

Trial Hearing
WITNESS: MLI-OTP-P-0065

(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 1
9 Thursday, 19 November 2020
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:14] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:32:42](Interpretation) Court is in session.
15 Good morning to everybody.
16 Court officer, please call the case.
17 THE COURT OFFICER: [9:32:55] (Interpretation) Good morning, your Honour.
18 The situation in Mali, in the case of The Prosecutor versus Al Hassan Ag Abdoul Aziz
19 Ag Mohamed Ag Mahmoud, ICC-01/12-01/18.
20 And we are in open session.
21 PRESIDING JUDGE MINDUA: [9:33:09](Interpretation) Thank you very much.
22 For the transcript, we are going to now have the appearances; starting with the
23 Office of the Prosecutor.
24 MR DUTERTRE: [9:33:20](Interpretation) Good morning, your Honour, your
25 Honours. Good morning, Witness. Good morning, everyone.

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1 The Prosecution is still represented by Madam Coquillaud, Mr Garcia and myself,
2 Gilles Dutertre. Thank you.

3 PRESIDING JUDGE MINDUA: [9:33:41](Interpretation) Thank you, Prosecutor. I
4 now turn to the Defence.

5 Ms Taylor.

6 MS TAYLOR: [9:33:46] Good morning, Mr President. Good morning, your
7 Honours. The Defence for Mr Al Hassan is represented today by
8 Ms Kirsty Sutherland, Ms Dolly Chahla, Ms Molly Thomas, and myself,
9 Melinda Taylor.

10 And again for the record, Mr Al Hassan is participating from the detention unit.
11 Thank you.

12 PRESIDING JUDGE MINDUA: [9:34:09](Interpretation) Thank you very much,
13 Ms Taylor.

14 It's now the turn of the Legal Representatives of Victims.

15 MR LUVENGIKA: [9:34:20] (Interpretation) Good morning, your Honour. First of
16 all, I would like to thank the Chamber for ensuring that the victims are represented in
17 the courtroom this morning. The Legal Representatives of Victims are composed
18 this morning of Madam Claire Laplace and myself, Fidel Nsita Luvengika. Thank
19 you.

20 PRESIDING JUDGE MINDUA: [9:34:44](Interpretation) Thank you, Maître Nsita.
21 Today, we are going to continue with the testimony of the 16th Prosecution witness,
22 P-0065.

23 Good morning, Witness. Can you hear me?

24 WITNESS: MLI-OTP-P-0065 (On former oath)

25 (The witness speaks Arabic)

- 1 THE WITNESS: [9:35:12](Interpretation) Good morning. Yes, very clearly.
- 2 PRESIDING JUDGE MINDUA: [9:35:15](Interpretation) Thank you, Witness.
- 3 I would like to thank you once again for your patience and I would like to welcome
- 4 you again, and, I would like to remind you, of course, that you are still under oath.
- 5 You should therefore tell the truth, the whole truth and nothing but the truth.
- 6 I would like to remind you of my instructions as regards taking the floor.
- 7 That's it.
- 8 Ms Taylor, you have the floor to continue with your cross-examination.
- 9 QUESTIONED BY MS TAYLOR: (Continuing)
- 10 Q. [9:36:01] Good morning, Mr Witness.
- 11 A. [9:36:05] Good morning.
- 12 Q. [9:36:06] How are you this morning?
- 13 A. [9:36:10] I'm very well.
- 14 Q. [9:36:23] I'm just waiting, sorry, for the transcript so I can see it.
- 15 Now, yesterday I showed you various images. I have some follow-up questions.
- 16 Mr Witness, do you think I can put those follow-up questions to you in open session?
- 17 A. [9:36:41] Yes.
- 18 Q. [9:36:43] Now, yesterday I showed you several images of a person in a black
- 19 turban and none of these images will be shown to the public gallery. The first image
- 20 was tab 238 of the Prosecution's list at MLI-OTP-0018-0737 and there was an image
- 21 showing the 15.16 mark. If we bring that up on evidence 2, you can see that the face
- 22 of the person is partially covered by a turban, that's correct?
- 23 A. [9:37:35] Yes.
- 24 Q. [9:37:38] And the second image I showed you was tab 136, that was MLI -- on
- 25 the Defence list, MLI-D28-004-3448, and it was at the nine-second mark of video

1 MLI-OTP-0018-0742.

2 And the face in this image of the person with the black turban is half obscured,
3 isn't it?

4 A. [9:38:21] Yes.

5 Q. [9:38:22] Now, the third image I showed you was tab 139 on the Defence binder,
6 that was MLI-D28-004-3451 at the 22-second mark.

7 A. [9:38:44] (Overlapping speakers)

8 Q. [9:38:45] And it's correct, isn't it, that --

9 A. [9:38:47] Yes.

10 Q. [9:38:48] -- that in this image, the face of the person is less covered?

11 A. [9:38:56] (Overlapping speakers)

12 Q. [9:38:58] And yesterday --

13 A. [9:38:58] Yes.

14 Q. [9:38:59] Yesterday, in the real-time transcript at T-48, page 89, lines 12 to 13,
15 after seeing this, you said:

16 I'm not a hundred per cent certain. In -- in this photo I'm not sure.

17 That's correct?

18 A. [9:39:19] Yes. That's what I said yesterday. But today I'm certain.

19 Q. [9:39:23] (Overlapping speakers) Mr Witness, you're certain of --

20 A. [9:39:26] I'm certain of knowing the photo a hundred per cent.

21 Q. [9:39:34] When you say you know the photo, Mr Witness, under oath, can you
22 say that you're a hundred per cent certain that that's Khalid?

23 A. [9:39:48] Yes. A hundred. Even 200 per cent. And I can clarify that in
24 private session, if you wish to have more clarifications as to the reasons why I can be
25 100 per cent sure that this is Khalid.

1 Q. [9:40:07] Now Mr Witness, before doing so, I'd like to show you another image.

2 It's from --

3 MR DUTERTRE: [9:40:15](Interpretation) Your Honour, I think the witness must be
4 allowed to express himself with regards to this question. Ms Taylor has put the
5 question, the witness has said he can give more information with regards to this
6 photograph; so I think it would be appropriate to give him the possibility to fairly let
7 him say what he has to say.

8 PRESIDING JUDGE MINDUA: [9:40:40](Interpretation) Prosecutor, there, I think,
9 you are carrying out the cross-examination there because the question was whether
10 the witness recognised the person. He says yes, and I think it stops there.
11 Please continue, Ms Taylor.

12 MS TAYLOR: [9:40:53] Thank you, Mr President.

13 Q. [9:40:55] Can I show you an image from a video that was shown to you at
14 transcript 38, page 29, line 6. This was tab 28 of the Prosecution's binder, that's
15 MLI-OTP-0018-0014. And if we could stop it at the mark of 27:04.

16 A. [9:41:35] Yes.

17 Q. [9:41:37] And during your testimony, when this image was shown to you, you
18 identified this person as Khalid, that's correct?

19 A. [9:41:54] (Overlapping speakers)

20 Q. [9:41:55] Now --

21 A. [9:41:55] Yes.

22 Q. [9:41:56] -- and in this image, the person is wearing the Islamic police vest?

23 A. [9:42:08] Yes, I think so.

24 Q. [9:42:11] Now I'd like you to look very carefully at the face.

25 A. [9:42:27] The photo isn't a very good quality or a quality enough to make -- for

1 me to be able to make out the features of the face. Other photographs of better
2 quality would make you think that it is that person, but you can't be a hundred
3 per cent sure in this case. And that's another detail that I could also comment on
4 when we are in private session.

5 Q. [9:42:59] Well, Mr Witness, we have a better quality version of this picture,
6 which we can show to you.

7 A. [9:43:12] There's another thing as well, which would require a private session in
8 order for the explanation, and this concerns the same picture, even if the quality is
9 better. So in order to give my position on this photograph, I -- in order to explain my
10 position, I would need to be in private session.

11 Q. [9:43:40] Certainly, Mr Witness, but I'd like to show you the photograph first,
12 the higher-quality one, and we can do so in private session, if the Presiding Judge
13 authorises us.

14 MS TAYLOR: [9:43:47] But that means I can no longer continue questioning him in
15 open session.

16 And I don't see any basis for the Prosecutor to be standing up.

17 PRESIDING JUDGE MINDUA: [9:44:08](Interpretation) No, Ms Taylor, it's not up to
18 you judge why the Prosecutor is standing up.

19 Prosecutor.

20 MR DUTERTRE: [9:44:16](Interpretation) Yes, your Honour, it's now the second
21 time that the witness has indicated that he wants to give an explanation in closed
22 session. The first time when he was shown the picture of -- from the video and, now,
23 on this video. So I think it would be appropriate if he could give all useful
24 explanations, which would also shed light on matters for the Defence itself.

25 PRESIDING JUDGE MINDUA: [9:44:48](Interpretation) Prosecutor, thank you. It's

1 the second time that the witness has asked for a private session. This time he was
2 supported by the Defence and I was about to order private session before you
3 intervened. So please try to be a bit patient in future.

4 Court officer, please could you take us into private session.

5 (Private session at 9.45 a.m.)

6 THE COURT OFFICER: [9:45:19] (Interpretation) We're in private session,
7 your Honour.

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18 (Open session at 10.08 a.m.)
19 THE COURT OFFICER: [10:08:47] (No Interpretation)(Overlapping speakers)
20 PRESIDING JUDGE MINDUA: [10:08:52](Interpretation) Thank you, court officer.
21 Ms Taylor.
22 MS TAYLOR: [10:08:56] And the video is tab 196 on the Defence list. It's
23 MLI-D28-0004-3539, and there's a related report at tab 174 on the Defence list, being
24 MLI-D28-0004-3504. I'm going to play it without sound.
25 (Viewing of the video excerpt)

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1 MS TAYLOR: [10:11:11]

2 Q. [10:11:11] Mr Witness, are you familiar with the contents of this video?

3 A. [10:11:22] Yes, I recall that there was a video published by Al-Qaeda - and, it
4 was distributed over social media and all media - and it shows some of the executions
5 which took place in the north of Mali, execution of a priest. To have priests who
6 had -- sorry, it was executions of traitors. To have traitors who had dealt with the
7 secret services, the services of others.

8 Q. [10:12:16] I'm now going to play a particular segment of the video between the
9 05:00 mark and the 06:15 mark and I think we can play it without sound.

10 (Viewing of the video excerpt)

11 MS TAYLOR: [10:13:53] And if we could freeze at the 06:21 mark.

12 Q. [10:14:08] Mr Witness, is the person on the screen Housseyne Ould Badi?

13 A. [10:14:19] I can't confirm this, but what I can say is that when this video was
14 distributed, which showed the execution of these people, everybody was asking
15 themselves, Who are these people? We all looked into it to try and find out who it
16 was. Some information said that these people -- or one of these people had been
17 executed.

18 MS TAYLOR: [10:14:55] (Overlapping speakers) I might suggest we go into private
19 session.

20 PRESIDING JUDGE MINDUA: [10:15:00](Interpretation) Court officer, private
21 session, please.

22 (Private session at 10.15 a.m.)

23 THE COURT OFFICER: [10:15:16] (Interpretation) We are in private session.

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1 (Open session at 10.21 a.m.)

2 THE COURT OFFICER: [10:21:28] (Interpretation) We are back in public session,
3 your Honour.

4 PRESIDING JUDGE MINDUA: [10:21:31](Interpretation) Thank you very much.
5 Ms Taylor.

6 MS TAYLOR: [10:21:34]

7 Q. [10:21:35] Now, Mr Witness, the purpose of the "TRAITORS 2" video, based on
8 what you know regarding this group, was it to send a message as to what could
9 happen to anyone who fails to obey Al-Qaeda's rules?

10 A. [10:21:58] The aim of this video was intimidation - in all senses of the term - for
11 anyone who could be dealing with government or a foreign institution, an
12 organisation, a foreign military organisation or intelligence service. Since I come
13 from this region, I can say that this video achieved its objective. In fact, it went
14 beyond all expectations.

15 Q. [10:22:42] And the 2012 video I showed you just beforehand, that was a public
16 sanction of a member of Ansar Dine or Al-Qaeda, wasn't it?

17 A. [10:22:57] Yes.

18 Q. [10:22:58] And based on your knowledge, was the purpose of the sanction to
19 send a message to members of Ansar Dine as concerns what would happen if they
20 failed to obey the rules?

21 A. [10:23:16] Yes.

22 Q. [10:23:20] I'm going to show you - and this won't be broadcast to the public - a
23 still from the video, the 2012 video. It's tab 193, MLI-D28-004-3531.

24 Is this -- does this seem to be the video I showed you before?

25 A. [10:23:46] Yes, this is the same video.

1 Q. [10:23:55] And the person that you see to the left, can you see his right hand
2 clutching his tunic, like he's afraid?

3 MR DUTERTRE: [10:24:10](Interpretation) Your Honour.

4 PRESIDING JUDGE MINDUA: [10:24:11](Interpretation) Mr Prosecutor.

5 MR DUTERTRE: [10:24:13](Interpretation) This is really speculative, this question.
6 It's a good example of a speculative question.

7 PRESIDING JUDGE MINDUA: [10:24:21](Interpretation) Ms Taylor, that is
8 speculation.

9 MS TAYLOR: [10:24:24]

10 Q. [10:24:25] Mr Witness, can you see this person clutching his right -- his tunic
11 with his right hand?

12 A. [10:24:36] Yes.

13 Q. [10:24:38] If we can bring up tab 59 of the Prosecution's list, that's
14 MLI-OTP-0018-0147 at the 50-second mark and freeze it. So for the record, that's the
15 40-second mark.

16 Now the person in this frame, he has a pouch on his right, that's correct, not a
17 weapon?

18 A. [10:25:35] There is something on his right, I don't see a weapon. I don't know
19 what it is.

20 Q. [10:25:43] We can zoom in.
21 It's not a weapon, is it, though?

22 A. [10:26:05] I can't say what he's carrying exactly on his right.

23 Q. [10:26:13] But you can confirm, Mr Witness, that it's not a gun?

24 MR DUTERTRE: [10:26:20](Interpretation) Your Honour (Overlapping speakers)

25 PRESIDING JUDGE MINDUA: [10:26:25](Interpretation) Prosecutor, there's no

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1 point.

2 The witness has already answered this question twice, Ms Taylor. Please, proceed.

3 MS TAYLOR: [10:26:39] Yes, for the record, he said in the transcript, "... I don't see
4 a weapon." Lines 15 to 16.

5 PRESIDING JUDGE MINDUA: [10:26:56](Interpretation) Yes, and that's what he
6 said twice.

7 MS TAYLOR: [10:27:02]

8 Q. [10:27:03] Now, if I can go back to the first flogging incident in June 2012, and
9 I believe I'll have to ask some questions in private session.

10 PRESIDING JUDGE MINDUA: [10:27:23](Interpretation) Court officer, private
11 session, please.

12 (Private session at 10.27 a.m.)

13 THE COURT OFFICER: [10:27:32] (Interpretation) We are back in private session,
14 your Honour.

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8 (Open session at 10.37 a.m.)

9 THE COURT OFFICER: [10:37:13] (Interpretation) We're in open session, your
10 Honour.

11 PRESIDING JUDGE MINDUA: [10:37:24](Interpretation) Thank you very much.
12 Ms Taylor.

13 MS TAYLOR: [10:37:30]

14 Q. [10:37:33] Mr Witness, this is --

15 A. [10:37:35] (Overlapping speakers)

16 Q. [10:37:36] -- this is an article -- I'm afraid it's in English, but I can, if you prefer,
17 read it on to the record or read the relevant sections on to the record. It's a article
18 about the incident we were just referring to and it's describing the fact that when that
19 incident was first reported, various media organisations, including Malijet,
20 accompanied the story with a photograph that had been taken in Somalia, in
21 March 2010, showing someone being condemned to death by stoning.

22 And this story had been picked up by various organisations, until it was corrected.
23 Did you hear about this at the time? And we're in open session.

24 A. [10:38:51] Yes. What's certain is that *Malian websites are not professional.
25 What's also certain is that there are a lot of videos and photos from Nigeria and

1 Somalia of the Al-Shabaab Al-Mujahideen group and the Boko Haram group that
2 were published in Malian media and also in some international media under the
3 claim that they came from Timbuktu, which is baseless. There wasn't any stoning
4 *hadd* in Timbuktu in 2012.

5 MS TAYLOR: [10:39:41] I believe I'll need to go into private session to ask the
6 following questions.

7 PRESIDING JUDGE MINDUA: [10:39:49](Interpretation) Private session, please,
8 court officer.

9 (Private session at 10.40 a.m.)

10 THE COURT OFFICER: [10:40:02] (Interpretation) We're in private session, your
11 Honour.

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- 19 (Open session at 10.58 a.m.)
- 20 THE COURT OFFICER: [10:58:37] (Interpretation) We're in open session,
- 21 your Honour.
- 22 PRESIDING JUDGE MINDUA: [10:58:41](Interpretation) Thank you, thank you
- 23 very much, court officer.
- 24 Ms Taylor.
- 25 MS TAYLOR: [10:58:53] For the record, we're starting at the 4:22 mark and a person

1 is being identified with the mouse. This is the person that previously you
2 saw walking towards the van. We're going to play it in slow motion until the
3 6-second mark and then we'll play it until the end.

4 Q. So we're now playing in slow motion. Can you see the person I'm talking
5 about, Mr Witness?

6 A. [10:59:20] (Overlapping speakers)

7 Q. [10:59:21] We're going to play it in slow motion --

8 A. [10:59:21] Yes.

9 Q. [10:59:24] -- to the 6-second mark and then we'll play it until the end.

10 (Viewing of the video excerpt)

11 MS TAYLOR: [10:59:42] For the record, we're stopping at the 6:16 mark and then
12 we're now going to play it in slow motion until the end.

13 Q. [10:59:53] Is that clear, Mr Witness?

14 A. [10:59:57] Yes, it's very clear.

15 (Viewing of the video excerpt)

16 MS TAYLOR: [11:00:27]

17 Q. [11:00:28] Now, Mr Witness, could you see a woman walking towards the van?

18 A. [11:00:37] Yes.

19 Q. [11:00:40] And it's correct, Mr Witness, that you -- could you see the same
20 person that you saw with the mouse in the last part of the clip?

21 A. [11:01:01] No.

22 MS TAYLOR: [11:01:07] I have another video to show but I can do so either now or
23 after the break. I have basically one or two questions concerning this video which
24 can all be asked in open session.

25 PRESIDING JUDGE MINDUA: [11:01:29](Interpretation) You're going to show the

Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

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1 video now? Obviously it won't be shown to the public, but you will follow with
2 questions in open session.

3 MS TAYLOR: [11:01:39] Yes, and I think we can do so relatively briefly, just so that
4 I can continue the open session. Because my next series of questions will be in
5 private session.

6 PRESIDING JUDGE MINDUA: [11:01:52](Interpretation) Very well.
7 Please go ahead.

8 MS TAYLOR: [11:01:58] I'm going to play another video, it's MLI-OTP-0018-0280,
9 and I'll play it without sound from the beginning.

10 (Viewing of the video excerpt)

11 MS TAYLOR: [11:02:38]

12 Q. [11:02:39] In this video did you see the same white van, the ambulance?

13 A. [11:02:49] Yes.

14 Q. [11:02:51] And after the van drove off, could you see the person that we
15 identified with the mouse before?

16 A. [11:03:06] No.

17 MS TAYLOR: [11:03:08] I think now would be a good time for the break.

18 PRESIDING JUDGE MINDUA: [11:03:13](Interpretation) Very good.

19 We will now take our break and we will recommence at 11.30.

20 The hearing is suspended.

21 THE COURT USHER: [11:03:27] All rise.

22 (Recess taken at open session at 11.03 a.m.)

23 (Upon resuming in open session at 11.30 a.m.)

24 THE COURT USHER: [11:30:43] All rise.

25 Please be seated.

1 PRESIDING JUDGE MINDUA: [11:31:12](Interpretation) The Court is now in
2 session. We will continue with the Defence cross-examination.
3 Ms Taylor, you can see I've got my little Post-it Note here. I would like to remind
4 you that you have 1 hour and 26 minutes, so please make the appropriate
5 arrangements. The idea is to complete our dealings with this witness tomorrow.
6 He has been very patient with us and I think it is time to release him to his usual daily
7 business. Thank you.

8 Ms Taylor, you may proceed.

9 MS TAYLOR: [11:32:01] Thank you, Mr President. But I believe now would be the
10 time to make an oral application.

11 Now, we have heard several times from the Bench that the Defence will be given all
12 the time that it needs. We have been dealing with changed circumstances
13 throughout our cross-examination, that includes the issuance of an amendment to the
14 decision on the direction of the conduct of the proceedings that required us to read
15 out full paragraphs, an obligation that did not apply during the examination-in-chief.
16 We have had a different court schedule, in the sense that we've been required to sit
17 four-day hearings rather than three-day hearings. We've been asked repeatedly to
18 chop and change the structure of our cross-examination, to do things in open session
19 and closed session, which in itself impacts upon the time that we have. We've also
20 faced a barrage of objections from the Prosecution.

21 Now, given the importance of this witness and the importance of taking the time to
22 show video evidence to him, we do request that we have sufficient time to be able to
23 play that video evidence in order to get accurate answers from the witness.

24 Now, the Prosecution also has the advantage that they had significant amount of time
25 with the witness during the preparation session to go through issues and to draw the

1 witness's attention to relevant documents. In contrast, when we wish to show
2 documents to the witness, because they are Defence exhibits that are not given during
3 the preparation session, the witness requires time to read them.
4 So it's apples and oranges, Mr President. The Defence does have a right to have
5 sufficient time to present its case. And given the importance of this witness, we do
6 request that we be given sufficient time to do so, taking into account the
7 particularities of his testimony and the particular constraints under which we have
8 been working, including as well the difficulties we have faced in consulting with our
9 client at various junctures throughout the testimony of this witness.
10 So I'm hoping to conclude my section today. And I believe that Ms Sutherland has
11 one or two hours questioning, which we hope to reduce in consultation this evening.
12 PRESIDING JUDGE MINDUA: [11:34:51](Interpretation) Ms Taylor, I don't want to
13 debate this question now because that will consume even more time. I would like
14 you to send us something in writing today and the Prosecutor reply, if he wishes to
15 do so, and we will decide today or tomorrow.
16 But what I can say, there are some things that I can't let pass uncommented. You
17 talked about the fairness and equity of time. This is a live witness, this is not
18 paragraph 68(3), therefore the time has to be fair for both sides. And according to
19 the calculations that I have here on this little piece of paper, you have 1 hour
20 26 minutes, compared with the time allotted to the Prosecution. That's my first
21 point.
22 Further, your second point, I would like to know what the witness thinks about this.
23 He's been extremely patient. He's been here for days and days. So the Chamber
24 will also take account of that. We will deliberate on it and we will see, but for the
25 time being, please do your best.

1 Let us proceed.

2 MS TAYLOR: [11:36:26] Now, as presaged before the break, we'll need to go into
3 private session to address the next series of questions.

4 PRESIDING JUDGE MINDUA: [11:36:42](Interpretation) Court officer, private
5 session, please.

6 (Private session at 11.36 a.m.)

7 THE COURT OFFICER: [11:36:57](Interpretation) We are in private session,
8 your Honour.

9 (Redacted)

10 (Redacted)

11 (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

ICC-01/12-01/18

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7 (Open session at 12.32 p.m.)

8 THE COURT OFFICER: [12:32:20](Interpretation) We're in open session again,

9 your Honour.

10 PRESIDING JUDGE MINDUA: [12:32:24](Interpretation) Thank you very much,

11 court officer.

12 We are now going to interrupt the hearing for the lunch break and we will be back

13 at 13.30.

14 Court is suspended.

15 THE COURT USHER: [12:32:41] All rise.

16 (Recess taken at 12.32 p.m.)

17 (Upon resuming in open session at 1.34 p.m.)

18 THE COURT USHER: [13:34:16] All rise.

19 Please be seated.

20 PRESIDING JUDGE MINDUA: [13:34:41](Interpretation) Court is in session once

21 again.

22 We shall continue with the cross-examination on the part of the Defence, but before so

23 doing I would like to hand down an oral decision with regard to the request that we

24 did received from the Defence via email.

25 The Defence requested that the Chamber grant them supplementary time, but the

1 Prosecutor did not answer this request, which arrived by email at the beginning of
2 this afternoon.

3 MR DUTERTRE: [13:35:30](Interpretation) Absolutely, we have not yet had the time
4 to answer it. I was in the middle of drafting a response.

5 PRESIDING JUDGE MINDUA: [13:35:39](Interpretation) Well, maybe orally, in
6 order to save time you could answer orally.

7 MR DUTERTRE: [13:35:44](Interpretation) Yes.

8 Paragraph 42 of the conduct of proceedings provides very clearly, and I quote
9 (Speaks English) "The cross-examination shall last no longer than the questioning by
10 the calling party."
11 (Interpretation) That is extremely clear and there's no surprise in there. The
12 Prosecution is of the opinion that we have found ourselves in an equal situation, on
13 equal footing with the Defence. We have had the same difficulties with regard to the
14 open session, public session, with regard to the ability to play videos, and that there is
15 nothing particular or different in the situation that each or either party is facing.
16 As to the access to the witness beforehand, well, I would say that the protocol was
17 applied with regard to the opposite party and the Defence never came back as to the
18 agreement that had been given by the witness to meet with the Defence before the
19 start of the hearing. So we are of the opinion that we are on an equal footing.
20 Now, in half an hour time will have run out. We are not objecting to supplementary
21 time being allocated in order to finish up today with the whole session in
22 cross-examination, but I would like to remind you that we have not yet read through
23 paragraph 35, contrary to what the Chamber ordered two days ago now.
24 Now, as to the management of time, what would be regrettable would be to have to
25 call back the witness on Monday, who has already been extremely patient. We

1 would need to have to finish everything off tomorrow, which might involve a
2 re-examination in-chief, questions on the part of the Chamber, and the last word for
3 the Defence. So that might take some time, which is not very manageable.

4 So I think we can give them up to the whole session of today. The Prosecution is not
5 objecting to them exceeding the time allocated to the Prosecution, but we need to be
6 vigilant and not finish up in too much of the speedy fashion, while losing quality.

7 PRESIDING JUDGE MINDUA: [13:38:19](Interpretation) Thank you very much,
8 Prosecutor, for your answer.

9 The Chamber -- Ms Taylor.

10 MS TAYLOR: [13:38:27] Thank you, Mr President. If I can respond just very briefly
11 on two issues.

12 One, the decision on the conduct of the proceedings concerning parity is without
13 prejudice to the possibility that the Legal Representatives of Victims are given an
14 opportunity to pose questions, because that is always on a case-by-case basis subject
15 to the authority of the Chamber.

16 In this case, the LRV were granted the right to put questions to the witness up to
17 approximately 30 minutes. So we are facing not only the examination-in-chief of the
18 Prosecutor, but also an additional 30 minutes from the LRV.

19 Secondly, I anticipate that I should be able to finish within 20 to 30, perhaps
20 40 minutes. But what we do need is to be able to consult with our client before
21 finalising our cross-examination. The reason being is that for each day this week we
22 have only had one-hour lunch breaks. Now, by the time I get up to my office it's
23 12:45. I have to eat. Mr Al Hassan has to eat. He has to be in a specific location to
24 be able to call me. We've been able to have one- to two-minute calls. He's
25 exhausted by weeks of following the hearings and by intense examinations last week.

1 What we are asking for is the opportunity to consult with him so that we can in fact
2 present a very concise end to our cross-examination which will allow the testimony of
3 this witness to finish tomorrow. But it is imperative that we have that opportunity
4 to consult with him properly before finalising our cross-examination.

5 PRESIDING JUDGE MINDUA: [13:40:45](Interpretation) Thank you very much,
6 Ms Taylor.

7 The Chamber has read your filings, and we have just heard what the Prosecutor had
8 to say in his response, and also we have heard what you had to say in your reply.
9 Now, the constraint that we have is that we need to free up the witness, because it
10 doesn't really seem very timely to me at this juncture to ask him his opinion because
11 he has been with us for quite some time now. He is been very patient. He has
12 made great efforts to answer in a very clear manner to the questions that have been
13 put to him and it is time for him to go about his normal business. We need to release
14 him to tomorrow at the end of the hearing.

15 There we are.

16 So we all need to make efforts, sacrifices. I don't think that I'm going to be putting
17 any questions to the witness myself, in fact, maybe just one or not at all. So taking
18 all of that into account, I need to hand down the following decision:

19 Counsel for Defence in its filings specified that she would need an hour this afternoon
20 and again tomorrow morning, basing herself on the argument that the Defence has
21 been up against circumstances that have modified throughout the cross-examination,
22 also to persistent objections raised on the part of the Prosecution, and that the Defence
23 has not had the opportunity or the advantage to be able to prepare the witness as the
24 Prosecution had.

25 The Defence also makes reference to the specificities and the importance of the

1 testimony, and the difficulties encountered by the Defence to consult their client on a
2 number of occasions.

3 So, firstly, the Chamber takes note that according to paragraph 42 of the document on
4 the conduct of proceedings, the cross-examination should not exceed the time
5 allocated to the examination-in-chief. The Chamber may decide, on a case-by-case
6 basis, whether supplementary time is justified.

7 With regard to the questions raised by the Defence, the Chamber would like to make
8 the following observations:

9 Firstly, with regard the claim to circumstances that were modified, nothing new has
10 been mentioned by the Defence. The directives by the Chamber to the parties
11 throughout the testimony of this witness have quite simply been that of reiterating or
12 repeating principles that have already been outlined in the directives on the conduct
13 of proceedings. This includes the matter of the use of private session, which is
14 clearly outlined at paragraph 83 and 84.

15 So, it was up to the Defence to organise its cross-examination in keeping with these
16 principles right from the outset, and its inability to do so does not constitute a good
17 enough reason to grant the Defence additional time for cross-examination.

18 The same applies to the principle on the usage of the statement of the witness at
19 paragraph 52 of the directives on the conducted of proceedings, or guidelines. The
20 paragraph that sets out that quoting passages of the witness's statement is an
21 exception to the general rule, according to which the counsel should abstain from
22 paraphrasing the statement of the witness or from uselessly requesting that the
23 witness reiterate his or her testimony.

24 With regard to the matter of objections raised by the Prosecution, as the parties
25 should already know, the objections are taken away from the time allocated to the

1 parties by the Registry and, therefore, have no incidence whatsoever on the time
2 allocated to the Defence.

3 With regard to the change of scheduling of the hearings, as the Chamber has already
4 indicated, the reduction to three hours for some of the hearings for this witness was a
5 temporary measure that had to do with COVID-19. And, in fact, the Chamber is still
6 working half an hour less per day than its usual schedule. As a result, this does not
7 constitute a good reason to grant additional time to the Defence.

8 As regards the matter of consultation between counsel for the Defence and
9 Mr Al Hassan, the Registry has informed the Chamber that measures had been taken
10 to remedy the issue raised yesterday during the hearing by the Defence.

11 The Defence raised the matter also of the times to be used by
12 the Legal Representatives for Victims. The Chamber is alive to this argument and is
13 taking it into account.

14 The Chamber acknowledges also the particularities and importance of the testimony
15 of this witness, as described by the Defence in its email sent this afternoon.

16 In the light of the aforementioned, the Chamber shall grant to the Defence additional
17 time for a total of two hours.

18 So, Ms Taylor, you still have an hour today and an hour tomorrow to finish your
19 cross-examination. I believe that that is a satisfactory solution.

20 There we are.

21 So let us proceed now with your cross-examination, Ms Taylor.

22 MS TAYLOR: [13:50:10] Thank you very much, Mr President. The Defence is very
23 grateful to have this opportunity this evening to consult with the client.

24 Now I believe we'll have to go into private session to continue the line of questioning.

25 PRESIDING JUDGE MINDUA: [13:50:30](Interpretation) Madam courtroom officer,

- 1 private session, please.
- 2 (Private session at 1.50 p.m.)
- 3 THE COURT OFFICER: [13:50:41](Interpretation) We are in private session,
- 4 Mr President, your Honours.
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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Private Session)

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Trial Hearing
WITNESS: MLI-OTP-P-0065

(Open Session)

ICC-01/12-01/18

1 (Redacted)

2 (Open session at 2.41 p.m.)

3 THE COURT OFFICER: [14:41:08] (Interpretation) We are in open session,

4 Mr President.

5 PRESIDING JUDGE MINDUA: [14:41:12](Interpretation) Thank you very much,

6 madam courtroom officer.

7 So, Mr Witness, the Chamber thanks you and invites you to return tomorrow

8 morning at 9.30.

9 We shall now draw this hearing to a close and, as always, I would like to thank very

10 much the parties and participants, the court reporters, the interpreters, and of course

11 the security guards and our public.

12 Now the hearing is adjourned.

13 THE COURT USHER: [14:41:53] All rise.

14 (The hearing ends in open session at 2.42 p.m.)