

~~--ICC-01/12-01/18-T-049-CONF-ENG-ET-19-11-2020-1/76-SZ-T~~

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 Thursday, 19 November 2020
- 10 (The hearing starts in open session at 9.32 a.m.)
- 11 THE COURT USHER: [9:32:14] All rise.
- 12 The International Criminal Court is now in session.
- 13 Please be seated.
- 14 PRESIDING JUDGE MINDUA: [9:32:42](Interpretation) Court is in session.
- 15 Good morning to everybody.
- 16 Court officer, please call the case.
- 17 THE COURT OFFICER: [9:32:55] (Interpretation) Good morning, your Honour.
- 18 The situation in Mali, in the case of The Prosecutor versus Al Hassan Ag Abdoul Aziz
- 19 Ag Mohamed Ag Mahmoud, ICC-01/12-01/18.
- 20 And we are in open session.
- 21 PRESIDING JUDGE MINDUA: [9:33:09](Interpretation) Thank you very much.
- 22 For the transcript, we are going to now have the appearances; starting with the
- 23 Office of the Prosecutor.
- 24 MR DUTERTRE: [9:33:20](Interpretation) Good morning, your Honour, your
- 25 Honours. Good morning, Witness. Good morning, everyone.

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- 1 The Prosecution is still represented by Madam Coquillaud, Mr Garcia and myself,
- 2 Gilles Dutertre. Thank you.
- 3 PRESIDING JUDGE MINDUA: [9:33:41](Interpretation) Thank you, Prosecutor. I
- 4 now turn to the Defence.
- 5 Ms Taylor.
- 6 MS TAYLOR: [9:33:46] Good morning, Mr President. Good morning, your
- 7 Honours. The Defence for Mr Al Hassan is represented today by
- 8 Ms Kirsty Sutherland, Ms Dolly Chahla, Ms Molly Thomas, and myself,
- 9 Melinda Taylor.
- 10 And again for the record, Mr Al Hassan is participating from the detention unit.
- 11 Thank you.
- 12 PRESIDING JUDGE MINDUA: [9:34:09](Interpretation) Thank you very much,
- 13 Ms Taylor.
- 14 It's now the turn of the Legal Representatives of Victims.
- 15 MR LUVENGIKA: [9:34:20] (Interpretation) Good morning, your Honour. First of
- 16 all, I would like to thank the Chamber for ensuring that the victims are represented in
- 17 the courtroom this morning. The Legal Representatives of Victims are composed
- 18 this morning of Madam Claire Laplace and myself, Fidel Nsita Luvengika. Thank
- 19 you.
- 20 PRESIDING JUDGE MINDUA: [9:34:44](Interpretation) Thank you, Maître Nsita.
- 21 Today, we are going to continue with the testimony of the 16th Prosecution witness,
- 22 P-0065.
- 23 Good morning, 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: [9:35:12](Interpretation) Good morning. Yes, very clearly.
- 2 PRESIDING JUDGE MINDUA: [9:35:15](Interpretation) Thank you, Witness.
- 3 I would like to thank you once again for your patience and I would like to welcome
- 4 you again, and, I would like to remind you, of course, that you are still under oath.
- 5 You should therefore tell the truth, the whole truth and nothing but the truth.
- 6 I would like to remind you of my instructions as regards taking the floor.
- 7 That's it.
- 8 Ms Taylor, you have the floor to continue with your cross-examination.
- 9 QUESTIONED BY MS TAYLOR: (Continuing)
- 10 Q. [9:36:01] Good morning, Mr Witness.
- 11 A. [9:36:05] Good morning.
- 12 Q. [9:36:06] How are you this morning?
- 13 A. [9:36:10] I'm very well.
- 14 Q. [9:36:23] I'm just waiting, sorry, for the transcript so I can see it.
- 15 Now, yesterday I showed you various images. I have some follow-up questions.
- 16 Mr Witness, do you think I can put those follow-up questions to you in open session?
- 17 A. [9:36:41] Yes.
- 18 Q. [9:36:43] Now, yesterday I showed you several images of a person in a black
- 19 turban and none of these images will be shown to the public gallery. The first image
- 20 was tab 238 of the Prosecution's list at MLI-OTP-0018-0737 and there was an image
- 21 showing the 15.16 mark. If we bring that up on evidence 2, you can see that the face
- 22 of the person is partially covered by a turban, that's correct?
- 23 A. [9:37:35] Yes.
- 24 Q. [9:37:38] And the second image I showed you was tab 136, that was MLI -- on
- 25 the Defence list, MLI-D28-004-3448, and it was at the nine-second mark of video

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- 1 MLI-OTP-0018-0742.
- 2 And the face in this image of the person with the black turban is half obscured,
- 3 isn't it?
- 4 A. [9:38:21] Yes.
- 5 Q. [9:38:22] Now, the third image I showed you was tab 139 on the Defence binder,
- 6 that was MLI-D28-004-3451 at the 22-second mark.
- 7 A. [9:38:44] (Overlapping speakers)
- 8 Q. [9:38:45] And it's correct, isn't it, that --
- 9 A. [9:38:47] Yes.
- 10 Q. [9:38:48] -- that in this image, the face of the person is less covered?
- 11 A. [9:38:56] (Overlapping speakers)
- 12 Q. [9:38:58] And yesterday --
- 13 A. [9:38:58] Yes.
- 14 Q. [9:38:59] Yesterday, in the real-time transcript at T-48, page 89, lines 12 to 13,
- 15 after seeing this, you said:
- 16 I'm not a hundred per cent certain. In -- in this photo I'm not sure.
- 17 That's correct?
- 18 A. [9:39:19] Yes. That's what I said yesterday. But today I'm certain.
- 19 Q. [9:39:23] (Overlapping speakers) Mr Witness, you're certain of --
- 20 A. [9:39:26] I'm certain of knowing the photo a hundred per cent.
- 21 Q. [9:39:34] When you say you know the photo, Mr Witness, under oath, can you
- 22 say that you're a hundred per cent certain that that's Khalid?
- 23 A. [9:39:48] Yes. A hundred. Even 200 per cent. And I can clarify that in
- 24 private session, if you wish to have more clarifications as to the reasons why I can be
- 25 100 per cent sure that this is Khalid.

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- 1 Q. [9:40:07] Now Mr Witness, before doing so, I'd like to show you another image.
- 2 It's from --
- 3 MR DUTERTRE: [9:40:15](Interpretation) Your Honour, I think the witness must be
- 4 allowed to express himself with regards to this question. Ms Taylor has put the
- 5 question, the witness has said he can give more information with regards to this
- 6 photograph; so I think it would be appropriate to give him the possibility to fairly let
- 7 him say what he has to say.
- 8 PRESIDING JUDGE MINDUA: [9:40:40](Interpretation) Prosecutor, there, I think,
- 9 you are carrying out the cross-examination there because the question was whether
- 10 the witness recognised the person. He says yes, and I think it stops there.
- 11 Please continue, Ms Taylor.
- 12 MS TAYLOR: [9:40:53] Thank you, Mr President.
- 13 Q. [9:40:55] Can I show you an image from a video that was shown to you at
- 14 transcript 38, page 29, line 6. This was tab 28 of the Prosecution's binder, that's
- 15 MLI-OTP-0018-0014. And if we could stop it at the mark of 27:04.
- 16 A. [9:41:35] Yes.
- 17 Q. [9:41:37] And during your testimony, when this image was shown to you, you
- 18 identified this person as Khalid, that's correct?
- 19 A. [9:41:54] (Overlapping speakers)
- 20 Q. [9:41:55] Now --
- 21 A. [9:41:55] Yes.
- 22 Q. [9:41:56] -- and in this image, the person is wearing the Islamic police vest?
- 23 A. [9:42:08] Yes, I think so.
- 24 Q. [9:42:11] Now I'd like you to look very carefully at the face.
- 25 A. [9:42:27] The photo isn't a very good quality or a quality enough to make -- for

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1 me to be able to make out the features of the face. Other photographs of better
2 quality would make you think that it is that person, but you can't be a hundred
3 per cent sure in this case. And that's another detail that I could also comment on
4 when we are in private session.

5 Q. [9:42:59] Well, Mr Witness, we have a better quality version of this picture,
6 which we can show to you.

7 A. [9:43:12] There's another thing as well, which would require a private session in
8 order for the explanation, and this concerns the same picture, even if the quality is
9 better. So in order to give my position on this photograph, I -- in order to explain my
10 position, I would need to be in private session.

11 Q. [9:43:40] Certainly, Mr Witness, but I'd like to show you the photograph first,
12 the higher-quality one, and we can do so in private session, if the Presiding Judge
13 authorises us.

14 MS TAYLOR: [9:43:47] But that means I can no longer continue questioning him in
15 open session.

16 And I don't see any basis for the Prosecutor to be standing up.

17 PRESIDING JUDGE MINDUA: [9:44:08](Interpretation) No, Ms Taylor, it's not up to
18 you judge why the Prosecutor is standing up.
19 Prosecutor.

20 MR DUTERTRE: [9:44:16](Interpretation) Yes, your Honour, it's now the second
21 time that the witness has indicated that he wants to give an explanation in closed
22 session. The first time when he was shown the picture of -- from the video and, now,
23 on this video. So I think it would be appropriate if he could give all useful
24 explanations, which would also shed light on matters for the Defence itself.

25 PRESIDING JUDGE MINDUA: [9:44:48](Interpretation) Prosecutor, thank you. It's

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1 the second time that the witness has asked for a private session. This time he was
2 supported by the Defence and I was about to order private session before you
3 intervened. So please try to be a bit patient in future.

4 Court officer, please could you take us into private session.

5 (Private session at 9.45 a.m.)

6 THE COURT OFFICER: [9:45:19] (Interpretation) We're in private session,
7 your Honour.

8 PRESIDING JUDGE MINDUA: [9:45:25](Interpretation) Thank you very much.
9 Ms Taylor.

10 MS TAYLOR: [9:45:35]

11 Q. [9:45:36] Mr Witness, in front of you, this is the image from the higher-quality
12 video. Is this the person you identified as Khalid?

13 A. [9:45:50] Yes. Can I now explain what I wanted to say in private session?

14 Q. [9:46:02] Yes, Mr Witness, we're in private session.

15 A. [9:46:09] Very well. These events took place several years ago and what I
16 wanted to say to you was that Khalid was appointed towards the end of this period.
17 He's not like Adam or other people [REDACTED]

18 [REDACTED] Contrary to that, Khalid is somebody [REDACTED]

19 [REDACTED]

20 Secondly, I treat these videos on the basis of my memory, which is quite weak, and
21 also, to try and revive my memory by recognising the people in the videos.

22 And thirdly, I need to be reminded of the context. The first video - when I said that

23 I was sure that it was Khalid [REDACTED]

24 [REDACTED]
25 [REDACTED]

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9 [REDACTED] five different persons, but they resemble each other.

10 The photograph that we spoke about yesterday, and I said, when you asked me
11 questions, I said that I think it's Al Hassan. When the Prosecutor asked me the
12 question, I said that I think it's Al Hassan. I said perhaps it's Al Hassan, because I
13 didn't remember Al Hassan as well as I remember Khalid. But he did resemble
14 Al Hassan, and, as such, I said he was Al Hassan. But during the public session
15 I was asked if it was Al Hassan, I said yes, but in private session I said, "I think it's
16 Al Hassan". I wasn't as categorical.
17 So those are factors that have an influence on my impression. So please take into
18 account this time that has passed since the events took place. It's a long period of
19 time. I'm trying to remember everybody's features, but I don't remember everything,
20 but I know that through the photographs that are presented to me, I could be wrong, I
21 could be right.

22 There's another issue that you also asked me yesterday. You asked me if I
23 remembered the presence of Al Hassan in two *hadd*, when there were sanctions being
24 applied. And I remember that he was present during the first one, that's to say the
25 first *hadd*, the first sanction and, also, during the *qisas*, the punishment and -- I think

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1 that he was there. But I saw furthermore, Al Hassan was in certain videos and there
2 were times when I did not remember Al Hassan being present, but I saw him being
3 present, but -- I hope that the interpretation is reliable.

4 Q. [9:50:57] That was quite a lengthy response, Mr Witness, so I'm going to break it
5 down. Now, yesterday, when I showed you [REDACTED] from behind, you
6 had difficulties recognising [REDACTED] that's correct?

7 A. [9:51:14] Nobody can see somebody from behind or recognise them from behind.

8 [REDACTED] this person. I can recognise the person. [REDACTED] and I'm

9 sorry if my answers are long, but [REDACTED]

10 [REDACTED] I know the answers are important. So when I have to give an
11 incomplete reply, which isn't clear, that is annoying to me. And that's the reason
12 why afterwards, I need to reply in a clearer way and in a more exhaustive fashion.

13 Q. [9:52:11] Thank you. Now, Mr Witness, if I understand you correctly, you
14 were stating that it's harder for you to make an identification in this video because
15 you yourself weren't there [REDACTED]?

16 A. [9:52:33] [REDACTED] I said it was
17 Khalid because the person looks like him and because I remember that the person
18 [REDACTED] - if I remember well - told me
19 that it was Khalid.

20 Q. [9:53:02] Well, if you could carefully look at this photo, and then I'm going to
21 show you again tab 139 that I showed you before. And if you could compare what
22 you're seeing. Not what you think you're seeing, but what you're seeing.

23 Now in front of you is a person who you've identified as someone that [REDACTED]
24 [REDACTED] told you was Khalid. I'm now going to show you again tab 139, which is
25 MLI-D28-004-3451, and if we could zoom in on the person with the black turban.

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1 A. [9:54:07] I don't know Khalid's features a hundred per cent. He always wore a
2 turban [REDACTED]

3 [REDACTED]
4 [REDACTED] given all of that, I can confirm that

5 it's Khalid. With regards to the other person, on the basis of what I remember, and
6 on the basis of the impression that he resembles Khalid and -- in light of how I
7 remember Khalid's face to look, I would say I think it's him.

8 But in this photo, this person, who is supervising the execution of the sanctions of the
9 *hadd*, then I can say I can confirm that this is Khalid. I can't be any more clear than
10 that.

11 Q. [9:55:09] Now, Mr Witness, it's correct that no one in this photograph is wearing
12 an Islamic police vest?

13 A. [9:55:20] No, I don't see anybody wearing an Islamic police vest here.

14 Q. [9:55:31] Whereas in the other videos, they were wearing the Islamic police vest,
15 weren't they, whenever you identified someone and Khalid was wearing one in the
16 previous video?

17 A. [9:55:50] Well, given that you've compared both videos, allow me to compare
18 myself on the basis of the two pictures and not on the basis of my memory, because
19 you want to analyse it. So I'm going to do the same thing. I don't know when the
20 first video was taken nor when the second was taken, whether in terms of the date or
21 in terms of the period. And if we say that the person in this video is wearing a vest
22 against the cold in the morning, very early in the morning, then he has -- he's wearing
23 this vest because he's cold.

24 And in the second picture, the persons are dressed lightly. They have light clothing,
25 so it's easier to put the vest over their clothes because you've compared both.

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1 Q. [9:56:52] Now, on Monday, at transcript 46, page 49, lines 12 to 18, you testified
2 that assets were shared between different sections, and one day a car could be used
3 by the Islamic police and next day by *Hesbah*.

4 So, Mr Witness, the mere fact we're seeing a white car in this picture doesn't mean it
5 was being used by the Islamic police. It could have equally been used by *Hesbah*,
6 that's correct?

7 A. [9:57:34] That's true.

8 Q. [9:57:43] Now, at transcript 42, page 29, line 3, to page 30, line 4, you explained
9 that [REDACTED]
10 [REDACTED] in Timbuktu; is that correct?

11 A. [9:58:09] I don't remember. My memory doesn't allow me to remember when I

12 [REDACTED] As I said, if

13 [REDACTED]

14 [REDACTED] whether it was the same day or whether it was later. But I can't say if [REDACTED]

15 [REDACTED] three days after the events took place [REDACTED] I don't

16 know. My memory doesn't enable me to remember that, [REDACTED]

17 [REDACTED]

18 Q. [9:58:56] I'd like to refer you to tab 249 in the Defence binder, it's the Arabic
19 version of MLI-OTP-0018-0819, and the relevant pages are 0827 to 0829. The English
20 is tab 250 on the Defence binder, that's MLI-OTP-0078-9798 at 90 (Overlapping
21 speakers)?

22 A. [9:59:32] What tab, 200 and what?

23 Q. [9:59:36] Tab 249 in the Defence binder. And for the record, I'm just going to
24 complete the English reference, it's MLI-OTP-0078-9798 at 9809 to 9811.

25 A. [10:00:15] Yes, yes, I've got the chat in front of me.

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- 1 Q. [10:00:18] Can you confirm for the record what's in front of you?
- 2 A. [10:00:25] It's a chat between [REDACTED] and myself. [REDACTED]
- 3 [REDACTED]
- 4 Q. [10:00:41] And if you could go to the bottom of the page, starting at 0827 in
- 5 Arabic, what are the dates of the chats at the bottom?
- 6 A. [10:00:54] The dates of the second chat is [REDACTED]
- 7 Q. [10:01:15] I believe you must be on the wrong page, Mr Witness.
- 8 A. [10:01:22] (Overlapping speakers)
- 9 Q. [10:01:23] Could you turn to the page, I think it must be in Arabic, 0827.
- 10 A. [10:01:31] Yes. 0827, the last page, is that correct?
- 11 Q. [10:02:12] It's not the last page of the chat.
- 12 A. [10:02:20] Okay. I've, I've found it now. 0827.
- 13 Q. [10:02:30] For the record, can you say the dates of the chats that are on that
- 14 page?
- 15 A. [10:02:38] [REDACTED] January, those are the dates.
- 16 Q. [10:02:53] And it's correct, isn't it, [REDACTED]
- 17 [REDACTED] and, if we turn over the page, continuing on [REDACTED]?
- 18 A. [10:03:13] Yes, I think so.
- 19 Q. [10:03:21] Thank you, Mr Witness. Now, last Thursday, you referred to an
- 20 incident where a member of Ansar Dine was flogged in September 2012, that was
- 21 transcript 41, page 9, line 24 to page 10, line 1. And you said it was for a betrayal of
- 22 trust and that [REDACTED]
- 23 [REDACTED] This was transcript 41, page 10, lines 2 to 5. And yesterday, you clarified
- 24 that [REDACTED]
- 25 [REDACTED] Transcript 49, page 58, line 12.

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1 So is it correct that Talha was involved [REDACTED]?

2 A. [10:04:27] Yes, this -- [REDACTED]

3 [REDACTED]

4 Q. [10:04:41] And you mentioned seeing -- identifying various Al-Qaeda leaders
5 there, such as Abou Chingetty?

6 A. [10:04:56] Yes.

7 Q. [10:04:57] (Overlapping speakers) and the Prosecution showed a video from this
8 event and I'm going to bring up an image from the video. It's tab 59, that's
9 MLI-OTP-0018-0147 at the 11-second mark.

10 A. [10:05:18] Yes.

11 Q. [10:05:19] Mr Witness, are you familiar with the name Housseayne Ould Badi?
12 Someone who was a member of Al-Qaeda?

13 A. [10:05:35] This is a familiar name, Housseayne Ould Badi, but I don't recall
14 exactly who he was right now. Most of them, I don't -- for most of them, I don't
15 know their real names. I only know their *nom de guerre*. But Housseayne Badi seems
16 to me to be a familiar name, but I'm not entirely sure who it belongs to.

17 Q. [10:06:08] [REDACTED]
18 [REDACTED]?

19 A. [10:06:27] Yes, I was able to follow all the publications of Al-Qaeda, but I don't
20 recall all their names, all their titles, nor the dates. If I could see the video, then I
21 might know, [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 PRESIDING JUDGE MINDUA: [10:07:22](No interpretation)

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- 1 MS TAYLOR: [10:07:24] We're in private session I believe because of the witness's
2 concerns. I'm about to show a video. Is the witness comfortable with me going into
3 open session [REDACTED] ?
4 THE WITNESS: [10:07:43](Interpretation) [REDACTED]
5 [REDACTED] I have
6 no objections to dealing with that in public session.
7 PRESIDING JUDGE MINDUA: [10:08:03](Interpretation) Thank you, Mr Witness.
8 MS TAYLOR: [10:08:05] (Overlapping speakers) before we go into open session, if I
9 can just clarify to the witness [REDACTED]
10 [REDACTED] But I won't be
11 posing that in open session.
12 THE WITNESS: [10:08:26](No Interpretation) (Overlapping speakers).
13 MS TAYLOR: [10:08:28] (Overlapping speakers) so I believe we can --
14 THE WITNESS: [10:08:28](Interpretation) Yes.
15 MS TAYLOR: [10:08:29] -- go into open session with that clarification.
16 PRESIDING JUDGE MINDUA: [10:08:37](Interpretation) Thank you, Ms Taylor.
17 Court officer, private session, please -- public session, please.
18 (Open session at 10.08 a.m.)
19 THE COURT OFFICER: [10:08:47] (No Interpretation)(Overlapping speakers)
20 PRESIDING JUDGE MINDUA: [10:08:52](Interpretation) Thank you, court officer.
21 Ms Taylor.
22 MS TAYLOR: [10:08:56] And the video is tab 196 on the Defence list. It's
23 MLI-D28-0004-3539, and there's a related report at tab 174 on the Defence list, being
24 MLI-D28-0004-3504. I'm going to play it without sound.
25 (Viewing of the video excerpt)

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1 MS TAYLOR: [10:11:11]

2 Q. [10:11:11] Mr Witness, are you familiar with the contents of this video?

3 A. [10:11:22] Yes, I recall that there was a video published by Al-Qaeda - and, it
4 was distributed over social media and all media - and it shows some of the executions
5 which took place in the north of Mali, execution of a priest. To have priests who
6 had -- sorry, it was executions of traitors. To have traitors who had dealt with the
7 secret services, the services of others.

8 Q. [10:12:16] I'm now going to play a particular segment of the video between the
9 05:00 mark and the 06:15 mark and I think we can play it without sound.

10 (Viewing of the video excerpt)

11 MS TAYLOR: [10:13:53] And if we could freeze at the 06:21 mark.

12 Q. [10:14:08] Mr Witness, is the person on the screen Housseinye Ould Badi?

13 A. [10:14:19] I can't confirm this, but what I can say is that when this video was
14 distributed, which showed the execution of these people, everybody was asking
15 themselves, Who are these people? We all looked into it to try and find out who it
16 was. Some information said that these people -- or one of these people had been
17 executed.

18 MS TAYLOR: [10:14:55] (Overlapping speakers) I might suggest we go into private
19 session.

20 PRESIDING JUDGE MINDUA: [10:15:00](Interpretation) Court officer, private
21 session, please.

22 (Private session at 10.15 a.m.)

23 THE COURT OFFICER: [10:15:16] (Interpretation) We are in private session.

24 PRESIDING JUDGE MINDUA: [10:15:19](Interpretation) Thank you. Ms Taylor.

25 MS TAYLOR: [10:15:22]

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 Q. [10:15:22] I apologise for interrupting, Mr Witness, [REDACTED]

2 [REDACTED]

3 A. [10:15:32] Yes, I wanted to talk [REDACTED], but now I can explain this
4 better. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 The second person [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 I don't know whether I can say that that is him because I don't know his face, [REDACTED]

14 [REDACTED]

15 [REDACTED] There were other people whose heads -- who were beheaded. Who were
16 executed. They would -- they were accused of treason, and, today, in the north of
17 Mali, somebody is assassinated by Al-Qaeda every day for being a traitor or because
18 he's a terrorist.

19 So if you want to assassinate somebody, you can accuse them of treason or working
20 for the intelligence services or you can accuse them of terrorism, and there's nobody
21 taking any responsibility. Nobody has to be made accountable for any of this.

22 [REDACTED]

23 [REDACTED] most of the people assassinated were not terrorists. They -- but they
24 were traitors or the other way around. They were not executed because they were
25 traitors, but because they were terrorists.

~~ICC-01/12-01/18-T-049-CONF-ENG-ET-19-11-2020-17/76-SZ-T~~

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 Q. [10:18:05] If I could go back to the 06:55 mark.

2 Mr Witness, do you recognise the person on the left? Or [REDACTED]

3 [REDACTED] who he might be?

4 A. [10:18:53] No. Maybe a judge from Al-Qaeda, but I don't know anything else
5 about him.

6 Q. [10:19:08] Have you heard the name before, Abu Abd al-Rahman al-Sanhaji?

7 A. [10:19:20] Al-Sanhaji, rather it's a name that a lot of people have and it's a
8 *nom de guerre*, and these are very similar. I've heard this name on a number of
9 occasions.

10 Q. [10:19:46] Do you happen to recall [REDACTED]
11 whether the person on the left was present in Timbuktu in 2012?

12 A. [10:20:01] I don't recall that.

13 Q. [10:20:07] Now the person on the right, does that person appear similar to the
14 person who was in the 2012 video that I showed earlier?

15 A. [10:20:25] I can't confirm this. What I can say is that amongst these people,
16 there was the person who was flogged, but I don't know whether it's this person or
17 another. But among the people we see in this video, these people who were
18 executed, we see the same person who was getting -- getting whipped
19 in -- previously.

20 PRESIDING JUDGE MINDUA: [10:21:08](Interpretation) I think we could have
21 asked the last few sessions in public session.

22 Could we please move to public session?

23 MS TAYLOR: [10:21:16] (Overlapping speakers) Yes, we can.

24 PRESIDING JUDGE MINDUA: [10:21:18](Interpretation) Court officer, public
25 session, please.

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 (Open session at 10.21 a.m.)

2 THE COURT OFFICER: [10:21:28] (Interpretation) We are back in public session,
3 your Honour.

4 PRESIDING JUDGE MINDUA: [10:21:31](Interpretation) Thank you very much.
5 Ms Taylor.

6 MS TAYLOR: [10:21:34]

7 Q. [10:21:35] Now, Mr Witness, the purpose of the "TRAITORS 2" video, based on
8 what you know regarding this group, was it to send a message as to what could
9 happen to anyone who fails to obey Al-Qaeda's rules?

10 A. [10:21:58] The aim of this video was intimidation - in all senses of the term - for
11 anyone who could be dealing with government or a foreign institution, an
12 organisation, a foreign military organisation or intelligence service. Since I come
13 from this region, I can say that this video achieved its objective. In fact, it went
14 beyond all expectations.

15 Q. [10:22:42] And the 2012 video I showed you just beforehand, that was a public
16 sanction of a member of Ansar Dine or Al-Qaeda, wasn't it?

17 A. [10:22:57] Yes.

18 Q. [10:22:58] And based on your knowledge, was the purpose of the sanction to
19 send a message to members of Ansar Dine as concerns what would happen if they
20 failed to obey the rules?

21 A. [10:23:16] Yes.

22 Q. [10:23:20] I'm going to show you - and this won't be broadcast to the public - a
23 still from the video, the 2012 video. It's tab 193, MLI-D28-004-3531.

24 Is this -- does this seem to be the video I showed you before?

25 A. [10:23:46] Yes, this is the same video.

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

- 1 Q. [10:23:55] And the person that you see to the left, can you see his right hand
2 clutching his tunic, like he's afraid?
- 3 MR DUTERTRE: [10:24:10](Interpretation) Your Honour.
- 4 PRESIDING JUDGE MINDUA: [10:24:11](Interpretation) Mr Prosecutor.
- 5 MR DUTERTRE: [10:24:13](Interpretation) This is really speculative, this question.
6 It's a good example of a speculative question.
- 7 PRESIDING JUDGE MINDUA: [10:24:21](Interpretation) Ms Taylor, that is
8 speculation.
- 9 MS TAYLOR: [10:24:24]
- 10 Q. [10:24:25] Mr Witness, can you see this person clutching his right -- his tunic
11 with his right hand?
- 12 A. [10:24:36] Yes.
- 13 Q. [10:24:38] If we can bring up tab 59 of the Prosecution's list, that's
14 MLI-OTP-0018-0147 at the 50-second mark and freeze it. So for the record, that's the
15 40-second mark.
- 16 Now the person in this frame, he has a pouch on his right, that's correct, not a
17 weapon?
- 18 A. [10:25:35] There is something on his right, I don't see a weapon. I don't know
19 what it is.
- 20 Q. [10:25:43] We can zoom in.
21 It's not a weapon, is it, though?
- 22 A. [10:26:05] I can't say what he's carrying exactly on his right.
- 23 Q. [10:26:13] But you can confirm, Mr Witness, that it's not a gun?
- 24 MR DUTERTRE: [10:26:20](Interpretation) Your Honour (Overlapping speakers)
- 25 PRESIDING JUDGE MINDUA: [10:26:25](Interpretation) Prosecutor, there's no

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 point.

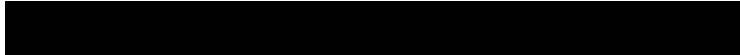
2 The witness has already answered this question twice, Ms Taylor. Please, proceed.

3 MS TAYLOR: [10:26:39] Yes, for the record, he said in the transcript, "... I don't see
4 a weapon." Lines 15 to 16.

5 PRESIDING JUDGE MINDUA: [10:26:56](Interpretation) Yes, and that's what he
6 said twice.

7 MS TAYLOR: [10:27:02]

8 Q. [10:27:03] 

9 

10 PRESIDING JUDGE MINDUA: [10:27:23](Interpretation) Court officer, private
11 session, please.

12 (Private session at 10.27 a.m.)

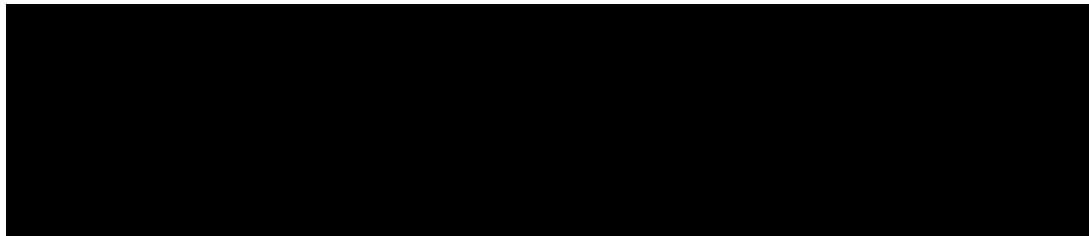
13 THE COURT OFFICER: [10:27:32] (Interpretation) We are back in private session,
14 your Honour.

15 PRESIDING JUDGE MINDUA: [10:27:39](Interpretation) Thank you very much,
16 court officer.

17 Ms Taylor.

18 MS TAYLOR: [10:27:43]

19 Q. [10:27:47] 

20 

21

22

23

24 THE COURT OFFICER: [10:28:58] (No interpretation)

25 PRESIDING JUDGE MINDUA: [10:29:05](Interpretation) Mr Witness?

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 THE WITNESS: [10:29:08](Interpretation) I need to leave for two minutes, if I may,
2 your Honour.

3 PRESIDING JUDGE MINDUA: [10:29:14](Interpretation) Indeed. That's granted,
4 Mr Witness.

5 Court officer, please could you accompany the witness from the room.

6 (The witness exits the courtroom)

7 (Pause in proceedings)

8 (The witness enters the courtroom)

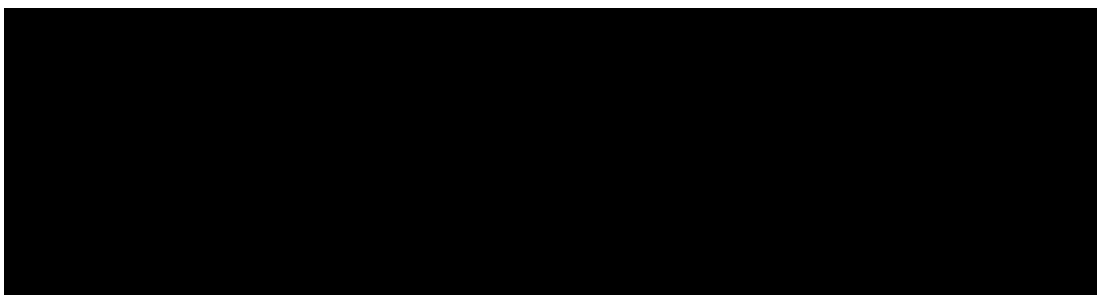
9 THE COURT OFFICER: [10:32:04] (No interpretation)

10 PRESIDING JUDGE MINDUA: [10:32:06](Interpretation) Thank you very much,
11 court officer.

12 Ms Taylor, please, go ahead.

13 Court officer, are we still in private session, is that right? So we are in private
14 session.

15 MS TAYLOR: [10:32:21] And I'm reading for the record paragraph 175 of this
16 statement, which says:

17 
18
19
20
21

22 Mr Witness, for this case that I just referred to, do you recall that you were told that
23 her father, the father of the girl, had asked that she be prosecuted?

24 A. [10:33:07] Yes, 

25 Q. [10:33:12] At transcript 42, page 43, line 7 to 22, you testified that 

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 [REDACTED]

2 [REDACTED] ?

3 A. [10:33:39] [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q. [10:35:09] So would it be correct then, that the Islamic police was obliged to obey
16 the orders from Radwan and Koutaïba which came from above?

17 A. [10:35:21] What is certain, [REDACTED]
18 [REDACTED] is that the orders were something
19 that were sacred. Orders had to be obeyed. Not doing so -- or disobeying orders
20 would imply sanctions on earth and beyond that. And the fact of not obeying orders
21 could weaken the Islamic army. That's the reason why nobody could contradict or
22 disobey orders. They could leave an organisation, but they couldn't refuse to
23 execute an order.

24 Q. [10:36:15] Now earlier in your testimony, transcript 45, page 56, line 10, to page
25 58 line 4, you mentioned that [REDACTED]

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 [REDACTED]
2 [REDACTED]
3 I'd like you to turn to tab 69 in the Defence binder, that's [REDACTED] I can
4 ask some questions in open session, but then I'd have to go back into private session
5 to ask a follow-up question.
6 PRESIDING JUDGE MINDUA: [10:37:05](Interpretation) Court officer, open session,
7 please.
8 (Open session at 10.37 a.m.)
9 THE COURT OFFICER: [10:37:13] (Interpretation) We're in open session, your
10 Honour.
11 PRESIDING JUDGE MINDUA: [10:37:24](Interpretation) Thank you very much.
12 Ms Taylor.
13 MS TAYLOR: [10:37:30]
14 Q. [10:37:33] Mr Witness, this is --
15 A. [10:37:35] (Overlapping speakers)
16 Q. [10:37:36] -- this is an article -- I'm afraid it's in English, but I can, if you prefer,
17 read it on to the record or read the relevant sections on to the record. It's a article
18 about the incident we were just referring to and it's describing the fact that when that
19 incident was first reported, various media organisations, including Malijet,
20 accompanied the story with a photograph that had been taken in Somalia, in
21 March 2010, showing someone being condemned to death by stoning.
22 And this story had been picked up by various organisations, until it was corrected.
23 Did you hear about this at the time? And we're in open session.
24 A. [10:38:51] Yes. [REDACTED]
25 [REDACTED]

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] There wasn't any stoning
4 *hadd* in Timbuktu in 2012.

5 MS TAYLOR: [10:39:41] I believe I'll need to go into private session to ask the
6 following questions.

7 PRESIDING JUDGE MINDUA: [10:39:49](Interpretation) Private session, please,
8 court officer.

9 (Private session at 10.40 a.m.)

10 THE COURT OFFICER: [10:40:02] (Interpretation) We're in private session, your
11 Honour.

12 PRESIDING JUDGE MINDUA: [10:40:06](Interpretation) Thank you very much.
13 Ms Taylor.

14 MS TAYLOR: [10:40:08]

15 Q. [10:40:10] The article states that:

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]?

22 A. [10:40:52] [REDACTED]

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

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 [REDACTED]
- 2 Q. [10:41:44] Now, earlier in your testimony, I showed you a 23 June article [REDACTED]
- 3 [REDACTED] That's tab 221 of the Defence binder, that's
- 4 MLI-OTP-0018-0928 at 0930, that's the Arabic.
- 5 A. [10:42:12] (No interpretation)
- 6 Q. [10:42:18] Tab 223?
- 7 A. [10:42:19] The tab number please?
- 8 Q. [10:42:23] Tab 223 of the Defence binder.
- 9 A. [10:42:33] (No interpretation)
- 10 Q. [10:42:35] The English reference to 224, MLI-OTP-0049-0040 at 0042. French.
- 11 Mr Witness, do you have page 0930 in front of you?
- 12 A. [10:43:20] (No interpretation)
- 13 Q. [10:43:26] And the second last paragraph, the second sentence, do you have that
- 14 in front of you, referring to Talha?
- 15 A. [10:43:40] Yes. The second paragraph, is that it?
- 16 Q. [10:43:47] The second last paragraph, I don't know if it's the same in Arabic, but
- 17 it's in the section concerning the incident regarding the flogging. And it starts with a
- 18 sentence concerning the medical team, and then it has a sentence referring to Talha
- 19 arriving with soldiers and he was there for assuring security.
- 20 A. [10:44:13] Yes.
- 21 Q. [10:44:15] And would that be consistent with what you saw and heard on the
- 22 day that Talha was there and he was responsible for ensuring security.
- 23 A. [10:44:30] Certainly.
- 24 Q. [10:44:33] And just for context, at transcript 40, page 11, line 17 to 19, you also
- 25 stated that Koutaïba and Radwan were there, overseeing the execution of the

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

- 1 punishment.
- 2 MS TAYLOR: [10:44:51] I believe I can ask the following questions in open session.
- 3 PRESIDING JUDGE MINDUA: [10:45:02](Interpretation) Open session, please,
- 4 court officer.
- 5 MS TAYLOR: [10:45:09] Actually, I don't think I can. I'm sorry. I'm sorry. Some
- 6 of the questions refer to his presence.
- 7 THE COURT OFFICER: [10:45:18] We are still in private session, Mr President.
- 8 PRESIDING JUDGE MINDUA: [10:45:21](Interpretation) Very good. Please
- 9 continue, Ms Taylor.
- 10 MS TAYLOR: [10:45:24]
- 11 Q. [10:45:24] Transcript 40, page 15, lines 6 to 7 and page 16, lines 5 to 8, you
- 12 described a lot of people being present. [REDACTED] The imam of
- 13 Djinguereber mosque was present. So it would be fair to say, Mr Witness, that a lot
- 14 of people there were watching what was happening.
- 15 A. [10:45:56] Yes.
- 16 Q. [10:45:57] And not everyone who was there watching what was happening was
- 17 responsible for what was happening, were they?
- 18 A. [10:46:05] That's correct.
- 19 Q. [10:46:10] Now you testified that a white ambulance van was present to provide
- 20 medical assistance; that's transcript 40, page 11, lines 22 to page 12, line 2.
- 21 Now the doctors and medical assistants who were present, they weren't members of
- 22 Ansar Dine, were they?
- 23 A. [10:46:42] That's true.
- 24 Q. [10:46:43] They were there to help the persons being punished?
- 25 A. [10:46:53] That's correct.

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Trial Hearing

(Private Session)

ICC-01/12-01/18

WITNESS: MLI-OTP-P-0065

1 Q. [10:46:56] Now I want to show a video that was played previously, that's the
2 MLI-OTP-0018-0285. I'm going to show 0 to 8 seconds in normal speed and then
3 4 to 6 seconds at a slower speed.

4 (Viewing of the video excerpt)

5 MS TAYLOR:

6 Q. [10:48:07] Now, Mr Witness, the white van on the right, is that the ambulance?

7 A. [10:48:16] Yes. And it belongs to the hospital.

8 Q. [10:48:22] I am going to play the 4 to 6 second section again slowly.

9 (Viewing of the video excerpt)

10 MS TAYLOR:

11 Q. [10:48:43] Now, the person wearing striped clothes, do they appear to be
12 walking towards the white van?

13 A. [10:48:59] Yes.

14 PRESIDING JUDGE MINDUA: [10:49:03](No Interpretation)

15 MR DUTERTRE: [10:49:05](Interpretation) Your Honour, could we know what the
16 timestamp is, because there isn't a record thereof. We're on 00:00:6:11, we don't see
17 the person the Defence is speaking about.

18 PRESIDING JUDGE MINDUA: [10:49:18](Interpretation) That's correct. I don't see
19 the person with striped clothing.

20 MS TAYLOR: [10:49:22] Mr President, I'm not saying that that person's in this frame.
21 We just played a section in slow motion between 4 seconds and 6 seconds and I'm
22 asking the witness what he saw in the frames that were just displayed. It's not
23 possible to freeze it at a particular point because it's a process of walking towards a
24 vehicle.

25 PRESIDING JUDGE MINDUA: [10:49:57](Interpretation) So it's a question of being

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 specific as to the seconds so it's clear in the transcript.

2 MS TAYLOR: [10:50:02] I believe I specified several times that we were playing
3 between the 4-second mark and the 6-second mark.

4 Q. [10:50:14] Now, Mr Witness, between those seconds, and I can play it again, [REDACTED]

5 [REDACTED]?

6 A. [10:50:36] The interpreting wasn't clear.

7 Q. [10:50:40] The interpreter has said that the interpreting wasn't clear.

8 A. [10:50:54] [REDACTED]?

9 Q. [10:50:59] Yes, we have one clip looking in one direction and then we suddenly
10 have another clip in another direction. But I can play it again slowly. And if you
11 could pay attention to what's happening at the 5:18 mark.

12 A. [10:51:31] Yes, it's clear. The scene is clear.

13 Q. [10:51:37] [REDACTED]

14 [REDACTED]?

15 A. [10:51:56] [REDACTED]

16 [REDACTED]

17 Q. [10:52:12] [REDACTED]

18 [REDACTED]

19 A. [10:52:28] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q. [10:52:48] Now if we could play in slow motion until the end of the clip.

23 (Viewing of the video excerpt)

24 MS TAYLOR: [10:53:26]

25 Q. [10:53:27] Now, Mr Witness, after the person in striped clothes walks towards

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 the ambulance, were you able to see them in the rest of the video?

2 A. [10:53:41] I don't remember that.

3 Q. [10:53:45] Do you want me to play it again?

4 A. [10:54:08] I don't know what I have to focus on. [REDACTED]

5 [REDACTED] I'm -- yeah, it's a bit awkward.

6 Q. [10:54:22] Perhaps if we can play it from the 6-minute mark.

7 For the record, we can do it from the 6:06 mark. We're playing it from the 6:06 mark.

8 (Viewing of the video excerpt)

9 MS TAYLOR: [10:55:11]

10 Q. [10:55:12] Now, Mr Witness, is it correct that from the 6:06 mark onwards you
11 could not see a person wearing striped clothes?

12 A. [10:55:30] What are the striped clothes? Could you show me the person that
13 you're speaking about? I'm not able to understand your question. If you would
14 like to speak about somebody specific, please show me that person with the mouse so
15 that I could say how that person got there.

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 But when I watch the video I'm perplexed, I don't know what to concentrate on,
20 because your question isn't clear. If your question concerns a person in particular,
21 then please could you show me that person with the mouse.

22 PRESIDING JUDGE MINDUA: [10:56:25](Interpretation) Ms Taylor, we've looked at
23 this scene several times. We think the witness is right. Please show the person and
24 that way we can do it.

25 MS TAYLOR: [10:56:33] Well, we can go back to the 4- to 6-second mark, which is

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

1 what I showed earlier, and the witness testified that he saw a person in striped clothes
2 walking towards the van. So we can play the entire clip in slow motion, starting
3 from the 4-second mark.

4 THE WITNESS: [10:57:01](Interpretation) Please, before showing the video, please
5 could you show with the mouse the person so that I can comment on that person
6 when that person enters and leaves the scene. Then I can really comment on it.

7 PRESIDING JUDGE MINDUA: [10:57:27](Interpretation) Witness, apart from that I
8 have an additional question: Could you say something in open session or do we
9 continue in private session?

10 THE WITNESS: [10:57:38](Interpretation) Of course I can comment on it in open
11 session, given that I'm looking at the video. [REDACTED]

12 [REDACTED] [REDACTED]
13 [REDACTED]

14 PRESIDING JUDGE MINDUA: [10:58:05](Interpretation) Thank you very much,
15 Witness.

16 Ms Taylor, we've got three minutes left. I think we can finish this in open session.

17 MS TAYLOR: Yes, certainly.

18 PRESIDING JUDGE MINDUA: Open session, please, court officer.

19 (Open session at 10.58 a.m.)

20 THE COURT OFFICER: [10:58:37] (Interpretation) We're in open session,
21 your Honour.

22 PRESIDING JUDGE MINDUA: [10:58:41](Interpretation) Thank you, thank you
23 very much, court officer.

24 Ms Taylor.

25 MS TAYLOR: [10:58:53] For the record, we're starting at the 4:22 mark and a person

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1 is being identified with the mouse. This is the person that previously you said you
2 saw walking towards the van. We're going to play it in slow motion until the
3 6-second mark and then we'll play it until the end.

4 Q. So we're now playing in slow motion. Can you see the person I'm talking
5 about, Mr Witness?

6 A. [10:59:20] (Overlapping speakers)

7 Q. [10:59:21] We're going to play it in slow motion --

8 A. [10:59:21] Yes.

9 Q. [10:59:24] -- to the 6-second mark and then we'll play it until the end.

10 (Viewing of the video excerpt)

11 MS TAYLOR: [10:59:42] For the record, we're stopping at the 6:16 mark and then
12 we're now going to play it in slow motion until the end.

13 Q. [10:59:53] Is that clear, Mr Witness?

14 A. [10:59:57] Yes, it's very clear.

15 (Viewing of the video excerpt)

16 MS TAYLOR: [11:00:27]

17 Q. [11:00:28] Now, Mr Witness, could you see a woman walking towards the van?

18 A. [11:00:37] Yes.

19 Q. [11:00:40] And it's correct, Mr Witness, that you -- could you see the same
20 person that you saw with the mouse in the last part of the clip?

21 A. [11:01:01] No.

22 MS TAYLOR: [11:01:07] I have another video to show but I can do so either now or
23 after the break. I have basically one or two questions concerning this video which
24 can all be asked in open session.

25 PRESIDING JUDGE MINDUA: [11:01:29](Interpretation) You're going to show the

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1 video now? Obviously it won't be shown to the public, but you will follow with

2 questions in open session.

3 MS TAYLOR: [11:01:39] Yes, and I think we can do so relatively briefly, just so that

4 I can continue the open session. Because my next series of questions will be in

5 private session.

6 PRESIDING JUDGE MINDUA: [11:01:52](Interpretation) Very well.

7 Please go ahead.

8 MS TAYLOR: [11:01:58] I'm going to play another video, it's MLI-OTP-0018-0280,

9 and I'll play it without sound from the beginning.

10 (Viewing of the video excerpt)

11 MS TAYLOR: [11:02:38]

12 Q. [11:02:39] In this video did you see the same white van, the ambulance?

13 A. [11:02:49] Yes.

14 Q. [11:02:51] And after the van drove off, could you see the person that we

15 identified with the mouse before?

16 A. [11:03:06] No.

17 MS TAYLOR: [11:03:08] I think now would be a good time for the break.

18 PRESIDING JUDGE MINDUA: [11:03:13](Interpretation) Very good.

19 We will now take our break and we will recommence at 11.30.

20 The hearing is suspended.

21 THE COURT USHER: [11:03:27] All rise.

22 (Recess taken at open session at 11.03 a.m.)

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

24 THE COURT USHER: [11:30:43] All rise.

25 Please be seated.

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1 PRESIDING JUDGE MINDUA: [11:31:12](Interpretation) The Court is now in
2 session. We will continue with the Defence cross-examination.
3 Ms Taylor, you can see I've got my little Post-it Note here. I would like to remind
4 you that you have 1 hour and 26 minutes, so please make the appropriate
5 arrangements. The idea is to complete our dealings with this witness tomorrow.
6 He has been very patient with us and I think it is time to release him to his usual daily
7 business. Thank you.
8 Ms Taylor, you may proceed.
9 MS TAYLOR: [11:32:01] Thank you, Mr President. But I believe now would be the
10 time to make an oral application.
11 Now, we have heard several times from the Bench that the Defence will be given all
12 the time that it needs. We have been dealing with changed circumstances
13 throughout our cross-examination, that includes the issuance of an amendment to the
14 decision on the direction of the conduct of the proceedings that required us to read
15 out full paragraphs, an obligation that did not apply during the examination-in-chief.
16 We have had a different court schedule, in the sense that we've been required to sit
17 four-day hearings rather than three-day hearings. We've been asked repeatedly to
18 chop and change the structure of our cross-examination, to do things in open session
19 and closed session, which in itself impacts upon the time that we have. We've also
20 faced a barrage of objections from the Prosecution.
21 Now, given the importance of this witness and the importance of taking the time to
22 show video evidence to him, we do request that we have sufficient time to be able to
23 play that video evidence in order to get accurate answers from the witness.
24 Now, the Prosecution also has the advantage that they had significant amount of time
25 with the witness during the preparation session to go through issues and to draw the

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1 witness's attention to relevant documents. In contrast, when we wish to show
2 documents to the witness, because they are Defence exhibits that are not given during
3 the preparation session, the witness requires time to read them.
4 So it's apples and oranges, Mr President. The Defence does have a right to have
5 sufficient time to present its case. And given the importance of this witness, we do
6 request that we be given sufficient time to do so, taking into account the
7 particularities of his testimony and the particular constraints under which we have
8 been working, including as well the difficulties we have faced in consulting with our
9 client at various junctures throughout the testimony of this witness.
10 So I'm hoping to conclude my section today. And I believe that Ms Sutherland has
11 one or two hours questioning, which we hope to reduce in consultation this evening.
12 PRESIDING JUDGE MINDUA: [11:34:51](Interpretation) Ms Taylor, I don't want to
13 debate this question now because that will consume even more time. I would like
14 you to send us something in writing today and the Prosecutor reply, if he wishes to
15 do so, and we will decide today or tomorrow.
16 But what I can say, there are some things that I can't let pass uncommented. You
17 talked about the fairness and equity of time. This is a live witness, this is not
18 paragraph 68(3), therefore the time has to be fair for both sides. And according to
19 the calculations that I have here on this little piece of paper, you have 1 hour
20 26 minutes, compared with the time allotted to the Prosecution. That's my first
21 point.
22 Further, your second point, I would like to know what the witness thinks about this.
23 He's been extremely patient. He's been here for days and days. So the Chamber
24 will also take account of that. We will deliberate on it and we will see, but for the
25 time being, please do your best.

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- 1 Let us proceed.
- 2 MS TAYLOR: [11:36:26] Now, as presaged before the break, we'll need to go into
3 private session to address the next series of questions.
- 4 PRESIDING JUDGE MINDUA: [11:36:42](Interpretation) Court officer, private
5 session, please.
- 6 (Private session at 11.36 a.m.)
- 7 THE COURT OFFICER: [11:36:57](Interpretation) We are in private session,
8 your Honour.
- 9 PRESIDING JUDGE MINDUA: [11:37:00](Interpretation) Thank you very much,
10 court officer.
- 11 Ms Taylor.
- 12 MS TAYLOR: [11:37:03]
- 13 Q. [11:37:04] Mr Witness, I'm going to play another video for you, it's
14 MLI-OTP-0018-0252, and it was discussed with you at transcript tab -- sorry, no.
15 Is this the same incident, Mr Witness?
- 16 A. [11:37:30] Yes.
- 17 Q. [11:37:32] [REDACTED] ?
- 18 A. [11:37:41] Yes.
- 19 Q. [11:37:44] So I can play the video [REDACTED] But to save time,
20 Mr Witness, can you confirm that [REDACTED] ?
- 21 A. [11:38:03] I don't remember.
- 22 Q. [11:38:07] Then we can play it.
23 And we can play it at half speed and stop at the 7-second mark, from the beginning.
24 (Viewing of the video excerpt)
- 25 MS TAYLOR: [11:38:33]

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1 Q. [11:38:37] Mr Witness, [REDACTED]?

2 A. [11:38:49] [REDACTED]

3 Q. [11:39:00] [REDACTED]

4 [REDACTED]?

5 A. [11:39:12] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. [11:39:37] Now I'd like to play from this mark until the 11-second
9 mark -- 12-second mark.

10 (Viewing of the video excerpt)

11 MS TAYLOR: [11:40:01]

12 Q. [11:40:03] Mr Witness, can you confirm that there was [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 A. [11:40:24] I don't recall. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Q. [11:41:10] Could I turn to another video, that's tab 47 on the Prosecution's list,
21 it's MLI-OTP-0018-0286. And if we could play from the 4-second mark to the
22 9-second mark at a slower speed.

23 (Viewing of the video excerpt)

24 MS TAYLOR: [11:41:45]

25 Q. [11:41:45] Mr Witness, can you confirm that there was [REDACTED]?

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- 1 A. [11:41:55] [REDACTED]
- 2 [REDACTED]
- 3 Q. [11:42:15] If I could play another video, that's tab 44, MLI-OTP-0018-0284. This
- 4 was discussed in the transcript at transcript 40, page 23, line 23, and if we could play
- 5 at reduced speed between the 8-second mark and the 13-second mark.
- 6 (Viewing of the video excerpt)
- 7 MS TAYLOR: [11:42:56]
- 8 Q. [11:42:58] [REDACTED]?
- 9 A. [11:43:04] Yes, undoubtedly.
- 10 Q. [11:43:09] And if we can now play between 15-second mark and the 18-second
- 11 mark.
- 12 (Viewing of the video excerpt)
- 13 MS TAYLOR: [11:43:25]
- 14 Q. [11:43:26] [REDACTED]?
- 15 A. [11:43:32] I think -- yes.
- 16 Q. [11:43:39] Now, Mr Witness, were you aware that Mali referred the situation to
- 17 the ICC on 18 July 2012?
- 18 A. [11:43:59] I don't know when I learnt this or how.
- 19 Q. [11:44:07] Would it be correct that in July 2012 there was [REDACTED]
- 20 [REDACTED]?
- 21 A. [11:44:34] The question is not clear to me.
- 22 Q. [11:44:40] In around July 2012 was there [REDACTED] interest in what was
- 23 happening in Timbuktu?
- 24 A. [11:44:52] Of course.
- 25 Q. [11:44:56] Yesterday at transcript 48, page 58, lines 21 to page 59, line 6 you

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1 testified that [REDACTED]
2 [REDACTED] If I was to put to you that
3 this occurred at around 10 or 11 July, would that sound correct?

4 A. [11:45:32] I have nothing to say on this. I don't know. I can't say whether it's
5 true or not.

6 Q. [11:45:43] So you've testified that there was [REDACTED] interest as concerns
7 what was happening in Timbuktu at this time, so if there was any punishments or
8 floggings it would be fair to say that [REDACTED]
9 [REDACTED]?

10 A. [11:46:14] [REDACTED] I think
11 there was unprecedented interest [REDACTED] in the area of Timbuktu
12 and the north of Mali. [REDACTED]

13 [REDACTED]
14 [REDACTED]

15 Q. [11:46:58] Now, earlier we went through an article [REDACTED]
16 [REDACTED] regarding the 20 June flogging and the
17 fact that it had used a false image concerning what was occurring. So would it be
18 fair to say that [REDACTED] was happening in Timbuktu?

19 A. [11:47:26] [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Q. [11:48:09] [REDACTED]
25 [REDACTED]?

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- 1 A. [11:48:19] [REDACTED]
- 2 Q. [11:48:28] Mr Witness, could you turn to tab 86 of the Defence binder, it's
- 3 MLI-D28-0004-3208.
- 4 A. [11:49:05] Yes.
- 5 Q. [11:49:08] For the record, can you see the search terms at the top of this page,
- 6 and can you state what they are?
- 7 A. [11:49:25] I read Malijet 19-7-2012 (sic) or 18-7-2012 (sic). That's all I can see.
- 8 Q. [11:49:51] Would it be search terms calling up Malijet tweets from 8 July 2012
- 9 until 9 July 2012?
- 10 A. [11:50:09] Yes.
- 11 Q. [11:50:13] Now, Mr Witness, can you look through these tweets?
- 12 A. [11:50:44] (No interpretation)
- 13 Yes.
- 14 Q. [11:51:10] We can see --
- 15 A. [11:51:11] Yes.
- 16 Q. [11:51:11] -- tweets concerning statements issued by the president of the ICC; is
- 17 that correct?
- 18 A. [11:51:20] I read comments and tweets relating to the ICC.
- 19 Q. [11:51:32] And do you also read tweets about the Ouagadougou Accords and
- 20 reports about MUJAO?
- 21 MR DUTERTRE: [11:51:44](No interpretation)
- 22 PRESIDING JUDGE MINDUA: [11:51:47](Interpretation) Prosecutor.
- 23 MR DUTERTRE: [11:51:48](Interpretation) I have an objection. I don't see the link
- 24 between this witness and this document. Could this be done by Bar table? But the
- 25 witness [REDACTED] is probably not the best placed to answer this

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- 1 question.
- 2 PRESIDING JUDGE MINDUA: [11:52:13](Interpretation) Ms Taylor, what is the link
- 3 between this witness and the chat which we see which is from Malijet.
- 4 MS TAYLOR: [11:52:22] We'll get there, Mr President.
- 5 Q. [11:52:25] Now, Mr Witness, in these tweets you don't see anything about
- 6 flogging --
- 7 PRESIDING JUDGE MINDUA: [11:52:29](Interpretation) Ms Taylor, you often say
- 8 that. But then we spend ages and ages and the Chamber can't follow you. Perhaps
- 9 you could --
- 10 MS TAYLOR: (Overlapping speakers)
- 11 PRESIDING JUDGE MINDUA: [11:52:41] -- please say what the link is. In that case,
- 12 if it's your next question, please proceed.
- 13 MS TAYLOR: [11:52:50] I was in the process of saying it.
- 14 Q. [11:52:52] Mr Witness, you can't see any tweets here about a flogging in
- 15 Timbuktu, can you?
- 16 A. [11:53:01] No, I didn't notice that.
- 17 Q. [11:53:05] Mr Witness, can you turn to tab 63 in the Defence binder, that's
- 18 MLI-D28-0004-3116.
- 19 A. [11:53:46] Yes.
- 20 Q. [11:53:48] This is an article by Maliweb dated 16 July 2012 and it's --
- 21 MR DUTERTRE: [11:53:59](No interpretation)
- 22 PRESIDING JUDGE MINDUA: [11:54:03](Interpretation) Mr Prosecutor.
- 23 MR DUTERTRE: [11:54:04](Interpretation) Your Honour, could please, as with all
- 24 documents, [REDACTED]
- 25 [REDACTED] rather than just present him with these

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1 documents as was done before.

2 PRESIDING JUDGE MINDUA: [11:54:25](Overlapping speakers)

3 MS TAYLOR: [11:54:26] Mr President, I hadn't actually put any questions yet. This

4 is exactly how we lose our time.

5 PRESIDING JUDGE MINDUA: [11:54:36](Interpretation) No, Ms Taylor, because

6 this is not the first court to have this procedure. When you present a document or an

7 item to the witness, there needs to be a link with the previous item. You said: I'm

8 going to ask the question.

9 You asked him a question and he was not familiar with it. And now it's the same

10 thing. You could bring all the items of evidence to the witness in the world like this

11 and we would be going through them. We need to look at the link. [REDACTED]

12 [REDACTED] There

13 needs to be some sort of link.

14 But put your question and we'll see how things develop.

15 MS TAYLOR: [11:55:35] Thank you, Mr President. But we do need to put the

16 questions first before objections are made. I'm about to put my question. To do so,

17 I have to let the witness see the document.

18 Q. [11:55:47] Now, this is a document MLI-D28-0004-3116.

19 Now, Mr Witness, at the beginning of this document it refers to an incident occurring

20 in Timbuktu where someone was allegedly given 40 flogs for drinking alcohol.

21 A. [11:56:20] Yes. There were floggings in Timbuktu for reasons of alcohol. And

22 flogging for alcohol is 50 lashes and not 40, if I recall correctly.

23 Q. [11:56:38] Mr Witness, this article is dated 16 July. It says that the flogging

24 took place at the market of Timbuktu and it says that the information was confirmed

25 by many witnesses. And that it happened on a Monday.

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1 A. [11:57:00] I can't comment on something relating to the date and the timing of
2 this because I don't remember that. But there were floggings happening all the time.

3 Q. [11:57:26] And just to confirm, [REDACTED]
4 [REDACTED] the number of floggings?

5 PRESIDING JUDGE MINDUA: [11:57:44](Interpretation) Prosecutor.

6 MR DUTERTRE: [11:57:45](Interpretation) This is another speculative question,
7 your Honour.

8 PRESIDING JUDGE MINDUA: [11:57:50](Interpretation) I agree with the Prosecutor,
9 Ms Taylor. It's not up to this witness to comment on this [REDACTED] That is
10 speculation.

11 MS TAYLOR: [11:58:01] Mr President, [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 PRESIDING JUDGE MINDUA: [11:58:24](Interpretation) There's no point in
16 arguing, Ms Taylor. The witness said that the punishment for alcohol was 50 lashes
17 and now you can't ask this witness to judge this agency. Please proceed.

18 MS TAYLOR: [11:58:46]

19 Q. [11:58:49] Now, Mr Witness, you've testified that [REDACTED]
20 [REDACTED]
21 [REDACTED]; that's correct? This was transcript 47, page 66,
22 lines 5 to 11.

23 A. [11:59:15] (No interpretation)

24 Q. [11:59:26] I don't believe your response was put on the transcript yet.

25 A. [11:59:31] Yes, that's true.

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- 1 Q. [11:59:38] [REDACTED]
- 2 [REDACTED] that's
- 3 correct?
- 4 A. [11:59:59] Yes.
- 5 Q. [12:00:00] [REDACTED]; that's correct?
- 6 A. [12:00:09] That's true.
- 7 Q. [12:00:14] Now, during your testimony the Prosecution played the following
- 8 video concerning a flogging on 8 July. Transcript 40, page 39, line 17 they showed
- 9 video MLI-OTP-0018-0693. And I just want to show it at the 4:56:21 mark.
- 10 (Viewing of the video excerpt)
- 11 MS TAYLOR: [12:01:25] For the record, this is a 15 minute -- 5:19 mark.
- 12 Q. [12:01:31] These were soldiers of Ansar Dine wearing the army uniform; that's
- 13 correct?
- 14 A. [12:01:40] (No interpretation)
- 15 Q. [12:01:42] And they would have fallen under the control of Talha?
- 16 A. [12:01:48] Yes.
- 17 I can't confirm it, but probably, yes.
- 18 Q. [12:01:56] I'm going to play the following part of the video, it's the 3:44 until
- 19 4:03 mark.
- 20 (Viewing of the video excerpt)
- 21 MS TAYLOR: [12:02:30]
- 22 Q. [12:02:30] And I'm going to go back and stop at the 3:51 mark.
- 23 Mr Witness, the person where the mouse is --
- 24 A. (Overlapping speakers)
- 25 Q. -- wearing a beige tunic and a page turban, do you know who this person was?

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1 A. [12:03:02] I remember this person. I remember his face. But currently I
2 wouldn't be able to say who it is.

3 Q. [12:03:18] Do you recall if he was [REDACTED]?

4 A. [12:03:29] I don't remember that.

5 Q. [12:03:34] I'm going to show the following clip from the video, just the
6 1:41 mark.

7 Is this the same person?

8 A. [12:04:02] Yes, I think it is.

9 Q. [12:04:07] Would it refresh your memory if I was to put to you that, at this
10 period, he was the second in charge in the Islamic police under Adama?

11 A. [12:04:27] I know that his face is familiar to me. [REDACTED]

12 But I don't remember anything about him. I just remember his face. His
13 appearance.

14 Q. [12:04:44] [REDACTED]
15 [REDACTED]?

16 A. [12:05:04] Of course.

17 Q. [12:05:08] Do you recall roughly [REDACTED]
18 [REDACTED]?

19 A. [12:05:23] I don't remember.

20 Q. [12:05:28] Can we play it in slow motion between the 1- and 4-second mark.

21 (Viewing of the video excerpt)

22 MS TAYLOR: [12:05:51]

23 Q. [12:05:52] [REDACTED]?

24 A. [12:05:58] What do you mean by [REDACTED]?

25 [REDACTED]

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1

2 Q. [12:06:34] Can we play between the 7-second and the 10-second mark.

3 (Viewing of the video excerpt)

4 THE WITNESS: [12:06:56](Interpretation)

5

6

7

8

9

10 MS TAYLOR: [12:07:46]

11 Q. [12:07:47] Can I play between the 12 and the 17-second mark.

12 (Viewing of the video excerpt)

13 MS TAYLOR: [12:08:10]

14 Q. [12:08:11] ?

15 A. [12:08:17] Yes,

16

17

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21 Q. [12:09:06] Now, Mr Witness, in order to avoid

22 is that possible?

23 A. [12:09:23] It's possible, yes. As I said to you already,

24

25

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1 Q. [12:09:49] If we could bring -- Mr Witness, could you turn to tab 46 on the
2 Defence binder, it's MLI-D28-0004-2959.

3 A. [12:10:14] Yes.

4 MS TAYLOR: [12:10:16] Can that be shown on evidence 1.

5 THE COURT OFFICER: [12:10:28] The material is being displayed currently on
6 evidence channel 1.

7 MS TAYLOR: [12:10:35]

8 Q. [12:10:39] Mr Witness, this is [REDACTED].

9 Can you see what the [REDACTED] date [REDACTED]?

10 A. [12:10:58] Yes.

11 Q. [12:11:06] And for the record what are they?

12 A. [12:11:10] 09/06/2013.

13 Q. [12:11:31] So 9 June 2013?

14 A. [12:11:37] Yes.

15 Q. [12:11:40] [REDACTED]?

16 A. [12:11:53] I don't know. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Q. [12:12:52] Now, Mr Witness, I'd like to show you another video, it's

23 MLI-OTP-0018-0185, it was in the Prosecution's list at tab 50.

24 Now this video is only 16 seconds long, so you would agree, wouldn't you, that it's
25 quite a bit shorter than the last one?

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- 1 A. [12:13:24] Yes.
- 2 Q. [12:13:26] And we're going to play it slowly between the 8- and 15-second mark.
- 3 (Viewing of the video excerpt)
- 4 MS TAYLOR: [12:13:54]
- 5 Q. [12:13:54] Mr Witness, [REDACTED]?
- 6 A. [12:14:03] Yes.
- 7 Q. [12:14:06] I'm going to play another video, that's MLI-OTP-0018-0189, and the
- 8 length of this video is 2 minutes and 53 seconds. And we're going to play between
- 9 the 5-second mark -- no, sorry, the 3-second mark and the 8-second mark in slow
- 10 motion.
- 11 (Viewing of the video excerpt)
- 12 MS TAYLOR: [12:14:58]
- 13 Q. [12:14:58] Mr Witness, [REDACTED]?
- 14 A. [12:15:06] Yes.
- 15 Q. [12:15:08] If we could now play between the 9-second mark and the 15-second
- 16 mark.
- 17 (Viewing of the video excerpt)
- 18 MS TAYLOR: [12:15:32]
- 19 Q. [12:15:33] [REDACTED]?
- 20 A. [12:15:39] Yes.
- 21 Q. [12:15:41] If we could play between the 35- and 45-second mark.
- 22 (Viewing of the video excerpt)
- 23 MS TAYLOR: [12:16:10]
- 24 Q. [12:16:12] [REDACTED]?
- 25 A. [12:16:19] Yes.

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1 Q. [12:16:21] If we could play between the 01:03 and 01:08 mark.

2 (Viewing of the video excerpt)

3 MS TAYLOR: [12:16:45]

4 Q. [12:16:49] [REDACTED]?

5 A. [12:16:56] Yes.

6 Q. [12:16:57] If we can play between the 01:35 and 01:45 mark.

7 (Viewing of the video excerpt)

8 MS TAYLOR: [12:17:32]

9 Q. [12:17:32] [REDACTED]?

10 A. [12:17:36] Yes.

11 Q. [12:17:38] If we can play between the 02:25 and 02:32.

12 (Viewing of the video excerpt)

13 MS TAYLOR: [12:18:09]

14 Q. [12:18:09] [REDACTED]?

15 A. [12:18:14] Yes.

16 Q. [12:18:17] If we can play between the 02:32 and 02:37.

17 (Viewing of the video excerpt)

18 MS TAYLOR: [12:18:39]

19 Q. [12:18:39] [REDACTED]?

20 A. [12:18:44] (Overlapping speakers)

21 Q. [12:18:45] And if we can play between --

22 A. [12:18:46] Yes.

23 Q. [12:18:47] If we can play between the 02:37 and the 02:45.

24 (Viewing of the video excerpt)

25 MS TAYLOR: [12:19:04]

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1 Q. [12:19:07] [REDACTED]?

2 A. [12:19:11] (No interpretation)

3 Q. [12:19:16] Now, Mr Witness, I'm going to turn to another topic now.

4 Do you recall - and I'm bringing up something we were discussing another day before

5 you took time to read [REDACTED] And if you could turn to tab 240 of

6 the Defence list, that's MLI-OTP-0061-1512 at 1545, paragraph 107. And the English

7 reference is tab 16, MLI-OTP-0024-3096 at 3124 (sic), paragraph 107.

8 And I'll read it out for the record:

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 A. [12:20:40] Yes.

14 Q. [12:20:43] Now if I could turn you to tab 255 in the Defence binder, that's

15 MLI-OTP-0018-0777, and the relevant page would be 0787. And the English

16 reference is tab 254, that's MLI-OTP-0078-9758 at 9796.

17 A. [12:21:34] You said page 0778?

18 Q. [12:21:42] Mr Witness, yes -- sorry, the reference is 0787.

19 A. [12:21:55] Yes.

20 Q. [12:22:04] Is this -- are these [REDACTED] exchanges between you [REDACTED]?

21 A. [12:22:14] Yes.

22 Q. [12:22:17] And is it correct that in 2013 you sent several messages to [REDACTED]'s

23 account trying to make contact with him?

24 A. [12:22:40] Certainly.

25 Q. [12:22:40] And this would include a message of [REDACTED] where you ask

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- 1 him if he's created a new account?
- 2 A. [12:22:57] What's the date of the message once again?
- 3 Q. [12:23:01] [REDACTED]
- 4 A. [12:23:26] Yes.
- 5 Q. [12:23:29] And on this date you ask him if he's created a new account?
- 6 A. [12:23:37] I said [REDACTED] I didn't say
- 7 [REDACTED]?"
- 8 Q. [12:23:50] I apologise, Mr Witness.
- 9 And do you have the message of [REDACTED] in front of you?
- 10 A. [12:24:01] Yes.
- 11 Q. [12:24:02] And do you say "Where are you, man?"
- 12 A. [12:24:08] Yes.
- 13 Q. [12:24:09] And then on [REDACTED] this person sends you a statement, don't
- 14 they?
- 15 A. [12:24:22] Yes.
- 16 Q. [12:24:24] Now, Mr Witness, if you could keep this document next to you, but if
- 17 you could also turn to tab 257 on the Defence binder, that's MLI-OTP-0058-0563. The
- 18 English reference is tab 258 on the Defence list, that's MLI-OTP-0067-1031.
- 19 A. [12:25:10] I'm not able to find the tab 257 here.
- 20 Q. [12:25:17] Are you looking in the Defence binder? It's the one that you took
- 21 more time to look through, so I don't know where it is now.
- 22 A. [12:25:33] 257 isn't there. Nor is it in the new folder.
- 23 But please go ahead, you can read it.
- 24 Q. [12:25:46] I think it's better, Mr Witness --
- 25 A. [12:25:48] To save time.

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- 1 Q. [12:25:49] I think you need to have it in front of you in Arabic. I can't read
2 Arabic to you, I'm afraid.
- 3 THE COURT OFFICER: [12:25:59] The Registry can suggest also to put it in zoom
4 and scroll as he reads on the screen evidence channel 1, if it's convenient for the
5 Defence and agreeable to the Chamber, of course.
- 6 THE WITNESS: (Overlapping speakers)
- 7 MS TAYLOR: [12:26:15] We can also see if we can give our copy to the witness.
- 8 PRESIDING JUDGE MINDUA: [12:26:24](Interpretation) Yes, if you could give a
9 copy to the witness.
- 10 THE WITNESS: [12:26:50](Interpretation) Yes.
- 11 MS TAYLOR: [12:26:52]
- 12 Q. [12:26:52] Mr Witness, do you have this -- do you have this in front of you now?
13 Now --
- 14 A. [12:26:56] (Overlapping speakers)
- 15 Q. [12:26:57] -- at transcript 47 --
- 16 A. [12:26:58] Yes.
- 17 Q. [12:26:59] -- page 12, lines 12 to 15, you testified that you initially thought you
18 were exchanging message with [REDACTED]
- 19 A. [12:27:17] Yes. Yes. As it appeared in the chat, it was a conclusion after
20 reading the chat. And if you would like me to send you or show you the paragraph
21 where I thought it was [REDACTED], then I would tell it to you. I will tell you which
22 paragraph it is. Would you like me to find that paragraph?
- 23 Q. [12:27:47] Yes, certainly. And while doing so, are you able to identify words in
24 Arabic where you used the feminine form?
- 25 A. [12:28:02] Yes. Just a moment, please.

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1 MS TAYLOR: [12:28:11] Sorry, if I could just ask the court officer, we haven't given
2 the full bundle to the witness, so I think he needs to have the full document.

3 PRESIDING JUDGE MINDUA: [12:28:26](Interpretation) Very well. You're right.

4 THE WITNESS: [12:28:42](Interpretation) So I'm looking in the document and, if
5 you would like to look, there are a lot of pages in the first document I received, the
6 order isn't clear.

7 I spoke in the feminine form when I said: [REDACTED] For the man you
8 say [REDACTED] That's once when I spoke to in the feminine
9 form -- or, I wrote to her in the -- or, wrote to him in the feminine form.

10 And afterwards, on the page 0566 of the chat, I addressed myself in the first message
11 to him, saying: [REDACTED]

12 [REDACTED]

13 And at that time he said to me: [REDACTED]
14 homonym.

15 Yes -- I said "Yes". [REDACTED]

16 [REDACTED]

17 And I said: [REDACTED]?

18 And he said: [REDACTED]

19 And I said to him: [REDACTED]

20 [REDACTED]
21 [REDACTED]

22 Q. [12:31:08] So, Mr Witness, if you first thought, almost I think over a year that
23 you were exchanging messages with [REDACTED], it follows that it's
24 not always easy to identify who you're exchanging messages with, is it?

25 A. [12:31:28] Yes, it's very difficult. [REDACTED]

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- 1 [REDACTED]
- 2 I didn't know who they were.
- 3 MS TAYLOR: [12:31:52] Mr President, it's 12.31. I believe now would be a good
- 4 time for the break.
- 5 PRESIDING JUDGE MINDUA: [12:32:03](Interpretation) You're right, Ms Taylor.
- 6 Court officer, please take us back into open session.
- 7 (Open session at 12.32 p.m.)
- 8 THE COURT OFFICER: [12:32:20](Interpretation) We're in open session again,
- 9 your Honour.
- 10 PRESIDING JUDGE MINDUA: [12:32:24](Interpretation) Thank you very much,
- 11 court officer.
- 12 We are now going to interrupt the hearing for the lunch break and we will be back
- 13 at 13.30.
- 14 Court is suspended.
- 15 THE COURT USHER: [12:32:41] All rise.
- 16 (Recess taken at 12.32 p.m.)
- 17 (Upon resuming in open session at 1.34 p.m.)
- 18 THE COURT USHER: [13:34:16] All rise.
- 19 Please be seated.
- 20 PRESIDING JUDGE MINDUA: [13:34:41](Interpretation) Court is in session once
- 21 again.
- 22 We shall continue with the cross-examination on the part of the Defence, but before so
- 23 doing I would like to hand down an oral decision with regard to the request that we
- 24 did received from the Defence via email.
- 25 The Defence requested that the Chamber grant them supplementary time, but the

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1 Prosecutor did not answer this request, which arrived by email at the beginning of
2 this afternoon.

3 MR DUTERTRE: [13:35:30](Interpretation) Absolutely, we have not yet had the time
4 to answer it. I was in the middle of drafting a response.

5 PRESIDING JUDGE MINDUA: [13:35:39](Interpretation) Well, maybe orally, in
6 order to save time you could answer orally.

7 MR DUTERTRE: [13:35:44](Interpretation) Yes.

8 Paragraph 42 of the conduct of proceedings provides very clearly, and I quote
9 (Speaks English) "The cross-examination shall last no longer than the questioning by
10 the calling party."

11 (Interpretation) That is extremely clear and there's no surprise in there. The
12 Prosecution is of the opinion that we have found ourselves in an equal situation, on
13 equal footing with the Defence. We have had the same difficulties with regard to the
14 open session, public session, with regard to the ability to play videos, and that there is
15 nothing particular or different in the situation that each or either party is facing.

16 As to the access to the witness beforehand, well, I would say that the protocol was
17 applied with regard to the opposite party and the Defence never came back as to the
18 agreement that had been given by the witness to meet with the Defence before the
19 start of the hearing. So we are of the opinion that we are on an equal footing.

20 Now, in half an hour time will have run out. We are not objecting to supplementary
21 time being allocated in order to finish up today with the whole session in
22 cross-examination, but I would like to remind you that we have not yet read through
23 paragraph 35, contrary to what the Chamber ordered two days ago now.

24 Now, as to the management of time, what would be regrettable would be to have to
25 call back the witness on Monday, who has already been extremely patient. We

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1 would need to have to finish everything off tomorrow, which might involve a
2 re-examination in-chief, questions on the part of the Chamber, and the last word for
3 the Defence. So that might take some time, which is not very manageable.
4 So I think we can give them up to the whole session of today. The Prosecution is not
5 objecting to them exceeding the time allocated to the Prosecution, but we need to be
6 vigilant and not finish up in too much of the speedy fashion, while losing quality.
7 PRESIDING JUDGE MINDUA: [13:38:19](Interpretation) Thank you very much,
8 Prosecutor, for your answer.
9 The Chamber -- Ms Taylor.
10 MS TAYLOR: [13:38:27] Thank you, Mr President. If I can respond just very briefly
11 on two issues.
12 One, the decision on the conduct of the proceedings concerning parity is without
13 prejudice to the possibility that the Legal Representatives of Victims are given an
14 opportunity to pose questions, because that is always on a case-by-case basis subject
15 to the authority of the Chamber.
16 In this case, the LRV were granted the right to put questions to the witness up to
17 approximately 30 minutes. So we are facing not only the examination-in-chief of the
18 Prosecutor, but also an additional 30 minutes from the LRV.
19 Secondly, I anticipate that I should be able to finish within 20 to 30, perhaps
20 40 minutes. But what we do need is to be able to consult with our client before
21 finalising our cross-examination. The reason being is that for each day this week we
22 have only had one-hour lunch breaks. Now, by the time I get up to my office it's
23 12:45. I have to eat. Mr Al Hassan has to eat. He has to be in a specific location to
24 be able to call me. We've been able to have one- to two-minute calls. He's
25 exhausted by weeks of following the hearings and by intense examinations last week.

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1 What we are asking for is the opportunity to consult with him so that we can in fact
2 present a very concise end to our cross-examination which will allow the testimony of
3 this witness to finish tomorrow. But it is imperative that we have that opportunity
4 to consult with him properly before finalising our cross-examination.

5 PRESIDING JUDGE MINDUA: [13:40:45](Interpretation) Thank you very much,
6 Ms Taylor.

7 The Chamber has read your filings, and we have just heard what the Prosecutor had
8 to say in his response, and also we have heard what you had to say in your reply.
9 Now, the constraint that we have is that we need to free up the witness, because it
10 doesn't really seem very timely to me at this juncture to ask him his opinion because
11 he has been with us for quite some time now. He is been very patient. He has
12 made great efforts to answer in a very clear manner to the questions that have been
13 put to him and it is time for him to go about his normal business. We need to release
14 him to tomorrow at the end of the hearing.

15 There we are.

16 So we all need to make efforts, sacrifices. I don't think that I'm going to be putting
17 any questions to the witness myself, in fact, maybe just one or not at all. So taking
18 all of that into account, I need to hand down the following decision:

19 Counsel for Defence in its filings specified that she would need an hour this afternoon
20 and again tomorrow morning, basing herself on the argument that the Defence has
21 been up against circumstances that have modified throughout the cross-examination,
22 also to persistent objections raised on the part of the Prosecution, and that the Defence
23 has not had the opportunity or the advantage to be able to prepare the witness as the
24 Prosecution had.

25 The Defence also makes reference to the specificities and the importance of the

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1 testimony, and the difficulties encountered by the Defence to consult their client on a
2 number of occasions.

3 So, firstly, the Chamber takes note that according to paragraph 42 of the document on
4 the conduct of proceedings, the cross-examination should not exceed the time
5 allocated to the examination-in-chief. The Chamber may decide, on a case-by-case
6 basis, whether supplementary time is justified.

7 With regard to the questions raised by the Defence, the Chamber would like to make
8 the following observations:

9 Firstly, with regard the claim to circumstances that were modified, nothing new has
10 been mentioned by the Defence. The directives by the Chamber to the parties
11 throughout the testimony of this witness have quite simply been that of reiterating or
12 repeating principles that have already been outlined in the directives on the conduct
13 of proceedings. This includes the matter of the use of private session, which is
14 clearly outlined at paragraph 83 and 84.

15 So, it was up to the Defence to organise its cross-examination in keeping with these
16 principles right from the outset, and its inability to do so does not constitute a good
17 enough reason to grant the Defence additional time for cross-examination.

18 The same applies to the principle on the usage of the statement of the witness at
19 paragraph 52 of the directives on the conducted of proceedings, or guidelines. The
20 paragraph that sets out that quoting passages of the witness's statement is an
21 exception to the general rule, according to which the counsel should abstain from
22 paraphrasing the statement of the witness or from uselessly requesting that the
23 witness reiterate his or her testimony.

24 With regard to the matter of objections raised by the Prosecution, as the parties
25 should already know, the objections are taken away from the time allocated to the

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1 parties by the Registry and, therefore, have no incidence whatsoever on the time
2 allocated to the Defence.
3 With regard to the change of scheduling of the hearings, as the Chamber has already
4 indicated, the reduction to three hours for some of the hearings for this witness was a
5 temporary measure that had to do with COVID-19. And, in fact, the Chamber is still
6 working half an hour less per day than its usual schedule. As a result, this does not
7 constitute a good reason to grant additional time to the Defence.
8 As regards the matter of consultation between counsel for the Defence and
9 Mr Al Hassan, the Registry has informed the Chamber that measures had been taken
10 to remedy the issue raised yesterday during the hearing by the Defence.
11 The Defence raised the matter also of the times to be used by
12 the Legal Representatives for Victims. The Chamber is alive to this argument and is
13 taking it into account.
14 The Chamber acknowledges also the particularities and importance of the testimony
15 of this witness, as described by the Defence in its email sent this afternoon.
16 In the light of the aforementioned, the Chamber shall grant to the Defence additional
17 time for a total of two hours.
18 So, Ms Taylor, you still have an hour today and an hour tomorrow to finish your
19 cross-examination. I believe that that is a satisfactory solution.
20 There we are.
21 So let us proceed now with your cross-examination, Ms Taylor.
22 MS TAYLOR: [13:50:10] Thank you very much, Mr President. The Defence is very
23 grateful to have this opportunity this evening to consult with the client.
24 Now I believe we'll have to go into private session to continue the line of questioning.
25 PRESIDING JUDGE MINDUA: [13:50:30](Interpretation) Madam courtroom officer,

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1 private session, please.

2 (Private session at 1.50 p.m.)

3 THE COURT OFFICER: [13:50:41](Interpretation) We are in private session,

4 Mr President, your Honours.

5 PRESIDING JUDGE MINDUA: [13:50:46](Interpretation) Thank you very much.

6 Ms Taylor.

7 MS TAYLOR: [13:50:49]

8 Q. [13:50:50] Good afternoon, Mr Witness. I hope you have managed to eat and
9 relax during the break.

10 A. [13:51:02] Good afternoon. Indeed, yes.

11 Q. [13:51:06] Mr Witness, before the break we were going through two sets of
12 Facebook exchanges. Do you have those before you still?

13 A. [13:51:18] I do. Yes.

14 Q. [13:51:26] Now, Mr Witness, could you turn to page 0567 in the Arabic of the
15 [REDACTED] exchange with the -- that you were looking through before where you
16 identified certain feminine phrases. The English is at page 1036.

17 A. [13:51:55] Yes.

18 Q. [13:52:05] Is it correct that you ask [REDACTED]?

19 A. [13:52:14] It is.

20 Q. [13:52:18] And do you use the name [REDACTED] because that's a Tuareg way of
21 referring to him?

22 A. [13:52:31] [REDACTED] as far as I remember, was in Timbuktu using his real name,
23 and I don't know that he ever had any *nom de guerre*.

24 Q. [13:52:47] And after you ask [REDACTED] there's no reaction and the
25 person continues to ask you for news. This is up to [REDACTED]

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- 1 A. [13:53:03] Yes. That is true.
- 2 Q. [13:53:08] Can you turn to page 0569 in Arabic. That's 1038 in the English.
- 3 A. [13:53:19] Yes.
- 4 Q. [13:53:35] And can you look at the chat dated [REDACTED]
- 5 A. [13:53:48] Yes.
- 6 Q. [13:53:51] This person asks you if you wish to speak to [REDACTED]; that's correct?
- 7 A. [13:53:59] Yes.
- 8 Q. [13:54:02] And was [REDACTED] often used as a *nom de guerre* by various persons?
- 9 A. [13:54:18] [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED] He said, it's me, [REDACTED]
- 12 Q. [13:54:38] Mr Witness, can you look at the Arabic. [REDACTED]
- 13 [REDACTED] But if you could look at the messages of the person who's actually
- 14 responding to you, does it say [REDACTED] "
- 15 That's correct.
- 16 A. [13:54:58] Yes.
- 17 Q. [13:54:59] Now could you turn to the other batch of [REDACTED] exchanges that
- 18 you had, that was with [REDACTED]'s account?
- 19 A. [13:55:11] Yes, [REDACTED]'s account, fine. I have it now.
- 20 Q. [13:55:20] It's correct that in [REDACTED] 2013, to your knowledge, [REDACTED] was still
- 21 alive?
- 22 A. [13:55:40] Yes.
- 23 Q. [13:55:41] And in the [REDACTED] exchange of -- with the account that you believe
- 24 to be [REDACTED], did you receive a message on [REDACTED] 2013?
- 25 A. [13:56:03] Yes, [REDACTED] -- I see here [REDACTED] and I see [REDACTED] with

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1 regards to the chat I have here before me. I can't see [REDACTED] here.

2 Q. [13:56:22] What is the date -- are you on the message, the [REDACTED] exchange
3 with [REDACTED]?

4 A. [13:56:35] Yes, I see here the chat that I have here before me. There was a
5 statement that was sent to me on [REDACTED] in 2013. The message that comes
6 afterwards was on [REDACTED] 2013. I do not see any message dated [REDACTED]
7 here before me.

8 Q. [13:57:05] There might be an issue with the translation because the English has
9 [REDACTED] 2013. But in any case, at this time period this person sends you a
10 statement, doesn't it?

11 A. [13:57:25] Yes, it is a statement.

12 Q. [13:57:32] And the statement, does it refer to [REDACTED]
13 [REDACTED]?

14 A. [13:57:43] This is a statement which I haven't read. If you wish, I can read and
15 sum up the content thereof.

16 Q. [13:57:55] Yes, certainly. And if you could read the contents of the statement
17 and then also the messages you exchange with the other account on [REDACTED] 2013.

18 A. [13:58:16] Fine.

19 (Pause in proceedings)

20 THE WITNESS: [14:01:01](Interpretation) I have read it now. The date was in the
21 second chat, right? Could you please help me with saying on which page is this, I
22 mean the second chat, which page?

23 MS TAYLOR:

24 Q. [14:01:17] The chat in the other [REDACTED] was the chat of [REDACTED]
25 preceding -- I think it would have been 56 -- either 0569 or 0568. In the -- I don't

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1 have the Arabic, unfortunately, you have our copy, but in English it's 1038, and just
2 before [REDACTED] there's discussions regarding [REDACTED] being killed, as
3 well as a child from Azawad.

4 A. [14:02:34] Just a second, please.

5 I remember that, but finding this piece takes time, but it's not compatible with the
6 same date. [REDACTED] here -- no, it's [REDACTED] -- oh, just a second, please.

7 Q. [14:03:13] Mr Witness, I believe in the Arabic [REDACTED] is actually on the page
8 0568, if you're looking at the original exchanges with [REDACTED]

9 A. [14:03:38] That I have already, but what I have now on this page is 0568, this is
10 dated October 7.

11 Q. [14:04:00] Perhaps if you can continue until you find exchanges on [REDACTED]
12 I believe the Arabic page is 0814.

13 A. [14:04:43] That I have. What I'm looking for is the other chat.

14 Q. [14:04:49] Sorry, Mr Witness, it's quite confusing because I'm not there next to
15 you. Which chat are you looking at now?

16 A. [14:05:04] The chat with [REDACTED] I have the pages dated [REDACTED]
17 that I have. But what I'm asking about, because you told me to look at the same date
18 in the other chat, I don't have the page number that would be compatible with either
19 [REDACTED] at the same time.

20 Q. [14:05:39] (Microphone not activated) Sorry, my microphone wasn't on. Can
21 you look at the bottom of the page 0568.

22 A. [14:06:06] Regarding which chat? Is that the chat with [REDACTED]?

23 Q. [14:06:11] It's the chat with the unknown person.

24 A. [14:06:18] It's 05, then?

25 Q. [14:06:29] 0568.

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- 1 A. [14:06:58] I have it now. I have the date here of [REDACTED]
- 2 Q. [14:07:12] And on [REDACTED] were you referring to [REDACTED]
- 3 [REDACTED]?
- 4 A. [14:07:37] Yes.
- 5 Q. [14:07:40] And [REDACTED] did
- 6 it refer to the deaths of AQIM soldiers?
- 7 A. [14:08:07] Let me look again at the statement.
- 8 The answer is yes.
- 9 Q. [14:08:29] Now, Mr Witness, could you turn to page 0572 in the Arabic. This is
- 10 with the unknown chat person. The relevant reference is 1040 for the English.
- 11 A. [14:08:46] 052?
- 12 Q. [14:08:52] 0572.
- 13 A. [14:08:59] I'm on the same page.
- 14 Q. [14:09:04] Now, this person refers to [REDACTED], but the
- 15 person never says Timbuktu; that's correct?
- 16 A. [14:09:37] Yes.
- 17 Q. [14:09:40] And [REDACTED] in Gao; that's
- 18 correct?
- 19 A. [14:09:49] That is true.
- 20 Q. [14:09:52] [REDACTED]?
- 21 A. [14:10:02] [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED] This is for the sake
- 24 of precision.
- 25 Q. [14:10:24] [REDACTED]

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1 [REDACTED]; that's correct?

2 A. [14:10:36] Yes.

3 Q. [14:10:39] [REDACTED] the Prosecutor showed you at
4 transcript 39, page 29, lines 18 to 20, you testified that you were not sure [REDACTED]

5 [REDACTED]

6 A. [14:11:07] Although I focused on this, I'm still unable to remember anything on

7 [REDACTED]

8 Q. [14:11:20] Now, the person writing to you [REDACTED]

9 [REDACTED]

10 PRESIDING JUDGE MINDUA: [14:11:29](Interpretation) Mr Prosecutor.

11 MR DUTERTRE: [14:11:30](Interpretation) Thank you, Judge.

12 For several days now does the Defence -- can they tell us exactly where this video is?

13 What video are they talking about, for the record. And also for the witness. He
14 might not know which video we're referring to.

15 PRESIDING JUDGE MINDUA: [14:11:57](Interpretation) Ms Taylor.

16 THE ARABIC INTERPRETER: [14:12:04] Answer from the witness as the line was
17 busy was "Yes."

18 MS TAYLOR: [14:12:08] Mr President, the witness answered my question. And I
19 gave the transcript reference for the Prosecution. The witness specifically says in his
20 response, if I can -- he actually said he could -- even to this day he couldn't remember
21 [REDACTED] I can't see the line references because it's gone down. But it's the
22 witness testifying, not Mr Duterte.

23 PRESIDING JUDGE MINDUA: [14:12:57](Interpretation) Is the reference on the
24 record?

25 MS TAYLOR: [14:13:01] It was transcript 39, page 29, lines 18 to 20.

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- 1 PRESIDING JUDGE MINDUA: [14:13:27](Interpretation) Mr Prosecutor.
- 2 MR DUTERTRE: [14:13:28](Interpretation) How can the witness remember
- 3 transcript 39 when it's one and a half weeks ago? I too, who read it every day,
- 4 cannot really remember which video we can refer to. The least thing we can do, if
- 5 we want to comment, is that we show the video and then check whether that's the
- 6 correct one. To mention a page with a line in a courtroom is not perhaps the best
- 7 way of proceeding.
- 8 PRESIDING JUDGE MINDUA: [14:14:02](Interpretation) Ms Taylor, I think that the
- 9 Prosecution has -- is correct. Allow the witness to check.
- 10 MS TAYLOR: [14:14:10] I can give more information about the video I'm referring to.
- 11 I'm not showing a video just because the Prosecutor wants to conduct their
- 12 examination through my cross-examination. I'll explain [REDACTED] I'm speaking
- 13 about and then the witness -- again, if we're going to finish in any time, we do need to
- 14 be able to conduct our cross-examination in the way that we deem appropriate in line
- 15 with our instructions.
- 16 I can provide an explanation, then it's for the witness to determine if he's capable of
- 17 answering, but it's not for the Prosecutor to tell the Defence what evidence to show
- 18 during its cross-examination.
- 19 PRESIDING JUDGE MINDUA: [14:14:55](Interpretation) Ms Taylor, we are seeking
- 20 truth, so the witness must understand what we're talking about. If you do not wish
- 21 to show the video, then explain what it's about so that we can be sure that the witness
- 22 knows precisely and that he won't give us an incorrect response.
- 23 MS TAYLOR: [14:15:21]
- 24 Q. [14:15:22] Mr Witness, at transcript 39, page 29, lines 18 to 20, you gave
- 25 testimony concerning [REDACTED]

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1 [REDACTED] I showed that video to

2 you again yesterday and I believe you commented [REDACTED]

3 [REDACTED] Does this refresh your memory?

4 A. [14:16:05] Yes, certainly. When is mentioned [REDACTED]

5 [REDACTED] it's

6 the very one I commented on [REDACTED] And I'm not sure if

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Q. [14:16:47] [REDACTED]

13 [REDACTED] ?

14 A. [14:16:56] Yes, that is true.

15 Q. [14:16:59] [REDACTED]

16 [REDACTED] ; that's correct?

17 A. [14:17:11] Yes, that is true.

18 Q. [14:17:15] [REDACTED]

19 [REDACTED] ; that's correct?

20 A. [14:17:29] I cannot confirm that, because according to the chat I thought I was

21 chatting with [REDACTED]

22 Q. [14:17:41] Now, Mr Witness, can you turn to page 0580 in the Arabic. In the

23 English it's 1049. There's a message of [REDACTED] 2014 at 11.33 a.m.

24 A. [14:18:11] The page again, please.

25 Q. [14:18:14] The Arabic is 0580 and there's a message of [REDACTED] 2014?

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- 1 A. [14:18:44] Sorry, it's 0580, is that the case?
- 2 Q. [14:18:49] 0580, that's correct.
- 3 A. [14:18:56] Yes.
- 4 Q. [14:18:59] [REDACTED] that's correct, and the
- 5 (Overlapping speakers)
- 6 A. [14:19:09] Yes.
- 7 Q. [14:19:09] -- and the person refers to the death of Adam, Youssef and
- 8 Khoubayb?
- 9 A. [14:19:19] Yes.
- 10 Q. [14:19:22] You ask for details. And the person says one person survived, and
- 11 passed on the details?
- 12 A. [14:19:37] Yes.
- 13 Q. [14:19:40] Now at transcript 40, page 7, line 17, to page 8, line 1, you testified
- 14 that [REDACTED]
- 15 [REDACTED] you couldn't recall exactly who that was.
- 16 Is this the exchange you were thinking of?
- 17 A. [14:20:17] That is possible.
- 18 Q. [14:20:18] [REDACTED]
- 19 which referred to -- if I can refer you to the tab, it's tab 14 in Arabic,
- 20 MLI-OTP-0020-0124. The French is tab 15, that's MLI-OTP-0078-9741. And I've
- 21 shown it to you two days ago [REDACTED] It's in the Prosecution's
- 22 binder. Tab 14 in the Prosecution's binder.
- 23 A. [14:21:30] Yes.
- 24 Q. [14:21:33] [REDACTED]?
- 25 A. [14:21:51] Yes.

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- 1 Q. [14:21:54] [REDACTED]
2 [REDACTED] ?
3 A. [14:22:06] Yes.
4 Q. [14:22:13] And two days ago, you confirmed that you had told the Prosecution
5 that you thought [REDACTED] ?
6 A. [14:22:33] Look, first, I cannot remember everything related to that incident.
7 And if you've noticed well, before he -- before this person gave me more details
8 regarding [REDACTED] I had already told him
9 something of certainty: [REDACTED] ? And since they
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] [REDACTED]
13 But for further confirmation, I asked him. I didn't say whether [REDACTED] - did -- had
14 [REDACTED] ? I told him: [REDACTED] ? Because I had
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] So if you look back
18 at the chat, you will see that [REDACTED]
19 This is not what I remember. This is what I concluded now from this chat. Because
20 now I do not actually remember how things happened. [REDACTED]
21 [REDACTED]
22 But this chat shows that I had [REDACTED] and I was
23 basically telling him about this. Because I told him about this, he gave me more
24 information and I asked even for further information.
25 However, what I'm sure of as well is that I got in touch with [REDACTED] I got in touch

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- 1 with [REDACTED]
2 [REDACTED] For a whole night, they were trying to reach me.
3 They were trying to send me an email. And I'm sure that I was also in touch with
4 [REDACTED] afterwards.
5 I don't know how, but I remember that I was in touch with him -- [REDACTED]
6 [REDACTED] I think it might have been either [REDACTED]
7 [REDACTED] But at some point I learned that [REDACTED] -- that it was [REDACTED] afterwards.
8 I know that afterwards. [REDACTED]
9 [REDACTED] when I was in --
10 THE INTERPRETER: [14:25:31] Unidentifiable name.
11 THE WITNESS: [14:25:35](Interpretation) -- which I could not have -- which I
12 couldn't receive because of their [REDACTED]
13 MS TAYLOR: [14:25:42]
14 Q. [14:25:43] Mr Witness, you've stated that this person - after you mentioned the
15 [REDACTED] - provided additional details concerning [REDACTED]
16 [REDACTED] So that would suggest that person was close to that person, to
17 [REDACTED]?
18 A. [14:26:17] Look, at that time, there was communication [REDACTED] whether the
19 person was close or distant. But I assure you that I do not remember how these
20 chats happened. What I can answer you with are answers that I concluded from the
21 chat and from reviewing the chat.
22 Q. [14:26:46] Now, Mr Witness, earlier you confirmed that you made a mistake in
23 thinking that it was [REDACTED]
24 [REDACTED] and you've said that that was confusing.
25 Now, Mr Witness, would it be correct that you're not in a position to identify exactly

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- 1 who was writing all the different messages in this [REDACTED] exchanges?
- 2 A. [14:27:28] So far I cannot confirm.
- 3 Q. [14:27:35] Now, Mr Witness, I've been asked to read paragraph 35 of your
- 4 [REDACTED] statement; that's MLI-OTP-00-1890 (sic) at 1895.
- 5 I don't have the Arabic reference, but I'll read out the English:
- 6 "It is my understanding that the Islamic Police was often in charge of organising
- 7 executions of sentences, and I often saw Al Hassan [REDACTED] However, it is
- 8 my understanding that it was the Islamic Tribunal and the Hesbah who decided on
- 9 the punishments."
- 10 A. [14:28:34] Yes.
- 11 Q. [14:28:35] Now, this comes from a statement that you provided in [REDACTED]
- 12 [REDACTED] years after the fact.
- 13 A. [14:28:49] Yes. And what is the question?
- 14 Q. [14:28:54] And it's correct that you stated this after mistakenly identifying
- 15 Al Hassan as being present at the Sallaka flogging?
- 16 A. [14:29:17] I do not understand the question.
- 17 Q. [14:29:20] Mr Witness, this paragraph comes from a statement that you
- 18 provided to the Prosecution in [REDACTED] And during this interview, you had
- 19 indicated that you thought Mr Al Hassan was present during the flogging of Sallaka.
- 20 A. [14:29:47] Yes.
- 21 Q. [14:29:49] So your belief that he was present would have impacted on your
- 22 assessment of him, that's correct?
- 23 A. [14:30:02] That is possible.
- 24 Q. [14:30:07] And [REDACTED] and in court, at transcript 46, page 59, lines 18 to 20, you
- 25 described Al Hassan's role in the Islamic police as being administrative.

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1 A. [14:30:29] Yes, as far as I remember, yes.

2 Q. [14:30:34] And you stated [REDACTED] and in court, transcript 46, page 55, lines 5 to 6,
3 that the Islamic police did not have a lot of authority and its members were not the
4 decision-makers.

5 A. [14:30:59] Look, I am not a member of the Islamic police. Nor am I member of
6 the administrative structure of Ansar Dine or Al-Qaeda in Timbuktu. And, I do not
7 know exactly the responsibilities and the prerogatives given to each and every person.
8 So I think that these answers cannot be precise, whether the ones I gave previously or
9 the ones I gave now.

10 As far as me giving information about someone having certain prerogatives, that
11 cannot be the case. I do not know the powers that these people had. What I know
12 is that Mr Al Hassan was in the Islamic police and I saw him [REDACTED]
13 [REDACTED] on the ground [REDACTED] at locations where punishments,
14 *hudud* were carried out.

15 Q. [14:32:14] [REDACTED]
16 [REDACTED]?

17 A. [14:32:31] That is true, [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] if you wish to. That I can
21 give in a summary.

22 Q. [14:33:06] If you wish to give that summary, Mr Witness.

23 A. [14:33:11] Yes. [REDACTED]
24 [REDACTED]
25 [REDACTED]

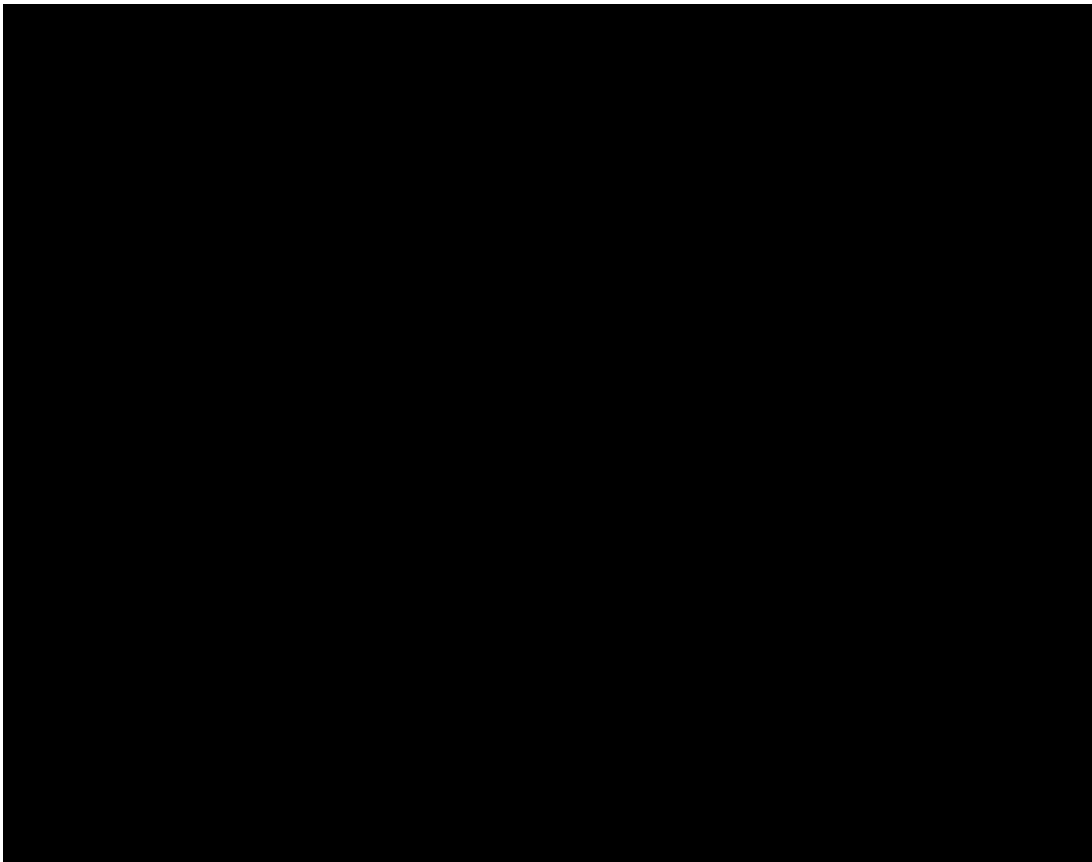
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15 MS TAYLOR: [14:35:07] Mr President, that ended my cross-examination. The next
16 section was going to be put to the witness by Ms Sutherland. So we can actually
17 adjourn earlier today, if that would be acceptable to the Chamber and to the witness.
18 MS SUTHERLAND: [14:35:33] Your Honours, if it assists, I do believe that in the
19 interests of judicial economy, an investment at this time would save time tomorrow
20 morning and I would endeavour to be well under an hour.
21 PRESIDING JUDGE MINDUA: [14:35:57](Interpretation) Mr Prosecutor.
22 MR DUTERTRE: [14:35:59](Interpretation) Yes, Mr President, I imagine that the
23 Defence must have prepared this point because Madam Sutherland has not put any
24 questions thus far, and in the interests of judicial economy, we should start now.
25 That would make half an hour; so that would mean another half an hour tomorrow

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1 and we will finish off with this witness much earlier.

2 PRESIDING JUDGE MINDUA: [14:36:23](Interpretation) Ms Taylor.

3 MS TAYLOR: [14:36:24] Just very briefly, my understanding of the rationale of the
4 decision handed down earlier was to give the Defence the opportunity to consult with
5 the client before finalising our cross-examination, due to the fact that it's been very
6 difficult for us to consult with the client during the lunch breaks and during these
7 proceedings.

8 Now what Ms Sutherland is explaining is that once we have consulted with the client,
9 that will enable us to provide a very concise final line of questioning. The question
10 as to whether these questions will be posed by myself or Ms Sutherland is entirely
11 irrelevant.

12 The issue at stake is our ability to consult with the client before we decide what final
13 questions should be put to the witness.

14 PRESIDING JUDGE MINDUA: [14:37:17](Interpretation) Very well.

15 Ms Taylor, the Chamber has granted you an hour for this afternoon and an hour for
16 tomorrow morning. You still have 25 minutes remaining, which you do not want
17 to use.

18 I'm going to consult my colleagues, but it is out of the question for us to go beyond
19 the programme that we have already fixed.

20 MS TAYLOR: [14:37:41] I completely understand that, Mr President. And, if the
21 concern is using the time, there was in fact a line of questioning I could have put to
22 the witness [REDACTED], which I didn't put to the witness in the interests of
23 judicial economy.

24 Now I can go through that video again [REDACTED] and that
25 will take us up to 3 o'clock. But given that the witness had confirmed that he agreed

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1 [REDACTED] I did not do that. But I can, in fact, do
2 that exercise now.

3 PRESIDING JUDGE MINDUA: [14:38:20](Interpretation) The Chamber will briefly
4 confer.

5 (Trial Chamber confers)

6 PRESIDING JUDGE MINDUA: [14:38:58](Interpretation) Very well. Ms Taylor,
7 well, the Chamber would like to remain within the confines of the time allocated to
8 you by the Chamber, but it is also alive to your argument for having more time to
9 consult your client.

10 So we're going to rise for today and we shall reconvene tomorrow morning at 9.30,
11 bearing in mind that you will only have one hour maximum to conclude your
12 cross-examination.

13 We do agree, do we not?

14 MS SUTHERLAND: [14:39:42] Absolutely. Thank you, your Honour.

15 PRESIDING JUDGE MINDUA: [14:39:56](Interpretation) So everything is in order.
16 I do not see any objections anywhere.

17 So we shall now rise for today. And we shall reconvene tomorrow morning at 9.30,
18 as I just said.

19 Mr Witness, once again, the Chamber would like to thank you greatly for your
20 cooperation for having answered the questions that have been put to you clearly.

21 Unfortunately, your testimony is not yet over; so you shall be returning tomorrow
22 morning at 9.30.

23 There we are.

24 Tomorrow morning, 9.30, as I was just saying. And as we are still in private session,
25 we shall now move into open session.

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1 Madam courtroom officer, please.

2 (Open session at 2.41 p.m.)

3 THE COURT OFFICER: [14:41:08] (Interpretation) We are in open session,

4 Mr President.

5 PRESIDING JUDGE MINDUA: [14:41:12](Interpretation) Thank you very much,

6 madam courtroom officer.

7 So, Mr Witness, the Chamber thanks you and invites you to return tomorrow

8 morning at 9.30.

9 We shall now draw this hearing to a close and, as always, I would like to thank very
10 much the parties and participants, the court reporters, the interpreters, and of course
11 the security guards and our public.

12 Now the hearing is adjourned.

13 THE COURT USHER: [14:41:53] All rise.

14 (The hearing ends in open session at 2.42 p.m.)

15 CORRECTION REPORT

16 The following correction, marked with an asterisk and not included in the
17 audio-visual recording of the hearing, is brought into the transcript.

18 Page 23 lines 24 to page 24 line 4:

19 "A. [10:38:51] Yes. [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 [REDACTED] There was not stoning in 2012 in Timbuktu."

24 Is corrected to

25 "A. [10:38:51] Yes. [REDACTED]

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[REDACTED]

[REDACTED]

There wasn't any stoning

hadd in Timbuktu in 2012. “