doesn't hear. I cannot anticipate what my learned friend might say.

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- 1 PRESIDING JUDGE MINDUA: [11:23:09](Interpretation) Exactly. We shall keep
2 the witness with us for the time being because one never knows. He can't hear right
3 now, but we are not going to release him just yet.
- 4 MS TAYLOR: [11:23:22] Well, Mr President, what is it exactly we're doing here?
5 I've concluded my cross-examination. We've had re-examination. We've then
6 had me respond (Overlapping speakers)
- 7 PRESIDING JUDGE MINDUA: [11:23:31](Interpretation) This is the Chamber's
8 administration, so to speak. Everyone has finished, and now the Prosecution has
9 some concerns that he wishes to share with the Chamber. I don't know what he is
10 about to say, but I do have to give him the floor so that he can say what he has to say
11 I'm just waiting for the interpretation to conclude.
- 12 Now, Mr Prosecutor, go ahead
- 13 MR DUTERTRE: [11:24:07](Interpretation) Thank you, your Honour. I'll try to be
14 brief.
- 15 Today, transcript, page 24, the Defence returned to the issue of the meeting held in
16 January 2013 between the crisis committee members, Mr Adama and Mr Al Hassan,
17 and a number of Arab merchants. By doing that - and this is the point I wish to
18 make - Ms Taylor quoted transcript 135, confidential English version, pages 43 and 44.
19 She said that it was testimony from 654.
- 20 Now, the clarification I'm trying to obtain is this: She began - what she began to
21 quote was not the words of 654 but, rather, the statement of another witness, P-113,
22 who was introduced to 654. And that is not clear. I think this needs to be perfectly
23 clear for the transcript.
- 24 I also note that this statement *by P-113 seems reliable for Ms Taylor.
- 25 Secondly, as for the quoting of 113's statement, as it was put today to P-4 was

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1 incomplete. And we can read in the transcript. Just before what Ms Taylor read,
2 there was mention made of Adama who said that any person would be killed in
3 front -- if he or she went in front of a shop. That sentence was not said to P-4. So he
4 did not have the complete context.

5 So that has happened. So the quote was not of 654. It was of 113, and the context
6 was lacking.

7 PRESIDING JUDGE MINDUA: [11:27:05](Interpretation) Thank you, Mr Prosecutor.

8 Well, Ms Taylor, I see that you have risen. Please respond. Please go ahead.

9 You've heard what the Prosecution has said.

10 MS TAYLOR [11:27:22] Yes Thank you very much, Mr President

11 Now, firstly, it's inappropriate for the Prosecution to do this at the very end. They
12 have a duty of diligence. If they see issues, they should rise They shouldn't wait to
13 see how things go and then object.

14 Secondly, what they have just stated is not correct. When I read it out, I was very
15 aware - and I don't know if we're in open session or private session, but I was very
16 aware of the need not to identify to this witness

17 Are we in private session? Can we go into private session?

18 PRESIDING JUDGE MINDUA [11:27:55](Interpretation) We are in open session.

19 Private session, please, court officer.

20 (Private session at 11.28 a.m.)

21 THE COURT OFFICER: [11:28:05](Interpretation) We are in private session.

22 PRESIDING JUDGE MINDUA: [11:28:11](Interpretation) Thank you.

23 Ms Taylor.

24 MS TAYLOR: [11:28:14] Mr President, I was very aware [REDACTED]

25 [REDACTED] Now, what I was reading out was an

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1 account that was put to P-654, and then he was then asked at the end whether this
2 account recalls what he heard from [REDACTED] And he responds:

3

4

5 And that was the point.

6 And I then put to him - and I was specifically asking him questions which related to
7 this extract, which was the interaction between the Arab traderspersons and Adama.

8 And that was the subject of the extract, and that in that extrac [REDACTED]

9 had apparently told [REDACTED] that the Arab traderspersons had threatened to
10 take up arms. Adama had called for calm. [REDACTED] had said that he
11 wasn't happy with being hauled in there, but at the end, they all agreed on a message
12 for calm.

13 And when that was put to [REDACTED]

14

15 He said [REDACTED]

16

17 And then I asked this witness about this interaction specifically between the Arab
18 traderspersons and how Adama and the crisis committee reacted after hearing the
19 interactions from the Arab traderspersons. That was what my entire line of
20 questioning was about, the Arab traderspersons, concerns about being -- fleeing,
21 protests from the Arab traderspersons, leading up specifically to this interaction
22 concerning the Arab traderspersons.

23 PRESIDING JUDGE MINDUA: [11:30:24](Interpretation) Well, thank you very
24 much, Ms Taylor.

25 Thank you, Mr Prosecutor.

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1 Well, there is a duty of diligence, and usually this sort of thing should be done at the
2 very moment. Clarification has been provided, and the Chamber is sufficiently
3 edified. We have three minutes before the tape runs out.

4 Court officer, please re-establish the audio feed to the witness, and then we shall also
5 move into open session as well.

6 (Open session at 11.31 a.m.)

7 THE COURT OFFICER: [11:31:11](Interpretation) We are in open session,
8 Mr President, and the witness can hear us now.

9 PRESIDING JUDGE MINDUA: [11:31:19](Interpretation) Thank you very much.
10 Mr Witness, I'm now turning to you. On behalf of the Chamber, I would like to
11 really apologise to you because of these incessant toings and froings and cutting off
12 and re-establishing the link with you. Often you don't know what it's all about, but
13 these are questions of a legal nature, and they are internal.

14 So we have finally reached the end of your testimony. It is now over. And on
15 behalf of the Chamber, I would like to very sincerely thank you for having assisted
16 the Court. And thanks to your clear answers and your goodwill and your ease of
17 speech, you have assisted us in establishing the truth. Your testimony is now over,
18 and I would like to wish you a safe journey home and good luck.

19 THE WITNESS: [11:32:28](Interpretation) Thank you very much.
20 (The witness is excused)

21 PRESIDING JUDGE MINDUA: [11:32:31](Interpretation) Before we adjourn for
22 today, I would like to thank the parties, the participants, the court reporters, the
23 interpreters, the security guards, and our public. I would like to wish you all a very
24 pleasant day because we are only 11.30 in the morning.
25 So, Mr Prosecutor, is this our last witness before the holidays?

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1 MR DUTERTRE: [11:33:02](Interpretation) Yes, indeed, it is. This is our last
2 witness before the holidays, and we have finished for today, and we'll start again with
3 a new witness after the holidays.

4 PRESIDING JUDGE MINDUA: [11:33:16](Interpretation) Very well. Thank you
5 very much, and thank you very much for your work.
6 And I'd like to make the most of this opportunity to wish everyone a very good
7 holiday period and a happy New Year. And thank you all very much for your hard
8 work, and festive greetings on behalf of the Chamber.
9 We shall rise or adjourn, unless anyone else has something else to say.

10 So, Ms Taylor

11 MS TAYLOR: [11:33:53] I'd like to wish everyone the same, if there's enough tape.

12 PRESIDING JUDGE MINDUA [11:34:00](Interpretation) Thank you very much
13 That's very nice of you.

14 I can see that Mr Prosecutor is nodding his head, as is the Legal Representative for
15 Victims. There's no more time. So we shall stop.

16 Court is adjourned.

17 THE COURT USHER: [11:34:14] All rise.

18 (The hearing ends in open session at 11.34 a.m.)

19 CORRECTIONS REPORT

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

22 Page 4 line 22

23 "That was [REDACTED] Is corrected to "He lives [REDACTED]

24 Page 30 line 22

25 "for having" Is corrected to "for not having

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1 Page 42 line 23-25

2 "to the necessity of an answer from the witness - well, I can't anticipate what

3 my learned friend might ... (Overlapping speakers)" Is corrected to "to a reaction on

4 the part of the Defence, there is every interest in keeping the witness, but as long as he

5 doesn't hear. I cannot anticipate what my learned friend might say

6 Page 43 line 24

7 "from 113 seems to be reliable." Is corrected to "by P-113 seems reliable for Ms

8 Taylor.