

Trial Hearing  
WITNESS: MLI-OTP-P-0152

(Open Session)

ICC-01/12-01/18

1 International Criminal Court  
2 Trial Chamber X  
3 Situation: Republic of Mali  
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag  
5 Mahmoud - ICC-01/12-01/18  
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and Judge  
7 Kimberly Prost  
8 Trial Hearing - Courtroom 1  
9 Wednesday, 30 September 2020  
10 (The hearing starts in open session at 9.32 a.m.)  
11 THE COURT USHER: [9:32:09] All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE MINDUA: [9:32:37](Interpretation) Court is in session.  
15 Good morning to everybody.  
16 Court officer, please call the case.  
17 THE COURT OFFICER: [9:32:47] Thank you, Mr President, your Honours.  
18 The situation in Mali, in the case of The Prosecutor versus Al Hassan Ag Abdoul Aziz  
19 Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.  
20 And we are in open session.  
21 PRESIDING JUDGE MINDUA: [9:33:05](Interpretation) Thank you very much,  
22 court officer.  
23 As usual, we shall proceed with the introductions, starting with the Office of the  
24 Prosecutor. I see that there is a new face.  
25 MR SANDOVAL: [9:33:21] Good morning, Mr President, good morning,

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1 your Honours. I am Raymond Sandoval, a trial lawyer in the Office of the  
2 Prosecutor, appearing today with Gilles Dutertre, senior trial lawyer, and  
3 Lucio Garcia, trial lawyer.

4 PRESIDING JUDGE MINDUA: [9:33:34](Interpretation) Thank you very much,  
5 Mr Prosecutor.

6 I now turn towards the Defence.

7 Ms Taylor.

8 MS TAYLOR: [9:33:43] Thank you, Mr President. Unfortunately, an old face over  
9 here. The Defence for Mr Al Hassan is represented today by Ms Molly Thomas,  
10 myself, Melinda Taylor, and we will be joined after the break by Ms Dolly Chahla.  
11 Thank you.

12 PRESIDING JUDGE MINDUA: [9:34:03](Interpretation) Thank you very much,  
13 Ms Taylor.

14 So, for the Legal Representative of Victims, Mr Nsita.

15 MR LUVENGIKA: [9:34:15](Interpretation) Good morning, your Honour,  
16 your Honours. The Legal Representative of Victims are represented this morning by  
17 Madam Claire Laplace and myself Maître Nsita. Thank you.

18 PRESIDING JUDGE MINDUA: [9:34:30](Interpretation) Thank you, Maître Nsita.  
19 I now turn towards the witness.

20 Good morning, Witness. Can you hear me?

21 WITNESS: MLI-OTP-P-0152

22 (The witness speaks English)

23 THE WITNESS: [9:34:48] Yes, your Honour. I can hear you.

24 PRESIDING JUDGE MINDUA: [9:34:51](Interpretation) Thank you very much,  
25 Mr Witness.

1 On behalf of the Chamber I would like to welcome you. You are going to testify  
2 with a view to aiding the Chamber establish the truth in the case concerning  
3 Mr Al Hassan.

4 Mr Witness, protective measures have been put in place such that your identity is not  
5 revealed to the public.

6 Whenever you must give details which could reveal your identity, we shall talk about  
7 them in private session, and in this way, with the exception of those present in  
8 the courtroom, nobody else will be able to hear.

9 Have you understood that?

10 THE WITNESS: [9:36:07] Yes, your Honour.

11 PRESIDING JUDGE MINDUA: [9:36:13](Interpretation) Thank you very much,  
12 Witness.

13 We are now going to proceed with your solemn undertaking under Rule 66(1) of  
14 the Rules of Procedure and Evidence.

15 On your table there is a white paper, a document, can you see it?

16 THE WITNESS: [9:36:39] Yes, your Honour.

17 PRESIDING JUDGE MINDUA: [9:36:43](Interpretation) Thank you very much.

18 This is the solemn undertaking according to which you must swear to tell the truth,  
19 the whole truth. And I ask you to read it aloud so that everybody can hear you.

20 Please go ahead.

21 THE WITNESS: [9:37:07] Thank you, your Honour.

22 I solemnly declare that I will speak the truth, the whole truth and nothing but  
23 the truth.

24 PRESIDING JUDGE MINDUA: [9:37:18](Interpretation) Thank you very much,

25 Mr Witness.

1 You are now under oath. The representatives of the victims unit, as well as  
2 the representatives of the Prosecution have already told you what that means.  
3 I'm going to give you some advice of a practical nature. You should bear in mind  
4 that everything said in this courtroom is transcribed by court reporters and it is  
5 simultaneously interpreted by the interpreters into different languages.  
6 It is therefore important to speak clearly and slowly. Don't start to speak until  
7 the person who is asking you a question has finished putting that question. And  
8 count up to three in your head before answering the question. This break is essential  
9 for ensuring that your testimony is duly taken down.  
10 If you have any questions, please raise your hand so as to indicate that you would like  
11 to take the floor. Have you understood that?  
12 THE WITNESS: [9:39:07] Yes, your Honour.  
13 PRESIDING JUDGE MINDUA: [9:39:12](Interpretation) Thank you very much,  
14 Witness.  
15 We are now going to hear your testimony. You will firstly be questioned by  
16 the Office of the Prosecutor and possibly by the Legal Representatives of Victims, and  
17 thereafter by the Defence for the cross-examination. And perhaps the Chamber will  
18 also have some questions to put to you.  
19 Prosecutor, this witness is going to testify under 68(3), Rule 68(3); is that correct?  
20 MR SANDOVAL: [9:40:01] Yes, that is correct, Mr President.  
21 PRESIDING JUDGE MINDUA: [9:40:07](Interpretation) Very well.  
22 It's over to you. Please go ahead.  
23 MR SANDOVAL: [9:40:11] Thank you, Mr President.  
24 QUESTIONED BY MR SANDOVAL:  
25 Q. [9:40:13] Good morning, Mr Witness. Can you hear me?

1 A. [9:40:16] Yes, I can hear you very well.

2 Q. [9:40:18] Can you confirm that you have a binder in front of you?

3 A. [9:40:23] Yes.

4 Q. [9:40:24] Thank you.

5 MR SANDOVAL: Your Honours, if I could begin in private session as I will be  
6 addressing the witness's identity and qualifications. These preliminary questions  
7 will take about 10 minutes and then we can revert to open session.

8 PRESIDING JUDGE MINDUA: [9:40:44](Interpretation) Please go ahead,  
9 Prosecutor.

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

11 (Private session at 9.40 a.m.)

12 THE COURT OFFICER: [9:40:57] (Interpretation) We're in private session,  
13 your Honour.

14 (Redacted)

15 (Redacted)

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2 (Open session at 10.00 a.m.)

3 THE COURT OFFICER: [10:00:35] (Interpretation) We are in open session,  
4 your Honour.

5 PRESIDING JUDGE MINDUA: [10:00:37](Interpretation) Thank you very much,  
6 court officer.

7 Prosecutor, please go ahead.

8 MR SANDOVAL: [10:00:41] Thank you, Mr President.

9 Q. [10:00:42] Mr Witness, if you could go to tab 2 of your binder, which contains  
10 a mission letter dated 21 July 2015 with ERN 0030-1039. This is a confidential  
11 document. Do you see that document?

12 A. [10:01:00] Yes.

13 Q. [10:01:03] Do you confirm that the Office of the Prosecutor requested you to  
14 prepare a report on: One, the various causes of the conflict that started in 2012 in  
15 Mali; two, the development of the said conflict, in particular in 2012/2013; and three,  
16 the different parties involved in the conflict?

17 A. [10:01:28] Yes, I can confirm that.

18 Q. [10:01:32] Now please turn to tab 3 of the court binder. This contains a report  
19 with ERN 0031-0496. This is a confidential document.  
20 Do you see that document?

21 A. [10:01:53] Yes.

22 Q. [10:01:54] Is this the report you prepared in accordance with the mission letter  
23 previously discussed?

24 A. [10:02:06] Yes, this is my report.

25 Q. [10:02:09] Mr Witness, where did you obtain the information on which you

1   relied for the analysis and conclusions in this report?

2   Please remember that we are in open session, so please avoid mentioning any  
3   information which identifies yourself.

4   A.   [10:02:27] Thank you.

5   The report is based on my own research, that is research that I already had done.

6   But it's also empirical research in Mali, but it's also, of course, based -- like any other  
7   social scientist, we also -- I also base my reports, my analysis, my writing on a number  
8   of written sources.   And in this case it's written sources both from news and media  
9   outlets, but also written sources from other academics that also work either on this  
10   particular conflict in this particular situation, or on similar conflicts elsewhere where  
11   you can draw on parts of that work.

12   And all the -- apart from the, the background interviews that we use in this report and  
13   they have -- I have made them anonymous because it is sensitive issues, so we cannot  
14   quote people directly on these topics, because it would -- it could potentially put  
15   people into great danger.   But apart from the background interviews,  
16   everything -- all the other material that this report is based on is from open sources.

17   Q.   [10:03:56] (Redacted)

18   (Redacted)

19   (Redacted)

20   (Redacted)

21   (Redacted)

22   (Redacted)

23   (Redacted)

24   (Redacted)

25   (Redacted)

1 MR SANDOVAL: [10:05:06] Your Honours, I now intend to turn to the contents of  
2 the report. I wish to first address the nature of unrest in northern Mali and  
3 the emergence of various armed groups which eventually became key players in  
4 the 2012-2013 conflict. I will then address the four phases of the 2012-2013 conflict as  
5 discussed in the report.

6 Q. [10:05:32] Mr Witness, on page 0497 of your report, you stress the need to place  
7 2012 and 2013 events in Mali in their historical context.

8 Mr Witness, just to remind you, your report is in tab 3 of your court binder.

9 Do you have the report in front of you?

10 A. [10:05:59] Yes.

11 Q. [10:06:00] So on page 0497, and I refer to the last four digits of the ERN, you  
12 highlighted that, quote:

13 "... the trouble in Mali - " unquote, and I skip a few words, quote, "... is defined  
14 through a prolonged process of conflict ... between Tuareg rebels demanding  
15 autonomy and independence for the North, various groups of Jihadist insurgents,  
16 smugglers and traffickers, and state officials ..." Unquote.

17 In the context of this, quote, "prolonged process of conflict", unquote, can you briefly  
18 tell the Chamber what were the specific regional or national developments in 2011  
19 and 2012 that contributed to the 2012 and 2013 events?

20 A. [10:07:01] Thank you.

21 What I mean by this is that in order to understand 2012 -- and 2012 was and still is  
22 a defining moment for Mali. In fact, you could almost say that Mali never got out of  
23 2012. It continues to repeat itself. But that is probably another debate.  
24 But you cannot understand 2012 and 2013 without putting it -- placing these events  
25 into a larger historical pattern, because 2012 did not appear out of the blue. There is

1 a long tradition in Mali for uprisings in the north. It was an uprising in the 1960s,  
2 there was unrest in the '70s, we had the Tuareg rebellion in the '90s that led to the  
3 so-called national pact, and then the conflict seemed to restart out of the blue in 2012.  
4 But if you look more closely at events leading up to this, you will see that it's  
5 a combination of both new unrest and discontent among the Tuareg population, but  
6 it's also a situation of jihadi insurgents that has come also from Algeria that has  
7 started to achieve a level of local integration in the north.  
8 Simultaneously what we saw during this period leading up to the events of 2012 was  
9 a renewal of the old lines of commerce through the Sahel, particularly as this area also  
10 became a major hot spot for drug smuggling on a much larger scale than one  
11 previously had seen. And added to all of this is the role of a state that increasingly  
12 became more and more corrupted.  
13 So it's -- when you look at an event like 2012, it's easy to think that, okay, if you just  
14 penetrate deep enough, we can find one core reason why this -- why this happened.  
15 But that is not necessarily the case in my point of view, and what I think my research  
16 shows, both the research that is the background for this report, but also all  
17 the -- much of the other works that I have written about the situation in the Sahel is  
18 that it's much more like an onion where there are layers upon layers of causes that  
19 explain why certain things happen. And this is something we see very clearly in the  
20 case of 2012.

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

22 Thank you. I was just waiting for the interpretation to finish.

23 The Chamber would like to pass into private session for just two minutes, please.

24 Court officer, if you would be so kind.

25 (Private session at 10.10 a.m.)

1 THE COURT OFFICER: [10:10:49](Interpretation) We are in private session.  
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18 (Open session at 10.12 a.m.)  
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- 12 THE COURT USHER: [10:19:16] All rise.
- 13 (Recess taken at 10.19 a.m.)
- 14 (Upon resuming in open session at 10.39 a.m.)
- 15 THE COURT USHER: [10:39:54] All rise.
- 16 Please be seated.
- 17 PRESIDING JUDGE MINDUA: [10:40:23](Interpretation) Court is now in session.
- 18 Court officer, we're still in open session, are we not?
- 19 THE COURT OFFICER: [10:40:28](Interpretation) I confirm that, your Honour.
- 20 PRESIDING JUDGE MINDUA: [10:40:34](Interpretation) Thank you. So
- 21 the medical problem that we had has been resolved. We are therefore going to
- 22 continue with our hearing.
- 23 Prosecutor.
- 24 MR SANDOVAL: [10:40:43] Thank you, Mr President.
- 25 Mr President, before I continue, I'm just looking at the clock, I believe I still have

1 about 30 minutes of time left.

2 Do I understand correctly that I can proceed and complete my examination until  
3 about 10 past 11 before we take our break?

4 PRESIDING JUDGE MINDUA: [10:41:08](Interpretation) Granted. Ten past 11.  
5 Please go ahead.

6 MR SANDOVAL: [10:41:15] Thank you, Mr President.

7 Q. [10:41:16] Mr Witness, as you've just heard, I have about 30 minutes left. So I  
8 would like to ask you to please be very brief in your answers and to answer as  
9 directly as possible.

10 Please remember that your entire report will be submitted into evidence, so there's no  
11 need for any unnecessary elaboration and just kindly try to answer as briefly and as  
12 concisely as possible.

13 Thank you very much, Mr Witness.

14 So, Mr Witness, in line with my limited time remaining, I had intended to proceed to  
15 discussing the various armed groups, namely, Ansar Dine, AQIM, MNLA and  
16 MUJAO. However, due to the lack of time, I would like to proceed directly to  
17 the MNLA and -- just to clarify one point. And then I will discuss  
18 Ansar Dine - and, I will no longer discuss AQIM and MUJAO in detail - and then I  
19 will just ask one brief point in relation to the four phases of the conflict.

20 So proceeding to the MNLA, could you please tell us when the MNLA was created?

21 A. [10:42:45] (Microphone not activated)

22 Q. [10:42:49] Microphone.

23 A. [10:42:50] Sorry, your Honour.

24 The MNLA was created in just before 2012. I mean, it's not an old organisation.

25 Q. [10:43:03] So I would just like to clarify. On page 0500 of your report, in

1 the second paragraph, the line corresponding to footnote 15, you wrote, quote, "a new  
2 rebellion emerged in 2006." Unquote.

3 You then proceed to discuss the MNLA. Could you clarify whether it is the MNLA  
4 you're referring to as having emerged in 2006 on this page?

5 A. [10:43:32] What was the page number again?

6 Q. [10:43:35] Page 0500, the second paragraph, and specifically the line  
7 corresponding to footnote 15: one, five.

8 A. [10:43:49] This is not the MNLA that I'm referring to as in 2006. This was  
9 a smaller rebellion that was started by, among other, Ibrahim Ag Bahanga who died  
10 in 2012.

11 Q. [10:44:07] Thank you, Mr Witness. Now proceeding to the group Ansar Dine.  
12 What does Ansar Dine mean?

13 A. [10:44:14] Ansar Dine means those that follows god.

14 Q. [10:44:19] And you write Ansar Dine in your report as "Ansar ed-Dine". Are  
15 Ansar Dine and Ansar ed-Dine the same thing?

16 A. [10:44:28] Yes, it's just a matter of, of writing style.

17 Q. [10:44:33] And who established Ansar Dine?

18 A. [10:44:36] That was Iyad Ag Ghaly.

19 Q. [10:44:39] When did he establish Ansar Dine?

20 A. [10:44:42] Ansar Dine is established around 2012, when the whole MNLA  
21 rebellion breaks out, and Iyad Ag Ghaly is not put forward as the leader of MNLA.

22 Q. [10:44:59] And very briefly, Mr Witness, could you describe Iyad Ag Ghaly and  
23 his background.

24 A. [10:45:07] To be very brief, he emerged as one of several leaders -- emir leaders  
25 of Tuareg rebel movements in the 1990s. He was then involved in various roles,

1 both being in government, working for the government, but also travelling to, among  
2 other things, Pakistan. I mean, he was an envoy, diplomatic envoy of Mali to Saudi  
3 Arabia.

4 Then, returning to -- to Mali, and played -- was also supposed to play a role for  
5 the government when Tuaregs returned from Libya, and then he started Ansar  
6 ed-Dine. He has a long history of -- both as a rebel, but also as being part of the state  
7 until he created Ansar ed-Dine.

8 Q. [10:46:03] Thank you, Mr Witness. And based on your research, why did  
9 Iyad Ag Ghaly create Ansar Dine when the MNLA already existed?

10 A. [10:46:11] Most likely, and, there are things we don't know the full details of yet  
11 because it's not possible to interview Iyad Ag Ghaly himself about these issues, but  
12 mostly likely it's a combination of his increased religious radicalisation, in  
13 combination with the fact that he probably saw himself as the one that should lead a  
14 new Tuareg rebellion.

15 But he was not selected as the main leader. So it's a combination of the fact that he  
16 probably lost a power struggle within the Tuareg community so that he did not  
17 become one of the main leaders of MNLA, in combination with the fact that this is  
18 a person who had been on -- on a slippery slope of religious radicalisation for quite  
19 some time.

20 Q. [10:47:14] Thank you, Mr Witness. And based on your research, what was  
21 Iyad Ag Ghaly's goal in establishing Ansar Dine?

22 A. [10:47:20] We must suppose that Iyad Ag Ghaly understood that when he  
23 formed Ansar ed-Dine, when he -- when he contributed to the fighting - together with  
24 other jihadi movements, like AQIM and MUJAO - he understood that this,  
25 the position he now had taken was one that it would be almost impossible for him to

1 return to a negotiated solution with a Malian state. Meaning that we have to  
2 suppose that he really believed in the causes that he said he was fighting for; namely,  
3 to establish complete Sharia rule in the whole of Mali.

4 Q. [10:48:15] Based on your research, Mr Witness, how did Iyad Ag Ghaly view  
5 the MNLA?

6 A. [10:48:23] He seems to have viewed the MNLA as a, as a secular organisation, as  
7 an organisation that was fighting for a cause that he did not believe in. And, as such,  
8 the MNLA, in many -- for most reasons, became one of his enemies.

9 Q. [10:48:50] And finally, based on your research, how did Iyad Ag Ghaly view  
10 AQIM?

11 A. [10:48:58] AQIM had already been present in areas of the north for quite some  
12 time when these things started. And Ansar, and particularly AQIM, entered into  
13 a collaboration, a collaboration that started in around 2012, and continues today in  
14 a new organisation called JNIM.

15 So this is a collaboration that has been going on for many years now, and it started in  
16 around 2012. But obviously there had been contact points between these persons,  
17 that AQIM that came to be in front of Ansar ed-Dine for some time before 2012;  
18 otherwise, their collaboration we saw in 2012 would not have been possible.

19 Q. [10:49:51] Thank you, Mr Witness.

20 Now I would like to go to the four phases of the conflict as discussed in your report,  
21 specifically the third phase of the conflict as described on page 0505, which covers  
22 the period between 6 April 2012 and 8 January 2013.

23 On this -- on page 0505 you refer collectively to an Islamist coalition in northern Mali  
24 which, quote, "both politically and militarily out-manoeuvred the MNLA and took  
25 control of all major cities in the north." Unquote.

1 And you give the groups Ansar Dine, AQIM and MUJAO as examples of  
2 the members of this coalition.

3 Now, Mr Witness, when you referred to, quote, "major cities in the north", unquote,  
4 which cities are these?

5 A. [10:50:56] Here I'm referring to the three main cities, that is, Kidal, it's Gao and  
6 Timbuktu.

7 Q. [10:51:06] And in Timbuktu, which of these armed groups out-manoeuvred  
8 the MNLA and took control?

9 A. [10:51:15] According to my research, Timbuktu was jointly controlled by Ansar  
10 and AQIM.

11 Q. [10:51:25] And how about Kidal? Which armed groups operated there?

12 A. [10:51:29] Kidal, Kidal was, was almost exclusively controlled by Ansar.

13 Q. [10:51:36] And finally Gao?

14 A. [10:51:37] That was MUJAO.

15 Q. [10:51:40] On page 0513 of your report, in the first paragraph, you refer to  
16 August 2012 in the context of a meeting between Iyad Ag Ghaly and the Burkina Faso  
17 foreign minister. You go on to write, quote, "in the same period, Ansar ed-Dine  
18 fighters first expelled MNLA from Timbuktu", unquote.

19 Can you clarify in which month of 2012 Ansar Dine fighters expelled the MNLA from  
20 Timbuktu?

21 A. [10:52:29] That was during the autumn of 2012. I'm -- I'm not entirely certain  
22 what month this, this happened, but as we -- as we move towards the end of the year,  
23 it was -- became increasingly clear that, that MNLA was no longer in control of  
24 Timbuktu.

25 Q. [10:53:01] So remaining still on the third phase of the conflict, I would like to

1 clarify your understanding of Ansar Dine's control of Timbuktu.

2 On page 0512 of your report, you write, quote, "Ansar ed-Dine's control of  
3 Timbuktu ... did not last very long as this city soon came under the rule of AQIM."  
4 Unquote.

5 You go on to write that, quote, "long time AQIM members from northern Mali,  
6 including Sanda Ould Bouamana and Omar Ould Hamaha, presented themselves as  
7 Ansar ed-Dine officials in the city." Unquote.

8 Based on your research, Mr Witness, was the relationship between AQIM and  
9 Ansar Dine clear to you?

10 A. [10:53:53] It's my view that the relationship between AQIM and Ansar ed-Dine  
11 at that time was relatively cordial. It was a collaborative relationship. And, and  
12 while at this point in time AQIM was, was an organisation, an insurgency with  
13 deeper roots and a longer history, whereas Ansar Dine was a relatively new  
14 organisation. So in the beginning of this relationship, AQIM had some sort of  
15 position of seniority in the relationship. That was a -- that would eventually change,  
16 but in this period, yes, there was some sort of seniority of AQIM and particularly in  
17 the Timbuktu area.

18 Whereas Ansar, as mainly a Malian Tuareg-based insurgency, where several of the  
19 main leaders including Iyad Ag Ghaly came from Kidal, it was natural that they had a  
20 much firmer control in Kidal than they had in Timbuktu.

21 But it was, in many ways, a joint cordial -- really, and a collaborative relationship  
22 between these two groups.

23 Q. [10:55:20] During our preparation session, Mr Witness, you considered that  
24 the relationship between Ansar Dine and AQIM to be somewhat of an quote-unquote  
25 "enigma."

1 Can you clarify what you meant by this?

2 A. [10:55:39] By an enigma I simply mean that, yes, I mean I have been researching  
3 and studying these events for a long time. But when we are dealing with a study of  
4 the internal relationship with insurgencies that produce very little of written material,  
5 that also produce very little of official communications - and where we are cut off  
6 from talking to the main actors involved in this - of course, there are things that  
7 happen that it's difficult to understand.

8 What we do know is that there were internal debates within these organisations about  
9 how to rule the areas that had come under their control and about various strategies.

10 This is, for example, something that has been documented later in the so-called  
11 Droukdel letters that was found in Timbuktu after the town was sort of, in quotation  
12 mark, "liberated" from the joint forces of the -- of AQIM and Ansar Dine after  
13 the French Operation Serval.

14 And the Droukdel letters shows that there was a long debate within these movements,  
15 where particularly the overall AQIM leader, Droukdel, was trying to argue to both  
16 Ansar and -- certain Ansar and certain AQIM members, that they needed to not move  
17 as fast as they did, both in the military offensive, but also with their implementation  
18 of Sharia rule.

19 So -- but this is part of the enigma of understanding that internal debate within these  
20 organisations.

21 I hope this clarified your question.

22 Q. [10:57:33] Thank you, Mr Witness.

23 Let's return to page 0513 of your report. At the beginning of the last paragraph you  
24 state, quote, "In this period, Ansar ed-Dine also continued to train together with  
25 AQIM in the Timbuktu [region]", unquote.

1 You wrote this after discussing the period in which Ansar Dine fighters expelled  
2 the MNLA from Timbuktu.

3 Can you specify the period in which Ansar Dine continued to train together with  
4 AQIM in the Timbuktu region?

5 A. [10:58:13] Sorry. As far as I know, the, the training exercises and the joint  
6 operations between Ansar ed-Dine and AQIM in the Timbuktu area continued as  
7 long as the -- as this town and this area was under the control by the jihadi insurgents.

8 Q. [10:58:37] I see I've proceeded a bit more quickly than I anticipated, so I'd like to  
9 ask perhaps a few questions on AQIM, specifically in relation to Timbuktu.  
10 Since when has AQIM been present in that region?

11 A. [10:58:56] AQIM, as an organisation, dates back to the Algerian Civil War where  
12 it started out as the -- as -- under another name, the Salafist Group for Preaching and  
13 Combat, which was a breakaway group from the GIA in the Algerian Civil War.  
14 After the peace accords in Algeria, there was a limited group of men who did not  
15 want to be part of an amnesty process and some of these started to set up real bases in  
16 northern Mali, including in the Timbuktu areas.

17 So most likely, AQIM, what became AQIM, has had a presence in the Timbuktu  
18 region for many years. Some of them already started operating here as an R&R area  
19 for, for their operations in Algeria in the late 1990s early 2000s. So AQIM and AQIM  
20 operatives has -- have been present in this area for a long time and had developed  
21 quite fine-tuned strategies for local integration among local communities.

22 Q. [11:00:30] Thank you, Mr Witness.

23 And I'd just like to correct a line in the transcript, when, Mr Witness, when you  
24 replied that Kidal was almost exclusively controlled by Ansar. Do you recall? Was  
25 that the response that you gave? Because in the transcript it refers to Kidal having

1 been controlled by, almost exclusively by Ansar.

2 A. [11:01:02] Yeah. Yes. And that is what I -- what I meant. If I said anything  
3 else I was misrepresenting myself.

4 Q. [11:01:10] And by "Ansar" you refer -- do you mean to refer to Ansar Dine?

5 A. [11:01:16] Ansar ed-Dine. Sorry.

6 Q. [11:01:20] And I'd like to ask another question in relation to AQIM. On  
7 page 0520 of your report, you described AQIM as, quote, "arguing strongly for its  
8 interpretation of the virtues of Islam." Unquote.

9 You note in the second paragraph of page 0516 of your report that Sufism is a strain  
10 of Islam that is widespread in the Sahel, including among the Tuareg. And in  
11 the first paragraph of page 0517 of your report, you describe the practice of some Sufi  
12 orders to celebrate saints and to use protective amulets.

13 Now, Mr Witness, how does AQIM's interpretation of Islam compare with that of Sufi  
14 Islam?

15 A. [11:02:14] Short answer to that is that they do not compare very well. AQIM is  
16 a Salafiya movement based on a very sort of strict reading of the holy text of the  
17 Koran. Whereas Sufism, which has been one of the sort of main brands of Islam in  
18 this part of the world, has a slightly wider interpretation where there is a role for  
19 the -- for the saints, there is a role for the -- this shrines that we had in, that exist in  
20 Timbuktu and so on and so forth. Things that the Salafiya interpretation of Islam do  
21 not see as in line with Islam.

22 So here there is a clear theological difference between what historically had been one  
23 of the main lines of interpretation of Islam, that is, Sufism, and the kind of scriptural  
24 reading that the -- of the Salafiya tradition, which -- which is the tradition of Islam  
25 that AQIM finds its theological roots in.

1 Q. [11:03:39] Thank you, Mr Witness. I'd like to ask one, one last question about  
2 the contents of your report, and I apologise for jumping back to the phases of the  
3 conflict. But in relation to the fourth and final phase of the conflict, which you  
4 describe on page 0506 of your report as covering the period between 8 January and  
5 11 August 2013, you refer on page 0506 to, quote, "The Islamist advance south of the  
6 River Niger clearly triggered the French military intervention in Mali (known as  
7 Operation Serval)." Unquote.

8 When you refer to the, quote, "Islamist advance," unquote, here, which groups are  
9 you referring to?

10 A. [11:04:28] I'm here referring to all the three main groups of Islamist rebels that  
11 existed in -- at that time in Mali, that is, AQIM, that's Ansar ed-Dine and MUJAO.  
12 And they did made -- make a joint advancement when they crossed the River Niger  
13 in the beginning of January 2013 and attacked the town of Konna. And it was  
14 the -- it was the crossing of the River Niger, which took the rebellion from the north of  
15 Mali towards the central region, and the attack of Konna. That really alarmed  
16 the politicians in Bamako. And they did the one thing that they thought they could  
17 do, that was basically calling Paris, and President Hollande, asking for his military  
18 assistance and Hollande initiated Operation Serval.

19 Q. [11:05:34] So I wish to conclude, Mr Witness, by asking you two questions about  
20 your report in general.

21 Do you affirm that the contents of your report are - along with the clarifications that  
22 we discussed this morning - to the best of your knowledge and belief, true and  
23 correct?

24 A. [11:05:53] Yes, I do. This is -- if I'd written it today, I may have written it  
25 slightly different because our interpretation of what happens will change, but I mean

1 the -- all the content here is, to the best of my knowledge, the most accurate picture  
2 you can paint of what happened in 2012/2013. So, yes, I confirm that.

3 Q. [11:06:27] Do you have any objections to the submission of your report into  
4 evidence?

5 A. [11:06:33] No.

6 MR SANDOVAL: [11:06:42] Your Honours, if I could just have a moment. I just  
7 need to look up a transcript reference that we wish to correct before I conclude.

8 PRESIDING JUDGE MINDUA: [11:07:00](Interpretation) Yes, do please go ahead.  
9 (Pause in proceedings)

10 MR SANDOVAL: [11:07:16] It's on page 28 of the English transcript, line 18. You  
11 were -- the witness was referring to Ansar and particularly AQIM entered into  
12 a collaboration, a collaboration that started in around 2012 and continues today in  
13 a new organisation called, and it's unclear what the name of the organisation is. This  
14 is on line 18 of page 28 of the English transcript.

15 If you recall, Mr Witness, what you're referring to. Could you repeat the name of  
16 that new organisation.

17 THE WITNESS: [11:08:08] Sorry. It's known by the acronym JNIM, J-N-I-M.

18 MR SANDOVAL: [11:08:19] And I apologise, Mr President. There is one more  
19 correction.

20 Yes, in the witness's response referring to Timbuktu being jointly controlled by Ansar  
21 and AQIM, could you clarify, Mr Witness, when you refer to Ansar, do you refer to  
22 Ansar Dine?

23 A. [11:09:03] Yes, I refer to Ansar ed-Dine.

24 MR SANDOVAL: [11:09:08] Thank you very much, Mr Witness, for answering my  
25 questions today.

1 No further questions, your Honours.

2 PRESIDING JUDGE MINDUA: [11:09:22](Interpretation) Thank you very much,  
3 Mr Prosecutor.

4 I see that you are consulting. What's going on in your team?

5 MR DUTERTRE: [11:09:31](Interpretation) I just wanted to say that it's page 29, lines  
6 16 and 17, just to make that quite clear.

7 PRESIDING JUDGE MINDUA: [11:09:39](Interpretation) Thank you very much,  
8 Mr Dutertre.

9 The Chamber is satisfied that the conditions set out in paragraph 68(3) of the  
10 regulations have been fulfilled.

11 I would therefore like to turn to the representative of the victims. On 18 September,  
12 we received a submission from you, 1803 -- 105 -- 1052 (sic). You expressed a wish to  
13 question the witness.

14 Do you want to maintain this?

15 MR LUVENGIKA: [11:10:28](Interpretation) Thank you, Mr President. I think that  
16 we do have some quick questions to ask this witness. It will not take long. They  
17 relate to his testimony relating to what exists in Timbuktu, because he referred to  
18 the Tuareg, and therefore it's about the ethnic groups. I think it's not only Tuareg  
19 there, so we would have some questions related to these ethnic groups.

20 PRESIDING JUDGE MINDUA: [11:11:02](Interpretation) Thank you, Mr Nsita.  
21 I turn to the Prosecutor.

22 Prosecutor -- Prosecution, do you have any objections to this request?

23 MR SANDOVAL: [11:11:13] No objections, your Honours.

24 PRESIDING JUDGE MINDUA: [11:11:18](Interpretation) Thank you, Prosecution.  
25 Ms Taylor, do you have any objections?

1 MS TAYLOR: [11:11:25] Thank you, Mr President. We don't have any objections  
2 per se but, noting the vague description, we reserve our right to object depending on  
3 the particular question that's posed.

4 PRESIDING JUDGE MINDUA: [11:11:48](Interpretation) Very well, Ms Taylor.

5 It is time to take our break, so we will now take a 30-minute break and we will  
6 recommence at 11.40. And when we restart, the Legal Representative of Victims will  
7 take the floor.

8 The hearing is suspended.

9 THE COURT USHER: [11:12:18] All rise.

10 (Recess taken at 11.12 a.m.)

11 (Upon resuming in open session at 11.53 a.m.)

12 THE COURT USHER: [11:53:45] All rise.

13 Please be seated.

14 PRESIDING JUDGE MINDUA: [11:54:11](Interpretation) Court is now in session.

15 Court officer, I confirm that we are in open session.

16 THE COURT OFFICER: [11:54:18](Interpretation) Yes, we are in open session,  
17 your Honour.

18 PRESIDING JUDGE MINDUA: [11:54:21](Interpretation) Thank you very much.

19 So I'm now going to ask you to go into private session, because I would like to allow  
20 Ms Taylor to make a brief communication to us.

21 (Private session at 11.54 a.m.)

22 THE COURT OFFICER: [11:54:46](Interpretation) We're in private session,  
23 your Honour.

24 (Redacted)

25 (Redacted)

Trial Hearing  
WITNESS: MLI-OTP-P-0152

(Private Session)

ICC-01/12-01/18

1 (Redacted)  
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23 (Open session at 11.56 a.m.)  
24 THE COURT OFFICER: [11:56:53] (Interpretation) We're in open session,  
25 your Honour.

1 PRESIDING JUDGE MINDUA: [11:56:57](Interpretation) Thank you very much,  
2 court officer.

3 We are in open session now. We're going to continue with the questions of Legal  
4 Representatives of Victims. And, for the record, I would state that the accused is not  
5 in the courtroom, he has excused himself and, with the agreement of the Defence, we  
6 are going to continue without the presence of Mr Al Hassan.

7 Mr Nsita, you have the floor for your questions.

8 MR LUVENGIKA: [11:57:38](Interpretation) Thank you, your Honour.

9 QUESTIONED BY MR LUVENGIKA:

10 Q. [11:57:44] Good morning, Witness. I am the Legal Representative of Victims,  
11 the victims of the occupation of Timbuktu in 2012/2013, and I have certain questions  
12 that I would like to put to you. As you can imagine, they are questions which are  
13 based around victims.

14 So just to put you in the context, my questions, they are put to you because you're an  
15 expert, an expert on Mali. You're an expert on conflict. And in order to do so, I'm  
16 going to refer to your report and, namely, page MLI-OTP-0031-0506 where -- page 11  
17 thereof, as well as page MLI-OTP-0031-0507, so page 12 thereof, right at the start. So  
18 the last paragraph in fact is what I'm referring to, the last paragraph of page 11 and  
19 the beginning of page 12.

20 Witness, if you would be so kind as to explain to the Chamber the difference that  
21 there is -- or the different people in the north, that there are in the north of Timbuktu  
22 as well the relations that there are between the different communities there.

23 I don't know if you have understood my question where it refers to the different  
24 peoples there. But, please, if you could be as brief as possible, because we don't have  
25 much time.

1 Thank you very much.

2 A. [11:59:50] Thank you. And thanks for the question.

3 Yes, I mean, there are -- Mali is an ethnically diverse country, and the same is the case  
4 for the north. So I hope that there is no misunderstanding here concerning that fact.

5 The Timbuktu area is home to people of Tuareg origin, but also of numerous other  
6 groups. And, in fact, I mean the Tuareg are only -- constitute a majority in Kidal, not  
7 in the Timbuktu and Gao or Ménaka provinces. So it's important that that is

8 correct -- I mean, in the Timbuktu area, of course you find the Tuaregs, but you'll

9 found people of Fulani or Peul origin. Here you have also some high groups there

10 and other -- other of the ethnic groups of, of Mali, Bambara and others.

11 So -- and the relationship between these groups, I mean, historically, Timbuktu has

12 been a Tuareg city, but not -- but you also have important Arab groups there like

13 the Kounta and others, so it's really quite an ethnically diverse area.

14 As Mali, as a post-colonial state came into being, I mean, also other groups came into

15 this area for -- for jobs and other things, and I was going to say the dominant position

16 of the Tuareg group was slightly reduced, but it still was an important sort of group

17 both socially, economically and politically in, in the area.

18 But in addition, you also have to take -- you have to take into consideration that

19 the Tuareg society is a stratified society between the various family clans, but also

20 with regards to the various occupations that people were doing, from the noble class

21 and -- order down to the, the Bella, which are people who, at one point in time, was

22 taken as slaves. So this is a lineage of people of, of -- of historically a slave origin.

23 It's also important to take note here of what kind of occupation people are having. I

24 mean, northern Mali is an area which has seen a lot of conflict between pastoralists

25 and, and farmers, for example. So it's a diversity of livelihood, it's a diversity of

1 various ethnic groups, and that is important that it's taken into consideration. And it  
2 should not be stated that sort of one group belongs to a group that is perpetrators and  
3 others are victims. There are victims on all sides here. There were Tuaregs who  
4 were victim of the conflict, but there were also people of Fulani, Songhay and other  
5 ethnic origin that were victims of this conflict, whereas there was also people of that  
6 origin that -- that were perpetrators during the conflict.

7 I hope this clarified this matter.

8 Q. [12:03:14] Yes. Thank you, Witness.

9 We are in 2012 and, according to your testimony this morning, the Ansar Dine/AQMI,  
10 they occupied the north and these movements, if I understood you well, were of  
11 Tuareg majority. And if I've understood, when I refer to your report, you were  
12 speaking about you had people with light skin and people with dark skin. And if, if  
13 you could tell us the proportion in around Timbuktu of light-skinned people and  
14 dark-skinned people? So the light-skinned people and dark-skinned people during  
15 the period that is of interest to us, and what is the role, or at least the position, of  
16 the communities with regards to the occupation?

17 A. [12:04:20] It's not possible to give an exact breakdown of people into light skin  
18 and darker skin when it comes to the Tuareg, because such, such a sample frame  
19 simply do not exist first and foremost because people are not classified as this  
20 officially.

21 And secondly, it's simply not -- it would be very, very difficult to do, to establish that  
22 sample frame, actually.

23 So it's, it's hard to say the actual proportion of this, but sort of historically speaking, I  
24 mean sort of more lighter-skinned groups among the Tuaregs has been belonging to  
25 the upper class, I mean the noble class. And, as any noble class, I mean the noble

1 class constitutes often a minority and that is also the case here.

2 So that would be my answer to that particular part of your question.

3 Secondly, how did the various groups in the Timbuktu area respond to AQIM and  
4 Ansar as an occupying force?

5 That is not something that can be broken down on only ethnicity or with regard to  
6 light skin, darker skin, because this had to do with -- both with how people saw  
7 the conflict in itself, and people had different views about this, but also how people  
8 responded to the fact that AQIM and Ansar came in and took control of the city.

9 And here we have to remember that the MNLA rebellion created an enormous chaos  
10 in the north and, for some people, they probably viewed AQIM and Ansar as a group  
11 that re-established some sort of order in the area after the chaos that MNLA created.

12 This was an order that, I would say, a majority of the population of Timbuktu  
13 probably did not sympathise with. Meaning that they had no -- they did not  
14 necessarily like the very strict Sharia rule that AQIM and Ansar tried to implement in  
15 the town and in the province that they -- in the part of the province they controlled.  
16 But still, for some people, they found the strict and harsh order of AQIM and Ansar  
17 preferable to the chaos that the MNLA created. And this means that, yes, some  
18 people supported the role of AQIM and Ansar also prior to them having control of  
19 the city. Some people responded, if not positively to the rule of Ansar and AQIM, at  
20 least they tolerated it and they did not openly resist it.

21 And it's almost impossible to say that the light skin or the dark skin was more in  
22 opposition or more in sympathy or more for or against AQIM, because it depends  
23 more on how you were situated prior to the conflict started. If you already had  
24 religious political leanings towards the Salafi project of Ansar and AQIM, but also  
25 how you responded -- or, should I say, more opportunistically to the fact that

1 the town and the area where you suddenly -- lived suddenly were under the control  
2 of these organisations.

3 So, both victimhood and response to the rule of this organisation is relatively equally  
4 divided between the various groups that lived in this particular area. That said,  
5 there is -- also clear that if you look at how the conflict evolved during that time, one  
6 would probably see that there were slightly more people of Tuareg origin that was  
7 more inclined to side with AQIM and Ansar than, perhaps, there were people of  
8 Fulani origin.

9 And this has little to do necessarily with religion or theology as such and more with  
10 regard to pre-existing conflicts over land rights and not the least the right to graze  
11 cattle. And AQIM and Ansar were two organisations that were good at  
12 appropriating these local conflicts and using them for their own purpose and  
13 advantage.

14 Sorry for being long, but it's a complicated question and it really needs a complex  
15 answer, which I'm trying -- which I tried to give here.

16 Q. [12:09:52] Yes, I understand you well, Witness.

17 This is a complex question and that's why I refer to you in your capacity as an expert,  
18 as a researcher.

19 What would you say about these communities in normal times? What about  
20 marriage between the two communities? Would that be envisagable, a marriage  
21 between the two communities?

22 And I also want to go back to the fact that during the conflict there were a lot of  
23 women who were victims of rape, forced marriages. Was this practice, was it used  
24 as a weapon as is used a weapon of mass destruction?

25 So -- and how would you -- as you've had contact with a lot of people from the north,

1 who have come from the north and who you've met, you've questioned a lot of  
2 different people, you've interviewed a lot of different people, what is your vision?  
3 What is your view about this practice of multiple rapes, which were committed while  
4 marriage was forced, and afterwards, having acquired the woman, she was then  
5 handed over for collective rape? Was this a weapon that was used --

6 PRESIDING JUDGE MINDUA: [12:11:33](Interpretation) Maître Nsita, I have  
7 the impression that your question is a compound question with multiple questions.  
8 Can't you put it in little parts?

9 MR LUVENGIKA: [12:11:47](Interpretation) I think that the witness understood me  
10 well. I'll let him answer the question first and, if necessary, then I will reframe my  
11 question. Thank you very much, your Honour.

12 PRESIDING JUDGE MINDUA: [12:12:02](Interpretation) Very well. Let's try.

13 THE WITNESS: [12:12:06] Okay. Thank you. And I will try to the best of my  
14 ability to answer not one question, but you had several there.

15 Let me start with where you started, around marriage practices prior to the conflict,  
16 because I think that was your entry point.

17 Here, I would say that, yes, I mean it was not unthinkable that you had  
18 the intermarriages between different communities, but we have to also remember that  
19 Mali was and still is a socially conservative society, and, in the rural areas, people  
20 most often tend to marry within their own ethnic group, meaning that a Tuareg  
21 woman would normally marry a Tuareg man.

22 In the larger cities, particularly among -- I shouldn't say the more bourgeois, the more  
23 upper classes, people with education and so on, it is more common that you also have  
24 this intermarriages between groups so that a Fulani man could be married to a Tuareg  
25 woman and vice versa, but this is more of a Bamako phenomenon than a Timbuktu

1 phenomenon, but it also happened -- happens in, in Timbuktu.

2 But in the rural areas and among poorer people, it is most common that people marry  
3 within their ethnic group. And marriages has always, in Mali, been something that  
4 is a family matter. It's only among the young and the very well-educated richer ones  
5 that people marry, that a girl autonomously chooses who she marries. So a marriage  
6 is something that is organised between families, if you get my drift.

7 What really shocked people -- and now I'm coming to the second part of your  
8 question about these forced marriages. When we interviewed people in 2013 about  
9 what had happened in the north during the conflict, this was one of the issues that  
10 many of those that we interviewed said that they were really shocked about this - and  
11 they said that this was something completely new compared to previous conflicts in  
12 the north - that combatants who had control of an area had forced girls into marriage.  
13 And also there were reports about rapes, about sexual violence that had not been  
14 reported in the conflicts prior to this, for example, there was the conflict in the 1990s.  
15 So this was something that was new. People were very shocked about this and  
16 really couldn't understand why this had happened in their communities, because this  
17 was something they saw as extremely alien, that the combatants would do things like  
18 this.

19 And the exact extent to which this happened has -- at least to my knowledge yet to be  
20 established and I think it will never be established, the extent to which it happened.  
21 But we know that this happened both in Timbuktu and perhaps even more frequently  
22 in Gao. At least, there are some evidence that suggested that. But we know it also  
23 happened in -- in Timbuktu. It became commonly known in Mali as jihadi  
24 marriages. Marriages where girls were -- yeah, forced or in other ways sort of  
25 pressured or convinced to, to marry a jihadi fighter. And some of these marriages

1 didn't last much longer than for the fighter to have sexual intercourse with  
2 the -- the woman and then he simply told her, "I am divorcing you." And then she,  
3 in some instances, she would then be married again to another jihadi warrior that  
4 would have sexual intercourse with her.

5 To the extent this was sort of organised as you tend to indicate as a -- as a clear  
6 weapon of war, I am less certain about. But that did -- that this happened, that's  
7 unquestionable, in my point of view. But it may be that it happened more as an  
8 instrument in order to satisfy the fighters rather than as a direct weapon of war to  
9 terrorise one particular group, because it's difficult for me to say that one -- that  
10 women from one ethnic group was more likely to be forced into these marriages than  
11 women from other groups.

12 So it may very well have been that this was more of an -- of a strategy to keep fighters  
13 happy and also something that could be used to lured -- to, to attract more fighters.  
14 Basically saying, "Come and fight with us and you will get -- you will have the ability  
15 to have sex with women."

16 Q. [12:17:57] And does that explain that when these combatants had been driven  
17 out of the town, they left and abandoned all these women?

18 A. [12:18:09] Yes. I mean, to have -- there has never been much of a tradition, if  
19 you look at the various jihadi groups, that they travel with women. So -- and you  
20 have to remember that when they had to leave Timbuktu, when they left Gao and  
21 other towns, they were leaving because French forces were embarking in on these  
22 cities.

23 So in some cases, they left in quite a, quite a hurry, meaning that they had to travel  
24 fast, they had to disappear into the desert, hide among other local communities where  
25 they had achieved some level of local integration, and it was limits to, also their

1 ability to bring some of these women with them.

2 Some of them may have been brought with them. The majority of them was

3 probably not, but I would like to stress that, I mean, this is a part of the conflict where

4 we -- we do not have exact statistics over this, yeah, at least to my knowledge, that do

5 not exist because it's almost impossible to construct a sample frame over this because

6 we really are dealing with an invisible population because we don't know.

7 The majority of these women, we simply don't know who they were.

8 Q. [12:19:38] Thank you, Witness. A last question --

9 PRESIDING JUDGE MINDUA: [12:19:41](Interpretation) Mr Nsita.

10 Ms Taylor?

11 MS TAYLOR: [12:19:44] I'm intervening proactively with respect to my colleague to

12 ask that the questions be framed in an open, neutral manner rather than as

13 a statement of testimony or fact, which has been the case for the last couple of

14 questions. They've been extremely leading.

15 PRESIDING JUDGE MINDUA: [12:20:04](Interpretation) I accept your objection,

16 Ms Taylor.

17 Mr Nsita, please formulate your questions in such a way that you're not making

18 statements. Ask open questions, please.

19 MR LUVENGIKA: [12:20:19](Interpretation) Thank you, your Honour.

20 Q. [12:20:23] Witness, just a question, which I'm going to close with: Do you

21 know what happened to the children who were produced through rape or forced

22 marriage? What happened to these children? What became of them, if you know?

23 A. [12:20:51] I'm sorry, but I -- I do not know. And I -- I can only speculate that

24 they have remained with their, their mothers and that these mothers, most of them,

25 are back in their local communities. To what extent these children are carrying some

1 sort of stigma with them, we do not know the certainty of that. But, of course,  
2 they're ... I mean, neither do we -- do we have any clear idea about the number of  
3 such children born out of these kind of -- I mean, for lack of a better word, jihadi  
4 marriages.

5 Q. [12:21:41] Thank you very much, Witness.

6 Your Honour, I've finished with my questions. Thank you very much.

7 PRESIDING JUDGE MINDUA: [12:21:51](Interpretation) Thank you Maître Nsita  
8 for your questions.

9 Now it's the turn of the Defence to conduct the cross-examination.

10 Ms Taylor, you have the floor.

11 QUESTIONED BY MS TAYLOR:

12 Q. [12:22:08] Good afternoon, Mr Witness. My name is Melinda Taylor and I'll be  
13 putting questions to you on behalf of the Defence. And just, again, because we're  
14 speaking the same language, if we could remember to have the 5-second break  
15 between questions and answers.

16 You should have a Defence binder next to you as well as a Prosecution binder.

17 So, Mr Witness, I'll start by going back in time. In your report, you set out  
18 the impact of French colonial rule on the situation and status of Tuaregs in groups in  
19 the north, that the French imposed a more centralised rule and this impacted on  
20 the autonomy and prosperity of the north; is that correct?

21 A. [12:23:06] Yes, that's correct. Because the French colonial system was based on  
22 trying to achieve a central administration and a central administration needs to -- in  
23 many ways tries to make people stay put where they are in order to rule them and  
24 organise them.

25 And this does -- this type of modern statecraft as, as a central -- centralised states

1 require, do not go very well together with the nomadic and seminomadic lifestyle of  
2 a pastoralist population as the Tuareg who belongs -- who depends on the livelihood  
3 for what we call the transhumance, that is, the seasonal migration of people and cattle  
4 from one pasture to another pasture.

5 And this is important for the Tuareg pastoral -- pastoral way of life because you have  
6 to migrate during the dry season to dry season pastures further south.

7 Q. [12:24:14] And if I could turn to page 0500 of your report, that's tab 5 of  
8 the Prosecution's list of exhibits, MLI-OTP-0031-0496 at 0500.

9 Do you confirm what you've written there, which is that:

10 "The Tuareg position in the northern region was turned upside down by French  
11 colonialism and made permanent by the post-colonial state system."

12 A. [12:24:45] Yes, I can confirm that.

13 Q. [12:24:48] And at an earlier page, at page 0499, you write that the Mali's  
14 post-colonial "one-party state socialism ... allowed little room for any kind of  
15 autonomy for minority groups, including those in the North."

16 A. [12:25:05] Yes.

17 Q. [12:25:06] Would you agree that the humiliation and violence meted out during  
18 the colonial regime continued under post-colonial Mali?

19 A. [12:25:19] Yes. If you allow me just 10 seconds to explain.

20 I mean, prior to colonialism, the Tuareg, who has always lived in one of the harshest  
21 environments of the world, had one important advantage for them and that was  
22 basically that they were the ones who lived in this area where the Sahel borders  
23 the Sahara, and they controlled, in many ways, the right of passage through these  
24 areas.

25 And as you also have seen from my report, I underlined the fact that there has -- there

1 is these ancient pathways of trade in between these areas, of commerce, of trade, but  
2 also of pilgrimages. And this placed the Tuareg and particularly the noble families  
3 that led the Tuareg clans in -- despite the harsh environment they lived in, where they  
4 constantly had to navigate and negotiate the droughts that happens with various  
5 degrees of predictability and frequency, they had the advantage that they controlled  
6 the rights of passage.

7 This is something that -- this is a right that they basically, to a certain extent, but not  
8 fully, lost during French colonialism, that tried to pacify these peoples, tried to control  
9 the borders and thereby also removing from them the right of the -- the right of  
10 passage.

11 But we also have to remember that the Tuareg has -- as a pastoralist people has  
12 always also been a people of wars and conflicts. And the Tuareg was a, was  
13 a population who directed slave raiding -- raids towards the south, that means to  
14 the African, black African population.

15 So you have here a situation where a group of -- where a group of people, the Tuareg,  
16 who used to in many ways be the overlords, the masters of this area of the Sahel  
17 in-between the Sahel and the desert - who, historically, also had committed raids to  
18 get slaves from the black population - with the coming of colonialism and, later,  
19 the post-colonial state, you had this group that used to be the overlords suddenly  
20 ended up as a minority, more or less forever doomed to be ruled by a -- the majority  
21 population, the black African population. Who, until the coming of colonialism, had  
22 been a population that at least I wouldn't say that they dominated them, but there  
23 were -- and there has also been times it's said of collaboration between these groups.  
24 The history of the north is both a history of collaboration as well as conflict. But  
25 suddenly they became an ethnic minority, and an ethnic minority that the state, due

1 to its centralised approach to statehood and statecraft tried, if not to dominate at least  
2 to pacify, to make them steadfast. That means that they should no longer be  
3 pastoralist, they should become steadfast farmers.

4 And the Tuareg rejected this and you had the first Tuareg uprising already in  
5 the early 1960s. And since then it has been, the story of the relationship between  
6 the central state, between Bamako and the north, has been one of both conflict but  
7 also of collusion and collaboration at times. But this has been a volatile relationship.

8 Q. [12:29:30] Thank you. Thank you, Mr Witness. If we could just go through  
9 things in steps. I would now like you to focus on the post-colonial processes,  
10 specifically the democratisation processes initiated in Bamako. Would you agree  
11 that during these processes the Tuaregs remained sidelined?

12 And if I could draw you to perhaps page 502 of your report, paragraph 2.

13 A. [12:30:02] Yes, that's fair to say. Although, I mean, sidelined as they may have  
14 been, I mean the, the ongoing uprising in the north also in a way contributed to  
15 the popular discontent in the south that drove this, drove this political process.

16 But they were at the margins of the larger political changes that happened.

17 That's -- that's ... But still, I mean, if you look at what happened thereafter,  
18 numerically speaking, after the democratisation processes and the -- in the early 1990s,  
19 it would be wrong to say that the Tuareg has numerically been underrepresented in  
20 the Malian state.

21 But the north continued to be economically marginalised.

22 Q. [12:31:07] So just on this issue of economic marginalisation, would you agree  
23 that there was a significant difference in poverty levels between the north and the  
24 south of Mali, as reflected in several studies?

25 A. [12:31:21] Yes, that is most likely the -- the case. And -- but the main reason for

1 this, for the economic neglect and marginalisation of the north, has more to do with  
2 the culture of corruption in Mali rather than that money was not officially set aside  
3 for the north.

4 But what happened was a collusion of interest between certain Malian politicians in  
5 the south and regional strongmen in the north that continue to starve the north of -- of  
6 economic assistance that was supposed to have come to the north.

7 Q. [12:32:14] Just on this issue of corruption, if I could turn you to page 498 of your  
8 report. Do you confirm what you've written there about the Bamako government  
9 being marked by "institutional weakness, mismanagement, and ... collusion between  
10 regional and national 'big men' interests that paid little if any respect to human  
11 security and development."

12 A. [12:32:41] Yes, I can confirm this. This was the -- this was the best  
13 characteristics of Malian politics and political life in that period and, unfortunately,  
14 you could say exactly the same about Mali today, at least up until the coup that  
15 happened over there in August.

16 Q. [12:33:04] And if I could turn you to page 526 of your report. Would you  
17 confirm your statement that "Mali's political system had become a rotten fruit and  
18 gone badly awry under Touré, amid rampant corruption and the breakdown of the  
19 rule of law."

20 Paragraph 2 of that page.

21 A. [12:33:24] Yes, I mean, again, I think it's an accurate picture and, I mean,  
22 the level of impunity that I have seen in Mali is, is probably larger than I've seen in  
23 any of the other African countries in conflict that I worked in, the Congo included.  
24 I mean, the level of impunity that has persisted in this country has been enormous,  
25 particularly with regard to economic corruption and siphoning of state resources,

1 including official development assistance.

2 Q. [12:34:02] On this issue of impunity, in your report you cite to a 2006 report by  
3 Robert Pringle. That's footnote 6 of your report and it's tab 5 of the Defence binder,  
4 MLI-OTP-0078-2651 at 2678.

5 A. [12:34:33] Could you please report so that I find it here in your --

6 Q. [12:34:34] It's tab 5 of the Defence binder.

7 A. [12:34:37] Tab 5, yes.

8 Q. [12:34:38] And it's MLI-OTP-0078-2651 and if you turn to a page which has 2678.

9 A. [12:34:54] 2678?

10 Q. [12:34:56] Yes, which on this page it refers to deep concerns regarding the justice  
11 systems, contradictions between colonial and post-colonial legal texts, justice  
12 negotiated at a price and a culturally based unwillingness to sanction the powerful.  
13 That's at the first paragraph.

14 A. [12:35:15] Mm-hmm. Yes.

15 Q. [12:35:22] Would you agree with Mr Pringle's assessment of the state of  
16 impunity in Mali at this time?

17 A. [12:35:34] Yes. That is not something I would disagree with.

18 Q. [12:35:39] At footnote 55 of your report you also refer to an article by Bruce  
19 Whitehouse titled, "What went wrong in Mali?"

20 And this is tab 7 of the Defence binder, it's MLI-OTP-0078-3678.

21 And if you could turn to the -- your eyes to the first paragraph, Mr Whitehouse  
22 writes:

23 "As Touré's second term approached its end, Malians had also lost faith in the rule of  
24 law. On the outskirts of Bamako, residents saw their property seized by members of  
25 the president's inner circle, and were powerless to seek redress through the courts.

1 Few Malians felt protected by the police, who were busy extorting bribes from  
2 motorists. Judges sold favourable verdicts to the highest bidders. There was  
3 the revival of a practice known as Article 320, first seen in the lawless days after  
4 Moussa Traoré's fall: Accused thieves were doused with petrol and set alight.  
5 (The name comes from the price of a litre of petrol and a box of matches, which in  
6 1991 totalled 320 local francs.) At least seven such vigilante killings were reported in  
7 Bamako in the first two months of this year, and it seems likely that many more have  
8 taken place since."

9 MR SANDOVAL: [12:37:14] Mr President, could we just seek clarification.

10 PRESIDING JUDGE MINDUA: [12:37:20] (Overlapping speakers)

11 MR SANDOVAL: [12:37:21] Could we just seek clarification as to which  
12 paragraph on page 3678 the Defence is referring to. The transcript records  
13 a reference to the first paragraph, but I don't see the words that she is quoting in  
14 the first paragraph.

15 MS TAYLOR: [12:37:35] It's page 3680 of this report, and if you start looking at the  
16 sentence starting with "As Touré's second term approached its end" --

17 MR SANDOVAL: Thank you. Because the transcript referred to the first page  
18 originally --

19 PRESIDING JUDGE MINDUA: [12:37:56](Interpretation) Please could we have  
20 some breaks, because I don't hear the full interpretation.

21 Prosecutor, what is your concern?

22 MR SANDOVAL: [12:38:06] Mr President, I was just seeking clarification as to  
23 which page the Defence was referring to, because the transcript seems to have  
24 recorded a reference to the first paragraph of the first page, that is page 3678, when  
25 the Defence has just clarified that she was referring to the first paragraph of page 3680,

1 where I now see the excerpt that the Defence is referring to.

2 Thank you, Mr President.

3 PRESIDING JUDGE MINDUA: [12:38:39](Interpretation) Very well.

4 Ms Taylor.

5 MS TAYLOR: [12:38:44]

6 Q. [12:38:44] Mr Witness, this an article you cite in your report. Are you familiar  
7 with it?

8 A. [12:38:50] Yes.

9 Q. [12:38:51] And you were in Bamako in 2013. Did you hear of complaints  
10 concerning corrupt justice?

11 A. [12:38:56] Yes, that's something you also hear when you are in Mali.

12 Q. [12:39:02] And did you hear about this revival of this Article 320 practice?

13 A. [12:39:07] I have heard about it. And this is something, a very sad and  
14 unfortunate fact that you see not only in Mali but also in several of these other, other  
15 countries where I worked.

16 I mean, I have a lot of respect for the scholarship of Bruce Whitehouse, but I have  
17 myself -- I have not -- I have seen this practice elsewhere where I worked, I've never  
18 seen it, been an eyewitness to this myself in Bamako. And I'm very thankful for that.  
19 And I've seen it once or two times in the Sudan and it's not something I would like to  
20 see again, to put it that way.

21 But I have heard about it also in the case of Mali and Bamako. The extent to which  
22 this happened is again something that is extremely difficult to put a figure on, but we  
23 know that it happened in Bamako and elsewhere. And why does it happen? Well,  
24 it happens because people had lost complete faith in the justice system. And this is  
25 again something that later the various jihadi insurgents would use to their advantage

1 by establishing Sharia courts that were seen as much less corrupt than government  
2 courts.

3 Q. [12:40:32] If I could turn you to tab 12, it's MLI-D28-0004-0993, and if you could  
4 turn to -- this is an article concerning these alleged incidents, and if you could turn to  
5 page 0994, the third paragraph quotes Bruce Whitehouse, the same author, saying:  
6 "The coup and vigilante justice are different expressions of a single logic shaped by  
7 the state's perceived failure to enforce the law."

8 Would you agree with this assessment?

9 A. [12:41:27] Yes. I mean, that was more or less what -- the reply I gave to you  
10 just a second ago, so yes. This is, this is why -- I mean, when people lose faith in  
11 state institution, when people lose faith in law as something that at least has the  
12 possibility of giving them justice, then people will feel that they need to act on their  
13 own. And when, when enough people feel that the law is not -- is not there for them  
14 but for another purpose, then -- then, with all likelihood, a few will turn to these kind  
15 of extremely dramatic ways of trying to enforce some sort of law for themselves, like  
16 vigilante justices.

17 Q. [12:42:11] Now, if I could turn to tab 1 of the Defence binder, this is another  
18 author you cite in your report, Roland Marchal. His report is titled "Is a military  
19 intervention in Mali unavoidable?"

20 The reference for the transcript is MLI-OTP-0001-6676.

21 MR SANDOVAL: [12:42:38] Mr President.

22 PRESIDING JUDGE MINDUA: [12:42:43](Interpretation) Prosecution.

23 MR SANDOVAL: [12:42:45] (Overlapping speakers) I'm sorry to interrupt, but could  
24 the Defence specify where this was cited in the witness's report?

25 MS TAYLOR: [12:42:55] If we can find that, I believe it would have been in

1 the footnotes. This is an OTP exhibit that was disclosed by the Prosecution.

2 MR SANDOVAL: [12:43:02] But just for the guidance of the witness, if you could  
3 guide him to the specific end-note where it was cited so that, if necessary, the witness  
4 can refer to the relevant portion of his report.

5 MS TAYLOR: [12:43:15] Well, perhaps I can put to the witness:

6 Q. [12:43:17] Are you familiar with this report?

7 A. [12:43:20] Yes, I'm familiar with it, I have read it, but it's quite some time since I  
8 read it, so, I mean, don't ask me to give a precise sort of verbal review of it. But I  
9 know it, yes.

10 Q. [12:43:39] I promise, Mr Witness, I won't give you a pop quiz.

11 A. [12:43:42] Thank you.

12 Q. [12:43:43] So if we could perhaps turn to page 6679 of his report. And if you  
13 look on the left column, and if we could start with the sentence that starts with  
14 "The destruction of the tombs in Timbuktu". And Mr Marchal writes:  
15 "The destruction of the tombs in Timbuktu provoked uproar in the international  
16 media, but few journalists asked what kind of Islam was practised in Timbuktu before  
17 the city was taken over by the insurgents. To a large extent, media reaction was  
18 framed in terms of a colonial (and later touristy) mythology that Timbuktu was a  
19 'sacred city'."

20 Mr Witness, would you agree with Marchal that colonial perceptions and  
21 mythologising of Timbuktu may have led to a disproportionate and accentuated focus  
22 on what was happening in Timbuktu as compared to Gao or Bamako?

23 A. [12:44:53] Yes and no I would say. Yes, because I mean Roland is correct that  
24 Timbuktu has, in a way, sort of -- it captures a popular -- or should I say a popular  
25 imaginary of an ancient town. I mean, you find references to Timbuktu in anything

1 from Walt Disney and Donald Duck to whatnot, so clearly, I mean, Timbuktu  
2 captures some sort of popular imaginary in Europe but probably also in the US.  
3 In that regard he is correct. And yes, I mean, the colonial scholars had certain  
4 misrepresentations of Timbuktu that has contributed to this popular imaginary of  
5 Timbuktu as this ancient scholarly city in the desert.

6 But part of that popular imaginary is also, in my point of view, quite correct. I mean,  
7 this was a centre of learned wisdom from old times and there is -- historically there  
8 has been a Sufi tradition in Timbuktu and in parts of Mali that has been quite  
9 important.

10 So, yes, could there have been good reasons for a similar focus on events in Gao?

11 Would there have been good reason for a larger sort of international scrutiny of  
12 the culture of impunity in Bamako? Yes, Roland is correct in that regard.

13 But where I think I disagree with Roland is basically that the destructions -- while  
14 the destructions that took place in Timbuktu of Sufi shrines, of Sufi mausoleums  
15 cannot be compared to the Taliban style of blasting ancient Buddha statues with  
16 heavy -- with heavy canons and RPGs and these kind of things, many Malians were  
17 proud of Timbuktu and they were quite shocked when they realised that there had  
18 been an attempt by some of the jihadi actors that occupied the city to -- if not totally  
19 destroy, at least make quite some damage to some of these artefacts. And I would  
20 also say that many Malians were quite relieved when they realised that at least part of  
21 the damages were, were reparable and that it could be in some ways fixed.

22 So I have both -- I understand Roland's point, but I also slightly disagree with it,  
23 which is often the case with scholars.

24 Q. [12:47:57] Just on this issue of religion, if I could turn you to page 498 of your  
25 report --

1 A. [12:48:05] Now we are in my report?

2 Q. [12:48:08] Yes.

3 For the transcript that's MLI-OTP-0031-0496.

4 You write that "... different expressions ... of Islam have shaped the country's history  
5 as well as the current societal landscape."

6 A. [12:48:38] This is 0496?

7 Q. [12:48:41] This is 0498.

8 A. Okay. Thank you.

9 Q. [12:48:43] Paragraph 2. And then you write:

10 "... pre-colonial Mali also included important reformist Jihadist movements such as  
11 those led by Sufi leaders Seku Amadu and Umar al Futi who denounced what the[y]  
12 understood as un-Islamic behaviour in local kingdoms and sought to replace them  
13 with new policies based on their interpretation of Islamic creed and law."

14 So on the basis of what you've written here, would it be true to say that contentions  
15 over the interpretation of Islam is nothing new in northern Mali?

16 A. [12:49:25] Yeah, that would be correct. I mean, if you look at the larger history  
17 here of Mali and go deep into history, you will see that there has been a continued  
18 attention on the interpretation of both the role of Islam and how Islam is supposed to  
19 be displaced.

20 And where -- and a number of sort of precolonial jihadi rebellions have waved  
21 the flag of jihad and used religion in order to make a rebellion against a ruler has been  
22 quite common.

23 And yes, it's also correct that at least some of the current jihadi insurgencies in Mali  
24 are trying to sort of portray themselves as the contemporary expression of that much  
25 larger canon. AQIM and Ansar has not done that very much, whereas a new one

1 that is outside of the -- of the -- of this case, Katibat Macina, very deliberately has  
2 done that.

3 Q. [12:50:36] If we could just turn to page 516 of your report, you write, this is in  
4 the second paragraph towards the end, you write that it would be "... way too simple  
5 to present the issue of Islam in Northern Mali as 'peace-loving' and pragmatic Sufis  
6 confronted by external missionaries trying to spread the gospel of international  
7 Jihad."

8 So in line with what you've written there, if I could now show you page 6679 on  
9 the report of Roland Marchal that we looked at before, that was tab 1.

10 A. [12:51:26] What page did you say? Can you repeat, please.

11 Q. [12:51:29] Page 6679.

12 A. 6679, yes.

13 Q. [12:51:33] And for the transcripts it's MLI-OTP-0001-6676 at 6679.

14 And if you could look at the second paragraph on the left column, would you agree  
15 with Mr Marchal that the distinction between Salafi and Sufism is often overstated,  
16 that even in contemporary Timbuktu there are conservative Sufis who may not have  
17 supported female emancipation or the UNESCO designations of the mausoleums?

18 A. [12:52:23] Yes. I mean, there is -- first you have to remember that, I mean,  
19 this -- this is very much in line what -- with what I myself has written both in this  
20 report and elsewhere. I mean, there has been a tendency on the more popular  
21 reporting on the conflict of Mali in general to overstate the role of religion. Religion  
22 do play a role in this conflict and theological differences also plays a role, but there  
23 are also a number of other issues at stake here and you can -- really cannot explain  
24 this conflict and neither the events of 2012/2013 by simply referring to religion.

25 And yes, I mean, there are differences, there are theological differences between Sufi

1 Islam and Salafi Islam. But the Sufi Islam that is practised in Mali is informed by  
2 the Maliki -- Maliki brand of Sunnism.  
3 That is one thing, but another thing is that this is a Sufism that always has been  
4 socially conservative. And on some of these issues concerning the role of women in  
5 society and other issues, there would often be quite a lot of agreement between  
6 Malians who follow Sufism and those that are more followers of Salafism. And it's  
7 also important to note that Salafism has been present in Mali for quite some time and  
8 I write also about that in my report. I mean, Salafism in itself is not something that is  
9 new in Mali. In fact, it sort of arrived in Mali prior to the Second World War and has  
10 been an aspect of Malian society and religious practice ever since.  
11 That said, I mean, you also have to remember that in Mali, as elsewhere in the world,  
12 I mean, 98 per cent of the world's Salafi population is completely peaceful people and  
13 do not follow the armed approach of the minority Salafi position.

14 Q. Mr Witness --

15 THE COURT OFFICER: [12:54:32] Can we please mark a pause between question  
16 and answer and slow down the flow also a little bit for the court reporters. I see that  
17 they didn't catch everything in the transcript. Thank you very much.

18 MS TAYLOR:

19 Q. [12:54:53] Mr Witness, can I turn you to binder 13 in the Defence list. It's an  
20 article by Andrew Lebovich in 2019.

21 For the record, it's MLI-D28-0004-0997.

22 And if you could turn to page 0998, the third paragraph down. Mr Lebovich writes  
23 that:

24 "Preconceptions about radicalisation and counter-terrorism have, therefore,  
25 contributed to widespread misunderstandings about the relationship between

1 religion and Malian society - a dangerously skewed focus. Many outside observers,  
2 and even some Malians, place Muslims in reductive and overly rigid categories - or  
3 create dichotomies of Muslim practice such as that between Sufism and Salafism - in  
4 an echo of Western attempts to separate 'good' Muslims from 'bad' Muslims."

5 If I could also turn you to page 1011 of the same article, second paragraph.

6 A. [12:56:25] Could you repeat the page number, please.

7 Q. [12:56:27] It's 1011 at the bottom.

8 A. [12:56:34] 1001, okay.

9 Q. [12:56:36] 1011.

10 A. [12:56:43] Yes.

11 Q. [12:56:43] Lebovich refers here to Houka Houka Ag Alhousseini, the *qadi* for

12 Ansar Dine in 2012. He notes that he openly practiced as a *qadi* in Timbuktu since

13 2015, has been consulted by the government and local officials on issues of

14 reconciliation, and further notes that he has liaised with several religious leaders on

15 such issues, including Mahmoud Dicko and Chérif Ousmane Madani Haidara.

16 Now, if I could now turn you to page 1004, Mr Lebovich suggests that the willingness

17 of these leaders to liaise with each other is consistent with the fact that religious

18 leaders in Mali often share similar views on moral issues, the role of Islam in public

19 life, and some government policies.

20 Would you agree with this conclusion?

21 MR SANDOVAL: [12:58:09] Objection, your Honour.

22 PRESIDING JUDGE MINDUA: [12:58:17](Interpretation) Prosecutor.

23 MR SANDOVAL: [12:58:19] Mr President, could the Defence lead the basis for

24 the presentation of this document to the witness. The Defence has not explained

25 who this author Andrew Lebovich is and why his views should be presented to the

1 witness, and also why the witness would be in any position to comment on this  
2 particular individual's views.

3 And furthermore, your Honours, if the Defence could cut down the question. It  
4 amounts to a compound and rather complex question.

5 PRESIDING JUDGE MINDUA: [12:59:09](Interpretation) Thank you, Prosecutor. I  
6 accept your objection.

7 Ms Taylor, the article was written by Andrew Lebovich, but what is the link to  
8 the witness here today?

9 MS TAYLOR: [12:59:25] I can put that to the witness.

10 Q. [12:59:27] Are you familiar with Mr Lebovich? I do believe you've cited to him.

11 A. [12:59:32] Yes, I'm familiar with Andrew Lebovich. (Redacted)

12 (Redacted)

13 (Redacted), I know his work, I have

14 a lot of respect for his work. So I have no problem comment on it, but I'm trying to

15 sort of understand what you want me to comment on. That was -- if I have

16 a problem, it's that. Not commenting on Andrew's work, which I know quite well.

17 Q. [13:00:08] Well, in this article Mr Lebovich refers to meetings between

18 Houka Houka, the former *qadi* in Timbuktu, and other religious leaders who might

19 have at certain points been perceived to be on other sides. In his introduction he

20 frames this as his position that religious leaders in Mali often share similar views on

21 moral issues, the role of Islam in public life, and government policies. And this is in

22 keeping with the quote I put to you earlier about the dangers of having overly

23 reductive categories.

24 A. [13:01:01] Yes, if I might try to answer. Islam in Mali is -- to the extent that it's

25 organised, it's -- at least has one major representation and that is the so-called high

1 Islamic authority, or the High Islamic Council. And on the High Islamic Council you  
2 find sort of representatives of both the Maliki branch of Sunnism and you have Sufi  
3 representatives, but you also have Salafi representatives. Like, for instance, you  
4 mentioned this Mahmoud Dicko, for example, he is the most important Salafi imam  
5 in Mali.

6 And together, these people, they may disagree over certain interpretations of Islam,  
7 they may have certain theological differences, but they also agree on a lot of -- are the  
8 same with sort of social issues that they do agree upon.

9 And yes, they talk together. Most of these people know each other. I mean -- and  
10 some of them also know people who are known among the jihadi rebels. And that is  
11 not necessarily uncommon. I mean, earlier in this, in my testimony we talked about  
12 the role of Iyad Ag Ghaly, who has been on sort of all possible sides during  
13 the different conflicts that has plagued this country. So these people know each  
14 other and they have -- and they talk together and some of them has also continued to  
15 talk together.

16 And while they may disagree on how Sharia should be implemented, they may  
17 disagree upon whether Mali should remain a secular state or not. For example, you  
18 have a character like Mahmoud Dicko, probably the most -- one of the most important  
19 religious leaders in the country, probably also one of the most important political  
20 leaders, he is a Salafi, but he is still defending the state as a secular construct. While  
21 you have others who have other opinions about this.

22 But they do -- most of these people agree upon some of the more sort of social  
23 conservative issues. For example, issues which has often united the various Islamist  
24 actors in Mali, issues concerning family planning, which they don't like, issues  
25 concerning education on sexual issues, reproductive health are often issues that unites

1 them, and so on and so forth. And these are issues that often resonates deeply with  
2 large parts of the Malian population which, after all, are -- tend to be quite socially  
3 conservative. So that these people talk together and that there are issues that they  
4 agree upon. Yes, that's quite natural. But it does -- but you will also see that some  
5 of these religious leaders like Dicko, like Haidara, like the Chérif Bouyé which is also  
6 referred to here in -- sorry, in Andrew's report.

7 They have also taken a very clear stance against violence. And particularly against,  
8 against what they see as foreign groups. And the debates that you refer to here is  
9 a debate that has continued up until today, which was in fact quite instrumental  
10 when it came to the coup that also happened in -- now in August where there has  
11 been an increasingly sort of disagreement with a quite significant part of the Malian  
12 population who want to negotiate with all armed actors that they define as Malian  
13 actors, whereas they will not negotiate with what they see as foreign actors. And  
14 that is first and foremost AQIM and this new group called Islamic State Greater  
15 Sahara.

16 So what you're referring to is a debate that has been going on for a long, long time  
17 and is still continuing.

18 MS TAYLOR: [13:05:04] Mr President, it's five past 1. If I could be directed by  
19 the Chamber as to when you want to take the lunch break today.

20 PRESIDING JUDGE MINDUA: [13:05:24](Interpretation) Ms Taylor, I was waiting  
21 for the French interpretation.

22 As we started late, I suggest we carry on until 13.20 to catch up on this morning's  
23 delay. So please continue.

24 MS TAYLOR: [13:05:44]

25 Q. [13:05:44] Now, Mr Witness, would you also agree that the distinction between

- 1 religious positions of the different groups in the north is oversimplified or conflated?
- 2 MR SANDOVAL: [13:06:01] Objection, Mr President. The question is --
- 3 PRESIDING JUDGE MINDUA: [13:06:05](Interpretation) Prosecutor.
- 4 MR SANDOVAL: [13:06:07] The question is overly broad. Could the Defence
- 5 specify the groups to which she is referring to?
- 6 MS TAYLOR: [13:06:17] If we can talk about the groups perhaps around 2011, 2012.
- 7 MR SANDOVAL: [13:06:25] I'm sorry, Mr President, that's still rather vague.
- 8 PRESIDING JUDGE MINDUA: [13:06:39](Interpretation) Ms Taylor (Overlapping
- 9 speakers)
- 10 MS TAYLOR: (Overlapping speakers) I'll move on.
- 11 Q. [13:06:42] If I could take you to page 511 of your report, that's tab 5.
- 12 A. [13:06:52] (Microphone not activated)
- 13 Q. [13:06:53] Yes, 0511.
- 14 A. [13:07:00] Yes.
- 15 Q. [13:07:00] Here you note that after 1996 Iyad Ag Ghaly came under the influence
- 16 of the Islamic missionary movement, Jama'at Al-Tabligh.
- 17 A. [13:07:15] Yes.
- 18 Q. [13:07:16] And you further note that this movement had a strong presence and
- 19 influence over the Ifoghas of Kidal.
- 20 A. [13:07:27] Yes.
- 21 Q. [13:07:28] And just for the record, by Ifoghas, you're referring to the noble clan
- 22 of the Tuaregs?
- 23 A. [13:07:35] Yes.
- 24 Q. [13:07:35] Now, Mr Witness, are you aware that the Jama'at Al-Tabligh has its
- 25 roots in Sufism rather than Salafism?

1 A. [13:07:44] Yes, I'm aware of that.

2 Q. [13:07:46] And it focuses on Muslims practising a life of piety?

3 A. [13:07:52] Yes.

4 Q. [13:07:53] In your report you also describe Iyad Ag Ghaly's background in  
5 working either for or with the Malian authorities; that's correct?

6 A. [13:08:00] Yes.

7 Q. [13:08:00] And I won't go through it, but -- in detail, but just in résumé, this  
8 included being instrumental in a 1991 peace deal with some of his fighters joining  
9 the Malian army to implement it? That's at page 511 of your report.

10 A. [13:08:19] Yes.

11 Q. [13:08:21] Acting as a cultural attaché? That's at page 512.

12 A. [13:08:27] Yes, that's correct.

13 Q. [13:08:29] Serving as liaison between Bamako and Tuareg returnees? That's  
14 also at page 0511.

15 A. [13:08:42] Yes.

16 Q. [13:08:42] Now before you made a distinction for the religious leaders between  
17 foreigners and nationals, are you aware that in November 2012, Modibo Keïta  
18 described Ansar Dine as compatriots and said that dialogue with Ansar Dine and  
19 MNLA was inevitable?

20 MR SANDOVAL: [13:09:05] Objection, Mr President. Could the Defence identify  
21 where --

22 PRESIDING JUDGE MINDUA: [13:09:13](Overlapping speakers)

23 MR SANDOVAL: [13:09:14] Could the Defence identify where the witness makes  
24 that distinction that she refers to, for the record?

25 MS TAYLOR: [13:09:22] It was earlier in the transcript where he was discussing

1 the religious leaders.

2 MR SANDOVAL: [13:09:36] Perhaps if you could just rephrase the question.

3 MS TAYLOR:

4 Q. [13:09:41] Mr Witness --

5 PRESIDING JUDGE MINDUA: [13:09:43](Interpretation) Ms Taylor.

6 MS TAYLOR: [13:09:47] I'll rephrase the question.

7 Q. [13:09:50] Are you aware that in November 2012 Modibo Keita described

8 Ansar Dine as compatriots and said that dialogue with Ansar Dine and MNLA was  
9 inevitable?

10 A. [13:10:01] Yes. And that is also a position that other people took in 2012. But  
11 you have to remember that this was in 2012 when the peace negotiations also were  
12 taking place, among others, assisted by the then Burkinabé government and  
13 president.

14 And, as I also just recently alluded to, I mean, this debate in Mali about negotiations  
15 or non-negotiations and who one should negotiate it, I mean, this is a debate that has  
16 gone on since 2012 and has come -- it sort of has remained throughout the whole  
17 period, the strength of it has varied with circumstances, but there are -- this is not  
18 a secret, it's not a controversial position. I mean, it's an ongoing debate in Mali and it  
19 would be unnatural if it was not going on.

20 I mean, in most countries where you have these kind of situation where you get an  
21 uprising against the government, it will be different positions concerning how to  
22 handle it. And in 2012 many people, particularly perhaps in government, saw  
23 the 2012 rebellion with the same eyes that they have viewed the rebellions of the  
24 1990s, that this was something that could be negotiated and particularly something  
25 that could be negotiated between the big men of the governments and the big men of

1 the rebellion. And one could find a cordial agreement to the whole thing. That of  
2 course turned out to be wrong.

3 PRESIDING JUDGE MINDUA: [13:11:46](Interpretation) Witness, you will note that  
4 there are a lot of missing parts in the transcript. This is due to fact that, as you're  
5 both speaking the same language, you're not leaving breaks between your  
6 interventions. That's the first thing.

7 Secondly, Witness, you are speaking a bit too fast. Please try to slow down when  
8 you speak in order to make it possible for the court reporters to write down your  
9 message and for the interpreters to interpret what you say. Thank you.

10 Ms Taylor.

11 MS TAYLOR: [13:12:33]

12 Q. [13:12:34] Mr Witness, if we could turn to tab 4, this is the report by Roland  
13 Marchal again.

14 For the record, MLI-OTP-0078-2592.

15 And if we could turn to page 2596, the last paragraph on the left-hand column, where  
16 Marchal writes that:

17 "Whatever his own personal views, it is important to understand why members of  
18 Iyad ag Ghaly's movement cannot have been recruited on an ideological basis. He  
19 can call on the backing of his own lineage or clan, or the support of the people he  
20 fought with in previous episodes of Tuareg insurgency, or simply offer better rewards  
21 than other armed groups. As a consequence, one should not overstress religious  
22 commonalities in the public discourses of Ansar Dine and AQIM. Moreover,  
23 convergences at a political level appear much more fragile and opportunistic in  
24 nature."

25 Mr Witness, would you agree with this position?

1 A. [13:14:10] Again, yes and no. And I will try to explain.  
2 As I also have stated, you cannot explain the conflict in Mali solely through the lenses  
3 of religion and theological differences or commonalities.  
4 And yes, we know that from Mali, as I know -- as I have seen and learned from all  
5 the other conflict areas that I work in that when people join non-state armed groups,  
6 they join them for a multitude of different reasons. Some join because they are  
7 convinced of the political, or in this case political religious platform and discourse of  
8 the organisations. Others join simply due to the circumstances of the conflict. Or,  
9 as is the case in Mali, many have joined because groups, both like Ansar, like AQIM,  
10 like MUJAO and others that have come to the fore as the conflict has evolved, they  
11 have all become quite well adept at appropriating local grievances and local conflict  
12 lines.  
13 And due to the weakness of the Malian state, due to the high level of impunity and  
14 corruption that we already have discussed, this Mali, in particular the north and  
15 central Mali and the border between the north and the central region of Mali, is -- was  
16 and still is crisscrossed by local mainly land rights conflicts between different groups.  
17 And here it's not only about ethnicity, it's much more about people's functional  
18 interest of using land.  
19 And remember that this has taken place within the framework of an extremely weak  
20 but also corrupted state with little interest, willingness or ability to regulate  
21 the relationship between two groups, two main groups, that's the pastoralists and  
22 the farmers, that tend to live in the same area, and they use the same resource -- same  
23 resources, that is land and water, but they have completely different interest in  
24 the use of that resource.  
25 So that is a very important reason why people joined the various factions, how their

1 communities responded to the emergence of the different factions. So in that regard  
2 I completely agree with Roland Marchal's views. Where I disagree is that I would  
3 say that discourse and religious discourse that lasts over time also have an impact,  
4 because it socialises people into these movements, into these insurgencies, meaning  
5 that while people may initially have joined an armed movement, in this case Ansar,  
6 for a number of other reasons than the religious/political/theological platform. As  
7 the organisation, as the insurgency has lasted over time, also this aspect of  
8 the insurgency starts to play a role.

9 Q. [13:18:12] I am just respecting the pause.

10 If I could turn you to tab 6 on the Defence list of exhibits. I'm not going to read out  
11 the article title. For the record it's MLI-OTP-0078-3563.

12 Do you confirm that you authored this article?

13 A. [13:18:43] Yes.

14 Q. [13:18:46] And if I could turn you to page 3566 of the article --

15 PRESIDING JUDGE MINDUA: [13:18:54](Interpretation) Court officer,  
16 the document mustn't be shown to the public.

17 THE COURT OFFICER: [13:18:59](Interpretation) That's noted. By default we do  
18 not show the documents to the public.

19 PRESIDING JUDGE MINDUA: [13:19:04](Interpretation) Thank you very much.

20 MS TAYLOR: [13:19:12]

21 Q. [13:19:13] (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 Do you agree with this statement that you wrote?

3 A. [13:19:55] Yes, I do.

4 Q. [13:19:57] Would it follow, therefore, that organisations such as Ansar Dine  
5 were of a heterogeneous rather than homogeneous nature, meaning that participants  
6 might not have shared each other's goals and objectives?

7 A. [13:20:17] That may very well be the case. But you also have to remember that  
8 these are organisations that, yes, they may have a central leadership - in this case  
9 Iyad Ag Ghaly and the people closest to him - but operatives also had considerable  
10 freedom in how they sort of laid out and operated on the basis of the very few sort of  
11 guiding principles of Ansar Dine and of Iyad Ag Ghaly and the leadership.

12 The level of command and control in these insurgencies, be it -- both be it AQIM, be it  
13 Ansar or MUJAO, for that matter, have mainly only been high when they have done  
14 specific operations.

15 So if you look at -- one way of looking at this is to say that Ansar is some sort of  
16 a super structure under which you find people who have joined for, as I have already  
17 eluded to, probably many different reasons, but they still find an interest of being in  
18 that Ansar family or super structure, if you like. It's a super structure that at times  
19 has allowed them also to pursue these other interests. These other interest can be  
20 religious, they can be political, they can be social, they can be economical.

21 But it's also a group that is good at merging people together for specific operations.

22 And if you look at some of the operations that has been conducted in the name of  
23 Ansar, in the name of AQIM and in the name of others, you will also see that, yes, it's  
24 an insurgency where members at times may have considerable degrees of freedom,  
25 but it's also an insurgency that is able to carry out quite complex operations in Mali,

1 but also, as we have seen, Ansar Dine has contributed also to operations outside of  
2 Mali, in Burkina, in Côte d'Ivoire and so on and so forth. So it's an -- it's an  
3 organisation with, with at times quite high operational capacity but at the same time  
4 an insurgency that also allows at times for considerable freedom of actions by its  
5 various members, to put it that way.

6 PRESIDING JUDGE MINDUA: [13:23:08](Interpretation) Very well. Thank you,  
7 Witness.

8 Ms Taylor, we said that we would stop at 1.20. We're now going to break for  
9 the lunch and, as we've lost a lot of time, we're going to start again at 2.30, as we  
10 usually do.

11 Very well. Court is now suspended.

12 THE COURT USHER: [13:23:37] All rise.

13 (Recess taken at 1.23 p.m.)

14 (Upon resuming in open session at 2.30 p.m.)

15 THE COURT USHER: [14:30:12] All rise.

16 Please be seated.

17 PRESIDING JUDGE MINDUA: [14:30:36](Interpretation) Court is in session.

18 We will continue with the cross-examination of the Defence, with Ms Taylor.

19 You have the floor, please.

20 MS TAYLOR: [14:30:54]

21 Q. [14:30:56] Good afternoon, Mr Witness.

22 We still have a few subjects to go, so I would just ask if you can keep your answers, to  
23 the extent possible, concise.

24 Now if I could bring you to your report at pages 0510 and 0511, you refer to the father  
25 of Alghabass Ag Intalla, the chief of the Ifoghas, and you write that he was opposed

1 to Iyad Ag Ghaly.

2 And at page 0510 in the second paragraph, towards the end, you write that  
3 informants speculated that Alghabass Ag Intalla joined Ansar Dine to prevent an  
4 alliance between Ansar Dine and Islamist forces.

5 Mr Witness, would this suggest that while those who joined Ansar Dine supported  
6 some degree of adherence to Islam or a religious state, they could also be opposed to  
7 extreme elements?

8 A. [14:32:27] Yes. I mean, as we are -- have been repeatedly discussing, people  
9 that join these movements also due to the circumstances of the conflict and at least  
10 one important theory here, that was that seen from the -- from this family's point of  
11 view and from the -- and as the chief of the Ifoghas, it could be important for them to  
12 try to avoid that Iyad dragged with him large segments of Tuareg society in the north  
13 and particularly in the Kidal into a position from which a return to negotiations with  
14 the Malian state would be very difficult.

15 Q. Mr Witness --

16 THE COURT OFFICER: [14:33:18] Just a reminder for the Defence, please: Could  
17 you please switch off your microphone during the witness's answer. Thank you  
18 very much.

19 MS TAYLOR: [14:33:28]

20 Q. [14:33:28] If we can turn to page -- tab 3 in the Defence list of exhibits. This is  
21 MLI-OTP-0069-9866.

22 Do you recognise this report?

23 A. [14:33:49] Yes, you are talking about the article that was published in the Review  
24 of African Political Economy; right?

25 Q. [14:33:56] Yes.

- 1 A. [14:33:56] Yeah.
- 2 Q. [14:33:57] Are you familiar with it?
- 3 A. [14:33:58] Yes.
- 4 Q. [14:33:59] If we could turn to page 9896.
- 5 A. [14:34:08] Can you we repeat this, 9 --
- 6 Q. [14:34:13] 9896.
- 7 A. [14:34:23] Yes.
- 8 Q. [14:34:24] And if you could look at the bottom of the page.
- 9 A. [14:34:29] Yes.
- 10 Q. [14:34:30] It discusses the possibility that Alghabass Ag Intalla might have
- 11 joined Ansar Dine to influence from within to curb Iyad's ambitions?
- 12 A. [14:34:43] Yes.
- 13 Q. [14:34:44] Would you agree with this assessment?
- 14 A. [14:34:46] At least it's a plausible possibility. You have to recall that neither me
- 15 nor the authors of this particular article has been able to interview in detail the very
- 16 persons that were involved in this particular process. So, what both I have been
- 17 trying to do in my work and these researchers said, which are respected scholars, is
- 18 basically we are all trying to piece together a larger puzzle and come to both similar,
- 19 but also at times slightly different conclusions concerning this. Because a lot of this
- 20 is based on interviews with people who may or may -- some of them may have been
- 21 present during these events but not necessarily been part of the inner circle of this,
- 22 whereas others -- other of this information is based on anything from rumours to how
- 23 people who has been around these events have interpreted them themselves,
- 24 basically.
- 25 But it's plausible.

1 Q. [14:36:06] Could we turn to tab 6 in the Defence list of exhibits. This is your  
2 report.

3 For the record it's MLI-OTP-0078-3563.

4 And if you could turn to page 3575 of the article.

5 A. [14:36:35] Yes.

6 Q. [14:36:36] And here you make a connection between the fact that many MNLA  
7 members had recently arrived from Libya and Algeria and allegations that they  
8 committed crimes against the local populations, such as rape and pillaging.

9 A. [14:36:53] Yes.

10 Q. [14:36:55] You then compare the MNLA to Ansar Dine, which is more  
11 integrated with local communities?

12 A. [14:37:03] Yes.

13 Q. [14:37:05] Now, during your preparation session with the Prosecution, you  
14 noted that MUJAO's rule in Gao was more violent and extreme than what occurred in  
15 Timbuktu.

16 A. [14:37:19] Yes.

17 Q. [14:37:22] And you stated to the Prosecution that Iyad Ag Ghaly was skillful at  
18 achieving local integration?

19 A. [14:37:28] Yes.

20 Q. [14:37:32] Would that suggest, Mr Witness, that community links and  
21 integration was a relevant factor to violence?

22 A. [14:37:41] It's one of the relevant factors, but you also have to be aware of that  
23 this type of local integration, while it may sort of be relatively peaceful to one local  
24 community, may also very well be relatively violent to another local community,  
25 because quite a lot of the local integration that were seen by these insurgencies in both

1 northern and central Mali is again based on what I call appropriating local conflict  
2 lines. And one way then of achieving local integration is to take the side of one -- of  
3 one side in one of these local rights based conflicts.

4 So that's another side to this. But, of course, when you look at what I compared in  
5 my preparation with the Office of the Prosecutor was basically that if you looked at  
6 how events played out in comparing Timbuktu to Gao, there is good reasons to  
7 believe that MUJAO's rule was both more haphazard and more violent in Gao than  
8 was the case of Ansar/AQIM in Timbuktu. That do not say that I do not believe that  
9 serious crimes also took place in Timbuktu.

10 Q. [14:39:26] (Microphone not activated) on the Defence list of exhibits. For  
11 the record it's MLI-D28-0004-1032.

12 A. [14:39:40] Sorry, your mic was off when you referred to the --

13 Q. [14:39:45] Tab 16.

14 A. [14:39:47] Tab 16. Thank you.

15 Q. [14:39:57] This is a study by the Red Cross on The Roots of Restraint in War.  
16 And if you turn to page 1036, it lists the experts involved in writing the section on  
17 Mali.

18 A. [14:40:22] Tab 16?

19 Q. [14:40:23] It's tab 16, the document is MLI-D28-0004-1032.

20 A. [14:40:36] Yeah. But I only have one page.

21 Q. [14:40:41] You only have one page?

22 A. [14:40:42] Yeah. You're referring to number 16 in your -- in the Defence  
23 binder?

24 Q. [14:40:55] Then you can have our version.

25 A. [14:40:59] It says -- it's only listed one page --

- 1 Q. [14:41:03] Everyone only has one page?
- 2 A. [14:41:06] The Roots of Restraint in what?
- 3 Q. [14:41:08] Okay. Then can we bring it up on eCourt?
- 4 THE COURT OFFICER: [14:41:13] The document has been displayed from the start
- 5 on the witness screen.
- 6 THE WITNESS: [14:41:19] Yeah, I see it now.
- 7 MS TAYLOR:
- 8 Q. [14:41:21] Can you see page 1036?
- 9 If that can be brought up.
- 10 A. [14:41:26] If it is the acknowledgments page, then it's in front of me.
- 11 Q. [14:41:29] Yes. And can you see the experts listed there? Are you familiar
- 12 with any of them?
- 13 A. [14:41:34] You mean the start with "This publication was written by"? Yes, I
- 14 mean, I -- there are at least -- I don't know Fiona Terry or Brian McQuinn, but Yvan is
- 15 a name I recognise, Yvan Guichaoua.
- 16 Q. [14:41:53] Okay. If we could then turn to page 1083.
- 17 A. [14:42:01] Yes, that I have in front of me.
- 18 Q. [14:42:05] In the third paragraph the report contrasts approach of MUJAO in
- 19 Gao and Ansar Dine in Kidal. And for the later concludes that "Based on interviews
- 20 conducted for this study, the group's relative restraint, when compared with
- 21 MUJAO's, was strongly attributed to community links and the moderating voice of
- 22 the local *qadis*."
- 23 A. [14:42:32] Yes.
- 24 Q. [14:42:32] Would you agree with his assessment?
- 25 A. [14:42:35] Yes. And I mean, this is -- shouldn't be any surprise. I mean, after

1 all, I mean, a lot of the Ansar leadership come from -- came from the Kidal area.

2 They have strong, strong links there. And Ansar, as a Tuareg movement, Kidal is  
3 also the area -- the only area from Mali where the Tuareg are in a clear majority.

4 Q. [14:42:57] Now, Mr Witness, would you also agree that community links and  
5 the moderating voice of locals in Timbuktu might have also given rise to restraint in  
6 Timbuktu as compared to Gao?

7 A. [14:43:15] You can --

8 MR SANDOVAL: [14:43:16] Objection, your Honours.

9 PRESIDING JUDGE MINDUA: [14:43:20](Interpretation) Mr Prosecutor.

10 MR SANDOVAL: [14:43:25] Could, could the Defence establish the basis of  
11 the reference to the moderating voice of locals in Timbuktu? The previous reference  
12 that the Defence counsel made was, I believe, in relation to Gao and Kidal, so I don't  
13 see where the -- where the assertion in relation to the moderating voice of locals in  
14 Timbuktu comes from.

15 MS TAYLOR: [14:43:58] I'll rephrase the question. We've already addressed  
16 community links.

17 Q. [14:44:02] Mr Witness, would you agree that community links and  
18 the participation of locals in Timbuktu who might have had less extreme views could  
19 have also given rise to restraint and contributed to the difference with Gao?

20 A. [14:44:19] That's a possibility, but you must also take into consideration that,  
21 while Timbuktu was under the control of AQIM, an organisation that had been in  
22 the area for a long time and are quite a well-established insurgency, whereas MUJAO  
23 was a breakaway faction from AQIM, a lot of -- a younger, less experienced  
24 leadership that did not have the same sort of fine-tuned strategies that had been  
25 developed over years in order to achieve some sort of local integration that AQIM

1 had.

2 So there are also differences there in how, how these two insurgencies were organised  
3 that may explain parts of this. But, yes, under certain circumstances one cannot rule  
4 out that, that an affiliation between, between local communities and part of  
5 the insurgency, either rank and file or leadership, may lead to a certain constraint  
6 when it comes to violence. That cannot be ruled out.

7 Q. [14:45:38] Mr Witness, I'm circling back now to Alghabass Ag Intalla. Now, in  
8 your report you refer to an alliance between MNLA and Ansar Dine in May 2012.

9 And at page 0513 of your report you note this was negotiated by Alghabass Ag Intalla  
10 and that elements in Ansar Dine were attempting to pursue a more unified Malian  
11 approached and were opposed to external elements and influence; that's correct?

12 A. [14:46:21] Yes.

13 Q. [14:46:21] And at the same page, you note that Alghabass Ag Intalla publicly  
14 expressed opposition to terrorism at this point and stated that they did not collaborate  
15 with terrorist groups such as AQIM or MUJAO.

16 A. [14:46:38] Yes.

17 Q. [14:46:40] Now, just a quick housekeeping question, Mr Witness: Do you read  
18 French?

19 A. [14:46:45] Yes.

20 Q. [14:46:47] Okay. Could I draw your attention to tab 21 on the Defence list of  
21 exhibits.

22 For the record that's MLI-D28-0004-1163. It's a transcript of an audio recording  
23 which is MLI-D28-0004-1161. And it's a statement from Attaye Ag Mohamed,  
24 the spokesperson for MNLA in Timbuktu dated 29 May 2012.

25 And in it Attaye is referring to concessions being made between MNLA and

1 Ansar Dine as part of an alliance, specifically one of them being to agree to apply  
2 Islam in Mali and, secondly, for Ansar Dine not to be in contact with AQIM.  
3 So, Mr Witness, would it follow that for locals in Timbuktu in May 2012, associating  
4 with Ansar Dine at this time, based on these statements, was not necessarily choosing  
5 to associate with AQIM?

6 MR SANDOVAL: [14:48:21] Objection, your Honours.

7 PRESIDING JUDGE MINDUA: [14:48:25](Interpretation) Prosecutor, please.

8 MR SANDOVAL: [14:48:31] Mr President, I object on the basis that the question of  
9 the Defence counsel calls for speculation on the basis of a statement by a third party  
10 that -- who has no connection whatsoever to the witness.

11 PRESIDING JUDGE MINDUA: [14:48:53](Interpretation) Ms Taylor.

12 MS TAYLOR: [14:48:54](Overlapping speakers) Mr President, the witness is here as  
13 an expert to give his expert opinion based on the public statements that were issued  
14 at the time. His report already addresses some of those public statements. This is  
15 one such statement concerning the state of relations between Ansar Dine and MNLA  
16 as publicly expressed.

17 PRESIDING JUDGE MINDUA: [14:49:20](Interpretation) Mr Prosecutor, the witness  
18 is an expert and he has answered several questions on documents drafted by other  
19 authors. If you want to add something.

20 MR SANDOVAL: [14:49:39] Yes, just briefly, Mr President. Yes, while the witness  
21 is an expert on the situation in Mali during the 2012-2013 conflict,  
22 the Defence counsel's question delves into asking the witness to speculate as to  
23 the motivations of the locals in Timbuktu and I would suggest, your Honours, that  
24 this is not within the, the competence of the witness as an expert.

25 PRESIDING JUDGE MINDUA: [14:50:13](Interpretation) Please rephrase your

1 question, Ms Taylor.

2 MS TAYLOR: [14:50:20] Thank you.

3 Q. [14:50:21] And I'll link it to something you said during the preparation session  
4 and today, where you stated that the relationship between Ansar Dine and AQIM  
5 was somewhat of an enigma.

6 Now, Mr Witness, would you agree that, given these public statements between  
7 Ansar Dine and MNLA, and the enigmatic relationship between Ansar Dine and  
8 AQIM, it might not have been clear to people on the ground what their precise  
9 relationship was?

10 A. [14:51:07] I think what we know about this -- and I will do my best not to  
11 speculate because I cannot speculate about what people were thinking, but I can try to  
12 offer a general picture.

13 This was a time of great confusion in the north and, initially, I would say -- think it  
14 fair to say that people were quite bewildered about what was going on. Many  
15 people didn't understand at all what was happening. Why was that the case?  
16 Because, I mean, you are here -- we are here discussing a statement that was put up,  
17 but I mean, this is not necessarily something that was widely distributed that people  
18 heard about these things. I mean, this is something that basically was caught up by  
19 media and different media platforms, so that the general knowledge about what was  
20 going on among people were often quite low.

21 And yes, it's also correct that the relationship between MNLA and Ansar in  
22 the beginning was one where it was not totally clear what direction Ansar would take.  
23 But from there to sort of say that -- yes, there was a general sort of bewilderment and  
24 confusion, a lot of people really didn't understand, but as events evolved, it became  
25 also clearer to a lot of people that Iyad was taking Ansar on a different path than what

1 many, at least Tuareg, understood as a rebellion that was first and foremost  
2 concerned with their rights within the Malian state and not a different project, which  
3 Ansar ended up as.

4 So, yes, it's possible that people did not exactly understand what path Ansar would  
5 take, because it wasn't necessarily totally clear at that time. But that's the closest as  
6 I can get to an answer to your question because it's impossible for me to speculate  
7 more concretely around what the Timbuktu population thought about this or what  
8 specific parts of the Timbuktu population thought about this.

9 Q. [14:53:53] Now, Mr Witness, can I take you to tab 17 of the Defence list of  
10 exhibits, and I'm not going to read the title.

11 It's, for the record, it's MLI-D28-0004-1110.

12 Can you confirm that you authored this?

13 A. [14:54:16] Yes.

14 Q. [14:54:19] Can I take you to page 1113, where on the second column going down,  
15 you write that:

16 (Redacted)

17 (Redacted)

18 Do you confirm that opinion today?

19 A. [14:54:52] Yes, but I also would like to point out that I underscore that these are  
20 an organisation with a Janus face, where both, yes, they have achieved their local  
21 integration through the fact that in the Timbuktu area they deliberately presented  
22 themselves as pious traders, made a point of not necessarily steeling from people but  
23 paying for goods and services and so forth and so on.

24 And if you compare sort of that more honest face in that regard of the GSPC/AQIM  
25 with what people, unfortunately, was used to from Malian state officials, where it

1 often almost always was money involved, I mean, you just have to behave a little  
2 better if you're -- if the one that you are competing for influence with is behaving so  
3 badly when it comes, for example, to corruption.

4 So, yes, this is one face of AQIM, but the other face is the willingness, ability to use  
5 violence. So we can -- we have to see both faces of this, and I do think that also this  
6 work of mine do that.

7 Q. [14:56:13] In terms of this Janus-faced approach, would it be fair to characterise  
8 it as a carrot-and-stick approach, the carrot being charitable approaches, the stick  
9 being threats of force or actual force?

10 A. [14:56:26] Yes, that's not a bad way of characterising it.

11 Q. [14:56:35] If I could turn to tab 3, that's a report we looked at earlier,

12 MLI-OTP-0069-9886. And if we could look at page 9894.

13 It refers to the practice of the mujahideen of "... financing marriage ceremonies for  
14 young couples too poor to wed, ... by offering high bride prices to marry local women,  
15 at least some of whom accepted the offer, thereby embedding the organisation deeper  
16 in local community."

17 Is this consistent with what you have written about AQIM?

18 A. [14:57:42] Yes. I mean, this is part -- again, part of the picture. And I have  
19 also written that AQIM, when it started its process of trying to gain an influence over  
20 populations in northern Mali, Timbuktu, including that they, they did marry into  
21 local lineages. They did also often make, make a deliberate stance of not necessarily  
22 marrying into the most -- into the upper classes of local lineages, but into more poorer,  
23 dependent lineages. And this was part of their way of cultivating again an image, of  
24 branding themselves in a particular way.

25 So, yes, I mean, I don't disagree with this and what Lecocq, Mann and others have

1 written here. I mean, again, it's part of the picture, but it's also a part of the picture  
2 that what was referred to earlier today in the exchange between me and the Legal  
3 Representatives of Victims, that these forced marriages also took place there. But not,  
4 not all marriages between jihadi insurgents and local women were of that nature.

5 Many of them were also more of these ordinary arranged marriages that is  
6 the tradition in Mali. I mean, most men and -- young men and women in Mali do  
7 not necessarily marry entirely out of love or entirely out of free will. Marriages are  
8 still here something that is arranged between families, which I also earlier alluded to.

9 Q. [14:59:27] Now if we could turn to tab 5 from the Prosecution's list of exhibits, so  
10 it will be in the Prosecution binder.

11 A. [14:59:49] Yes.

12 Q. [14:59:50] This is MLI-OTP-0031-0496. And if we could turn to page 0520 of  
13 that document and if we could look at the second paragraph, which contrasts  
14 the number of amputations in Timbuktu, which is one, compared to Gao, and  
15 suggests that as a younger splinter group, MUJAO, it was an issue of asserting Salafi  
16 jihadi credentials?

17 A. [15:00:35] Mmm.

18 Q. [15:00:38] Mr Witness, would this contrast, this difference, suggest that, because  
19 Ansar Dine did not actively oppose AQIM in Timbuktu, AQIM did not feel as  
20 compelled to resort to force to exert their credentials?

21 A. [15:00:58] I do not know exactly, and I don't think anybody can know exactly  
22 why you have this marked difference, but at least when it comes to amputations, it's  
23 clear. MUJAO, as part of implementation of Sharia law, MUJAO was much more  
24 eager and forceful in implementing this in Gao, which that insurgency controlled.  
25 The youthfulness and the need of various MUJAO commanders, you know, to

1 a certain extent, to exert their authority by showing their jihadist credentials in this  
2 regard I believe is one reason why you have this difference.

3 There are also reasons to believe that those that ruled Timbuktu in this period, they  
4 were under a certain pressure. I referred earlier today in my, in my witness  
5 statement to the so-called Droukdel letters. The Droukdel letters are letters that was  
6 written by Abdelmalek Droukdel, which was at that time, up until his death this  
7 summer, was the overall leader of AQIM. But he was not based here in this period  
8 of time, he was still based in Algeria. And he sent a number of letters that was  
9 carried, transported to AQIM commanders in Timbuktu and asking them to not rush  
10 to enforce the jihadi Salafi project. So that is another explanation why more  
11 constraints could have been shown here compared to Gao.

12 A third possible explanation is around the fact that, whereas MUJAO was new to Gao,  
13 many of the MUJAO members had no sort of long-standing relationship to Gao.  
14 AQIM had been in the Timbuktu area for a long time, deliberately tried to build up  
15 a level of local integration, combined with the fact that I believe that Timbuktu was  
16 also not only under the influence of AQIM but jointly also the -- under influence of  
17 Ansar. These factors alone or in combination may explain the difference that you  
18 point to. I cannot give you a clearer answer than that because it's impossible to say  
19 that it was this and this solely that can explain this difference.

20 Q. [15:04:11] Mr Witness, if we could just turn to your report, page 0516.

21 A. [15:04:24] 0516?

22 Q. [15:04:27] Yeah, paragraph 1. You refer to the MNLA committing chaos,  
23 looting, killing and sexual violence among those who should have been their kin;  
24 that's correct?

25 A. [15:04:46] Yes.

1 Q. [15:04:48] And if I could turn you to page 0523, you write that -- this is the last  
2 paragraph:

3 "This may seem strange, but when compared to the abuse, raids and thefts  
4 perpetrated by the MNLA, MUJAO justice was preferable to the majority of ... [Gao's]  
5 population. Thus, the harshness of MUJAO's Sharia was initially seen as nothing  
6 compared to the random violence that had reigned in Gao during the nominal rule of  
7 MNLA."

8 A. [15:05:30] Yes.

9 Q. [15:05:33] Now, at page 51 -- 0512, you refer to AQIM taking over Timbuktu  
10 from Ansar Dine; that's correct?

11 A. [15:06:04] Yes.

12 Q. [15:06:15] And page 0520, you refer to AQIM offering people in Timbuktu  
13 protection by giving them a number they could call if they're harassed by members of  
14 MNLA?

15 A. [15:06:38] Yes.

16 Q. [15:06:39] Now, given that Ansar Dine was there first, is it possible that it was  
17 Ansar Dine who gave the population that number?

18 A. [15:06:50] Everything is possible. And, as I again said -- as I already had stated,  
19 I mean, this happened during a period of chaos, confusion and violence. But in  
20 according to the interviews that we did with people that had lived in Timbuktu area  
21 during this period, these interviews we did in 2013 in Bamako, people claimed that it  
22 was AQIM who had produced this number that they could call. Could it have -- is it  
23 possible that some of our very informants has gotten this wrong? Yes, that's possible,  
24 but this is at least what our informants has told us at that time. And it was more  
25 than one informants. And it was a question that we did press concerning who had

1 produced this number or not.

2 Q. [15:07:50] And, Mr Witness, in the same way that you write the MUJAO could  
3 have been viewed in Gao as a form of relief against the random violence perpetuated  
4 by the MNLA, would the same have applied in Timbuktu?

5 A. [15:08:06] Yes, that is correct. This is not -- does not necessarily mean that  
6 people were -- liked what was happened. But I mean, if you live in a -- if you live in  
7 a situation of complete random chaos and violence, anybody who comes in and  
8 establishes some sort of order, some sort of predictability in your life will be looked  
9 more favourably on than the predecessor if the predecessor did nothing but conduct  
10 chaos and violence. And this is what you need to compare this against it, I think.

11 Q. [15:08:48] Would you agree that another key problem and source of insecurity in  
12 the north was drug smugglers and traffickers?

13 A. [15:08:56] I would agree that drug smuggling and traffickers is a problem of  
14 the north. They are not necessarily in themselves a source of violence, because these  
15 are people who -- they are carrying things of immense wealth at times and what they  
16 want is as smooth passage as possible. But the drug smuggling and the trafficking  
17 has -- due to the level of corruption that it also has created has been tearing away at  
18 the very social fabric of the north and of communities in the north. But they are not  
19 necessarily the ones that are enacting the violence against local communities  
20 themselves. Not because they are nice, simply because it's not in their interest.

21 Q. [15:09:59] Did these drug smugglers have links to the Berabish Arab groups?

22 A. [15:10:06] Yes. And they are also linked to almost all other groups. I mean,  
23 these are -- some of these operation, particularly the ones that involve the cocaine  
24 trade, is highly sophisticated with their tentacles into almost all aspects of Malian  
25 society, from high up in Bamako to local communities and to the various insurgent

1 groups. They are interested in having connections with whoever may control  
2 the routes or have influence of the routes that they would like to traffic the drugs.

3 Q. [15:10:48] If I could turn you back to the document at tab 3 of the Defence list of  
4 exhibits, that's MLI-OTP-0069-9886, and if we could go to page 9890.

5 A. [15:11:09] Sorry, are you now in the Defence?

6 Q. [15:11:10] Defence exhibits, yes.

7 A. [15:11:12] Yeah, okay. Sorry. Can you repeat, tab 3?

8 Q. [15:11:17] It's tab 3.

9 A. [15:11:17] Yes.

10 Q. [15:11:18] If we could go to page 9890.

11 A. [15:11:23] 9890.

12 Q. [15:11:25] And if we could go down the page, the second paragraph, there's  
13 a sentence starting with "While Berabish Arabs from the Timbuktu area controlled  
14 the movement in ... [and out of] the city".

15 A. [15:11:40] Yes.

16 Q. [15:11:44] And if we can go to page 9893 of the same article.

17 A. [15:11:50] 9893, yes.

18 Q. [15:11:55] It states that faced with the possibility of MNLA taking over  
19 Timbuktu, these local Berabish Arab militia handed the city over to AQIM to prevent  
20 it from falling into the hands of Tuareg separatists.

21 MR SANDOVAL: [15:12:15] Could the Defence counsel identify which  
22 paragraph she's reading from.

23 MS TAYLOR: [15:12:21] This is the top --

24 PRESIDING JUDGE MINDUA: [15:12:23](Overlapping speakers)

25 MS TAYLOR: [15:12:24] -- starting with "Before the MNLA could launch its final

1 assault, local Berabish Arab militia leaders essentially handed the city over to AQIM  
2 to prevent it from falling into the hands of the Tuareg separatists."

3 THE WITNESS: [15:12:46] And you want to know what I think about this, I assume?

4 MS TAYLOR: [15:12:50]

5 Q. [15:12:50] Yes, Mr Witness.

6 A. [15:12:56] I am not really certain about, about this. There are different stories  
7 and narratives around what happened here. And, and that the Berabish Arab militia  
8 leaders would be strong enough to simply hand the city over to AQIM, I would doubt  
9 so. Where their interest in Timbuktu that would do what they can -- they could to  
10 prevent Timbuktu becoming totally controlled by MNLA, yes.

11 That it was a matter of handing over I think is -- I think that my colleagues here are  
12 perhaps pushing things further than I think it would be reasonable to conclude. But  
13 this is a matter -- again, a matter of interpretation.

14 Q. [15:14:11] So, Mr Witness, you have stated that it's not certain, there's different  
15 narratives, and it's a matter of interpretation. Would it follow from that that you're  
16 not in a position to tell us which armed groups were where and doing what in 2012?

17 A. [15:14:31] I think I have as good overview as any of my colleagues on where  
18 the different groups were. But if anybody would come into this room and say that  
19 "I can pinpoint with exact knowledge on what they and what -- which groups were  
20 where", well, I mean, that person would not take the oath that he or she swore  
21 initially in this room, seriously.

22 Because this is -- what we are trying to do here, me and other people who have been  
23 studying this, is -- again, as I said, we are trying to piece together a very torn-up and  
24 confused jigsaw puzzle. This is not sort of the -- an issue of a mathematical equation  
25 where you can just add up the numbers and then you get an answer that you could

1 put two lines under. Events and what happened exactly here is still open for both  
2 scholarly and political debate. And if anybody said that "I can tell you with certainty  
3 what groups there were", either that people -- that person is either lying or not  
4 understanding how complex the situation is.

5 Q. [15:15:53] If I could bring you to tab 4 on the Defence list of exhibits.

6 A. [15:16:00] Yes.

7 Q. [15:16:00] This is the May 2012 article by Roland Marchal.

8 A. [15:16:04] Yeah.

9 Q. [15:16:05] For the record it's MLI-OTP-0078-2592 and if I could turn you to 2593.

10 A. [15:16:17] Yes.

11 Q. [15:16:18] And it suggests here that President Touré might not have been serious  
12 about fighting AQIM because of the need to protect the golden goose, this referring to  
13 narco trafficking routes and ransom cuts.

14 MR SANDOVAL: [15:16:38] Which paragraph, Ms Counsel?

15 MS TAYLOR:

16 Q. [15:16:41] It's the second column, it's the second last paragraph at the end.

17 Specifically having the words: "History will tell whether this lack of enthusiasm was  
18 motivated by the need to protect the golden goose ..."

19 Is that a possible conclusion?

20 A. [15:17:04] It's not an impossible conclusion, at least, as I already have alluded to  
21 when we talked about the drug trafficking and other kinds of trafficking, I mean,  
22 the level of impunity in Mali has historically been very high, it was very high during  
23 this period. There was high-level corruption around this particular regime and this  
24 presidency.

25 And this -- to the extent that this presidency involved itself in the conflicts in

1 the north, it was mainly in a divide and rule approach, where certain groups were  
2 favoured over others. And it -- yes, it's true that both this presidency and previous  
3 presidencies and later presidencies has done way too little to try to really combat  
4 the drug smuggling that has gone through the northern areas. And you can then  
5 only speculate why a consecutive series of Malian governments and presidents have  
6 been so little interested in actually trying to address this problem in a -- to a larger  
7 degree than they have done.

8 Q. [15:18:29] If we could turn to page 2594.

9 A. [15:18:33] Yes.

10 Q. [15:18:34] The first paragraph on the left-hand side Marchal writes that there  
11 was an easy victory of Tuaregs in the north primarily because many army officers  
12 defected due to a lack of support from the central government.

13 A. [15:18:51] Yes.

14 Q. [15:18:52] Would you agree with his assessment?

15 A. [15:18:57] Yes. I mean, as I write myself in the report produced for this court, I  
16 mean, I say that a number of the soldiers, they ran away from their position and  
17 instead committing a coup in Bamako. So yes, I mean -- and why was the morale so  
18 low in the Malian army? Again, there are a number of reasons for this, but the deep  
19 level of corruption in this army was -- has always been a major problem. It was  
20 a major problem then and it still is a major problem. I mean what -- can you expect  
21 much of a good morale of troops if, if a new recruit have to give away three months of  
22 salary in order to be enrolled in the army and see that the generals are lavishing in  
23 money in Bamako while he has, he is fighting for his life with bad equipment in  
24 the north? No. I think it's quite natural that you get bad morale in the army, so yes,  
25 I agree to this.

1 Q. [15:20:00] Now if we could go back to your report, specifically page 0497 --

2 A. [15:20:09] 0497.

3 Q. [15:20:14] You say that capturing the northern towns was "a swift and relatively  
4 easy military operation".

5 This is the second paragraph.

6 A. [15:20:30] 0497, yes.

7 Q. [15:20:31] You say that:

8 "Thus, whereas capturing the major towns in northern Mali may have been a swift  
9 and relatively easy military operation ..."

10 A. [15:20:41] Yes.

11 Q. [15:20:41] Now, would it be fair to say, Mr Witness, that you used the term  
12 "conflict" in a political science context and it does not necessarily mean military  
13 operation, when you refer to conflicts?

14 MR SANDOVAL: [15:21:09] Mr President.

15 PRESIDING JUDGE MINDUA: [15:21:14](Interpretation) Mr Prosecutor, please.

16 MR SANDOVAL: [15:21:15] Mr President, I'm just having a difficult time following,  
17 because the Defence counsel just quoted a line, the last line of the second  
18 paragraph on page 0497, so I don't know where she then comes with the reference to  
19 the witness's use of the word "conflict". So it's -- it's actually misleading in that sense,  
20 that the Defence counsel premises with reference to a line in the second paragraph of  
21 page 0497 and then appears to jump to a totally different concept, that is  
22 the use -- the witness's apparent use of the word "conflict", and there was no prior  
23 reference to, to that term in the Defence counsel's question.

24 PRESIDING JUDGE MINDUA: [15:22:09](Interpretation) Ms Taylor.

25 MS TAYLOR: [15:22:11] The witness has used the word conflict both in his report

1 and in his testimony. Here I'm asking him how he understands the word conflict in  
2 light of his specific usage of the term military operation.

3 MR SANDOVAL: [15:22:28] Mr President, those are two different terms.

4 PRESIDING JUDGE MINDUA: [15:22:33](Overlapping speakers)

5 MS TAYLOR: [15:22:34](Overlapping speakers)

6 PRESIDING JUDGE MINDUA: [15:22:38](Interpretation) Mr Prosecutor, please, first  
7 and foremost, wait for the interpretation and take it into account.

8 Secondly, we are in the context of 68(3), Rule 68(3), you tendered into evidence  
9 a certain number of exhibits that you did not analyse in detail. Now Ms Taylor, who  
10 is supposed to having read the dossier in its entirety with all the exhibits, is raising  
11 ideas that she's putting to the witness and you're intervening all the time.

12 The witness is -- he's capable of asking this question -- answering this question  
13 because he has talked about conflict throughout his reports.

14 Ms Taylor, please, continue.

15 MS TAYLOR: [15:23:27]

16 Q. [15:23:27] Mr Witness, I'll phrase the question more simply. Do you use  
17 the word conflict in a different sense than you use the word military operation?

18 A. [15:23:39] Let me try to explain this. When I use the -- when I talk here  
19 specifically about a military operation I'm talking about the French and UN operation  
20 that took back control over this area, and that's a specific military operation, that's  
21 Operation Serval.

22 When I talk about conflict, I talk -- I use that not as -- I use it both to talk about  
23 political conflict, as a conflict between parties, or it can be a violent conflict.

24 But are you asking here for a specific terminology? I'm just a little uncertain about  
25 what -- what you were -- I mean, I could go into a lengthy sort of academic answer

1 about what I see as conflict or not conflict, but you'll need to help me a little bit here  
2 because I do not really understand what you're trying to get at. Maybe I'm stupid,  
3 but I don't understand it.

4 Q. [15:24:42] Would it be fair to say, Mr Witness, that conflict can have different  
5 meanings, including political conflict or conflict encompassing different issues  
6 including violence?

7 A. [15:24:53] Yes, of course.

8 Q. [15:24:59] Now if I can turn you back to tab 10 --

9 A. [15:25:07] In your dossier? In your binder?

10 Q. [15:25:08] Yes, the Defence, this is again your report.

11 That's MLI-OTP-0004-0900, and if we could turn to page 0937. And at the last  
12 sentence of the left-hand column on to the next column, you note that the situation  
13 under Islamic rule was more ambiguous than is generally reported, and here you cite  
14 to a 2017 article by Bouhlel, Guichaoua and Jézéquel. So you're familiar with that  
15 article?

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. [15:27:07] And if we could -- are you familiar with the incident that this article

1 depicts, this stoning incident?

2 A. [15:27:11] Yes. I -- it's not something that I had -- I mean, it's a long time since I  
3 read this particular piece, but yes, I know what you are referring to.

4 Q. [15:27:25] And for the record, can you explain what happened.

5 A. [15:27:30] It's a debate about a stoning, as far as I remember. But, I mean, it's  
6 probably three, four years since I -- since I read this piece. I mean, you cannot -- I  
7 mean, I read thousand of these pieces every year. I mean, you cannot really  
8 seriously expect me to remember the exact content of this. Then I would have  
9 the memory of a super human.

10 Q. [15:27:59] Well perhaps to refresh your memory, Mr Witness, the article relates  
11 to public reports that were actually published in the media concerning a stoning that  
12 turned out not to have happened?

13 A. [15:28:12] Mmm.

14 Q. [15:28:12] Now, if we could turn to page 1148 of this, specifically the second  
15 paragraph.

16 A. [15:28:30] Yes.

17 Q. [15:28:31] The authors write that:

18 "The consequence of this is that journalists and researchers rely on indirect sources of  
19 information that are far from perfect and then do their best to triangulate them. It  
20 can often be difficult to tell whether two accounts are distinct or if they derive from  
21 the same source of information, since the same story can circulate through networks  
22 under multiple guises.

23 "These constraints on access to information demand extreme prudence. This was  
24 severely lacking in AFP and RFI's reporting. They took the word of 'notables' and  
25 'elected officials' for granted and ignored more sceptical voices."

1 Would you agree with this assessment?

2 A. [15:29:20] Yes. And, I mean, this is something that we come up -- that I come  
3 across in all my work, and that is why it's so important to be present on the ground  
4 and do interviews on the ground. What is criticised here is basically the journalist  
5 accounts are not scholarly reports that my colleagues are criticising. And yes, we  
6 need to be extremely careful. And the Sahel, as other of these new conflict-related  
7 areas in Africa and the Middle East, is confronting us with a whole range of new  
8 methodological challenges because we don't have the same access to the field as we  
9 previously had. I mean, I worked on conflict research since the mid-1990s. When I  
10 worked in Liberia and Sierra Leone I could travel in the whole territory of Liberia and  
11 Sierra Leone, I could interview parties to the conflicts on both sides. That is almost  
12 impossible here, because I would then be taken as a hostage. So, I mean, there  
13 is -- and my local Malian colleagues have some of the same issues, there are places  
14 where they can go to where they don't want me to accompany them, but there are  
15 also a number of places where even they cannot go to anymore. So yes, I mean, they  
16 are -- and that means that we need to be extremely careful with how we're presenting  
17 and I'm always trying to do that in my research.

18 (Redacted)

19 (Redacted), so I can only say amen to this,  
20 yes, we need to be extremely careful. But I do not think that this undermines  
21 the research that I have done, because I'm trying to be careful with this, I'm trying not  
22 to go into, for example, these kind of contested specific affairs, that is where we need  
23 to be extremely careful and that is also why I tried to write a report that portrays  
24 a picture of events which is as consensual as possible when it comes to also other  
25 scholarly reports about this particular period of time in Mali.

1 Q. [15:31:44] Now if we could just turn to page 1148 of the same article -- the same  
2 page:

3 "In this context, it is to be expected that contacts on the ground may be biased.  
4 The only way to overcome this is to ensure sources of information come from  
5 different parts of the political spectrum."

6 Do you agree?

7 A. [15:32:08] Of course, I agree. I mean -- I mean, I would a very bad scholar if I  
8 disagreed with this. And this is also what all of us who are serious solicitors  
9 desperately is trying to do when it comes to the situation in Mali and similar  
10 situations. And, to the extent possible, you try to sort of get the information from as  
11 many different sources as possible. That is also why we go to great lengths trying to  
12 interview local people who live in areas that has come under the control of these  
13 various non-state armed groups, and we also try to make certain that we get the point  
14 of view not only from the Tuareg, but from Fulani, from Songhai, Bambara, and so on,  
15 that we try to get information from a number of local government sources, NGOs that  
16 is working in the area. And to the extent possible, we always try to see if it's possible  
17 to interview people who have been with the actual waring group also, and at times  
18 we succeed also in talking to some people. And we always have to remember that  
19 everybody who talks to us, there is no such thing as a neutral, impartial informants in  
20 these kind of situations. Everybody has a stake in this, everybody has an interest,  
21 and we try to take that into account as good as we can.

22 But again, I mean, this is not the kind of research where you are doing -- plotting  
23 things into an Excel sheets and then you can render equation. This is a complicated,  
24 qualitative research where there always, at the end of the day, you will have to draw  
25 certain interpretations of what you think is the most credible picture of, of events and

1 what has happened.

2 Q. [15:34:05] Now, Mr Witness, if I can go back to some of your earlier answers  
3 concerning jihadi marriages, would it be correct that that was based on interviews  
4 concerning both Gao and Timbuktu?

5 A. [15:34:21] That is based on -- on interviews that we did, both with people who  
6 had lived and experienced this in the Timbuktu area, in Gao, but also later in central  
7 Mali, but I'm not drawing on that here. And yes, as I tried to reply when I was asked  
8 this by the Legal Representatives of Victims, there are no certain figures about this.  
9 We know that it happened, we do not know exactly how many women that was  
10 exposed to this, we do not know, necessarily, dates, names and where and how. But  
11 there are enough stories about this that it's every reason to believe that they are not  
12 made up and that this in fact happened to women, both in the Timbuktu area and in  
13 the Gao area.  
14 There are also certain indications that makes it plausible to say that this happened  
15 more in the Gao area than it happened in the Timbuktu area, but nobody has been  
16 able to come up with any concrete numbers and figures, and I don't think that  
17 anybody ever will be able to do that either.

18 Q. [15:35:37] Now your interviews, would it be fair to say they were restricted to  
19 the persons you could meet in Bamako --

20 A. [15:35:44] Yes.

21 Q. [15:35:45] -- (Overlapping speakers) you've confirmed?

22 And just to confirm for the record, is it correct that you told the Prosecution during  
23 the preparation session that you would not disclose the names or sources of  
24 the persons you interviewed?

25 A. [15:35:58] That's also correct.

1 MS TAYLOR: [15:36:02] I have no further questions.

2 PRESIDING JUDGE MINDUA: [15:36:09](Interpretation) Thank you very much,

3 Ms Taylor. I suppose that is the end of your cross-examination?

4 Very well then.

5 Judge Akane would like to put a question.

6 JUDGE AKANE: [15:36:35] Mr Witness, you testified earlier today to the Defence

7 counsel, I believe, that forced marriages took place, for example, in Timbuktu, but

8 that -- I quote you:

9 "... not all marriages between jihadi insurgents and local women were of that nature.

10 Many of them were also more of these ordinary arranged marriage that is

11 the tradition in Mali." Unquote.

12 You added that, I quote you:

13 "... young men and women in Mali do not necessarily marry entirely out of love or

14 entirely out of freewill. Marriages are still here something that is arranged between

15 families, which I also earlier alluded to."

16 So my question: I would like to ask you to tell the Chamber what makes a difference

17 between a host marriage and an ordinary and traditional arranged marriage,

18 according to you. That is my question.

19 THE WITNESS: [15:38:02] Thank you, your Honour. I'll try to explain.

20 When I talk about an ordinary arranged marriage, it's a marriage that is conducted

21 according to local traditions where there is, there is a bride price involved, there are

22 negotiations between families, families on both sides are involved in - how should I

23 say? - in the whole affair and the marriage is then usually something that is seen of

24 importance and a good thing, both for the man and woman who actually becomes

25 married, married, but is also seen as something that is useful and good for the two

1 families involved. So there -- and there are times there can be lengthy debates about  
2 these marriages, there are the negotiations over the bride prices, these kind of things,  
3 and there is, if not a formal institution, at least informal institutions around these  
4 marriages, customary institutions and so on and so forth.

5 When we talk about the -- what here are called the jihadi marriages, these are  
6 marriages that not -- whereas an arranged marriage is meant to last, you're not  
7 supposed to divorce, this is a marriage that is supposed to last until, until death takes  
8 one or both of them away. The jihadi marriage is not something where the family as  
9 such is much involved in. If the family is involved at all it would be that, okay,  
10 the father of the girl is told that this is, this is your compensation for the girl, maybe,  
11 maybe not. And it happens quickly. It happens quickly. It is a rushed affair.  
12 And often it's basically a marriage for the night and then the man divorces and then  
13 the girl maybe end up in another jihadi marriage and so on and so forth.

14 But I would also like to underscore that not all marriages between women, local  
15 women here and jihadi insurgents were of this type. Some of them were also partly  
16 and were arranged marriage where a jihadist insurgent would introduce themselves  
17 to the father of the girl and he and the father would then discuss a bribe price and so  
18 on and so forth. So that would be more a marriage in accordance with local tradition,  
19 with the exception that the man's family, that is the jihadi fighter, most often would  
20 not be involved because, most often, his -- at least if his family was not from that area.  
21 I hope this at least clarified this point. Thank you.

22 JUDGE AKANE: [15:41:10] Thank you, Mr Witness.

23 PRESIDING JUDGE MINDUA: [15:41:16](Interpretation) Thank you very much,  
24 Mr Witness.

25 Judge Prost has another question for.

1 JUDGE PROST: [15:41:22] Thank you.

2 Mr Witness, just a few questions. You described earlier today the -- for this report  
3 that you've produced, that you worked on -- your work included written sources,  
4 open sources and also these background anonymous interviews. Can you give  
5 the Chamber just a sense of the volume of interviews involved in a report -- in this  
6 report. Just a broad sense, we don't need exact numbers, but a sense of the volume  
7 and the type of interviews that you do.

8 THE WITNESS: [15:42:07] (Microphone not activated) Sorry.

9 The interviews that this report draws upon are the -- are around 30, 40, maybe  
10 slightly more interviews of different types. Some of them were very long interviews  
11 where we spent more than a day talking to one or two people. Others were of the  
12 kind that lasted perhaps an hour, sometimes less, sometimes more. Sometimes we  
13 interviewed people just one, one-to-one, other times it was more useful both for us,  
14 but also for the research participants that we did this in a group, more like a focus  
15 group session.

16 And together, I think they give -- at least gave me a relatively broad spectrum of  
17 views concerning how people who had lived in the north during this particular  
18 period of time viewed the situation. And perhaps particular the lengthy one which  
19 had this -- there's something that scholars like me call a life history approach, where  
20 you talk to people over a longer period of time, where you usually start with the fact  
21 that you are talking together and then you sort of trace it backwards to a specific  
22 event, this time 2012, and then you sort of trace forward again. It gives an  
23 opportunity to have very sort of deep conversations about people's experiences, but  
24 also their views concerning these specific events.

25 So these are the various techniques that we have used there and, frankly speaking, I

1 mean it's basically the only research techniques that you can use in order to get  
2 the information from people, because doing this based on a questionnaire wouldn't  
3 make much sense because it's impossible to establish a simple frame of the population  
4 and, thereby, the questionnaires wouldn't be representative for anything more than  
5 those that had answered them anyway.

6 JUDGE PROST: [15:44:33] Thank you for that.

7 And just on the same point. You just gave a very clear description of your  
8 methodology, in particular the importance in your work of talking to as many sources  
9 as possible from the different groups in society, and as well about the need to be  
10 careful about taking into account neutrality or lack of neutrality. I take it that those  
11 methodologies you used in preparing this particular report as well?

12 THE WITNESS: [15:45:09] Yes.

13 JUDGE PROST: [15:45:22] Thank you.

14 Sorry. You mentioned in your testimony that Ansar Dine was an organisation that  
15 at times was -- had a high operational capacity but, at the same time, as an insurgency  
16 that allowed for considerable freedoms. And I would just like a little bit of more  
17 explanation of what you mean by those contrasting characteristics or perhaps how  
18 those contrasting characteristics might play out in their operations, just a bit more  
19 detail on that, if you could.

20 THE WITNESS: [15:46:04] Okay. I'll give it a try.

21 What I mean by this is that -- and this goes back to something that was also discussed  
22 between me and the Defence concerning that these are in -- when people think about  
23 insurgencies, we have a tendency of thinking about sort of the classical guerrilla style  
24 organisation like the ones that we saw on -- I mean, Che Guevara in Cuba, Mao  
25 Tse-tung's theory of guerilla warfare, and so on and so forth. These that we find in

1 the Sahel have much more of a hybrid nature. They do have a certain core, but that  
2 core is more around certain specific people, which we may or may not call big men,  
3 who control networks of people. So there is a network character to these  
4 insurgencies and when the big men, in the case of Ansar that would be the very big  
5 man is Iyad Ag Ghaly, when he wants, really wants something to happen, he draws  
6 these networks together and then the organisation can express a high level of  
7 operational capacity. It is able to conduct complex operations, like when they have  
8 attacked big -- all the big hotels like the Radisson Hotel in Bamako, for example.  
9 They have contributed to operations in Ouagadougou in Burkina Faso. They were  
10 also involved in the killings on the beach of Grand-Bassam outside Abidjan in  
11 Côte d'Ivoire. This is an organisation that can conduct complex operations  
12 over -- also over long distances. But we also see that, in the larger historical  
13 trajectory of Ansar, this doesn't happen very often. So they have the capacity every  
14 now and then to do this, but when these things are not happen -- these things are not  
15 happening, when they are not pressurised very much militarily, then the organisation  
16 is in much more of a network mode where local commanders can have considerable  
17 autonomy in what they are doing. This can allow also local commanders to get -- to  
18 siphon off money from not necessarily participation as such in the drug trade, but  
19 simply letting things pass by. It can allow them to enter into various local politics.  
20 It can allow them to be more involved in local rights-based conflicts than in the larger  
21 conflicts. So in -- within this network that really Ansar Dine is -- which is also  
22 overlapping networks, there is a number of interest that coexists. But what testifies  
23 to the success of Iyad Ag Ghaly is his ability to maintain these networks over time,  
24 even if there are a number of interests that coexist, and sometimes competing interests  
25 that coexist in the network.

1 Why does he succeed in doing this? Because he is smart enough to allow a certain  
2 degree of flexibility, a certain degree of autonomy on local fighters and local  
3 commanders, but still maintaining that core position as the very personal  
4 embodiment of all these networks.

5 JUDGE PROST: [15:50:08] Thank you very much.

6 PRESIDING JUDGE MINDUA: [15:50:15](Interpretation) Thank you very much,  
7 Judge Prost.

8 You have the floor, Madam Taylor.

9 MS TAYLOR: [15:50:26] Yes, thank you very much, Mr President.

10 QUESTIONED BY MS TAYLOR: (Continuing)

11 Q. [15:50:30] Mr Witness, just so you know, it's a procedure here that the Defence  
12 has the last right of questions.

13 So just in following up from the questions that were put to you regarding  
14 the methodology, now, I'm assuming you just didn't come to Bamako and run into  
15 victims -- sorry, for the record, you nodded your head side to side.

16 A. [15:50:51] No, I did not.

17 Q. [15:50:53] So persons identified them for you?

18 A. [15:50:58] I have been privileged enough to have been able to work with  
19 a number of good Malian colleagues and I have built up a huge base of contacts, both  
20 my personal contacts but also the contacts I have through my Malian colleagues.

21 Why was -- how was I able to do this? Well --

22 Q. [15:51:22] Sorry, Mr Witness, can you keep your answers quite short because  
23 we're almost about to finish.

24 A. [15:51:27] Okay, sorry. Well, the short answer is that I was able to -- the first  
25 time I came to Mali I came with a colleague who had worked there during the 1990s

1 and, through her networks, I have been able to expand on my own networks. And  
2 these are people that I have worked with over a longer period of time and we work  
3 together on a number of different projects, so, and these are people which I trust  
4 adhere to the same research methodologies as I do when it comes to having a broad  
5 range of respondents from various aspects of these conflicts.

6 Q. [15:52:09] Mr Witness, we can go into private session, if necessary, but would  
7 you agree to give the names of your colleagues and put them on the record?

8 A. [15:52:20] I can give some names of some of my colleagues, but then I would like  
9 to do that in a private session, because, I mean, I have not asked them if they are okay  
10 with having their names in this court and these are people who live in Mali. Now,  
11 so this is, for them, potentially quite serious and sensitive.

12 PRESIDING JUDGE MINDUA: [15:52:49](Interpretation) You are quite correct,  
13 Mr Witness.

14 Court officer, let us go into private session.

15 (Private session at 3.53 p.m.)

16 THE COURT OFFICER: [15:53:07] (Interpretation) We are in private session,  
17 your Honour.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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25 (Redacted)

Trial Hearing  
WITNESS: MLI-OTP-P-0152

(Private Session)

ICC-01/12-01/18

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Trial Hearing  
WITNESS: MLI-OTP-P-0152

(Private Session)

ICC-01/12-01/18

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Trial Hearing  
WITNESS: MLI-OTP-P-0152

(Private Session)

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25 (Open session at 4.01 p.m.)

- 1 THE COURT OFFICER: [16:01:25](Interpretation) We are in open session.
- 2 PRESIDING JUDGE MINDUA: [16:01:35](Interpretation) Thank you very much,
- 3 court officer.
- 4 Mr Prosecutor, if I understand correctly tomorrow, Thursday, Friday, and Monday
- 5 we don't have any witness; is that correct?
- 6 MR DUTERTRE: [16:01:48](Interpretation) That is correct, your Honour.
- 7 PRESIDING JUDGE MINDUA: [16:01:53](Interpretation) So our next hearing will be
- 8 on Thursday, 6 October with the testimony of the twelfth witness of the Prosecution.
- 9 MR DUTERTRE: [16:02:06](Interpretation) Yes, that is correct, your Honour.
- 10 PRESIDING JUDGE MINDUA: [16:02:11](Interpretation) Very well, we will
- 11 therefore reconvene on Tuesday, 6 October at 9.30 a.m. Thank you, court officer, for
- 12 correcting me. And that will be for the testimony of the twelfth witness.
- 13 Court is adjourned.
- 14 THE COURT USHER: [16:02:41] All rise.
- 15 (The hearing ends in open session at 4.02 p.m.)