

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 Tuesday, 13 October 2020
10 (The hearing starts in open session at 9.45 a.m.)
11 THE COURT USHER: [9:45:39] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:46:07](Interpretation) Court is in session.
15 Good morning, everyone.
16 Madam courtroom officer, if could please call the case.
17 THE COURT OFFICER: [9:46:19] Thank you, Mr President, your Honours.
18 The situation in Mali, in the case of The Prosecutor versus Al Hassan Ag
19 Abdoul Aziz Ag Mohamed Ag Mahmoud, situation ICC-01/12-01/18.
20 And we are in open session.
21 PRESIDING JUDGE MINDUA: [9:46:36](Interpretation) Thank you, Madam
22 courtroom officer.
23 We will be starting now. We are 15 minutes' behind and the Chamber
24 apologises, but the delay was due to a number of technical issues.
25 The technicians are working hard to deal with these issues and we do hope that
26

1 they will be resolved.

2 In the time being, we will begin with what we have at hand.

3 As usual, we will begin with the introduction, starting with the OTP.

4 I see the Prosecutor. Madam Prosecutor.

5 MS CORBIN: [9:47:13] (Interpretation) Good morning, your Honours.

6 The Prosecution is represented by Gilles Dutertre, Mr Garcia, myself ...

7 THE INTERPRETER: [9:47:23] Inaudible.

8 PRESIDING JUDGE MINDUA: [9:47:27](Interpretation) Thank you very
9 much.

10 And now the Defence.

11 MS SUTHERLAND: [9:47:29] Good morning, Mr President, your Honours.

12 The Defence for Mr Al Hassan today is represented by Ms Melinda Taylor,

13 Ms Molly Thomas, Ms Laura Ferri and, myself, Kirsty Sutherland.

14 PRESIDING JUDGE MINDUA: [9:47:51](Interpretation) Thank you very
15 much. But I believe you neglected to tell us your name. I didn't hear it on
16 the French channel.

17 MS SUTHERLAND: [9:47:58] My apologies, Mr President, my name is
18 Kirsty Sutherland.

19 PRESIDING JUDGE MINDUA: [9:48:06](Interpretation) There, very well, we
20 have it recorded now.

21 Representative of victims, please.

22 MR LUVENGIKA: [9:48:15](Interpretation) Good morning, your Honours.

23 The victims are represented today by Ms Claire Laplace, and myself, Mr Fidel
24 Luvengika. Thank you very much.

25 PRESIDING JUDGE MINDUA: [9:48:33](Interpretation) Thank you very

Trial Hearing
WITNESS: MLI-OTP-P-0151

(Open Session)

ICC-01/12-01/18

1 much, Mr Luvengika.

2 I will now turn to the witness, and we will now hear the testimony of the 13th
3 Prosecution witness today.

4 Good morning, Mr Witness, can you hear me?

5 WITNESS: MLI-OTP-P-0151

6 (The witness speaks French)

7 (The witness gives evidence via video link)

8 THE WITNESS: [9:48:54](Interpretation) Yes.

9 PRESIDING JUDGE MINDUA: [9:48:54](Interpretation) On behalf of the
10 Chamber, I would like to welcome you to the Court.

11 THE WITNESS: [9:48:59](Interpretation) Thank you.

12 PRESIDING JUDGE MINDUA: [9:49:02](Interpretation) You will be giving
13 testimony now in order to help the Chamber determine the truth in the case of
14 Mr Al Hassan.

15 THE WITNESS: [9:49:12](Interpretation) Yes.

16 PRESIDING JUDGE MINDUA: [9:49:14](Interpretation) Now, you have not
17 asked for any protective measures; is that correct?

18 THE WITNESS: [9:49:19](No interpretation)(Overlapping speakers)

19 THE INTERPRETER: [9:49:19] Overlapping speakers.

20 PRESIDING JUDGE MINDUA: [9:49:22](Interpretation) Very well. We will
21 now begin with the solemn oath pursuant to the Rules of Procedure and
22 Evidence.

23 Now, I think you will find a written copy on the table and there you will find
24 the solemn oath. Could you kindly read out the (Overlapping speakers)

25 THE WITNESS: [9:49:49](Interpretation) Yes, I solemnly declare that I shall

1 tell the truth, the whole truth and nothing but the truth.

2 PRESIDING JUDGE MINDUA: [9:49:55](Interpretation) Thank you very
3 much.

4 You are now under oath. The Victims and Witnesses Section and the OTP
5 representatives have already explained to you what that means.

6 I do have some practical recommendations to give you now. Please,
7 remember, throughout your testimony that everything that is being said in
8 the courtroom is transcribed by court reporters and interpreted simultaneously
9 into several languages by our interpreters.

10 Thus, it is important for you to speak clearly and slowly. Begin your reply
11 only once the person questioning you has finished putting his or her question.
12 Please count up to three in your head before you respond. This short pause is
13 necessary so that your statement can be recorded properly.

14 Naturally, if you have any questions, just raise your hand to let us know that
15 you would like to say something.

16 Have you understood?

17 THE WITNESS: [9:51:27](Interpretation) Yes, I have.

18 PRESIDING JUDGE MINDUA: [9:51:29](Interpretation) Thank you very
19 much, Mr Witness.

20 Now, you have some UNESCO officials with you?

21 THE WITNESS: [9:51:38](Interpretation) Yes.

22 PRESIDING JUDGE MINDUA: [9:51:39](Interpretation) Okay.

23 The Chamber authorises the UNESCO officials to assist you and, if they wish to
24 speak, they will ask for leave and the Chamber will decide whether or not to
25 allow the official to speak.

1 Is that all right?

2 THE WITNESS: [9:51:59](Interpretation) Okay.

3 PRESIDING JUDGE MINDUA: [9:52:00](Interpretation) We will now hear
4 your testimony. You'll be questioned by the parties and, possibly, by
5 the Legal Representatives of Victims and by the judges of the Chamber.
6 We will begin with the Office of the Prosecutor.

7 Madam Prosecutor, please proceed.

8 MS CORBIN: [9:52:27](Interpretation) Thank you, your Honours.

9 I will only be asking a few questions to clarify certain aspects of the witness's
10 written statement having to do with the whole process of placing
11 the monuments on the UNESCO List of World Heritage and on the List of
12 World Heritage in Danger.

13 PRESIDING JUDGE MINDUA: [9:52:58](Interpretation) Go ahead, please.

14 QUESTIONED BY MS CORBIN: (Interpretation)

15 MS CORBIN: [9:53:02]

16 Q. [9:53:02] Good morning, I am Nelly Corbin and I will be asking you some
17 questions on behalf of the Prosecution.

18 A. [9:53:10] Fine.

19 Q. [9:53:10] Now to ensure that your identity is properly recorded, could
20 you kindly give us your name in full.

21 A. [9:53:18] I am Francesco Bandarin.

22 Q. [9:53:24] Date and place of birth?

23 A. [9:53:26] 26 December 1950 in Venice, Italy.

24 Q. [9:53:33] Sir, the Chamber has agreed to hear your testimony as an expert
25 witness. I am not going to review your entire professional background, but

1 could we just confirm your most recent positions within UNESCO before you
2 retired.

3 Now, first of all, sir, you were the Director of the World Heritage Committee of
4 UNESCO from the year 2000 to the year 2011; namely, 11 years. Correct?

5 A. [9:54:13] Correct.

6 Q. [9:54:14] Just in a few words, tell us about this World Heritage Centre.

7 A. [9:54:21] The UNESCO World Heritage Centre is internal to
8 the organisation and coordinates various aspects having to do with
9 the conventions. In other words, the centre is the secretariat for the various
10 conventions.

11 Q. [9:54:41] Now you were the Assistant Director-General responsible for
12 Culture from the year 2010 to 2014; correct?

13 A. [9:54:51] Yes, correct. In French, we say *directeur général adjoint*,
14 Assistant Director-General in English.

15 Q. [9:55:05] Thank you very much for correcting me on that point. You
16 resumed those duties as the Assistant Director-General of UNESCO, Culture,
17 in the year 2015. Correct?

18 A. [9:55:20] Yes, in 2015, in October 2015.

19 Q. [9:55:22] Now I believe you stopped work in 2014, and under what
20 circumstances did you resume in 2015?

21 A. [9:55:31] I retired because I had reached the age limit and I resumed my
22 duties as an academic person. I teach at the University of Venice; I teach
23 urban planning. But my successor, in 2015, decided to resign after only one
24 year in service as Assistant Director-General, and, at that point,
25 the Director-General asked me to resume my duties on an acting basis just to

1 cover until various decisions were taken for the continuation of activities. So I
2 agreed and I carried out those duties for about two and a half years, because
3 the Director-General decided to keep me on an acting basis until the end of her
4 mandate in 2018.

5 Q. [9:56:40] Do you still work for UNESCO?

6 A. [9:56:44] No, I am now retired.

7 Q. [9:56:49] Do you remember providing a statement to members of the OTP
8 in September and October 2015?

9 A. [9:57:00] Yes, of course. That was during the Al Mahdi trial and I was to
10 be a witness on behalf of UNESCO.

11 Q. [9:57:17] Now in that statement, is it correct to say that you provided
12 information about the procedure for something to be placed on
13 the World Heritage List, and the various criteria and the roles of the various
14 organisations that are involved, and the consequences of a place or a building
15 being put on the list?

16 A. [9:57:42] Yes, we gave all that information. The entire -- all
17 the information from A to Z regarding inscription on the list and maintenance
18 after the place or the building is put on the list, and all the official documents
19 and statutory requirements for a building being placed on the heritage list.
20 And, in particular, some information about Timbuktu itself.

21 Q. [9:58:12] Now in your statement, more specifically, you explained
22 the process of a building or a site being put on the list and you mention
23 the names of three mosques and 16 mausoleums that are now listed on
24 the World Heritage List. Is that correct?

25 A. [9:58:36] Correct. Yes, I gave all that information - and, in great

1 detail - and I provided a great many documents as well, both from UNESCO
2 and from the country in question.

3 Q. [9:58:54] Could you have a look at this document. This is at tab 2 of
4 the binder that you have in front of you.

5 A. [9:59:09] Yes, that's my statement. I have it in English here, "WITNESS
6 STATEMENT".

7 Q. [9:59:16] This is document MLI-OTP-0029-0843, and this is a confidential
8 document.

9 A. [9:59:26] Yes, I can confirm that.

10 Q. [9:59:31] So you recognise this document as being your witness statement.
11 Could you please go to the last page, and this is 0029-0863.

12 A. [9:59:46] Yes, I have it here.

13 Q. [9:59:49] Whose signature is it in the middle of the page?

14 A. [9:59:56] It's my signature.

15 Q. [9:59:59] And the previous page, 0029-0862. Here, we see a list of the 11
16 documents that are annexes to your statement?

17 A. [10:00:13] Yes, that's right.

18 Q. [10:00:22] I'd like to review a few paragraphs within your witness
19 statement so your testimony is crystal clear. Could you kindly go to
20 0029-08 -- 0858.

21 A. [10:00:42] Yes. I'm there.

22 Q. [10:00:46] Paragraph 84. Here, we see the list of the three mosques and
23 the many mausoleums that were placed on the World Heritage List; is that not
24 the case?

25 A. [10:01:05] Yes, that's right.

1 Q. [10:01:07] Second last line, paragraph 84, you mentioned the "Sidi Khiyar"
2 mausoleum?

3 A. [10:01:25] Yes.

4 Q. [10:01:26] Could you kindly turn to 0861.

5 A. [10:01:31] Yes, I'm there.

6 Q. [10:01:36] Do you see paragraph 100?

7 A. [10:01:40] Yes.

8 Q. [10:01:42] The second phrase reads as follows:

9 (Speaks English)(Overlapping speakers)

10 "The mausoleum Alpha Moya is known as Sidi Khiyar in the nomination
11 document of 1987."

12 A. Yes, that's right.

13 Q. [10:02:04] Now the first sentence of paragraph 100 states, and, I quote:

14 (Speaks English)(Overlapping speakers) "The two tombs of Bahaber Babadie
15 and Ahamed Fulane are protected because they annexed to the Djingareyber
16 Mosque."

17 (Interpretation) Can you confirm that statement?

18 A. [10:02:27] Yes, that is correct.

19 Q. [10:02:32] Now the third and final sentence remains -- reads as follows:

20 (Overlapping speakers)(In English) "The door that was removed at Sidi Yahia
21 Mosque is a component of the mosque and hence protected."

22 (Overlapping speakers)(Interpretation) Can you confirm that statement?

23 A. [10:02:48] Yes, I confirm that statement.

24 THE COURT OFFICER: [10:02:51] (Overlapping speakers) Just an

25 intervention quickly from the Registry to inform the Chamber, the parties and

1 participants and -- now eCourt is working. So the Registry will be able to
2 display the evidence called on the respective screens on evidence channel 1.

3 And I would like to remind the Prosecution if it will be possible, please, to state
4 which redacted version of the document shall be displayed.

5 Thank you very much.

6 PRESIDING JUDGE MINDUA: [10:03:17](Interpretation) Thank you very
7 much, courtroom officer. I see that our technical issue is solved.

8 MS CORBIN: [10:03:28] (Interpretation) This is a confidential document,
9 actually.

10 THE COURT OFFICER: [10:03:31] (Overlapping speakers) We have a
11 redacted version 01, 02 and 03; so just for us to know which one we should
12 display on the respective screen.

13 MS CORBIN: [10:03:45] (Interpretation) The last redacted version, 03.

14 THE INTERPRETER: [10:03:49] Overlapping speakers.

15 MS CORBIN: [10:04:01] (Interpretation)

16 Q. [10:04:04] Now if we are talking about a mausoleum that is placed on
17 the list, what part of the structure is actually protected?

18 A. [10:04:14] The structure is protected in its entirety. * The part below the
19 ground and the part above the ground. So the whole architectural structure.

20 Q. [10:04:38] Could you kindly turn to page 0859, paragraph 88. You
21 explain that two years after the site was placed on the World Heritage List,
22 the three mosques and the 16 mausoleums were put on the World Heritage List
23 in Danger * and you say that the site remained on the danger list until 2005,
24 which is the year you went to Timbuktu?

25 A. [10:05:17] Yes, this is correct.

1 Q. [10:05:18] Could you tell us more about the List of World Heritage in
2 Danger in relation to the List of World Heritage?

3 A. [10:05:31] The list in question, the list of World Heritage in Danger is a
4 sublist of the World Heritage List. It's a list in which the sites that are already
5 placed on the World Heritage List are registered if they are in great danger
6 because of a situation or because of a natural disaster, or - as is the case in this
7 instance - because of deliberate destruction.

8 THE WITNESS: [10:05:59] This is a list, at this moment, this--I believe there's
9 about 544 site on this list out of 1,121 on the World Heritage List.

10 MS CORBIN: [10:06:19] (Interpretation)

11 Q. [10:06:19] And why were the sites placed on the List of World Heritage in
12 Danger in the year 1990?

13 A. [10:06:34] Yes, as indicated in the documents, the conditions in Timbuktu
14 are quite particular. I'm speaking about the weather conditions. We're talking
15 about the desert, of course, but there are either heavy rains in the winter that
16 threaten the structures of the buildings, which are structures made of earth, or
17 mainly, in the spring, there are very strong winds that come from the north,
18 from the Sahara, and they carry vast quantities of sand. Thee quantities are so
19 important that the sand can encroach on the buildings and entirely invade the
20 buildings, the houses, the mosques. So there is this ongoing threat, which
21 requires a constant intervention. At the time, there were not yet effective
22 measures in place and the mosques were regularly filled with sand and,
23 practically, it was impossible to enter; it was even very difficult to manage the
24 preservation of the buildings. And so the World Heritage Committee thought it
25 would be appropriate to put these structures on the List or World Heritage in

1 Danger.

2 Q. [10:07:50] And why were the Timbuktu sites taken off the list, off the List
3 of World Heritage in Danger in the year 2005?

4 A. [10:07:57] Well, once a site has been placed on a list, there are a whole
5 series of technical measures put in place to enhance the capacity of local
6 * institutions and especially of those who manage the mosques so that the
7 dangers can be dealt with. After 15years of work, a solution was found; namely,
8 the necessary measures were put in place to save the buildings. At this point,
9 the Committee thought that the danger no longer existed, and, thus, the
10 suggestion was made for the buildings to be taken off the World Heritage in
11 Danger list.

12 Q. [10:08:49] Could you kindly have a look at the photograph at tab 7. And I
13 believe this can be shown publicly, MLI-OTP-0029-1075, tab7.

14 A. [10:09:13] Yes. I can see it.

15 Q. [10:09:15] Now you explained in your statement that this is a photograph
16 that you took in the year 2005, and this is a replastering exercise of the mosque.
17 This is an annual exercise, and the local people gather to place a earthen
18 mixture on the monument to protect it.

19 My question is this: What is the basis for this knowledge, this local
20 knowledge possessed by the local people?

21 A. [10:09:56] Well, here, you see a community coming together. Ever since
22 the foundation of these mosques, the people have gathered periodically to
23 maintain the structure. Now, in the winters in Timbuktu, as I just said,
24 the rains are extremely heavy through torrents of water at times and
25 the document --

1 THE INTERPRETER: [10:10:24] Correction --

2 THE WITNESS: [10:10:25] -- the buildings can be damaged. As you can see
3 from the photograph, they're quite fragile. Part of the building is made out of
4 raw clay and this is a very fragile building material and these torrential rains
5 can do considerable damage to the building.

6 So to reduce the amount of damage, this replastering is done of the outside of
7 the mosque. And it's a necessary operation. Without the replastering,
8 the building will not hold up long against the extreme weather. So the local
9 people have organised themselves for many, many years to carry out this
10 activity.

11 The people of Timbuktu are here, as you can see, putting this layer of clay on
12 the building so it can hold up to the weather. It is a kind of community
13 endeavour, and also an expression of respect by the community towards
14 the monument, and, of course, we can see the attachment to their religious
15 symbol.

16 MS CORBIN: [10:12:00] (Interpretation)

17 Q. [10:12:00] Thank you. In 2005, you went to Timbuktu. Could you tell
18 us whether a similar process was being used to the mausoleums in Timbuktu?

19 A. [10:12:08] Yes. It is the same material used. The mausoleums are
20 usually smaller than the mosques, but they are built out of the same materials.
21 Basically, mud bricks. And they, too, require maintenance.

22 Now, I can't tell you whether the maintenance is done in -- by the community
23 or in a community manner, but those mausoleums do need regular
24 maintenance, that is to say, regularly applying a layer of plaster to make sure
25 that the mausoleums can hold up against the rain.

1 Q. [10:13:11] Now, when you were the Assistant Director-General
2 responsible for Culture at UNESCO between 2010 and *2014, did you receive
3 any information about the impact of the destruction on the people of Timbuktu
4 and on the international community?

5 A. [10:13:31] Yes. I was in that position when the discussions were
6 underway in 2012, and I followed the issue closely. * Timbuktu is a site with a
7 high symbolic value and we had made a big investment from a technical or
8 financial point of view; so I was familiar with the situation. You must realise
9 that architects mandated by UNESCO had made a record of all the monuments
10 in Timbuktu. It was a site that we took care of, knowing that it was very fragile.

11 THE INTERPRETER: [10:14:06] Correction—

12 THE WITNESS: [10:14:07]--So when the destructions took place, it was quite a
13 shock to us, to the international community and people involved in
14 preservation of heritage. There were a lot of rumours going around in
15 the heritage community; so, yes, we followed the -- we monitored the issue
16 quite closely on a daily basis, actually.

17 MS CORBIN: [10:14:37] (Interpretation)

18 Q. [10:14:37] Since your statement in 2015, what changed as regards
19 reconstructions of the monuments of Timbuktu? And also as regards
20 UNESCO's policies on reconstruction, generally speaking?

21 *A. [10:14:59] After the liberation of the town in 2013, we started a process of
22 analysis of the situation. We immediately sent missions with experts on
23 architecture made of earth to ascertain the extent of the damages. And we
24 made a diagnosis and started to prepare reconstruction projects. We managed
25 to raise more than \$3 million to carry out this work, and, in the following two

1 years reconstruction work was carried out on the basis of technical documents
2 available to UNESCO, so that reconstruction work could be carried out in
3 keeping with the original construction the greatest extent possible. According to
4 international charters, a reconstruction of elements that have been destroyed is
5 admitted -- I am talking about international charters on conservation obviously
6 -- is admitted if we have a good documentation on the state of the building that
7 was destroyed, because its destruction can also be caused by natural events or
8 natural catastrophes. So, we had all the necessary documents to carry out the
9 reconstruction using traditional methods, and in accordance with the technical
10 documents we had available. I believe we adopted a holistic and scientific
11 approach. This wasn't the only case that we faced over the years. Unfortunately,
12 as you know, many countries have endured conflicts over the past decades, in
13 the Middle East, in Africa, so there were several instances of destruction of
14 cultural heritage. We had to think about it seriously; especially, in the world of
15 conservation to see what response we could give in cases of deliberate
16 destructions, as was the case here. International charters for the conservation of
17 monuments, in particular the Fundamental Charter for the conservation of
18 monuments, called the Venice Charter, doesn't normally advise reconstruction
19 because it may be seen as falsification. But in this particular case, we felt that
20 the value for the community, the importance for the cultural life, the spiritual
21 life and the life of the community, and the essence of a collectivity and the
22 monuments were so important that we had to react and readjust the
23 conservation's philosophy. And we did. UNESCO worked out a specialised
24 programme together with specialised organisations in this field -- and in
25 particular ICOMOS, which is the international council for monuments and

1 sites, the world organisation of professionals on conservation -- and they
2 examined this in depth, which led to the Warsaw Declaration, where it is
3 explicitly said that the reconstruction of a site deliberately destroyed through a
4 violent act was possible, and, indeed, necessary, to provide a community a
5 sense of reparation of the damages it suffered. The theory--the doctrine of
6 conservation evolved in a significant manner because of the destructive acts
7 that were noted through the last decade, and, in particular, in reference to
8 Timbuktu.

9 Q. [10:19:28] Thank you for your reply. During the preparation phase, there
10 were two errors that were noticed. You go to page 0029-0856, paragraph 73.

11 A. [10:20:00] What paragraph? Sorry.

12 Q. [10:20:03] 73. Could you confirm that the ERN number is MLI-OTP-004-0361.
13 This is in at tab 16 of your file - and not OTP-0004-0363?

14 A. [10:20:38] Yes, the appointment file is at 16, at 0361. That's correct.

15 Q. [10:20:54] Could you also confirm that at page 0029-0857, paragraph 78, the
16 ERN should end with 0361, MLI-OTP-0004-0361, and not 0004-0369?

17 A. [10:21:59] I can confirm that. So it should be 0361. I can confirm that.

18 Q. [10:22:13] Are there any other corrections or clarifications which you
19 would like to introduce into your document?

20 A. [10:22:25] In 2016, I made a detailed statement which I imagine also
21 applies to this current situation, so I refer to my previous statement. It was
22 extremely detailed and it covers all the details and all the questions that you
23 might have in this area as regard to the procedure.

24 *Q. [10:23:06] Thank you. Let us look at your transcript later on, but I would
25 like to continue with this current statement. Is this statement correct, with the

1 exception of the minor corrections we've just made?

2 A. [10:23:28] Since 2016, some things have changed, so some of the figures
3 indicated have changed, but those were the acts undertaken at the time. They
4 still remain, but they have to be updated. Some other sites are included and
5 registered.

6 A lot has happened in the last four years, so it needs to be updated. But as
7 regards the substance, and indeed the form of the registering procedure,
8 nothing has changed. The basis remains the same. The registering of the
9 sites, the dates are the same, the organisation of the committee, all relating to
10 the procedure of the convention remains the same. It has not changed. What
11 has changed is the number of sites registered.

12 Q. [10:24:42] Thank you. So when you say the number of sites, you're
13 talking at a world level; is that correct?

14 A. [10:24:51] Yes.

15 Q. [10:24:54] In addition to the 11 annexes, which we've seen, you also made
16 comments on several documents. Nine, in total. They are listed in your
17 statement and they are found in the binder in front of you.

18 A. [10:25:17] Yes.

19 Q. [10:25:18] Binder 14-22.

20 A. [10:25:19] Yes, those are the statutory documents; the registering procedure
21 for the sites and the decisions of the committee to register the sites and the state
22 of conservation of the sites. *Notably there is the 2012 document, it is the
23 transcript of the activities of the World Heritage Committee in 2012, the year
24 the destruction occurred. I also noted in my testimony in 2016 that this
25 destruction happened during the session of the World Heritage Committee,

1 which was taking place at that time, between 24 June and 6 July 2012 in St
2 Petersburg. So we took note directly of the situation in Mali and, at that time,
3 the Committee reacted in an unusual way by convening assemblies to draw up
4 a petition for the protection of those sites, which were of course not listened to
5 by the militia who destroyed the sites. It was a significant moment for the
6 Committee because we had to take steps, directly almost, whilst discussions
7 were ongoing in order to preserve the sites.

8 Q. [10:27:10] Do you have any objections that this statement, with those
9 annexes, is included in the filing?

10 A. [10:27:24] No, I am happy to agree to that.

11 Q. [10:27:31] We briefly touched upon the fact that -- do you remember that
12 you were a witness in the Al Mahdi case in 2016?

13 A. [10:27:43] Yes, I remember that very well.

14 Q. [10:27:48] Could you go to annex number 1, it is document
15 MLI-OTP-0069-4350. On page 4370, you have told the Court that you were
16 questioned by the Prosecution. At the end of your statement on
17 page 44 -- 4410.

18 A. [10:29:00] Yes, there was a break in page 44 (sic), but then we continued
19 afterwards until page 4446. Perhaps, it might have been a break or a pause.

20 Q. [10:29:17] Are you talking about your statement, which finishes on
21 page 4410?

22 A. [10:29:28] But after that it continues. Oh, no, it's another. My apologies.
23 It's 4410, that is correct.

24 Q. [10:29:30] Is that the transcript of your statement?

25 A. [10:29:54] Yes.

1 Q. [10:29:58] Could you go to page 4404, line 18. During the preparation
2 meeting, you confirmed -- and that's in annex 12. It's not annex 12, but annex
3 11?

4 A. [10:30:21] (Overlapping speakers)(No interpretation)

5 Q. [10:30:36] As regards page 69-4410 for -- is that correct? For 4410?

6 A. [10:30:54] Sorry, I didn't quite follow your question.

7 Q. [10:31:01] Your statement, 4370 to page 4410?

8 A. [10:31:05] Yes, that is correct.

9 Q. [10:31:11] So we have to correct the annex. Apart from this correction,
10 can you confirm the transcript and that it is correct and reflects your statement?

11 A. [10:31:23] Yes, I can confirm that.

12 Q. [10:31:31] Do you have any objection that we can include this in
13 the filings of this case?

14 A. [10:31:33] (Overlapping speakers)(No interpretation)

15 Q. [10:31:34] Thank you, Mr Bandarin. I have nothing further to add.

16 A. [10:31:35] Thank you.

17 PRESIDING JUDGE MINDUA: [10:31:58](Interpretation) Thank you, Madam
18 Prosecutor. * I would like to remind you that this witness has testified,
19 according to Rule 68(3) of the Rules of Procedure and Evidence. The Chamber
20 is satisfied that the conditions of procedure requested under Rule 68(3) of the
21 Rules have been fulfilled.

22 I will, therefore, turn to the Legal Representative of the Victim to find out
23 whether they would like to say anything, because in your written submissions
24 of 5 October 2020, you have said that, in principle, you will not intervene, but
25 after having heard the questioning, would you like to review the situation?

1 MR LUVENGIKA: [10:33:06](Interpretation) Thank you, my Lord.

2 After having heard the testimony of the witness this morning, the legal
3 representative would like to put some question by way of clarification by
4 looking at one particular aspect, which affects the interests of the victim, but
5 wasn't clearly stated this morning during this hearing.

6 PRESIDING JUDGE MINDUA: [10:33:41](Interpretation) Thank you,
7 Mr Nsita. We will confer.

8 Please, we authorise you to put your questions. Please, go ahead.

9 QUESTIONED BY MR LUVENGIKA: (Interpretation)

10 Q. [10:34:07] Good day, Mr Bandarin, I hope I have said your name correctly.
11 I am Fidel Nsita Luvengika, I am one of the representatives, the Legal
12 Representatives of the Victims in this case. I would like to put some questions
13 to you to see if you could shed some light on the community and the victims of
14 Timbuktu in general terms.

15 In your statement, you raised on several occasions the material aspect of
16 the reconstruction of the damaged sites, in particular, the mausoleums.
17 This morning, you spoke of the value and importance of these sites for
18 the cultural life and the spiritual life of the community. It was vital for
19 the community as a whole. My question is therefore, is to understand, as an
20 expert, have you got any views as regards the immaterial value related to
21 the destruction of these sites and protected monuments?

22 And thereafter, secondly, after the reconstruction of those sites. First, there
23 was destruction and then there was reconstruction. How did the population,
24 how did the religious community, how did the religious centres perceive this
25 spiritually?

1 A. [10:36:18] I could answer on the basis of my knowledge of the community
2 having visited the sites during my work, and also by following the actions and
3 acts that were taken for these sites. If you allow me, I would like to make
4 a difference of another aspect that hasn't been raised yet, because there are
5 other types of heritage which exist in Timbuktu, not only the monuments.
6 For example, the importance of the manuscripts, which have been existing for
7 centuries. It's been a -- Timbuktu was a spiritual and intellectual centre of great
8 significance in Africa; particularly for the north of Africa, and thanks to
9 the wealth and richness of the 14th and 15th century, the town became
10 the intellectual centre for this part of the world. These manuscripts were
11 preserved in libraries, in both public and private libraries - I'll speak about that
12 later, because it's an extremely important part - and they were affected when
13 the town was occupied.
14 Timbuktu is very attached to its traditions. Not only in Mali, but also
15 the other towns in Mali. Djenné, for example, are attached to their traditions,
16 their cultural and spiritual and even technical elements of the monuments.
17 It's extremely important, I won't go into the details, but just want to say that,
18 for example, Malian music is extremely important. It's one of the most
19 important African types of music. Farka Touré, for example, in Mali, is a very
20 important type of music and is omnipresent in the African culture, and, in
21 particular, for Timbuktu.
22 This attachment was shown through the maintaining of the monument and
23 the replastering of the monuments and sites. It is part of their spiritual life,
24 part of their prayers and the cultural events - like music elements, which are
25 very frequent - are part and parcel of the traditions of this town.

1 The destruction of the monuments and the suffering, which it caused to
2 the population, was a deep wound for the community. What I saw during
3 the occupation, there was major suffering for the population as regards their
4 cultural life. The proof of this is that when the town was liberated and when
5 the monuments were reconstructed --

6 PRESIDING JUDGE MINDUA: [10:40:12](Interpretation) Sorry, one moment.
7 The Defence.

8 MS SUTHERLAND: [10:40:17] Thank you very much, Mr President. My
9 concern is that the witness is being invited to go beyond the scope of the
10 question.

11 PRESIDING JUDGE MINDUA: [10:40:41] (No interpretation).

12 MS SUTHERLAND: [10:40:48] Sorry, there a lot of background noise.

13 THE INTERPRETER: [10:40:50] Message from the interpreters: Yes, indeed,
14 we have a lot of background noise. The Presiding Judge basically asked you
15 to repeat your question.

16 THE COURT OFFICER: [10:41:02] (Via video link) (Interpretation)

17 The Registrar here. On the video link, yes, there is a group, but we have
18 asked them to lower the volume; so I hope the background disturbance will be
19 reduced.

20 PRESIDING JUDGE MINDUA: [10:41:22](Interpretation) Thank you.
21 Defence.

22 MS SUTHERLAND: [10:41:30] Thank you. Thank you, your Honour. Yes,
23 we are concerned that the witness is now speaking beyond the scope of his
24 expertise.

25 PRESIDING JUDGE MINDUA: [10:41:52](Interpretation) Maître Nsita.

1 MR LUVENGIKA: [10:41:55](Interpretation) I think the witness tried to put
2 everything into perspective. And it's at that moment when he started to
3 answer the question which was put to him as regards the damage done to
4 the community that we were interrupted.

5 So I would ask you to let the witness continue with his statement and answer
6 the question, because this is a particular aspect of the immaterial value. This
7 is an expert. He has worked in this domain; so he could shed light on
8 the situation and the impact of this destruction for the faith of the population.

9 Did the reconstruction repair the immaterial aspect? Or did it really not affect
10 that aspect which affected the population and they continue to suffer from
11 the experiences they had in the past.

12 PRESIDING JUDGE MINDUA: [10:43:03](Interpretation) Thank you. I think
13 that the witness, he spoke a bit about the manuscripts, but right now he is in
14 the area where he's an expert when referring to the destroyed monuments and
15 how it was perceived by the population.

16 So please, proceed.

17 THE WITNESS: [10:43:31](Interpretation) Thank you, your Honour. I'll be
18 brief. I was going to say that proof of the attachment of the local community
19 to the buildings was clear on two particular occasions: The inauguration in
20 2015, where there were other representatives of UNESCO; and also when they
21 became sacred, which took place on 2016.

22 These were two unique moments and there was a relief in the community to
23 see what was happening to these monuments.

24 MR LUVENGIKA: [10:44:18](Interpretation)

25 Q. [10:44:19] Thank you. I would like to ask you a final question. All

1 the cemeteries of Timbuktu, and therefore also the mausoleums in those
2 cemeteries, are they also protected sites?

3 A. [10:44:40] Yes, I have shed light on this in the documents which you have
4 before you. The cemeteries are protected by national legislation, but they are
5 not included in the heritage list. We only have the three mosques and the 16
6 mausoleums on the list. So not all the cemeteries are part and parcel of
7 UNESCO heritage, but they are covered by national legislation.

8 Q. [10:45:16] Thank you.

9 I have concluded my questions.

10 PRESIDING JUDGE MINDUA: [10:45:20](Interpretation) Thank you,
11 Mr Nsita.

12 We still have 15 minutes before break.

13 I turn to the Defence for their cross-examination. Mrs Sutherland.

14 (Pause in proceedings)

15 MS SUTHERLAND: [10:46:22] I'm so sorry, one moment.

16 (Counsel confer)

17 MS SUTHERLAND: [10:46:30] Mr President, your Honours, would it be
18 possible to invite the witness to switch his mic on and off because there's an
19 awful lot of background interference?

20 Thank you very much, Mr Witness.

21 PRESIDING JUDGE MINDUA: [10:46:47](Interpretation) Mr Witness,
22 I believe you heard the Defence counsel. Please, when you're not speaking, if
23 you could just shut off your microphone. Thank you very much.

24 MS SUTHERLAND: [10:46:59] Mr President, your Honours, we have
25 a Defence binder prepared, but it has not been distributed yet. Would you

1 like that to happen now or after the break? The witness has a copy.

2 PRESIDING JUDGE MINDUA: [10:47:20](Interpretation) We would like to
3 have the documents now, please.

4 QUESTIONED BY MS SUTHERLAND:

5 Q. [10:48:08] Mr Witness, could I please check that you have the copy of the
6 Defence binder in your possession?

7 A. [10:48:20] Yes, I do have them with me.

8 Q. [10:48:23] Thank you.

9 THE COURT OFFICER: [10:48:29] (Overlapping speakers) distribute the
10 binders (Overlapping speakers)

11 THE COURT OFFICER: [10:48:40] (Via video link)(Interpretation)
12 (Overlapping speakers) We have six documents that were disclosed by
13 the Defence. Is that what you're talking about, six documents?

14 MS SUTHERLAND: [10:48:52] Yes, thank you very much.

15 Q. [10:48:55] Mr Witness, I would be very grateful if we could clarify
16 the chronology of UNESCO's formal relationship with Timbuktu. As I
17 understand it, from the evidence that you've given us thus far, in 1988, there
18 was the inscription of three mosques and 16 mausolea. In 1990, Timbuktu
19 was placed on the danger list because of sand encroachment. This was
20 delisted only in 2005 after, as you've testified today, UNESCO have managed
21 to sufficiently enhance the capacity of local institutions.

22 If I could ask you to turn to tab 2 of the Defence binder, that's

23 MLI-D28-0004-0494 at 0499. This a UNESCO maintenance report dated 2010,
24 in which UNESCO notes that:

25 As for the sixteen mausolea, the mission noted the gates of cemeteries' fences

1 being torn down and waste spreading everywhere, which is a worrying
2 situation common to the surroundings of all the mausolea visited.

3 In 2012, you received information from Bamako and Timbuktu such that
4 the mausolea were being destroyed.

5 Please, could you turn to tab 2 of the Prosecution binder, which is
6 MLI-OTP-00 -- (Overlapping speakers).

7 PRESIDING JUDGE MINDUA: [10:50:49](Interpretation) Ms Sutherland.
8 Prosecutor.

9 MR DUTERTRE: [10:50:52](Interpretation) There are a series of statements
10 here, but I would like to know what the question is, if any? I hear a series of
11 statements and observations.

12 PRESIDING JUDGE MINDUA: [10:51:03](Interpretation) Have you heard
13 that point, Ms Sutherland?

14 MS SUTHERLAND: [10:51:07] I have. By way of clarification, as I stated at
15 the beginning, we wanted to just ascertain the chronology was correct. If
16 the witness disagrees with anything I say, then I expect him to let me know.
17 This is just to get the framework so that we can proceed with the rest of the
18 cross-examination, which will be full of questions, I assure you. This is
19 framed as a question.

20 PRESIDING JUDGE MINDUA: [10:51:38](Interpretation) Mr Witness,
21 the Defence counsel is giving us a timeline, and can you confirm?

22 THE WITNESS: [10:51:47](Interpretation) Yes, the timeline is correct and I do
23 confirm it.

24 PRESIDING JUDGE MINDUA: [10:51:52](Interpretation) Very well.
25 Ms Sutherland, please continue.

1 MS SUTHERLAND: [10:51:56] Thank you, your Honour.

2 Q. [10:51:58] At tab 2 of the Prosecution's bundle at paragraph 95, you state
3 that:

4 "[...] UNESCO acted swiftly and we planned the reconstruction of the sites in
5 Tombouctou. Reconstructing them was possible only because we had a full
6 analysis of the structure [...] UNESCO had evaluated those eight years ago,
7 and had all the necessary information to rebuild them."

8 Can I ask, you make that statement in 2015, by "eight years ago" were you
9 referring to 2007?

10 A. [10:52:48] Yes, I think so. I'll have to check, but, yes, yes.

11 Q. [10:52:53] Thank you.

12 In 2013, UNESCO sent a mission to assess the preservation of the mausolea and
13 the restoration was complete by the summer of 2015; is that correct?

14 A. [10:53:16] Yes, that's correct.

15 Q. [10:53:19] We learnt from another witness that in 2015, a report was
16 commissioned in an attempt to understand the cultural significance of
17 the mausolea. Are you aware of that report?

18 A. [10:53:34] No, no, I don't think so. But perhaps if I have a look at it, it
19 may refresh my memory, but it's not in the list here.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: MLI-OTP-P-0151

(Open Session)

ICC-01/12-01/18

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1 A. [10:56:37] Yes, I'm looking at that paragraph. That's a technical analysis
2 of the situation, *as of early 2020, yes.

3 Q. [10:56:52] And to clarify, you -- in answer to the Legal Representative for
4 Victims, you explained how much money had been spent on the reconstruction
5 in 2015. But I have a note from the -- from what I heard of \$300,000 million.

6 I was wondering if you can confirm whether that's the sum that was
7 (Overlapping speakers)

8 A. [10:57:19] Three million -- 3 million.

9 Q. [10:57:23] Thank you very much.

10 MS SUTHERLAND: [10:57:28] Mr President, your Honours, I'm about to
11 come to a rolling section of the cross-examination, having completed
12 the preliminary confirmation of the chronology. I'm mindful of the time and I
13 wonder if it might be sensible to take a break at this juncture.

14 PRESIDING JUDGE MINDUA: [10:57:52](Interpretation) We have five
15 minutes before the break. I see the Prosecutor is on her feet.

16 Madam Prosecutor, do you have something to say?

17 MS CORBIN: [10:58:06] (Interpretation) Yes, the Defence said at page 32, lines
18 8 to 10 of the transcript, I'm referring to the French transcript, that a witness
19 spoke about the -- the state of the restoration in 2020. Could we have
20 a reference for that statement?

21 MS SUTHERLAND: [10:58:36] That, Madam Prosecutor, that was
22 MLI-D28-0004-0345. It's a report of -- given by a witness.

23 MS CORBIN: [10:58:49](Interpretation) Oh, I see.

24 PRESIDING JUDGE MINDUA: [10:59:00](Interpretation) Well, there you
25 have it.

1 We will now suspend and have a half-hour break and we will be resuming at
2 11.30.

3 The hearing is now suspended. All rise.

4 (Recess taken at 10.59 a.m.)

5 (Upon resuming in open session at 11.32 a.m.)

6 THE COURT USHER: [11:32:30] All rise.

7 Please be seated.

8 PRESIDING JUDGE MINDUA: [11:32:49](Interpretation) The hearing now
9 resumes. We continue with questioning by the Defence.

10 Ms Sutherland, please, proceed.

11 MS SUTHERLAND: [11:33:02] Thank you.

12 Q. [11:33:03] Mr Witness, you have explained today that the mausolea faced
13 a number of threats to their physical integrity, prime amongst these being
14 climactic threats. Would you agree -- would you agree with the -- that
15 these are significant? The significant maintenance issues -- sorry, let me
16 rephrase that.

17 In view of these significant maintenance issues, would you agree that
18 the impact of these forces is fatal to the structures?

19 A. [11:33:53] Yes, indeed. If there is no maintenance, the structures may be
20 damaged and, with time, may even vanish. But it would take some time
21 before the structures actually disappeared.

22 Q. [11:34:10] Earlier you told us that without the necessary operation of
23 the *crépissage*, the structures would not last long --

24 PRESIDING JUDGE MINDUA: [11:34:23](Interpretation) Madam,
25 the Prosecution.

1 MS CORBIN: [11:34:28](Interpretation) Technical issue, we don't see any
2 transcription up on the screen. I don't know if this is just a problem for the
3 Prosecution or for everyone.

4 PRESIDING JUDGE MINDUA: [11:34:41](Interpretation) Courtroom officer?

5 THE COURT OFFICER: [11:34:42] (Overlapping speakers) I see from my
6 bench that this is working, the English transcription.

7 MS CORBIN: [11:34:49](Interpretation) I'm on the French.

8 THE COURT OFFICER: [11:34:52] (Overlapping speakers) The French
9 transcript. I am going to quickly check and call the technicians to solve the
10 issue.

11 We can proceed. I invite you maybe to now follow the English transcript,
12 which is perfectly working, and we're going to try to fix this issue as soon as
13 possible, if this is agreeable for the Chamber as well.

14 PRESIDING JUDGE MINDUA: [11:35:08](Interpretation) Yes, quite so.
15 Ms Sutherland.

16 MS SUTHERLAND: [11:35:16]

17 Q. [11:35:16] Mr Witness, I'll repeat my question. Earlier you told us that
18 without the necessary operation of the *crépissage*, the structures would not last
19 long, but you were referring to the mosques.

20 Would you claim the same process for the mausolea?

21 A. [11:35:37] Yes, I think that the mausoleums are in the same situation. If
22 they are not maintained regularly, they deteriorate. A building has a certain
23 functional aspect and, and a physical aspect. A building may remain in
24 a non-functional state for a long time, but if we want the building to be
25 functional as well, the maintenance has to be done; otherwise, there will be

1 deterioration and other issues.

2 So, yes, I confirm that -- be it the mosques or the mausoleums, they require
3 regular maintenance.

4 Q. [11:36:30] Can I ask what the basis of your knowledge is regarding
5 the *crépissage*?

6 A. [11:36:45] I haven't quite understood your question. But if I can
7 interpret your question, I would say the function of the *crépissage*,
8 the replastering, this function is essential. It's a matter of replacing
9 the external coating of the building or the outer cladding by way of using raw
10 earth; so the building is made out of pieces of wood, usually wood from palm
11 trees and other materials. These are relatively simple construction techniques,
12 but you see, the materials are somewhat fragile because of the porosity of the
13 raw materials. The clay that is used, for instance.

14 Q. [11:37:57] Is this a direct assessment that you have made personally?

15 A. [11:38:08] Yes, I did have an opportunity to visit the city in the past, in
16 2005, and I did check and, and I do -- I did see that these kind of structures
17 behave in a way quite similar to those in other parts of the world at this
18 latitude. Usually, such buildings are found in desert settings and clay is
19 the only available building material. So the, the -- the behaviour, so to speak,
20 of the buildings is similar to that of other buildings in other areas.

21 Q. [11:38:53] Are you explaining that this architectural method is not
22 unique?

23 A. [11:39:08] Well, you can say that the -- that this kind of architecture is
24 the most widespread form of architecture in the world and throughout history.
25 I'm referring to construction in the past in Europe. For example, most

1 buildings in Europe were made out of raw earth until the time of the Industrial
2 Revolution. So if we're talking of -- we're talking about the oldest and most
3 common form of construction on the planet.

4 Q. [11:39:48] Thank you very much. That's very interesting.

5 You've also explained just how much financial investment is necessary to
6 maintain the sites in Timbuktu, explaining that UNESCO has had to give a lot
7 of assistance for both restoration and maintenance. This suggests that
8 the Malian authorities themselves were unable or unwilling to maintain
9 Timbuktu's sites without significant investment. Would you agree?

10 A. [11:40:31] Not exactly. That is to say, maintenance is, for the most part,
11 provided by the community itself sometimes, and, in the history of
12 the Timbuktu sites, technical assistance was required, much as is the case for
13 other similar sites.

14 Mali is not a very rich country, and so any assistance from foreign foundations
15 or UNESCO is very useful. UNESCO is not the only organisation that helped
16 in Timbuktu or elsewhere. So this is a rather classic, usual widespread kind of
17 international cooperation.

18 The very reason for having UNESCO working in this area, one of our tasks, is
19 to promote cooperation. Technical assistance was offered in Mali before,
20 when the destruction was quite minor, perhaps *\$100,000. Perhaps *\$100,000
21 for restoration of a number of buildings, an amount that was not sufficient in
22 and of itself to guarantee the maintenance.

23 At that time, you must realise that Timbuktu still had tourism; some visitors
24 until the year 2012. Up until then, the city did receive some tourists and
25 tourism did contribute to fundraising efforts to pay for the restoration of

1 the mosques.

2 *Now, of course, that sort of thing no longer occurs because there is no tourism.

3 After the destruction, UNESCO's help was very important and fundamental, I

4 would say. I talked, you remember, about a fund of \$3 million in actual fact

5 provided by UNESCO. This was funding provided by a number of UNESCO

6 Member States and that funding formed the foundation for the complete

7 restoration of the mausoleums and also to support the restoration of the

8 mosques

9 Q. [11:43:15] Is the tourism to the region considered to be a tool for economic
10 development?

11 A. [11:43:32] Tourism, generally speaking, does help the population with
12 their economic development. Tourism means services are needed and so on
13 and so forth; so, yes, there is economic development. This is not a -- we're not
14 talking about massive numbers of tourists; it's quite a remote area. We're not
15 talking about mass tourism, we're talking about a form of elite tourism. But,
16 yes, it is a component of the economic system of the area.

17 Q. [11:44:13] Does tourism -- sorry, forgive me. Does tourism and its
18 economic potential, elite or otherwise, factor into UNESCO's designation
19 decisions?

20 A. [11:44:40] No. Tourism is not a factor taken into account when making
21 decisions. We consider the value of the building or the site, its cultural and
22 artistic value, and, above all, as I explained earlier, the determination of the
23 exceptional universal value, which justifies the building or the site being placed
24 on the list.

25 But, no, tourism is not a factor taken into account. Of course, we do consider

1 tourism to be -- well, we do observe that tourism is a component of the
2 economy and can support the economy, but it can also represent a threat if
3 the tourism exceeds a certain level.

4 Q. [11:45:33] I think you anticipated my next question, which was, is there
5 a risk that making a site a tourist attraction can detract from its value to
6 the local population?

7 A. [11:45:56] I wouldn't say that because the value of the site depends on its
8 history, it's artistic components et cetera. But what could change is
9 the capacity of the local population to visit the sites. There are lots of sites
10 where the tourist presence has pushed the local population out or has
11 increased the prices -- or the prices of housing and has had a direct negative
12 impact on the local population.

13 I wouldn't say that's the case of Timbuktu because it was very limited tourism,
14 especially during certain periods of the year. The three months in winter, and
15 because of the cost of the travels to get there, there were a limited number of
16 tourists. But it was nevertheless an element, which played its part in
17 the economic life. There were a certain number of hotels, restaurants. There
18 were paid visits, for example, to the library with the manuscripts, which
19 helped the local population and the families of those people to keep
20 the manuscripts and their historic value alive.

21 Q. [11:47:32] Does UNESCO have in place any protocols or procedures to
22 ensure that financial value doesn't overtake local value?

23 A. [11:47:51] In our convention on heritage as regards the sites, it remains
24 with the parties; so it's the Malians that have that responsibility and must
25 protect their sites. They also carry out the management.

1 So we don't look at the financial aspects. What we have tried to do in our
2 relationships with the different parties at the diplomatic levels or at the
3 technical visits, we try to make sure that there are necessary financial funds
4 available. If there are no financial funds, then, as you saw in your documents,
5 then the conservation of the site will be very difficult. * For example, if you
6 look into the website of the World Heritage Centre, you would see that, each
7 year, the Timbuktu sites are reviewed to see what the situation is. You will find
8 data until 2019. Not this year, because this year the committee couldn't go
9 because of COVID; but otherwise, there would have been a 2020 report as well
10 from UNESCO. So we follow the developments closely. We exchange
11 information with the State party. Normally, the State party presents a report
12 each year, a report on the state of conservation of the site, or within the
13 framework of missions to those various sites that we send regularly.

14 Q. [11:49:30] So if I understand you correctly, UNESCO's involvement
15 invokes the cooperation of the Malian authorities, the government institutions
16 in Bamako?

17 A. [11:49:49] Yes. They are a member party of UNESCO and they assume
18 their obligations. Of course, we have relations with the local authorities, but
19 the Malian authorities have the formal authorities for these sites.

20 Q. [11:50:12] Is there any way for UNESCO to ensure that decision-making
21 regarding local cultural value remains in the hands of those local value
22 holders?

23 A. [11:50:38] If I've understood your question, is whether UNESCO can
24 make sure that the responsibilities are efficiently carried out. It's
25 a complicated situation and it's up to the State Party, which plays a core role in

1 the administration of Mali. But also the local authorities, and, in particular, in
2 the case of the mosques, the imams are active participants in the management
3 and conservation of the mosques.

4 So there is cooperation between different bodies, either at ministerial level or
5 local level. This should result in conservation of the site and its value. *It is
6 when there is a lack that UNESCO can intervene, for example, if there's no
7 conservation, we have to see what the problem is. Is it administrative? Is it
8 technical? Financial? So then UNESCO tries... The missions carried out by
9 UNESCO are tools to understand properly what problems have arisen in
10 relation to conservation and then we come up with the recommendations to do
11 something about those problems

12 Q. [11:51:57] Earlier we discussed or I presented to you as a series of
13 indications that the mausolea had fallen into disrepair before the events of 2012.
14 I can restate those references for the sake of the record. That's tab 2 on
15 the Defence list of exhibits, MLI-D28-0004-0494 at 0499. This is the 2010
16 UNESCO maintenance report, which notes that: The gates of the cemeteries'
17 fences had been torn down and waste was spreading everywhere.

18 A worrying situation common to the surroundings of all the mausolea visited.
19 And similarly at tab 1 on the Defence list of exhibits, which is
20 MLI-D28-0004-0345 at 0350, it was explained that, while local -- sorry, I'll take
21 you to the exact place.

22 It's again under paragraph "7. THE SITUATION IN EARLY 2020", and
23 the report notes that just five years after the reconstruction completed in 2015,
24 external plastering was washed away with a serious impact on the eastern
25 elevation. And further down the page at the third paragraph, that while local

1 masons understand what has to be done, and ought to be concerned by
2 the deterioration, there is a wait-and-see attitude that probably has a financial
3 aspect.

4 How does UNESCO measure the effectiveness of its efforts?

5 A. [11:54:28] As I said previously, it is these periodic observation that takes
6 place in Timbuktu. It happened frequently because of the *great importance
7 of the site for UNESCO and also because of the reconstruction; so we were in
8 a position to look at the situation. If you look at the report, the annual reports
9 which the committee produced, we examined the situation and reported on it
10 in detail in the situation before and after. These monuments, and even
11 the mausolea are extremely ancient, 400 years, so you can't -- in that amount of
12 time maintenance won't take place. There is a structure, which did work in
13 the long run, perhaps not perfectly, I admit that sometimes we see that it's not
14 as good as it should be and perhaps it wasn't maintained correctly. Parts
15 ran -- were washed away or it wasn't -- the cleanliness left something to be
16 desired.

17 But if you look at what exists in Timbuktu, you can conclude that for many,
18 many years, there was a community that was anxious to keep their heritage
19 alive, especially when you bear in mind that this is very fragile and limited in
20 a site. But there was consistent maintenance.

21 Right now, after the reconstruction, the situation in Mali is not completely
22 resolved yet. It's a country which still faces quite a lot of military and political
23 problems and has no tourism right now; so the situation of the local
24 community is not back to what it was before the destruction took place.

25 It's a community which was relatively well-balanced economically speaking

1 before, but now it suffers from an economic point of view. I haven't been there
2 personally, but I imagine that the economic climate is not favourable to
3 a continuous conservation. The report you mentioned also indicates this.

4 Q. [11:57:24] So beyond observing, UNESCO doesn't have strict
5 measurements to ensure that its interventions and its support -- the support
6 that it provides is effective?

7 A. [11:57:46] No, I didn't say that. We have reports, but UNESCO has
8 a bureau in Mali, in Bamako. Its duties is to maintain relationships between
9 UNESCO and Mali as regards the reconstructions of the mosques. And that
10 might have been the most important function of the bureau. It's not only
11 observation, we also provided technical and financial support, as well as
12 operational support for the community so that they could go ahead with
13 the reconstruction.

14 Q. [11:58:30] Thank you. My question -- and I'm sorry for not being clear,
15 was how UNESCO measures its effectiveness, if UNESCO is able to do so?

16 A. [11:58:48] The main objective of UNESCO is to make recommendations
17 and to guarantee the values which are listed in the World Heritage, that is,
18 their universal exceptional value, which is detailed and has all the components;
19 what is the heritage, and there are a lot of details relating to it; it relates to
20 the structure, the use, everything that has to do with a heritage building.
21 UNESCO has also the possibility to check whether the actions that it has taken
22 are completed successfully; namely, the conservation of the universal
23 exceptional value. If there are threats or gaps, then we start to get concerned
24 and we send technical *missions to see what we can do to support the state and
25 the local community to find the solutions to keep the exceptional value alive.

1 Q. [12:00:08] (Overlapping speakers) At any point -- forgive me. At any
2 point, did UNESCO consider removing the World Heritage designation from
3 the sites in Mali?

4 A. [12:00:27] No. We never considered that. The site was on
5 the endangered list, but the first time we did this was because of natural
6 phenomena and then it was because of human dangers later on. The delisting,
7 as one says, in Timbuktu, was never considered or even suggested.

8 Q. [12:01:06] Thank you.

9 Moving on to considering the basis and conception of the mausoleas'
10 value - and, universal outstanding value as you've recently stated - could I
11 invite you to turn to tab 6 of the Defence bundle, which is MLI-D28-0004-1570
12 at 1572. It's a document with which I'm sure everyone in the Court is very
13 familiar.

14 Q. [12:02:03] Therein, in relation to Criterion II, ICOMOS describes:
15 "The mosques and holy places of Timbuktu played an essential part in
16 the spread of Islam in Africa at an early period."

17 At Criterion IV, ICOMOS states:

18 "The three great mosques of Timbuktu, restored by the Qadi Al Aqib in
19 the 16th century, bear witness to the golden age of the intellectual and spiritual
20 capital at the end of the Askia dynasty."

21 And in relation to Criterion V, the ICOMOS description states: "Built of banco
22 except for some limited repairs (the minaret of the mosque of Sidi Yahia in 1939,
23 the alhor stone facework on the eastern facade of the mosque of Sankoré in
24 1952), the mosques of Timbuktu are more representative than the more
25 extensively remodeled dwellings of traditional construction techniques that

1 have become vulnerable under the impact of irreversible change."

2 Thus, we see -- I'm sure you agree -- that the values listed in the statement of
3 outstanding universal value focus on the mosques and some mausolea as
4 witnesses to Timbuktu's distant past.

5 A. [12:03:41] (No interpretation).

6 Q. [12:03:42] And you see that there is no mention of community values or
7 exceptional architectural techniques.

8 A. [12:04:01] Yes, what you mentioned, the three criteria of the sites, there
9 are 10 in total, six deal with cultural sites. Criterion II relates to the importance
10 of the exchange of human and cultural values and the roles which the site can
11 play in that. And Timbuktu played an essential role. It was the intellectual
12 capital of all the Sahel and Sahara for centuries. This was its cultural role and,
13 I think, that the cultural role has close links to the local community life.

14 As regards the exceptional examples of architecture which existed in Timbuktu
15 was very important. It was very unique in that type of architecture. And in
16 the world of the professionals and conservationist, it was a very important
17 model and also for other architectural types in the Sahel/Saharan type.

18 And Criterion V, which talks about the exceptional nature of a site - and
19 Timbuktu represented and fulfilled all the elements for Criterion V - I think
20 the relationship with the local community, as far as I see it, is for the cultural
21 aspect, but also the traditional aspect, which are vital to maintain this type of
22 human establishment.

23 Q. [12:06:13] Forgive me, Mr Witness, earlier you told us that the form of
24 architecture was the most widespread form of architecture in history.

25 A. [12:06:30] Perhaps that's not exactly what I meant to say. I said that

1 using raw earth, mud bricks, was the most widespread in history, but this form
2 and style of architecture is something different. So the material, the basic
3 material, which is used for their construction, is widespread, but this form is
4 different. You need local masons to create this form and style. The bricks
5 are available throughout the world, but there's only one Versailles, if you like.

6 Q. [12:07:13] How do we know what the architecture -- or how does
7 UNESCO know what the architecture was in the 16th century?

8 A. [12:07:31] The sources in Timbuktu go back to that era because Timbuktu
9 was first in a small village, which became a true capital. It is at that time in
10 the 16th century that the wealth of the town, because of salt, of gold, even
11 slavery at a certain point in time, attracted a lot of trade coming to Timbuktu.
12 A lot of travellers passed Timbuktu and they established a form of exchange
13 with other cultures.

14 For example, the manuscripts of Timbuktu, many of these manuscripts are
15 written on parchment paper, which are produced in Italy, just to give you an
16 example. There was an important cultural exchange, and the travellers at that
17 time looked at that town and started to send images and pictures. So we have
18 images from the 16th and 17th century. But then after that, there's also
19 the archaeological discoveries as regards the statural structures.

20 Q. [12:09:04] But this itself - the ICOMOS description - says was a restoration
21 in the 16th century. So my question - we'll come to later - is about how one
22 determines what is the integral and authentic structure to be preserved.
23 But I want to observe at the moment that the ICOMOS evaluation does not
24 refer to the Criterion VI, which is to:

25 "Be directly or tangibly associated with events or living traditions, with ideas,

1 or with beliefs, with artistic and literary works of outstanding universal
2 significance ..."

3 And yet you now refer to modern local, cultural value connections.

4 A. [12:10:06] Thank you. Criterion VI is very rarely used because it refers
5 to events which are very specific, extraordinary, if you like, which have taken
6 place. There's a history to that, but it is not decisive. It is only one of
7 the criterion, cultural criterion which enables it to be listed. As regards
8 heritage, and that is included in the international charter, the community plays
9 a vital role. There is no heritage without a community. The community is an
10 integral part of the consideration and a major player. So the role of the
11 community is always included in the charters as an essential element. Not
12 only here, but in all the practices relating to conservation we appreciate the role
13 of the local community.

14 Q. [12:11:19] Could I ask you to turn to tab 4 of the Defence bundle, and
15 the reference is MLI-D28-0004-1360. These are the "Operational Guidelines
16 for the Implementation of the *World Heritage Convention*". And at page 1385,
17 paragraph 78, the operational guidelines state that:

18 "To be deemed of Outstanding Universal Value, a property must also meet
19 the conditions of integrity and/or authenticity and must have an adequate
20 protection and management system to ensure its safeguarding."

21 At paragraph 88 c), which is on the following page, these explain that:

22 "Examining the conditions of integrity, [...] requires assessing the extent to
23 which the property:

24 [...] suffers from adverse effects of development [...] or neglect."

25 Given the 15 years that the sites spent on the heritage in danger list and that

1 just five years after being delisted, as we put it earlier, the mausolea were
2 covered in waste, could UNESCO be satisfied that this criterion was met?

3 A. [12:13:17] The criterion of integrity is fundamental for including this site
4 and as well as authenticity. I would like to specify the importance in this area,
5 integrity, because its open to different types of interpretation.

6 Integrity for World Heritage refers to the presence in a site of a quantity in
7 sufficient numbers of historical referral points, so that it can be regarded as
8 a historical cultural site. For example, an archaeological site, if there's only
9 one single brick, then it doesn't meet the integrity criterion.

10 So we look, the quantitative element of a site to see how much has been
11 preserved. Integrity can be reduced by natural factors or human factors if
12 there's a destruction taking place or effects that are negative.

13 As regards cleanliness or lack of it can also have a detrimental effect, but this
14 does not directly affect integrity. That's rather something relating to
15 maintenance.

16 I hope I've answered your question.

17 PRESIDING JUDGE MINDUA: [12:14:59](Interpretation) Prosecution.

18 MR DUTERTRE: [12:15:01](Interpretation) Sorry, I didn't react earlier, I heard
19 the Defence say that the mausolea were covered with waste. I would like to
20 know exactly where this is mentioned, "covered with waste". That
21 the mausolea were "covered with waste". I don't recall having seen that
22 before.

23 PRESIDING JUDGE MINDUA: [12:15:35](Interpretation) Yes, I do recall
24 having seen it, "covered in waste".

25 Defence.

1 MS SUTHERLAND: [12:15:42] (Overlapping speakers) The reference is, it's
2 tab 2 of our bundle and its MLI-D28-0004-0494, which is a public report on
3 the state of conservation in Timbuktu, a UNESCO report. And it's at
4 page 0499, under the heading:
5 "*e) State of conservation of the property*".

6 MR DUTERTRE: [12:16:22](Interpretation) But it says nothing about "covered
7 in waste". That's not the (Overlapping speakers)

8 PRESIDING JUDGE MINDUA: [12:16:31](Interpretation) Could you tell us
9 which paragraph or the specific spot on the page where this is said.

10 MS SUTHERLAND: [12:16:39] It's the second paragraph, under e), which is
11 towards the bottom of the page of 0499, and I accept entirely the Prosecutor's
12 intervention.

13 It in fact states the "waste" was "spreading everywhere ..."

14 Forgive me.

15 PRESIDING JUDGE MINDUA: [12:17:05](Interpretation) Fine. Thank you
16 very much, Counsel.

17 MS SUTHERLAND: [12:17:13]

18 Q. [12:17:13] Regarding authenticity, Mr Witness, you have stated at
19 paragraph 59 of your witness statement, which is at tab 2 of the Prosecution
20 bundle, MLI-OTP-0029-0843-R03 at 0853, that:

21 "Authenticity means that the site has not been altered."

22 The operational guidelines, state at paragraph 81, which is MLI-D28-0004-1360
23 at 1385, returning to where we just were --

24 "[...] that cultural heritage must be considered and judged primarily within
25 the cultural contexts to which it belongs."

1 And at paragraph 86, on the following page:

2 "In relation to authenticity, the reconstruction of archaeological remains or
3 historic buildings or districts is justifiable only in exceptional circumstances.
4 Reconstruction is acceptable only on the basis of complete and detailed
5 documentation and to no extent on conjecture."

6 If I could --

7 A. [12:19:11] Were you putting a question or are you continuing?

8 Q. [12:19:18] No, forgive me, I was mentally restructuring my
9 cross-examination. Sorry for the pause.

10 In the report that we have cited at tab 1 of the Defence bundle, it is explained
11 that these sites have altered much through the ebb and flow of their history.
12 This is at MLI-D28-0004-0345 at 0347, and, forgive me, I'm paraphrasing. Also
13 explains that over the centuries, walls have repeatedly been raised above
14 the original structures, meaning that the modern structures are far above, while
15 the old structures remain underground.

16 Writing in 2020, the report notes how recent surveys have shown that extensive
17 works to some mausolea were performed approximately 20 years ago, but that
18 few records of this work are available. And forgive me, I don't have
19 the reference, but we will provide it imminently.

20 A witness in this case - and the reference is P-0104, T-24, page 56, lines 15 to
21 18 - has explained that:

22 "Alterations funded by the French colonial governor fundamentally" altered
23 "the shape of" the "Sida Yahya mosque ..." and used "new construction
24 materials ..."

25 He also explained that this colonial-era technique was subsequently used on all

1 mausolea, except that belonging to Alpha Moya.

2 What is UNESCO's policy in such circumstances?

3 A. [12:21:27] Thank you for your question.

4 Of course, it depends on the nature and concept - and, I don't want to go into
5 the details - but I would point out that authenticity of a monument is one of
6 the tests, the prerequisites for listing on being -- for the place being listed on
7 the World Heritage List. There's not a single monument on earth that is
8 exactly like it was built originally for reasons related to -- well, the need for
9 maintenance. Over the years, over the centuries, a monument has to be
10 maintained so it can still be functional and often that maintenance does change
11 the nature, well, the -- of the materials used and the techniques. We see that
12 everywhere in the world, not just in Timbuktu.

13 Furthermore, it has to do with the nature of change itself. Quite often
14 monuments are stratified and there has been a great deal of intervention over
15 the years. I'm not speaking only about Timbuktu. I'm speaking in very
16 general terms. A gateway, for example, may have undergone many changes
17 over the course of the centuries. In that case, we study the various strata and
18 we try to place the building or the site within its historical framework.

19 According to the Vienna agreement, everything has to be placed within its
20 proper context. We try to recompose the history of a monument properly and
21 we want to preserve the value. When a monument is placed on the World
22 Heritage List, we verify these aspects, and after the site or building has been
23 listed, we try to maintain the value that has been added to the list, even if some
24 elements may come from different times in history.

25 Q. [12:24:04] Given UNESCO's series of conventions relating to

1 the importance of ensuring that cultures are not prioritised over other cultures
2 and that discrimination is eradicated in line with all of its general UN
3 commitments, how does UNESCO guard against the preservation of colonial
4 structures?

5 A. [12:24:42] That is a complex issue, of course, and that relates to a great
6 extent to the will of the community. We have many cases in which
7 the community accepted or endorsed colonial buildings as part of the new city
8 of the community. For example, there are many cities in Africa where people
9 recognise the colonial heritage present. For example, in Senegal or the city of
10 Asmara in Eritrea, which just was placed on the World Heritage List, even
11 though the entire town was built during the colonial times.
12 In other cases, a community may not -- may choose not to identify itself with its
13 colonial heritage. That has happened, too. It is a decision that comes from
14 the new community that forms after the colonial period.
15 Generally speaking, what we see is that most communities do try to preserve
16 colonial structures for functional reasons and also because gradually
17 the structure has become part of the community's identity.

18 Q. [12:26:14] Thank you.

19 For reference, the -- my reference earlier to the extensive works to mausolea
20 having been performed in approximately 2000, the reference for that is
21 MLI-D28-0004-0345 at 0347. It's the right-hand column, lines 7 to 8.

22 Mr Witness, could I ask you to turn to tab 3 of the Defence list, which is
23 MLI-D28-0004-1330, which is "The Burra Charter", as updated in 1999.

24 MS SUTHERLAND: [12:27:15] It has no material difference to the earlier
25 versions, your Honours. It does, but not for these purposes.

1 Q. [12:27:26] At page 1339, Article 13 demands that the:
2 "Co-existence of cultural values should be recognised, respected and
3 encouraged, especially ... where they conflict."
4 And at page 1342, Article 23 (sic), states: "Work on a *place*" must be preceded
5 by study of the physical, documentary and other evidence, and, the "Existing
6 *fabric*" professionally recorded before any disturbance of the place.
7 What studies of the mausolea had UNESCO conducted prior to 2012?
8 A. [12:28:46] Thank you, counsel.
9 I'd like to specify the nature of this document. This is a document from
10 Australia and it has a regional value and focus, which is of great interest, but
11 was developed for the conditions to be found in that part of the world where,
12 as you know I'm sure, there has been coexistence of European civilisation
13 arising from immigration and the aboriginal culture that was present there
14 beforehand. The Australians found a number of mechanisms to allow for the
15 coexistence of these cultures.
16 This charter does not have a role to play within the system for World Heritage.
17 This is not part of the convention. Actually, the Venice Charter or the Nara
18 Document, which also deals with dealings between communities and heritage
19 objects, this could be considered one of the tools within the world of heritage,
20 but it is a regional document and it does not -- it is not part of the convention
21 itself.
22 The principles in this document are perfectly in accordance with
23 the international charters of UNESCO, and I think it's clearly stated in
24 the Burra Charter that they completely comply with the doctrine of heritage
25 conservation that has been established over the years; so there's no true

1 difference between this charter and the others.

2 But your question makes reference to the general management that
3 conservators use when conserving heritage items, and I think it was clear in the
4 documents that a great deal of analysis has been done of the Timbuktu
5 monuments, some very specific surveys were done * about their architecture,
6 they were known, and there were architectural drawings prepared as well. So
7 we have considerable in-depth knowledge about this architecture, its forms
8 and the structures. These documents form the foundation for
9 the reconstruction of the monument.

10 Q. [12:32:08] When were those documents researched, compiled and
11 published?

12 A. [12:32:20] The documents were prepared early in the 20th -- 21st century,
13 and a number of students prepared drawings and surveys, depending on
14 the nature of the operation. So they are relatively recent documents, not all
15 that old.

16 Q. [12:32:51] The Venice Charter that you referred to just now, vigorously
17 recommends - and forgive me, I'm speaking from memory - if I understand
18 correctly, it vigorously recommends that reconstruction should be avoided.

19 A. [12:33:19] Yes, Counsel, that is correct. The Venice Charter does prohibit
20 fantastical sort of constructions, unless there are documents that demonstrate
21 the pre-existence of certain buildings. And in -- under exceptional
22 circumstances, reconstruction is possible. Of course, Timbuktu meets the two
23 conditions, there was a technical * documentation and then there was
24 the exceptional circumstances.

25 Q. [12:34:00] And the Nara Document, could you clarify the basis on which

1 it permits reconstruction?

2 A. [12:34:17] Thank you for the question. The Nara Document does not
3 deal directly with this issue. It is not a charter. It's very interesting, but it
4 was recognised by the heritage convention.

5 THE INTERPRETER: [12:34:41] Inaudible.

6 THE WITNESS: [12:34:45] This document seeks to identify and recognise
7 the importance of cultural diversity in the conservation of monuments.

8 I'll briefly explain. Most of the charters on heritage were prepared with
9 a view to conserving physical heritage, European sort of heritage, buildings,
10 architecture. Some cultures use other construction materials that are not
11 durable; so, you see, such construction is fundamental.
12 For example, in Japan. Japan found itself in a somewhat special situation
13 because they had a great deal of heritage, but the heritage did not respect
14 the principles of the Venice Charter because quite often the temples there were
15 made out of wood or other perishable materials that had to be replaced.
16 So the Nara Document deals with that issue and speaks to cultural values, not
17 just conservation of the physical aspect of heritage, but also the cultural
18 aspects.

19 And this is done in many parts of the world. You may replace some parts of
20 a monument if you follow the traditional techniques and that sort of thing, if
21 you maintain the traditional techniques and sometimes that's quite a difficult
22 endeavour.

23 I do hope I've answered your question.

24 MS SUTHERLAND: [12:36:57]

25 Q. [12:36:57] Thank you.

1 I think what I'm trying to get at additionally is that the discussion of local
2 cultural value in modern times has been cited as a justification for
3 the reconstruction that was conducted very rapidly between 2012 and 2015.
4 Would you agree?

5 A. [12:37:30] I don't think I quite understood your question. I'll try to
6 expand upon my answer.

7 The interventions in 2012 were deemed to be necessary and in compliance with
8 the Venice Charter, and so there was no substantive objection. As I explained
9 earlier, there was no change or -- of attitude within the heritage community.

10 THE INTERPRETER: [12:38:15] Correction --

11 THE WITNESS: [12:38:16] There was some change of attitude within
12 the heritage community. So, because of these two factors, rapid measures had
13 to be taken and were justified.

14 THE INTERPRETER: [12:38:33] Message from the interpreter: We have
15 a great deal of background noise from the remote location.

16 THE COURT OFFICER: [12:38:43] (No interpretation)

17 THE INTERPRETER: [12:38:54] The court officer in the remote location
18 confirms that the group is once again on break.

19 THE COURT OFFICER: [12:39:00] (Via video link)(Interpretation) But I will
20 remind them to be quiet.

21 MS SUTHERLAND: [12:39:11]

22 Q. [12:39:11] Forgive me, Mr Witness, you just referred to two factors.
23 Could you clarify to which two factors you were referring and could you also
24 explicate the change of attitude you refer to.

25 A. [12:39:32] Yes, Counsel.

1 Well, one criterion is the tradition, and that is to be found in the international
2 conservation charter. And then there was the change that occurred in recent
3 time to these concepts to facilitate rebuilding of monuments after deliberate
4 destruction.

5 I said earlier that the Venice Charter, even though it indicates that
6 reconstruction is not allowed, particularly sort of fantastical or artificial
7 reconstructions, it does provide that there are some exceptional circumstances
8 that can justify reconstruction.

9 All of this is changing and we've seen changes over the last few decades. We
10 have seen several examples in countries after conflict. For example, in
11 the Middle East, people have thought very deeply about the Venice Charter
12 and the underlying principles and we have made some adjustments to take
13 into account the modern reality. And now the community takes a greater role
14 when the time comes for rebuilding. The attitude towards reconstruction of
15 destroyed monuments has been re-opened because of these developments and
16 now we are more in favour of reconstruction, particularly after a community
17 has been destroyed or ripped apart.

18 That was the case in Mali. There was some reconstruction in the past, and I
19 did mention the Varsovie convention, which is not an international charter, but
20 it was a declaration that the heritage community took note of and it is a more
21 advanced version, if I could put it that way, a broader, more advanced vision
22 of reconstruction within the heritage community. Now it is seen as -- we see
23 that it is possible to rebuild a monument that has been deliberately destroyed
24 for the sake of the community.

25 Q. [12:42:27] So regarding the element of tradition, how and when did

1 UNESCO determine the local tradition in relation - and forgive me, this is
2 slightly laborious - to each of the mausolea with which we are concerned
3 today?

4 And, if I can take you through them by name - and you'll have to forgive my
5 pronunciation - the Sheikh Sidi Mahmoud Ben Omar Mohamed Aquit
6 mausoleum. How and when did UNESCO determine the traditions
7 associated with this mausoleum?

8 A. [12:43:32] I don't think I can answer that question. Those monuments
9 were placed on the list in 1990 and they represent different forms of
10 architecture normally speaking, relatively simple. These mausolea are not
11 great monuments. They can't be compared to the mosques. When we say
12 mausolea, we think of something, but usually these are relatively small
13 buildings and the construction is relatively simple, using the same techniques,
14 raw earth, wooden beams.

15 So these are forms of architecture that were identified, as such, at the time of
16 inscription on the list and, later on, there was more scientific information.
17 But if I've understood your question, I wouldn't say that UNESCO has
18 interpreted aspects of the monuments. They -- I would say more that they
19 took stock of the monuments.

20 Q. [12:45:22] Going back to the chronology that we discussed at the very
21 beginning, in 2015, after the completion, one supposes, or the near completion
22 of the restoration of the mausolea, another witness in this case -- and, for
23 reference, that's P-0104, T-24, page 14, lines 24 to 25, has told us that UNESCO
24 commissioned a report in an attempt to understand the cultural significance of
25 the mausolea, in 2015. And contemporaneously - and that's at page 10 of the

1 same document, lines 22 to 24 - tasked an historian to work on the oral
2 traditions surrounding the mausolea.

3 Returning to the values listed in the statement of outstanding universal value,
4 the focus again is on the tombs as witness to Timbuktu's past. And, there is
5 no mention of community values and it's only after 2012, that UNESCO
6 invoked community and intangible values.

7 Was that a justification, an ex post facto justification for the very rapid
8 reconstruction of the mausolea?

9 A. [12:47:20] I think the link between heritage and community is enshrined
10 in all the charters relating to heritage. And even in the conservation of world
11 buildings, you often talk about the community as a vitally important element
12 and it's not necessary to write it down each time. There has been a change or
13 a shift of appreciating more greatly the immaterial elements. The UNESCO
14 conference adopted an international conference to safeguard the material
15 aspects. There was a growing importance for the immaterial aspects in
16 conservation in general at an international level and the convention was
17 a demonstration of this.

18 There was also a growing awareness of the role of the community because we
19 realised that, at the outset of the conservation of monuments, there was an
20 attitude which was rather technical in its nature. It's the conservators who
21 wanted to keep and conserve the buildings in the beginning of the 18th century.
22 Today, our views have changed completely. Conservation is only a part and
23 the community has to express its opinion and we refer to the local community.
24 When you talk about strategies for conservation, this is an important cultural
25 change. Material is only one of the elements. There's -- the Burra Charter

1 was another element where the community -- it was important to show
2 the importance of a site. So in the last two or three decades, the culture and
3 the community became even more important.

4 MS SUTHERLAND: [12:49:58] If you will excuse me one moment, I'm going
5 to turn my back.

6 (Counsel confer)

7 MS SUTHERLAND: [12:50:21] Thank you.

8 Q. [12:50:23] Mr Witness, finally, thank you very much for all of your
9 answers thus far. But finally, I'd like to explore your personal knowledge of
10 Timbuktu. You've told us that you practised as an architect and advised on
11 land management and you are an expert in architecture and urban planning.
12 And that's in the personal background as set out in your witness statement; for
13 the record, that's MLI-OTP-0029-0843-R03 at 0846, tab 2 of the Prosecution's list
14 of exhibits.

15 Mr Witness, you are not an expert yourself in the architecture of Timbuktu; is
16 that correct?

17 A. [12:51:12] It's correct. I visited Timbuktu, so I know a bit about
18 the structure. I've seen earthen structures quite frequently. But to be an
19 expert, you need to have even more qualities. You have to study it in depth;
20 so I cannot really say that I'm an expert of Timbuktu.

21 I have visited the sites and I was part of a group of experts, and I often referred
22 to the experts to understand the situation.

23 Q. [12:52:00] Yes, you've stated that your work in UNESCO is reliant very
24 much - someone at your level - on the reports of others. You'd agree?

25 A. [12:52:14] Yes, it's a community where we work together. We base

1 ourselves on the experts' reports. It's not necessarily ICOMOS, it's one of the
2 great experts that assisted us in our reports on Timbuktu.

3 Q. [12:52:36] And for today's testimony, you had the assistance of an
4 assistant from UNESCO; is that correct?

5 A. [12:52:52] For the legal part, yes, I was aided by the legal department of
6 UNESCO.

7 Q. [12:53:05] You would agree, I assume, with your legal background, that
8 this would constitute anonymous hearsay? Or legal familiarity rather than
9 background?

10 A. [12:53:31] I would like to ask for some legal assistance here.

11 MR DUTERTRE: [12:53:44](Interpretation) We use that if somebody's an
12 architect, but I don't think he can understand the question put in those terms;
13 so I think it has to be reworded. And I think there's a misunderstanding
14 between his duties and possible information, which the witness needs in
15 the framework of his work as regards the Assistant Director.

16 PRESIDING JUDGE MINDUA: [12:54:20](Interpretation) Thank you,
17 Prosecution.

18 I think the witness is an expert in architecture. But he is not going to
19 concentrate on the legal aspects of the situation; that's not his domain. I don't
20 see why we ask him this particular question.

21 MS SUTHERLAND: [12:54:43] Thank you, Mr President.

22 Q. [12:54:45] Mr Witness, you do not personally hold the expertise that
23 would allow you to make historic cultural or religious evaluations of
24 contemporary Timbuktu?

25 A. [12:55:07] I confirm, I'm not an expert. I'm an expert in heritage, which

1 sometimes affects cultural and intellectual properties; so I'm not an expert of
2 Timbuktu. But I am familiar with the subject matter.

3 Q. [12:55:26] Thank you.

4 And finally, because as you explained to us earlier today, exceptionally,
5 UNESCO did not send a mission to evaluate the state of the mausolea until
6 2013. Neither you nor UNESCO, more broadly, is in a position to provide an
7 assessment of either the extent or the causes of the damage in 2012?

8 A. [12:55:59] The mission of UNESCO in 2013, if I'm not mistaken, was to
9 evaluate the damage and there was a report on the damage, which
10 the monuments were subjected to. I think that mission let us assess what
11 damage and to look at reparation; so we did carry out an assessment in 2013.

12 Q. [12:56:29] But it was not immediate. It was not immediately after
13 the events of 2012. You placed it on the danger list without visiting.

14 A. [12:56:52] Yes, the committee of heritage thought that the -- Timbuktu
15 was in danger because we had a world session in St Petersburg at the end of
16 June 2012, during the time when the destruction was taking place.

17 The committee thought that it was in danger and that justified that it was put
18 onto the danger list without visiting the site, which would have only been
19 possible later on.

20 Q. [12:57:33] You based this assessment on contemporary media reports and
21 the statements of the Malian government?

22 A. [12:57:46] We also had links to individuals in Timbuktu who also
23 informed us of the situation and the damage to the monuments. So we had
24 several sources to find out that the monuments, that the mausolea were being
25 destroyed.

1 Q. [12:58:13] Was there a danger that your sources had personal interests in
2 the destruction of the mausolea? And what I'm asking really is, is there any
3 danger that your sources were biased?

4 A. [12:58:35] No, I don't think so. We were talking to those people who
5 were involved in conservation. Those were people who worked in the past
6 with us. It was our partners, our links, all interested in conservation.

7 PRESIDING JUDGE MINDUA: [12:59:03](Interpretation) Counsel, I think this
8 is speculation. You're asking the witness to speculate on his sources, is that
9 not the case?

10 MS SUTHERLAND: [12:59:19] I'm asking the witness to explain if and how
11 UNESCO is able to determine that it has conducted a fair assessment of
12 the views of the local community at the time that the -- of the alleged
13 destruction.

14 My concern is that UNESCO did not have detailed reports regarding the state
15 of the mausolea before 2012, immediately before 2012. There is an indication
16 that they were in a terrible state or not -- of neglect and the next assessment
17 was not conducted until 2013. So the extent to which UNESCO can ascertain
18 the damage caused is limited.

19 PRESIDING JUDGE MINDUA: [13:00:29](Interpretation) Is that a conclusion
20 you make? Or do you have additional information on the basis of documents
21 which were provided by the witness?

22 MS SUTHERLAND: [13:00:39] I have been trying to ascertain the level of
23 UNESCO's assessment of the state of the mausolea before 2012 and its
24 contemporary or lack of contemporary assessment, for whatever reason, until
25 2013.

1 The point is that that limits UNESCO's ability to explain the extent of the
2 damage.

3 PRESIDING JUDGE MINDUA: [13:01:19](Interpretation) Well, ask
4 the witness the question, if UNESCO was aware of the state of the buildings in
5 2012.

6 MS SUTHERLAND: [13:01:30] I have asked him that question.

7 PRESIDING JUDGE MINDUA: [13:01:31] Yes.

8 MS SUTHERLAND: [13:01:32] I have asked him that question. I asked him
9 the basis for the detailed understanding of the state of the mausolea, each
10 mausoleum, prior to the events of 2012.

11 Q. [13:01:48] Mr Witness, what --

12 A. [13:01:50] (Overlapping speakers) as I said, we had architectural
13 drawings. We knew the structure of those mausolea.

14 Secondly, as you indicated yourself, we continue to assess the buildings each
15 year; so the UNESCO report reflected that situation very clearly. I don't think
16 the monuments were in a very bad situation or destroyed. On the contrary, I
17 think they needed some maintenance and some higher cleanliness, but they
18 were in an acceptable state. They were destroyed during 2012.

19 Q. [13:02:43] Beyond the observations contained in the maintenance reports,
20 one of which I've cited from 2010, does UNESCO have structural detailed
21 analyses of the states of the individual mausolea immediately preceding
22 the events of 2012?

23 A. [13:03:09] We have statements, which I already mentioned. There's no
24 single document just before the destruction on the sites and its conservation,
25 but we have information on the sites, which were regularly submitted to

1 the committee. If a destruction took place before, it would have been
2 mentioned in those reports. These are observations which is ongoing each
3 year. Each year, we assess the sites.

4 MS SUTHERLAND: [13:03:58] Mr President, I may have a few further
5 questions, but they will be very limited. I welcome the opportunity to discuss
6 with Ms Taylor, but I note that it's 1 o'clock.

7 PRESIDING JUDGE MINDUA: [13:04:18](Interpretation) It's 1 o'clock, so do
8 your consultation. We can go on for a little bit, but not a lot.
9 (Counsel confer)

10 MS SUTHERLAND: [13:05:02] Thank you for your forbearance, Mr President.

11 Q. [13:05:10] Mr Witness, you refer to --

12 PRESIDING JUDGE MINDUA: [13:05:12](Interpretation) Sorry, you want to
13 continue? How many questions have you got, for how long?

14 MS SUTHERLAND: [13:05:17] (Overlapping speakers) Two questions.

15 PRESIDING JUDGE MINDUA: [13:05:21](Interpretation) Go ahead.

16 MS SUTHERLAND: [13:05:23] Thank you.

17 Q. [13:05:24] Mr Witness, you referred earlier to your sources in Timbuktu
18 who provided you with the information regarding the state of the mausolea
19 and general information.

20 Are you willing to disclose those -- the names of those sources, including on
21 a confidential basis?

22 A. [13:05:55] I will consult the legal department, because it has a legal aspect.
23 So bear with me for a moment.

24 PRESIDING JUDGE MINDUA: [13:06:06](Interpretation) Go ahead.

25 (Pause in proceedings)

1 PRESIDING JUDGE MINDUA: [13:06:21] (No interpretation)

2 MR DUTERTRE: [13:06:24](Interpretation) Whilst this is going on, perhaps
3 we could go into closed session.

4 PRESIDING JUDGE MINDUA: [13:06:31](Interpretation) Naturally,
5 Prosecutor, Counsel.

6 (Pause in proceedings)

7 PRESIDING JUDGE MINDUA: [13:06:57](Interpretation) Are you prepared
8 to give the resource? If you are, tell me like this.

9 THE WITNESS: [13:07:05](Interpretation) After consultation, your Honour,
10 with the legal department, I cannot give you the name of the sources because
11 we want to ensure their safety.

12 PRESIDING JUDGE MINDUA: [13:07:15](Interpretation) That is fine.

13 MS SUTHERLAND: [13:07:18] One further question.

14 Q. [13:07:20] Do you know whether any of these sources received any
15 reparations following the events of 2012?

16 A. [13:07:35] No, I do not know.

17 Q. [13:07:40] (Overlapping speakers) Mr Witness, thank you very much.

18 Mr President, your Honours, I have no further questions, unless I can be of any
19 further assistance.

20 PRESIDING JUDGE MINDUA: [13:07:50](Interpretation) Thank you,
21 Ms Sutherland, for your cross-examination.

22 I turn to my colleagues to see if they have any questions.

23 Mr Witness, I have a small question for you. You said there are two factors
24 for reconstruction when destruction takes place and when it is done
25 intentionally by men, and the factors are, firstly, the physical elements and then

1 there has to be some sort of justification, cultural, religious, or whatever.

2 So my question is: Do we keep the same factors in mind to reconstruct
3 the monument if it was destroyed by natural elements, wind, rain et cetera,
4 sand?

5 THE WITNESS: [13:08:55](Interpretation) Thank you, your Honour, for this
6 very important question from a doctrinal point of view. We've had many
7 discussions on this. The conclusion is always linked to the community. It
8 always goes back to the community. We put the emphasis on that today. It
9 is the community that has to express their willingness to have a reconstruction
10 and it has to be incorporated in their value system. If they are damages
11 because of natural reasons, then we have to, again, turn to the community.
12 Once again, I'll talk about Kathmandu with its earthquakes, where they had
13 substantial damage, and in the reconstruction of those monuments, the initial
14 condition was there, the technical elements, and the community expressed
15 their absolute desire to have their monuments rebuilt.

16 So it was the community who gave us the possibility of trying to reconstruct.
17 Sometimes the community might be a scientific community. It's not only
18 the inhabitants. It's everyone who has an interest in conservation. It can also
19 be other elements rather than the local inhabitants who play a part.

20 PRESIDING JUDGE MINDUA: [13:10:41](Interpretation) Thank you,
21 Mr Witness. Thank you.

22 We have reached the end of your testimony, but the Prosecution I see would
23 like to say something.
24 Prosecution.

25 MS CORBIN: [13:10:59](Interpretation) For the transcript -- to reflect this in

1 the transcript, 24 was quoted, that wasn't put correctly in the transcript. If
2 you look at page 52, line 5 and 61, line 10, T-24 I think needs to be included
3 here.

4 PRESIDING JUDGE MINDUA: [13:11:27](Interpretation) Noted.

5 No objections from the Defence. The Registrar has also verified this.

6 Mr Witness, once again the Chamber wishes to thank you for having assisted
7 us by answering in a very specific and clear way to the questions which were
8 put to you. Your testimony has now come to an end. Many thanks.

9 THE WITNESS: [13:12:01](Interpretation) It is I who thank you, your Honour.
10 (The witness is excused)

11 PRESIDING JUDGE MINDUA: [13:12:09](Interpretation) I turn towards
12 the parties and I would like to remind them of the procedure as regards
13 evidence linked to the testimony of this witness.

14 I would like to thank all those who have participated in the success of this
15 hearing, the participants and the parties. I would like to thank the staff and
16 the interpreters and the guards, the security officers, and of course our public.
17 Mr Prosecutor, we will start 9 o'clock with the next witnesses?

18 MR DUTERTRE: [13:12:56](Interpretation) That is correct, your Honour.

19 PRESIDING JUDGE MINDUA: [13:13:01](Interpretation) Very well. Well I
20 hope you have all an enjoyable afternoon. The session is adjourned.

21 THE COURT USHER: [13:13:11] All rise.

22 (The hearing ends in open session at 1.13 p.m.)