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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 International Criminal Court
- 2 Trial Chamber X
- 3 Situation: Republic of Mali
- 4 In the case of The Prosecutor vs Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
- 5 Mahmoud - ICC-01/12-01/18
- 6 Presiding Judge Antoine Kesia Mbe Mindua, Judge Tomoko Akane and
- 7 Judge Kimberly Prost
- 8 Trial Hearing - Courtroom 1
- 9 Wednesday, 11 November 2020
- 10 (The hearing starts in open session at 9.30 a.m.)
- 11 THE COURT USHER: [9:30:23] All rise.
- 12 The International Criminal Court is now in session.
- 13 Please be seated.
- 14 PRESIDING JUDGE MINDUA: [9:30:52](Interpretation) Court is in session.
- 15 Good morning to everyone.
- 16 Madam courtroom officer, could you please call the case.
- 17 THE COURT OFFICER: [9:31:04] Thank you, Mr President.
- 18 The situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan
- 19 Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
- 20 And for the record, we are in open session.
- 21 PRESIDING JUDGE MINDUA: [9:31:26](Interpretation) Thank you very much,
- 22 madam courtroom officer.
- 23 As every morning, we shall now deal with the appearances, starting with the Office of
- 24 the Prosecutor.
- 25 Mr Dutertre, please.

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- 1 MR DUTERTRE: [9:31:39](Interpretation) Good morning, Mr President, good
- 2 morning, your Honours. The Office of the Prosecutor is represented this morning by
- 3 Sarah Coquillaud, Lucio Garcia and myself, Gilles Dutertre. Thank you.
- 4 PRESIDING JUDGE MINDUA: [9:31:51](Interpretation) Thank you very much.
- 5 Now, I turn to the -- oh, the Defence.
- 6 Ms Taylor.
- 7 MS TAYLOR: [9:31:57] Good morning, Mr President. Good morning, your
- 8 Honours. Good morning to everyone in the courtroom. The Defence for
- 9 Mr Al Hassan is represented by Kirsty Sutherland, Molly Thomas, Dolly Chahla and
- 10 myself, Melinda Taylor. Thank you.
- 11 PRESIDING JUDGE MINDUA: [9:32:16](Interpretation) Thank you very much,
- 12 Ms Taylor.
- 13 Now, Legal Representatives for Victims.
- 14 Maître Kassongo.
- 15 MR KASSONGO: [9:32:24](Interpretation) Good morning, thank you, Mr President.
- 16 Good morning, your Honours. The team of the Legal Representatives for Victims
- 17 this morning comprises still, Madam Claire Laplace, who is assisting me, and myself,
- 18 Mr Kassongo, and we would like to thank you.
- 19 PRESIDING JUDGE MINDUA: [9:32:42](Interpretation) Thank you very much,
- 20 Mr Kassongo.
- 21 Today we shall continue with the questioning of the 16th Prosecution Witness P-0065.
- 22 And the Defence shall continue with its cross-examination.
- 23 Good morning, Mr Witness, can you hear me?
- 24 WITNESS: MLI-OTP-P-0065 (On former oath)
- 25 (The witness speaks Arabic)

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1 THE WITNESS: [9:33:22](Interpretation) Good morning, Mr President, I can hear
2 you very well.

3 PRESIDING JUDGE MINDUA: [9:33:29](Interpretation) Very well.

4 I was just waiting for the French interpretation.

5 So I would like to welcome you once again, and I would like to renew my gratitude
6 for your patience and remind you that you are still under oath. As a result, you
7 should speak the truth, the whole truth and nothing but the truth.

8 I will make the most of this opportunity to also remind you of my advice with regard
9 to when you take the floor.

10 Now, I will now hand the floor over to Ms Taylor.

11 QUESTIONED BY MS TAYLOR: (Continuing)

12 Q. [9:34:06] Good morning, Mr Witness.

13 A. [9:34:08] Good morning.

14 Q. [9:34:13] Yesterday I was questioning you in private session, so we will need to
15 continue in private session.

16 PRESIDING JUDGE MINDUA: [9:34:26](Interpretation) Ms Taylor, you know my
17 position with regard to private session. Of course we have the duty of protecting the
18 witness, but we also have to respect the principle of the publicity of the proceedings.

19 So I would request that you be careful and try and shorten the duration of your
20 cross-examination spent in private session, please.

21 MS TAYLOR: [9:34:59] Certainly, Mr President. But these questions cannot be put
22 in open session.

23 PRESIDING JUDGE MINDUA: [9:35:10](Interpretation) Yes, I understand only too
24 well.

25 Just for the members of the public, how long will your private session last,

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1 approximately?

2 MS TAYLOR: [9:35:20] Mr President, given the nature of this testimony, it's very
3 difficult to go into open session. What I would suggest - I believe that this is a
4 practice that was adopted in the Katanga case - is that, after the end of each day, we
5 go through and we identify which sections of the transcripts can then be lesser
6 classified. In that way, there's less risk to the witness from inadvertent disclosures.

7 PRESIDING JUDGE MINDUA: [9:36:10](Interpretation) I don't know whether I've
8 understood you correctly.

9 I was asking you the question with regard to the public that is following us, so that
10 they be forewarned how long you will be spending now in private session, the private
11 session that we're going to announce.

12 MS TAYLOR: [9:36:29] Mr President, I'm very loath to give an estimate because it
13 may depend on the witness's answers.

14 PRESIDING JUDGE MINDUA: [9:36:44](Interpretation) Should I understand from
15 that that we might be coming and going into and out of private session and open
16 session?

17 MS TAYLOR: [9:36:53] Yes, exactly, because of the nature of the materials that will
18 be used.

19 PRESIDING JUDGE MINDUA: [9:37:02](Interpretation) Very well.
20 Courtroom officer, private session, please.

21 (Private session at 9.37 a.m.)

22 THE COURT OFFICER: [9:37:19] We are in private session, Mr President.

23 PRESIDING JUDGE MINDUA: [9:37:24](Interpretation) Thank you very much.

24 Ms Taylor.

25 MS TAYLOR: [9:37:29]

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1 Q. [9:37:30] Now, yesterday we were in the process of playing a video, that was tab
2 218 on the Defence list and tab 251 on the Prosecution list. It is MLI-OTP-0015-0495.
3 For the interpreters, the transcript is tab 252 on the Prosecution's list, that's
4 MLI-OTP-0033-5189 and the translation is tab 253 on the Prosecution's list, being
5 MLI-OTP-0033-5288. And as was the case yesterday, we'll be playing from the 40
6 minute mark to 41:32 seconds with sound.

7 (Viewing of the video excerpt)

8 THE INTERPRETER: [9:39:41](Interpretation of the video excerpt)

9 My family left. We had crops but they disappeared. The season was very bad and
10 we weren't able to harvest. There is not enough water.
11 Every time that they come here to distribute aid to us, well, they give us just a little
12 bit.

13 They took hijabs and clothes. We can't lie in front of God. He helps us to reinforce
14 our faith. Nothing comes to us except by the grace of God. All we have left is the
15 grace of God.

16 MS TAYLOR: [9:40:34]

17 Q. [9:40:35] [REDACTED] ?

18 A. [9:40:43] [REDACTED] But before addressing these images or the questions of
19 today, I would like to express something following yesterday's session.
20 Following yesterday's session, I did not feel comfortable because there was a question
21 raised by the Defence to which I knew the answer, but the details I did not wish to
22 speak about are present [REDACTED], as the Defence did point out.
23 And I think it would not be fair of me to respond to each and every question and
24 overlook another question that may be of importance to the Defence. So I am willing
25 to answer yesterday's question, which I think was the only one I did not respond to,

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1 which concerns [REDACTED]

2 [REDACTED]

3 Q. [9:42:09] Thank you, Mr Witness, for that clarification. Are you willing to
4 provide that information now?

5 A. [9:42:20] Yes, certainly. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

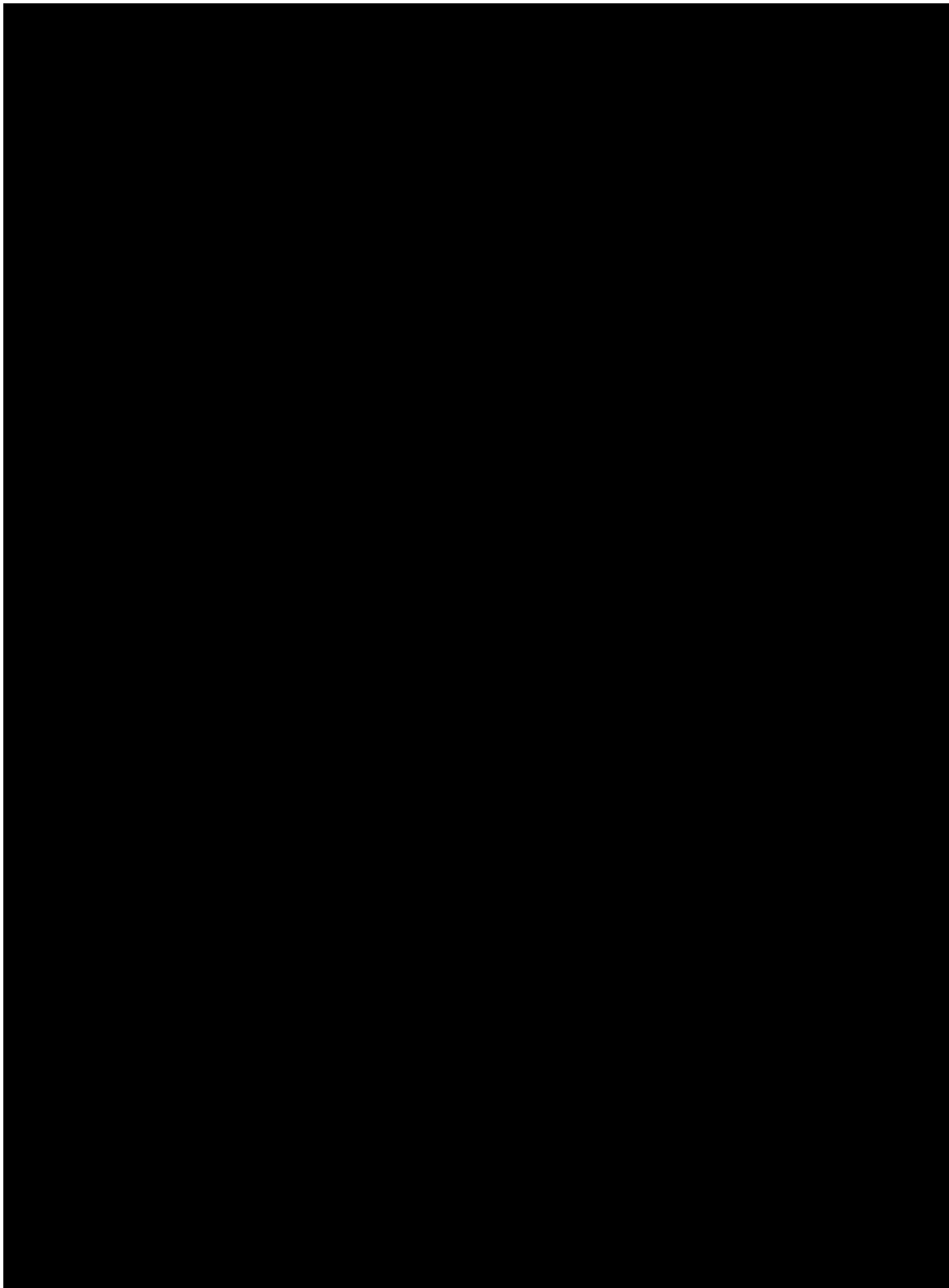
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2 And that was, in brief, what happened.

3 Q. [9:47:48] Thank you very much, Mr Witness, for allowing us to ascertain the
4 truth. We may come back to you with some follow-up questions on this very helpful
5 information.

6 [REDACTED]?

7 A. [9:48:24] [REDACTED]

8 [REDACTED]

9 Q. [9:48:43] And it may seem obvious, but for the record, what ethnicity are the
10 individuals who are interviewed in these images?

11 A. [9:48:58] Based on the part I heard, they are from the Tuareg.

12 Q. [9:49:09] And the commentary to these images states that some people were
13 glad to see the mujahedin. Is this consistent with what you saw and heard?

14 A. [9:49:24] Look, there is a truth that may sound strange a little. Some people
15 were happy with the presence of the Islamist groups and some people were
16 present -- were happy to go to Mauritanian camps. And the reason is very simple:
17 It's poverty. Extreme poverty. You could see spend a whole day not eating
18 anything, and, at that time, there was some aid provided and for the first time people
19 did receive free aid.

20 If you are a poor person who thinks only about getting himself just a meal a day, that
21 would make him over the moon and he wouldn't be paying attention to political
22 considerations or any other side's considerations.

23 The same thing applies to people who have been to refugee camps and who were
24 starving beforehand. Because at the refugee camp, they had a UNHC providing
25 regular aid; so instead of being deprived of whatever, they are now in a situation

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1 where they are getting nourishment and that made them happy.

2 Q. [9:50:54] Now, if I could just turn to tab 17, it's in the Prosecution's binder; that's
3 MLI-OTP-0040-0368 at page 0389, paragraph 101.

4 And, Mr Witness, if you could turn to tab 241 in the Defence binder, that's the Arabic,
5 and that's MLI-OTP-0077-1653 at page 1653 -- sorry, 1676, paragraph 101.

6 And if the court officer could bring it up on evidence 1, but not shown to the public
7 obviously.

8 THE COURT OFFICER: [9:51:59] The document is displayed indeed on the evidence
9 1 channel, and we are in private session.

10 MS TAYLOR: [9:52:47]

11 Q. [9:52:47] The relevant paragraph is 101.

12 A. [9:52:56] Yes.

13 Q. [9:52:58] Is it correct, Mr Witness, that you told the Prosecution [REDACTED] that:
14 "In the end," even "the Songhay ... protested when Ansar Dine was leaving ... town
15 because they preferred them to the MNLA."

16 A. [9:53:36] That is true.

17 Q. [9:53:38] And is that consistent with what you saw and heard at the time?

18 A. [9:53:48] It is. [REDACTED]

19 [REDACTED] I think I did mention this in my testimony here for -- following a
20 decision or a rumour that Ansar Dine were leaving Timbuktu at the beginning,

21 [REDACTED]
22 [REDACTED] a protest where the people are calling for
23 Ansar Dine not to withdraw.

24 Q. [9:54:32] Now just focusing on this period at the beginning of 2012, it's correct,
25 isn't it, that you yourself were not present during any of the fighting between

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1 Ansar Dine and the Malian army at this period?

2 A. [9:54:50] Yes, I was not there, [REDACTED]

3 Q. [9:54:58] And is it also correct that some groups, such as the MNLA,

4 exaggerated or lied about their involvement in certain incidents for propaganda

5 purposes? For example, their claim to victory at Aguelhok?

6 A. [9:55:27] The question is not clear enough. But here, I'd like to say that the first

7 day where the Malian army -- when the Malian army left Timbuktu, and there were

8 the Arab militias inside the city and the MNLA members who made it there, although,

9 MNLA's leadership did give orders that the members head to the airport because

10 the inside of the city was under the control of Arab militias, which announced their

11 alliance with MNLA to control the city. But some vehicles and some fighters refused

12 those orders and did go inside the city.

13 And on that day, as far as what the people told [REDACTED]

14 [REDACTED] it was total chaos. It was looting and

15 destruction of public property all over.

16 That might have been the reason people were afraid that Ansar Dine could leave the

17 city and end up -- and then ending up with the same people who had been there on

18 day one.

19 Q. [9:56:56] Just focusing now on these Arab groups, if I could turn you tab 1 on

20 the Prosecution's list, but actually for the Arabic, it would be tab 239 on the Defence

21 list, that's MLI-OTP-0068-3201 at 3216, paragraph 72. And for the English, it's tab 1

22 in the Prosecution's binder, MLI-OTP-0020-0019 at page 0034.

23 A. [9:57:35] "209" what? Can you please tell me.

24 Q. [9:57:40] It's tab 239 in the Defence binder. And if you could go to page

25 3 -- 3216 and then paragraph 72. And for the English, it would be page 0034 at

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1 paragraph 72.

2 A. [9:58:44] Yes.

3 Q. [9:58:47] Do you recall telling the Prosecution [REDACTED] that at this point the Arab
4 militia played a double game; that they were initially part of the Malian army, but
5 after the Malian army left Timbuktu, they pretended to chase them out to create an
6 appearance that they were opposed to the army?

7 A. [9:59:12] Very much so.

8 Q. [9:59:15] So that's consistent with what you saw and heard at the time?

9 A. [9:59:23] Indeed.

10 Q. [9:59:27] And you've just described now I think a situation of pillaging and, I
11 guess, would you describe it as chaos?

12 A. [9:59:41] Yes.

13 Q. [9:59:44] And at paragraph 73 of the same statement, you inform the
14 Prosecution that the Arab groups vandalised Timbuktu's banks, offices and the army
15 camp and they also took a large quantity of weapons from the army barracks. Is that
16 correct?

17 A. [10:00:12] It is. They -- roughly, it was them who entered the Malian army
18 barracks and took unimaginable amounts of army assets. [REDACTED] in
19 Timbuktu, there was an anger towards Mohamed Najim and also towards the young
20 people who -- the young people, who joined MNLA in Timbuktu, thought that
21 Mohamed Najim betrayed them and was in collusion with the Arabs. And, the
22 going rumour was that Mohamed Najim is originally an Arab and he did what he did,
23 which is, to put away the members of the MNLA to allow for an entrance to the city
24 and left the room for Arab militias to take control of the -- of weapons and to take
25 everything they wanted, including vehicles and anything that belonged to

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1 organisations or to the government.

2 Q. [10:01:27] So turning to paragraph 74 of the same statement, you're referring to
3 the agreement between the MNLA and the Arabs. Do you recall also telling the
4 Prosecution that some of the MNLA entered Timbuktu and pillaged after the Arab
5 militia?

6 PRESIDING JUDGE MINDUA: [10:01:51](Interpretation) Prosecutor.

7 MR DUTERTRE: [10:01:57](Interpretation) Your Honour, I have a question as to
8 whether we should be in public session for this. I mean, it's not very identifying.
9 So perhaps questions could be put without reference systematically being made to the
10 statement.

11 PRESIDING JUDGE MINDUA: [10:02:13](Interpretation) Ms Taylor, I think the
12 Prosecutor's right. We can go into open session and we will be careful not to identify
13 the person that we want to protect.

14 MS TAYLOR: [10:02:22] Thank you, Mr President. But yesterday I was told I
15 should make reference to the statement each and every time. So ... I think that puts
16 us in a bit of a bind in the sense that if I don't make reference to the statement, I will
17 have the Prosecution object. And it is our right, actually, to put the statement to the
18 witness.

19 PRESIDING JUDGE MINDUA: [10:02:58](Interpretation) Prosecutor.

20 MR DUTERTRE: [10:03:00](Interpretation) Of course, you can present the document.
21 What the Prosecution is saying is, when the document's presented, you refer to the
22 document. It has to be mentioned, but here we're talking about questions that the
23 Defence could put in a spontaneous way. It can refer to the statement if it has a
24 problem and it wants to remind the witness of it, but these could be spontaneous
25 questions and spontaneous answers. The idea is when you use a document, you

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- 1 mention it. That doesn't mean you always use the document.
- 2 PRESIDING JUDGE MINDUA: [10:03:36](Interpretation) Ms Taylor, I'm in
3 agreement with the Prosecutor on that point. We're going to go into open session.
4 You ask your questions to the witness, the witness will answer and, when it is
5 sensitive, we can go into private session. Is that agreeable?
- 6 MS TAYLOR: [10:03:51] Yes. But for the record, we'll have to do so every time
7 because, in accordance with the decision on the conduct of the proceedings, we have
8 an obligation to elicit the foundation of the witness's knowledge. So each time I ask
9 him a question about the statement, I've been asking him if this is consistent with
10 what he saw and what he heard, which is a risk of identification.
- 11 THE WITNESS: [10:04:27](Interpretation) As far as I'm --
- 12 PRESIDING JUDGE MINDUA: [10:04:30](Interpretation) Witness, yes, I saw your
13 gesture, but I was waiting for the interpretation.
- 14 THE WITNESS: [10:04:35](Interpretation) As far as I'm personally concerned, I'd like
15 to express again that I do want to give a testimony on the basis of my memory today.
16 Not my memory of years back. Also, I don't want my testimony to sound like I am
17 agreeing -- I had agreed to something before and I am here to confirm it on you. So
18 to go back to these transcripts, past transcripts, I don't think that's necessary or
19 important. I prefer questions to be put to me directly without going back to
20 previous references and I would answer on the basis of what I know today.
- 21 PRESIDING JUDGE MINDUA: [10:05:36](Interpretation) Yes, Witness, you have to
22 reply in response to what you remember today. But the Defence doesn't know what
23 you know today. That's the reason why the Defence is basing itself on what you've
24 already said in order to ask you questions.
- 25 Of course you're going to answer with regard to what you remember.

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1 Court officer, if you would be so kind as to take us into open session.

2 (Open session at 10.06 a.m.)

3 THE COURT OFFICER: [10:06:22] We're in open session, Mr President.

4 PRESIDING JUDGE MINDUA: [10:06:28](Interpretation) Thank you very much,
5 court officer.

6 Ms Taylor.

7 MS TAYLOR: [10:06:34]

8 Q. [10:06:37] Mr Witness, I think -- I believe my last question to you was about the
9 MNLA entering Timbuktu and whether some of them pillaged after the Arab militias
10 entered Timbuktu.

11 A. [10:07:00] When the Malian army left Timbuktu, the Arab militias were already
12 present with the Malian army. They did not enter the city. They were already in
13 the city, but MNLA - led by Mohamed Najim - were besieging the city from different
14 directions. I was not in the city on that day, but the people concurred each other
15 when they relayed this to me, when they told me that it was total chaos because there
16 was pillaging. There was also breaking and destruction of property in an arbitrary
17 and irresponsible way.

18 This is what the inhabitants relayed to me.

19 Q. [10:08:07] Now, Mr Witness, if you could turn to paragraph 73, just to situate the
20 question. We were talking previously about the Arab groups entering the army
21 barracks and taking a large quantity of weapons. And at paragraph 73, it says that
22 you told the Prosecution that:

23 "The population also used" this "opportunity and took its share."

24 Is that correct?

25 A. [10:08:41] The city was in total chaos. And since the Arab groups were with

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1 the Malian army and they even oversaw the departure of the Malian army from the
2 city, because there was coordination with MNLA outside and there was coordination
3 with the Malian army and this double role was supported, so they were the first to
4 reap the fruit of that departure and they were the first to make their way to the
5 barracks of the Malian army. And, of course, the local people did do looting. And
6 whenever there was a lack of security control, that happened. It happened when the
7 Malian army left and it happened when Ansar Dine also left the city.

8 The local people, I could say, roughly destroyed all the shops that belonged to
9 fair-skinned people. They looted their homes. And that -- so that happened twice.
10 Q. [10:09:50] I'll be asking you some questions on that at a later stage, but just to be
11 clear for the record, did the population enter the army barracks and take weapons?

12 A. [10:10:06] I don't think so. But I don't know. I do not have precise
13 information. What I know is that the Arab militias did go to the store houses and,
14 I think, there were weapons all over the place. I remember two children playing
15 with an IED, and it exploded, and one of them had his leg cut off. The other died.
16 And that shows how much chaotic it was. How much the takeover of the weapons
17 was chaotic, these weapons that were in Malian army barracks.

18 Q. [10:10:58] Now, Mr Witness, this morning you've described people protesting
19 because they didn't want Ansar Dine to leave because they preferred them to the
20 MNLA, and you've also described the Ansar Dine promoting equality amongst the
21 population.

22 Would it be fair to say that in April and May 2012, Ansar Dine was the least worst
23 option for ensuring security and stability in Timbuktu?

24 A. [10:11:42] First of all, that is true. The people in Timbuktu did favour the
25 group Ansar Dine to Arab militias and to MNLA, as they expressed in protests when

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1 there was a rumour that Ansar Dine were about to leave the city.

2 Q. [10:12:11] For the purposes of the transcript, I will now be asking a question

3 concerning paragraph 51 of the statement before you, where you told the Prosecution

4 that Ansar Dine is not linked to Al-Qaeda in terms of ideology. Within Ansar Dine

5 there were many who were not fundamentalists. And that most people in Ansar

6 Dine have tribal goals, they try to look like Islamists but most of them do not pray.

7 They would hide and smoke in secret.

8 Is it correct that you said this to the Prosecution in 2014?

9 A. [10:13:11] Yes. Look, Ansar Dine has two components. There is the radical

10 component, the extremist one, that is a copy of Al-Qaeda. And that does include

11 local people, most of whom are Tuareg and Arabs. And there is another component

12 that joined after Ansar Dine and Al-Qaeda's takeover. Of course the first component

13 did help in achieving that takeover, part of it did help in that. So after Ansar Dine

14 and Al-Qaeda took control of the major cities in northern Mali, particularly Timbuktu,

15 and after expelling the national movement from Timbuktu, and that movement

16 having no longer any role in managing that part of the country, there were -- there

17 was a tribal kind of decisions that recognised the reality that these people are now in

18 charge, that MNLA has withdrawn, and that the only way for us is to be with these

19 people to protect ourselves and to protect our interests.

20 So there came about a new component in Ansar Dine that holds the banner of Ansar

21 Dine, but that's only on the facade. Ideologically speaking, they were not connected

22 to them. Actually, they hated each other, because one component was extremist,

23 who refused that anyone would hold a banner without embracing the ideology. The

24 other component, who saw the first one as an internationally condemned terrorist

25 component who would put them in a difficult situation when they called for their

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1 rights. And that's how they saw things.

2 And at the same time, each wanted to reap some benefit from the other. The
3 national Ansar Dine members thought they were using the power and control of the
4 other Ansar Dine for them to have power. Also, the radical side of Ansar Dine
5 thought that, under the pretexts of having a local Ansar Dine organisation, they were
6 able to be in control of everything without being in the picture, but instead put the
7 local people in the picture as if they were the ones in control.

8 Q. [10:16:16] Now, turning to, for the record, paragraph 166 of the same statement,
9 is it correct that at the beginning in Timbuktu, Iyad met local leaders and religious
10 leaders and told them to join Ansar Dine? And by "Iyad" I meant Iyad Ag Ghaly.

11 A. [10:16:52] Yes, there was a big meeting attended by tribunal representatives,
12 dignitaries and military leaders, including people from MNLA. Most of them
13 actually was -- were from MNLA. Iyad Ag Ghaly asked them to join Ansar Dine and
14 they told him: We're ready to be with you, we trust you, and we're fully ready to
15 stand behind you, as long as you guarantee that we have no relationship to Al-Qaeda.
16 Iyad didn't give them guarantees. He told them: Your relationship is with me, not
17 with Al-Qaeda, but -- and that everyone would work under the banner of Ansar Dine.
18 And for the sake of precision, I was not present in the meeting but this is what I heard
19 from [REDACTED] and different people I met who attended the meeting.

20 MS TAYLOR: [10:17:51] Can we go into private session very briefly?

21 PRESIDING JUDGE MINDUA: [10:18:06](Interpretation) Private session, please.
22 (Private session at 10.18 a.m.)

23 THE COURT OFFICER: [10:18:20] We are in private session, Mr President.

24 PRESIDING JUDGE MINDUA: [10:18:26](Interpretation) Thank you very much.

25 Ms Taylor.

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1 MS TAYLOR: [10:18:30]

2 Q. [10:18:31] While we're in private session, are you able to tell us who those
3 sources were?

4 A. [10:18:38] When it comes to this meeting, I cannot say this particular person told
5 me so-and-so, because when you have concurring information and accounts from
6 multiple people, it becomes like a self-evident truth shared among the people. So it's
7 difficult to point at one person in particular and say he told me so-and-so.

8 MS TAYLOR: [10:19:04] We can go back into open session.

9 PRESIDING JUDGE MINDUA: [10:19:16](Interpretation) Open session, please, court
10 officer.

11 (Open session at 10.19 a.m.)

12 THE COURT OFFICER: [10:19:29] We are back in open session, Mr President.

13 PRESIDING JUDGE MINDUA: [10:19:36](Interpretation) Thank you very much.
14 Ms Taylor.

15 MS TAYLOR: [10:19:41] For the purposes of the record, my next question relates to
16 paragraph 193 of the same statement.

17 Q. [10:19:50] Is it correct, Mr Witness, that the idea of the Ansar Dine leaders was
18 that Al-Qaeda was supposed to leave after the takeover in Timbuktu, leaving
19 Ansar Dine in charge under the command of Ibrahim Benna?

20 A. [10:20:16] Yes. That's the information spread among the people and what we
21 heard. It was -- there was an agreement with Al-Qaeda to help take control of the
22 major cities in general. And following that control, Al-Qaeda ought to withdraw to
23 the mountainous areas where it has been before 2012. And Timbuktu be left to the
24 local Ansar Dine under the leadership of Colonel Ibrahim Benna, a colonel from the
25 Malian army, who was from Kidal.

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1 Q. [10:21:07] And it's correct that, notwithstanding that understanding, Al-Qaeda
2 decided to stay?

3 A. [10:21:24] Yes, Al-Qaeda decided to stay, and I think there were negotiations on
4 that matter held in Timbuktu in secret with representatives from Kidal with Al-Qaeda
5 in Timbuktu, but Al-Qaeda refused to leave Timbuktu.

6 Q. [10:21:52] And the people taking decisions in Timbuktu from that point were
7 Yahya, Nabil, Abou Zeid, and Abdallah Al Chinguetti?

8 A. [10:22:07] What is sure here is -- or the people are certain to have been involved
9 were Nabil, before we died in a car accident, also Yahya Abou Al Hammam, and
10 Abdelhamid Abou Zeid. These were the ones who were in control of the Timbuktu
11 region indeed.

12 Q. [10:22:34] And for the purposes of the record, just referring you now to
13 paragraph 194 of the same statement, it's correct, isn't it, that these persons in charge
14 would not necessarily consult with Iyad Ag Ghaly?

15 A. [10:23:07] At the time I don't think there was -- I don't think there was anything
16 done, either within -- whether within Ansar Dine or Al-Qaeda without consultation
17 with Iyad Ag Ghaly.

18 Q. [10:23:22] Mr Witness, could you turn to paragraph 194 of your statement.

19 A. [10:23:44] Where exactly?

20 Q. [10:23:46] It's paragraph 194 --

21 A. [10:23:53] Which binder?

22 Q. [10:23:54] It's the one you were looking at previously.

23 So it's tab 239 on the Defence list.

24 And for those in the courtroom, it's tab 1 of the Prosecution list, MLI-OTP-0020-0019

25 at (Overlapping speakers)

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- 1 A. [10:24:13] The reference number.
- 2 Q. [10:24:14] The reference number is, for the Arabic, is tab 239,
- 3 MLI-OTP-0068-3201 and it's page 3240.
- 4 A. [10:24:33] The page number?
- 5 Q. [10:24:35] The page number is page 3240 and the paragraph number is 194.
- 6 A. [10:24:58] 104? Here I have a binder that starts with 200.
- 7 Q. [10:25:07] Mr Witness, it's tab 239.
- 8 PRESIDING JUDGE MINDUA: [10:25:21](Interpretation) Court officer, could the
- 9 witness kindly be assisted?
- 10 THE WITNESS: [10:25:36](Interpretation) I have it now, but I just need the page
- 11 number.
- 12 MS TAYLOR: [10:25:45]
- 13 Q. [10:25:46] The page number is page 3240 and if we could look at paragraph 194.
- 14 A. [10:26:37] And which paragraph? Is it 194?
- 15 Q. [10:26:41] Yes, Mr Witness.
- 16 And in the English it says "I do not think that Al-Qaeda would consult Iyad on all
- 17 decisions" at the beginning of the sentence?
- 18 A. [10:26:55] Yes.
- 19 Q. [10:26:58] So, Mr Witness, is it correct that the persons I mentioned, Yahya,
- 20 Nabil, Abou Zeid, Al Chinguetti, that they would not necessarily consult with
- 21 Iyad Ag Ghaly on all decisions?
- 22 A. [10:27:17] It's difficult to be specific on that. What I can assure you of here is
- 23 that Iyad Ag Ghaly founded Ansar Dine and he is the commander-in-chief of
- 24 Ansar Dine or the supreme leader of Ansar Dine. * And what turned out to be the
- 25 case later was that Droukdel, the commander of *Al-Qaeda in the Islamic Maghreb,

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1 did give him special prerogatives whereby the Al-Qaeda emirs would listen to him
2 and would consult with him on everything. And as far as I heard, these prerogatives
3 given to Iyad by Al-Qaeda were the reason Mokhtar Belmokhtar dissented from
4 Al-Qaeda and joined MUJAO, because he believed it was him who founded Al-Qaeda
5 in northern Mali and therefore it was not acceptable for him *to have a Tuareg giving
6 him orders or instructions, *as the rumours said.

7 Q. [10:28:35] Mr Witness, you say in the same paragraph that when Iyad was in
8 Timbuktu he had influence, but he wasn't in Timbuktu often, was he?

9 A. [10:28:51] Yes, Iyad's presence in Timbuktu was only for -- happened only three
10 times, as the people in Timbuktu know, except if he had secret visits that no one was
11 aware of. And this was -- that these three times when they first took control of
12 Timbuktu, the second time was when he finished negotiations with MNLA, before
13 signing the agreement or the protocol of the agreement, and the third time was when
14 he came to provide equipment for the army that was going to head south.

15 Q. [10:29:41] I'm going to ask you a question about the possibility of secret visits,
16 but to do so I need to go into private session, that's with the authorisation of the
17 Presiding Judge.

18 PRESIDING JUDGE MINDUA: [10:29:58](Interpretation) Prosecutor.

19 MR DUTERTRE: [10:30:00](Interpretation) Yes, your Honour.

20 I would need some clarification with the witness in the transcript.

21 In the French and English transcript they speak about Ansar Dine, the commander of
22 Ansar Dine in the Islamic Maghreb gave him prerogatives, and it's the same in the
23 English transcript. Is it Ansar Dine in the Islamic Maghreb or -- that the witness is
24 speaking about, or something else?

25 And at the same time, as I have the floor, on page 18, line 7 in French there's a

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1 reference to a paragraph, it's not the right paragraph, perhaps the Defence could come
2 back to correct it.

3 PRESIDING JUDGE MINDUA: [10:30:47](Interpretation) I also noted that
4 confusion.

5 Ms Taylor, could you also get some clarification with this part with the witness,
6 please.

7 MS TAYLOR: [10:30:59] Mr President, this is Defence cross-examination. The
8 Prosecution's had their turn. If there's a need for me to obtain clarification, I'll do so.
9 Thank you.

10 PRESIDING JUDGE MINDUA: [10:31:17](Interpretation) You are right, Ms Taylor.
11 But a statement by the witness that we haven't understood well. So you could put
12 the question and the witness could clarify it for the transcript.

13 MS TAYLOR: [10:31:30] Certainly, I will do so after the break. Thank you.

14 PRESIDING JUDGE MINDUA: [10:31:39](Interpretation) Ms Taylor, we don't have
15 the break now. We continue to 11 o'clock.

16 MS TAYLOR: [10:31:44] Yes, I'm aware, Mr President.

17 PRESIDING JUDGE MINDUA: [10:31:50](Interpretation) Do you want us to go to
18 private session, is that what you've asked for, or do we continue in open session?

19 MS TAYLOR: [10:32:02] I had actually asked to go into private session before the
20 Prosecution stood up.

21 PRESIDING JUDGE MINDUA: [10:32:09](Interpretation) Very well. Madam
22 courtroom officer, private session, please.

23 (Private session at 10.32 a.m.)

24 THE COURT OFFICER: [10:32:18] We're in private session.

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

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1 Ms Taylor.

2 MS TAYLOR: [10:32:27]

3 Q. [10:32:31] Mr Witness, can you turn to tab 19 of the Defence binder. It's the

4 Arabic version. It's [REDACTED] And the English version is at tab 20,

5 being [REDACTED]?

6 A. [10:34:02] Yes.

7 Q. [10:34:05] [REDACTED]?

8 A. [10:34:13] [REDACTED]

9 Q. [10:34:17] If I could draw your attention to [REDACTED] Iyad is not
10 the person who can move between cities in secrecy. [REDACTED]?

11 A. [10:34:37] [REDACTED]

12 Q. [10:34:39] And is that consistent with what you saw and heard at that time?

13 A. [10:34:50] Yes. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Let me now answer the question on the basis of my memory today. There are
19 delegations that come from Libya and from different places to Timbuktu and that are
20 Ansar Dine barracks outside the city. What we see only is what happens in the city
21 and which may not be visible to everyone. But there are other things, hidden
22 barracks outside -- or camps outside the city. Iyad could visit those [REDACTED]

23 [REDACTED]

24 All I mentioned is the times that I am sure he -- on which he did visit the city. And,
25 so far, my memory is not that fresh when it comes to negotiations on leaving

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1 Timbuktu, but what I know is that there were delegations that arrived and I know
2 that Al-Qaeda's refusal to leave the city was a reason of discontent to the non-radical
3 side of Ansar Dine led by Alghabass Ag Intallah, who considered that this was a sort
4 of treason to them.

5 Q. [10:37:14] Just on the subject of Iyad Ag Ghaly's movements, is it possible that
6 he could have come into the centre of Timbuktu and had meetings with people like
7 Houka Houka in secrecy?

8 A. [10:37:41] It's certain that he did meet Houka Houka, [REDACTED]

9 [REDACTED] When exactly, I don't know. But I don't think Iyad would
10 come to Timbuktu in secret to meet Houka Houka. [REDACTED]

11 [REDACTED]
12 [REDACTED] when he came to

13 the city with Ansar Dine and Al-Qaeda the first time.

14 MS TAYLOR: [10:38:21] I think we can go into open session.

15 PRESIDING JUDGE MINDUA: [10:38:29](Interpretation) Open session, please,
16 madam courtroom officer.

17 (Open session at 10.38 a.m.)

18 THE COURT OFFICER: [10:38:43] We're in open session, Mr President.

19 PRESIDING JUDGE MINDUA: [10:38:48](Interpretation) Thank you very much.

20 Ms Taylor.

21 MS TAYLOR: [10:38:51]

22 Q. [10:38:53] Now, for the record, my next question concerns the same statement
23 we were looking at earlier, that's tab 239 of the Defence binder, in Arabic, and tab 1 on
24 the Prosecution's binder, the Arabic reference being MLI-OTP-0068-3201 at 3239,
25 paragraph 188, and the English being MLI-OTP-00-0019 at 0059, again paragraph 188?

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- 1 A. [10:40:16] Yes.
- 2 Q. [10:40:19] Do you recall telling the Prosecution that there's no doubt in my mind
3 that Timbuktu was under the control of Al-Qaeda and that Ansar Dine had only a
4 symbolic presence?
- 5 A. [10:40:36] I do.
- 6 Q. [10:40:40] So if Al-Qaeda was in control and decisions were being taken by
7 members of Al-Qaeda, it would follow, wouldn't it, that the role of some of the local
8 Ansar Dine members would have been symbolic or administrative?
- 9 A. [10:41:02] Yes.
- 10 Q. [10:41:05] If I could turn you to tab 11 of the Prosecution list. And for the
11 Arabic it's actually tab 10 of the Prosecution's binder and the references are, for the
12 Arabic, it's MLI-OTP-0020-0017, and for the English it's MLI-OTP-0078-9744
13 at 9745 to 9746.
- 14 And I believe we'll have to go into closed -- private session for this.
- 15 PRESIDING JUDGE MINDUA: [10:42:01](Interpretation) Private session, please,
16 madam courtroom officer.
- 17 (Private session at 10.42 a.m.)
- 18 THE COURT OFFICER: [10:42:27] We're in private session.
- 19 PRESIDING JUDGE MINDUA: [10:42:29](Interpretation) Thank you very much.
- 20 Ms Taylor.
- 21 MS TAYLOR: [10:42:31]
- 22 Q. [10:42:35] Now, in terms of the Arabic, I believe that would be the sixth
23 paragraph from the top, and for the English it's the final paragraph on 9745.
- 24 Mr Witness, [REDACTED]?
- 25 A. [10:43:19] [REDACTED]

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- 1 [REDACTED]
- 2 Q. [10:43:40] Do you have the Arabic version in front of you?
- 3 A. [10:43:46] I don't.
- 4 Q. [10:43:53] Mr Witness, tab 10 is Arabic. The Prosecution's binder.
- 5 A. [10:44:27] Tab 10 is just a post of a link and there's no text here.
- 6 Q. [10:44:35] It's the Prosecution's binder you should be looking at, Mr Witness.
- 7 I think you're looking at the Defence binder.
- 8 THE COURT OFFICER: [10:44:45] Ms Taylor, we will bring the OTP binder to the
- 9 witness.
- 10 THE WITNESS: [10:45:00](Interpretation) I have a Defence binder that begins
- 11 with 200.
- 12 MS TAYLOR: [10:45:16]
- 13 Q. [10:45:19] And now you have a whole forest of binders.
- 14 A. [10:45:38] Yes.
- 15 Q. [10:45:40] [REDACTED]?
- 16 A. [10:45:44] [REDACTED]
- 17 Q. [10:45:47] [REDACTED]?
- 18 A. [10:45:58] [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED]
- 24 Q. [10:46:38] [REDACTED]
- 25 [REDACTED]?

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1 A. [10:46:47] [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 THE ARABIC INTERPRETER: [10:47:34] The Arabic statement was not clear
7 enough.

8 MS TAYLOR: [10:47:38]

9 Q. [10:47:39] Mr Witness, the interpreter has said that they didn't understand the
10 last section in Arabic. Would you mind repeating it.

11 A. [10:47:52] Which part exactly? [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q. [10:48:38] At the end of this page, it talks about the judicial council of Timbuktu
17 being just one body established by Ansar Dine, and it being, "It is composed of
18 members of the group, as well as non-members".

19 Mr Witness, in 2012, was it possible to find persons working with the different
20 institutions in Timbuktu who had not pledged allegiance to Ansar Dine or Al-Qaeda?

21 A. [10:49:34] Timbuktu was under the control of Al-Qaeda, under the banner of
22 Ansar Dine. All of the institutions present in Timbuktu were under their direct
23 control, one way or another.

24 Yes, I did feel that the imams in Timbuktu were to adjudicate within the judicial
25 council, but I felt, and I'm not sure of that, I felt that they did not belong to any

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- 1 organisational structure. And by "organisational structure", I mean the armed
2 groups such as Al-Qaeda or Ansar Dine.
- 3 Q. [10:50:32] Now, turning to tab 145 of the Prosecution list that you have before
4 you, that's MLI-OTP-0033-5772. And the translation is tab 144, being
5 MLI-OTP-0033-5475.
- 6 A. [10:51:44] You mean tab 145?
- 7 Q. [10:51:52] Yes, of the Prosecution's binder.
- 8 A. [10:52:06] Yes, there it is.
- 9 PRESIDING JUDGE MINDUA: [10:52:10](Overlapping speakers)
- 10 MR DUTERTRE: [10:52:11](No interpretation)
- 11 PRESIDING JUDGE MINDUA: [10:52:25](No interpretation)
- 12 MS TAYLOR: [10:52:28] I only have a very brief question on this, it's not necessary
13 to play the video.
- 14 PRESIDING JUDGE MINDUA: [10:52:33](Interpretation) Please go ahead, put your
15 question.
- 16 MS TAYLOR: [10:52:39]
- 17 Q. [10:52:40] Mr Witness, do you recall at the end of May 2012 [REDACTED] an
18 agreement between Ansar Dine and the MNLA to work together in the north of Mali?
- 19 A. [10:52:59] Concerning what agreement exactly? Do you mean the one reached
20 at the beginning or the agreement that failed?
- 21 Q. [10:53:13] I'm referring to the agreement at the end of May.
- 22 A. [10:53:25] [REDACTED] There was an agreement
23 between Ansar Dine and MNLA.
- 24 Q. [10:53:35] And do you recall [REDACTED]
25 [REDACTED] attempts to establish an MNLA and Ansar Dine transitional council?

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1 [REDACTED] The first one being if we could turn to tab 7 on the
2 Defence list before you, this would be the Defence binder, not the Prosecution binder,
3 and it's [REDACTED] And the English to be tab 8 of the Defence binder, that's
4 [REDACTED]

5 A. [10:54:57] These files are now kind of difficult to deal with. I have it now.

6 Q. [10:55:17] [REDACTED]?

7 A. [10:55:23] [REDACTED]

8 Q. [10:55:26] [REDACTED]?

9 A. [10:55:34] [REDACTED]

10 [REDACTED]
11 [REDACTED]

12 Q. [10:56:00] If I could now turn you to tab 10 of the same binder. That's the
13 Arabic being -- sorry, that's the English. Tab 9, actually, I apologise, Mr Witness.
14 The Arabic would be tab 9 and the English would be tab 10. And the Arabic is
15 [REDACTED] and the English is [REDACTED]

16 [REDACTED]?

17 A. [10:56:55] [REDACTED]

18 Q. [10:57:03] Yes, we can turn to that. That would be tab 12 on the Defence list of
19 evidence, being [REDACTED] and the relevance reference would be 2880.

20 I think I gave you the English. The Arabic would be tab 11 on the Defence list,

21 [REDACTED] And, Mr Witness, the relevant reference for you would be
22 page [REDACTED]?

23 A. [10:58:34] Yes.

24 Q. [10:58:35] Mr Witness, [REDACTED]?

25 A. [10:58:42] [REDACTED]

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2

3 Q. [10:59:01] [REDACTED] it states that Sheikh Ossa said that the
4 MNLA and Ansar Dine were working on the terms of an agreement. He's also
5 saying that: "We and the National Movement for the Liberation of Azawad cannot
6 fight". [REDACTED]?

7 A. [10:59:37] [REDACTED] I don't remember this now, but what I'm
8 sure of is that [REDACTED]

9

10 Q. [10:59:59] Now turning to tab 239 of the Defence binder, for the Arabic that's
11 MLI-OTP-0068-3201 at 3243, and the relevant --

12 A. [11:00:21] Tab, please?

13 Q. [11:00:22] 239 of the Defence binder. It's paragraph 205. And for the English
14 it's tab 1 of the Prosecution's binder, MLI-OTP-0020-0019 at (Overlapping speakers)

15 A. [11:00:45] 239?

16 Q. [11:00:48] Yes, exactly.

17 A. [11:00:54] Page, please.

18 Q. [11:00:56] The page would be 3243 and the paragraph is 205.

19 PRESIDING JUDGE MINDUA: [11:01:13](Interpretation) Mr Prosecutor.

20 MR DUTERTRE: [11:01:14](Interpretation) I do not have a tab 239 in the Defence
21 binder. If I understood correctly, it is the Defence binder.

22 MS TAYLOR: [11:01:26] That's because you don't speak Arabic, Mr Dutertre. You
23 have the Prosecution's binder. It's tab 1.

24 MR DUTERTRE: [11:01:36](Interpretation) Oh, okay. Thank you.

25 MS TAYLOR: [11:02:42] Mr President, bearing in mind the time, I can either put the

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- 1 question now or after the break.
- 2 PRESIDING JUDGE MINDUA: [11:03:00](Interpretation) I think that the witness
- 3 read the paragraph and he can answer your question. Please ask your question.
- 4 MS TAYLOR: [11:03:07]
- 5 Q. [11:03:09] Mr Witness, paragraph 205 says:
- 6 "One day [REDACTED] the vehicles of the MNLA getting fuel and
- 7 preparing to leave as they had received a warning. There was no fight but many
- 8 Islamist group fighters gathered there fully armed."
- 9 Is this consistent with what you saw and heard at the time?
- 10 A. [11:03:44] Yes, precisely.
- 11 MS TAYLOR: [11:03:48] I believe that now would be a good time for a break.
- 12 We're still in closed session.
- 13 PRESIDING JUDGE MINDUA: [11:03:56](Interpretation) Very well.
- 14 We're in private session at the moment. We shall go back -- please take us back into
- 15 open session, court officer.
- 16 (Open session at 11.04 a.m.)
- 17 THE COURT OFFICER: [11:04:19] We are back in open session, Mr President.
- 18 PRESIDING JUDGE MINDUA: [11:04:22](Interpretation) Thank you very much,
- 19 court officer.
- 20 It's now 11.05. We need to have a 30-minute pause to allow the cleaning services to
- 21 do their job, so we are going to take a break and come back at 11.35.
- 22 The hearing is now suspended.
- 23 THE COURT USHER: [11:04:47] All rise.
- 24 (Recess taken at 11.04 a.m.)
- 25 (Upon resuming in open session at 11.37 a.m.)

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- 1 THE COURT USHER: [11:38:01] All rise.
- 2 Please be seated.
- 3 PRESIDING JUDGE MINDUA: [11:38:30](Interpretation) Court is now again in
- 4 session.
- 5 Ms Taylor, you have the floor for the follow-up of your cross-examination.
- 6 MS TAYLOR: [11:38:42] Thank you, Mr President.
- 7 Just on the issue that arose before the break concerning the transcript, it is our
- 8 understanding that the answer of the witness was clear in the Arabic, and we are
- 9 verifying that with the interpreter so the necessary corrections can be made to the
- 10 English and the French transcripts.
- 11 PRESIDING JUDGE MINDUA: [11:39:12](Interpretation) But in French it wasn't
- 12 clear even for me. Perhaps it would be better to ask the question to the witness so
- 13 the witness can answer the question, and in that way I would also be able to hear it in
- 14 French and my colleagues could hear it in English.
- 15 MS TAYLOR: [11:39:30]
- 16 Q. [11:39:32] Mr Witness, before when you were referring to Droukdel, were you
- 17 saying that he was a commander of -- (Overlapping speakers)
- 18 PRESIDING JUDGE MINDUA: [11:39:41](Interpretation) We're in open session, is it
- 19 open session? Yes.
- 20 The court officer is, she wants to check.
- 21 Could it be done in open session?
- 22 Please go ahead, ask your question.
- 23 MS TAYLOR: [11:40:03]
- 24 Q. [11:40:05] Mr Witness, I apologise, there appears to be a word confused in the
- 25 English and French transcripts.

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1 Earlier, when you referred to Droukdel as being a commander, can you clarify
2 whether he was commander of Al-Qaeda in the Maghreb?

3 A. [11:40:31] Droukdel is * Abu Musab Abdel Wadoud, the Algerian. He was the
4 supreme emir of what is the called Al-Qaeda in the Islamic Maghreb.

5 MS TAYLOR: [11:40:54] I believe that's clear now.

6 PRESIDING JUDGE MINDUA: [11:41:10](Interpretation) We've received the
7 interpretation.

8 Prosecutor.

9 MR DUTERTRE: [11:41:14](Interpretation) Yes, it was in the interest of having the
10 immediate clarification, but at the time I don't think it was Droukdel, we were talking
11 about the person who had given competencies to somewhere else. I think you have
12 to go to somewhere earlier in the transcript.

13 PRESIDING JUDGE MINDUA: [11:41:32](Interpretation) Yes, the question was who
14 gave instructions or orders, was it Al-Qaeda or Ansar Dine, if I remember correctly.

15 MS TAYLOR: [11:41:41] (Overlapping speakers) Mr President, it's entirely clear in
16 the transcript, in the Arabic it was clear, and we are now in open session. The
17 transcript will be corrected at the end of the day. In the Arabic the words were
18 heard accurately and clearly at the time the witness gave his answer.

19 PRESIDING JUDGE MINDUA: [11:42:12](Interpretation) Prosecutor.

20 MR DUTERTRE: [11:42:13](Interpretation) Yes, the transcript indicates subsequently,
21 ultimately the commander of Al-Qaeda gave the prerogatives by mail and -- the
22 commander of Ansar Dine in the Maghreb.

23 THE INTERPRETER: [11:42:33] Corrects the interpreter.

24 MR DUTERTRE: [11:42:35](Interpretation) And that's something that has to be
25 looked at.

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- 1 PRESIDING JUDGE MINDUA: [11:42:42](Overlapping speakers)
- 2 MS TAYLOR: [11:42:42] It might be that there's an issue between the English and the
- 3 French, because the English, it's clear that it's the person I was just mentioning.
- 4 In any case, we're in open session.
- 5 PRESIDING JUDGE MINDUA: [11:43:07](Interpretation) We're going briefly into
- 6 private session to put the question to the witness such that we have the interpretation
- 7 in French and in English.
- 8 Court officer, please take us into private session.
- 9 (Private session at 11.43 a.m.)
- 10 THE COURT OFFICER: [11:43:29] We're in private session, Mr President.
- 11 PRESIDING JUDGE MINDUA: [11:43:33](Interpretation) Thank you very much.
- 12 Ms Taylor.
- 13 MS TAYLOR: [11:43:37] I will read to the witness what is in the English transcript so
- 14 he can correct it.
- 15 Q. Now, Mr Witness, in the English transcript at page 25, I believe line 526, it says:
- 16 "What turned out to be the case later was that Droukdel, the commander of
- 17 Ansar Dine in the Islamic Maghreb, gave specific prerogatives."
- 18 Now, when you say -- when the transcript says Ansar Dine or -- in the Islamic
- 19 Maghreb, should it say Al-Qaeda?
- 20 A. [11:44:24] This is a very simple thing to say, but potentially things get
- 21 complicated with translation.
- 22 I said that Iyad Ag Ghaly had power and influence and that the emir of Al-Qaeda,
- 23 Droukdel, gave orders, instructions and prerogative of a special kind to Iyad during
- 24 the time when the control over northern Mali started to materialise. But Droukdel
- 25 was not in the -- was not in Morocco and was not in northern Mali, he was in Algeria

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1 and he was the general commander of Al-Qaeda in the Islamic Maghreb at the time.

2 PRESIDING JUDGE MINDUA: [11:45:27](Interpretation) That's it. That's very
3 clear. Thank you very much, Witness.

4 Ms Taylor, we can go back into open session.

5 MS TAYLOR: [11:45:35] Actually, we'll have to stay in private session.

6 PRESIDING JUDGE MINDUA: [11:45:41](Interpretation) Okay. But not for a very
7 long time. So we'll stay in private session.

8 Please go ahead.

9 MS TAYLOR: [11:45:49]

10 Q. [11:45:53] Mr Witness, could we turn to tab 21 of the Defence binder, that's
11 MLI-D28-0004-2903, it's Arabic. And the English is tab 22, that's MLI-D28-0004-2904.

12 [REDACTED] Mr Witness?

13 A. [11:47:06] [REDACTED]

14 Q. [11:47:11] Mr Witness, could you turn your gaze to the fourth paragraph. Does
15 this state that there are no -- "without any skirmishes recorded with the elements of
16 the national movement"?

17 A. [11:47:49] Yes, uh-huh.

18 Q. [11:47:52] And if you could turn to the last two paragraphs, referring to ongoing
19 negotiations, and the question being posed at the end: "Will Ansar Dine continue to
20 follow the negotiating approach?"

21 A. [11:48:22] Yes.

22 Q. [11:48:25] [REDACTED]?

23 A. [11:48:32] As it is shown here, [REDACTED]

24 Q. [11:48:40] Would this reference to continuing to follow the negotiating approach
25 suggest that there were efforts at negotiations throughout 2012?

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1 A. [11:49:02] At the end of 2012, the group Ansar Dine was trying to have total
2 control of the last locations that belonged to MNLA, [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 [REDACTED] Afterwards, indeed there was a total control of those areas and they
7 became under Ansar Dine, including Lere.

8 Q. [11:49:56] Mr Witness, [REDACTED] no skirmishes being recorded, would
9 that suggest that direct confrontation was avoided?

10 A. [11:50:21] The situation in Lere, as was the situation in the Timbuktu airport,
11 MNLA's power is not comparable to that of Ansar Dine and Al-Qaeda. A skirmish
12 would be suicidal for MNLA. They were few people in that camp.

13 Q. [11:50:45] Could we turn now to tab 13 of the Defence binder, that's the Arabic.
14 It's MLI-D28-0004-2882. And tab 14 of the English, being MLI-D28-0004-2885.

15 A. [11:51:41] Yes.

16 Q. [11:51:43] [REDACTED]?

17 A. [11:51:51] [REDACTED]

18 Q. [11:51:54] [REDACTED]?

19 A. [11:51:58] [REDACTED]

20 Q. [11:52:05] This [REDACTED] refers to the disintegration of parts of the MNLA, with
21 some officers heading to Algeria and others joining Ansar Dine; is that correct?

22 A. [11:52:24] Yes, certainly. That's what happened indeed.

23 Q. [11:52:39] Is it correct that throughout 2012 several Tuaregs from the MNLA
24 joined Ansar Dine?

25 A. [11:52:57] That is true. Following Ansar Dine and Al-Qaeda's control of all the

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1 major cities and the withdrawal of the national movement, many defected from the
2 national movement and joined Ansar Dine.

3 Q. [11:53:15] And would it be correct, Mr Witness, that for Tuaregs in Timbuktu
4 the options were to either work with Ansar Dine or go to the refugee camps?

5 A. [11:53:33] Yes. Either that or to be in a sidelined camp that belonged to MNLA
6 without having any connection with what -- with what was going on in Timbuktu or
7 even outside Timbuktu.

8 Q. [11:53:56] And going to these camps, these refugee camps or these sideline
9 camps, it would have been very difficult for those with families, wouldn't it?

10 A. [11:54:11] It's more difficult for the fighters, and also for the tribal leaders,
11 because the tribal leaders do not want anything to be controlled when they could take
12 part in that and they want to have a part in that.

13 And let's go back to the '90s and the Malian army, they believed that their sons joining
14 the Malian army will provide them security, it will spare them any massacres. That
15 mentality continued even with the advent of Ansar Dine. Many sheikhs of the tribes
16 believed that their sons joining these movements will provide them security and will
17 grant them access to how things were going on, which is better than being
18 marginalised or be completely out of the picture.

19 PRESIDING JUDGE MINDUA: [11:55:19](Interpretation) Ms Taylor, isn't it time to
20 go back into open session?

21 MS TAYLOR: [11:55:26] No, Mr President. I'm about to ask him a question about
22 his experience in 2012.

23 PRESIDING JUDGE MINDUA: [11:55:39](Interpretation) Please go ahead.

24 Prosecutor.

25 MR DUTERTRE: [11:55:43](Interpretation) Yes, just a procedural question, your

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1 Honour, your Honours. [REDACTED]

2 [REDACTED]

3 PRESIDING JUDGE MINDUA: [11:56:01](Interpretation) Indeed.

4 [REDACTED]

5 [REDACTED]

6 MS TAYLOR: [11:56:11]

7 Q. [11:56:14] [REDACTED]?

8 A. [11:56:22] [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. [11:56:43] Now, Mr Witness, going back to my question before about the refugee

12 camps, [REDACTED], it would have been

13 difficult, wouldn't it, for someone with a family to have gone to the refugee camps?

14 A. [11:57:12] No, not at all. There was no problem. People did come and go

15 to -- come and go to the camps, except during one time only, when there were

16 restrictions. They were not stringent restrictions. It was the time when Ansar Dine

17 entered in Timbuktu as far as I think.

18 Q. [11:57:35] Perhaps my question wasn't clear. I'm not referring to the

19 restrictions, but in terms of [REDACTED] refugee camp.

20 A. [11:57:56] The refugee camp [REDACTED] is bad in every way. We may talk

21 about the humanitarian aspect. They are living a very bad life.

22 Q. [11:58:12] Can you describe that for the record?

23 A. [11:58:19] The location where the [REDACTED] refugee camp is located is a Sahara-like

24 location, *built on dunes, with extreme heat in summer and extreme cold in winter

25 and people are in very small camps that do not protect them neither from the sun nor

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1 from the heat.

2 Also, the aid provided by the refugee agency is very small. A very small sum paid
3 every month, and sometimes it's delayed and not received monthly. As for hospitals
4 and health facilities, there's one health facility in a poor condition. It makes you feel
5 sick more than it treats you.

6 Q. [11:59:17] [REDACTED]

7 [REDACTED]?

8 A. [11:59:33] [REDACTED]

9 Q. [11:59:41] And [REDACTED] the conditions in Timbuktu were better than the
10 refugee camp?

11 A. [11:59:52] Certainly.

12 Q. [11:59:55] And you were able to work in Timbuktu?

13 A. [12:00:02] Yes, of course.

14 Q. [12:00:07] And to do so, you had to accept the rules of Ansar Dine, that's correct?

15 A. [12:00:19] Certainly. [REDACTED]

16 [REDACTED]

17 Q. [12:00:31] Mr Witness, can I turn you to tab 221 of the Defence binder -- okay,
18 apparently it's tab 243 is the Arabic. It's MLI-OTP-0077-2696 and the page for you,
19 Mr Witness, is page 2699. And the English is tab 221; that's MLI-OTP-0033-0044, it's
20 at page 0046.

21 Mr Witness, in the English at the end of 0046, it says:

22 [REDACTED]
23 [REDACTED]

24 Mr Witness, is that what you said to the Prosecution [REDACTED]?

25 A. [12:03:12] The text here is not very clear, the way it is formulated. But if your

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1 question concerns whether I did all that was necessary to protect myself and to avoid
2 any brawls with those in charge of the city, yes, that's true.

3 Q. [12:03:39] Now, Mr Witness, it's correct, isn't it, that you're not an Islamist and
4 you don't support the goals and objectives of Al-Qaeda?

5 A. [12:03:55] Certainly.

6 Q. [12:04:00] Mr Witness, can we turn you to tab 239 of the Defence binder. That's
7 MLI-OTP-0068-3201, it's page 3220 at paragraph 93. And the English reference is tab
8 1 of the Prosecution's binder, MLI-OTP-0020-0019 at 0038, the paragraph 93.

9 A. [12:04:45] Page, please.

10 Q. [12:04:49] In the Arabic, it's page 3220 and it's paragraph 93.

11 A. [12:05:48] Yes.

12 Q. [12:05:51] [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 A. [12:06:12] Yes.

16 Q. [12:06:15] [REDACTED]

17 [REDACTED]

18 A. [12:06:25] Yes.

19 Q. [12:06:31] Mr Witness, could you turn to tab 214 -- sorry, 240, on the Defence list
20 is the Arabic, it's MLI-OTP-0061-1512 and it's page 1541, paragraph 97. In the
21 English, it's tab 16 on the Prosecution's list; that's MLI-OTP-0024-3096, page 3119,
22 paragraph 97.

23 A. [12:07:17] "242", is it? 242 is not compatible with the other document, if this is
24 supposed to be in Arabic.

25 Q. [12:07:27] (Overlapping speakers) It's tab 240, two-four-zero.

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1 A. [12:07:37] I have it now.

2 Q. [12:07:40] It's paragraph 97, and, in the English, it states: "I had to be lenient,
3 diplomatic and keep good relationships with Al-Qaeda in order to protect myself ..."

4 A. [12:08:21] This is different from paragraph 97, which I have. Now I see the
5 paragraph.

6 Q. [12:08:42] Mr Witness, can you see the third last sentence in this paragraph?

7 A. [12:08:57] I do.

8 Q. [12:08:59] In the Arabic, does it state: "I had to be lenient, diplomatic and keep
9 good relationships with Al-Qaeda in order to protect myself [REDACTED]

10 [REDACTED]?

11 A. [12:09:16] Yes.

12 Q. [12:09:16] And is that consistent with what you told the Prosecution?

13 A. [12:09:25] It is.

14 Q. [12:09:28] And Mr Witness, is it correct that you associated with Ansar Dine and
15 Al-Qaeda? You accepted their conditions [REDACTED] because

16 you had to?

17 A. [12:09:50] Yes. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 [REDACTED] I also do not remember having violated any instructions on how to
25 go about my business.

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1 Q. [12:11:02] Mr Witness, can I turn now to the beginning of 2013. Were you in
2 Timbuktu after Ansar Dine left?

3 A. [12:11:18] No.

4 Q. [12:11:22] Do you recall when you were in Timbuktu in January 2013?

5 A. [12:11:37] I remember that I was in Timbuktu until everyone left Timbuktu.

6 Q. [12:11:48] When was that roughly?

7 A. [12:11:54] I think that happened in January as far as I think. The end of January.
8 I don't remember the dates precisely.

9 Q. [12:12:07] [REDACTED] in Timbuktu in
10 January 2013?

11 A. [12:12:20] Yes, I remember that [REDACTED] when the French bombing started I was
12 there. And when Al-Qaeda forces and Ansar Dine forces started leaving the city,
13 I was also there. And roughly speaking, I left on the -- the day before the last day
14 Ansar Dine left the city. [REDACTED]

15 [REDACTED] it was a deserted
16 place -- when it became a deserted place.

17 Q. [12:13:04] I'm going to play a video now. It's MLI-OTP-0018-0415 and it was
18 tab 340 on the Prosecution's list. And it was -- the transcript is MLI-OTP-0069-1870
19 and it's tab 251 on the list, the binder that was given this morning. If we could play
20 it without sound.

21 (Viewing of the video excerpt)

22 MS TAYLOR: [12:14:16]

23 Q. [12:14:18] [REDACTED]?

24 A. [12:14:24] Unfortunately I do not.

25 Q. [12:14:32] [REDACTED]

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1 [REDACTED]?

2 A. [12:14:47] I don't remember that. [REDACTED]

3 [REDACTED]

4 [REDACTED] The other places I do not
5 remember in precise terms.

6 Q. [12:15:14] I'm going to play another video, that's tab 34 on the Prosecution's list,
7 that's [REDACTED] I'm going to play it without sound from [REDACTED]

8 [REDACTED]

9 (Viewing of the video excerpt)

10 MS TAYLOR: [12:16:53]

11 Q. [12:16:54] Mr Witness, are you familiar with these images?

12 A. [12:17:01] I am. These images are of the Islamic tribunal in Timbuktu [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. [12:17:28] If we could play it with sound.

16 (Viewing of the video excerpt)

17 MS TAYLOR: [12:18:03] For the interpreters, the transcript is tab 35 on the
18 Prosecution's list, it's MLI-OTP-0028-0839 and the relevant section starts at 0847 of the
19 transcript. If we could perhaps start again.

20 THE INTERPRETER: [12:18:23] Could you please give the interpreter a moment to
21 find it, please.

22 MS TAYLOR: [12:18:28] Certainly. Perhaps if the interpretation booth can give me
23 a thumbs up when they've found it. I can't actually see them, so maybe if they could
24 give a thumbs up to the court officer.

25 THE INTERPRETER: [12:18:51] The opposite booth has the binder.

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1 Message from the English booth: I found tab 34, but I have not found a transcript. I

2 do apologise. There's no transcript here.

3 MS TAYLOR: [12:19:10] Tab 35 is the transcript. And it should -- the relevant

4 section starts at 0847.

5 THE COURT OFFICER: [12:19:19] We can also try to publish it on the evidence 1

6 channel.

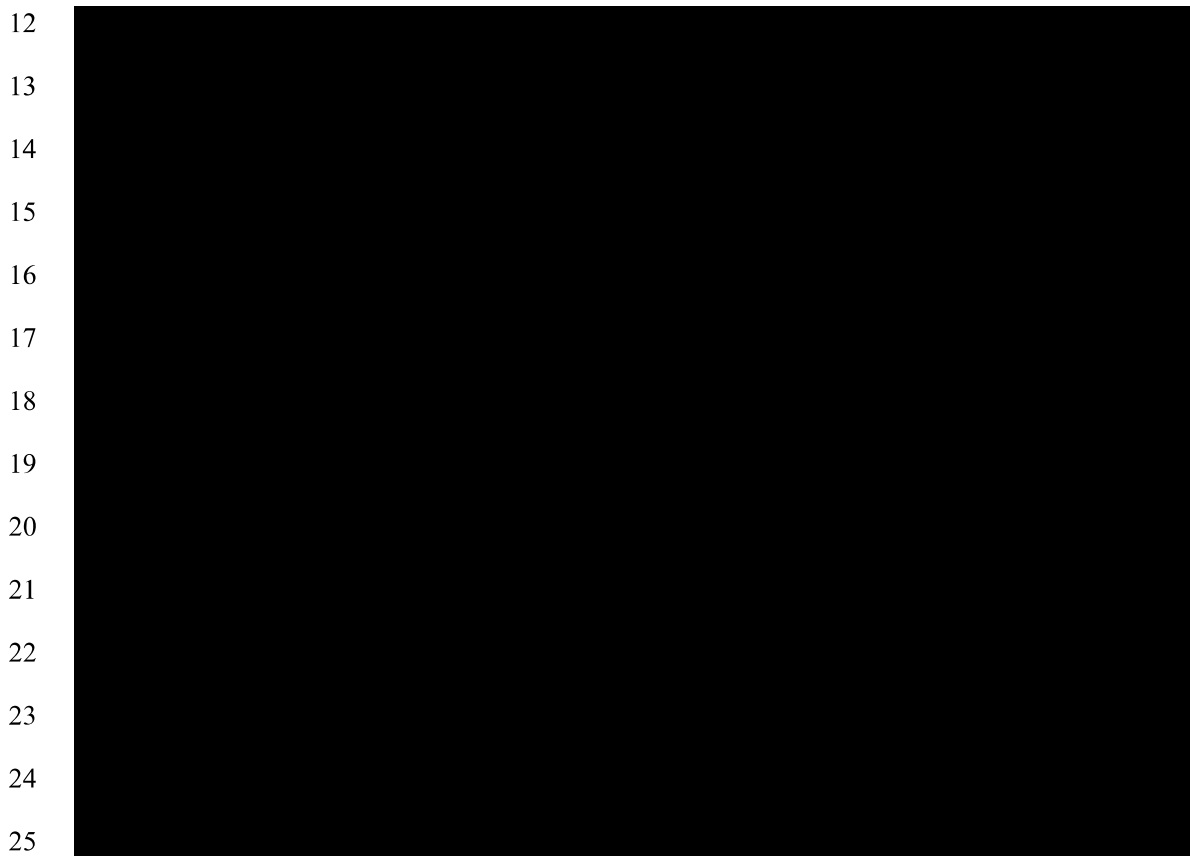
7 THE INTERPRETER: [12:19:29] Message from the English booth: I have finally

8 found it. Thank you.

9 MS TAYLOR: [12:19:34] So we're going to play the same section with sound.

10 (Viewing of the video excerpt)

11 THE INTERPRETER: [12:19:38] (Interpretation of the video excerpt)



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1

2 MS TAYLOR: [12:21:16]

3 Q. [12:21:17]

4 [REDACTED]?

5 A. [12:21:30] [REDACTED] I know that there was a French TV team of journalists

6 accompanying the French forces, as was the case with the Al Jazeera team

7 accompanying the French forces, and they covered a story following the intervention

8 of the French army after the expulsion of the groups from there.

9 Q. [12:21:59]

10 [REDACTED]?

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

12 MR DUTERTRE: [12:22:15](Interpretation)

13 [REDACTED]

14 [REDACTED] So I object to that

15 question on which he can only speculate.

16 PRESIDING JUDGE MINDUA: [12:22:35](Interpretation) I think the witness has

17 already answered that question, Ms Taylor.

18 MS TAYLOR: [12:22:38] Mr President, that objection should not have been made in

19 the presence of the witness. The Prosecution has again telegraphed their position.

20 If the witness could leave the courtroom, just briefly.

21 PRESIDING JUDGE MINDUA: [12:23:02](Interpretation) The witness has already

22 answered, Ms Taylor. There's no need for him to leave the courtroom. Please,

23 continue.

24 MS TAYLOR: [12:23:09] Mr President, you made your ruling on this without

25 hearing from the Defence. I believe we should be given an opportunity to be heard

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1 and, to do so, we should be able to do so not in the presence of the witness.

2 PRESIDING JUDGE MINDUA: [12:23:29](Interpretation) I handed down the
3 decision because I've heard the witness's answer already on a number of occasions.
4 Please continue, because we only have 10 minutes left before we need to rise.

5 MS TAYLOR: [12:23:44]

6 Q. [12:23:47] [REDACTED]
7 [REDACTED]?

8 A. [12:24:06] No.

9 Q. [12:24:09] [REDACTED]?

10 A. [12:24:22] I don't know.

11 Q. [12:24:23] [REDACTED]
12 [REDACTED]?

13 A. [12:24:39] [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] all international teams of journalists that came to
18 Timbuktu at the time were embed with the army, the French army.

19 Q. [12:25:19] Now, Mr Witness, earlier today you mentioned the pillaging
20 happening on two occasions, at the beginning and at the end. Can you provide the
21 Court with any information you have concerning what you heard or what you saw
22 concerning pillaging happening in January 2013?

23 A. [12:25:48] In 2013, there was pillage. As far as the information shows, pillage
24 was of the shops and homes that belonged to fair-skinned people only and some
25 people were also killed. The pillage was carried out by the people, the inhabitants of

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1 Timbuktu of the homes and shops of civilians, and I think the most destroyed house
2 was that of Sanda, as far as I remember.

3 Q. [12:26:32] You mentioned people being killed, can you elaborate more on that?

4 A. [12:26:44] Yes. There is an unidentified number of fair-skinned people who
5 remained in Timbuktu after the entrance of the French and army -- and the Malian
6 and French armies and those people were killed.

7 [REDACTED]

8 [REDACTED] an elderly person

9 named Ali Abarri (phon) who was killed. Also a friend of mine, [REDACTED]
10 was killed. [REDACTED] These two
11 were killed by the Malian army.

12 Q. [12:27:40] You mentioned Sanda's house being broken into. Were any of the
13 buildings used by Ansar Dine broken into?

14 A. [12:27:58] The buildings that were used by Ansar Dine were governmental
15 buildings and I don't think they were. But what I'm sure of is, [REDACTED]
16 [REDACTED]
17 is that the shops that belonged to fair-skinned people especially - and I wouldn't say
18 Tuareg and Arabs, because there are black-skinned Tuaregs and Arabs who were not
19 affected, so that's why I used the expression "fair-skinned people" or "light-skinned
20 people" - their shops and homes were totally destroyed. Nothing was left.

21 Q. [12:28:42] Do you know who broke into the house of Sanda?

22 A. [12:28:52] Young people in angry demonstrations are the ones who did that, but
23 I don't know who exactly.

24 Q. [12:29:05] I'm about to play a video, but I note that it's 12.30, so it might be a
25 good time to break.

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1 PRESIDING JUDGE MINDUA: [12:29:18](Interpretation) Very well. We shall take
2 the break now.

3 Now we shall move into open session first.

4 (Open session at 12.29 p.m.)

5 THE COURT OFFICER: [12:29:37] We're in open session, Mr President.

6 PRESIDING JUDGE MINDUA: [12:29:42](Interpretation) Thank you very much,
7 courtroom officer.

8 Ms Taylor, you can see that I'm very preoccupied. We have just spent
9 approximately one hour in private session. I know that it's very difficult to question
10 or cross-examine this witness because of his personal situation. However, however,
11 the Chamber would like to recall the principle that has already been formulated
12 during a previous hearing with regard to the publicity of the proceedings. As the
13 Chamber has already indicated, it behoves the parties to make a clear distinction
14 between those questions that go to the merits of the case and those questions that
15 need to be -- that -- put in public from those questions that are linked or associated
16 with the identity of the witness.

17 So, Ms Taylor, the Chamber would request that you kindly structure your
18 questioning to the extent possible, with a view to respecting this instruction from the
19 Chamber. And more specifically, the Chamber would strongly suggest to you that
20 you group the questions that need to be put in private session and group the
21 questions that can be put in open session. And, if possible, I would advise you to
22 put those questions in private session at the beginning or end of each session. I
23 know it's difficult, but we need to try.

24 The Chamber would also suggest to you that you assess whether it is possible for you
25 to put your questions in public session whilst not broadcasting the documents as we

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- 1 tried to do with the Prosecutor.
- 2 I'm trying to be fair. It's very difficult, but we need to try because I don't want to
- 3 carry on like this for an entire session in private session.
- 4 Unfortunately, I would like your lunch break to be a laborious one because you're
- 5 going to need to be hard at work grouping these questions together. I do thank you
- 6 for your understanding.
- 7 So we are going to rise and we shall reconvene after an hour and a half of break, and
- 8 that is to say at 2 p.m.
- 9 Court is suspended.
- 10 THE COURT USHER: [12:33:36] All rise.
- 11 (Recess taken at 12.33 p.m.)
- 12 (Upon resuming in open at 2.01 p.m.)
- 13 THE COURT USHER: [14:01:06] All rise.
- 14 Please be seated.
- 15 PRESIDING JUDGE MINDUA: [14:01:34](Interpretation) Court is in session again.
- 16 Ms Taylor, you have the floor for the follow-up of the cross-examination.
- 17 MS TAYLOR: [14:01:50] Thank you, Mr President. And following the Chamber's
- 18 directive we did spend our lunch time restructuring the questions, and I've thought of
- 19 a system which should - inshallah - allow me to ask all but one question in open
- 20 session.
- 21 PRESIDING JUDGE MINDUA: [14:02:16](Interpretation) I would like to thank you
- 22 enormously, Ms Taylor. Thank you so much.
- 23 Please go ahead if you'd be so kind.
- 24 MS TAYLOR: [14:02:25]
- 25 Q. [14:02:25] Now, Mr Witness - and I'd just like to draw your attention to the fact

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1 that we are in open session, so not to use any information that could identify you - but

2 before the break at page 56, lines 19 to 20, you mentioned [REDACTED]

3 [REDACTED]

4 [REDACTED]?

5 A. [14:03:13] The question isn't very clear, I'm afraid.

6 Q. [14:03:19] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] Does that refresh

10 your memory?

11 A. [14:04:04] Perhaps the interpretation wasn't very precise. [REDACTED]

12 [REDACTED] if you

13 would be so kind. If you would be so kind --

14 Q. [14:04:23] Of course, of course --

15 A. [14:04:24] [REDACTED]

16 [REDACTED]

17 PRESIDING JUDGE MINDUA: [14:04:41](Interpretation) Court officer, we're going
18 to private session very briefly.

19 (Private session at 2.04 p.m.)

20 THE COURT OFFICER: [14:04:55] We are in private session, Mr President.

21 PRESIDING JUDGE MINDUA: [14:05:02](Interpretation) Thank you very much,
22 madam court officer.

23 Ms Taylor.

24 MS TAYLOR:

25 Q. [14:05:06] Thank you, Mr Witness, but to be clear, I'm not referring to yourself,

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1 so I apologise for that.

2 A. [14:05:17] Yes, I've understood. [REDACTED]

3 [REDACTED]

4 [REDACTED] Could you be a
5 bit more precise.

6 MS TAYLOR: [14:05:49] Is there a way of bringing up page 56 on the screen?

7 Lines 19 to 20?

8 Q. [14:05:56] We were discussing the different groups [REDACTED] I believe you
9 mentioned [REDACTED] and I believe you were discussing
10 that [REDACTED] when coming
11 into Timbuktu. And according to the transcript, you said the conditions for

12 [REDACTED]

13 A. [14:06:38] Yes. Yes. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 But I wasn't in Timbuktu at that time. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] And with regards to the security measures, there were -- the French
21 army [REDACTED]

22 Q. [14:07:58] I'll just finish this point before we go into open session. Can you
23 explain what you mean by "security measures"?

24 A. [14:08:15] [REDACTED]

25 [REDACTED]

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1 [REDACTED] whether it's
2 within the town or in any other location.
3 Q. [14:08:39] Thank you. We're about to go back into open session and I believe
4 that the questions can be put to you in open session. But if at any point you believe
5 that anything might identify you, if you could just raise your hand and we can go into
6 closed -- private session.
7 MS TAYLOR: [14:09:07] Mr President, if we could go into open session.
8 PRESIDING JUDGE MINDUA: [14:09:11](Interpretation) Certainly. Just one
9 minute, please.
10 Court officer has told me that the transcript is public.
11 THE COURT OFFICER: [14:09:27](Interpretation) The transcript is published on
12 evidence 1, your Honour.
13 PRESIDING JUDGE MINDUA: [14:09:28](Interpretation) Okay. I didn't
14 understand well. Okay, we're now going into open session, please.
15 (Open session at 2.09 p.m.)
16 THE COURT OFFICER: [14:09:54] We are back in open session, Mr President.
17 PRESIDING JUDGE MINDUA: [14:09:56](Interpretation) Thank you very much.
18 Ms Taylor.
19 MS TAYLOR: [14:10:04] I'm going to play a video. It's on tab 238 on the Defence
20 list and tab 254 on the Prosecution's list. It's MLI-OTP-0020-0003 at 39:55:06 to 40:08.
21 For the interpreters, the transcript is tab 255 on the Prosecution's list, that is
22 MLI-OTP-0069-2955 and it shouldn't be shown to the public. So we're playing
23 without sound to start with.
24 (Viewing of the video excerpt)
25 MS TAYLOR: [14:11:20] Continue a couple more seconds.

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1 (Viewing of the video excerpt)

2 MS TAYLOR: [14:11:41] And for the record, we're stopping at 50 -- 40:26:22.

3 Q. [14:12:01] Mr Witness, does this -- are you familiar with these images, without
4 saying how?

5 A. [14:12:19] Yes.

6 Q. [14:12:19] And what time period does this correspond to?

7 A. [14:12:25] The intervention of French forces into Timbuktu.

8 Q. [14:12:35] And, Mr Witness, in the crowds that you saw on the streets, did you
9 see any Tuaregs or Arabs from Timbuktu?

10 A. [14:12:53] No, I didn't remark that. I saw none.

11 Q. [14:13:01] And would that have been because they would have fled at that
12 point?

13 A. [14:13:10] Yes. To be more precise, I would say I didn't see or observe in this
14 video any Tuareg or any light-skinned Arabs, but it's certain that there were Tuareg
15 who also have brown or dark brown skin.

16 Q. [14:13:41] Thank you for that clarification.

17 Now, the light-skinned Tuaregs and Arabs that would have fled, would -- this would
18 have been because they were concerned about being attacked or arrested because of
19 their skin colour?

20 A. [14:13:58] Nobody thought that they would be safe if the Malian army entered
21 into the town. That's the reason why a lot of refugees from the camps fled towards
22 Timbuktu. But once the French army and the Malian army started to go towards
23 Timbuktu, there was a second wave of movement towards the camps. So in the
24 other direction a second time.

25 MS TAYLOR: [14:14:54] Could we briefly go into private session?

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1 PRESIDING JUDGE MINDUA: [14:15:00](Interpretation) Private session, if you
2 would be so kind, madam court officer.

3 (Private session at 2.15 p.m.)

4 THE COURT OFFICER: [14:15:11] We are in private session.

5 PRESIDING JUDGE MINDUA: [14:15:16](Interpretation) Thank you very much.

6 Ms Taylor.

7 MS TAYLOR: [14:15:19]

8 Q. [14:15:21] Mr Witness, in light of the fact that the light-skinned Tuaregs and
9 Arabs were fleeing from Timbuktu at this point, would that mean that

10 [REDACTED]
11 [REDACTED]?

12 A. [14:15:57] [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED] is different from Arabs and people with dark -- from the Arab Tuaregs.
17 So it's easy to distinguish between the two of them.

18 Q. [14:16:42] I apologise. I'm afraid my question was not clear. In light of the
19 fact that light-skinned Tuaregs and Arabs had fled from Timbuktu, would that mean
20 that

21 [REDACTED] these light-skinned Tuaregs and Arabs in Timbuktu?

22 A. [14:17:19] The only family that stayed in Timbuktu at the time, the father of
23 which was killed, and that was a person who was very elderly. [REDACTED]

24 [REDACTED] And there were reports on that family and on this family father that
25 was killed or murdered. He entered into the Malian army camp and -- with a cow,

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1 and the next day the neighbours found that he'd been killed. And that was reported
2 on the news as well. Amali Kabadi (phon) was assassinated. [REDACTED]
3 [REDACTED].

4 Q. [14:18:17] And apart from this particular family, would it have been possible [REDACTED]
5 [REDACTED] to obtain information about the day-to-day life of light-skinned
6 Tuaregs and Arabs who had lived in Timbuktu in 2012?

7 A. [14:18:51] Yes. The information was available, whether it was by asking the
8 population questions about where these Tuareg were, but the families were no longer
9 there. They had fled. Only that family was left, the family I spoke about, and
10 another family. [REDACTED] whose family member had been killed,
11 apart from his wife who was light-skinned.

12 Q. [14:19:28] Can I turn you to tab 31 on the Defence list of evidence, that's
13 [REDACTED], and the English is tab 32 on the Defence list and it's
14 [REDACTED]

15 A. [14:20:25] Could you give me the number once again, please.

16 Q. [14:20:30] Certainly. It's in the Defence binder, tab 31. And the document
17 number is [REDACTED]

18 A. [14:21:12] What I have in front of me is the document in English.

19 Q. [14:21:24] Are you at tab 31?

20 A. [14:22:13] Yes.

21 Q. [14:22:15] Is this [REDACTED]?

22 A. [14:22:22] Yes.

23 Q. [14:22:25] Do you recall [REDACTED]?

24 A. [14:22:32] Yes.

25 Q. [14:22:35] [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 Can you explain [REDACTED]?

5 A. [14:23:18] [REDACTED]

6 [REDACTED]

7 [REDACTED] -- issues concerning the Tuareg in the Sahara. [REDACTED]

8 [REDACTED]
9 [REDACTED]

10 Q. [14:23:59] And what did it mean when it said that [REDACTED]

11 [REDACTED]?

12 A. [14:24:19] The Ghanda Koy is a movement or a militia which is -- has a racist
13 orientation. Ghanda Koy means the owners of the land. It's a militia. It was set
14 up by the Malian government during the war in the '90s against the Tuareg. These
15 militia is responsible for trying to finish with all people of Tuareg origin, to kill them
16 all, the ones with the -- who were light skinned, and to take over their property.

17 Q. [14:25:10] And are you aware, [REDACTED]
18 of any particular Ghanda Koy [REDACTED]?

19 A. [14:25:41] In fact, this means that the most hostile people, or the people most
20 hostile to the light-skinned Tuareg and who carried out their -- or who were against
21 their existence, that was the Ghanda Koy, and most of them were made up of people
22 from Timbuktu who had very important posts.

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED] members or former members of the Ghanda Koy who were still
3 active within the society. And the main aim was to show that the identity of the
4 Timbuktu inhabitants was reserved for people who are not light skinned and are not
5 Tuareg.

6 Q. [14:27:12] Mr Witness, you referred to members of the Ghanda Koy [REDACTED]
7 [REDACTED] Do you recall what [REDACTED] those were?

8 A. [14:27:32] No.

9 Q. [14:27:37] Do you recall any names?

10 A. [14:27:43] No.

11 Q. [14:27:49] Do you remember reading any reports quoting Halle Ousmane, the
12 mayor of Timbuktu?

13 A. [14:28:22] I didn't know the mayor of Timbuktu. [REDACTED]

14 [REDACTED]

15 [REDACTED] I hardly even knew his
16 name.

17 Q. [14:28:48] Mr Witness, you were referring [REDACTED] to false allegations. Are
18 you able to recall what type of false allegations you were referring to?

19 A. [14:29:12] Unfounded accusations [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] information which was false
23 or erroneous, which was against the Tuareg, which said about them that they were
24 barbarians, they were savages, and they didn't know the details of the daily life of the
25 Tuareg. And it was this misinformation that was given about the Tuareg that

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5 MS TAYLOR: [14:30:33] I believe we can go into open session.

6 PRESIDING JUDGE MINDUA: [14:30:42](Interpretation) Please could you take us
7 into open session, court officer.

8 (Open session at 2.30 p.m.)

9 THE COURT OFFICER: [14:30:49] We are in open session, Mr President.

10 PRESIDING JUDGE MINDUA: [14:30:56](Interpretation) Thank you very much.

11 Ms Taylor.

12 MS TAYLOR: [14:30:58] If we can play the same video from before, from

13 40:15 minute until 41:37 minute, and I believe we can play it with sound to speed

14 things up.

15 THE COURT OFFICER: [14:31:20] You indicated earlier that the video was

16 confidential, so we cannot play it with sound in open session.

17 MS TAYLOR: [14:31:29] Then we'll have to go into private session.

18 PRESIDING JUDGE MINDUA: [14:31:37](Interpretation) Private session, please,
19 court officer.

20 (Private session at 2.31 p.m.)

21 PRESIDING JUDGE MINDUA: [14:31:53](Interpretation) Prosecutor.

22 THE COURT OFFICER: [14:32:00] We're in private session, Mr President.

23 PRESIDING JUDGE MINDUA: [14:32:04](Interpretation) Prosecutor.

24 MR DUTERTRE: [14:32:05](Interpretation) Yes, your Honour.

25 I don't want to go round in circles, but the Prosecution -- the Defence is trying to

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1 show the video without the sound, that's the instructions by the Chamber -- or that's
2 what the Prosecution did, and I think we have to continue with this course of action
3 because that makes it possible for the witness to see it without the (Overlapping
4 speakers)

5 PRESIDING JUDGE MINDUA: [14:32:28](Interpretation) I certainly agree,
6 Prosecutor.

7 THE INTERPRETER: [14:32:32] There were previously overlapping speakers.

8 MS TAYLOR: [14:32:39] Yes, I was saying certainly.

9 PRESIDING JUDGE MINDUA: [14:32:42](Interpretation) Very well.
10 Court officer.

11 THE COURT OFFICER: [14:33:10] Ms Taylor, just to be clear, you would like to play
12 the video without sound.

13 MS TAYLOR: [14:33:15] Yes, we'll play a couple of seconds without sound to see if
14 the witness recognises the images.

15 THE COURT OFFICER: [14:33:34] Thank you.

16 (Viewing of the video excerpt)

17 MS TAYLOR: [14:34:09]

18 Q. [14:34:10] [REDACTED] ?

19 A. [14:34:15] [REDACTED]

20 Q. [14:34:21] Yes, Mr Witness.

21 A. [14:34:25] [REDACTED]

22 [REDACTED]
23 [REDACTED]

24 MS TAYLOR: [14:35:00] If we could play the same with sound until 41:37.

25 (Viewing of the video excerpt)

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1 MS TAYLOR: [14:36:41]

2 Q. [14:36:42] Mr Witness, are these images consistent with what you saw and heard
3 at the time?

4 A. [14:36:53] Yes, absolutely. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q. [14:37:21] And is it correct that these Tuaregs are fleeing because they're
8 concerned about being shot or arrested by the Malian army?

9 A. [14:37:37] Yes. Of course. These are people who returned to Timbuktu after
10 the Malian army left. And when the Malian army was heading towards Timbuktu
11 again they fled in the opposite direction in this exodus.

12 Q. [14:38:05] And is it correct that the persons [REDACTED] weren't jihadists but were
13 worried that they would be labelled a jihadist?

14 A. [14:38:22] These were civilians, [REDACTED]

15 [REDACTED]

16 [REDACTED] He's been
17 mayor for decades, the town of Soumpi, and he still is today. And when the Malian
18 army was in this region, he also fled.

19 Q. [14:39:08] Mr Witness, are you able to give us the name of that man?

20 A. [14:39:21] Mohamed Ag Hamed. He is the mayor of Soumpi, which is the
21 capital of the region [REDACTED]

22 Q. [14:39:39] Mr Witness, did you hear of any reports of Tuaregs and Arabs being
23 mistreated by the Malian army on arrest at this time?

24 A. [14:40:07] Most of the people arrested by the Malian army were killed by the
25 army.

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1 Q. [14:40:20] Do you recall [REDACTED] prisoners in April 2013 who had been
2 captured by the MNLA?

3 A. [14:40:32] Could you please repeat the question.

4 Q. [14:40:48] Do you recall [REDACTED] prisoners who had been captured by the
5 MNLA? [REDACTED]

6 A. [14:41:12] Yes, of course. In 2013, [REDACTED]
7 [REDACTED] there
8 were prisoners who were members of Ansar Dine who had been captured or who had
9 surrendered and who had been taken to Kidal [REDACTED]

10 [REDACTED]
11 [REDACTED]

12 Q. [14:41:55] I'm just going to play a video now.

13 It's tab 236 on the Defence list, it's MLI-OTP-0011-0203. And the transcript for the
14 interpreters is 248 of the Defence binder, that's MLI-D28-0004-3608, and we'll just play
15 the first couple of seconds without sound.

16 (Viewing of the video excerpt)

17 MS TAYLOR: [14:42:49]

18 Q. [14:42:49] [REDACTED]?

19 A. [14:42:58] Could you show a bit more of the video so I could be sure? Because
20 there's a certain amount of camouflage.

21 MS TAYLOR: [14:43:18] Certainly.

22 (Viewing of the video excerpt)

23 MS TAYLOR: [14:43:41] Perhaps I can actually show the relevant section to you that
24 I want to ask you questions on. It's 1:15:07.

25 (Viewing of the video excerpt)

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- 1 MS TAYLOR: [14:44:14]
- 2 Q. [14:44:15] [REDACTED]?
- 3 A. [14:44:19] [REDACTED]
- 4 MS TAYLOR: [14:44:26] If we could play from 1:15 to 2:20 with sound.
- 5 (Viewing of the video excerpt)
- 6 MS TAYLOR: [14:46:03]
- 7 Q. [14:46:05] If we could just go back to the 1:17 mark.
- 8 Mr Witness, this person being interviewed, [REDACTED]?
- 9 A. [14:46:29] [REDACTED] He was part of the Islamic police in Timbuktu.
- 10 Q. [14:46:38] And what was his name?
- 11 A. [14:46:42] I don't know.
- 12 MS TAYLOR: [14:46:46] If we can play another video, it's tab 356 on the
- 13 Prosecution's list. It's MLI-OTP-0018-0475 and we can play it without sound.
- 14 (Viewing of the video excerpt)
- 15 MS TAYLOR: [14:47:45]
- 16 Q. [14:47:46] Mr Witness, was that the same person that you saw in the previous
- 17 video?
- 18 A. [14:47:55] Yes, this is the same person [REDACTED]
- 19 [REDACTED]
- 20 Q. [14:48:06] And does the name [REDACTED] refresh your memory?
- 21 A. [14:48:17] I don't recall his name.
- 22 Q. [14:48:21] Now, the prisoners that were being held by the MNLA, do you recall
- 23 if they were given to the French or the Malian army?
- 24 A. [14:48:46] I don't know. But what I do recall is that [REDACTED]
- 25 [REDACTED] known for being hostile to the jihadist

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- 1 movement [REDACTED]
2 [REDACTED] he said that nobody wanted them, they were a
3 burden, they are of different nationalities and we would really just like to get rid of
4 them.
5 Q. [14:49:35] Mr Witness, I'm about to ask you a series of questions [REDACTED]
6 [REDACTED] in open session, in order to do this in -- we're
7 not in open session yet, but when we go into open session, I understand there's a
8 piece of paper next to you, if you could write down the name of the author of the post,
9 or if you could confirm if it's the same name that you've written down, and that way
10 we can try to avoid going in and out of closed and open session. Is that clear?
11 I'm sorry, Mr Witness, but you need to answer for the record. I see you nodding.
12 A. [14:50:29] Yes, I've understood.
13 Q. [14:50:32] And as before, if you believe that my question is entering into
14 territory that could identify you, if you just put up your hand, I'll go straight into
15 private session.
16 A. [14:50:45] Understood.
17 MS TAYLOR: [14:50:52] Mr President, can we go into open session.
18 PRESIDING JUDGE MINDUA: [14:50:57](Interpretation) Public session, please,
19 court officer.
20 (Open session at 2.51 p.m.)
21 THE COURT OFFICER: [14:51:05] We're in open session, Mr President.
22 PRESIDING JUDGE MINDUA: [14:51:16](Interpretation) Thank you very much.
23 Ms Taylor.
24 MS TAYLOR: [14:51:19]
25 Q. [14:51:21] Just to be clear, none of these posts will be shown to the public,

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1 Mr Witness.

2 Now if we could turn to tab 33 on the Defence binder. It's [REDACTED] that's
3 the Arabic for you, Mr Witness. And the English is tab 34 on the Defence binder,
4 that's [REDACTED] Do you have it in front of you, Mr Witness?

5 A. [14:52:23] Yes, I do.

6 Q. [14:52:25] Can you write down on the page, piece of paper next to you the
7 person who authored.

8 Perhaps we can go briefly into private session for that to be read out.

9 PRESIDING JUDGE MINDUA: [14:52:51](Interpretation) Private session, please,
10 court officer.

11 (Private session at 2.52 p.m.)

12 THE COURT OFFICER: [14:53:01] We're in private session, Mr President.

13 PRESIDING JUDGE MINDUA: [14:53:10](Interpretation) Thank you.

14 Ms Taylor.

15 MS TAYLOR: [14:53:13] If the response can be put on the screen so we can all see it.

16 PRESIDING JUDGE MINDUA: [14:54:03](Interpretation) That's excellent.

17 Court officer, if you could register it and please give it a number.

18 THE COURT OFFICER: [14:54:15] (Overlapping speakers) MLI-REG-0001-0014.

19 MS TAYLOR: [14:54:19]

20 Q. [14:54:20] Mr Witness, can you tell us the name that's written there?

21 A. [14:54:27] [REDACTED]

22 [REDACTED]

23 Q. [14:54:38] Thank you very much. And for all the future posts, if you could
24 identify whether it's the same or if it's a different, and if it's different, if you could
25 write it down.

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- 1 MS TAYLOR: [14:54:51] I believe we can now go into open session.
- 2 PRESIDING JUDGE MINDUA: [14:54:58](Interpretation) Open session, please, court
- 3 officer.
- 4 (Open session at 2.55 p.m.)
- 5 THE COURT OFFICER: [14:55:28] We're in open session, Mr President.
- 6 PRESIDING JUDGE MINDUA: [14:55:33](Interpretation) Thank you very much.
- 7 Ms Taylor.
- 8 MS TAYLOR: [14:55:36]
- 9 Q. [14:55:37] Mr Witness, without reading out what's in front of you, can you
- 10 explain to the Court what this post is about?
- 11 A. [14:55:49] It relates to certain persons who have been imprisoned by the Malian
- 12 army who wants a ransom in order to free them.
- 13 Q. [14:56:16] And what time period is this?
- 14 A. [14:56:21] Thirteen, if I recall correctly.
- 15 Q. [14:56:30] And the month?
- 16 A. [14:56:38] 24 September 2013.
- 17 Q. [14:56:47] Can you explain what is meant by violations?
- 18 A. [14:57:01] Violations such as torture, all sorts of torture, killings, murders, and
- 19 imprisoning a person because of the colour of their skin and accusations aimed at him,
- 20 for example, that he was a terrorist. And the ransom that's been requested for the
- 21 liberation, [REDACTED]
- 22 [REDACTED]
- 23 Q. [14:57:56] Mr Witness, if we could now go to tab 35 on the Defence list, that's
- 24 [REDACTED]. And the English is tab 36, that's [REDACTED]
- 25 A. [14:58:39] Yes. This was written by the same person.

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1 Q. [14:58:47] Can you explain what the contents of the post concern?

2 A. [14:59:01] This post talks of the entry of the Malian army into the Ashl market,
3 which is a weekly market west of Goundam, and the Malian army entered, arrested a
4 number of Tuaregs and people with light-coloured skins and they stole their money.

5 Q. [14:59:40] Can we now move to tab 43 on the Defence list, it's

6 [REDACTED] is the Arabic. And the English is tab 44, that's

7 [REDACTED]

8 A. [15:00:17] 34 in the same binder or a different binder?

9 Q. [15:00:21] Tab 43.

10 A. [15:01:07] Yes, this was written by the same person.

11 Q. [15:01:10] Can you explain what the post concerns.

12 A. [15:01:17] Yes. The person that we see in the photo wrote that he's together
13 with people who are wounded and this person is explaining the history of the story.
14 These are people who were arrested by the Malian army who tortured them, flogged
15 them for a whole day without giving them either food or water.

16 Q. [15:02:03] To your knowledge, was this ever investigated, these incidents ever
17 investigated by the Malian authorities?

18 A. [15:02:16] No, not to the best of my knowledge. There was no investigation
19 about any of these events.

20 Q. [15:02:27] If we can turn to tab 213 of the Defence binder, that's the Arabic, that's

21 [REDACTED] And the English is tab 214, that's [REDACTED]

22 A. [15:03:40] Yes. That was written by the same person.

23 Q. [15:03:48] I'm going to play a video. It's MLI-D28-0004-3185, without sound.

24 (Viewing of the video excerpt)

25 THE WITNESS: [15:04:27](Interpretation) Yes.

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- 1 MS TAYLOR: [15:04:28]
- 2 Q. [15:04:29] Are you familiar with these images?
- 3 A. [15:04:36] Yes. These are pictures of Arab people in Gao with light skin who
- 4 were burnt.
- 5 Q. [15:04:57] [REDACTED] ?
- 6 A. [15:05:10] Yes.
- 7 Q. [15:05:16] Are you able to explain what happened to these people?
- 8 PRESIDING JUDGE MINDUA: [15:05:27](Interpretation) Prosecutor.
- 9 MS TAYLOR: (Overlapping speakers)
- 10 MR DUTERTRE: [15:05:28](Interpretation) Your Honour, the Prosecution has a
- 11 question with regard to the relevance of these images in Gao with the facts in
- 12 question in 2013 in Timbuktu.
- 13 PRESIDING JUDGE MINDUA: [15:05:47](Interpretation) Ms Taylor, what is the
- 14 relevance?
- 15 MS TAYLOR: [15:05:51] I believe I would have to put questions to the witness first.
- 16 I'm in the process of establishing the relevance.
- 17 PRESIDING JUDGE MINDUA: [15:06:05](Interpretation) Please go ahead,
- 18 Ms Taylor.
- 19 MS TAYLOR: [15:06:09]
- 20 Q. [15:06:10] Mr Witness, are you able to explain what happened to these
- 21 individuals?
- 22 A. [15:06:24] They were burnt. And it wasn't the only time when this happened.
- 23 One month before, an Arab person who belonged to the same Arab tribe had been
- 24 burnt. And this could have caused problems and conflicts. But afterwards, I did
- 25 not hear anyone speak about a sanction that was imposed on these people who burnt

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- 1 the young people. If you look at the person, that person is a minor, not even an
2 adult. That person was burnt alive, if my memory serves me well.
- 3 Q. [15:07:22] So, Mr Witness, for the last two incidents you said that no one
4 investigated these incidents. Would it be correct that these victims didn't have
5 anyone to protect them?
- 6 A. [15:07:42] Where it concerns these practices of burning people, I didn't hear
7 about somebody who was sanctioned. But where it concerns the other events, the
8 arrests, torture, murders on the part of Malian army in the west of Timbuktu and also
9 the arrests or kidnappings for a ransom, I am sure that nobody was found guilty and
10 there was no investigation into these events.
- 11 Q. [15:08:27] Mr Witness, you said that the persons in these images were minors.
12 To your knowledge, were any minors killed in Timbuktu in 2012?
- 13 A. [15:08:48] I do not remember currently.
- 14 MS TAYLOR: [15:09:02] If I could ask one question in private session before going
15 back into open session.
- 16 PRESIDING JUDGE MINDUA: [15:09:13](Interpretation) Private session, please,
17 court officer.
- 18 (Private session at 3.09 p.m.)
- 19 THE COURT OFFICER: [15:09:19] We're in private session, Mr President.
- 20 PRESIDING JUDGE MINDUA: [15:09:31](Interpretation) Thank you very much.
21 Ms Taylor.
- 22 MS TAYLOR: [15:09:32]
- 23 Q. [15:09:33] Mr Witness, the incidents that you have just described, is the
24 information that you provided to the Court based on what you know and what you
25 heard at the time?

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1 A. [15:09:55] Yes.

2 Q. [15:09:59] And how did you come about this information?

3 A. [15:10:07] I'm from that region [REDACTED]

4 [REDACTED]

5 [REDACTED] We all suffered abuses from the Malian army. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Q. [15:11:13] Thank you.

11 MS TAYLOR: [15:11:14] I believe we can now go into open session.

12 PRESIDING JUDGE MINDUA: [15:11:21](Interpretation) Open session, please, court
13 officer.

14 (Open session at 3.11 p.m.)

15 THE COURT OFFICER: [15:11:31] We are back in open session, Mr President.

16 PRESIDING JUDGE MINDUA: [15:11:39](Interpretation) Thank you very much.
17 Ms Taylor.

18 MS TAYLOR: [15:11:42]

19 Q. [15:11:44] If we could turn to tab 241 of the Defence list of evidence, that's the
20 Arabic version. That's MLI-OTP-0077-1653 at page 1682, paragraph 136. And the
21 English is MLI-OTP-0040-3863 at paragraph 136, this is tab 17 on the Prosecution's
22 binder.

23 THE COURT OFFICER: [15:13:01] Ms Taylor, could you please repeat the ERN
24 number of the first page of the English version, please.

25 MS TAYLOR: [15:13:07] Certainly. It's MLI-OTP-0040-36 -- 0368 - my eyes are

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1 failing me - at paragraph 136, at page 0396, paragraph 136. And for the Arabic it's

2 page 1682, paragraph 136, and it's tab 241 in the Defence binder.

3 THE WITNESS: [15:14:05](Interpretation) Yes.

4 MS TAYLOR: [15:14:10]

5 Q. [15:14:11] Do you recall the Prosecution asking you about allegations about

6 sexual abuse of women in detention?

7 A. [15:14:28] Yes.

8 Q. [15:14:32] And in your view were these allegations correct?

9 A. [15:14:46] I don't think so. According to the information that I had available to
10 me and according to what I was able to know about Timbuktu, this was impossible.

11 The secret of the discipline of the Islamic groups was in their scrupulous respect for

12 instructions and it was also in the fact that sanctions, punishment was inevitable and

13 that's the reason why these individuals respected the instructions and orders given.

14 They were very disciplined and they were rigorous in their respect of law and of rules.

15 And the question of sexual abuses is one of the most serious violations.

16 Q. [15:15:51] In terms of this issue of discipline, was a member of *Hesbah*
17 disciplined for alleged rape?

18 A. [15:16:11] Yes, I remember an incident like that. It wasn't proved that it was

19 true. A young girl claimed that an individual from Ansar Dine, I don't know if he

20 was Islamic police or *Hesbah*, she claimed that he had raped her or sexually abused

21 her. However, the person that she accused said that he had her consent and that he

22 promised the young woman that he would pay her for it, but he didn't pay. And so

23 I think that he was flogged. *It is undoubtable that he was flogged. And I also

24 think that he was deported from the town and excluded from the Ansar Dine group.

25 Q. [15:17:16] If we could turn to paragraph 138.

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1 MS TAYLOR: Perhaps we could go into private session for this.

2 PRESIDING JUDGE MINDUA: [15:17:33](Interpretation) Private session, if you
3 would be so kind, madam court officer.

4 (Private session at 3.17 p.m.)

5 THE COURT OFFICER: [15:17:46] We're in private session, Mr President.

6 PRESIDING JUDGE MINDUA: [15:17:52](Interpretation) Thank you very much.
7 Ms Taylor.

8 MS TAYLOR: [15:18:05]

9 Q. [15:18:06] Mr Witness, do you recall telling the Prosecution that you believed
10 that allegations of sexual violence had been fabricated by the locals to tarnish the
11 reputation of the armed groups [REDACTED]?

12 A. [15:18:32] Yes.

13 Q. [15:18:37] Can you explain what you meant by that?

14 A. [15:18:44] Well, because [REDACTED] these abuses, these attacks
15 within the prisons, but I was in the town [REDACTED]
16 [REDACTED] there was nothing, that
17 these abuses did not take place.

18 Q. [15:19:18] And turning to paragraph 139 of the same statement, do you recall
19 telling the Prosecution or giving the Prosecution an example of such an exaggeration,
20 saying if a woman was detained for a dress code violation the locals would report this
21 [REDACTED] stating that the women had been detained and tortured in prison?

22 A. [15:20:04] [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED] this image, this
2 misrepresentation, this misrepresented image, this distorted image, which is not the
3 reality.

4 Q. [15:21:00] When you refer to locals reporting this [REDACTED] were you
5 referring to particular groups in Timbuktu that were opposed to light-skinned
6 Tuaregs and Arabs?

7 A. [15:21:16] [REDACTED]
8 [REDACTED]
9 [REDACTED] In Timbuktu

10 [REDACTED]
11 [REDACTED] it was merely a rumour.

12 Q. [15:22:14] Mr Witness, I know it's a long time ago, but can you remember any of
13 those rumours?

14 A. [15:22:28] No, I can't give a precise example, but rumours were very
15 widespread.

16 Q. [15:22:43] Now if we could turn to tab 240 on the Defence binders list, this is the
17 Arabic, MLI-OTP-0061-1512 at page 1542 to 1543, and the paragraph number is 100.
18 And the English is tab 16 on the Prosecution's list, that's MLI-OTP-0024-3096 at 3121,
19 paragraph 100.

20 A. [15:23:36] I'm sorry, could you repeat the page number, please.

21 Q. [15:23:42] The tab number is 240 for the Arabic and the page number is pages
22 1542 and it's paragraph 100.

23 Mr Witness, do you recall telling the Prosecution that the Songhay thought that you
24 were a member of an armed group [REDACTED]

25 [REDACTED] ?

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- 1 A. [15:25:10] Yes.
- 2 Q. [15:25:11] So would it be correct, Mr Witness, that if any crimes were committed
- 3 by someone who was not a Songhay, they would assume that that person was a
- 4 member of the armed groups?
- 5 A. [15:25:32] Yes.
- 6 Q. [15:25:34] And is it correct that it was easy for them therefore to confuse the
- 7 different groups?
- 8 A. [15:25:50] Yes, it's true.
- 9 Q. [15:25:54] If we could turn to tab 241 on the Defence list, this is the Arabic,
- 10 MLI-OTP-0077-1653, and the page is 1686, paragraph 149. And for the English it's
- 11 tab 17 on the Prosecution's list, this is MLI-OTP-0040-368 at 3 -- 0398, paragraph 149.
- 12 And if we could turn perhaps to paragraph 153, which is on page 0399 of the English
- 13 and 1686 of the Arabic.
- 14 Mr Witness, do you recall being asked about marriages between the armed groups
- 15 and local women?
- 16 A. [15:28:20] Yes.
- 17 Q. [15:28:23] And to your knowledge, is it correct these marriages were done with
- 18 the consent of the women and that they had the chance to refuse?
- 19 A. [15:28:41] Yes.
- 20 Q. [15:28:45] And based on what you saw and heard at the time, that it was based
- 21 on a verbal contract between the man and the woman according to Sharia law?
- 22 A. [15:29:04] Yes. Islamic Sharia provides that marriage is concluded by a verbal
- 23 contract *between the person responsible, that is the tutor responsible for the
- 24 woman -- the representative of the woman and the representative of the man.
- 25 THE INTERPRETER: [15:29:35] Corrects the interpreter.

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1 MS TAYLOR: [15:29:41]

2 Q. [15:29:41] And, Mr Witness, you were in Timbuktu in 2012 and based on what
3 you saw and what you heard, is it correct that there were no cases of forcing women
4 to get married without consent?

5 MR DUTERTRE: [15:29:57](Interpretation) Your Honour.

6 PRESIDING JUDGE MINDUA: [15:29:58](Interpretation) Prosecutor.

7 MR DUTERTRE: [15:29:59](Interpretation) I think in this statement you can choose
8 whatever you want, pick and choose, but you also have to be fair to the witness. The
9 witness has indicated a certain number of things in paragraph 154 which is
10 immediately following, so I think if you push that line -- if you put that line of
11 questioning, then I think you have to put everything that the witness said on this
12 particular point and not only preferred chosen part therefrom.

13 Thank you.

14 PRESIDING JUDGE MINDUA: [15:30:41](Interpretation) Ms Taylor.

15 MS TAYLOR: [15:30:41] The Prosecution had their chance to question this witness.
16 It's now the chance of the Defence. And the Prosecution should not interrupt -- I'm
17 sorry, I'm still speaking, Mr Prosecutor.

18 MR DUTERTRE: [15:30:57](Interpretation) I'm not interrupting you.

19 PRESIDING JUDGE MINDUA: [15:31:00](Interpretation) Prosecutor, you don't have
20 the floor. Ms Taylor is speaking.

21 Ms Taylor.

22 MS TAYLOR: [15:31:06] I'm putting a series of questions to the witness. I have not
23 finished these series of questions. It's not appropriate for the Prosecutor to attempt
24 to conduct a re-examination in the middle of the Defence cross-examination. They
25 can't interject just because they don't like our questions.

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1 PRESIDING JUDGE MINDUA: [15:31:36](Interpretation) Well, I think that we
2 understand, Ms Taylor. But be careful with your questions. Nevertheless,
3 continue.

4 MS TAYLOR: [15:31:49]

5 Q. [15:31:52] Now, Mr Witness, is it correct that when you were in Timbuktu you
6 heard of no cases of forcing women to get married without their consent?

7 A. [15:32:12] Yes. If there was an adult -- if we're talking about an adult woman,
8 *it can never be the case that an adult woman is forced into this. And I don't
9 remember ever having heard of this happening. If it was a minor, the father could
10 marry the minor to whom he wished.

11 Q. [15:32:38] Now, Mr Witness, you indicated to the Prosecution, paragraph 154,
12 that some families may have pressured women to get married because of a financial
13 incentive; is that correct?

14 A. [15:32:58] Yes.

15 Q. [15:33:01] And it's correct that dowries were given for marriage before 2012 and
16 also after 2012?

17 A. [15:33:16] (No interpretation)

18 THE COURT OFFICER: [15:33:21] Ms Taylor, your question was not captured
19 because your microphone was not turned on.

20 MS TAYLOR: [15:33:27] I can see it in the transcript. Which question was that? In
21 the transcript it says "it's correct that dowries were given for marriage before 2012 and
22 also after 2012?"

23 Q. So turning to paragraph 158 of your statement --

24 PRESIDING JUDGE MINDUA: [15:34:00](Interpretation) Ms Taylor, it's time.
25 You've just got one minute to conclude.

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1 MS TAYLOR: [15:34:07] I've got only two questions to go and then I've finished this
2 series of questions.

3 THE WITNESS: [15:34:46](Interpretation) But this is a document that's got almost
4 nothing in it, 158.

5 MS TAYLOR: [15:35:00]

6 Q. [15:35:01] It was paragraph 158 of the same document you were looking at
7 before.

8 A. [15:35:18] And what page is that on, please?

9 Q. [15:35:22] It's page --

10 A. [15:35:25] I thought it was a different tab.

11 Q. [15:35:28] It's the same tab, sorry, Mr Witness. It's -- you're looking at tab 241
12 and you should be looking at page 1687, paragraph 158.

13 A. [15:36:02] Yes.

14 Q. [15:36:03] Do you recall telling the Prosecution or describing these women as
15 victims of society because they are now perceived by the society as wives of
16 terrorists?

17 A. [15:36:24] Yes.

18 Q. [15:36:30] And that during the occupation the perception was different because
19 they were the wives of rulers and the marriage was not seen as shameful?

20 A. [15:36:49] Of course.

21 Q. [15:36:51] So would it be correct that the shame has been imposed upon them by
22 Songhay society that they belong to and not the persons they married?

23 A. [15:37:13] No. This shame was imposed on them in a general way. [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 [REDACTED] There were a lot of cases,
2 but nobody wanted to talk about it. [REDACTED]

3 [REDACTED]
4 Q. [15:38:07] If I can just rephrase my question, it will be the final question.

5 So, Mr Witness, you said that in 2012 the marriage was not seen as shameful. This
6 shame you're describing, was that caused because the circumstances changed and
7 they were now seen as terrorists after the French intervened?

8 A. [15:38:45] Yes.

9 Q. [15:38:47] Thank you.

10 MS TAYLOR: [15:38:48] I think we can stop today.

11 PRESIDING JUDGE MINDUA: [15:38:54](Interpretation) Very well. Thank you
12 very much, Ms Taylor.

13 I see the Prosecutor is looking at me.

14 Mr Prosecutor.

15 MR DUTERTRE: [15:39:02](Interpretation) Yes, I would like to say something, but
16 perhaps we could wait until the witness has left. It's been a long day and I just
17 have -- need a couple of minutes.

18 PRESIDING JUDGE MINDUA: [15:39:17](Interpretation) We will first move into
19 open session.

20 Mr Prosecutor, do you wish to speak to the Chamber in open session or in private
21 session?

22 MR DUTERTRE: [15:39:33](Interpretation) That can be in open session.

23 PRESIDING JUDGE MINDUA: [15:39:38](Interpretation) In that case, court officer,
24 please can we move to open session.

25 (Open session at 3.39 p.m.)

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- 1 THE COURT OFFICER: [15:39:50] We're in open session, Mr President.
- 2 PRESIDING JUDGE MINDUA: [15:39:55](Interpretation) Thank you, court officer.
- 3 Mr Witness, we have reached the end of your testimony for today. We have reached
- 4 our time limit. Unfortunately, we are going to ask you to be patient yet further
- 5 because we have not completed discussing your testimony. Tomorrow and Friday,
- 6 unfortunately the Chamber will not sit as the judges will be on a retreat. Therefore,
- 7 we will see you again here on Monday, 16 November at 9.30. Have you understood?
- 8 THE WITNESS: [15:40:47](Interpretation) Yes.
- 9 PRESIDING JUDGE MINDUA: [15:40:50](Interpretation) Thank you very much.
- 10 So, as usual, of course you will discuss your testimony with no one. I would now
- 11 ask you to be escorted from the room because the Chamber is going to discuss further
- 12 with the parties and participants. I hope you will have the opportunity to rest and
- 13 we will see you here again next week.
- 14 Obviously I would like to thank you once more.
- 15 (The witness exits the courtroom)
- 16 PRESIDING JUDGE MINDUA: [15:41:46](Interpretation) Mr Prosecutor, the witness
- 17 has left and we are in open session. You have the floor.
- 18 MR DUTERTRE: [15:41:53](Interpretation) Thank you, your Honour. I will be
- 19 brief.
- 20 We realise that we are in the middle of the cross-examination, and that the
- 21 cross-examination can discuss the points that Defence wishes, but at the same time
- 22 one can't take a little bit from here and a little bit from there because what is being
- 23 sought here is really the truth. And it's a question also of fairness for the witness.
- 24 And when we go from a bit of paragraph 154 to paragraph 158, the way the Defence
- 25 is approaching things don't allow the Chamber to get an overall picture of what is

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1 being said by the witness.

2 And mentioning also that in 154, (Speaks English) the main source of pressures were

3 two, poverty and power, and they were perceived as the rulers. (Interpretation)

4 These are evidence which even in a cross-examination one can't sort of cut and pick

5 from the paragraphs. I mean, if you take the paragraph you must take the whole

6 information -- all the information that it contains.

7 That's what I wanted to have recorded in the transcript, your Honour.

8 PRESIDING JUDGE MINDUA: [15:44:02](Interpretation) Thank you, Mr Prosecutor.

9 What you say is clear but I see that the Defence would like to take the floor.

10 Ms Taylor.

11 MS TAYLOR: [15:44:14] Yes.

12 These interjections from the Prosecution are unacceptable. They're doing so

13 repeatedly in the presence of the witness and it's interfering our ability to put our

14 case.

15 Now the Prosecution had by my count about 20 hours to question this witness, and if

16 we are to talk about picking and choosing, that's exactly what the Prosecution did.

17 They did not pose a single question to this witness about this section. They chose

18 not to do so within their 20 hours. They cannot now stand up in the middle of our

19 cross-examination and try to correct their own examination strategy. The witness's

20 statement has not been admitted through Rule 68(3). He is testifying now on the

21 stand. He has the statement in front of him. He can answer my questions freely.

22 We are in the middle of doing a train of questions. We may come back to things

23 later, as did the Prosecution when the witness attempted to explain his position on

24 certain issues.

25 But what cannot and should not happen is for the Prosecutor to attempt to hijack our

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1 own cross-examination and to verbally testify and read out the contents of a
2 statement that's not in evidence.
3 Thank you.
4 PRESIDING JUDGE MINDUA: [15:45:47](Interpretation) Very well. Thank you,
5 Ms Taylor, for your response.
6 With regard to time, the Prosecutor had 20 hours, you said, and you have been told
7 by the Chamber that you will have the time you require to carry out your
8 cross-examination, so please no need to be concerned about that.
9 This is a viva voce witness and therefore, on the basis of his statements, you can put
10 your questions. However, I also agree with the Prosecutor because -- this is what it
11 is, everything, every text outside this text is -- if a text is taken out of context, it's a
12 pretext, therefore we need to avoid chopping things up into little pieces to give what
13 we want to the witness.
14 So it's difficult to fix rules without appealing to your sense of cooperation, which you
15 have proven until now. You say that the Prosecutor keeps interrupting, we try to
16 stop this as much as possible, limit the objections, and so I appeal to your sense of
17 responsibility. So I think we agree, we cannot just say whatever we want to the
18 witness, when it is the turn of one party, one should respect that fact.
19 I think we will bring this to a close now and we will meet again on Monday to
20 continue.
21 I would like to thank, as usual, the parties, the Prosecution, Defence, Legal
22 Representative of Victims, I would like to thank our court reporters and our
23 interpreters. And let's not forget the security officers and our public, our public who
24 are always very patient. I wish you all a very pleasant evening. It's a little early to
25 say have a good weekend, it being Wednesday, but nevertheless we will see each

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1 other again on Monday.

2 The hearing is adjourned.

3 THE COURT USHER: [15:48:43] All rise.

4 (The hearing ends in open session at 3.48 p.m.)

5 CORRECTIONS REPORT

6 The following corrections, marked with an asterisk and not included in the

7 audio-visual recording of the hearing, are brought into the transcript.

8 Page 20 line 24 to page 21 line 6:

9 "And what turned out to be the case later was that Droukdel, the commander of

10 Ansar Dine in the Islamic Maghreb did give him special prerogatives whereby the

11 Al-Qaeda eye mirrors would listen to him and would consult with him on everything

12 and as far as I heard, these prerogatives given to Iyad by Al-Qaeda were the reason

13 Mokhtar Belmokhtar dissented from Al-Qaeda and joined MUJAO because he

14 believed it was him who founded Al-Qaeda in northern Mali and therefore it was not

15 acceptable for him for a Tuareg giving him orders or instructions."

16 is corrected to

17 "And what turned out to be the case later was that Droukdel, the commander of

18 Al-Qaeda in the Islamic Maghreb did give him special prerogatives whereby the

19 Al-Qaeda emirs would listen to him and would consult with him on everything and

20 as far as I heard, these prerogatives given to Iyad by Al-Qaeda were the reason

21 Mokhtar Belmokhtar dissented from Al-Qaeda and joined MUJAO because he

22 believed it was him who founded Al-Qaeda in northern Mali and therefore it was not

23 acceptable for him to have a Tuareg giving him orders or instructions, as the rumors

24 said."

25 Page 38 line 23 to page 39 line 1:

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- 1 "A. [11:58:19] The location where the [REDACTED] refugee camp is located is a
2 Sahara-like location. There are a lot of desert manifestations, you know extreme heat
3 and cold winter and summer."
4 Is corrected to
5 "A. [11:58:19] The location where the [REDACTED] refugee camp is located is a
6 Sahara-like location, *built on dunes, with extreme heat in summer and extreme cold
7 in winter and people are in very small camps that do not protect them neither from
8 the sun nor from the heat. "
9 Page 70 line 23:
10 "It is undoubtable that he was flogged." Is translated and added.
11 Page 73 lines 23-24:
12 "Between the person responsible, that is the TAOU tore responsible for the woman. "
13 Is corrected to
14 "between the person responsible, that is the tutor responsible for the woman --"
15 Page 75 line 8:
16 "you couldn't force an adult woman"
17 is corrected to
18 "it can never be the case that an adult woman is forced into this"
19 SECOND CORRECTION REPORT
20 The following correction, marked with an asterisk and not included in the
21 audio-visual recording of the hearing, is brought into the transcript.
22 Page 33 line 3:
23 "Abu Musab Abdel Walid (phon)" is corrected to "Abu Musab Abdel Wadoud"