

Trial Hearing

(Open Session)

ICC-01/12-01/18

WITNESS: MLI-OTP-P-0431

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Judge Antoine Kesia-Mbe Mindua, Presiding, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Tuesday, 23 February 2021
10 (The hearing starts in open session at 9.30 a.m.)
11 THE COURT USHER: [9:30:25] All rise. The International Criminal Court is
12 now in session. Please be seated.
13 PRESIDING JUDGE MINDUA: [9:30:49](Interpretation) Court is in session.
14 Good morning to everyone.
15 Court officer, please would you be so kind as to call the case.
16 THE COURT OFFICER: [9:31:07] (Interpretation) Good morning,
17 your Honour, your Honours.
18 The situation in Mali, in the case of The Prosecutor versus Mr Al Hassan Ag
19 Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18.
20 And we are in open session.
21 PRESIDING JUDGE MINDUA: [9:31:24](Interpretation) Thank you very
22 much, court officer.
23 We are now going to start as usual with the appearances.
24 I'm looking at the Office of the Prosecutor.
25 Madam Prosecutor.

1 MS MARTIN SALGADO: [9:31:37] Good morning, Mr President,
2 your Honours. My name is Elena Martin Salgado, trial lawyer for the Office
3 of the Prosecutor. Today with me, Gilles Dutertre, senior trial lawyer.

4 PRESIDING JUDGE MINDUA: [9:31:56](Interpretation) Thank you very
5 much, Madam Prosecutor.

6 I now turn towards the Defence.

7 Counsel.

8 MS SUTHERLAND: [9:32:02] Good morning, Mr President. Good morning,
9 Mr President, your Honours. Today the Defence for Al Hassan is represented
10 by Mr Melinda Taylor, Ms Molly Thomas and myself, Kirsty Sutherland.

11 PRESIDING JUDGE MINDUA: [9:32:21](Interpretation) Thank you very
12 much, Ms Sutherland.

13 It's now the turn of the Legal Representative of Victims.

14 MR LUVENGIKA: [9:32:33](Interpretation) Good morning, your Honour,
15 your Honours. The victims are represented this morning by myself,
16 Maître Fidel Luvengika. Thank you.

17 PRESIDING JUDGE MINDUA: [9:32:45](Interpretation) Thank you very
18 much, Maître Nsita.

19 I now turn towards the witness.

20 Good morning, Witness. Can you hear me?

21 WITNESS: MLI-OTP-P-0431 (On former oath)

22 (The witness speaks French)

23 (The witness gives evidence via video link)

24 THE WITNESS: [9:32:59](Interpretation) Good morning, I can hear you very
25 well.

1 PRESIDING JUDGE MINDUA: [9:33:02](Interpretation) I would like to be
2 clear, this is the 22nd witness of the Prosecutor whose hearing -- whose
3 testimony we are taking today.

4 Witness, I would like to once again welcome you.

5 I would like to remind you that you are still under oath and that you must tell
6 the truth, the whole truth and nothing but the truth.

7 Have you understood that?

8 THE WITNESS: [9:33:35](Interpretation) I have understood that well,
9 your Honour.

10 PRESIDING JUDGE MINDUA: [9:33:38](Interpretation) Thank you very
11 much, Witness.

12 I would also like to remind you of the practical advice that I gave you
13 yesterday; namely, that you have to always bear in mind that our exchanges
14 are taken -- recorded by court reporters and are interpreted by interpreters.
15 Therefore, you must speak clearly and you must speak slowly.

16 I am now going to give the floor over to the Defence for the continuation of the
17 cross-examination.

18 Ms Sutherland, it is over to you.

19 MS SUTHERLAND: [9:34:26] Thank you, Mr President.

20 QUESTIONED BY MS SUTHERLAND: (Continuing)

21 Q. [9:34:32] Good morning, Mr Witness. Can you hear me?

22 A. [9:34:36] I can hear you, Counsel.

23 Q. [9:34:39] Thank you very much. Could you confirm for the Court the
24 [REDACTED], please?

25 Oh, forgive me --

1 PRESIDING JUDGE MINDUA: [9:34:54](Interpretation) Please wait, Mr

2 Witness.

3 Madam Prosecutor.

4 MS MARTIN SALGADO: [9:34:58] I just wanted to raise we're in public

5 session.

6 MS SUTHERLAND: [9:35:02] Forgive me, I had forgotten, yes, for this concise

7 question --

8 PRESIDING JUDGE MINDUA: [9:35:08](Interpretation) Ms Sutherland,

9 please wait, I'm getting you in French at the moment so please give time for the

10 interpretation to come across.

11 Now you were just saying? And -- I didn't catch it.

12 MS SUTHERLAND: [9:35:24] Mr President, I was apologising for my

13 forgetfulness and requesting that we move into private session just for this

14 very discrete question.

15 PRESIDING JUDGE MINDUA: [9:35:38](Interpretation) How much time

16 would be necessary, Ms Sutherland, so that our public may know that?

17 MS SUTHERLAND: [9:35:47] Mr President, I believe it would be a matter of

18 seconds.

19 PRESIDING JUDGE MINDUA: [9:35:59](Interpretation) Thank you very

20 much.

21 Court officer, please take us into private session.

22 (Private session at 9.36 a.m.)

23 THE COURT OFFICER: [9:36:08] We are in private session, Mr President.

24 PRESIDING JUDGE MINDUA: [9:36:21](Interpretation) Thank you very

25 much, court officer.

1 Ms Sutherland.

2 MS SUTHERLAND: [9:36:25] Thank you.

3 Q. [9:36:25] Mr Witness, now that we're in private session, please could you
4 confirm for the Court [REDACTED]?

5 A. [9:36:37] In [REDACTED]
6 [REDACTED]

7 Q. [9:36:53] And what was [REDACTED]?

8 A. [9:36:58] [REDACTED].

9 Q. [9:37:10] Thank you.

10 MS SUTHERLAND: [9:37:12] Mr President, I think we can now return to
11 public session.

12 PRESIDING JUDGE MINDUA: [9:37:19](Interpretation) Court officer, please
13 take us into open session.

14 (Open session at 9.37 a.m.)

15 THE COURT OFFICER: [9:37:26] (Interpretation) We are in open session,
16 your Honour.

17 PRESIDING JUDGE MINDUA: [9:37:35](Interpretation) Thank you very
18 much.

19 Ms Sutherland.

20 MS SUTHERLAND: [9:37:38]

21 Q. [9:37:39] Mr Witness, as yesterday, I have a couple more World Heritage
22 Committee reports that I'd like to go through with you. In the interests of
23 time, I would ask you first of all, to keep your answers as concise as you are
24 able while answering fully, and I will also ensure that I'm as direct as possible
25 in my quotations from the reports so as to avoid any confusion.

1 If I interrupt you, I mean no disrespect. It's just that I'm under time pressure.

2 Please, could we turn to Defence tab 17, which is the 2009 World Heritage

3 Committee report and, that is, MLI-D28-0004-5679 at 5739 to 5744.

4 At page 5740, the World Heritage Committee notes the:

5 "Main threats identified in previous reports" are:

6 "a) [The] Inappropriate design and scale of [the] new Ahmed Baba Cultural

7 Centre in the buffer zone of the Sankoré Mosque;" and "lack of detailed

8 drawings supplied to the Committee;

9 b) Approaches to the restoration of the Djingareyber Mosque;

10 c) Urban development pressure;

11 d) Flooding and rubbish disposal;

12 e) Lack of building regulations and land use plan;" and

13 "f) Lack of adequate maintenance of the buildings."

14 In more detail, at the bottom of page 5742, at point h), the World Heritage

15 Committee states, regarding the Sidi Yahia mosque:

16 "Since the last mission in June 2008, the general state of the Mosque of

17 Sidi Yahia has degraded considerably."

18 Mr Witness, are you able to tell us what steps the Malian authorities took in

19 response to this report by the World Heritage Committee?

20 A. [9:40:24] Thank you, Counsel. Where it concerns the new centre, Ahmed

21 Baba, I think that's what it's about.

22 Q. [9:41:00] Mr Witness? Mr Witness, I'm referring to the general state of

23 the mosque of Sidi Yahia. What steps did the Malian authorities take

24 regarding Sidi Yahia?

25 A. [9:41:18] Well, in 2008, the cultural mission that was in place at the time

1 was working with the community and reported on all the activities of
2 conservation that were carried out. At the time, where it concerns the
3 Sidi Yahia mosque specifically, I have to say that I don't remember very well
4 [REDACTED].

5 Q. [9:42:21] Very well. Very well, thank you. Moving to part j) at
6 page 5743 of the same document, the World Heritage Committee -- the World
7 Heritage Committee reported:
8 "The mission had the opportunity to examine the conservation of the 16
9 mausoleums within the property. It noted that they have not been the subject
10 of regular maintenance since 2005, and this is reflected in the degradation
11 observed, with broken doors and neglected peripheral walls. The mission
12 recalls that the 16 mausoleums are part of the attributes that justify the
13 Outstanding Universal Value of the property and they thus deserve [...] the
14 same attention as the [...] mosques."

15 Mr Witness, are you able to tell us what steps were taken by the Malian
16 authorities in respect of the apparent degradation of the mosques -- of the
17 mausoleums?

18 A. [9:43:40] What I said a moment ago was that this report is about the
19 cultural mission of Timbuktu. Now, whatever the case, whenever there is
20 degradation observed, the Malian authorities always react and they do so via
21 subsidiary services in order to take appropriate measures with regards to
22 restoration, or they take appropriate measures in order to have partners.
23 Now given that the essential part of the work is also done with the mausoleum
24 stakeholders, that's the case.

25 Q. [9:44:55] Mr Witness, in that case, can you explain how the Malian

1 authorities ensure that appropriate measures are indeed taken?

2 A. [9:45:28] Here, you have to put yourself in the framework -- or within an
3 institutional framework, if I can put it like that; that is to say, that *the cultural
4 mission of Timbuktu is conceived as a local service. It works directly on site
5 with the stakeholders. It issues reports on its activities to the ministry of culture
6 to ensure that the appropriate measures are taken. Now, as regards the same
7 region and town of Timbuktu, there is also the regional directorate for culture,
8 which is the requisite service for the daily follow-up of such matters as well as
9 alerts, if there are any. Now this same department reports, as I said earlier, to
10 the authorities such that measures be taken, such that appropriate conservation
11 measures be taken.

12 Q. [9:47:15] Mr Witness, you've just told us that [REDACTED]
13 [REDACTED]. Could I refer you to the draft
14 recommendations of the World Heritage Committee, which are set out in the
15 same document at page 5744, at point 7, the World Heritage Committee states
16 that it:

17 "Urges the State Party to develop as soon as possible appropriate planning
18 controls to revitalise the traditional architectural forms, in order to reverse the
19 apparent accelerated change in building materials and form in the old city, to
20 prohibit all new public projects in the old city, and to re-engage the local
21 community in the overall planning processes;"

22 Focusing on the last part, the re-engagement of the local community, are you
23 able to explain the basis for this concern?

24 A. [9:48:43] With regards this specific concern, this concern of the World
25 Heritage Committee, well, I think that behind this, the issues are what has been

1 reported to them by the stakeholders as well as the services on the ground in
2 Timbuktu; including, the field mission that was carried out in Timbuktu.
3 However, where it concerns the direct work with the stakeholders in the field
4 on site in Timbuktu, as I said, this was essentially the cultural mission of
5 *Timbuktu which is a service mission that has always been close to the
6 stakeholders where it concerns outreach and awareness raising and
7 information in order to have the necessary exchanges on the proper
8 conservation of mosques and mausolea.

9 Q. [9:50:21] Mr Witness, when you say they are still now seeking
10 to -- forgive me, I'll find the ...

11 When you explain that they are still on the ground there, is that because there
12 is still a need to educate the local population?

13 A. [9:51:00] Yes. The cultural mission is always on the ground. It is
14 a proximity service. A close service. It has to be close, to be there for the
15 proper conservation of Timbuktu. Having said that, awareness raising and
16 outreach is a continued effort because at any time different and new actors can
17 intervene. That can happen at any time and they can express new needs with
18 regards to these sites and, you have to remember, these are living sites.

19 Q. [9:51:59] Can you elaborate on what you mean by "living sites"?

20 A. [9:52:13] What I mean by a living site is that the site has values. It is
21 classified for its values, and, for these same values, it is important to
22 continually remind the inhabitants as well as those who are on the sites, to
23 remind them of those values.

24 I can take an example on the needs of the population which could come up.

25 This is a recurrent question where it concerns these living sites. If you take an

1 example quite off-the-cuff, the need for electricity, for example. And in the
2 conservation measures, you have to take into account, for example, the values
3 of the site while ensuring that you do not deprive the community of this hope
4 or wish for development at the same time.

5 There's also a need for -- a need for comfort. This need for comfort sometimes
6 *makes certain people aspire to values above and beyond those for which the
7 property is registered. So this need for comfort and for development weighs
8 upon the living sites, that is to say, upon the same sites as where communities
9 hold an aspiration to comfort in particular, and that is what justifies them being
10 reminded that the sites are classified because of values that have to be respected.

11 Q. [9:55:03] Mr Witness, are you saying that there's a contradiction between
12 development and comfort and the maintenance of these sites?

13 A. [9:55:16] It's not a contradiction between conservation and new hopes.
14 It's just about ensuring that the aspirations to development and that the
15 aspiration to comfort, which are legitimate aspirations, that they are compatible
16 with the values according to which the site was classified and registered on the
17 list. That is also what justifies the permanent effort of outreaching -- outreach
18 and awareness raising. It's what also justifies the fact that enumerable treaties
19 speak of how to ensure, for example, the compatibility between development
20 needs with conservation needs.

21 Q. [9:56:50] Mr Witness, are you able to tell us whether the Malian
22 authorities prioritise development or conservation?

23 A. [9:57:03] Malian authorities, to the best of my knowledge, do not make
24 a prioritisation between the two. The aspiration to development *is also
25 legitimate. Respect of the property as registered on the World Heritage list is

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1 also legitimate. So for the conservators, the efforts essentially consist of
2 ensuring that both of these fundamental needs are compatible. That is
3 essentially the approach of the conservators.

4 Q. [9:58:25] Thank you, Mr Witness. Moving to Defence tab 18, which is
5 the 2010 World Heritage Committee report, the number being
6 MLI-D28-0004-5845 at pages 5962 to 5966, and, specifically turning to page 5965,
7 please.

8 If we turn to the second paragraph on that page, it reads:

9 "As for the sixteen mausoleums, the mission noted the gates of cemeteries'
10 fences being torn down and waste spreading everywhere, which is a worrying
11 situation common to the surroundings of all the mausoleums visited."

12 Mr Witness, were you aware of the condition of the mausoleums in 2010?

13 A. [9:59:43] The situation of the mausolea in 2010 as presented in this report*,
14 which I don't recall being aware of, in the sense that the Cultural Mission on
15 site responsible for the follow-up of the status of conservation and awareness
16 raising among the communities should have it, and should also have brought it
17 to the attention of the authorities, in particular to the Ministry of Culture,
18 because it is an autonomous service on site in Timbuktu, which was on-site in
19 Timbuktu like the other cultural missions, and, as such, the answer should
20 be -- should have been given by the cultural mission.

21 Whatever the case, any information relating to the proper conservation of the
22 sites is always subject to an alert on the part of the authorities such that the
23 necessary measures are taken.

24 Q. [10:01:44] Mr Witness, reminding you that we are in public session, [REDACTED]

25 [REDACTED] ?

1 A. [10:02:05] [REDACTED]
2 [REDACTED]
3 [REDACTED] It was a matter of responding [REDACTED] to
4 the appropriate bodies [REDACTED] in this case - in order
5 to -- together with suggestions for improving conservation of the site.

6 So this is part of what has to be done at local level with the stakeholders and
7 whether -- where, if necessary, one has to find partners in the development in
8 order to resolve the problems raised.

9 Q. [10:03:44] Mr Witness, from what you are telling us, are you concerned
10 that there was an apparent failure of reporting?

11 A. [10:04:03] What -- sorry, I haven't understood the question.

12 Q. [10:04:26] Mr Witness, UNESCO received reports about the deterioration
13 or degradation or treatment of the mausoleums [REDACTED]

14 [REDACTED] Does that raise [REDACTED]

15 A. [10:04:59] I don't think that this needs to raise any particular concern.
16 I -- I'm talking about this from my memory, and, in any case, one must not
17 forget that there was -- in the cultural mission of Timbuktu on-site, which
18 would have received all the UNESCO reports and all the reports relating to
19 missions that took place in Timbuktu, by which I mean that there is not
20 necessarily a failure in this case with regard to the distribution of information
21 because again, I am basing this on my recollection of that period.

22 Q. [10:06:30] Mr Witness, one final World Heritage Committee report, which
23 is at tab -- Defence tab 19, MLI-D28-0004-6066, at 6151 to 6154, and I'd like to
24 turn please to page 6152.

25 Mr Witness, you've just told us that the missions that took place on the ground

1 in Timbuktu would have received the UNESCO reports and all reports relating
2 to missions?

3 A. [10:08:16] I think we need to distinguish between what we call the
4 cultural mission, which is *an on-site service and the on-site missions
5 organised by the World Heritage Centre.

6 Q. [10:08:45] Mr Witness, are you telling us that the national heritage centre
7 is the body that would have been interacting on the ground?

8 A. [10:08:58] It's the cultural mission that was acting on the ground because
9 it was created to work with -- directly with the stakeholders in terms of
10 awareness raising and education and then to report on everything that
11 happens on-site to the appropriate -- together with suggestions for appropriate
12 measures.

13 Q. [10:09:56] Mr Witness, on page 6152, we see that the UNESCO World
14 Heritage Committee says -- refers to a report that was provided regarding
15 Timbuktu, and says:

16 "The report does not provide information on the state of conservation of the 16
17 mausoleums, which form part of the property and are in need of urgent
18 restoration works."

19 Are you able to explain who conducted that report? Who composed that
20 report, conducted the study and composed the report?

21 A. [10:10:40] If there is a report on the state of conservation of Timbuktu, this
22 report would have come from the cultural mission in Timbuktu. So I am not
23 aware of which report is being referred to here, so that means I'm unable to say
24 whether it did in fact come from the cultural mission of Timbuktu or from
25 some other body. But in principle, reports were prepared by the Timbuktu

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1 cultural mission and sent to UNESCO or to the ministry of culture.

2 Q. [10:12:10] Mr Witness, in case it assists your memory, on the same page it
3 states that:

4 "On 2 February 2011, the State Party submitted a report on the state of
5 conservation of the property. The report gives a brief overview of the
6 ongoing conservation and management operations."

7 By "State Party", can they be referring to the cultural mission on the ground in
8 Timbuktu?

9 A. [10:12:43] Well, the report on the state of conservation was drafted by the
10 cultural mission. It could have been at Timbuktu or from another site in Mali.
11 *The conservation status reports were produced by the Cultural Missions. So
12 they were reporting to the committee of the heritage centre,
13 which also reported to the ministry.

14 Q. [10:14:01] Mr Witness, is it correct to infer, therefore, that the cultural
15 mission paid less attention to the mausolea than to the mosques?

16 PRESIDING JUDGE MINDUA: [10:14:16](Interpretation) Mr Prosecutor.

17 MR DUTERTRE: [10:14:18](Interpretation) Thank you, Mr President. I think
18 that this is a speculative question and we object.

19 PRESIDING JUDGE MINDUA: [10:14:28](Interpretation) Ms Sutherland,
20 please reformulate your question.

21 MS SUTHERLAND: [10:14:36]

22 Q. [10:14:37] Mr Witness, are you able to tell us whether the mausolea were
23 formerly studied before the crisis in 2012?

24 A. [10:14:53] A study of the mausolea before the 2012 crisis, do you mean by
25 that a study aimed at increasing knowledge about the mausolea? Or do you

1 mean by that an evaluation or the type of an evaluation [REDACTED]
2 [REDACTED] and the results of which were included in
3 reports?

4 In every case, any time work was carried out in Timbuktu, the mausolea were
5 always included because they are part of the Timbuktu inscription. So in all
6 the programmes and projects, the mausolea are always mentioned and they
7 were always accorded the same attention as the mosques.

8 Q. [10:16:48] Had the structure of the mausolea been formerly studied before
9 2012?

10 A. [10:16:59] The knowledge, which [REDACTED] of the mausolea before 2012,
11 come from the information provided at the time that the sites of Timbuktu
12 were inscribed on the list. The knowledge that we have consists of the
13 information that followed subsequently, comprising mainly increasing our
14 knowledge of the saints and also questions related to the state of their
15 conservation. So in terms of a study of the structures of the mausolea, I am
16 not aware of that.

17 Q. [10:18:38] Are you able to tell us whether the cultural significance of the
18 mausolea was formerly studied before 2012?

19 A. [10:18:49] The importance of the mausoleum - and, I'm referring again in
20 terms of studies - well, I don't know whether you're talking about studies with
21 a project and -- and things. In any case, the knowledge of the mausolea, the
22 studies carried out on the mausolea is the information provided by the state
23 party for the inscription of the mausolea on the World Heritage List.

24 Q. [10:20:07] Thank you, Mr --

25 PRESIDING JUDGE MINDUA: [10:20:10](Interpretation) Ms Sutherland, I

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1 assume you are thinking about the amount of time that you have left.

2 MS SUTHERLAND: [10:20:22] Mr President, Mr President, I very much am.

3 My calculation follow -- given the information that I've been -- received from

4 your *greffier* this morning is that I have until approximately 10:40. I will be

5 corrected if that's inaccurate.

6 PRESIDING JUDGE MINDUA: [10:20:49](Interpretation) Court officer, have

7 you done the calculations?

8 THE COURT OFFICER: [10:20:54] (Interpretation) I told the Defence that they

9 had used 1:18 ...

10 THE INTERPRETER: I'm sorry, I can't hear the court officer through her mask.

11 She's turning away from the mic.

12 PRESIDING JUDGE MINDUA: [10:21:15](Interpretation) Ms Sutherland, do

13 you wish to continue until 10:45, is that what you are saying?

14 MS SUTHERLAND: [10:21:24] With your leave, Mr President, yes, please. It

15 may be that we finish before then, depending on the witness's answers.

16 PRESIDING JUDGE MINDUA: [10:21:43](Interpretation) Thank you. I wish

17 to be fair in terms of the Prosecution, so please do your very best to finish

18 before 10:45.

19 MS SUTHERLAND: [10:21:57] Thank you very much, Mr President. We will

20 also take into account the time taken by the Legal Representative for the

21 Victims.

22 THE COURT OFFICER: [10:22:08] And just for your information, Mr

23 President and the Defence, so far the Defence has used 2:05 -- well, two hours

24 three minutes actually, if I remove this intervention.

25 MS SUTHERLAND: [10:22:26] I'll be as swift as possible.

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1 MS MARTIN SALGADO: [10:22:2] Mr President?

2 PRESIDING JUDGE MINDUA: [10:22:28](Interpretation) Ms Prosecutor.

3 MS MARTIN SALGADO: [10:22:31] (Overlapping speakers) Mr President, for
4 indication, we used 2:07 yesterday for our time.

5 PRESIDING JUDGE MINDUA: [10:22:40](Interpretation) Thank you for your
6 precise response.

7 So Ms Sutherland, please continue as previously explained.

8 MS SUTHERLAND: [10:22:51] Thank you.

9 Q. [10:22:51] Mr Witness, does the knowledge of the specific mausolea fall
10 within the scope of your expertise? Are you able to explain specifics about
11 each of the mausolea to us?

12 A. [10:23:07] If you're talking about my personal competence, no.

13 Q. [10:23:38] Thank you very much, Mr Witness.

14 MS SUTHERLAND: [10:23:53] Mr President, I have to ask very briefly to go
15 into private session, but it will be for a matter of minutes.

16 PRESIDING JUDGE MINDUA: [10:24:03](Interpretation) Yes, Ms Sutherland.
17 Courtroom officer, please.

18 (Private session at 10.24 a.m.)

19 THE COURT OFFICER: [10:24:18] (Interpretation) We are in private session,
20 your Honour.

21 PRESIDING JUDGE MINDUA: [10:24:22](Interpretation) Thank you. Ms
22 Sutherland.

23 MS SUTHERLAND: [10:24:24]

24 Q. [10:24:26] Mr Witness, you've mentioned [REDACTED] I

25 think the order of his name changes, but I have [REDACTED] or [REDACTED]

1 [REDACTED] Do you know him?

2 A. [10:24:52] Yes, I know this person.

3 Q. [10:25:03] You explained yesterday at page -- transcript 62, page 34 - and,
4 it was then line 19 - that [REDACTED]

5 [REDACTED] yesterday. Is that correct?

6 A. [10:25:21] That is indeed correct.

7 PRESIDING JUDGE MINDUA: [10:25:34](Interpretation) Ms Prosecutor.

8 MS MARTIN SALGADO: [10:25:34] (Overlapping speakers) You Honour, I'm
9 sorry, I was trying to look up the transcript, but from memory, that's not what
10 he said.

11 If you just give me a moment, he confirmed he [REDACTED]

12 [REDACTED] this gentleman.

13 MS SUTHERLAND: [10:25:50] I take that point. That's fine.

14 PRESIDING JUDGE MINDUA: [10:25:54](Interpretation) Ms Sutherland, do
15 you have the reference, please?

16 MS SUTHERLAND: [10:25:57] The reference that I had but it was -- because
17 of the editing, it changes. But it was transcript 62 page 34 at line 19. But I'm
18 happy to rephrase the question. I'm told that it's now page 35, line 25.

19 Q. [10:26:22] Mr Witness, has he [REDACTED] ?

20 A. [10:26:30] The person you're referring to?

21 Q. [10:26:39] (Overlapping speakers) Yes.

22 A. [10:26:44] Yes, [REDACTED] the destroyed monuments.

23 Q. [10:26:55] And [REDACTED] on
24 Timbuktu?

25 A. [10:27:02] No.

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1 Q. [10:27:11] Do you follow him on Facebook?

2 A. [10:27:29] On Facebook? Well, yes, occasionally I follow him on
3 Facebook.

4 Q. [10:27:40] I'd ask you to turn to Defence tab 21, please, which is

5 [REDACTED]

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

7 MS MARTIN SALGADO: [10:28:14] Your Honour, we have an object -- sorry.
8 Yes, your Honour, we have an objection, but it should not be in the presence of
9 the witness.

10 PRESIDING JUDGE MINDUA: [10:28:28](Interpretation) Very well. Court
11 officer, could you please cut the connection to the witness.

12 THE COURT OFFICER: [10:28:49] (Interpretation) I'm going to ask the court
13 officer in the field to cut the sound. I can't get the connection on the phone.
14 Please, could I have confirmation that the sound has been cut?

15 Has the sound been cut? Could you please give me a sound -- a sign with
16 your hand?

17 MS SUTHERLAND: [10:29:41]

18 Q. [10:29:41] Mr Witness, can you hear us?

19 THE COURT OFFICER: [10:29:48] (Interpretation) I have the impression that
20 the sound -- that the sound has been cut.

21 Do you wish formal confirmation?

22 PRESIDING JUDGE MINDUA: [10:29:58](Interpretation) No, it seems it has
23 been.

24 Prosecutor, please continue.

25 MS MARTIN SALGADO: [10:30:00] Thank you, Your Honour.

1 Now if we look at that item, we see it contains a date but there's no year
2 indicated on that date, so we don't know whether it's before, during or after the
3 events.

4 Now we have been shown how the date can be shown - by hovering the arrow
5 or the cursor over the date and that can show the actual year - but we don't see
6 it there and we think that those items showing the full date with the arrow
7 hovering should be provided and properly disclosed.

8 Now, there are two possibilities here, your Honour, but I had to stop this now
9 before the document was used. If the Defence wishes to elicit from the expert
10 what he sees and asks him to help date the photo, then that is one thing. But
11 if the photo is being put to the expert in order to contradict his account or
12 challenge the date, it becomes important and the fact that there is no date on
13 the face of the document becomes an issue, and we think it is both not fair to
14 the witness and also less helpful to the Court.

15 PRESIDING JUDGE MINDUA: [10:31:29](Interpretation) Ms Sutherland?

16 MS SUTHERLAND: [10:31:31] Mr President, I agree that the chronolocation
17 of photographs is a central issue. For the information of the Chamber, we
18 were alive to this problem. It's a practice of Facebook to -- when it's the
19 current year not to put the year at the end of the date, which is obviously
20 a cause of frustration.

21 We have -- we have stamped and disclosed the image as described by my
22 learned friend with the cursor hovering over the date and we are endeavouring
23 to disclose others, I believe.

24 That's the fullest explanation I can -- I can give you. We do intend to ask the
25 witness if he's able to give us an indication of the contemporaneity of the -- of

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1 the images.

2 PRESIDING JUDGE MINDUA: [10:32:39](Interpretation) Thank you very
3 much, Ms Sutherland.

4 The Chamber is not satisfied with your explanation, because if you asked the
5 witness to comment on the page but we don't know the date of the image, then
6 it's a shame. We have the month and the day, but there's no year.

7 So I think this evidentiary item isn't useful to us.

8 Yes?

9 MS SUTHERLAND: [10:33:08] (Overlapping speakers) It was only to say, Mr
10 President, that due to the practice of Facebook, in a sense we do have the year
11 because it's only the current year that is not shown. And we have disclosed

12 [REDACTED] (Overlapping speakers)

13 PRESIDING JUDGE MINDUA: [10:33:33](Interpretation) Ms Sutherland, I
14 think we are wasting time here. This practice of Facebook does not satisfy the
15 Chamber. We have no certainty, so move on to something else please.

16 MS SUTHERLAND: [10:33:48] Mr President, just for the record, we have
17 disclosed [REDACTED] which has the image of the date, but I will move
18 on.

19 PRESIDING JUDGE MINDUA: [10:34:08](Interpretation) Thank you very
20 much, Ms Sutherland.

21 So are we still in private session? Or can we go into open session now?

22 MS SUTHERLAND: [10:34:22] We can move into open session, Mr President.

23 PRESIDING JUDGE MINDUA: [10:34:29](Interpretation) Thank you very
24 much, Ms Sutherland.

25 Court officer.

1 (Open session at 10.34 a.m.)

2 THE COURT OFFICER: [10:34:38] (Interpretation) We are in open session,
3 your Honour.

4 PRESIDING JUDGE MINDUA: [10:34:46](Interpretation) Thank you very
5 much.

6 Ms Sutherland.

7 MS SUTHERLAND: [10:34:50] Thank you, Mr President.

8 Q. [10:34:51] Mr Witness, can I ask you to turn to Defence tab 22, which is
9 MLI-D28-0004-6905, and this is the "PLAN DE GESTION ET DE

10 CONSERVATION DU TOMBEAUXES ASKIA --"

11 (Overlapping speakers)(Interpretation) Management and conservation plan for
12 the tombs of Askia Gao.

13 And I'd ask you to turn to pages 6953 to 6954.

14 Mr Witness, are you familiar with this document?

15 Mr Witness, can you indicate whether you can hear us?

16 THE COURT OFFICER: [10:36:00] I'm checking with the field.

17 (Interpretation) The sound should have been reconnected now.

18 MS SUTHERLAND: [10:36:21]

19 Q. [10:36:22] Mr Witness, could you indicate whether you can hear us,
20 please?

21 PRESIDING JUDGE MINDUA: [10:36:27](Interpretation) Prosecutor.

22 MS MARTIN SALGADO: [10:36:28] (Overlapping speakers) I'd just ask in
23 terms of the evidence being shown, since we've gone directly to the page that
24 Ms Sutherland has (Overlapping speakers)

25 THE WITNESS: [10:36:31](Interpretation) I can hear you perfectly.

1 THE INTERPRETER: [10:36:33] Says the witness.

2 MS MARTIN SALGADO: [10:36:34] (Overlapping speakers) I apologise.

3 Since we've gone directly to the page that Ms Sutherland has indicated, if he
4 could perhaps also be shown the first page.

5 MS SUTHERLAND: [10:36:51]

6 Q. [10:36:54] Mr Witness, were you able to hear my last question?

7 Okay, Mr Witness, I'd like to ask you to turn to Defence tab 22, which is

8 MLI-D28-0004-6905. Mr Witness, are you familiar with this document?

9 A. [10:37:23] That goes back to the period covered by the management plan.

10 Would you -- could you go back to that. Could you put it up a bit, please.

11 Q. [10:37:55] (Overlapping speakers) Mr Witness, this dates that -- the
12 management plan for 2018 to 2022. It's the current plan.

13 A. [10:38:11] 2018-'22, I don't know this plan. I don't know. It's very recent.

14 Q. [10:38:25] But in any event, could I ask you to turn to page 6953.

15 PRESIDING JUDGE MINDUA: [10:38:35](Interpretation) Prosecutor.

16 MR DUTERTRE: [10:38:37](Interpretation) Thank you, your Honour. The
17 witness has just said that he doesn't know this plan, so he's not able to
18 comment on the content in this plan and we object to this question.

19 I would have to say that for more than 15, 20 minutes, we're over the Defence's
20 time in equivalence with the Prosecutor and we object to this question.

21 PRESIDING JUDGE MINDUA: [10:39:02](Interpretation) Ms Sutherland, I
22 perfectly agree with the Prosecutor. This plan is completely recent. It speaks
23 about 2018 to 2022. The witness didn't participate in that and has never seen
24 it. Please move on to something else.

25 MS SUTHERLAND: [10:39:20] (Overlapping speakers) But Mr President,

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1 being given the right to respond I would argue first of all that we're entitled,
2 not only to the equivalence of the Prosecution, but also to the LRVs. Also I'm
3 not -- we've been through a number of things on which the witness should be
4 in a position to comment on as an expert. I'm about to ask a simple question
5 about one of the sources of information on which he ought again to be able to
6 comment.

7 MR LUVENGIKA: [10:40:00](Interpretation) Your Honour, I would take the
8 floor if I could because for quite a while now, the Defence is referring to the
9 time used -- about the legal representatives and, there, it seems that the
10 Defence is presenting its own rules of proceedings. Because if that was the
11 case, it should have been decided by the Chamber and not by the Defence.
12 So the time for the examination-in-chief was defined by the Chamber and the
13 Defence keeps referring to the time used by -- the time used by the legal
14 representatives; so that has to be clarified. Thank you.

15 PRESIDING JUDGE MINDUA: [10:40:47](Interpretation) Thank you,
16 Maître Nsita.

17 Whatever the case, I've already decided about the time.

18 Ms Sutherland, please continue. You've got five minutes.

19 MS SUTHERLAND: [10:41:05] Mr President, am I understanding that I'm
20 able to use this document?

21 PRESIDING JUDGE MINDUA: [10:41:15](Interpretation) What's your basis
22 for using the document? Please remind me.

23 MS SUTHERLAND: [10:41:19] The document refers to an organisation called
24 "IR GANDA" and I have questions about whether the witness is able to explain
25 to us the role of this group. And that's in column 3 under "OPPORTUNITES".

1 PRESIDING JUDGE MINDUA: [10:41:45](Interpretation) I understand that
2 you want to ask this question to an expert, is that right?

3 MS SUTHERLAND: [10:41:50] (Overlapping speakers) Yes, Mr President.

4 PRESIDING JUDGE MINDUA: [10:41:52](Interpretation) Please go ahead.

5 MS SUTHERLAND: [10:41:53] Thank you, Mr President.

6 Q. [10:41:54] Mr Witness, on page 6953, this document refers to the recent
7 creation of the association "IR GANDA".

8 Mr Witness, are you able to explain what "IR GANDA" is and what its role is?

9 A. [10:42:31] Really, I don't know it. I don't know it.

10 Q. [10:42:41] Thank you, Mr Witness. And just a couple of final questions.

11 Would you agree that World Heritage status fuels a domestic industry of
12 heritage?

13 A. [10:43:07] I'm sorry, could you put the question again, I haven't
14 understood it.

15 Q. [10:43:27] I rephrase. Would the loss of UNESCO status be a blow to
16 Mali?

17 A. [10:43:36] You want to say the loss of a -- you mean, the loss of a property
18 as World Heritage?

19 Q. [10:43:59] A loss of -- a loss of the status of World Heritage?

20 A. [10:44:13] The loss of the status of World Heritage of an item that is
21 already registered, is that what you mean?

22 Q. [10:44:29] Yes. Yes, Mr Witness?

23 A. [10:44:32] Well, the loss of the status -- or the loss of World Heritage
24 status for a particular property or building necessarily causes problems.

25 These problems are fundamentally -- I mean how -- in terms of how it's felt, it

1 can be felt by a step back, a step backwards. I don't think --

2 Q. [10:45:32] Mr --

3 A. [10:45:32] -- the Mali that I know ...

4 Q. [10:45:35] Mr Witness, in the interests of time, I have two final short
5 questions and I'd like you to answer them as concisely as possible.

6 PRESIDING JUDGE MINDUA: [10:45:43](Interpretation) Prosecutor.

7 MS MARTIN SALGADO: [10:45:44] Your Honours, it is 10:45. That was the
8 time that was given to the Defence, 10:45, your Honour.

9 PRESIDING JUDGE MINDUA: [10:46:01](Interpretation) Prosecutor, I don't
10 agree because Ms Sutherland wants to put the question and when she wanted
11 to do so she still had a moment and you intervened.

12 So Ms Sutherland, please finish your question.

13 MS SUTHERLAND: [10:46:14] Thank you, Mr President.

14 Q. [10:46:15] Mr Witness, you'd agree that Timbuktu and the sites therein
15 have received significant international funding, yes or no?

16 A. [10:46:29] Timbuktu and the sites have received international funds, yes,
17 they've received significant international funds.

18 Q. [10:46:39] Do you --

19 A. [10:46:39] In particular, for conservation efforts et cetera.

20 Q. [10:46:49] Thank you, Mr Witness. Do you or the Malian authorities
21 have any concerns that this intense financial investment may feed corruption in
22 the region?

23 PRESIDING JUDGE MINDUA: [10:47:11](Interpretation) Prosecutor.

24 MS MARTIN SALGADO: [10:47:13] Your Honour, I hate to rise again, but we
25 believe it's a speculative question.

- 1 PRESIDING JUDGE MINDUA: [10:47:23](Interpretation) Indeed.
- 2 Ms Sutherland, this is speculation. Your time has now finished. So one last
- 3 sentence by way of conclusion.
- 4 MS SUTHERLAND: [10:47:39] One last sentence or one last question?
- 5 PRESIDING JUDGE MINDUA: [10:47:51](Interpretation) No. Just
- 6 a concluding statement.
- 7 MS SUTHERLAND: [10:47:54]
- 8 Q. [10:47:54] Thank you very much, Mr Witness. Thank you for your time.
- 9 MS SUTHERLAND: [10:47:57] That concludes my questions.
- 10 PRESIDING JUDGE MINDUA: [10:48:03](Interpretation) Thank you very
- 11 much, Ms Sutherland.
- 12 I now turn towards the Office of the Prosecutor to see if they have any
- 13 additional questions?
- 14 MS MARTIN SALGADO: [10:48:14] We don't, your Honour.
- 15 PRESIDING JUDGE MINDUA: [10:48:19](Interpretation) Very well. The
- 16 interpreter points out the Defence's microphone is still on. I now turn
- 17 towards the witness.
- 18 Witness, the Chamber would like to thank you once again for having aided by
- 19 answering in a clear and concise way to the questions that were put to you.
- 20 Your testimony is now finished.
- 21 And, once again, I would like to thank you and I would like to wish you a very
- 22 good day.
- 23 Have you heard me?
- 24 THE WITNESS: [10:49:08](Interpretation) I have heard you, your Honour.
- 25 PRESIDING JUDGE MINDUA: [10:49:12](Interpretation) Very well,

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1 thank you.

2 (The witness is excused)

3 PRESIDING JUDGE MINDUA: [10:49:15](Interpretation) We are now coming
4 to the end of this hearing. I would like to remind the parties of the
5 proceedings with regards to tendering items into evidence.

6 Our next hearing shall take place on Thursday, the 25th of February at 9.30 to
7 hear the 23rd Prosecution witness.

8 So I would just like to thank the parties and participants for this exemplary
9 cooperation. I would also like to thank the court reporters and the
10 interpreters for their assiduous work. My thanks also go to our security
11 officers and, of course, I am very grateful to our public in the gallery and
12 everybody following us from afar.

13 And I wish all of you a very good day.

14 Until next Thursday, Court is adjourned.

15 THE COURT USHER: [10:50:36] All rise.

16 (The hearing ends in open session at 10.50 a.m.)

17 CORRECTIONS REPORT

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

20 Page 8 lines 3-11

21 “the cultural mission of Timbuktu is conceived as a service which is about
22 proximity, being close. It works directly on the site with the stakeholders. It
23 issues reports on its issues to the ministry of culture to ensure that the
24 appropriate measures are taken. Now, as regards the same town in Timbuktu,
25 the regional directorate for culture is the requisite service for the daily

1 follow-up of such matters as well as alerts, if there are any. Now this same
2 department reports, as I said earlier, to the authorities such that measures be
3 taken, conservation measures -- such as conservation measures be taken."

4 Is corrected to

5 "the cultural mission of Timbuktu is conceived as a local service. It works
6 directly on site with the stakeholders. It issues reports on its activities to the
7 ministry of culture to ensure that the appropriate measures are taken. Now, as
8 regards the same region and town of Timbuktu, there is also the regional
9 directorate for culture, which is the requisite service for the daily follow-up of
10 such matters as well as alerts, if there are any. Now this same department
11 reports, as I said earlier, to the authorities such that measures be taken, such
12 that appropriate conservation measures be taken."

13 Page 9 lines 5-6

14 "Timbuktu which had a service mission - and, which I have to say, is still
15 a stakeholder" Is corrected to "Timbuktu which is a service mission that has
16 always been close to the stakeholders"

17 Page 10 lines 6-9

18 "pushes certain people to wanting to do something which is different to or at
19 odds with the values. Those are the needs -- needs of comfort, development
20 needs, which are also needs of the community. They have hopes. They wish
21 for comfort in particular," Is corrected to

22 "makes certain people aspire to values above and beyond those for which the
23 property is registered. So this need for comfort and for development weighs
24 upon the living sites, that is to say, upon the same sites as where communities
25 hold an aspiration to comfort in particular,"

1 Page 10 line 24 to Page 11 line 3

2 "...is legitimate. Respect of property - such as something on the world cultural
3 list - is also legitimate. The effort, essentially, is on behalf of the conservators to
4 ensure that both of these fundamental needs are compatible and that is
5 essentially the approach of the conservators or conservationists." Is corrected
6 to "...is also legitimate. Respect of the property as registered on the World
7 Heritage list is also legitimate. So for the conservators, the efforts essentially
8 consist of ensuring that both of these fundamental needs are compatible. That
9 is essentially the approach of the conservators."

10 Page 11 lines 14-18

11 "-- a report I don't remember having seen in the sense that the cultural
12 mission responsible for the follow-up of the state of conservation and outreach
13 and awareness raising among the communities should have it, and, should also
14 have brought it to the attention of the authorities, in particular, the minister of
15 culture. Because that was an autonomous department" Is corrected to
16 ", which I don't recall being aware of, in the sense that the Cultural Mission on
17 site responsible for the follow-up of the status of conservation and awareness
18 raising among the communities should have it, and should also have brought it
19 to the attention of the authorities, in particular to the Ministry of Culture,
20 because it is an autonomous service on site in Timbuktu,"

21 Page 13 lines 4-5

22 "a service on-site and the mission coordinated by the national heritage centre
23 on-site." Is corrected to "an on-site service and the on-site missions organised
24 by the World Heritage Centre."

25 Page 14 line 11

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- 1 “These reports on the state of conservation were the preserve of the cultural
- 2 Mission.” Is corrected to “The conservation status reports were produced by
- 3 the Cultural Missions.”