

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor vs Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia Mbe Mindua, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 1
9 Friday, 27 November 2020
10 (The hearing starts in open session at 9.34 a.m.)
11 THE COURT USHER: [9:34:28] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:34:57](Interpretation) Court is in session.
15 Good morning to all.
16 Madam courtroom officer, could you please call the case.
17 THE COURT OFFICER: [9:35:09] Thank you, Mr President.
18 The situation in the Republic of Mali, in the case of The Prosecutor versus Al
19 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference
20 ICC-01/12-01/18.
21 And for the record, we are in open session.
22 PRESIDING JUDGE MINDUA: [9:35:31](Interpretation) Thank you very
23 much.
24 Now for the record, as usual, we shall take the appearances. Commencing
25 with the Office of the Prosecutor.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 Madam Prosecutor, please.

2 MS CORBIN: [9:35:46] (Interpretation) Good morning, Mr President, good
3 morning, your Honours. There has been a change in our team. The Office of
4 the Prosecutor this morning is represented by Dianne Luping, Florie Huck,
5 Lucio Garcia and myself, Nelly Corbin.

6 PRESIDING JUDGE MINDUA: [9:36:02](Interpretation) Thank you very
7 much, Madam Prosecutor.

8 Now I shall turn to the Defence.

9 Ms Sutherland.

10 MS SUTHERLAND: [9:36:11] Good morning, Mr President. Good morning,
11 your Honours. The Defence for Mr Al Hassan is today represented again by
12 Ms Melinda Taylor, Ms Sarah Marinier-Doucet, Ms Dolly Chahla and myself,
13 Kirsty Sutherland.

14 PRESIDING JUDGE MINDUA: [9:36:26](Interpretation) Thank you very
15 much, Ms Sutherland.

16 Now, Legal Representatives for Victims.

17 Mr Nsita.

18 MR LUVENGIKA: [9:36:38](Interpretation) Good morning, Mr President,
19 your Honours. The victims are represented today by Madam Laplace and
20 myself, Maître Fidel Nsita.

21 PRESIDING JUDGE MINDUA: [9:36:52](Interpretation) Thank you very
22 much, Mr Nsita.

23 Today we shall continue the testimony of P-0565, the 17th Prosecution witness.

24 Now, I'm going to turn to the witness.

25 Good morning, Madam Witness. Can you hear me?

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 WITNESS: MLI-OTP-P-0565 (On former oath)

2 (The witness speaks Songhai)

3 THE WITNESS: [9:37:16](Interpretation) I am well. And I can hear you.

4 PRESIDING JUDGE MINDUA: [9:37:21](Interpretation) Thank you very
5 much.

6 I would like to welcome you once again, and I would like to remind you that
7 you are still under oath.

8 THE WITNESS: [9:37:49](Interpretation) Very well.

9 PRESIDING JUDGE MINDUA: [9:37:50](Interpretation) You should,
10 therefore, speak to the truth, the whole truth and nothing but the truth.

11 THE WITNESS: [9:37:59](Interpretation) Very well.

12 PRESIDING JUDGE MINDUA: [9:38:01](Interpretation) I would like to also
13 remind you, to you and yourself, my advice with regard to when you address
14 the Court.

15 THE WITNESS: [9:38:18](No interpretation)

16 PRESIDING JUDGE MINDUA: [9:38:22](Interpretation) Thank you very
17 much.

18 So I shall hand the floor to the Defence for the continuation of their
19 cross-examination of the witness.

20 Interpretation, please.

21 THE INTERPRETER: [9:38:40] Message from the Songhai booth:

22 Mr President, could you please repeat what you just said.

23 PRESIDING JUDGE MINDUA: [9:38:48](Interpretation) I was just telling the
24 witness that I am handing the floor over to the Defence for the continuation of
25 their cross-examination.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 THE WITNESS: [9:39:06](Interpretation) Very well.

2 PRESIDING JUDGE MINDUA: [9:39:07](Interpretation) Ms Sutherland,
3 please.

4 MS SUTHERLAND: [9:39:09] Thank you, Mr President, your Honours. I
5 will be able to ask the first few questions in open session, but in view of the
6 scope of the protective measures, I'm afraid that, thereafter, I will have to
7 request to go into private session.

8 PRESIDING JUDGE MINDUA: [9:39:31](Interpretation) Please proceed,
9 Ms Sutherland.

10 QUESTIONED BY MS SUTHERLAND: (Continuing)

11 Q. [9:39:37] Good morning, Madam Witness.

12 A. [9:39:45] Good morning.

13 Q. [9:39:48] Madam Witness, would you agree that it is easier to remember
14 details of events soon after they happen?

15 A. [9:40:16] How am I supposed to remember?

16 Q. [9:40:21] Well, do you agree that it is -- as time goes past, it becomes
17 harder to remember details?

18 A. [9:41:10] To date, I can remember everything that happened to me
19 perfectly. I don't know what can happen in the future, but for the time being,
20 I remember everything.

21 Q. [9:41:29] This morning I'm going to take you through a timeline,
22 everything in order. I do not want to confuse you.

23 A. [9:42:07] Very well.

24 Q. [9:42:09] We just want to make sure that everybody in the courtroom is
25 very clear and, to that end, we will show you some reports and some videos.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 A. [9:42:36] Very well.

2 MS SUTHERLAND: [9:42:41] Your Honours, I'm afraid that the next line of
3 questioning is very identifying and therefore request that we go into public
4 session -- private session, forgive me.

5 PRESIDING JUDGE MINDUA: [9:42:56](Interpretation) Madam courtroom
6 officer private session, please.

7 (Private session at 9.43 a.m.)

8 THE COURT OFFICER: [9:43:05] We are in private session, Mr President.

9 PRESIDING JUDGE MINDUA: [9:43:14](Interpretation) Thank you very
10 much.

11 Ms Sutherland.

12 MS SUTHERLAND: [9:43:17] Thank you, your Honour.

13 Q. [9:43:19] Madam Witness, yesterday you testified that you were chatting
14 to your husband when the Islamists first arrived.

15 And for the Court record, that's transcript 51 -- forgive me, that was on
16 Wednesday, transcript 51, page 16, line 20.

17 A. [9:44:09] I do not remember the day. All that I know is that on the day
18 that we were arrested, it was in front of our family.

19 Q. [9:44:27] This was the day that you ran into the house and pretended to
20 faint; is that correct?

21 A. [9:44:53] Yes.

22 THE INTERPRETER: [9:44:59] Could the Songhai interpreter please repeat
23 what he just said.

24 THE WITNESS: [9:45:25](Interpretation) Yes, that is correct. It happened at
25 night.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 MS SUTHERLAND: [9:45:33]

2 Q. [9:45:34] We will call that, Madam Witness, "day one".

3 You then testified that, I quote, "the next day, they took me away with them".

4 And that's the edited transcript 51, page 19, lines 21 to 22.

5 A. [9:46:13] Yes.

6 Q. [9:46:16] So we can call that "day two".

7 A. [9:46:52] I'm going to try and be clearer for you to understand me. The
8 first day when they came by, they didn't take me away with them. It's only on
9 the next day when they came by again, that they took me away with them.

10 Q. [9:47:14] And they took you to a building?

11 THE INTERPRETER: [9:47:23] The English interpreter will add that: They
12 took him (sic) away on that first day.

13 THE WITNESS: [9:47:28](Interpretation) Yes.

14 PRESIDING JUDGE MINDUA: [9:47:33](Interpretation) Ms Sutherland, are
15 we not repeating the same questions again and the same answers, of course?

16 MS SUTHERLAND: [9:47:44] Your Honour, there's a degree of confusion
17 over which days and how many days things occurred on. What we're trying
18 to do is make sure that we're all crystal clear as to where, in the chronology, the
19 events happened, what coincided with what, where she was taken and for how
20 long.

21 So to that end, this process is important.

22 PRESIDING JUDGE MINDUA: [9:48:26](Interpretation) Please proceed, but
23 let's move forward, shall we?

24 MS SUTHERLAND: [9:48:32]

25 Q. [9:48:33] Were you taken to the same building that the judge was in?

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 A. [9:48:55] Yes, it's the same location, but it's not the place where I was
2 taken on the first day where there was the judge present in that room.

3 Q. [9:49:19] Was it a different room?

4 A. [9:49:41] No, it's not the same place where -- where I was seated there,
5 there was nothing around me. Where I was sitting with the judge there was a
6 chair.

7 Q. [9:50:12] On day two, can you describe what road the building was on?

8 A. [9:51:00] Well, I am familiar with that road, that's a place I know because
9 that's where I grew up and it's a route that I know very well. Before going
10 there, I already knew that location.

11 Q. [9:51:19] Could you tell us the name of the road.

12 A. [9:51:29] In fact, that road is not a straight road. It's a windy road. If I
13 were to explain it to somebody who understands Songhai who knows the
14 location, they would be able to recognise it. But somebody who does not
15 understand those things would not. It's not an easy thing to do.

16 Q. [9:52:17] Could you describe what is around the building?

17 A. [9:52:45] Do you mean what is in the environment or what do you mean?

18 Q. [9:52:52] Buildings neighbouring or any landmark close to the building.

19 A. [9:53:38] Indeed, this location really is in the centre of the town and there
20 are buildings all around. There are schools, there is a market just nearby. So
21 it's really in the centre of the town. It's not an isolated location.

22 Q. [9:54:07] After you were brought to the building, where in the building
23 were you taken? Can you describe that, on day two.

24 A. [9:54:38] How? Am I supposed to give the name of the house or what?

25 Q. [9:54:44] I'm asking you to describe where you went after you went

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 through the door?

2 A. [9:55:10] They took me to a room inside the building on the day of my
3 arrival and that is where I stayed.

4 Q. [9:55:30] Was the room that you were taken to close to the entrance of the
5 building or did you have to walk into the building further?

6 A. [9:56:16] In fact, after I entered through the door, I walked for a little
7 while and then I walked down a corridor, and it was at the end of that corridor
8 where the room was located.

9 THE INTERPRETER: [9:56:39] Correction from the English booth: It was in
10 that corridor that the room was located.

11 MS SUTHERLAND:

12 Q. [9:56:45] You --

13 PRESIDING JUDGE MINDUA: [9:56:52](Interpretation) We are in private
14 session, Ms Sutherland.

15 MS SUTHERLAND: [9:57:01] I'm just about to ask the witness about her
16 husband.

17 PRESIDING JUDGE MINDUA: [9:57:11](Interpretation) Very well. Because
18 the questions with regard to the layout of the judge's office or room, that could
19 have been done in open session. But, yes, fine, we can remain in private
20 session for the husband part.

21 MS SUTHERLAND: [9:57:33] Thank you, your Honour.

22 Q. [9:57:35] Madam Witness, you testified that while you were there, there
23 were people coming and going.

24 And that's the edited transcript 51, page 27, lines 11 to 14.

25 Did you see people coming and going?

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 A. [9:58:21] That was just when I arrived before I was taken to the room
2 where I stayed. There were people, but I didn't know them. I went into that
3 room and then after that, I do not know what happened.

4 Q. [9:58:45] How did you realise that you were in the same place as your
5 husband on that day?

6 A. [9:59:35] In fact, it was on the day of the flogging that I saw him also
7 come out. So then I understood that he was there. When we went home,
8 speaking to him, I said that I was coming and going between there and here,
9 and then he also told me that he was at that location. That's how I came to
10 know that fact, not in any other way.

11 Q. [10:00:13] So you went from that building to the flogging?

12 A. [10:00:31] Yes.

13 Q. [10:00:35] We'll call the day of the flogging "day three". Sorry, forgive
14 me, was that the next day?

15 A. [10:01:10] What?

16 Q. [10:01:12] Was the flogging the next day?

17 PRESIDING JUDGE MINDUA: [10:01:20](Interpretation) Prosecutor.

18 MS LUPING: [10:01:21] Mr President, just in fairness to the witness, we don't
19 want to confuse her. At the moment we're saying it's the next day, but there
20 hasn't been -- the prior question was about the number of days that the witness
21 was at the location where she was being held, she was held there for a number
22 of days and now we're saying it was the next day. My concern is that the
23 witness will be induced into some form of error and there needs to be a clearer
24 question put to her, including on timing.

25 MS SUTHERLAND: [10:01:54] I'm happy to move on, your Honour.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 PRESIDING JUDGE MINDUA: [10:01:58](Interpretation) Indeed. Let's
2 move forward.

3 MS SUTHERLAND: [10:02:01] If I could ask to turn to Defence binder tab 4,
4 and the ERN is [REDACTED] [REDACTED]
5 [REDACTED]

6 THE COURT OFFICER: [10:02:45](Interpretation) This is on channel evidence
7 1.

8 MS SUTHERLAND: [10:03:07] Given that the witness cannot read, I don't
9 propose to ask her to do so. It's simply for the foundation of the question.

10 MS SUTHERLAND:

11 Q. [10:03:21] Madam Witness, there is [REDACTED]
12 This [REDACTED] refers to [REDACTED] and his wife, [REDACTED]
13 This [REDACTED] also says that [REDACTED] and his wife were flogged.
14 And this is at page [REDACTED]

15 Is this referring to your husband?

16 PRESIDING JUDGE MINDUA: [10:04:40](Interpretation) Prosecutor.

17 MS LUPING: [10:04:41] Mr President, I think the question is unclear. We've
18 had a reference to [REDACTED] referring to an individual and the wife. I mean,
19 "Is this referring to your husband?"

20 The question needs to be clearer. Is the question, is the name referring to the
21 husband? I mean, at the moment, of course the witness has no idea about the
22 content of [REDACTED] But if the question could be rephrased so it's put more
23 clearly to the witness. I think it's confusing.

24 PRESIDING JUDGE MINDUA: [10:05:16](Interpretation) Prosecutor, you are
25 correct in principle, but I heard the name. The name was given, was it not?

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 Prosecutor.

2 MS LUPING: [10:05:33] Just to clarify my objection, Mr President. The name
3 is given, but then there's a reference to [REDACTED] and then the question was
4 put, Is this referring to your husband?

5 It's unclear. Are we referring to [REDACTED]? The name? The question
6 I think needs to be rephrased so that it's more -- it's clearer for the witness. It
7 could be confusing.

8 MS SUTHERLAND: [10:05:55]

9 Q. [10:05:56] Is [REDACTED] (Overlapping speakers)

10 PRESIDING JUDGE MINDUA: [10:05:59] (Interpretation) Please go ahead,
11 Ms Sutherland.

12 MS SUTHERLAND: [10:06:02] Forgive me, your Honour.

13 Q. [10:06:04] Is [REDACTED] the name of your husband?

14 A. [10:06:20] Yes.

15 Q. [10:06:22] And is a reference to his wife, [REDACTED], is it reasonable to
16 consider that that is you?

17 A. [10:07:21] Yes [REDACTED], but on the
18 official papers it's [REDACTED] Sometimes when we're young, we are given a
19 nickname as a child and people -- something people like, and I'm called [REDACTED]
20 But officially, I -- I answer to the name of [REDACTED] Even [REDACTED]
21 [REDACTED] who know him with the name of
22 [REDACTED] His -- the name people use for him is [REDACTED] That's the
23 way that everybody refers to him.

24 Q. [10:08:37] [REDACTED] and his wife were
25 flogged. Is this referring to the same incident about which we are concerned?

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 A. [10:09:15] It's indeed possible, because I was flogged.

2 Q. [10:09:25] [REDACTED]

3 [REDACTED] ?

4 A. [10:10:00] When?

5 Q. [10:10:09] Close to the time of your flogging.

6 A. [10:10:54] It's possible. I am --

7 THE INTERPRETER: [10:11:00] Something.

8 THE WITNESS: [10:11:01] -- so that there are things that I don't recall. It's

9 possible that he spoke to them, but I don't know. It's possible that

10 I had -- had to -- speak without knowing. I don't know.

11 PRESIDING JUDGE MINDUA: [10:11:23](Interpretation) Prosecutor.

12 MS CORBIN: [10:11:25](Interpretation) My colleague asked whether she

13 knew that her husband had spoken [REDACTED] but I don't think we've

14 established that his -- this has been established, that her husband did speak to

15 [REDACTED] Maybe this came from another witness.

16 PRESIDING JUDGE MINDUA: [10:11:55](Interpretation)

17 Ms Sutherland -- Madam Prosecutor.

18 MS LUPING: [10:12:03] And just to clarify it, Mr President, your Honours, if

19 we look [REDACTED] -- sorry, I would ask that this part not be translated by the

20 Songhai interpreter. But if you look [REDACTED] when there are [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 So, in fact, it's not clear at all that any of these -- the information comes from

24 the witness. And there's a reference to a description of what happens to the

25 couple. So, in fact, the information does not appear to come from the husband,

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 it comes instead from a third individual.
2 The witness has stated -- secondly, the witness has stated that she's not aware
3 of what may have been discussed between her and her husband in any event.
4 And thirdly, there's no indication that she's aware of anything [REDACTED]
5 And, in our submission, she should not be asked any further questions in
6 relation to this [REDACTED] No foundation for putting any additional questions has
7 been established.

8 PRESIDING JUDGE MINDUA: [10:13:07](Interpretation) Ms Sutherland, this
9 is confusing. [REDACTED] we talk of a husband who had
10 been contacted [REDACTED] In the next paragraph, we talk about another witness
11 and the witness now says that she doesn't know.
12 So I think we can now move on from this.

13 MS SUTHERLAND: [10:13:42] Your Honours, for clarity, I'm referring
14 specifically to the first paragraph on page [REDACTED]

15 PRESIDING JUDGE MINDUA: [10:14:06](Interpretation) That's correct. In
16 the first paragraph, it says the young man who was whipped [REDACTED]
17 But the witness is saying that she didn't know that.

18 MS SUTHERLAND: [10:14:32] [REDACTED] makes a reference to the husband
19 spending 48 hours at the building.

20 PRESIDING JUDGE MINDUA: [10:14:53](Interpretation) So ask a question
21 about the 48 hours, but I think she's already answered to that -- answered that
22 because she said she didn't see her husband until the day they left the building
23 and went to the location where they were punished.

24 MS SUTHERLAND: [10:15:10] Thank you, your Honour. [REDACTED] also
25 makes reference to the couple being able to escape the obligation of having to

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 leave the city for a year and I would be grateful for the opportunity to ask the
2 witness to comment on this.

3 PRESIDING JUDGE MINDUA: [10:15:39](Interpretation) Yes, that's fine.

4 MS SUTHERLAND: [10:15:42] Thank you, your Honour.

5 Q. [10:15:44] Madam Witness, [REDACTED] after your punishment,
6 you were free, and escaped the obligation of having to leave the city for a year.

7 A. [10:16:25] When they set us free -- when who set us free?

8 Q. [10:16:39] [REDACTED] makes reference to escaping the obligation of having
9 to leave the city for one year.

10 PRESIDING JUDGE MINDUA: [10:16:54](Interpretation) Prosecutor.

11 MS LUPING: [10:16:56] Mr President, we would just ask that it's made clear,
12 or at least the witness is asked whether she agrees with this contention.

13 Because at the moment, she may believe that this is a fact that's not contested.
14 She should first be asked what -- whether or not she agrees with it.

15 MS SUTHERLAND: [10:17:14] Forgive me, I'm waiting for the Songhai
16 interpretation and then I will ask that.

17 PRESIDING JUDGE MINDUA: [10:17:22](Interpretation) Ms Sutherland, I
18 didn't follow what you said.

19 MS SUTHERLAND: [10:17:26] I was waiting for the Songhai interpretation
20 and that's precisely what I'm going to ask her.

21 THE SONGHAI INTERPRETER: [10:17:38](Interpretation) Could you please,
22 could you please ask the question again.

23 PRESIDING JUDGE MINDUA: [10:17:49](Interpretation) No. We're going
24 to have Ms Sutherland's question.

25 Ms Sutherland, would you please put your question.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 MS SUTHERLAND: [10:17:57]

2 Q. [10:17:58] Madam Witness, [REDACTED] you were able to escape
3 the obligation of having to leave the city for a year. Do you agree with this?

4 A. [10:18:42] Something that's going to prevent what? I don't understand
5 what's just been said to me.

6 PRESIDING JUDGE MINDUA: [10:19:09](Interpretation) Prosecutor.

7 MS LUPING: [10:19:10] Mr President, could I propose that a simple question,
8 a simpler question be put to the witness and without reference [REDACTED]

9 It's not necessary. She can simply be asked the contention and then respond.

10 And then, if necessary, we can see what relevance, if any, [REDACTED]

11 PRESIDING JUDGE MINDUA: [10:19:39](Interpretation) Ms Sutherland.

12 Ms Sutherland, I think the Prosecutor is helping you there. [REDACTED] is good,
13 it's for the parties, it's for the record, but now please put a simple question to
14 the witness.

15 MS SUTHERLAND: [10:20:01]

16 Q. [10:20:07] If you were not flogged, would you have had to have left
17 Timbuktu for one year?

18 A. [10:20:48] To go where? How would I leave Timbuktu and leave my
19 family behind?

20 Q. [10:21:08] (Microphone not activated)

21 THE INTERPRETER: [10:21:13] Microphone, please, Counsel.

22 PRESIDING JUDGE MINDUA: [10:21:15](Interpretation) Microphone, please.

23 MS SUTHERLAND: [10:21:18]

24 Q. [10:21:18] Madam Witness, [REDACTED] your husband was judged
25 after spending 48 hours at the building. Do you agree with this time frame?

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 A. [10:22:18] The judgment, I don't know if it was -- I can't say whether it
2 was 48 hours. Forty-eight hours, I don't know what that represents in terms
3 of time.

4 Q. [10:22:39] Madam Witness, it's two days or two nights.

5 A. [10:23:03] I know that he was in their hands. He was held by them.
6 But as to a time frame, I can't say anything about that.

7 Q. [10:23:25] He was held by them from the time when you pretended to
8 faint. You agree?

9 PRESIDING JUDGE MINDUA: [10:23:43](Interpretation) Prosecution.

10 MS LUPING: Mr President, I think this is -- the question has been asked, it
11 has been answered. This is a repetitive line of questioning and it may simply
12 confuse the witness further. She's been extremely clear in her response.

13 MS SUTHERLAND: [10:23:59] I'm happy to move on, your Honour.
14 If we could turn to Defence binder tab 3, the MLI -- sorry, this is

15 [REDACTED]
16 [REDACTED] a photograph. Can this please be shown
17 to the witness. The middle photograph. Yes.

18 PRESIDING JUDGE MINDUA: [10:25:02](Interpretation) Court officer.

19 THE COURT OFFICER: [10:25:04](Interpretation) This document is available
20 on evidence 1 channel.

21 PRESIDING JUDGE MINDUA: [10:25:09](Interpretation) Thank you, court
22 officer.

23 MS SUTHERLAND: [10:25:13]

24 Q. [10:25:14] Madam Witness, can you see the photograph?

25 A. [10:25:19] Yes.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 Q. [10:25:27] It's a picture of a man in a blue shirt and a woman in a pink sari.

2 Do you recognise the people in this photograph?

3 A. [10:25:58] Yes.

4 Q. [10:25:59] Who are they?

5 A. [10:26:15] That's me, my child and my husband.

6 Q. [10:26:19] [REDACTED]

7 [REDACTED]

8 [REDACTED] ?

9 A. [10:27:06] I recognise that that's our photo, but I don't remember how it

10 was taken and I am aware [REDACTED]

11 Q. [10:27:43] Thank you, Madam Witness. I'd like to play you a video now.

12 And the ERN is [REDACTED] We'll play the video without sound. It

13 should be visible on evidence channel 2.

14 THE COURT OFFICER: [10:28:22](Interpretation) This will be on evidence

15 channel 2.

16 MS SUTHERLAND: [10:28:35]

17 Q. [10:28:36] Madam Witness, can you see an image in front of you?

18 A. [10:28:48] Yes.

19 Q. [10:28:53] My colleague will play it for a few seconds without sound.

20 A. [10:29:11] Okay.

21 Q. [10:29:19] It's seconds 00:03:28:00 up to 00:03:28:13. Forgive me, starting

22 at 00:03:28:13 and playing until 00:04:13:00.

23 (Viewing of the video excerpt)

24 MS SUTHERLAND: [10:30:57]

25 Q. [10:30:58] Madam Witness, do you recognise the people in those images

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 that were just played to you?

2 A. [10:31:31] The scene from today?

3 Q. [10:31:36] Yes, the scene that was just played to you on the video screen.

4 A. [10:32:03] I can recognise this scene. I can see my father-in-law, my
5 husband and the children around us.

6 Q. [10:32:19] Do you agree you can see yourself next to your husband when
7 he is speaking?

8 A. [10:32:39] Yes.

9 Q. [10:32:42] I will now play with sound.

10 (Viewing of the video excerpt)

11 MS SUTHERLAND: [10:34:03]

12 Q. [10:34:03] Madam Witness, were you able to understand what your
13 husband said?

14 A. [10:34:18] Yes.

15 Q. [10:34:24] Do you agree that he was referring to the same flogging as the
16 incident that you have been testifying about?

17 A. [10:34:58] Yes, in fact it was the same story, the same -- I am talking about
18 the same thing that he was talking about.

19 Q. [10:35:16] You agree that he stated that he was detained for two nights?

20 A. [10:35:36] In fact, he -- maybe we don't have the same way of counting,
21 but otherwise it is the same reality.

22 THE INTERPRETER: [10:36:04] The Songhai interpreter's answer was not
23 entirely clear.

24 MS SUTHERLAND: [10:36:24]

25 Q. [10:36:26] Do you agree that your husband said that he does not know the

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 names of the Islamists?

2 A. [10:36:58] If he says that he does not know their names, then I believe him
3 because these are people that we don't know from where we come from.

4 PRESIDING JUDGE MINDUA: [10:37:24](No interpretation)

5 MS LUPING: Mr President, could my learned friend please indicate where
6 precisely the husband stated that he did not know the names of the Islamists.

7 I'm struggling to find the reference. Perhaps if she could give that to us.

8 PRESIDING JUDGE MINDUA: [10:37:46](Interpretation) Ms Sutherland, the
9 Prosecutor is right in so saying. Where did you find that claim?

10 MS SUTHERLAND: [10:38:05] My colleague will endeavour to find that as
11 soon as possible. And I'll return to it.

12 PRESIDING JUDGE MINDUA: [10:38:24](Interpretation) Very well.
13 Please proceed.

14 MS SUTHERLAND: [10:38:38]

15 Q. [10:38:38] Madam Witness, do you agree that in that video, your husband
16 makes no reference to the BMS?

17 A. [10:39:25] In fact, I didn't follow the entirety of the message on the video.
18 As to whether he said it or not, I can't recall. I do know that he mentioned a
19 few details, but what he had to say or his utterances were not rendered in their
20 entirety in the video.

21 MS SUTHERLAND: [10:39:55] We'll return to this once the transcript has
22 been provided.

23 PRESIDING JUDGE MINDUA: [10:40:06](Interpretation) Very well.
24 Madam Prosecutor.

25 MS LUPING: [10:40:13] Mr President, I would ask that my next comments not

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 be translated in Songhai to the witness.

2 I would also make the observation, in fairness to the witness, she stated it
3 herself, it may not be everything or the entirety of actually what her husband
4 stated at the time. And we do note that this -- for this particular recording,
5 which we did disclose, it's a Prosecution item, we indeed can't state whether
6 this is a reflection of the entirety of the interview that was conducted with this
7 couple.

8 So in fairness to the witness, to simply state, You can't hear him mentioning the
9 BMS, I mean it's not fair to the witness in the sense it may not indeed reflect the
10 entirety of the record of the interview that day.

11 PRESIDING JUDGE MINDUA: [10:41:15](Interpretation) Ms Sutherland, you
12 have followed what the Prosecutor just said. I do believe that she's right.
13 Whatever the case may be, the witness has already answered, so we can move
14 on.

15 MS SUTHERLAND: [10:41:27] Moving on to the next video, it's the new
16 video that was disclosed late on the evening of -- on Wednesday evening. The
17 translation of the transcript has been provided by the Language Services
18 Section last night. The video is MLI-D28-0004-3798 and the translation of the
19 Songhai in French is MLI-D28-0004-3810.

20 PRESIDING JUDGE MINDUA: [10:42:23](Interpretation) Yes, Ms Sutherland.
21 I'm all ears.

22 Madam Prosecutor, you are on your feet, I see.

23 MS LUPING: [10:42:35] Mr President, I would simply ask again, out of
24 fairness to the witness, that before this be played to her, that she be asked
25 preliminary questions as to her knowledge of the conversation, what she

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 knows of it, to ascertain whether she has any personal knowledge of this item
2 before it's played to her.

3 MS SUTHERLAND: [10:42:53] And she will be, in accordance with protocol.
4 Mr President, we will play her a few seconds to ascertain her knowledge of the
5 content.

6 PRESIDING JUDGE MINDUA: [10:43:22](Interpretation) Yes, Madam
7 Prosecutor.

8 MS LUPING: [10:43:24] Mr President, that is our objection. She shouldn't
9 actually have it played to her until the relevant questions are put to her in
10 advance to determine whether she has actual knowledge of the conversation
11 that took place. It would not be appropriate, in our submission, that any of
12 this item or video item be played to her until the questions are asked and we
13 can determine whether she has personal knowledge of it to be able to respond
14 accordingly.

15 MS SUTHERLAND: [10:43:52] First, the requirement is -- Mr President, first,
16 the requirement is that we play the video without sound in order to establish
17 whether the witness recognises or has knowledge of the content. Not that she
18 was present.

19 Second, this has the status of a prior recorded statement. We are permitted, if
20 not obliged, to allow the witness to respond to evidence that we say may
21 impeach some of her current evidence.

22 PRESIDING JUDGE MINDUA: [10:44:42](Interpretation) Madam Prosecutor,
23 please take your seat.

24 This is the method that we have always applied.

25 Please, Ms Sutherland, show the video without the sound.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 MS SUTHERLAND:

2 Q. [10:45:05] Madam Witness, can you see the video on your screen?

3 A. [10:45:22] Yes, I can see it.

4 (Viewing of the video excerpt)

5 MS SUTHERLAND: [10:45:37]

6 Q. [10:45:38] Madam Witness, do you agree that that is your husband?

7 A. [10:45:55] Yes.

8 MS SUTHERLAND: [10:45:57] Mr President, in view of my lack of
9 understanding of Songhai - and, out of an abundance of fairness to the witness,
10 given that we're unable to identify which of the relevant parts - we propose to
11 play the entirety of the video with sound.

12 PRESIDING JUDGE MINDUA: [10:46:30](Interpretation) The French
13 interpretation, I wasn't able to follow everything.

14 Please, Ms Sutherland, what is your concern?

15 MS SUTHERLAND: [10:46:38] Because we do not speak Songhai, we cannot
16 accurately identify the relevant parts of the video. Out of fairness to the
17 witness, we propose to play the whole thing with sound.

18 PRESIDING JUDGE MINDUA: [10:47:04](Interpretation) Madam Prosecutor.

19 MS LUPING: [10:47:06] Mr President, we are aware of the Conduct of
20 Proceedings decision and the relevant provisions in relation to playing of audio
21 and video material. However, there is another issue, in the sense that it's not
22 sufficient that the witness identifies her husband. The witness is being asked
23 to comment on apparent comments made by her husband, and before she can
24 even be played that video footage, it's not sufficient that she recognises the
25 person, but that she's able to identify the event. She should be asked

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 questions first to determine her personal knowledge of the event.
2 The Defence is fully aware of the content of the conversation. They
3 themselves have disclosed a transcript and know precisely what is contained in
4 this short clip. We're all aware of it. We've all received the transcript of
5 what is contained in it. And, in our submission, it's not appropriate that she
6 be played the audio sound or that she be asked a single question until the
7 appropriate questions, the foundation questions are first put to her as to her
8 basis of knowledge, and whether she has any personal knowledge of the
9 conversation that took place between her and the person asking the questions.

10 PRESIDING JUDGE MINDUA: [10:48:34](Interpretation) Yes, Ms Taylor,
11 please.

12 MS TAYLOR: [10:48:36] Thank you, Mr President.

13 As you're well aware, having sat through weeks of testimony where
14 Prosecution witnesses were shown videos that they did not author, showing
15 incidents for which they were not present, and they were asked to comment on
16 the contents of those videos.

17 Now we cannot have one rule for the Prosecution and one rule for the Defence.
18 My learned colleague has established a foundation for showing this video, in
19 that the witness recognises her husband in the video. My learned colleague
20 has further established a foundation in that it is tantamount to a prior
21 statement from another witness. She is entitled to impeach this witness's
22 credibility with testimony from another witness.

23 Her husband has given an account of the events. Ms Sutherland must be
24 entitled to put that account to this witness in its original form so that she is not
25 paraphrasing, and in a form that is fair to the witness because it is a video

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 recorded in its entirety.

2 And given that the Prosecutor has raised objections to [REDACTED] raising
3 the possibility that they might not be the entire interview, it is only fair that the
4 Defence be allowed to present a video which is an entire interview.

5 Thank you.

6 PRESIDING JUDGE MINDUA: [10:50:20](Interpretation) Very well.

7 So please go ahead, Madam Prosecutor, and then we're going to very briefly
8 consult each other.

9 MS LUPING: [10:50:31] Mr President, the Prosecution is not asking for an
10 exception as such in terms of the rules and showing of audio-video materials.
11 That is not the point. Here, though, there is a very specific use to which the
12 Defence is seeking to put an audio recording of her husband to her and the
13 content of it. In fairness to the witness, to ensure that we have the appropriate
14 foundation established with her as to her knowledge of what he'll be
15 discussing, because we know what is contained in this audio clip, that she be
16 first asked initial questions as to her knowledge of the conversation that took
17 place, what occurred, the meeting that apparently took place, before it is
18 simply shown to her.

19 It is only fair to the witness that she be enabled to answer such questions.

20 We're not asking that it not necessarily be played. We would ask that the
21 appropriate questions first be put to her, in fairness to the witness.

22 PRESIDING JUDGE MINDUA: [10:51:35](Interpretation) Very well. The
23 Chamber shall confer.

24 (Trial Chamber confers)

25 PRESIDING JUDGE MINDUA: [10:54:57](Interpretation) There we are. The

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 Chamber has conferred.

2 Ms Sutherland, you have already shown a few seconds of this video to the
3 witness. Now you need to lay a foundation to ascertain whether the witness
4 knows the circumstances surrounding which the video was filmed. And once
5 you have laid that foundation, then you can enter into the crux of the matter,
6 the contents of the video.

7 In a certain sense, the Prosecutor is right.

8 Please go ahead.

9 MS SUTHERLAND: [10:55:58] Mr President, I will try, though this is a
10 deviation from the requirement that was imposed on Witness P-65.

11 Can the -- can we go to the --

12 PRESIDING JUDGE MINDUA: [10:56:36](Interpretation) You can move on to
13 another question and then you can revisit your strategy at a later stage.

14 MS SUTHERLAND: [10:56:50] Thank you, your Honour. We'll move to the
15 witness's husband's application to become a victim before this Court. That's
16 MLI-OTP-0073-0930.

17 PRESIDING JUDGE MINDUA: [10:57:15](Interpretation) Is that still in
18 private session?

19 MS SUTHERLAND: [10:57:19] Because we're discussing her husband, their
20 alleged detention and the day on which they were flogged, my understanding
21 of the scope - from discussing this with my learned colleagues for the
22 Prosecution - is that this will have to remain in private session. And for that I
23 beg your patience.

24 PRESIDING JUDGE MINDUA: [10:57:48](Interpretation) Please proceed.

25 Please proceed.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 THE COURT OFFICER: [10:58:15](Interpretation) The document is on
2 evidence 1.

3 MS SUTHERLAND: [10:58:30]

4 Q. [10:58:31] Madam Witness, are you aware that your husband applied to
5 be a victim at this Court?

6 A. [10:58:59] Do I know what?

7 Q. [10:59:03] That your husband applied to be a victim at this Court.

8 A. [10:59:37] Yes, I do know that he decided to come and recount what
9 happened to him and that I also came to say what happened to me. I know
10 something about that.

11 Q. [11:00:02] Are you --

12 PRESIDING JUDGE MINDUA: [11:00:06](Interpretation) Ms Sutherland, I do
13 not believe that the witness understood the question, but maybe the assistant to
14 the witness could answer.

15 Do you believe that the witness understood the question?

16 THE ASSISTANT: [11:00:24](Interpretation) No, I do not believe that is the
17 case.

18 PRESIDING JUDGE MINDUA: [11:00:27](Interpretation) There you are,
19 Ms Sutherland. The language assistant is saying that the witness did not
20 understand the question. Maybe you could rephrase.

21 Yes, please, Mr language assistant.

22 THE ASSISTANT: [11:00:40](Interpretation) In fact, it is up to the interpreters
23 to clarify between "victims" and "witnesses". These are two words where the
24 difference really has to be clear between victims and witnesses.

25 PRESIDING JUDGE MINDUA: [11:00:56](Interpretation) Yes, indeed. So

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 we're going to be giving the time to the interpreters to go and check what the
2 precise meaning of those two terms is, and we shall come back on this after the
3 break.

4 Ms Sutherland, it is now time for the break and I would like to know how
5 much time you still need, because we do have the public in the gallery. And
6 when we return, will we be in a position to go back into open session? And
7 how do you intend to organise yourself?

8 MS SUTHERLAND: [11:01:32] Your Honour, I'm not quite sure exactly how
9 many minutes we have remaining. I'll have to defer to your *greffières*.

10 THE COURT OFFICER: [11:01:44] The Defence has 58 minutes left.

11 MS SUTHERLAND: [11:01:48] I don't -- well, I don't know how -- quite how
12 much of that we'll take, given some of the challenges that we're facing in the
13 courtroom. I will over the break endeavour to structure my questioning such
14 that we can return into public session, if possible.

15 PRESIDING JUDGE MINDUA: [11:02:22](Interpretation) I suggest the
16 opposite. When we come back, you start with the questions in open session
17 and then we shall finish up in private session. Then I can announce to all
18 these people who are looking at us, who have been here for an hour and a half
19 without any sound at all, then I can announce to them what is going to be
20 unfolding. Do you agree with me?

21 MS SUTHERLAND: [11:02:48] I will do my very utmost, your Honour.
22 Though, of course, the nature of the content is sensitive.

23 PRESIDING JUDGE MINDUA: [11:03:10](Interpretation) I do understand
24 entirely, but when we come back, some of the first session, well, you need to
25 organise yourself to put that in open session and those reserved for private

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 session should be towards the end. And in so doing, we can protect the
2 witness and also respect the publicity of the hearing in respect to the public.
3 I'm going to make the announcement now before we take the break.
4 Madam courtroom officer, open session, please.
5 (Open session at 11.03 a.m.)
6 THE COURT OFFICER: [11:03:51] We're in open session, Mr President.
7 PRESIDING JUDGE MINDUA: [11:04:01](Interpretation) Thank you very
8 much, courtroom officer.
9 Now I would like to announce that we shall be taking a half an hour break.
10 Of course, the constraints of the proceedings mean that we have spent a good
11 part of this first session in private session. After this half an hour break, we
12 shall come back and we shall continue and start off at 11.30, we shall reconvene,
13 at 11.30, yes, and we shall be in open session when we so do, and that means
14 that the public will be able to follow part of the session, the upcoming session.
15 After which, we shall have to return to private session. In so doing, we shall
16 reconcile the protection of the witness and also that of the publicity of the
17 proceedings.
18 The hearing is suspended.
19 THE COURT USHER: [11:05:04] All rise.
20 (Recess taken at 11.05 a.m.)
21 (Upon resuming in open session at 11.33 a.m.)
22 THE COURT USHER: [11:33:32] All rise.
23 Please be seated.
24 PRESIDING JUDGE MINDUA: [11:33:57](Interpretation) The Court is now in
25 session.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 We will continue with Defence cross-examination and I will remind

2 Ms Sutherland that you have 57 minutes.

3 MS SUTHERLAND: [11:34:15] Thank you, your Honour. I have identified a
4 passage of questioning that we can put in public session. Unfortunately, to do
5 that immediately would be very much putting the cart before the horse. So I
6 propose to return to the questioning we were doing immediately before the
7 break in private session before moving into public session. It should take
8 not -- well, hopefully not more than 10 minutes.

9 PRESIDING JUDGE MINDUA: [11:35:01](Interpretation) Court officer,
10 private session, please.

11 (Private session at 11.35 a.m.)

12 THE COURT OFFICER: [11:35:11] We're in private session, Mr President.

13 PRESIDING JUDGE MINDUA: [11:35:15](Interpretation) Thank you very
14 much.

15 Ms Sutherland.

16 MS SUTHERLAND: [11:35:21]

17 Q. [11:35:22] Madam Witness, are you aware of the distinction between a
18 witness and a victim?

19 A. [11:35:38] People who have had something done to them or something
20 like that.

21 Q. [11:36:08] Is that your understanding of victim?

22 A. [11:36:31] How do you mean understand? What am I understanding?

23 MS SUTHERLAND: [11:36:41] Mr President, I see that the language assistant
24 would like to address us.

25 PRESIDING JUDGE MINDUA: [11:36:51](Interpretation) Mr assistant, please

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 go ahead.

2 THE ASSISTANT: [11:36:54](Interpretation) Could one word, for the
3 interpreter, they can paraphrase the word "victim". Perhaps they could
4 paraphrase it slightly differently in a longer way. Because it seems that the
5 term "victim" is difficult for her to understand. She doesn't seem to be able to
6 grasp that.

7 PRESIDING JUDGE MINDUA: [11:37:27](Interpretation) Songhai interpreters,
8 I believe you heard that. When you translate the word "victim" or the word
9 "witness", please be as explicit as possible in your interpretation. Thank you.
10 Ms Sutherland.

11 MS SUTHERLAND:

12 Q. [11:37:44] Well, perhaps I can provide the distinction. A witness is
13 somebody who provides evidence to this Court and a victim is somebody who
14 applies for reparations.

15 A. [11:38:45] Now I understand.

16 Q. [11:38:47] Thank you very much.

17 Madam Witness, are you aware that your husband applied to become a victim
18 before this Court?

19 A. [11:39:25] I know that my husband was a victim because I was a witness
20 to what happened to him. I know he is a victim.

21 MS SUTHERLAND: [11:39:42] Could we show the witness Defence tab 10,
22 MLI-OTP-0073-0930 at page 0938.

23 PRESIDING JUDGE MINDUA: [11:40:23](Interpretation) Mr assistant.

24 THE ASSISTANT: [11:40:27](Interpretation) Could we please have the
25 reference again, please.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

- 1 THE COURT OFFICER: [11:40:32](Interpretation) It's also on evidence 1.
- 2 MS SUTHERLAND: [11:40:38]
- 3 Q. [11:40:40] Madam Witness, are you able to see the image on your screen?
- 4 Songhai interpretation, please.
- 5 THE ASSISTANT: [11:40:59] I think is official letter.
- 6 MS SUTHERLAND: [11:41:06]
- 7 Q. [11:41:06] Do you recognise this is your husband's ID card?
- 8 A. [11:41:28] Yes, I see what's there, but I don't know what it is. I just see
- 9 his face.
- 10 Q. [11:41:40] You recognise your husband in the photograph?
- 11 A. [11:42:01] Yes, I see the physical characteristics. Even though it's not
- 12 a -- even if the photo is a bit changed, I can see that it is his photo.
- 13 Q. [11:42:17] Madam Witness, this is attached to your husband's application
- 14 to become a victim before this Court.
- 15 MS SUTHERLAND: [11:42:24] My -- with the leave of the Court, to spare the
- 16 Court my French, my learned colleague will read a passage from page 0944.
- 17 PRESIDING JUDGE MINDUA: [11:42:46](Interpretation) Ms Sutherland, can
- 18 you not just ask the question directly? I don't know whether it's necessary to
- 19 read it. You remember paragraph 52 of our directives about the conduct of
- 20 trials.
- 21 MS SUTHERLAND: [11:43:03] Well, unfortunately, this is written
- 22 in -- handwritten in French and the witness is unable to read.
- 23 PRESIDING JUDGE MINDUA: [11:43:20](Interpretation) Please proceed.
- 24 MS SUTHERLAND: [11:43:22] With your permission, Ms Marinier-Doucet
- 25 will do the reading, as a native French speaker.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 PRESIDING JUDGE MINDUA: [11:43:40](Interpretation) Is this pertinent to
2 the cross-examination of this witness?

3 MS SUTHERLAND: [11:43:47] This contains material explaining the basis for
4 the witness's husband's application to become a victim. It also provides the
5 foundation for playing the video that we were discussing before the break.

6 PRESIDING JUDGE MINDUA: [11:44:10](Interpretation) Then let's do that
7 and save some time.

8 MS SUTHERLAND: Thank you.

9 MS DOUCET: [11:44:19](Interpretation) "I am [REDACTED] They
10 came to find me in front of the door of my companion. They questioned me
11 about our relationship and I told them she was my younger sister. They
12 asked me the name of my father. When I was alone without my companion,
13 they took me to one side of the vehicle on the driver's side. During this time,
14 other rebels were questioning my companion about the name of her father and
15 they understood that it was not the same father. They then arrested me, took
16 me to prison for two days and on the third day, my companion and I were
17 flogged. My companion was also flogged. They arrested us in [REDACTED]
18 and the flogging took place in a different area, Sankoré."

19 MS SUTHERLAND: [11:46:38]

20 Q. [11:46:38] Madam Witness, you heard that your husband said in this
21 application that he was detained for two days and on the third day, he was
22 flogged. Is that right?

23 THE INTERPRETER: [11:47:10] Correction from the Songhai booth --

24 PRESIDING JUDGE MINDUA: [11:47:22](Interpretation) Thank you.
25 Prosecutor.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 MS LUPING: [11:47:24] Mr President, asked and answered. We've had [REDACTED]
2 [REDACTED] already presented to the witness where I believe she was asked almost
3 an identical question from them, and she already provided a response as to
4 what she knows and what she doesn't know. And it was a clear response that
5 time as well.

6 I'm not sure how many times repeating it assists, but it's been asked and
7 answered.

8 MS SUTHERLAND: [11:47:52]

9 Q. [11:47:53] Madam Witness, is the --

10 PRESIDING JUDGE MINDUA: [11:47:58](Interpretation) I agree with the
11 Prosecutor, Ms Sutherland, the witness has already replied to this question, but
12 do go ahead.

13 MS SUTHERLAND: [11:48:05]

14 Q. [11:48:06] Madam Witness, is the reference to a companion a reference to
15 you?

16 A. [11:48:49] Yes, it was me. And I have already told you about when they
17 came and found us in front of the house. Do you want me to repeat this to
18 you?

19 Q. [11:49:13] We just want to ascertain that you agree that, according to your
20 husband, you and he were flogged on the day three, day one being when you
21 fainted and he was first taken away.

22 PRESIDING JUDGE MINDUA: [11:50:00](Interpretation) Prosecutor.

23 MS LUPING: [11:50:01] Objection, Mr President. I mean, this is a compound
24 and a confusing question.

25 PRESIDING JUDGE MINDUA: [11:50:14](Interpretation) I agree. It's a

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 compound question and she's already answered this question already. She's
2 explained the number of days. I really don't know what reply you're looking
3 for, Ms Sutherland. Please move on to something else. And then I think it's
4 time to move back into public session.

5 MS SUTHERLAND: [11:50:40] Mr President, now might be the time in fact to
6 play the video that we were discussing, received from the representatives for
7 victims on Wednesday evening.

8 PRESIDING JUDGE MINDUA: [11:51:07](Interpretation) The one we were
9 dealing with earlier on, the one before the break?

10 MS SUTHERLAND: [11:51:14] Yes, your Honour.

11 PRESIDING JUDGE MINDUA: [11:51:17](Interpretation) But for this video
12 we first needed, as we discussed, to see whether the witness was aware of the
13 circumstances in which the video was filmed. We needed to agree the basis
14 because we have explained this is a special witness and we need to take certain
15 measures.

16 MS SUTHERLAND: [11:51:46] We are not seeking to use the video for
17 the -- sorry, we're not seeking to ask the witness to authenticate the video. We
18 are seeking to use the video which is attached to the husband's victim
19 application in order to impeach the witness. Because of that, we do not have
20 to establish that the witness knew about the meeting. It is sufficient to
21 establish that she recognises her husband's -- husband and knows about the
22 issues that he is discussing.

23 PRESIDING JUDGE MINDUA: [11:52:34](Interpretation) Then ask the
24 witness directly. Because this video, it's related to the husband. It's not a
25 video of the wife.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

- 1 MS TAYLOR: [11:52:57] Mr President --
- 2 PRESIDING JUDGE MINDUA: (Overlapping speakers)
- 3 MS TAYLOR: -- with the greatest respect, I do have paragraphs 51 and 52 of
- 4 the decision on the Conduct of the Proceedings in front of me. Paragraph 51
- 5 says that the non-calling party shall put forward any facts or evidence that
- 6 conflicts with the credibility of the witness to give the witness an opportunity
- 7 to respond. Paragraph 52 then obliges us to use the original of that evidence.
- 8 That is what Ms Sutherland is doing. She's attempting to impeach this
- 9 witness with other evidence. It's not necessary for her to authenticate
- 10 impeachment evidence. This witness can't and shouldn't be required to
- 11 authenticate the evidence used to impeach her. And that requirement would
- 12 effectively mean that the Defence would be prevented from impeaching any
- 13 witness with materials that do not originate from the witness or for which the
- 14 witness is not in a position to authenticate.
- 15 So Ms Sutherland is acting in accordance directly with paragraphs 51 and 52 of
- 16 the decision.
- 17 MS SUTHERLAND: [11:54:07] Mr President, in order to establish with the
- 18 witness whether she recognises her husband, and indeed recognises that about
- 19 which he is talking, it will be necessary to show her a short clip of the video.
- 20 We can do so without sound initially, but of course for her to understand that
- 21 about which he is talking, she will have to hear the Songhai, unless we read
- 22 some of the French transcript to her and have it interpreted.
- 23 PRESIDING JUDGE MINDUA: [11:54:57](Interpretation) Prosecutor.
- 24 MS LUPING: [11:54:58] Mr President, to be clear, we're not objecting per se to
- 25 the playing of the audio-video clip, but there is a question that could simply be

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 put from the outset. We can, without trying to guess what the Defence
2 strategy is, on what they are going to be putting to her, there is a question that
3 could be put to her about her knowledge; including relating to the content of
4 the discussions that were held between her husband and the individuals
5 shown in the video. And that will provide her an opportunity.

6 The Defence is stating that they are wishing to pose it for the purposes of
7 impeachment, but she hasn't actually been asked the preliminary question yet
8 before we get to the stage of impeachment.

9 PRESIDING JUDGE MINDUA: [11:55:47](Interpretation) Ms Sutherland.

10 MS SUTHERLAND: [11:55:57] The discussion relates to the flogging.

11 PRESIDING JUDGE MINDUA: [11:56:07](Interpretation) In that case, let us
12 proceed.

13 MS SUTHERLAND: [11:56:13] Thank you, Mr President.

14 THE COURT OFFICER: [11:56:26](Interpretation) The video will be shown on
15 channel -- evidence channel 2.

16 PRESIDING JUDGE MINDUA: [11:56:38](Interpretation) Without sound.

17 MS SUTHERLAND: [11:56:40]

18 Q. [11:56:41] Madam Witness, are you able to identify the person in this
19 image?

20 A. [11:56:56] Yes, I can.

21 Q. [11:56:58] Who is it?

22 A. [11:57:09] It's my husband.

23 Q. [11:57:13] We will play a few seconds with sound.

24 PRESIDING JUDGE MINDUA: [11:57:24](Interpretation) Without sound.

25 MS SUTHERLAND: [11:57:28] But the issue is that, only by virtue of hearing

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 the Songhai, will the witness be able to determine that this relates to an
2 incident about which she knows.

3 PRESIDING JUDGE MINDUA: [11:58:03](Interpretation) Go ahead.

4 Court officer, with sound, please.

5 (Viewing of the video excerpt)

6 THE INTERPRETER: [11:58:45](Interpretation of the video excerpt)

7 [REDACTED] I've come today to see whether you can talk to us
8 about what happened when those people came and then just tell us what
9 happened, what happened to you.

10 Yes.

11 I want you to tell me all of that.

12 From the time people came.

13 Yes.

14 From their arrival, they found me standing at the women's door. Yes.

15 They asked me: What are you doing there? I answered that it's my little
16 sister and I wanted to bring in some coal.

17 Yes.

18 They said: Is that your little sister? We were arrested and I was on the point
19 of taking a barrel inside.

20 Yes.

21 They called me to the other side.

22 Yes.

23 The driver's side.

24 Yes.

25 They asked me what is the name of my father and I gave them the name of the

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 woman's father.

2 MS SUTHERLAND: [11:59:59]

3 Q. [12:00:00] Madam Witness, do you agree that your husband is talking
4 about the same incident?

5 A. [12:00:20] That's the same thing as I told you the day before yesterday.
6 That's, that's the same story that I told. He told it exactly the same way.

7 Q. [12:00:52] We'll continue.

8 PRESIDING JUDGE MINDUA: [12:01:06](Interpretation) Ms Sutherland,
9 we've heard the answer. What else are we going to ask about this? Time is
10 passing.

11 MS SUTHERLAND: [12:01:16](Overlapping speakers) We've established her
12 knowledge, Mr President. Out of fairness to the witness, because we're
13 unable to identify exactly where the relevant parts are, we have to play the
14 whole video.

15 PRESIDING JUDGE MINDUA: [12:01:40](Interpretation) Ask, ask your
16 question. What is your aim here? Ask the question, the witness is here.
17 She can give a reply. Whatever the case may be, it is not the witness who is
18 speaking, it is the husband.

19 MS SUTHERLAND: [12:02:03] And without translating this to the witness.
20 The witness -- the witness's husband states that they took him to the prison,
21 where they locked him up for two nights. That's the relevant part that we
22 wish the witness to hear and to be afforded the opportunity to comment on.

23 PRESIDING JUDGE MINDUA: [12:02:32](Interpretation) Madam Prosecutor,
24 there's no point in getting to your feet.

25 Ms Sutherland, I'm not going to authorise this question once again. We've

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 been talking about this for two days now. Madam Witness has already
2 explained on a number of occasions, two, three days, and what she means by
3 that, and what her husband means by that.
4 What are you going to -- what are you going to say now? If you say two days,
5 she's going to answer you in the same way. She's going to say that's not -- I
6 don't -- that's not my way of counting. And then when -- and when she talks
7 about 48 hours, two days, you know, you just need to move on.

8 MS SUTHERLAND: [12:03:07] Mr President, we can now (Overlapping
9 speakers)

10 PRESIDING JUDGE MINDUA: [12:03:13](Interpretation) If your case is to say
11 that you're talking about two days and the husband talked about three, then
12 put that question. But to my mind, she's already answered.

13 MS SUTHERLAND: [12:03:23] Mr President, I'm happy to move on. I'm also
14 happy to request to go into public session.

15 PRESIDING JUDGE MINDUA: [12:03:36](Interpretation) We are already in
16 private session. Ah, okay, right. Yes. Very well.

17 Madam courtroom officer, open session, please.

18 (Open session at 12.03 p.m.)

19 THE COURT OFFICER: [12:03:59] (Interpretation) We are in open session,
20 Mr President.

21 PRESIDING JUDGE MINDUA: [12:04:05](Interpretation) Thank you very
22 much.

23 Ms Sutherland, please.

24 MS SUTHERLAND: [12:04:07] I'm waiting for a precise reference to be found,
25 but ...

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 Q. [12:04:13] Madam Witness, yesterday you testified that you recalled a
2 meeting in Timbuktu where somebody showed you a video of the incident
3 about which we're concerned.

4 A. [12:05:35] I did not --

5 THE INTERPRETER: [12:05:37] Inaudible.

6 THE WITNESS: [12:05:37] -- the video in Timbuktu. I said that when I came
7 here, those people I met in Timbuktu, once I arrived here, I was shown a video
8 and that is when I understood that those were the same people that I had met.

9 Otherwise, we're not talking here about journalists. I didn't -- talking

10 about -- I didn't talk about journalists. When I was shown the video [REDACTED]

11 [REDACTED] I understood that it was the same person or people whom I had met

12 [REDACTED]

13 Q. [12:06:16] Could we show video MLI-OTP-0039-0574. And this video
14 should be shown privately.

15 THE COURT OFFICER: [12:06:44] Would it be played without sound?

16 MS SUTHERLAND: [12:06:48] Yes.

17 THE COURT OFFICER: [12:06:51] We can remain in open session then.

18 MS SUTHERLAND: [12:06:53] Only for the purpose of ascertaining her
19 knowledge of the contents and then played with sound.

20 Q. [12:07:20] Madam Witness, can you see an image on your screen?

21 A. [12:07:37] Yes, I can see it.

22 Q. [12:07:42] We'll play it without sound until the 17-second mark.

23 (Viewing of the video excerpt)

24 MS SUTHERLAND: [12:08:18]

25 Q. [12:08:21] Madam Witness, is this you?

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 A. [12:08:41] That was the video I was talking about, when I said that I'd
2 seen it here.

3 Q. [12:08:54] Is the other person we just saw Mr A? Using the pseudonym
4 discussed previously.

5 A. [12:09:05] Yes, that's him.

6 THE INTERPRETER: [12:09:38] The rest of the Songhai interpreter's response
7 is difficult to understand.

8 MS SUTHERLAND: [12:09:46] We'll now play the video with sound, from the
9 beginning until the 01:05 mark.

10 THE COURT OFFICER: [12:10:07] The video cannot be played with sound in
11 open session if it's a confidential item.

12 MS SUTHERLAND: [12:10:18] Can the sound be cut? No.

13 Well, in that case, Mr President, may we move into private session just for the
14 purpose of playing this clip?

15 PRESIDING JUDGE MINDUA: [12:10:39](Interpretation) Could we go into
16 private session, please, courtroom officer.

17 (Private session at 12.10 p.m.)

18 THE COURT OFFICER: [12:11:06] We are in private session and the sound is
19 enabled.

20 PRESIDING JUDGE MINDUA: [12:11:12](Interpretation) Thank you very
21 much.

22 (Viewing of the video excerpt)

23 THE INTERPRETER: [12:11:43] Message from the English booth: We do not
24 have the transcript.

25 (Viewing of the video excerpt)

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

- 1 THE INTERPRETER: [12:12:33] Message from the English booth: Could
2 counsel please indicate exactly where we are to find this part of the transcript,
3 please.
- 4 MS SUTHERLAND: [12:12:48] For the interpreters, the reference is just
5 coming. Thank you.
- 6 THE INTERPRETER: [12:12:53] Obligated. Thank you.
- 7 MS SUTHERLAND: [12:13:01] Mr President, we can return into open session.
- 8 PRESIDING JUDGE MINDUA: [12:13:09](Interpretation) Open session,
9 please, madam courtroom officer.
10 (Open session at 12.13 p.m.)
- 11 THE COURT OFFICER: [12:13:23] We are back in open session, Mr President.
- 12 PRESIDING JUDGE MINDUA: [12:13:31](Interpretation) Thank you very
13 much.
- 14 Ms Sutherland.
- 15 MS SUTHERLAND: [12:13:34]
- 16 Q. [12:13:34] Madam Witness, you agree that the woman showed you a
17 video of the incident in this meeting?
- 18 A. [12:14:13] I accept that I did see the video during the meeting, or what?
- 19 Q. [12:14:22] Yes, that she showed you the video and then she asked you
20 questions about it afterwards.
- 21 A. [12:14:40] I saw the video, but now I can't tell you whether it's the same
22 person.
- 23 Q. [12:15:00] The woman in the image right now, is this the woman who
24 questioned you?
- 25 A. [12:15:25] Well, I don't know because they all look much the same. I

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 really don't know.

2 Q. [12:15:34] Do you accept that that -- sitting next to her, are you and Mr A?

3 A. [12:16:08] Yes, I can see that we are seated next to her. It took place in
4 our house.

5 Q. [12:16:20] Did she film -- or did the people there film the whole meeting
6 with you and your husband -- sorry, Mr A?

7 A. [12:16:58] What, that small passage --

8 THE INTERPRETER: [12:17:05] Unintelligible.

9 THE WITNESS: [12:17:08](Interpretation) -- or what?

10 MS SUTHERLAND: [12:17:18]

11 Q. [12:17:19] We'll move on to the 15 to 16-minute mark and request that this
12 be played without sound.

13 (Viewing of the video excerpt)

14 MS SUTHERLAND: [12:18:09]

15 Q. [12:18:10] Madam Witness, can you see the image on your screen?

16 A. [12:18:25] Yes, I can see them.

17 (Viewing of the video excerpt)

18 MS SUTHERLAND: [12:19:29]

19 Q. [12:19:30] Madam Witness, do you recall meeting any of these people?

20 A. [12:19:53] Which people?

21 Q. [12:19:55] The people shown clearly in the footage that you were just
22 shown.

23 A. [12:20:32] In the images that I can see, I can't really distinguish between
24 the faces of the people.

25 Q. [12:20:47] In the image you can see right now, one of the faces is very

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 clear and the others are blurred out. Do you remember meeting this person or
2 the other people shown previously?

3 A. [12:21:25] Yes, I can see the gentleman there, but I don't know him.

4 Q. [12:21:33] Returning to minute 15 at the 7 -- sorry, at the 15:07 mark, we'll
5 play until the 15:15 mark without sound, please.

6 (Viewing of the video excerpt)

7 MS SUTHERLAND: [12:22:11]

8 Q. [12:22:12] When you were questioned, were you shown pictures in the
9 same way that people were shown pictures in those images?

10 A. [12:22:46] When was this?

11 Q. [12:23:02] Madam Witness, I'm asking about any of the times you were
12 questioned about what happened in 2012.

13 PRESIDING JUDGE MINDUA: [12:23:35](Interpretation) Madam Prosecutor,
14 please.

15 MS LUPING: [12:23:38] Just two points, Mr President. I'm just concerned
16 that we are in public session. I'm not sure how the witness is going to answer
17 or respond to this, but I'm just concerned about her identifying herself, number
18 one.

19 And number two, just to assist the witness, perhaps if my learned friend could
20 explain to her when who is questioning her. She's already explained different
21 individuals questioning her. It's just to avoid confusion as well. Thank you.

22 PRESIDING JUDGE MINDUA: [12:24:14](Interpretation) Ms Sutherland.

23 MS SUTHERLAND: [12:24:15]

24 Q. [12:24:16] Madam Witness, the image we saw previously showing you
25 and Mr A with a lady in your house, did she question you in this way, showing

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 you pictures?

2 A. [12:25:48] In fact, I don't recall because there is a problem. Were I to be
3 educated, I would not have forgotten certain details. But because I am not
4 educated, there are many details that I forget what happened to me. I can't
5 remember everything. There are many details that I have forgotten. Because
6 if I knew how to write, then I could at least taken notes in order not to forget.

7 Q. [12:26:25] Replay from the 16:07 mark until the 16:36 mark please,
8 without sound.

9 (Viewing of the video excerpt)

10 MS SUTHERLAND: [12:27:25]

11 Q. [12:27:25] Madam Witness, have you seen this footage before?

12 A. [12:27:39] No.

13 Q. [12:27:45] Madam Witness, you've told us that -- just now, that you
14 cannot remember everything and there are many details that you have
15 forgotten. Do you find being (Overlapping speakers)

16 Do the videos and photographs you are shown help you remember?

17 A. [12:28:38] Whatever the case may be, this video that I have before me I do
18 not recall. I don't even recall when I saw it for the first time.

19 THE INTERPRETER: [12:29:05] Correction: Where I saw it for the first time.

20 MS SUTHERLAND: [12:29:18]

21 Q. [12:29:21] Madam Witness, in your interview with the Prosecution at
22 MLI-OTP-0046-8881 at 8887, and that's paragraph 25.

23 Mr President, I'm afraid I'll have to ask very briefly to go into private session.
24 I'm very conscious of the time.

25 PRESIDING JUDGE MINDUA: [12:30:06](Interpretation) Madam courtroom

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 officer, private session, please.

2 (Private session at 12.30 p.m.)

3 THE COURT OFFICER: [12:30:15] We are in private session.

4 PRESIDING JUDGE MINDUA: [12:30:24](Interpretation) Thank you very
5 much.

6 Ms Sutherland.

7 MS SUTHERLAND: [12:30:46] Forgive me, one moment.

8 (Counsel confers)

9 MS SUTHERLAND: [12:30:55] Mr President, the witness statement is in
10 French, so again I will ask Ms Marinier-Doucet to read, just for time purposes
11 and clarity.

12 Paragraph -- starting at paragraph 24.

13 PRESIDING JUDGE MINDUA: [12:31:29](Interpretation) Prosecutor.

14 MS LUPING: [12:31:30] Just to assist my learned friends, it's actually at page
15 8885 that we start with paragraph 24. It's not 8887.

16 MS SUTHERLAND: [12:31:43] Thank you very much.

17 MS DOUCET: [12:31:46] (Interpretation) '██████████' was in the car
18 completely behind. We were both in the vehicle. I was behind the driver in
19 the second row of seats and ██████████ was at the back of the vehicle in the
20 fourth row of seats. They took us to their office.

21 Once we arrived there, which was at the BMS, they made my mother sit
22 outside in front of the door of the BMS and then they took me into the judge's
23 office. I know the BMS from the time before the town was spoiled. Before it
24 was called BMS, but they used it as a place to deliver their sentences."

25 THE WITNESS: [12:33:33](Interpretation) I've already told this part of the

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 story. Do I need to come back to it?

2 MS SUTHERLAND: [12:33:38]

3 Q. [12:33:39] No, Madam Witness, I just want to confirm that you accept that
4 on day one, your husband was taken in the evening and you pretended to faint.
5 Yes or no?

6 A. [12:34:10] Yes.

7 Q. [12:34:12] That the next day you were taken to the -- you were collected
8 with your husband, and taken to the office of the judge in a building that you
9 recognised as being the building where judgments were issued?

10 PRESIDING JUDGE MINDUA: [12:34:31](Interpretation) Prosecutor.

11 MS LUPING: [12:34:33] For the second contention, "... the next day you were
12 collected with your husband, and taken to the office of the judge in a building
13 that you recognised as ... the building where judgments were issued."

14 Well, first, it's two contentions in one. But could we please have the reference
15 to where the witness stated that in her testimony? We don't have that
16 reference. Please. We're not -- that doesn't align with our recollection of
17 what the witness actually stated in her testimony.

18 MS SUTHERLAND: [12:35:10] The witness said it earlier.

19 PRESIDING JUDGE MINDUA: [12:35:12](Interpretation) Ms Sutherland, the
20 Prosecutor is correct.

21 MS SUTHERLAND: [12:35:47]

22 Q. [12:35:47] Madam Witness, you accept that on the day after, you were
23 taken *dans le bureau du juge*?

24 A. [12:36:52] That's what I said the day before yesterday. It's what I said
25 yesterday. I repeated the same thing. I'm here to tell the truth, the whole

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 truth and nothing but the truth.

2 Q. [12:37:09] Madam Witness, do you accept that the day after that was the
3 day that you received the judgment and were flogged?

4 PRESIDING JUDGE MINDUA: [12:37:24](Interpretation) Prosecutor.

5 MS LUPING: [12:37:25] Mr President, it's not clear if the Defence is saying
6 that this is what the witness has already stated. But we've had the same line
7 of questions repeated, I don't know, countless occasions. This has been asked,
8 it has already been answered on a number of occasions already. And it's clear
9 that the witness is not understanding why she's being asked repetitive
10 questions too.

11 MS SUTHERLAND: [12:37:53] Mr President, I'm seeking to conclude with a
12 (Overlapping speakers)

13 PRESIDING JUDGE MINDUA: [12:37:59](Interpretation) Yes, it is the time to
14 conclude.

15 MS SUTHERLAND: [12:38:01] -- with a synopsis, a very clear day one, day
16 two, day three, to establish the timeline. The witness is free to agree or
17 disagree.

18 PRESIDING JUDGE MINDUA: [12:38:20](Interpretation) There we're going
19 to be repeating the same story, day one, day two, day three and it's not
20 different for ...

21 Ms Taylor, we shouldn't be repeating this about the days.

22 MS TAYLOR: [12:38:43] Mr President, earlier the Prosecution asserted that
23 the phrase "the next day" was not in the evidence. They're referring to the
24 transcripts. But if they had looked at her statement, paragraph 22, it clearly
25 states in French "*le lendemain*".

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Private Session)

ICC-01/12-01/18

1 So I believe that Ms Sutherland should be entitled to address this with the
2 witness - and I hope this is not being interpreted to the witness - but we have a
3 chronology in her statement that she signed which has day one, her fainting.
4 *Le lendemain*, the next day, her being taken with her husband to the office of the
5 judge.

6 So the Defence should be entitled to put that to the witness. That's a right that
7 we possess that's set out in the decision on the conduct of the proceedings, that
8 if there's inconsistent evidence --

9 PRESIDING JUDGE MINDUA: [12:39:42](Interpretation) It's your right,
10 Ms Taylor, but we've had the answer to this question several times. The first
11 day she fainted, the second day she was taken, but it's not -- that was not the
12 day, the second day, that the verdict was passed. She said that several times.
13 And there's no point in asking the same question again and again. She's
14 getting impatient. You're asking the same question all the time.
15 So please conclude summary. There's no point in constantly asking the same
16 question.

17 MS SUTHERLAND: [12:40:25] Mr President, that was my concluding
18 summary.

19 PRESIDING JUDGE MINDUA: [12:40:37](Interpretation) Thank you. You
20 see that the Chamber has been patient. It is now 12.40.
21 Public session, please, court officer.

22 MS SUTHERLAND: [12:40:57] Can the witness please confirm for one last
23 time --

24 (Open session at 12.41 p.m.)

25 THE COURT OFFICER: [12:41:03] We're in open session.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 PRESIDING JUDGE MINDUA: [12:41:10](Interpretation) Ms Sutherland, we
2 are in public session, so please come to a conclusion.

3 MS SUTHERLAND: [12:41:16]

4 Q. [12:41:17] Madam Witness, can you confirm that it was on the third day
5 that you received the judgment?

6 A. [12:43:01] It's, it's really as I told you. Perhaps we don't discuss things in
7 the same way. The events took place as I recounted them. And we count the
8 nights, and if we count from the nights, it was three days. So it was three -- so
9 it was the third day that we were flogged. And now on your side, I don't
10 know how you count these things, but on the -- on the video, it's the same thing.
11 If we talk to the video, it's a number of things that have been
12 counted -- counted the nights, it was three nights. I can only tell you the
13 truth.

14 PRESIDING JUDGE MINDUA: (Overlapping speakers)

15 MS SUTHERLAND:

16 Q. [12:44:08] Thank you very much, Madam Witness. Thank you for
17 answering my questions.

18 Mr President, your Honours, I have no further questions.

19 PRESIDING JUDGE MINDUA: [12:44:23](Interpretation) Thank you,
20 Ms Sutherland.

21 Ms Taylor, you are on your feet. What is happening?

22 MS TAYLOR: [12:44:28] Mr President, I don't intend to ask any questions.

23 It's more a matter of whether I can have an opportunity to address the Bench in
24 relation to the email that was sent in the middle of this witness's testimony
25 concerning the scheduling of the next witness.

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 So if there would be an opportunity to do so, before we break.

2 PRESIDING JUDGE MINDUA: [12:45:04](Interpretation) I would first like to
3 allow the witness to leave.

4 Madam Witness, this brings us to the end of your testimony.

5 THE WITNESS: [12:45:28](Interpretation) Okay.

6 PRESIDING JUDGE MINDUA: [12:45:31](Interpretation) We would like to
7 thank you again for having helped us by giving very clear answers to the
8 questions that were put to you. The Chamber is particularly grateful for your
9 availability, for your kindness and for your patience.

10 THE WITNESS: [12:46:23](Interpretation) I would also like to thank you for
11 having given me the occasion to have been a witness without being afraid of
12 anything that I heard.

13 PRESIDING JUDGE MINDUA: [12:46:52](Interpretation) I wish you a good
14 return to your home and hope that all is well. Thank you very much.

15 Court officer, could you please escort the witness from the courtroom.

16 (The witness is excused)

17 PRESIDING JUDGE MINDUA: [12:47:24](Interpretation) Ms Taylor, can we
18 continue in public session?

19 MS TAYLOR: [12:47:28] Yes, Mr President.

20 PRESIDING JUDGE MINDUA: [12:47:33](Interpretation) Please go ahead.

21 MS TAYLOR: [12:47:34] Thank you, Mr President.

22 As the Chamber is well aware, our client continues to be participating via
23 video link. This continues to impinge upon our ability to consult with him.

24 So, whereas the Chamber determined that it was appropriate to start with this
25 witness, the one that we've currently heard, so as not to prolong her stay in the

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 Hague, we do need to know at what point we will have time to meet with our
2 client in person in order to prepare for the coming witnesses, given that there's
3 not just the one coming this afternoon, but another one coming at the end of
4 next week.

5 So in terms of our ability to meet with our client and our ability to schedule
6 consultations with him, it would be helpful for us to know that, and to ensure
7 that we will have an effective ability to fully consult with him in relation to not
8 just the coming witness, but the one coming up.

9 PRESIDING JUDGE MINDUA: [12:48:37](Interpretation) So what is your
10 request in concrete terms?

11 MS TAYLOR: [12:48:41] Given the difficulties of communicating with our
12 client via telephone, we would like to know if there will be a break between the
13 next two witnesses, which will allow us to consult with our client, once it is
14 possible to have in-person visits again.

15 PRESIDING JUDGE MINDUA: [12:49:08](Interpretation) I see no reaction
16 from the side of the Prosecution.

17 MS LUPING: [12:49:13] Mr President, your Honours, we're in your hands.
18 We have no objection obviously to the Defence being able to consult with their
19 client in relation to the upcoming witness. The Prosecution is ready to
20 proceed. We're simply in your hands as to when you consider it's most
21 appropriate for the next witness to be called. But the Prosecution is ready.

22 PRESIDING JUDGE MINDUA: [12:49:41](Interpretation) We're just going to
23 quickly deliberate here in the courtroom.

24 (Trial Chamber confers)

25 PRESIDING JUDGE MINDUA: [12:52:24](Interpretation) Very well. We

Trial Hearing
WITNESS: MLI-OTP-P-0565

(Open Session)

ICC-01/12-01/18

1 have consulted and we will now adjourn until Monday. We will not sit this
2 afternoon. That will be the 18th Prosecution witness from Monday at 19.30
3 (sic).
4 For Ms Taylor, you will continue to consult your witness via the same channels
5 you're currently using. The Registry is aware, and we will give instructions so
6 that the contacts may continue and be improved, if that is necessary.
7 We hope that, on Monday, your client will be able to be here; that would seem
8 to be the case, according to the information that we have.
9 We are therefore going to close today's proceedings, but I would, as usual, first
10 like to thank -- no, I would remind the parties of the procedure for submitting
11 documents in relation to the 17th witness. I don't need to go through it in
12 detail for you.
13 So I would like to thank the parties and the participants for your cooperation.
14 I would like to thank the court reporters and the interpreters for your excellent
15 work every day, and I would also like to express my thanks to the security
16 officers and to our public.
17 I would thank you again for your patience and I hope that we will spend much
18 more time in public session in the future.
19 To everybody, I wish a very good weekend. Stay safe and please look after
20 yourselves.
21 The hearing is adjourned.
22 THE COURT USHER: [12:55:02] All rise.
23 (The hearing ends in open session at 12.55 p.m.)