

Trial Hearing
WITNESS: MLI-OTP-P-0641

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor vs Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia Mbe Mindua, Judge Tomoko Akane and
7 Judge Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Thursday, 23 September 2021
10 (The hearing starts in open session at 9.34 a.m.)
11 THE COURT USHER: [9:34:48] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:35:25](Interpretation) Court is in session.
15 Good morning, everyone.
16 Court officer, please call the case.
17 THE COURT OFFICER: [9:35:36] Good morning, Mr President, your Honours.
18 This is the situation in the Republic of Mali, in the case of The Prosecutor versus
19 Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference
20 ICC-01/12-01/18.
21 And for the record, we are in open session.
22 PRESIDING JUDGE MINDUA: [9:35:58](Interpretation) Thank you very much,
23 court officer.
24 For the record, we are going to proceed with the appearances for the different teams,
25 starting with the Office of the Prosecutor.

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1 Madam Prosecutor.

2 MS LUPING: [9:36:11] Good morning, Mr President. Good morning your Honours.
3 Appearing on behalf of the Prosecution this morning are Marie-Jeanne Sardachti and
4 myself, Dianne Luping. Mr Gilles Dutertre does provide his apologies to your
5 Honours that he couldn't be here this morning. He will be joining us on the -- from
6 the second session.

7 PRESIDING JUDGE MINDUA: [9:36:35](Interpretation) Thank you very much,
8 Madam Prosecutor.

9 I now turn towards the Defence.

10 MS TAYLOR: [9:36:42] Good morning, Mr President. Good morning, your
11 Honours. Good morning to everyone in the courtroom. The Defence for
12 Mr Al Hassan is represented today by Maître Mélissa Beaulieu Lussier and myself,
13 Melinda Taylor. Thank you.

14 PRESIDING JUDGE MINDUA: [9:36:59](Interpretation) Thank you very much,
15 Ms Taylor.

16 I now turn towards the Legal Representatives of Victims.

17 Maître.

18 MR KASSONGO: [9:37:11](Interpretation) Thank you, your Honour, your Honours.
19 Good morning everyone. The team of Legal Representatives of Victims this morning
20 is composed of Madam Prisque Biyéké Dipanga, who is just behind me, who is
21 assisting me, and myself, Maître Kassongo. Thank you.

22 PRESIDING JUDGE MINDUA: [9:37:29](Interpretation) Thank you very much,
23 Maître Kassongo.

24 I would now like to address the witness. I would like to remind you that this
25 morning we are hearing the Prosecution Witness P-0641.

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1 Good morning, Witness. Can you hear me?

2 WITNESS: MLI-OTP-P-0641

3 (The witness speaks Songhai)

4 (The witness gives evidence via video link)

5 THE WITNESS: [9:37:58](Interpretation) Good morning.

6 PRESIDING JUDGE MINDUA: [9:38:00](Interpretation) Witness, on behalf of the
7 Chamber, I would like to welcome you.

8 You are going to testify with a view to aiding the Chamber establish the truth in the
9 case concerning Mr Al Hassan.

10 THE WITNESS: [9:38:38](Interpretation) Very well.

11 PRESIDING JUDGE MINDUA: [9:38:40](Interpretation) Witness, you know that the
12 Chamber has taken protective measures for you.

13 THE WITNESS: [9:38:49](Interpretation) Okay.

14 PRESIDING JUDGE MINDUA: [9:38:50](Interpretation) During your testimony,
15 whenever there is a risk of giving identifying information, we will talk about that in
16 private session.

17 THE WITNESS: [9:39:12](Interpretation) Okay.

18 PRESIDING JUDGE MINDUA: [9:39:16](Interpretation) So I will now take your
19 solemn undertaking under Rule 66(1) of the Rules of Procedure and Evidence.

20 So, please could you state after me: I solemnly declare that I will tell the truth.

21 THE WITNESS: [9:39:51](Interpretation) I solemnly declare that I will tell the truth.

22 PRESIDING JUDGE MINDUA: [9:39:55](Interpretation) All the truth.

23 THE WITNESS: [9:39:59](Interpretation) All the truth.

24 PRESIDING JUDGE MINDUA: [9:40:02](Interpretation) And nothing but the truth.

25 THE WITNESS: [9:40:06](Interpretation) And nothing but the truth.

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1 PRESIDING JUDGE MINDUA: [9:40:12](Interpretation) Thank you very much,
2 Mr Witness.

3 You are now under oath. The representatives of the Victims and Witness Unit, as
4 well as the Prosecution representatives, have already explained to you what that
5 means.

6 THE WITNESS: [9:40:47](Interpretation) Yes.

7 PRESIDING JUDGE MINDUA: [9:40:49](Interpretation) Giving false testimony
8 before the Court, the ICC -- before the ICC constitutes a crime.

9 So I have some instructions of a practical nature to give you. You have to bear in
10 mind throughout your testimony that everything that is said in this courtroom is
11 transcribed by court reporters and simultaneously interpreted into several languages
12 by interpreters. It's therefore important to speak into the microphone, raising your
13 face, and to speak slowly and clearly. Only start speaking once the person who is
14 putting questions to you has finished putting that question.

15 THE WITNESS: [9:42:33](Interpretation) Very well.

16 PRESIDING JUDGE MINDUA: [9:42:34](Interpretation) If you have a question,
17 please raise your hand to indicate that you wish to take the floor.

18 Very well --

19 THE WITNESS: [9:42:48](Interpretation) I have no questions.

20 PRESIDING JUDGE MINDUA: [9:42:53](Interpretation) We'll see that in the future.
21 First of all, questions will be put by Office of the Prosecutor, and thereafter possibly
22 by Legal Representatives of Victims, and finally by the Defence.

23 So, without further ado, I would like to give the floor to the Office of the Prosecutor to
24 start with the examination-in-chief.

25 Interpretation.

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1 Thank you very much.

2 Madam Prosecutor.

3 MS LUPING: [9:43:47] Thank you, Mr President.

4 QUESTIONED BY MS LUPING:

5 Q. [9:43:52] And good morning, Mr Witness.

6 A. [9:43:57] Good morning.

7 Q. [9:43:59] As you know, my name is Dianne Luping, and I will be asking you
8 questions on behalf of the Prosecution this morning.

9 Before I start, I just wanted to add to the reminder from the Presiding Judge and ask
10 you to please speak in short sentences and slowly.

11 A. [9:44:49] Very well.

12 Q. [9:44:50] And I would also ask the court usher on the other side to ensure that
13 the microphone is as close to you as possible so that you can be heard properly.

14 Thank you.

15 Mr President, I would ask to please briefly go into private session for questions of an
16 identifying nature. I do not anticipate being longer than 10 minutes.

17 PRESIDING JUDGE MINDUA: [9:45:35](Interpretation) Court officer, please take us
18 into private session.

19 (Private session at 9.45 a.m.)

20 THE COURT OFFICER: [9:45:45] We're in private session, Mr President.

21 (Redacted)

22 (Redacted)

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1 (Redacted)

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3 (Open session at 9.58 a.m.)

4 THE COURT OFFICER: [9:58:50] We are back in open session, Mr President.

5 PRESIDING JUDGE MINDUA: [9:59:02](Interpretation) Thank you very much,
6 court officer.

7 Witness, we are now in open session.

8 Prosecutor.

9 MS LUPING: [9:59:17] Thank you.

10 Q. [9:59:18] Mr Witness, were you present in Timbuktu city in 2012, when it was
11 taken over by armed groups?

12 A. [9:59:49] Yes.

13 Q. [9:59:50] Can you describe what you saw and what you heard when the armed
14 groups arrived in the city.

15 A. [10:00:04] Well, what I saw and heard, when they came, they imposed Sharia.

16 Q. [10:00:38] And what do you mean by that, that they came and imposed Sharia?

17 A. [10:00:57] In 2012, several groups arrived. When they shared those who --
18 some wanted to share some people, some of them went off in other directions, some
19 of them remained.

20 Q. [10:01:45] Mr Witness, when you referred to "*c'est plusieurs groupes qui sont*
21 *venus*", which groups are you referring to?

22 A. [10:02:31] There were groups -- there was one group that was set up by the
23 authorities. It was a militia.

24 Q. [10:02:52] And can you remember what other groups entered Timbuktu?

25 A. [10:03:16] Yes. Let me get back to that. After -- well, there was the MNLA

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1 that came. They're from the Azawad.

2 Q. [10:03:39] And any other groups in addition to the MNLA?

3 A. [10:04:00] After the MNLA, the Ansar Dine came in.

4 Q. [10:04:22] Now, you stated, and that's at page 11, lines 5 to 6 of the transcript,
5 *(Interpretation) "that there were others who left from the other side."

6 (Speaks English) Who are you referring to?

7 A. [10:05:05] I was talking about the MNLA Azawad. They went towards the
8 airport.

9 Q. [10:05:26] And do you remember when the MNLA left the airport?

10 A. [10:05:58] Well, I don't remember very much because, you see, it just so
11 happened that we -- we were too tired, too traumatised.

12 Q. [10:06:21] And when you say you were too traumatised, what do you mean by
13 that?

14 A. [10:07:01] It was the month -- the sixth or seventh month of the year. That was
15 when Ansar Dine gave an ultimatum.

16 THE INTERPRETER: [10:07:17] Inaudible. Correction: To leave there, to leave
17 that place.

18 MS LUPING: [10:07:26]

19 Q. [10:07:28] Now, Mr Witness, you have referred to another group arriving called
20 Ansar Dine. Can you describe the type of clothing that the people from Ansar Dine
21 wore?

22 A. [10:08:14] Well, these people wore short trousers, yellow clothing, and they
23 always had weapons, they were always carrying weapons.

24 Q. [10:08:36] Do you remember where the Ansar Dine group, where they based
25 themselves inside the city once they arrived?

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1 A. [10:08:54] I don't really remember, but when they came, they occupied the entire
2 public departments, the hospitals, the -- every -- all the buildings that belonged to the
3 government. Schools, hospitals.

4 Q. [10:09:52] And in the early days, the first days of the arrival of Ansar Dine, did
5 you learn if there was any meeting between leaders of Ansar Dine and the leaders of
6 the local population?

7 A. [10:10:50] Yes, of course. I heard at the Hotel Bouctou, there was a meeting
8 there with Iyad Ag Ghaly, but the -- I don't know what the topic was. I don't really
9 know what they talked about, because everything that they were dealing with, well,
10 we were -- we were afraid and we didn't want to get involved.

11 Q. [10:11:27] And did you learn who from amongst the local population leaders
12 went to this meeting?

13 A. [10:11:49] Well, I really can't tell you too much. What I do know is that they
14 did have that meeting with the religious people. Other than that, I really can't tell
15 you much.

16 Q. [10:12:23] And how did you hear about this meeting?

17 A. [10:13:01] Well, the city is small. Even if --

18 THE INTERPRETER: [10:13:09] Inaudible.

19 THE WITNESS: [10:13:12](Interpretation) No matter what people say, other people
20 find out about it right away. Our ears are open. So, you see, people came in, in
21 vehicles, flying flags. And, you see, when anything happens in the town, we hear
22 about it right away.

23 THE INTERPRETER: [10:13:39] Interpreter correction: The vehicles mentioned
24 were sand coloured.

25 MS LUPING: [10:13:48]

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1 Q. [10:13:49] Now, Mr Witness, other than the meeting you heard about with
2 Iyad Ag Ghaly, were you yourself present when any leaders of Ansar Dine spoke to
3 the local population?

4 A. [10:14:52] Well, in actual fact, in reality, I don't know too much about the places
5 where the meetings were held, but each person or each organisation has its informers,
6 so people knew what was going on. People would hear such and such a thing
7 happened. You would get news that way. So each person had his own sources of
8 information.

9 Q. [10:15:27] Mr Witness, have you heard of a person called Omar Ould Hamaha?

10 A. [10:15:52] Yes. I've even seen him. He makes videos. He speaks in the
11 market.

12 Q. [10:16:07] When he spoke in the market, were you present?

13 A. [10:16:21] Yes.

14 Q. [10:16:24] And which market is that?

15 A. [10:16:29] Youboutao market.

16 Q. [10:16:43] I will ask you questions about that at a later point.

17 Now, Mr Witness, moving to a different topic, do you remember what were the
18 different institutions put in place by Ansar Dine to run Timbuktu?

19 A. [10:17:44] Yes, of course. They occupied the Télécentre. They took over the
20 *Gouvernorat* building on the other side of the city. They -- they had the academy and
21 the BMS.

22 Q. [10:18:15] And in the early days, who was based at the BMS?

23 A. [10:18:52] Well, it was Abou Dzar, Adama and Khalid. I remember them.
24 Those are the people I remember.

25 Q. [10:19:13] And do you know to which group or which institution they were

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1 part of?

2 A. [10:19:36] Yes, of course. There were the Ansar Dine combatants. When they
3 came at first they thought that the owners of the various buildings had closed their
4 windows. They had put up some banco. When they -- when they came, it was
5 Adama himself.

6 THE INTERPRETER: [10:20:28] Inaudible.

7 THE WITNESS: [10:20:30](Interpretation) They opened the windows and they
8 occupied the -- they began to occupy the buildings.

9 MS LUPING: [10:21:00]

10 Q. [10:21:02] Now, Mr Witness, we're also listening in the original to what you're
11 saying. We heard the word "*banque*". Is that correct? Did you just say "bank"?

12 A. [10:21:29] Yes. I was talking about the bank, of course. The BMS. The
13 building it called the BMS. The bank.

14 Q. [10:21:52] And you said that you remembered Adama, Khalid and Abou Dzar
15 being based at the BMS. Do you know what work they were doing, what job they
16 were doing for the group?

17 A. [10:22:20] Yes. The combatants arrived first and they prepared the place and
18 once they had finished preparing the building, it became the police.

19 Q. [10:23:18] And do you remember what type of clothing the police wore?

20 A. [10:23:38] Yes. Blue clothing and there was some writing in Arabic and vests as
21 well. The -- there was writing in Arabic and in French and they had vests as well.
22 They wore vests.

23 Q. [10:24:12] Mr Witness, I don't know if there's an interpretation issue, but could
24 you please describe the gilet? Can you describe them for us? What did they look
25 like?

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1 A. [10:25:01] Well, a vest is a short piece of clothing that you wear, and on the back
2 of the vest it was written "police" in Arabic and in French.

3 Q. [10:25:16] And what colour were those vests in?

4 A. [10:25:38] They were blue, tending towards black, but basically they were blue.

5 Q. [10:25:49] And can you remember what was the work or the job of the police,
6 what kind of work did they do?

7 A. [10:26:35] They dealt with all the things that were prohibited by Sharia law, all
8 the things that religion prohibited, in particular, short clothing, women were not
9 supposed to go out without being entirely -- without being entirely covered up,
10 alcohol, cigarettes, men had to wear short trousers and men should not speak to
11 women in the street either.

12 Q. [10:27:26] And how do you know that that was the work of the police?

13 A. [10:27:53] Well, they would go about the city and they would catch people
14 because of those things. And they -- when they caught someone, they would put the
15 person in their vehicle, in their car.

16 Q. [10:28:22] And you said that when they would catch people they would put
17 them in their vehicle. Did you see this with your own eyes?

18 A. [10:28:54] It happened several times, so I was able to see it. They would go by,
19 they would catch people and I also saw people who would come and plead on their
20 behalf. They would plead for their relatives who had been caught.

21 Q. [10:29:38] And you also said that they would put people in a vehicle. Can you
22 describe what you can remember of the vehicle?

23 A. [10:29:52] They had several kinds of vehicles. They had some *six*, they had
24 vans, they had many vehicles. They had Hilux. They had many vehicles and they
25 would patrol the city in various different vehicles.

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1 MS LUPING: [10:30:48] Mr President, could I have leave to go into private session
2 for just two questions, follow-up questions for now.

3 PRESIDING JUDGE MINDUA: [10:30:58](Interpretation) Quite so.
4 Private session, courtroom officer.

5 (Private session at 10.31 a.m.)

6 THE COURT OFFICER: [10:31:08] We're in private session, Mr President.

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20 (Open session at 10.36 a.m.)

21 THE COURT OFFICER: [10:36:40] We are back in open session, Mr President.

22 PRESIDING JUDGE MINDUA: [10:36:46](Interpretation) Thank you very much,
23 court officer.

24 Witness, we are now in open session.

25 Madam Prosecutor.

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1 MS LUPING: [10:37:03]

2 Q. [10:37:04] Now, Mr Witness, you said that relatives of people who were caught
3 were there.

4 Can you remember any examples of people who said that their relatives had been
5 caught by the police?

6 A. [10:38:00] Yes.

7 Q. [10:38:04] Can you please provide their names and any -- anything you know
8 about their situation?

9 A. [10:38:39] There's one called Toure. Toure, they took his daughter in the month
10 of *Carême*. And Hamed Moussa, Hamed Moussa caught his daughter.

11 THE INTERPRETER: [10:39:09] It was lent, says the interpreter.

12 MS LUPING: [10:39:14]

13 Q. [10:39:14] Now, Mr Witness, you've mentioned -- now you've mentioned a
14 person called Mohamed Moussa. Do you remember what work he did for the group,
15 who -- which part of the group he was with?

16 A. [10:39:36] Mohamed Moussa, he was the leader responsible for religious
17 questions or matters.

18 Q. [10:40:13] And do you remember the name of that group that he worked with?

19 A. [10:40:41] He worked for Ansar Dine.

20 Q. [10:40:48] And in terms of the job that he did in Timbuktu, what institution did
21 he work for?

22 A. [10:41:19] Well, first of all, he worked in the justice field, in the centres. In
23 Télécentre.

24 Q. [10:42:10] And who was based at the Télécentre?

25 A. [10:42:16] It was a branch of their Sharia house called *Hesbah* which was based at

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1 the Télécentre.

2 Q. [10:42:55] And -- so, to be clear, was Mohamed Moussa working with *Hesbah*?

3 A. [10:43:38] Well, it's the same thing. Like the gendarmerie, the police, it's the
4 same thing, in fact.

5 When he left there -- when he left the justice centre, when he came to the BMS to the --
6 for the police. But otherwise, it was the same thing. He just changed place.

7 Q. [10:44:12] Now, you said the *Hesbah* was based at the Télécentre. Did they stay
8 at the Télécentre, or did they also move?

9 A. [10:44:40] Well, the *Hesbah* stayed there until when they left there and then they
10 went to the BMS. Hamed Moussa came to the BMS, and the rest -- well, they freed
11 people from the *Hesbah*. They freed people from the *Hesbah*, and some of them left
12 for another building. Others went to another building next to a hotel in Abaradjou --
13 in Abaradjou.

14 Q. [10:45:52] Now, you said at the very beginning that there was a group at the
15 *Gouvernorat*.

16 Do you remember who moved to the *Gouvernorat*?

17 A. [10:46:11] It was the same group. When they left the police, they went to the
18 *Gouvernorat*. And after, Hamed Moussa came to the police.

19 Q. [10:47:03] And you said, "*C'était le même groupe. Quand ils ont quitté, ils sont*
20 *partis au Gouvernorat.*"

21 Which group went to the *Gouvernorat*?

22 A. [10:47:29] Abou Zeid, Adama, Khalid, Al Hassan. And when they left there,
23 Hamed Moussa came back to the BMS.

24 Q. [10:48:17] Now, Mr Witness, we have here on the record in the French and in the
25 English that you said Abou Zeid went from the BMS to the *Gouvernorat*? Was that

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1 correct or did you say -- is that correct? Is that who you said, Abou Zeid?

2 A. [10:48:53] No. It was Abou Dzar, Abou Dzar.

3 Q. [10:49:00] And you have mentioned that, in addition, Al Hassan also was one of
4 those who moved to the *Gouvernorat*. Can you remember what was Al Hassan's job
5 with the police?

6 A. [10:49:25] Yes. He was the one who said he was the leader. When somebody
7 was taken to the police station, he was the one who issued or rendered justice.

8 Q. [10:50:25] And how do you know that?

9 A. [10:51:03] People who they caught, it was them who told us. I had a friend
10 who they had caught in a hotel. The hotel in which they caught him was for
11 civilians. So he said that he had come to steal there from the hotel, and they caught
12 him.

13 MS LUPING: [10:51:46] Mr President, just in an abundance of caution, if we could
14 briefly move into private session for one question.

15 PRESIDING JUDGE MINDUA: [10:51:57](Interpretation) Of course.
16 Court officer.

17 (Private session at 10.52 a.m.)

18 THE COURT OFFICER: [10:52:08] We're in private session, Mr President.

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15 (Open session at 10.55 a.m.)

16 THE COURT OFFICER: [10:55:51] Your Honours, we're back in open session.

17 PRESIDING JUDGE MINDUA: [10:56:07](Interpretation) Thank you very much,
18 court officer.

19 Witness, we're in open session.

20 Prosecutor.

21 MS LUPING: [10:56:14] Thank you.

22 Q. [10:56:15] Now, Mr Witness, you explained that a friend had told you what had
23 happened to him. Without mentioning his name, could you tell us what he
24 described to you?

25 A. [10:57:11] What he said, when they caught him, they accused him of theft and

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1 Hassan arrested him with a young Arab.

2 Q. [10:57:28] And did he explain anything else of what happened after his arrest?

3 A. [10:58:05] Yes. Well, in fact when they took him, he returned -- he spent the
4 night there and they said for him to wait until Adama arrived. And then -- well, it
5 was the case that he was a worker from the hotel.

6 Q. [10:58:38] You said that -- I'm just going to get the precise words.

7 (Interpretation) "They told him to wait until Adama arrived. And there he would
8 tell the truth."

9 (Speaks English) Can you explain what you meant by that?

10 A. [10:59:15] In fact, he asked him to wait for Adama. Adama knew him as a
11 worker from the hotel and that's the reason why he spent the night with Hassan.
12 And Hassan asked him to put his hand on the table so that it could be amputated.
13 Adama was on a mission at that time.

14 MS LUPING: [11:00:39] Mr President, I do obviously have additional questions, but
15 I note the time is 11 o'clock. This might be an appropriate time to break, for the
16 pause.

17 PRESIDING JUDGE MINDUA: [11:00:53](Interpretation) Indeed, Madam
18 Prosecutor. It's 11 o'clock.

19 So we're going to have a break for half an hour and we will be back at 11.30.

20 Court is suspended.

21 THE COURT USHER: [11:01:06] All rise.

22 (Recess taken at 11.01 a.m.)

23 (Upon resuming in open session at 11.31 a.m.)

24 THE COURT USHER: [11:31:29] All rise.

25 Please be seated.

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1 PRESIDING JUDGE MINDUA: [11:31:57](Interpretation) The hearing shall now
2 resume.

3 I do note that the OTP team has changed composition somewhat. And now,
4 Madam Prosecutor, for the record.

5 MS LUPING: [11:32:13] Yes, Mr President, your Honours. I will note for the record,
6 as I indicated also this morning, that Mr Duterte has now joined us. And we are
7 otherwise the same team, with myself and Ms Marie-Jeanne Sardachti.

8 PRESIDING JUDGE MINDUA: [11:32:32](Interpretation) Very well. Thank you
9 very much, Madam Prosecutor.

10 Please proceed with the continuation of your examination-in-chief.

11 MS LUPING: [11:32:43] Thank you, Mr President.

12 Q. [11:32:44] Now, Mr Witness, I'm going to refer to something you said just before
13 the break, and that's in the French transcript page 24, lines 19 to 20, and I quote:

14 (Interpretation) "In other words, Hassan apparently asked to place his hand on the
15 table so that it should be amputated."

16 (Speaks English) Could you explain what you mean by that, describe what happened.

17 A. [11:33:55] He said to put the hand on the table and to tell the truth. And if he
18 didn't tell the truth, they would cut his hand off. And that he had stolen, that he had
19 gone off and stolen. That is what I meant.

20 Q. [11:34:21] And did he explain to you if Al Hassan had anything with him?

21 When he said to put the hand and that they were going to cut the hand off, did

22 Al Hassan have anything with him to use?

23 PRESIDING JUDGE MINDUA: [11:34:39](Interpretation) Ms Taylor.

24 MS TAYLOR: [11:34:40] Mr President, this is leading. The Prosecution should ask
25 in an open manner for the witness to recollect what he recalls.

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1 PRESIDING JUDGE MINDUA: [11:34:57](Overlapping speakers)

2 MS TAYLOR: [11:35:00](Overlapping speakers) This a problematic line of
3 questioning, and I do believe -- we're doing it in public session, which is aggravating
4 to the harm, so I do believe that the utmost caution should be used in any case.

5 PRESIDING JUDGE MINDUA: [11:35:11](Interpretation) Madam Prosecutor,
6 rephrase, please.

7 MS LUPING:

8 Q. [11:35:16] Mr Witness, from what you can recall of what your friend told you
9 about this incident, can you describe the entirety of how he described what happened
10 in that interaction with Al Hassan?

11 A. [11:36:07] Okay. Well, I didn't get to the end of my idea because you told me to
12 be brief. You didn't give me the time to keep on going and you stopped me, and
13 then you moved on to something else.

14 Q. [11:36:25] My apologies, Mr Witness. This is your opportunity now to provide
15 those additional details, please.

16 A. [11:36:55] When they caught him, they put him through the roller, and he said
17 no, that he wasn't the thief, that he worked at the hotel there and that the owner of the
18 hotel was a person he trusted. And he said that the owner of the hotel was travelling
19 to the west and it was one of his brothers-in-law who had gone there. And he said to
20 wait until Adama came because he knew him. He said he had already -- always
21 worked at that hotel and that is why he spent the night there.

22 Q. [11:38:48] And when you stated: *(Interpretation) "That is why he said that we
23 had to wait for Adama to come back, he knew him because he had always worked at
24 that hotel."

25 (Speaks English) Could you explain who is "he"? Who asked that they wait for

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1 Adama?

2 A. [11:40:01] It was the young person who they found at the hotel. The young
3 fellow asked that they wait until Adama get there because Adama would -- was the
4 very first one to get into the city. And when they got there, they realised that the
5 hotel did not belong to the authorities and that it belonged to a private individual.
6 After that, they had good dealings because Adama had a reputation of having good
7 dealings with people. So that's why the young man asked for them to wait until
8 Adama got there so that he could confirm that he was a worker at the hotel.

9 Q. [11:40:49] Now, at page 25, that's line 28, to page 26, line 2, you stated:

10 *(Interpretation) "And he said to put his hand on the table and to tell the truth, and
11 that if he did not tell the truth, he would cut it off." (Speaks English) End of quote.

12 My question is this: When this person described Al Hassan saying this to him, did
13 he describe to you in any way the scene or what happened?

14 PRESIDING JUDGE MINDUA: [11:41:49](Interpretation) Ms Taylor.

15 MS TAYLOR: [11:41:50] Mr President, the Prosecution has already asked the witness
16 to recount this several times. The witness was then saying before that he would do
17 so. We're going over the same territory. And again, I really have to emphasise how
18 problematic this line of questioning is.

19 PRESIDING JUDGE MINDUA: [11:42:14](Overlapping speakers)

20 MS LUPING: [11:42:15] Mr President, first I'd -- first I'd ask that the sound be cut off
21 to the witness.

22 PRESIDING JUDGE MINDUA: [11:42:23](Interpretation) Please cut the sound,
23 Mr Courtroom Officer.

24 THE COURT OFFICER: [11:42:27](Overlapping speakers) Your Honours, the sound
25 has been cut off.

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1 PRESIDING JUDGE MINDUA: [11:42:30](Interpretation) Thank you very much.

2 Madam Prosecutor.

3 MS LUPING: [11:42:33] Mr President, this is simply a follow-up question. The

4 witness did not answer the question the first time I asked it. In fact, he repeated

5 what he'd said previously but didn't respond to my specific question about the

6 moment that Mr Al Hassan had said or threatened to cut off the person's hand.

7 I rephrased it, as was requested. I have rephrased it to simply state, "Could you --

8 did he describe to you the scene when he said that?" It's simply a follow-up question,

9 which is appropriate. And no, he has not responded to my first question, so it is not

10 asked and answered.

11 And as for prejudice, your Honours, I would just note, whether individuals are in the

12 public gallery or not, the principle of publicity requires that this testimony be elicited

13 in public. And your Honours actually made your decision also very clear about that

14 as well.

15 PRESIDING JUDGE MINDUA: [11:43:34](Interpretation) Quite so.

16 Ms Taylor, as the Prosecutor was speaking, I tried to reread the transcript and I find

17 that the question is not repetitive. It is a follow-up. The witness had not answered.

18 It was a request for further information. So let us give the witness an opportunity to

19 reply to the question.

20 Ms Taylor, we will give the witness the chance to answer and then that will solve the

21 problem.

22 MS TAYLOR: [11:44:05] Mr President, there is an issue that's separate from that

23 which I do believe needs to be addressed. Because the Prosecutor has referred to the

24 principle of publicity, and I would also respectfully refer to the principle of the

25 presumption of innocence.

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1 Now, the public in the public gallery is not aware that this concerns an incident that
2 was rejected by the Pre-Trial Chamber. This goes directly to issues of
3 Mr Al Hassan's presumption of innocence to hear testimony, to elicit evidence on a
4 charge that was dismissed by the Pre-Trial Chamber.

5 This is extremely prejudicial and problematic that this Court is hearing evidence on a
6 charge that was dismissed and doing so publicly.

7 PRESIDING JUDGE MINDUA: [11:44:59](Interpretation) Ms Prosecutor, do you
8 wish to respond?

9 MS LUPING: [11:45:02] Absolutely, Mr President.

10 All I would do is just simply refer to the Chamber's decision that has been rendered
11 that the Prosecution has been granted explicitly authorisation to elicit this precise
12 evidence from the witness. And the Chamber was also equally clear that these
13 matters are relevant to the determination of matters before it, regardless of whether or
14 not it relates to specific charges concerning this named victim or individual. And it's
15 for this reason we're asking the question and Defence counsel, your Honours, is fully
16 aware of that.

17 Now, if Defence counsel is seeking to ask for a new decision or reconsideration or a
18 question of appeal, that is one thing. But I also do not think it appropriate to address
19 a public gallery on these matters. The decision has been rendered.

20 PRESIDING JUDGE MINDUA: [11:45:59](Interpretation) Well, there you have it.

21 I am going to check. And the decision has been handed down by the Chamber and
22 we authorise the Prosecutor to continue her examination-in-chief.

23 Courtroom officer, please re-establish the sound link.

24 THE COURT OFFICER: [11:46:19] Your Honours, the sound has been re-established.

25 PRESIDING JUDGE MINDUA: [11:46:23](Interpretation) Thank you very much.

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1 Madam Prosecutor.

2 MS LUPING: [11:46:26] Thank you, Mr President.

3 Q. [11:46:28] Mr Witness, I'm going to be repeating my question to you. At
4 page 25, line 28, through to page 26, line 2, I'm going to repeat what you said stated,
5 and I quote from the French: (Interpretation) "He said to him to put his hand on the
6 table and to tell the truth, and that if he didn't tell the truth, he was going to cut off his
7 hand." (Speaks English) End of quote.

8 My question was this: Did the person who told you about this incident describe to
9 you the scene when Al Hassan said this to him?

10 A. [11:48:23] What happened was that when he said that to him because the young
11 man was not as young as that, he was kind of older and he -- it was just short, you see.
12 What happened was after, in light of the threats, because they didn't believe him, he
13 put his hand on the table and he said that they could cut off his hand and he was
14 aware that he was not a thief. And it was only once the brother-in-law and the
15 parents arrived, that was when they were able to clear his name.

16 Q. [11:49:18] Now, Mr Witness, when you described the incident with this person,
17 you said that he was arrested by Al Hassan and a - and I quote - a *jeune Arab*. First
18 of all, could you give us the name of the *jeune Arab* who arrested this person together
19 with Al Hassan?

20 A. [11:50:40] The young Arab's name is Lamine. He has a bit of a problem with
21 his vision. His eyes don't go in the same direction. He didn't speak Arabic, so he
22 didn't know what they were saying to each other. So there was a mix-up as to
23 whether or not he had stolen something.

24 Q. [11:51:19] Now, Mr Witness, I don't know if this is an interpretation issue
25 because I see that both in the French and in English the question I asked was not

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1 correctly interpreted.

2 I was referring to the *jeune* Arab who you said arrested your friend together with
3 Al Hassan. So it was the *jeune* Arab and Al Hassan you said arrested your
4 friend.

5 So this *jeune* Arab who arrested your friend with Al Hassan, is he called Lamine?

6 A. [11:52:06] The young Arab was with Al Hassan and Al Hassan was the boss.

7 The young guy by himself couldn't arrest anyone. He was with Al Hassan and that
8 is when they mixed things up in Arabic and they got the young guy. There was a
9 mix-up. They weren't supposed to take him. And the same day -- the same young
10 person, the young Arab's name was Lamine. They patrolled together.

11 Q. [11:53:37] Now, Mr Witness, when your friend was brought to the BMS, did you
12 see this with your own eyes?

13 A. [11:54:05] I saw him when he got out of the white van.

14 THE INTERPRETER: [11:54:20] Interpreter correction: When he was taken out of
15 the white van.

16 MS LUPING: [11:54:26] Mr President, could I just ask one follow-up question in
17 private session, please.

18 PRESIDING JUDGE MINDUA: [11:54:36](Interpretation) Certainly,
19 Madam Prosecutor.

20 Mr Courtroom Officer, if you could.

21 (Private session at 11.54 a.m.)

22 THE COURT OFFICER: [11:54:48] We're in private session, Mr President.

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Open session at 11.56 a.m.)

11 THE COURT OFFICER: [11:56:19] We are back in open session, Mr President.

12 PRESIDING JUDGE MINDUA: [11:56:23](Interpretation) Thank you very much.

13 Madam Prosecutor.

14 MS LUPING: [11:56:40] Now -- actually, Mr President, if I could please ask that the
15 sound be cut off to the witness for a moment.

16 PRESIDING JUDGE MINDUA: [11:56:58](Interpretation) Courtroom officer, if you
17 could.

18 THE COURT OFFICER: [11:57:02] Your Honours, the sound has been cut off.

19 PRESIDING JUDGE MINDUA: [11:57:07](Interpretation) Thank you very much.

20 Madam Prosecutor.

21 MS LUPING: [11:57:15] Mr President, your Honours, I just want to note for the
22 record that in the witness's statement he had stated, and I'm going to quote:

23 (Interpretation) "if he did not tell the truth".

24 (Speaks English) I would request an opportunity to refresh this witness's memory.

25 He can obviously state if this is accurate or not accurate. It has been a very long time

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1 since the witness was interviewed, and I would just simply ask to go through the
2 normal refreshing of the memory exercise for this purpose.

3 PRESIDING JUDGE MINDUA: [11:58:03](Interpretation) Ms Taylor.

4 MS TAYLOR: [11:58:04] Mr President, we strongly object to this. One, the
5 refreshing of the memory procedure only comes into play, only comes into play if
6 there's indicia that the witness does not remember the incident. We have absolutely
7 no such indicia here. That is the threshold. The witness has not at any point said
8 he does not remember. There's therefore absolutely no basis to go to his prior
9 statement.

10 Two, it's extremely disingenuous for the Prosecutor to state that it's been a long time
11 since this witness reviewed his statement. He was interviewed in 2019. That is
12 several years after the facts. This is not a contemporaneous record.

13 Two, this witness has gone through two witness preparation sessions, two, within the
14 space of a year and his last witness preparation session only just finished, I would say,
15 two days ago.

16 There's simply no basis to use the witness refreshing procedure as a way of trying to
17 introduce statements from the bar. This witness has been asked a question several
18 times, as the Chamber saw, he's given a full account, he's not indicated he doesn't
19 recollect it and this is not an incident that's related to the charges.

20 We can't have one rule for relevance and another for the Prosecution and one for the
21 Defence. The mere fact that something's in the statement does not in and of itself
22 create an avenue or a door for the Prosecution to try and introduce information from
23 the statements through this procedure. It's happened a lot recently. If the witness
24 doesn't come up to proof, then that's not a basis to try and introduce a statement.

25 Now, it's a clear threshold. There has to be indicia that the witness doesn't

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1 remember. The Prosecution hasn't reached that threshold.

2 PRESIDING JUDGE MINDUA: [12:00:14](Interpretation) I see, Madam Prosecutor,
3 you are standing. Did you wish to say something?

4 MS LUPING: [12:00:19] Yes, Mr President. I would say simply that there is indicia
5 that the witness may simply not be recalling the precise information. I have not put
6 the question squarely, do you remember if you had a -- he's been asked to recount
7 what happened. He hasn't mentioned something that may simply not be of interest
8 for him to mention. He simply may have forgotten. Now, I'm not proposing, I'm
9 not messing up or confusing a Rule 68 procedure. I'm not proposing to put the
10 statement into evidence. What I'm proposing to do is a very normal procedure,
11 refreshing the witness's memory on one specific paragraph.

12 And he can simply explain whether it refreshes his memory or not. He's omitted one
13 aspect of the account and in our submission it's just simply a case of forgetting. He
14 has an opportunity now. We would argue it's in the interest of justice that the --
15 your Honours hear this evidence. It goes directly to the issue of the intent and
16 knowledge of the accused who, amongst other Defences, is arguing duress. And this
17 account or this incident would undermine that argument that he was under pressure
18 for doing all the acts that he did.

19 MS TAYLOR: [12:01:39] Mr President, if I may briefly --

20 PRESIDING JUDGE MINDUA: [12:01:43](Interpretation) Ms Taylor, a last time.
21 And then I'll have to decide.

22 MS TAYLOR: [12:01:47] Thank you very much.

23 PRESIDING JUDGE MINDUA: [12:01:50](Interpretation) One last time.

24 MS TAYLOR: [12:01:50] As the Chamber may recall, in his last answer when he was
25 asked twice to provide a full description of what happened, the witness stated that it

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1 was the individual himself who put his hand on the table and said, "Well, you can cut
2 it off if you don't believe me." This isn't an issue of memory, Mr President. This is
3 an issue of reliability.

4 Now, we do believe it would be extremely prejudicial for the Prosecution to use
5 witness refreshing as a way to try to bolster the credibility of their witnesses. They
6 can declare the witness hostile, but, again, they would need an indicia to do that.

7 Now, we do find it highly problematic that this procedure is being used simply to
8 bolster the Prosecutor's case. If we're interested in the truth, we have a witness on
9 the stand, it's the witness who should be testifying.

10 PRESIDING JUDGE MINDUA: [12:02:47](Interpretation) Ms Taylor, you would
11 agree that -- you will recall that the Chamber said that it could exceptionally grant
12 leave for the witness or the party which presents the witness to have the witness --
13 read the paragraph concerned to the witness. That possibility does exist, Ms Taylor.

14 MS TAYLOR: [12:03:15] Yes, Mr President. And as I've repeated, that possibility
15 exists exceptionally if the witness can't remember. Now the Prosecutor hasn't even
16 put to this witness do you recall this? Do you have problems remembering this?
17 There's no indicia that he has any problems remembering this.

18 He was interviewed two years ago about this. This is not an old statement. It was a
19 statement that was taken after the confirmation hearing. He's had two preparations
20 sessions. And we are highly concerned by the way that this is going. There is an
21 issue here that because the Prosecutor does not get one specific element that's
22 incriminating, that we are throwing the procedures out the window.

23 PRESIDING JUDGE MINDUA: [12:04:05](Interpretation) Ms Taylor, the Chamber
24 rendered a decision on the conduct of proceedings on 6 May 2020. So we have
25 paragraph 45 which states the following: (Speaks English) "The calling party or

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1 participant may exceptionally request permission to refresh a witness' recollection
2 using his/her previous statement where the witness is unable to independently recall
3 a particular fact. In this scenario, the party or participant shall provide the witness
4 with an opportunity to read the relevant paragraphs, or read these paragraphs to the
5 witness."

6 (Interpretation) That's it. So the Chamber will briefly deliberate and it shall answer
7 you.

8 (Trial Chamber confers)

9 PRESIDING JUDGE MINDUA: [12:06:47](Interpretation) So, Ms Taylor, as you will
10 have seen, the Chamber has deliberated. And in this specific case, the witness
11 should have the possibility to answer the question with the help of the Prosecution,
12 which will make it possible for him to refresh his memory. This is also in the interest
13 of justice.

14 Court officer, please could you re-establish the line.

15 THE COURT OFFICER: [12:07:27] Your Honours, the sound has been re-established.

16 PRESIDING JUDGE MINDUA: [12:07:32](Interpretation) Thank you very much,
17 court officer.

18 Madam Prosecutor, please continue.

19 MS LUPING: [12:07:36] Thank you, Mr President.

20 Q. [12:07:40] Mr Witness, do you recall meeting with investigators of the Office of
21 the Prosecutor and do you remember giving them a witness statement in 2019?

22 A. [12:08:20] Yes.

23 Q. [12:08:23] And I would like to now on channel 2 - and I'd ask that this not be
24 shown to the public - I'd like to show the end first of the statement. That is on
25 page 0185 of document MLI-OTP-0072-0143.

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1 Now, Mr Witness, is this your mark where it has (Interpretation) "Witness
2 Attestation".

3 (Speaks English) Is that your mark there?

4 A. [12:09:22] Yes.

5 Q. [12:09:49] And, Mr Witness, are the contents of the statement true and correct to
6 the best of your knowledge?

7 PRESIDING JUDGE MINDUA: [12:10:00](Interpretation) Ms Taylor.

8 MS TAYLOR: [12:10:01] Mr President, I have reviewed the procedure for witness
9 refreshing in all of the ICC cases. That's not the question that's put to the witness.

10 Does he recall making the statement, the paragraphs then read to him. Now that
11 question should not be put to the witness. That's not the procedure.

12 PRESIDING JUDGE MINDUA: [12:10:30](Interpretation) Ms Taylor, in the past
13 I think we had a similar case. This was a question that the Prosecutor was putting,
14 just to check with the witness if it is indeed the witness's statement. This doesn't
15 mean that the Prosecutor is going to tender the document immediately into evidence.
16 So we'll address the question.

17 Madam Prosecutor.

18 MS LUPING: [12:11:00] Thank you, Mr President. And indeed I reiterate what I've
19 already stated, the Prosecution has no intention of seeking to submit this witness
20 statement into evidence.

21 Q. [12:11:11] Mr Witness, is the content of this statement true and correct to the best
22 of your knowledge?

23 A. [12:11:34] It's just the truth, the whole truth.

24 Q. [12:11:39] Now, Mr Witness, I'm going to read -- first of all I'm going to read the

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1 entirety of paragraph 94 to you and then I'm going to be asking my question.
2 Mr President, just I notice that the first three words of this paragraph may be
3 identifying. I would just only ask to go briefly into private session just to read those
4 three words and I will continue reading the rest in public.

5 PRESIDING JUDGE MINDUA: [12:12:08](Interpretation) Court officer.

6 (Private session at 12.12 p.m.)

7 THE COURT OFFICER: [12:12:20] We're in private session, Mr President.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Open session at 12.13 p.m.)

22 THE COURT OFFICER: [12:13:46] Your Honours, we are back in open session.

23 That portion has been said out in open session as well.

24 PRESIDING JUDGE MINDUA: [12:13:57](Interpretation) Thank you very much,

25 court officer.

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1 Madam Prosecutor.

2 MS LUPING: [12:14:01] (Overlapping speakers) Thank you. We would just request
3 a redaction for that part that was heard in public.

4 Q. [12:14:07] And I'll now continue reading from your statement, Mr Witness.

5 And it's in French:

6 (Interpretation) "... we saw Al Hassan and Lamine bring the old people to the BMS.

7 It was in the first days of the setting up of these Islamic police in the BMS. I say that
8 because the Islamists were still trying to distinguish between public property and
9 private property. The very day of his liberation, or the day he was freed, he told us
10 that Al Hassan had interrogated him when they were at the police station.

11 Al Hassan had even got out a knife and he said to the old people, or the old man,
12 Vieux to put his hand on the table and he threatened to cut it if he did not say the
13 truth."

14 (Speaks English) Now, Mr Witness, when you stated that you were told, and I quote,

15 (Interpretation) "Al Hassan even got a knife out", (Speaks English) does this refresh
16 your memory? Is this what he told you happened?

17 THE INTERPRETER: [12:16:06] Message from the Songhai booth: The Songhai
18 booth would like to translate the paragraph for the witness prior to the question.

19 PRESIDING JUDGE MINDUA: [12:16:18](Interpretation) Yes, please translate it, but
20 not the three first words, because it shouldn't be heard by the public.

21 THE WITNESS: [12:18:21](Interpretation) Yes, I remember all that. And from this
22 day -- to this day, he still suffers from that. He's still suffering from that until this
23 very day.

24 MS LUPING: [12:18:38]

25 Q. [12:18:38] And just to be extremely clear, Mr Witness, because I'm not sure if my

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1 question was translated for you, I read back one particular part of that paragraph,
2 which was: (Interpretation) "Al Hassan had even got out a knife, told Vieux to put his
3 hand on the table and threatened to cut it off."

4 (Speaks English) My question is this: Where it states that Al Hassan took out a knife,
5 does that refresh your memory? Is that what happened? Is that what -- sorry, is
6 that what you were told had happened?

7 A. [12:20:04] Indeed. That's how the young person told the story to me. That's
8 what explains how to that -- to this day he has it still in his heart to this day.

9 Q. [12:20:29] And when you said this is how the young -- "*le jeune m'a raconté*
10 *l'histoire*", do you mean the person who Al Hassan did this to? Is this who you
11 mean?

12 A. [12:20:56] Yes. It's the same person who was asked to put his hand on the
13 table.

14 Q. [12:21:16] Now, Mr Witness, when you stated at page 42, lines 16 to 17 of the
15 French transcript (Interpretation) "He still suffers from that to this present day",
16 (Speaks English) what do you mean by that?

17 A. [12:22:04] It's the same young person, because what was done to him, that he
18 wasn't happy with that. He's not able to understand it.

19 Q. [12:22:22] Now, Mr Witness, I'm going to go back to another topic and I'm going
20 to remove now your statement from the screen. It's a different topic.

21 At page 21 of the French transcript, at line 26 to line 28, when speaking of
22 Mr Al Hassan, you stated: (Interpretation) "He said that he was the leader there or
23 the head there. When somebody was taken from the police, it was he who rendered
24 justice."

25 A. [12:23:37] Indeed. He was the person who received people. When people

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1 were called there, he was the one who would decide between people.

2 Q. [12:23:53] And when you said it was he who would decide between people, can
3 you give us examples of cases that you know of where he decided between people.

4 A. [12:24:31] I can give you two examples.

5 Q. [12:24:36] Yes, please. Any examples you have, please give them.

6 A. [12:25:14] I can give you the example of a boy who provided an Arab with
7 provisions, and there was an electricity bill for 30,000 and that was six -- yeah, it was
8 six months' bill which was an amount of 30,000. He provided electricity to an Arab.

9 Q. [12:26:05] And please go on.

10 A. [12:26:47] So, following that, he was called to the police station, and when he
11 was taken there -- when he had left, he was -- he explained what had happened,
12 explained what had happened to us.

13 Q. [12:27:23] What did he explain had happened when "*il a donné une convocation*".
14 Could you explain what happened.

15 A. [12:28:18] So, in fact, according to what he told us, when he received his court
16 summons, he was asked to pay the money, either 30,000 francs in accordance with the
17 electricity bill. It was 30,000 francs. And there was also an act that was done since
18 the time -- in the time of Mali under Malian authority. So Al Hassan forced him to
19 pay this amount.

20 Q. [12:29:26] And you said that there was a (Interpretation) He issued a summons.
21 (Speaks English) Who -- who issued the summons?

22 A. [12:29:46] So the summons came. When it was established, we didn't know
23 how it was made. But to the best of our knowledge, it was Al Hassan who called
24 upon the young Arab to take him to ask what happened. And it was after that that
25 he said -- well, from now on, he was told that he had to pay the bill. And they said

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1 from now on, you have to pay the electricity because they provide it. You have to
2 pay the fuel costs.

3 Q. [12:31:25] Now, you said this example, it was of a boy. Can you give us his
4 name, this person who was ordered by Al Hassan to make this payment.
5 What's the name of the person who was ordered to do this?

6 A. [12:32:06] In fact, I don't know what his name was. This is just an account I
7 heard. We were told what happened. I don't know the name of the person.
8 I don't know the name of the person in question.

9 Q. [12:32:24] And who told you this?

10 THE INTERPRETER: [12:33:13] Silence from the remote location.

11 PRESIDING JUDGE MINDUA: [12:33:19](Interpretation) We don't have any
12 interpretation showing up on the French transcript.

13 THE WITNESS: [12:33:33](Interpretation) It was the neighbour of the person who
14 was issued a summons.

15 MS LUPING: [12:33:43]

16 Q. [12:33:44] Can you give us the name of that neighbour?

17 A. [12:34:05] The name of the neighbour was Mohamed Mossa.

18 Q. [12:34:14] And is that Mohamed Moussa of the *Hesbah* or is it a different
19 Mohamed Moussa?

20 A. [12:34:31] No. It was another one.

21 Q. [12:34:46] Now, Mr Witness, you said you had a second example of a case in
22 which it was Al Hassan who decided between two people. Could you describe what
23 you know of that case.

24 A. [12:35:19] Yes.

25 Q. [12:35:23] Please go ahead.

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1 A. [12:36:01] The second case was a woman who had a dispute about a goat with a
2 gentleman. The goat gave birth and after the lady slit the throat of the goat and went
3 back and said that the goat belonged to her.

4 Q. [12:36:34] And can you explain what was Mr Al Hassan's role in this case.

5 A. [12:36:55] Actually, after that, Al Hassan was taken -- or, rather, was obliged to
6 make a decision because the goat followed the lady to the bank and that is why
7 Al Hassan had to decide and he said that the goat belonged to the lady.

8 Q. [12:37:58] And when you say the woman went to the bank and the goat
9 followed the woman, did you see the woman at the BMS with your own eyes?

10 A. [12:38:35] Yes, I did see her with my own eyes because I knew that woman.

11 Q. [12:38:45] And can you give us her name?

12 A. [12:38:57] Tina Houday (phon).

13 Q. [12:39:07] Could I ask the Songhai interpreter, please, to spell that to us for the
14 record.

15 Mr Witness, could you repeat the name so the Songhai interpreter can spell it for us,
16 please.

17 A. [12:39:55] Tina Koitey, Koitey.

18 THE INTERPRETER: [12:40:05] Tina Koitey. Tina, T-I-N-A. Koitey, K-O-I-T-Y.
19 Koitey.

20 MS LUPING: [12:40:28] Mr President, could I just ask a question in private session
21 which I may -- I believe may be identifying.

22 PRESIDING JUDGE MINDUA: [12:40:41](Interpretation) Certainly.
23 Courtroom officer.

24 (Private session at 12.40 p.m.)

25 THE COURT OFFICER: [12:41:01] We're in private session, Mr President.

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15 (Redacted)

16 (Open session at 12.43 p.m.)

17 THE COURT OFFICER: [12:43:05] We're back in open session, Mr President.

18 PRESIDING JUDGE MINDUA: [12:43:18](Interpretation) Thank you very much.

19 Madam Prosecutor.

20 MS LUPING: [12:43:22] Thank you.

21 Q. [12:43:23] Now, Mr Witness, dealing with each of these cases separately, first the
22 case of the woman and the goat, you said that you saw her go to the BMS when this
23 case was decided by Al Hassan.

24 Do you remember what month that was of this case with the woman with the goat?

25 A. [12:44:30] I couldn't tell you which month it was, but I can tell you that when the

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1 people saw the lady coming out of the bank with the goat, people ran after her to ask
2 her what had happened. And that is when she explained what had happened.

3 Other than that, the month, I don't remember.

4 Q. [12:44:54] And turning now to the first example you gave of the man who was
5 ordered to make a payment by Al Hassan. Was that when Mr Al Hassan was at the
6 BMS or at the *Gouvernorat*? Do you recall?

7 A. [12:45:16] All three cases that I mentioned occurred when he was at the BMS.
8 He was at the BMS for all those cases.

9 Q. [12:45:57] Now, sorry, returning to the case of the woman with the goat, you
10 said that when she left people ran to her to ask what happened. Were you also there?
11 Did you hear what she said about what happened?

12 A. [12:47:01] When she came out, people asked her what had happened. It so
13 happened that Al Hassan had already had determined that the goat belonged to her.
14 That was before. That was before the person -- the other person intervened, the
15 person with whom she had bought the goat. So that was before the information was
16 going around.

17 Q. [12:47:33] And just to clarify. I'm not sure if my question was interpreted.
18 When the woman spoke, did you hear her speak also with your own ears?

19 A. [12:48:07] The lady was close to us. She spoke. We all asked her the question
20 and I was one of the people that she had answered. And she said that Al Hassan
21 had told her to go and that her problem was over.

22 Q. [12:48:44] Now, Mr Witness, you've said that you can't remember the exact
23 month that this happened, but do you remember how long after the arrival of the
24 groups in Timbuktu that this particular incident with woman happened?

25 A. [12:49:04] As I told you, it wasn't an easy thing. Often we had the impression

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1 that we were experiencing or living a movie. We experienced things in such a way
2 that it was often hard to remember. It's like having a burden, a load on your head
3 and you have it and you wait until someone takes the burden off your head. So it's
4 not easy to remember the date.

5 Q. [12:50:20] Now, Mr Witness, just moving to a different topic, you explained that
6 Al Hassan was located in the BMS. Do you know where in the BMS he was located?

7 A. [12:51:06] The BMS faces the east, and when you go in his office was to the right.
8 The window gives on to the street.

9 Q. [12:51:38] And do you know whose office that used to be before this group
10 moved into the BMS? Whose office did he move into?

11 A. [12:52:10] It was the office of Koulou (phon), the bank director.

12 MS LUPING: [12:52:21] Mr President, I do want to ask the witness a question and
13 deal with a topic that I believe will be extremely identifying. I don't anticipate to be
14 more than, say, three minutes or so in private session.

15 PRESIDING JUDGE MINDUA: [12:52:40](Interpretation) Courtroom officer, private
16 session, please.

17 (Private session at 12.52 p.m.)

18 THE COURT OFFICER: [12:52:51] We are in private session, Mr President.

19 (Redacted)

20 (Redacted)

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16 (Redacted)

17 (Open session at 12.57 p.m.)

18 THE COURT OFFICER: [12:57:45] We're back in open session, Mr President.

19 PRESIDING JUDGE MINDUA: [12:57:55](Interpretation) Thank you very much.

20 Madam Prosecutor.

21 MS LUPING: [12:57:58]

22 Q. [12:57:59] Now, Mr Witness, you described an incident where Al Hassan gave
23 an instruction --

24 PRESIDING JUDGE MINDUA: [12:58:14](Interpretation) Ms Taylor.

25 MS TAYLOR: [12:58:15] Mr President, can the sound be cut off to the witness briefly.

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1 PRESIDING JUDGE MINDUA: [12:58:25](Interpretation) Courtroom officer, cut off
2 the sound to the witness.

3 THE COURT OFFICER: [12:58:31] The sound has been cut off.

4 PRESIDING JUDGE MINDUA: [12:58:41](Interpretation) Thank you.
5 Ms Taylor.

6 MS TAYLOR: [12:58:43] Thank you, Mr President. At page 53, line 9, the witness
7 said that Al Hassan asked him to tell this person. Now, the Prosecutor then
8 reformulated that to Mr Al Hassan ordering him and has now reformulated it to him
9 giving instructions. So we do believe that the Prosecutor should use the exact
10 language used by the witness rather than trying to formulate it in legal terms to fill
11 their case.

12 PRESIDING JUDGE MINDUA: [12:59:15](Interpretation) I believe the Defence is
13 correct.

14 MS LUPING: [12:59:21] Mr President, if I may, I am actually following the French
15 transcript and I'm going to refer you to page 51, lines 12 to 13. Unfortunately, this is
16 identifying, so I'm not going to state who was instructed, but the language was:
17 (Interpretation) "He instructed to drive away an old man who was sitting there."
18 (Speaks English) I'm not going to say who was being instructed, but the word used by
19 this witness in the French transcript is "*un vieux*". I'm simply using the language in
20 the transcript, Mr President.

21 PRESIDING JUDGE MINDUA: [13:00:10](Interpretation) Alas, Ms Taylor, I believe
22 you have different transcripts. We shall proceed.

23 MS LUPING: [13:00:18] Thank you.

24 Q. [13:00:21] Now, just continuing with my question --

25 PRESIDING JUDGE MINDUA: [13:00:28](Interpretation) Courtroom officer, the link

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1 to the witness, please.

2 THE COURT OFFICER: [13:00:35] The sound has been re-established.

3 PRESIDING JUDGE MINDUA: [13:00:39](Interpretation) Thank you very much.

4 Madam Prosecutor.

5 MS LUPING: [13:00:41] Thank you, Mr President. I see that the time is 1 o'clock.

6 I can simply return to this question after the break. It may be a reasonably lengthy
7 response.

8 PRESIDING JUDGE MINDUA: [13:00:58](Interpretation) That is correct, Madam
9 Prosecutor.

10 So it is now 1 o'clock and we will suspend for the lunch break and we shall resume
11 at 2.30.

12 The hearing is suspended.

13 THE COURT USHER: [13:01:14] All rise.

14 (Recess taken at 1.01 p.m.)

15 (Upon resuming in open session at 2.35 p.m.)

16 THE COURT USHER: [14:35:42] All rise.

17 Please be seated.

18 PRESIDING JUDGE MINDUA: [14:36:08](Interpretation) Court is in session.

19 So it would seem that we do not have a French transcript, but we do have an English
20 transcript. So we shall continue with the hearing in order not to lose any more time.

21 I note that the courtroom officer gentleman has left and we now have a lady
22 courtroom officer with us this afternoon.

23 So, Madam Prosecutor, over to you for the continuation of your examination-in-chief.

24 Ms Taylor, I can see you're on your feet. Ms Taylor.

25 MS TAYLOR: [14:37:04] Yes. Just briefly, Mr President, because I believe both the

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1 Prosecution and the Defence have raised issues concerning translation over the break,
2 and we also used the opportunity to -- to speak to our client concerning certain
3 Songhai words. And as we discussed during the break, there seemed to be
4 discrepancy between the French and the English transcript. And we understand that
5 the witness said in Songhai "*ahar aimahar*", which is A-H-A-R, A-I-M-A-H-A-R, two
6 separate words. So perhaps if the interpreters could verify what the means so that
7 we have clarity, as we understand that there is a difference.

8 PRESIDING JUDGE MINDUA: [14:37:59](Interpretation) So, Madam Prosecutor,
9 please.

10 MS LUPING: [14:38:01] Yes.

11 Q. [14:38:06] Mr Witness, now what we have recorded in the French transcript
12 before the break, at page 51, lines 12 to 13, it is stated that -- there's a reference to the
13 verb "*il ... instruit de chasser un vieux qui était assis*".

14 Mr President, I'm not hearing any interpretation at all.

15 PRESIDING JUDGE MINDUA: [14:39:01](Interpretation) Do you mean
16 interpretation into English or interpretation into Songhai?

17 MS LUPING: [14:39:07] At the moment I'm on the English channel, but I'm not
18 hearing any interpretation. I'm not sure if the witness has had any interpretation.

19 Q. [14:39:22] Mr Witness, are you getting any interpretation?

20 A. [14:39:37] Yes, I can hear you.

21 Q. [14:39:39] All right.

22 PRESIDING JUDGE MINDUA: [14:39:42](Interpretation) For the time being, we
23 have the transcript in French and the witness can hear the interpretation into Songhai.

24 Ms Taylor.

25 MS TAYLOR: [14:39:51] Mr President, rather than asking the witness to choose

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1 between different versions, which might be incorrect, we respectfully suggest that the
2 most appropriate approach would be to ask the witness to specify the words he used
3 and for the Songhai interpreters to translate them. Otherwise, it's a risk of just
4 repeating an incorrect information.

5 PRESIDING JUDGE MINDUA: [14:40:14](Interpretation) Madam Prosecutor,
6 I believe that the solution put forward by the Defence is the correct one. Please put
7 the question once again to the witness.

8 MS LUPING: [14:40:30] Yes -- Yes, Mr President. What I was intending to do is to
9 provide him a context by simply reading what I have in the transcript and asking him
10 to confirm whether that is what he said.

11 Q. [14:40:48] Now, Mr Witness, I refer again at page 51, lines 12 to 13. And you
12 were talking about Mr Al Hassan, and you stated in French -- actually, if I could move
13 to private session just to ask that because, otherwise, it's identifying.

14 PRESIDING JUDGE MINDUA: [14:41:17](Interpretation) Madam Courtroom Officer,
15 could we move into private session, please.

16 Ms Taylor, we are moving forward here. I believe this is the best solution. We
17 can -- Madam Prosecutor is going to read what is in the transcript and the witness
18 would -- is going to say what he thinks. Is that not a good solution for, Ms Taylor?

19 MS TAYLOR: [14:41:36] Mr President, I had understood that you upheld our
20 objection, so I'm not sure why we're going against that.

21 Now, what we had proposed and what you had accepted was that the Prosecution
22 should just ask the witness what words he used, rather than asking him to choose
23 between the versions which might be correct.

24 Now, we've read out the Songhai words. He can -- it's equally -- rather than putting
25 a French version to him, we could also put the Songhai and ask him is that the words

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1 he used. But, otherwise, it's effectively leading the witness. And, yes, that was on
2 the record.

3 (Private session at 2.42 p.m.)

4 THE COURT OFFICER: [14:42:21] We are in private session, Mr President.

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- 17 (Open session at 2.49 p.m.)
- 18 THE COURT OFFICER: [14:49:01] We are back in open session, Mr President.
- 19 PRESIDING JUDGE MINDUA: [14:49:14](Interpretation) Thank you very much,
- 20 Madam Courtroom Officer.
- 21 Madam Prosecutor.
- 22 MS LUPING: [14:49:19] Yes, thank you.
- 23 Q. [14:49:21] Now, Mr Witness, you said that the old man was told to leave, and
- 24 I'm going to quote in French at page 59, line 13: (Interpretation) "Because at that
- 25 moment it was they who had the power." (Speaks English) End of quote.

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1 Who -- who is "they" that you're referring to?

2 A. [14:49:46] Asking me who did not know what the organisation was there. They
3 were the ones who were following everything. So how can a question like that be
4 put to me again? Because it was the organisation that had the power at that time.

5 Q. [14:50:53] And, Mr Witness, at page 61, line 24, this time of the English
6 transcript, it's recorded that you stated, "The gentleman also told me he was a spy."

7 And we don't seem to have this in the French transcript. Who was said to be a spy?

8 A. [14:51:45] The old man. The old man said that he was a spy because he was
9 sitting there the whole time facing the situation.

10 Q. [14:52:03] Again, I'm not sure if it's an interpretation problem. But you stated
11 in French and in English, I'll read the French at page 60, line 17: (Interpretation) "It
12 was the old man, the old man who said that he was a spy."

13 (Speaks English) Who is said to have been the spy?

14 A. [14:52:46] The old man, the old man who Hassan said that he didn't want to see
15 there because he says that he's a spy.

16 Q. [14:53:26] And when you said, "he said that he's a spy," was it Al Hassan who
17 said that he is a spy?

18 A. [14:53:58] Yes.

19 Q. [14:54:02] Now, Mr Witness, I'm changing topics now. And I'm going to refer
20 to -- it's the French transcript at page 16 from lines 6 to 12 after I had asked you what
21 was the work of the police. And you stated, and I quote: (Interpretation) "Well, it
22 especially took care of everything that the Sharia had prohibited and everything that
23 religion had forbidden, namely, the" --

24 THE INTERPRETER: [14:54:48] Unintelligible. I'm sorry. The interpreter doesn't
25 know what that means.

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1 MS LUPING: [14:54:58] *Des habits courts.*

2 THE INTERPRETER: Could it be spelt to us, please.

3 MS LUPING: [14:55:05] D-E-S, *habits*, H-A-B-I-T-S, *courts*, C-O-U-R-T-S.

4 (Interpretation) -- "short clothes. Women should not go out without being entirely
5 covered -- (Overlapping speakers)(Speaks English) alcohol, sorry, "*d'accord*" it says
6 here (Interpretation) "cigarettes, and men should wear short trousers. And men
7 should not speak to women in the street as well."

8 Q. [14:55:47] Now, Mr Witness, in relation to all these prohibitions that you have
9 described --

10 A. [14:57:08] Yes, all of that is true.

11 Q. [14:57:13] Now, for my question. You describe these as different prohibitions.
12 Do you know if anybody was punished for violation of any of these rules?

13 A. [14:58:03] Yes. That did happen, but we don't know the names of those people
14 who were the victims. They were taken to those places where they were flogged,
15 and then they were released. There were many of them.

16 Q. [14:58:25] Now, I'm still talking about the work of the police at the BMS, the
17 ones that -- when they were based at the BMS.

18 My question is this: Did you ever see when Al Hassan was still at the BMS anybody
19 being punished for violating any of these rules?

20 A. [14:59:08] Yes. I did see some cases of people being flogged in the market. I
21 didn't really go, but I saw videos with people.

22 Q. [15:00:41] And, first of all, just focussing now on women who you said had to be
23 completely covered, did you ever learn of women being punished for that? For not
24 properly being covered.

25 A. [15:02:03] Yes. There are lots of examples where women were flogged for that.

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1 They are so numerous. I don't know their names. But this is something that was
2 done until dusk. And it was so frequent. It became something that was normal.
3 In the end, you weren't even paying any attention to it.

4 Q. [15:02:38] Now, Mr Witness, when you said, and I quote, (Interpretation) "There
5 are numerous of the women who are whipped for that or flogged for that",
6 (Speaks English) can you explain where -- so, first of all, whether you saw any of
7 these instances yourself with your own eyes.

8 A. [15:03:59] Yes. There were a lot, but I didn't see it myself. But when it
9 happened in town, people would talk about it. And often passing by, they said that
10 they've taken this person or that happened. That's how it was.

11 Q. [15:04:25] Now, when you said that women were flogged for that, my first
12 question is: Do you know if women were arrested for that?

13 A. [15:05:35] Yes. It's for that reason. Once women who didn't cover themselves
14 or wear a veil, they were the ones who would be arrested.

15 Q. [15:05:50] And these women who were arrested who were arrested for not
16 covering themselves or for not wearing the veil, do you know where they were held
17 after being arrested?

18 A. [15:06:34] They were taken to the ATM.

19 Q. [15:06:44] And they were taken to the *guichet automatique* at what bank?

20 A. [15:06:59] BMS.

21 MS LUPING: [15:07:15] Mr President, could I please briefly go into private session.

22 PRESIDING JUDGE MINDUA: [15:07:22](Interpretation) Court officer, private
23 session, please.

24 (Private session at 3.07 p.m.)

25 THE COURT OFFICER: [15:07:34] We are in private session, Mr President.

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15 (Open session at 3.18 p.m.)

16 THE COURT OFFICER: [15:18:18] We are back in open session, Mr President.

17 PRESIDING JUDGE MINDUA: [15:18:23](Interpretation) Thank you very much,
18 court officer.

19 Madam Prosecutor.

20 MS LUPING: [15:18:26] Yes, Mr President.

21 Q. [15:18:33] Mr Witness, we were still talking about the time, it was the time of
22 Al Hassan, and you spoke of cases of women who were whipped that you saw with
23 your own eyes.

24 Now, you stated, (Interpretation) "They flogged them." (Speaks English) My question
25 is this --

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1 PRESIDING JUDGE MINDUA: [15:18:59](Interpretation) Ms Taylor.

2 MS TAYLOR: [15:19:00] Thank you, Mr President. The decision on the conduct of
3 proceedings is clear that the parties questioning a witness should avoid summarising
4 the witness's testimony. Now that's being occurring several times. There's been
5 various instances where it hasn't been accurate, as was the last instance. We would
6 respectfully request again that the Prosecutor should avoid this constant
7 summarisation and just put open questions to this witness.

8 PRESIDING JUDGE MINDUA: [15:19:36](Interpretation) Ms Taylor, you're right.
9 The Chamber has already said that the party putting the questions must not
10 summarise. But I don't know if the Prosecutor is summarising. Perhaps she's
11 repeating what was on the transcript.

12 Madam Prosecutor, please go ahead.

13 MS LUPING: [15:19:55] Mr President, I don't mind quoting the precise words again
14 and to then follow up with my follow-up question. And it's at page 64, lines 8 to 9:
15 (Interpretation) "I saw cases during the time of Al Hassan."
16 (Speaks English) And I'll also be asking separate questions relating to the other
17 individual mentioned there.

18 And then the witness stated: (Interpretation) "Yes. All the women who they took, it
19 was there in front of the BMS that they flogged them. And their parents came with
20 veils with which they covered them."

21 Q. [15:21:00] Now, my first question is this, Mr Witness: When you said that
22 "they flogged them", who is "they"? Who are you referring to?

23 A. [15:21:57] If they were flogged, every office knew who their chief was. And if
24 the chief gives an order, that is the chief who gives the order, if somebody is flogged.
25 Everybody knows who is giving the order. That is the chief.

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1 Q. [15:22:22] And in these cases, who is the chief that you are talking about?

2 A. [15:22:42] The chief who was it given to at -- who was the time-- the men
3 couldn't leave without the orders of the chief, but Al Hassan was the chief or head at
4 the time.

5 Q. [15:23:09] And, again, at -- again, at page 67, lines 3 to 5, you stated:
6 (Interpretation) "After that, that was done towards twilight. Afterwards, they would
7 be given a paper by way of warning. That is what happened to us or what came to
8 us."

9 (Speaks English) Now, who is it that gave the warning paper or notice of warning?

10 A. [15:24:47] Yes. We didn't know what was happening or who did what. But if
11 somebody left with a paper, they said it was the Islamists who had given it to them.
12 And we know that each office has a head or a chief. And at that time we knew that
13 the person -- we knew who the person was who was leading it or heading it at the
14 time.

15 Q. [15:25:15] Now, Mr Witness, again, returning to page 64, from lines 5 to 7 of the
16 French transcript, my question was interpreted as follows, and then I'll give you your
17 response: (Interpretation) "Did you see with your own eyes one of these women
18 who was taken to the BMS ATM?"

19 (Overlapping speakers) (Speaks English) You responded, and that's at lines 8 to 9.

20 I'm going to read the part where you stated: (Interpretation) "I saw cases in the time
21 of Al Hassan."

22 (Speaks English) As I said, I'm going to be asking questions about the individual later.

23 My question is this: Women who were brought to the *guichet automatique* of the BMS
24 at the time of Al Hassan, did you see this with your own eyes, these people being
25 brought to the *guichet automatique*?

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1 A. [15:27:58] When you have a situation, we don't pay too much attention to it, but
2 the only woman who was taken and who was taken to the ATM, you could see that
3 they went to eat the next day. And you saw his sisters go the next day and she had
4 gone to eat the next day. This woman had been caught with a man.

5 Q. [15:28:38] And this woman that you're talking about, what was her name, if --
6 do you -- do you remember it?

7 A. [15:29:26] Yes. I don't remember her name, but I do know that she was flogged
8 next to the mosque of Sankore. And the man fled, but she was kept at the ATM.
9 And that -- she was kept there for several days. And afterwards, in the main prison.

10 Q. [15:30:02] Now, when you said that (Interpretation) "and this woman was
11 caught with a man", (Speaks English) what do you mean by that?

12 A. [15:30:58] The woman was caught with a man who was married, even though
13 she wasn't married. When they caught her, the man got on his motorbike and fled.
14 And the next day, we saw the woman at the ATM.

15 Q. [15:31:22] And did you see her with your own eyes?

16 A. [15:31:54] Yes, we all saw the woman. We all saw her. The man, however, he
17 preferred to leave and he left towards the south -- towards the east. He fled towards
18 the east. But we all went to see the woman.

19 Q. [15:32:18] Now, Mr Witness, I want to return to examples of cases at the time of
20 Mr Al Hassan at the BMS.

21 Do you remember women being kept at the *automatique guichet* at the BMS at the time
22 of Al Hassan?

23 A. [15:33:44] Well, during the period, I don't know any more, because the truth be
24 told, we had lost our hope somewhat. They did bring people. They flogged them.

25 Q. [15:34:04] And, Mr Witness, still referring to women at the *guichet automatique* of

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1 the BMS, you also stated at page 64, lines 8 to 9: (Interpretation) "... in the time of
2 Mohamed Moussa."

3 (Speaks English) Now, you've already explained or described the *Hesbah* at the BMS.
4 Can you remember at the time of Mohamed Moussa women being kept at the BMS --
5 being detained, rather?

6 A. [15:36:18] Yes. Men and women, of course. Even children. Children.

7 Q. [15:36:33] And, Mr Witness, you have your hand up. Did you have a question
8 to ask?

9 A. [15:36:47] Yes. I just wanted to clarify something in this regard about
10 Mohamed Moussa -- Hamed Moussa. I'm talking -- when I speak about children, I'm
11 talking about my apprentices.

12 MS LUPING: [15:37:28] Mr President, could we briefly go into private session.

13 PRESIDING JUDGE MINDUA: [15:37:36](Interpretation) Madam courtroom officer.
14 (Private session at 3.37 p.m.)

15 THE COURT OFFICER: [15:37:46] We are in private session, Mr President.

16 (Redacted)

17 (Redacted)

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11 (Open session at 3.41 p.m.)

12 THE COURT OFFICER: [15:41:17] We are back in open session, Mr President.

13 PRESIDING JUDGE MINDUA: [15:41:23](Interpretation) Thank you very much.

14 Madam Prosecutor.

15 MS LUPING: [15:41:25]

16 Q. [15:41:28] Mr Witness, you have given us the names of two people and you said
17 one of them fled and the other one was arrested. Without repeating their names,
18 could you explain why one of them was arrested?

19 A. [15:42:19] Yes.

20 Q. [15:42:28] Please go ahead.

21 A. [15:43:16] Yes. At the time of afternoon prayer, Hamed Moussa told them to
22 pray, even if they had prayed previously. And then they fled and during their flight
23 the telephone fell to the ground. They took that telephone, that's the telephone that
24 I had bought for them and that's what I used to call them when I am not on location.

25 Q. [15:43:48] And to the best of your knowledge, Mr Witness, why did they flee

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1 when they were asked to pray again?

2 A. [15:44:34] It is because he made them pray and they had already prayed. The
3 afternoon and evening prayer, he told them that he had -- they had to do it again. So
4 that's why they fled. And it is until the next day that the case once again surfaced.

5 Q. [15:45:12] And what do you mean by that, that the next day the case resurfaced?

6 A. [15:46:14] Yes. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 THE INTERPRETER: [15:46:47] The Songhai interpreter has not finished his
12 sentence.

13 MS LUPING: [15:47:29] This is just a question for the Songhai interpreter, we
14 understand that you have not finished interpretation. Is there more that you need to
15 interpret and that can be captured by the French and English interpreters, please?

16 THE INTERPRETER: [15:47:50] The Songhai interpreter: Well, we stopped exactly
17 where the witness stopped himself, so maybe he should be asked to continue.

18 MS LUPING: [15:48:06]

19 Q. [15:48:08] Now, Mr Witness, you said that one of these individuals was arrested.
20 Why was he arrested?

21 A. [15:48:27] Yes. Well, as I told you, we were sitting down. We didn't know
22 anything. And when he asked the other one to go and get his telephone for him, he
23 came back, that's the reason why, to ask for his telephone. And he even said the
24 telephone didn't belong to him. But that's when they took him and they locked him
25 up.

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1 Q. [15:49:17] And do you know why did they arrest him and lock him up?

2 A. [15:50:08] It's all about the telephone, that's why he was arrested. They looked
3 on the telephone. They saw images, bad images and they found music. And that is
4 why they arrested him. They said that the telephone is not for him and they said
5 that the person who the telephone belongs to should come. And he said that that
6 person had gone to Rondoubomo (phon).

7 Q. [15:50:47] Now, when you said they found music, what kind of music was it that
8 was on the phone?

9 A. [15:51:07] This was varied mixtures of music and X.

10 THE INTERPRETER: [15:51:26] Says the witness.

11 MS LUPING: [15:51:30]

12 Q. [15:51:32] Mr Witness, did you say, "and X"?

13 A. [15:51:49] Yes. This was music and pornography. And when I went to beg
14 him, Hamed Moussa showed me, opened the telephone and showed me. And even
15 other people whom I brought to beg him, he also showed them the images and said
16 that this is *haram*.

17 Q. [15:52:46] And the person who was arrested, do you know if he was punished?

18 A. [15:53:39] Yes, it was you -- well, I was explaining this to you and you cut me
19 short. I intervened. I went to the *Gouvernorat*. (Redacted)
20 (Redacted) and the images were shown to him. Everyone I took there to intervene
21 had the images shown to them.

22 Q. [15:54:08] Mr Witness, I just asked you to pause for the interpreters. Was there
23 anything else you wanted to add before I move to a different topic?

24 A. [15:54:37] Yes, the liberation of the child is not yet over.

25 Q. [15:54:44] Please explain.

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1 A. [15:54:56] That was when I took Abou Dzar. Abou Dzar saw the images and he
2 left. He left me there and that's when Talha came and asked Hamed Moussa to pray
3 at dusk. And Issa (phon) -- Hamed Moussa went around the market in order to
4 incite people to come and pray.

5 Q. [15:56:12] Mr Witness, I'd ask you to pause. Could you continue in your
6 explanation?

7 Do you know if the person who was arrested, was he punished? Did he have any
8 punishment?

9 PRESIDING JUDGE MINDUA: [15:57:02](Interpretation) Ms Taylor.

10 MS TAYLOR: [15:57:03] Mr President, we've had this exact question.

11 PRESIDING JUDGE MINDUA: [15:57:22](Interpretation) Ms Taylor, do you have
12 the reference?

13 MS TAYLOR: [15:57:25] I've got it page 79.

14 MS LUPING: [15:57:34] I can give the reference, Mr President. I have the reference.
15 Indeed the question has been asked, but not answered. The reference is at page 75,
16 line 28, page 76. I indeed asked the question, but as the Chamber can see from the
17 response that followed, there was no response to that question, which is why I'm
18 repeating the question. There was no response.

19 PRESIDING JUDGE MINDUA: [15:58:04](Interpretation) Ms Taylor.

20 MS TAYLOR: [15:58:05] Mr President, if the sound can be cut off just briefly.

21 PRESIDING JUDGE MINDUA: [15:58:16](Interpretation) Madam Courtroom Officer,
22 could you please cut off the feed to the witness.

23 THE COURT OFFICER: [15:58:29] Mr President, the sound has been cut.

24 PRESIDING JUDGE MINDUA: [15:58:35](Interpretation) Thank you very much.

25 Ms Taylor.

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1 MS TAYLOR: [15:58:37] Thank you, Mr President. The witness has proceeded by
2 providing a very full fulsome account of what happened. Now, for the Prosecutor to
3 specify that he hasn't answered the specific question as to whether the person was
4 punished presupposes that there was a specific type of the punishment that hasn't
5 been recounted. So our concern is that by repeating this question it's leading.
6 We've had a full account. The witness has been given multiple opportunities to
7 elaborate on this account, and we do think it's problematic with this witness to pose
8 questions multiple times with a view to getting specific answers. The Prosecution
9 has acknowledged it was asked and there has been an answer. It might not be the
10 answer they like, but it has been responded to.

11 PRESIDING JUDGE MINDUA: [15:59:41](Interpretation) Madam Prosecutor, one
12 last time.

13 MS LUPING: [15:59:43] Mr President, I'm looking at the response. The response
14 talks about how images were shown and interventions being made. At this stage,
15 there is no clear response to a specific question as to whether there was any
16 punishment. That's all I'm seeking to do, Mr President. I don't see how that is
17 leading in any way.

18 PRESIDING JUDGE MINDUA: [16:00:12](Interpretation) Indeed. To this question,
19 Ms Taylor didn't have a precise answer.
20 Now, please put the question quickly to the witness and then we shall finish.
21 Court officer, if you could re-establish the link again.

22 THE COURT OFFICER: [16:00:37] Mr President, the audio has been re-established.

23 PRESIDING JUDGE MINDUA: [16:00:42](Interpretation) Thank you very much,
24 court officer.

25 Madam Prosecutor.

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1 MS LUPING: [16:00:48] Thank you, Mr President.

2 Q. [16:00:49] Mr Witness, I'm now focussing on the person who you said was
3 arrested. To the best of your knowledge, do you know if he was punished?

4 A. [16:01:38] They flogged him towards dusk and then they left him after prayer.

5 Q. [16:01:44] And when you say "they flogged him", who flogged him?

6 A. [16:02:03] Hamed Moussa asked the officers to flog them. He even said that
7 they hadn't done it hard enough, they hadn't done it well.

8 Q. [16:02:30] And did you hear this with your own ears?

9 A. [16:02:50] Yes (Redacted). You have to let me finish

10 and -- with the story. (Redacted). And (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted). Brought every type of person you could imagine.

17 After the prayer at dusk, I came back again and I asked him to check through the
18 computer and have a look and to see the pictures, and there are two pictures of the
19 children and I'm the one who bought them.

20 And I said to search for it and I bought the phone just to be able to be in contact with
21 them, but they're the ones who modified it to do what they wanted to do. And that's
22 how they took the card out of it and he hid it on his computer -- or he put it in his
23 computer and then you saw the photos.

24 And then he said, "Very well, I'm going to leave you," and that's when he took them
25 outside and he said that they had to be flogged and he said that they hadn't flogged

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1 them enough.

2 And also wanting to destroy the part with the memory card, he put the wrong part
3 with the SIM. He got it mixed up with the -- the SIM card. Then he gave him the
4 telephone. That's where everything stopped. He gave him the telephone.

5 Q. [16:06:50] Thank you, Mr Witness. I have finished for today. I will have more
6 questions for you tomorrow.

7 MS LUPING: Thank you, Mr President, your Honours, for your indulgence in
8 allowing us to continue for this additional time.

9 PRESIDING JUDGE MINDUA: [16:07:06](Interpretation) Indeed, Madam
10 Prosecutor, because it's 4:06 now.
11 Ms Taylor.

12 MS TAYLOR: [16:07:11] Thank you, Mr President.
13 Just briefly, we've seen the email from the Chamber. And with the permission of the
14 Chamber, if my co-counsel, Ms Sutherland, could address the Bench tomorrow
15 morning at the start of the session?

16 PRESIDING JUDGE MINDUA: [16:07:28](Interpretation) Thank you very much,
17 Ms Taylor. She can come tomorrow morning at the start of the hearing.

18 MS TAYLOR: [16:07:34] Thank you very much.
19 And just a very quick request, because I note that we've treaded onto territory that's
20 covered by redactions, so just to alert the Chamber that we'll be submitting a request
21 to the Prosecutor given that the exact testimony we've just heard is redacted from the
22 version that we have, or there are elements that are redacted. Thank you.

23 PRESIDING JUDGE MINDUA: [16:08:02](Interpretation) Indeed, Ms Taylor.
24 I now turn towards the witness.

25 Witness, it's now 6:08 (sic). We have gone over our time. We're therefore coming to

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1 the end of our hearing today, but you will have understood that we haven't finished
2 with your testimony. Tomorrow morning, therefore, at 9.30, you will continue with
3 your testimony. Until then, please do not forget that you are prohibited from
4 speaking about your testimony with anyone, neither with members of your family,
5 nor with friends, should you be in contact with any of them this evening.

6 On behalf of the judges in the Chamber, I would like to thank you very sincerely for
7 having answered the questions in a clear way and patiently. I, therefore, wish you a
8 good rest. And see you tomorrow.

9 Before finishing the session, I would like, as usual, to thank most sincerely all the
10 parties and participants. I would like to thank also the court reporters and the
11 interpreters. I do not forget our security guards. And of course I would like to
12 thank our public in the gallery and our public following us from afar. I wish you all
13 a very good evening. And until 9.30 tomorrow morning.

14 Court is adjourned.

15 THE COURT USHER: [16:11:09] All rise.

16 (The hearing ends in open session at 4.11 p.m.)