

Trial Hearing
MLI-OTP-P-0099

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Wednesday, 20 October 2021
10 (The hearing starts in open session at 10.00 a.m.)
11 THE COURT USHER: [10:00:44] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [10:01:04](Interpretation) Court is in session.
15 Good morning to all.
16 Mr Courtroom Officer, could you please call the case.
17 THE COURT OFFICER: [10:01:28] Good morning, Mr President, your Honours.
18 This is the situation in the Republic of Mali, in the case of The Prosecutor versus Al
19 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
20 And for the record, we are in open session.
21 PRESIDING JUDGE MINDUA: [10:01:57](Interpretation) Thank you very much,
22 Mr Courtroom Officer.
23 As usual, we shall start with the introductions. First of all, the Office of the
24 Prosecutor.
25 Madam Prosecutor.

1 MS LUPING: [10:02:07] Good morning, Mr President. Good morning,
2 your Honours. Appearing on behalf of the Prosecution this morning is the same
3 team, Ms Sandra Schoeters and myself, Dianne Luping.

4 PRESIDING JUDGE MINDUA: [10:02:22](Interpretation) Thank you very much,
5 Madam Prosecutor.

6 Now I'm turning to the Defence. Counsel.

7 MS PRADHAN: [10:02:26] Thank you, Mr President, and good morning. We are
8 also the same team. It's myself, Alka Pradhan, on behalf of Mr Al Hassan, Ms Julia
9 Basile and Ms Melinda Taylor.

10 PRESIDING JUDGE MINDUA: [10:02:49](Interpretation) Thank you very much,
11 Ms Pradhan.

12 Now, turning to the Legal Representatives for Victims. Maître.

13 MR LUVENGIKA: [10:02:58](Interpretation) Good morning, Mr President. Good
14 morning, your Honours. The victims are represented at this hearing by Madam
15 Claire Laplace and by myself, Maître Fidel Nsita Luvengika, and I thank you.

16 PRESIDING JUDGE MINDUA: [10:03:10](Interpretation) Thank you very much,
17 Maître Nsita.

18 So now, I shall turn to the counsel for our witness. Maître.

19 MR CANTIER: [10:03:17](Interpretation) Good morning, Mr President. Good
20 morning, your Honours. François Cantier representing the witness. Thank you.

21 PRESIDING JUDGE MINDUA: [10:03:26](Interpretation) Thank you very much,
22 Maître Cantier.

23 So this morning, we shall be continuing with the testimony of Prosecution Witness
24 P-0099 with the cross-examination on the part of the Defence.

25 So I'm now turning to the witness.

1 Good morning, Mr Witness. How are you today?

2 WITNESS: MLI-OTP-P-0099 (On former oath)

3 (The witness speaks French)

4 THE WITNESS: [10:03:55](Interpretation) Good morning, Mr President, I'm fine.

5 Thank you.

6 PRESIDING JUDGE MINDUA: [10:03:58](Interpretation) Thank you very much,

7 Mr Witness.

8 Now, once again, on behalf of the Chamber, I would like to sincerely thank you for
9 your availability and the clarity with which you have been answering the questions
10 and I hope that we shall be continuing in the same vain this morning with the
11 cross-examination on the part of the Defence.

12 I would like to remind you that you are still under oath and that you should speak the
13 truth, the whole truth and nothing but the truth. And lastly, I would remind you
14 and everyone else in the courtroom that we need to speak clearly, slowly and observe
15 pauses.

16 So without further ado, I shall hand over to Ms Pradhan for the continuation of the
17 cross-examination for this -- the continuation and wrapping up, indeed, of the
18 cross-examination.

19 Counsel.

20 MS PRADHAN: [10:04:57] Thank you, Mr President. I just want to note that
21 when we ended yesterday, we were in private session. I do believe we can begin
22 today with a short piece in public session, after which, I'm afraid, the topics that I
23 would like to question this witness about are necessary -- necessarily need to be done
24 in private session. But I can begin in public session.

25 PRESIDING JUDGE MINDUA: [10:05:25](Interpretation) Yes, indeed, Ms Pradhan.

- 1 Thank you very much. Please go ahead.
- 2 MS PRADHAN: [10:05:31] Thank you, Mr President.
- 3 QUESTIONED BY MS PRADHAN: (Continuing)
- 4 Q. [10:05:34] Good morning, Mr Witness, and how are you this morning?
- 5 A. [10:05:37] Good morning.
- 6 Q. [10:05:38] Mr Witness, on direct examination you recounted a conversation that
- 7 you heard on the radio, on Radio Bouctou between persons you identified as
- 8 Mohamed Moussa and Abou Dardar. Do you recall that, sir?
- 9 A. [10:05:57] I remember especially that it was Abou Dardar who, (Redacted)
- 10 (Redacted), intervened over the radio complimenting
- 11 Mohamed (Redacted), wanting to
- 12 harden the attitude towards women et cetera, and, at the same time, Mohamed
- 13 Moussa was giving speeches. And I noticed at that moment in time that most of the
- 14 members in attendance were more in favour of Mohamed Moussa's stance (Redacted)
- 15 (Redacted)
- 16 Q. [10:07:09] And Mr Witness, you mentioned just now that this was, quote -- that
- 17 this incident where you heard -- that you heard over the radio was, quote, (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 A. [10:07:37](No interpretation)(Overlapping speakers)
- 22 PRESIDING JUDGE MINDUA: [10:07:43](Interpretation) Madam Prosecutor.
- 23 MS LUPING: [10:07:44] Mr President, your Honours, I'm just concerned as this was
- 24 all recounted in private session and I would request if we are going to get details
- 25 about this specific incident that that be also elicited in private session as it is

1 identifying.

2 PRESIDING JUDGE MINDUA: [10:08:08](Interpretation) Ms Pradhan.

3 MS PRADHAN: [10:08:11] Mr President, I do believe that the information about
4 what the witness heard on Radio Bouctou was in public session. I do understand my
5 learned friend's concern about my question regarding (Redacted), which I can
6 save until later, and I can begin -- I can actually move forward right now in public
7 session with a different question and come back to that, if that's acceptable.

8 PRESIDING JUDGE MINDUA: [10:08:44](Interpretation) Yes, indeed, Ms Pradhan,
9 please continue.

10 MS PRADHAN: [10:08:48] Thank you.

11 Q. [10:08:49] So strike my last question, Mr Witness.

12 My question to you is, do you recall saying on direct examination that when you
13 heard that exchange on Radio Bouctou that was at the end of October 2012?

14 A. [10:09:03] Yes.

15 Q. [10:09:16] And you also stated that regarding Abou Dardar, that he reported to
16 Abou Zeid and Abou Yahia, is that correct?

17 A. [10:09:43] That he reported to Abou Zeid and Mohamed Moussa, is that what
18 you mean?

19 Q. [10:09:50] No. Indeed --

20 PRESIDING JUDGE MINDUA: [10:09:56](Interpretation) Madam Prosecutor.

21 MS LUPING: [10:09:57] Mr President, first of all, that's not correct. That's not what
22 the witness stated.

23 And second of all, we are diverting from our normal practice that when we refer the
24 witness to his prior testimony, we must provide precise transcript references. Now,
25 we've also had a reference to the witness's date that he indicated that certain

1 presentations were made on Radio Bouctou, that the transcript references for that
2 were also not provided. And I would also note that the witness clarified that he
3 wasn't certain if it was an exchange as such.

4 So, again, I would ask that -- it could have been one at a time and he couldn't recall if
5 it was at the same time.

6 So I would ask, actually, that we have precise transcript references as per the normal
7 procedure.

8 PRESIDING JUDGE MINDUA: [10:11:02](Interpretation) Ms Pradhan, Madam
9 Prosecutor is right, we need references.

10 MS PRADHAN: [10:11:07] Of course, Mr President, and I can give you the precise
11 transcript references momentarily.

12 Q. [10:11:26] So the discussion regarding Radio Bouctou begins at transcript 145
13 (sic), page 20, lines 24 and 25.

14 And Mr Witness, do you recall saying -- do you recall being asked at page 21 of the
15 transcript, lines 2 and 3:

16 "Do you remember hearing a conversation between Abou Dardar and Mohamed
17 Moussa about a story he did on Radio Bouctou?"

18 Do you recall that question, sir?

19 A. [10:12:10] Yes. Mohamed Moussa was giving speeches in the mosques and he
20 gave a speech over Radio Bouctou which shocked me. And a little time later, I don't
21 know whether it was on the same day or the next day, Abou Dardar also spoke over
22 Radio Bouctou to call the praises of Mohamed Moussa.

23 Q. [10:12:53] And do you recall, sir, and this is *at transcript 145, page 24 at lines 16
24 and 17 -- I'll begin at lines 14, when you were asked:

25 "[...] do you remember when [...] -- first of all, when you heard this speech by [Mr]

1 Mohamed Moussa on Radio Bouctou?"

2 And at line 16, you answered:

3 "[...] somewhat after I did that [...] that is to say, towards the end of October."

4 Is that the best of your recollection, sir, that that -- that that speech by Mohamed
5 Moussa was towards the end of October?

6 A. [10:13:34] According to my recollection, yes.

7 Q. [10:13:44] Thank you, sir. And at page 24, you were asked -- of the transcript,
8 lines 24 and 25, you were asked: "And to the best of your knowledge, do you know
9 who Abou Dardar reported to within the group? Within the hierarchy?"

10 And on page 25, lines 2 and 3, you said: "He reported directly to Abou Zeid ... and
11 [to] the emir of AQMI, Yahia."

12 Do you recall that, sir?

13 A. [10:14:18] Yes, that is correct.

14 Q. [10:14:30] Thank you. Do you recall Abou Dardar's nationality?

15 A. [10:14:38] He was Mauritanian.

16 Q. [10:14:48] And I'd like to -- I'd like to direct your attention to a document that's
17 in the record at OTP tab 24, and this is MLI-OTP-0024-0461 at page 0478.

18 This document should not be shown to the gallery, Mr President.

19 PRESIDING JUDGE MINDUA: [10:15:37](Interpretation) Yes, indeed,

20 Mr Courtroom Officer.

21 MS PRADHAN: [10:15:43]

22 Q. [10:15:44] Mr Witness, I'm looking at the lines beginning at line 631, which I will
23 not read aloud, but to orient you regarding -- first, let me ask you, do you recognise
24 this document as a transcript of your discussion -- one of your discussions with OTP?

25 A. [10:16:03] Yes.

1 Q. [10:16:13] And at lines 631 and 632, there's an initial question that, again, I will
2 not read out loud, but does that orient you regarding the topic on which you were
3 being asked?

4 A. [10:16:35] I don't really understand the end of that question, but I can confirm
5 what is written here on the page. There's no ambiguity as far as I'm concerned.

6 Q. [10:16:59] Okay. I'm just waiting for the French.

7 Thank you, Mr Witness.

8 And between lines 635 and 650, you say that -- you were asked a particular question
9 and you said:

10 (Interpretation) "Abou DARDA, he experienced all of that, he had been with them for
11 a long time."

12 (Speaks English) And let me stop there briefly. When you said, "Abou DARDA"

13 (Interpretation) "he had been with them for a long time," (Speaks English) with
14 whom -- to whom were you referring?

15 A. [10:17:51] He was part of the initial nucleus -- well, not initial, but he was part of
16 the nucleus of AQIM.

17 Q. [10:18:06] And so when you said: (Interpretation) "he had been with them for
18 a long time," (Speaks English) (Overlapping speakers) you were referring to his
19 association to AQMI, is that correct?

20 A. [10:18:17] That is correct.

21 Q. [10:18:19] *Merci beaucoup*. And at line 638, you stated: (Interpretation) "As it
22 was somebody who was very agreeable and not especially radical with us, [...]"

23 (Speaks English) At line 641, you state:

24 (Interpretation) "We entertained relations with him that were ... good, that were
25 normal."

- 1 (Speaks English) And then at lines 643 to 646 -- excuse me, to 650, you continue:
- 2 (Interpretation) "He would come to visit us on a regular basis ... and visibly, he
- 3 accepted our discussions and he didn't go and tell stories or say bad things behind
- 4 our back to the people of AQIM. This was not the case" --
- 5 PRESIDING JUDGE MINDUA: [10:19:29](Interpretation) Madam Prosecutor.
- 6 MS LUPING: [10:19:30] Mr President, your Honours, again, I'm getting -- I am
- 7 becoming rather concerned that we're getting into an area that may potentially
- 8 identify the witness with these -- this particular line that's read right now, we're
- 9 getting to an area that may be rather identifying.
- 10 MS PRADHAN: [10:19:46] I --
- 11 PRESIDING JUDGE MINDUA: [10:19:52](Interpretation) Maître Cantier.
- 12 MR CANTIER: [10:19:54](Interpretation) Mr President, I feel exactly the same
- 13 concern at this moment in time.
- 14 PRESIDING JUDGE MINDUA: [10:19:59](Interpretation) Very well.
- 15 So, Ms Pradhan, what would you like to say?
- 16 MS PRADHAN: [10:20:05] I do recognise the concern. I have a very limited
- 17 question that does not go into any specifics beyond this and then would like to go into
- 18 private session.
- 19 PRESIDING JUDGE MINDUA: [10:20:19](Interpretation) Very well. Very limited,
- 20 not too much detail, then we'll go into private session.
- 21 MS PRADHAN: [10:20:24] Thank you, Mr President.
- 22 Q. [10:20:26] And just to complete the transcript -- excuse me, to complete the
- 23 statement at line 650, you stated, Mr Witness:
- 24 (Interpretation) "... so, I entertained a decent relationship with him."
- 25 (Speaks English) And without -- without providing any information that may be

1 identifying to you, can you confirm, Mr Witness, that here, you were describing Abou
2 Dardar as, in fact, not especially radical and that you maintained a good relationship
3 with him, is that correct?

4 PRESIDING JUDGE MINDUA: [10:21:18](Interpretation) Madam Prosecutor.

5 MS LUPING: [10:21:20] Mr President, with all due respect, I believe that the
6 question needs to be posed more fairly to the witness.

7 "[...] that here, you were describing Abou Dardar as ..." agreeable and not particularly
8 radical. "

9 Well, in fact, the witness had said:

10 "[...] and not particularly radical with us."

11 And that is quite an important distinction, your Honours.

12 So, again, we have to be fair to the witness. And by posing this question, I do
13 believe it's also, again, highly identifying. There is a context to that comment that
14 Defence counsel would be well aware of, and when the witness in fairness provides
15 his response, we know it's going to be identifying.

16 MS PRADHAN: [10:22:02] I think I would --

17 PRESIDING JUDGE MINDUA: [10:22:09](Interpretation) Yes, indeed. I am also
18 somewhat concerned as well.

19 So Ms Pradhan does have a problem here. She can't go into much detail. She has to
20 be fair to the witness. So we shall move into private session for a time.

21 So how long do you think that will last, this private session, Ms Pradhan?

22 MS PRADHAN: [10:22:31] Well, Mr President, my questions beyond this - the topics
23 that I would like to discuss with this witness - are necessarily going to be in private
24 session. And so I fear that -- we won't actually remain in private session for the rest
25 of my examination, which should not be particularly lengthy of course depending on

1 his answers, but I do think that this is the end of our public session questions.

2 PRESIDING JUDGE MINDUA: [10:23:00](Interpretation) Yes, indeed. I do
3 understand.

4 So we shall move into private session, please, Mr Courtroom Officer.

5 (Private session at 10.23 a.m.)

6 THE COURT OFFICER: [10:23:17] We're in private session, Mr President.

7 (Redacted)

8 (Redacted)

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20 (Open session at 11.30 a.m.)

21 THE COURT OFFICER: [11:30:49] We are back in open session, Mr President.

22 PRESIDING JUDGE MINDUA: [11:31:01](Interpretation) Thank you very much,

23 Mr Courtroom Officer. It is 11.30. We shall rise for half an hour and we shall

24 reconvene at midday.

25 The hearing is suspended.

- 1 THE COURT USHER: [11:31:18] All rise.
- 2 (Recess taken at 11.31 a.m.)
- 3 (Upon resuming in open session at 12.01 p.m.)
- 4 THE COURT USHER: [12:01:13] All rise. Please be seated.
- 5 PRESIDING JUDGE MINDUA: [12:01:32](Interpretation) The hearing shall now
- 6 resume.
- 7 And, if Defence could continue with their cross-examination.
- 8 Ms Pradhan.
- 9 MS PRADHAN: [12:01:55] Thank you, Mr President.
- 10 Q. [12:02:12] Mr Witness, when we left off, just to orient you --
- 11 PRESIDING JUDGE MINDUA: [12:02:21](Interpretation) Madam Prosecutor.
- 12 MS LUPING: [12:02:25] I'm just noting two things: First, we are still in -- we're
- 13 currently in public session. We haven't moved into private. And secondly, before
- 14 Defence counsel moves to her next question, the Prosecution does have an objection it
- 15 wishes to raise, but only in private session.
- 16 PRESIDING JUDGE MINDUA: [12:02:45](Interpretation) Quite so.
- 17 Court officer, private session, please.
- 18 (Private session at 12.02 p.m.)
- 19 THE COURT OFFICER: [12:02:57] We are in private session, Mr President.
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- 1 (Open session at 1.23 p.m.)
- 2 THE COURT OFFICER: [13:23:12] We are back in open session, Mr President.
- 3 PRESIDING JUDGE MINDUA: [13:23:18](Interpretation) Thank you very much,
4 court officer.
- 5 We shall now suspend for the lunch break, and we shall resume at 2.30.
- 6 The hearing is now suspended.
- 7 THE COURT USHER: [13:23:28] All rise.
- 8 (Recess taken at 1.23 p.m.)
- 9 (Upon resuming in open session at 2.30 p.m.)
- 10 THE COURT USHER: [14:30:31] All rise.
- 11 Please be seated.
- 12 PRESIDING JUDGE MINDUA: [14:30:48](Interpretation) Court is in session.
- 13 The Defence has the floor.
- 14 Ms Pradhan.
- 15 MS PRADHAN: [14:31:11] Thank you, Mr President.
- 16 QUESTIONED BY MS PRADHAN:
- 17 Q. [14:31:19] Mr Witness, you have been very patient. I just have a few minutes
18 for you.
- 19 You were asked by the Prosecutor a supplementary question on your recollection
20 now. On your recollection now --
- 21 (Overlapping speakers)
- 22 PRESIDING JUDGE MINDUA: [14:31:42](Interpretation) Maître Cantier.
- 23 MR CANTIER: [14:31:43](Interpretation) Are we in open session?
- 24 PRESIDING JUDGE MINDUA: [14:31:48](Interpretation) You're right,
25 Maître Cantier.

1 Court officer -- I imagine that, Maître Pradhan, you would like to intervene in private
2 session?

3 Very well. Court officer, private session, please.

4 (Private session at 2.32 p.m.)

5 THE COURT OFFICER: [14:32:10] We are in private session, Mr President.

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14 (Open session at 2.46 p.m.)

15 THE COURT OFFICER: [14:47:02] We are back in open session, Mr President.

16 PRESIDING JUDGE MINDUA: [14:47:13](Interpretation) Thank you very much,
17 court officer.

18 So, Witness, we are finally coming to the end of your testimony. So on behalf of the
19 Chamber, I'd like to thank you very sincerely for having aided the Court with your
20 clear and precise answers in establishing the truth in the case in question. I wish you
21 all the best hereafter.

22 And I would like to take this opportunity to turn to Maître Cantier to thank
23 Maître Cantier for his contribution.

24 MR CANTIER: [14:48:04](Interpretation) Thank you, your Honour.

25 PRESIDING JUDGE MINDUA: [14:48:06](Interpretation) You're welcome.

Trial Hearing
MLI-OTP-P-0099

(Open Session)

ICC-01/12-01/18

1 (The witness is excused)

2 PRESIDING JUDGE MINDUA: [14:48:12](Interpretation) So before adjourning, I
3 would like to ensure with the parties that our next hearing -- for the next witness of
4 the Prosecutor, P-0520, will take place on Thursday, the 21st, at 9.30.
5 Madam Prosecutor.

6 MS LUPING: [14:48:41] (Overlapping speakers) Yes, that is correct, Mr President,
7 your Honours. That's also our -- our understanding.

8 PRESIDING JUDGE MINDUA: [14:48:43](Interpretation) Very well. Tomorrow at
9 9.30. Afterwards, we will have a break on Friday and, of course, the weekend. And
10 we *will be back on Monday, the 25th, for the cross-examination of the Defence.
11 Is that correct? Ms Pradhan?
12 Ms Taylor?

13 MS TAYLOR: [14:49:07] Yes. That's what I recall the Chamber ruled.

14 PRESIDING JUDGE MINDUA: [14:49:12](Interpretation) Exactly. It's just so that
15 we are all up to speed with the situation.
16 I would, once again, like to express my gratitude to the parties and participants, to the
17 court reporters and to the interpreters, to our security guards and to the public
18 following the proceedings.
19 I would wish you all a very good evening. No, I'm not going to wish you a good
20 weekend because we'll see each other tomorrow.
21 So we shall now adjourn.
22 Court is adjourned.

23 THE COURT USHER: [14:49:55] All rise.
24 (The hearing ends in open session at 2.49 p.m.)