

Trial Hearing
WITNESS: MLI-OTP-P-0643

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and
7 Judge Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Monday, 17 May 2021
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:45] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:34:02](Interpretation) The Court is in session.
15 Good morning, everyone.
16 Courtroom officer, if you could please call the case.
17 THE COURT OFFICER: [9:34:28] Good morning, Mr President, your Honours.
18 This is the situation in the Republic of Mali, in the case of The Prosecutor versus Al
19 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case number ICC-01/12-01/18.
20 And for the record, we are in open session.
21 PRESIDING JUDGE MINDUA: [9:34:51](Interpretation) Thank you very much,
22 Mr Courtroom officer.
23 As usual, we shall begin with introductions, beginning with the Office of the
24 Prosecutor.
25 Madam Prosecutor.

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- 1 MS LUPING: [9:35:05] Good morning, Mr President. Good morning,
2 your Honours. Appearing on behalf of the Prosecution today will be myself,
3 Dianne Luping, and my colleague, Raymond Sandoval. Thank you.
- 4 PRESIDING JUDGE MINDUA: [9:35:17](Interpretation) Thank you very much,
5 Madam Prosecutor.
- 6 And now the Defence, please. Counsel.
- 7 MS TAYLOR: [9:35:29] Good morning, Mr President. Good morning
8 your Honours. The Defence for Mr Al Hassan is represented today by
9 Mr Mohamed Youssef and myself, Melinda Taylor. Thank you.
- 10 PRESIDING JUDGE MINDUA: [9:35:40](Interpretation) Thank you very much,
11 Ms Taylor.
- 12 I also note that Mr Al Hassan is present in the courtroom. Welcome, Mr Al Hassan.
13 And now Legal Representatives of Victims. Counsel.
- 14 MR KASSONGO: [9:36:00](Interpretation) Good morning, everyone. This morning,
15 Ms Prisque Biyéké Dipanga is here, as well as myself, Mayombo Kassongo. Thank
16 you very much.
- 17 PRESIDING JUDGE MINDUA: [9:36:15](Interpretation) Thank you very much,
18 Mr Kassongo.
- 19 This morning, we will begin hearing the 33rd witness from the Prosecution, this is
20 Witness P-0643.
- 21 Mr Witness, good morning, can you hear me?
- 22 WITNESS: MLI-OTP-P-0643
23 (The witness speaks French)
24 The witness gives evidence via video link)
- 25 THE WITNESS: [9:36:41](Interpretation) Yes, good morning, your Honour, I can

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1 hear you.

2 PRESIDING JUDGE MINDUA: [9:36:46](Interpretation) Thank you very much,
3 Mr Witness.

4 THE WITNESS: [9:36:49](Interpretation) You're welcome.

5 PRESIDING JUDGE MINDUA: [9:36:50](Interpretation) on behalf of the Chamber I
6 would like to welcome you to the courtroom. You will be giving testimony with a
7 view to helping the Chamber shed light on the case involving Mr Al Hassan.
8 Mr Witness, a number of protective measures have been put in place so that your
9 identity will not be revealed to the public. Each time you need to provide details
10 that could reveal your identity, we will discuss such details in private session. As
11 well, that way, no one outside this courtroom will be able to hear you.

12 Have you understood?

13 THE WITNESS: [9:37:56](Interpretation) Yes, your Honour.

14 PRESIDING JUDGE MINDUA: [9:37:59](Interpretation) Thank you very much.

15 THE WITNESS: [9:38:02](Interpretation) You're welcome.

16 PRESIDING JUDGE MINDUA: [9:38:04](Interpretation) I will now proceed with
17 your solemn undertaking pursuant to the regulation -- the Rules of Procedure and
18 Evidence. Now I believe you have the oath with you.

19 THE WITNESS: [9:38:24](Interpretation) Yes.

20 PRESIDING JUDGE MINDUA: [9:38:26](Interpretation) So this solemn undertaking
21 reads as follows -- you shall swear to tell the truth, so please read aloud the
22 solemn undertaking that you have before you.

23 THE WITNESS: [9:38:50](Interpretation) I solemnly declare that I shall tell the truth,
24 the whole truth and nothing but the truth.

25 PRESIDING JUDGE MINDUA: [9:39:08](Interpretation) Thank you very much,

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1 Mr Witness. You are now under oath. The staff from the witness and victims
2 section as well as the staff from the OTP have already explained to you what that
3 means.

4 I do have some practical considerations to discuss with you when it comes to your
5 testimony. I would like to remind you that everything that is said in this courtroom
6 is transcribed by court reporters and interpreted simultaneously into several
7 languages by interpreters. Therefore, it is important to speak clearly and slowly.
8 Begin to give your answer only once the person questioning you has finished putting
9 his or her question, above all, in the case of people who speak French, like you. So
10 you could possibly count to three in your mind before you give your reply. This
11 short break is essential so that everything you say can be properly recorded and
12 transcribed.

13 Naturally, if you have a question, just raise your hand to let us know that you'd like
14 to say something.

15 Have you understood, Mr Witness?

16 THE WITNESS: [9:41:03](Interpretation) Yes, your Honour.

17 PRESIDING JUDGE MINDUA: [9:41:06](Interpretation) Thank you. Thank you
18 very much, Mr Witness. We shall now hear your testimony.

19 I will now hand over to the Office of the Prosecutor, and the OTP shall begin
20 examination-in-chief. Madam Prosecutor.

21 MS LUPING: [9:41:25] Thank you, Mr President.

22 QUESTIONED BY MS LUPING:

23 Q. [9:41:29] And good morning, Mr Witness. As you know, my name is
24 Dianne Luping and I'll be asking you questions today on behalf of the Prosecution.
25 As a reminder, time is limited. We only have one hour together, so I would ask you

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1 to listen very carefully to the questions that I ask. Only answer the specific question
2 posed and please try to keep your answers short and concise.

3 MS LUPING: [9:42:04] Mr President, with your authorisation, I would ask, please, to
4 go into private session for questions of an identifying nature, in particular, in relation
5 to biographical details of this witness and some parts of his CV that may identify him.
6 I estimate it should take approximately 10 minutes.

7 PRESIDING JUDGE MINDUA: [9:42:31](Interpretation) Understood, Madam
8 Prosecutor.
9 Mr Courtroom officer, private session, please.

10 (Private session at 9.42 a.m.)

11 THE COURT OFFICER: [9:42:42] We're in private session, Mr President.

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13 (Redacted)

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12 (Open session at 9.55 a.m.)
13 THE COURT OFFICER: [9:55:50] We are back in open session, Mr President.
14 PRESIDING JUDGE MINDUA: [9:55:57](Interpretation) Thank you very much,
15 courtroom officer.
16 Madam Prosecutor.
17 MS LUPING: [9:56:02] Thank you, Mr President. Thank you, court officer.
18 Q. [9:56:05] Mr Witness, is it correct that you provided the Prosecution with an
19 updated copy of your curriculum vitae?
20 A. [9:56:13] Yes, Madam Prosecutor.
21 Q. [9:56:24] I'd ask you to turn to tab 2 of your binder, and that's
22 MLI-OTP-0077-3039. I'd like to ask you to turn to both the first page and the last
23 page of this document.
24 Do you have it in front of you, Mr Witness?
25 Perhaps it would be better if the binder can simply be left with the witness, court

1 officer or court usher on the other side. I think it would be quicker and simpler if the
2 binder is simply left with the witness.

3 Do you have the document at tab 2, sir? Can you turn to tab 2?

4 A. [9:57:12] I have the -- thank you. Do you want me to confirm, OTP-0060-3039
5 (sic)?

6 Q. [9:57:26] No need to confirm the number, sir. I'm just simply going to ask you
7 now, is this the curriculum vitae that you provided to the Prosecution dated
8 4 January 2021?

9 A. [9:57:39] Yes, indeed. It is that CV.

10 Q. [9:57:53] And can you confirm that this CV accurately reflects your educational
11 and professional experience to date?

12 A. [9:58:02] Yes, Madam Prosecutor.

13 Q. [9:58:17] And Mr Witness, were you asked by the Office of the Prosecutor to
14 provide an expert opinion in this case?

15 A. [9:58:24] Yes, Madam Prosecutor.

16 Q. [9:58:32] And in particular, did the Prosecution send you a letter of instruction
17 dated 27 November 2020 asking you to prepare a written report?

18 A. [9:58:45] Yes, Madam Prosecutor.

19 Q. [9:58:52] I ask you, Mr Witness, to turn to tab 3, and that's MLI-OTP-0077-3146.
20 I'll also ask my colleague to bring that document up.

21 I'd like you to look at this letter. Is this the letter of instruction that was given to you
22 by the Prosecution?

23 A. [9:59:20] Yes, Madam Prosecutor.

24 Q. [9:59:28] And is it correct that you wrote a report based on the questions
25 outlined in the letter of instructions?

- 1 A. [9:59:35] Yes, Madam Prosecutor.
- 2 Q. [9:59:44] I'd now like to ask you to turn to tab 1 of your binder, Mr Witness, and
3 that is document MLI-OTP-0077-2933. If you could please look at the front page and
4 the last page of this document. And turning in particular to page 52, the last page of
5 the document, is that your signature?
- 6 A. [10:00:27] I am at page 52, signed by my own hand.
- 7 Q. [10:00:35] Thank you. So can you confirm who wrote this report?
- 8 A. [10:00:41] Thank you for your question. The report was written by myself.
- 9 Q. [10:00:53] And did anybody else write it with you?
- 10 A. [10:01:00] No, Madam Prosecutor, no one else wrote it.
- 11 Q. [10:01:08] I'd now like to ask you to turn to chapter V of your report at page 30,
12 paragraph 4. And I'd like to ask you to turn to the last sentence.
13 And I've already stated the ERN for the record. And the page number is page 2963
14 of the document, or page 30 of the document.
15 And at paragraph 4, and I will read it. The last part of the sentence, it starts --
- 16 A. [10:01:45] I beg your pardon?
- 17 Q. [10:01:48] It starts with "*Pour la paix*" and finishes "*et des enfants par le Mali.*"
18 Do you have it in front of you, Mr Witness? It's your report -- page 30 of your report,
19 three-zero, or page 2963, it should have at the bottom. Please tell me when you are
20 at the correct page.
- 21 A. [10:02:16] I've got page 29.
- 22 Q. [10:02:19] Now, you need to be at page 30, the next page, sir, at paragraph 4.
23 And you should also have it in front of you. My colleague should be showing it in
24 front of you as well. And at paragraph 4 it starts (Interpretation) "For peace" (Speaks
25 English) and it finishes (Interpretation) "and the children by Mali."

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1 (Speaks English) Is there -- is that correct? Are there any corrections you wish to
2 make?

3 A. [10:02:50] Yes, Madam Prosecutor. I would ask you to note that it's by M-A-R-I,
4 it should be -- it should read instead of Mali.

5 Q. [10:03:07] I'd now like to ask you to turn to the next page, which is at page 31, or
6 page 2964, and at paragraph 5. It starts with "Mr Mamadou Madeira Keita" and that
7 paragraph ends (Interpretation) "... the announced law programme, didn't it reach 1
8 per cent of the state budget."

9 (Speaks English) Is there any correction you wish to make in that paragraph?

10 A. [10:03:46] Yes. Yes, Madam Prosecutor. The financial service indicated to me
11 that the budget of the ministry of justice had reached 1 per cent where it concerned
12 the budget of the year 2020. Thank you.

13 Q. [10:04:15] Thank you. And otherwise, to the best of your knowledge,
14 Mr Witness, are the contents of this report a true and accurate reflection of your views
15 impartially stated?

16 A. [10:04:33] Indeed, Madam Prosecutor.

17 Q. [10:04:36] And do you have any objections to the following documents being
18 submitted and ultimately admitted into evidence: Your report at tab 1, that's
19 0077-2933; your CV at tab 2, that's 0077-3039; the letter of instructions at tab 3,
20 0077-3146; and your attestation of your degree at tab 5, that's 0078-1386? Do you
21 agree, sir, to the submission and ultimate admission of these documents?

22 A. [10:05:16] I have no objection, Madam Prosecutor.

23 Q. [10:05:28] Thank you, Mr Witness. I now have a number of supplementary
24 questions for you on your report, and I'll be addressing four key topics: Malian laws,
25 women's rights, issues of religion, and issues related to peace and reconciliation.

1 The first topic, Malian laws, I'd ask you to keep in front of you - because all my
2 questions relate now to your report - to keep in front of you your report at tab 1, and
3 I'd ask you now to turn to page 26, that's chapter V of your report, and that is
4 page 2954 at paragraph 4.

5 In this chapter, you describe three different types of justice -- justice systems, namely
6 under the French law, also the *justice musulmane* and also the *justice indigène*. At
7 paragraph 4, at the last sentence, you state, and I quote: (Interpretation) This court
8 has -- "These courts have existed beside each other until the time of independence."
9 (Speaks English) End of quote.

10 Could you please clarify which of these three systems of law continued to operate
11 after independence?

12 A. [10:07:09] Thank you very much, Madam Prosecutor. Here we're talking about
13 a historical reminder. Under colonialisation, there was a system of law which was
14 applied with people who had French citizenship, France colonised the country, and
15 there were -- there was a system of courts applied to those people called the
16 indigenous peoples. At a certain time, and here I'm quoting 57 (sic), Muslim justice
17 existed within the legal system reserved for those persons who had the status of
18 French citizen. During the accession to Mali to independence in 1960, this double
19 system was abolished and the justice was equal for all citizens residing in the territory
20 of the Republic of Mali.

21 Q. [10:09:05] And to be clear, Mr Witness, did the -- what you describe as the
22 Muslim justice system, did that continue to exist after independence?

23 A. [10:09:17] No, Madam Prosecutor.

24 Q. [10:09:24] And to be further clear, the *justice indigène* that you referred to, did
25 that continue to apply after independence?

1 A. [10:09:35] No, Madam Prosecutor.

2 Q. [10:09:46] I'd now like to ask you to turn to the next page, and you refer to
3 various constitutional provisions, and the last paragraph of that page where it states:
4 (Interpretation) "The Republic of Mali is indivisible, democratic, secular and
5 democratic."

6 And just to clarify, did these Malian constitutional provisions apply to all Malians?

7 A. [10:10:17] This constitutional part applied to all Malians from 1960 to this day.

8 Q. [10:10:34] And if you turn to the next page, page 28, at the top of the page, the
9 first paragraph that refers to Article 43 of the constitution and it states: (Interpretation)
10 "Republic of Mali assures the independence of the legal authorities." (Speaks English)
11 End of quote.

12 And my question is this: Does this constitutional guarantee of judicial independence
13 apply to all Malian judicial institutions?

14 A. [10:11:08] Yes, Madam Prosecutor.

15 Q. [10:11:16] I'd now like to ask you to turn, please, to page 32 of your report, at
16 chapter V. That's page 2965 at paragraphs 3 to 4 starting from "*De l'accession*" and
17 ending with "*... les pratiques terroristes et l'intégrisme religieux qui ont eu cours en 2012 au*
18 *Nord du Mali.*" Do you see those two paragraphs, sir?

19 A. [10:11:51] Yes, Madam, on page 32.

20 Q. [10:12:02] Correct. And I'm going to read, (Interpretation) "... in 2012, the first
21 occupation in Mali, Sharia ... There were attempts to apply it in 2012 during the
22 occupation and they were on the order of the office of the High Council, but they
23 were not in accordance with the saintly Koran and the Sunna of the prophet."
24 (Speaks English) It also continues: (Interpretation) "... the rules of Sharia ban terrorist
25 practices and religious extremism which occurred in 2012 in the north of Mali."

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1 (Speaks English) My first question is this: What is the *Haut Conseil Islamique* of Mali,
2 what does it do?

3 A. [10:13:07] The High Islamic Council is the organisation which is -- is the
4 umbrella organisation for all the associations -- all the Islamic associations recognised
5 in the Republic of Mali. That's it.

6 Q. [10:13:36] And since what year has it existed?

7 A. [10:13:44] I can't give you the exact date of the High Islamic Council, but the
8 role -- the High Islamic Council was preceded by the Malian association for the unity
9 and progress of Islam. This association still exists. And afterwards, the
10 association -- the Muslim association also recognised, they came to an agreement that
11 there was necessary to have an umbrella organisation and that would be the High
12 Islamic Council.

13 Q. [10:14:31] And was it still in existence in 2012 to 2013?

14 A. [10:14:39] Yes, Madam Prosecutor.

15 Q. [10:14:48] And you say this -- the *Haut Conseil* articulated its view that the
16 application of Sharia during the occupation in the penal area did not conform to the
17 Saint Coran or Sunna the prophet. My first question is, when did they articulate that
18 view, what year?

19 A. [10:15:17] I don't have a document which would attest to that, but I could add it
20 that in the preachings and the teachers of the High Islamic Council, they were in the
21 public domain.

22 Q. [10:15:47] And when it refers to the occupation or the area of the occupation in
23 the north, did this include Timbuktu?

24 A. [10:15:52] Yes, Madam Prosecutor.

25 Q. [10:15:58] And why is it that application of Sharia in the penal area does not

1 conform to Saint Coran or Sunna the prophet? Why does it not conform?

2 A. [10:16:14] I have to say that Sharia didn't have scope within the criminal field,
3 that's something that I would support firstly, whilst sharing the ediction of the first
4 criminal code of the Republic of Mali did recognise it in its -- at its independence
5 in 1960.

6 Now where it concerns the period of the occupation, where it concerns that, the
7 opinions that were authorised or indicated or that the occupation, violent occupation,
8 was not in accordance with Islam and that's the opinion of Dr Moussa Ibrahim Touré.
9 And I would add that the fact that this occupation was not in accordance with Islamic
10 law was indicated to me by the person responsible for religious matters within the
11 High Islamic Council. There is no doubt that the High Islamic Council thought, and
12 this is well known in Islam, so you don't Islamise something that is already Islamic.

13 Q. [10:18:08] And when it states that the practices of terrorism and *intégrisme*
14 *religieux* are prohibited under Sharia rules, what does that mean?

15 A. [10:18:22] You don't force people to become Muslim, that's a basic in principle,
16 and you don't force people through violence or religious prescriptions to do that.
17 Quite simply.

18 Q. [10:18:48] And what about those who are already Muslims, are there any rules
19 where they are of a different school of thought as to what is allowable?

20 A. [10:18:58] There are matters, Madam Prosecutor, where there is opinion that is
21 admitted, for example, on questions of marriage, on the question of succession. The
22 Islamic law applies when the conditions are present, positive law allows this opening.
23 If we go back into the criminal field, once again, there is no place in Malian positive
24 law for Sharia.

25 PRESIDING JUDGE MINDUA: [10:20:07](Interpretation) A question by way of

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1 clarification: When you speak about independence, the Malian code does not have
2 specific provisions of Sharia, but on the other hand, in civil law, in the civil code, you
3 can find certain expression of Sharia; is that correct?

4 THE WITNESS: [10:20:41](Interpretation) Thank you, your Honour. That should
5 be nuanced, but I've been asked to answer this question precisely. When, in the
6 drafting of judgments, the law authorises the presence of a customary assessor with
7 the judge who is currently deciding on a case, it's more than a -- it's more than
8 a custom, that corresponds with the terms of Sharia.

9 I'm sorry to be long with my reply, but this clarification needed to be made.

10 PRESIDING JUDGE MINDUA: [10:21:33](Interpretation) Thank you very much,
11 Witness.

12 THE WITNESS: [10:21:36](Interpretation) You're welcome, your Honour.

13 PRESIDING JUDGE MINDUA: (Interpretation) Madam Prosecutor, please continue.

14 MS LUPING: [10:21:45] Thank you.

15 Q. [10:21:48] And now turning to another part of -- various other parts of your
16 report, you refer at chapter II of page 13 or 2946 of your report, you list the cadis in
17 Timbuktu --

18 A. [10:22:07] Page 13?

19 Q. [10:22:08] (Overlapping speakers) You list the cadis in Timbuktu. And again,
20 I'm just -- I'm just referring to various parts where -- in your report where you refer to
21 cadi. And at chapter IV, page 24, at the bottom of the page --

22 A. [10:22:31] I'm sorry, I'm going to page 24.

23 Q. [10:22:31] Thank you. And at the bottom of the page you state -- you refer
24 to -- it states: (Interpretation) "The cadi incarnated law and justice, and they had a role
25 of counter-authority ... the customary justice was always meted out but it was up to

1 the discretion of the *chefferie*."

2 (Overlapping speakers) (Speaks English) My first question is this: What is the
3 traditional role of the *cadi*?

4 A. [10:23:21] The *cadi*, Madam Prosecutor, is a superior judge.

5 Q. [10:23:26] And what type of law is applied by the *cadi*?

6 A. [10:23:31] The *cadi* applies Sharia law.

7 Q. [10:23:46] And in Timbuktu, over which ethnic groups does the *cadi* have
8 jurisdiction? How does that work?

9 A. [10:23:55] Quite simply, Madam Prosecutor, I necessarily have to remind that
10 the *cadi* here is one of the sixth century. Now within civil --

11 THE INTERPRETER: 16th century, corrects the interpreter.

12 THE WITNESS: [10:24:24] (Interpretation) Now where we talk about civil matters,
13 the citizens in all the neighbourhood of the town of Timbuktu, irrespective of the
14 ethnic group, you can have a religious officer who can decide on disputes and they
15 have the function of *cadi*. That's within the functions of a *cadi*.

16 Q. [10:25:04] And the role of the *cadi* in resolving disputes, is this something that is
17 imposed on people, is it something that can be forced on them?

18 A. [10:25:15] No, Madam. Historically, this is what the literature says, is that the
19 people volunteer to go towards the *cadi* -- they volunteer to go to the *cadi*.

20 Q. [10:25:38] Now turning to a different topic. In various parts of your report, you
21 refer to the function of a *marabout*. That's at chapter II, page 13 or page 2946, also at
22 page 14 at 2947, and again at page 25 in the last paragraph. And it's page 25 at the
23 last paragraph that I'm going to quote where it states "... *les marabouts qui*"

24 (Overlapping speakers)

25 A. (Overlapping speakers)

1 Q. [10:26:11] It's at page 25, sir, and I'm going to read it out to you:

2 (Interpretation) "... the marabout who were the *magistrature* issued justice according to
3 the Koran and according to the Malikite religion ..." (Speaks English) End of quote.

4 And again it states further on:

5 (Interpretation) "They also fulfilled the office of the lawyers". (Speaks English) End
6 of quote.

7 My question is this: What is a marabout?

8 THE INTERPRETER: "And they also carried out with inventories of successions and
9 their sharing. Now my question: What is a marabout?"

10 THE WITNESS: [10:26:54] (Interpretation) So, in a given part of the town, the
11 children who go to the Koranic school, who are learning about basic religious matters
12 and precepts, they will learn those precepts from the people who are called marabout.
13 The most eminent among them are - have the role of imams in mosques.

14 MS LUPING:

15 Q. [10:27:37] And it states here that they follow the principles of the Malikite sect.

16 Is this only a function of the Malikite sect?

17 A. [10:27:48] Madam Prosecutor, you have to compare the Sunnits in Islamic law.

18 There are four legal schools that are recognised: The Hanbalists, perhaps I should
19 have finished with them. You have the Hanafite school, the Malikite school, and the
20 Shafiite school.

21 I should mention that these are names which are names of imams which were
22 representatives of certain legal schools. The Malikite sect is the school which follows
23 Imam Malik, and he died in 795, 795 AD.

24 Q. [10:29:20] Thank you, Mr Witness.

25 And turning to the community in Timbuktu, what did the majority follow? What

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1 school of thought?

2 A. [10:29:30] The Malikite rites, Madam Prosecutor.

3 Q. [10:29:47] And just so that we understand, what was the Islamic school of
4 thought of the armed groups that occupied Timbuktu in 2012?

5 PRESIDING JUDGE MINDUA: [10:30:19](Interpretation) Court officer, it seems that
6 the witness has disappeared.

7 THE COURT OFFICER: [10:30:26] Your Honour, we are going to re-establish the
8 connection.

9 PRESIDING JUDGE MINDUA: [10:30:33](Interpretation) Thank you very much,
10 courtroom officer.

11 (Pause in proceedings)

12 THE COURT OFFICER: [10:32:12] Your Honour, I'm informed that the system, the
13 Cisco system apparently shut down. It may take some time to have it restarted. I'm
14 not too sure how long it will take.

15 PRESIDING JUDGE MINDUA: [10:32:29](Interpretation) Well, it would appear that
16 communications have been restored.

17 Mr Witness, can you hear me?

18 THE WITNESS: [10:32:37](Interpretation) Yes, I can hear you.

19 PRESIDING JUDGE MINDUA: [10:32:38](Interpretation) There you go. Perfect.
20 Madam Prosecutor, we shall proceed.

21 MS LUPING: [10:32:44] Thank you.

22 Q. [10:32:45] Mr Witness, I'm going to repeat the question that I asked before we
23 lost you, your -- by connection.

24 What the Islamic school of thought adopted by the armed group that occupied

25 Timbuktu in 2012 to 2013?

1 A. [10:33:07] To the best of my knowledge, Madam Prosecutor, according to the
2 knowledge I have, that group said that they were just applying Sharia law. That's
3 all.

4 Q. [10:33:23] And what is the difference -- sorry.
5 What school of thought applies Sharia law? What is it called in Islamic law? What
6 is that group that applies Sharia law?

7 A. [10:33:43] Madam Prosecutor, the four schools that I mentioned apply Sharia
8 law, understood as Islamic law. Should I add that in more than -- more than one
9 national language is spoken in Mali to indicate a rule or a standard and the citizen --
10 THE INTERPRETER: [10:34:26] Inaudible. Sharia.

11 MS LUPING: [10:34:28]

12 Q. [10:34:29] Could you -- could you explain to the Chamber what is the difference
13 between the Sunni schools of thoughts and Salafism.

14 A. [10:34:47] Thank you, Madam Prosecutor. I don't have any specific knowledge
15 about -- about Salafist thought. It would appear, judging by the literature, that it is
16 Hanbalistic, traditional, traditional. And the application of this thought, form of
17 thought, is more strict in comparison to religious practices. I am not a specialist in
18 that area.

19 Q. [10:35:29] Thank you for clarifying that, Mr Witness.

20 I'm now going to ask you to turn to your report first at page 9, paragraphs 3 to 5.

21 And in particular, I'm going to

22 quote: (No Interpretation) (Interpretation) "... they also reject various -- the various
23 sects which are factors of division."

24 I'm also now going to cite from your report at page 22, at paragraph 1. And I'm
25 going to -- I'm going to quote in particular from near the bottom of that paragraph:

1 (Interpretation) "Muslim humanism, as understood in Timbuktu, focuses on the
2 development of all the spiritual and intellectual qualities of man."

3 A. [10:36:53] Which page? 20 something?

4 Q. [10:36:56] Page 22.

5 Now referring to both excerpts from this report, could I ask you, focusing on
6 Timbuktu, what was the community's approach towards religion in Timbuktu before
7 the occupation in 2012?

8 A. [10:37:21] That's a tough one, Madam Prosecutor. I'll add that the community's
9 approach is known, and it has been known for centuries, for centuries without any
10 controversy, without any controversy. I am a legal person, legally trained. In
11 October 2012 in Timbuktu, in October 2012, in October, the people did not have the
12 impression that Sharia was being applied. They had the impression that victors'
13 justice was being administered. In the other parts of the area, that was the people's
14 opinion in Tin-Hama, November 2012.

15 Q. [10:38:33] I'm now going to switch to a different topic, and I'm going to ask you
16 to turn to page 12, that's page 2945 of chapter II, and I'm going to quote:

17 (Interpretation) "After the first rebellion in June ..." (No interpretation) (Speaks
18 English) End of quote.

19 My first question is this: What did -- can you explain what you mean by your
20 comments about Iyad Ag Ghaly.

21 A. [10:39:35] Madam Prosecutor, put simply, he was the figure -- the leader of
22 Ansar Dine, an extremist group.

23 MS LUPING: [10:40:01] I've just realised, actually, Mr President, I may have to ask
24 the following question in private session because this might identify the witness.

25 PRESIDING JUDGE MINDUA: [10:40:18](Interpretation) Very well.

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- 1 Private session, please, court officer.
- 2 (Private session at 10.40 a.m.)
- 3 THE COURT OFFICER: [10:40:26] We are in private session, Mr President.
- 4 (Redacted)
- 5 (Redacted)
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1 (Redacted)
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10 (Open session at 10.51 a.m.)
11 THE COURT OFFICER: [10:51:47] We are back in open session, Mr President.
12 PRESIDING JUDGE MINDUA: [10:51:52](Interpretation) Thank you very much,
13 courtroom officer.
14 Madam Prosecutor.
15 MS LUPING: [10:51:59]
16 Q. [10:51:59] Mr Witness, in your report, I'm going to ask you to turn to page 15 at
17 paragraph 1. And partway in that report it states, and I'm going to quote:
18 (Interpretation) "The multidimensional crisis that the country has been going through
19 since 2012 has helped worsen the situation for women living in the north of the
20 country and in the centre. Many women are the survivors of serious human rights
21 violations and are still awaiting reparation." End of quote.
22 (Speaks English) My first question is this: What are the grave violations of human
23 rights that you referred to that took place in the north?
24 A. [10:53:08] Thank you, Madam Prosecutor. I'm quoting from an authorised
25 report, a report from the National Human Rights Commission, it's in the public

1 domain and it states that sexual assaults occurred during the occupation, that there
2 were instances of rape, there were incidents of forced marriage, and I cited -- well, I
3 cite as well the demonstration of women in Timbuktu of October 2012 -- October 2012
4 during which they spoke out against the conditions of the occupation, forced
5 marriage, rapes, other gender crimes. All of this is in the public domain, in my view.

6 MS LUPING: [10:54:31] Mr President, to be honest, I'm not entirely sure how much
7 time, if any, I have left because there were a number of problems -- technical
8 problems. Could I have a clarification? If there is time, I'd ask two last questions,
9 but only if there is time.

10 PRESIDING JUDGE MINDUA: [10:54:48](Interpretation) Courtroom officer, where
11 are we?

12 THE COURT OFFICER: [10:54:53] The Prosecution has used one hour and one
13 minute.

14 PRESIDING JUDGE MINDUA: [10:54:58](Interpretation) You're out of time,
15 Madam Prosecution. We have five minutes before the end of this session, so please
16 go ahead, put your questions.

17 MS LUPING: [10:55:08] Thank you for your indulgence, Mr President.

18 Q. [10:55:14] Mr Witness, I'd like you to turn to page 22 of your report, paragraphs
19 5 and 6, under the heading "*Les tombeaux des saints*", and it continues also at page 23.
20 And you describe the traditions in relation to the 333 saints in Timbuktu.
21 My question is this: What is the significance of the tombs of the saints for the
22 communities in Timbuktu?

23 A. [10:55:57] They are part of the heritage of the city. It's the city's heritage.

24 Q. [10:56:09] And again at paragraph 2 you describe the manuscripts that were
25 produced in Timbuktu. And my question is this: What is the significance of the

1 manuscripts for the communities in Timbuktu?

2 A. [10:56:28] There, again, I would say that they are significant heritage, a
3 part -- a significant part of the heritage in light of the content of the manuscripts
4 which deal with all sorts of theological matters, medical science, and the list goes on.

5 Q. Thank you very much, Mr Witness.

6 MS LUPING: [10:57:01] I have no further questions for the witness. Thank you,
7 your Honours.

8 PRESIDING JUDGE MINDUA: [10:57:12](Interpretation) Thank you very much,
9 Madam Prosecutor.

10 And now I'll turn to Ms Taylor. There's three minutes left -- no, no, no. I was
11 moving too quickly. There's three minutes remaining, so I think we can stop at this
12 point.

13 But I'd just like to ask the Legal Representatives of Victims if any one of them would
14 like to intervene?

15 MR KASSONGO: [10:57:45](Interpretation) Thank you, Mr President. After
16 listening to the examination-in-chief led by the Prosecutor, and listening carefully,
17 and after listening to our expert witness, the Legal Representatives would like to seek
18 a number of clarifications, if possible, if that is allowed by the Chamber, just to flesh
19 out a few points.

20 PRESIDING JUDGE MINDUA: [10:58:18](Interpretation) Very well. Very well,
21 Mr Kassongo.

22 And Ms Taylor, what do you think?

23 MS TAYLOR: [10:58:27] Thank you, Mr President. In principle, the Defence does
24 not object, but it would be helpful and in line with prior practice to have some degree
25 of specificity as concerns the particular issues that the Legal Representatives for

1 victims wish to clarify.

2 PRESIDING JUDGE MINDUA: [10:58:51](Interpretation) Thank you very much,
3 Ms Taylor.

4 Mr Kassongo, in response?

5 MR KASSONGO: [10:58:56](Interpretation) Thank you very much, your Honours.

6 The questions of clarification for the witness will not go beyond the content of the
7 examination-in-chief; however, they will target quite specifically a number of points,
8 a number of definitions and events that the witness has made mention of. He's
9 also been a -- he's also a factual witness, so these are points he could clarify. We'd
10 like to know more about fundamental freedoms, a bit more about various points
11 having to do with Malian law, how various acts can be described, and this will be of
12 use to us in our observations. And then the whole issue of people's status and
13 a number of acts, criminal acts, and we will put the questions in a very specific and
14 concise manner.

15 PRESIDING JUDGE MINDUA: [11:00:11](Interpretation) Thank you very much,
16 Mr Kassongo, for your clarification.

17 I can see Ms Taylor is on her feet.

18 Ms Taylor?

19 MS TAYLOR: [11:00:21] Thank you, Mr President. The Defence has no objection to
20 the points of clarification concerning the issues of law or religion or human rights.

21 On issues of fact, we would request that any clarification fall within the parameters of
22 the examination-in-chief. And for the reasons set out in my email last week, we
23 believe that there would otherwise be an issue of disadvantage if the Legal
24 Representatives for victims were to go into other issues of fact, bearing in mind
25 particularities concerning this witness.

1 PRESIDING JUDGE MINDUA: [11:01:08](Interpretation) Understood, Ms Taylor.

2 This witness, as we have said several times, is an expert, but he is also a witness of

3 fact. And Mr Kassongo, the representative of victims, will naturally put some

4 questions to him within the framework of the examination-in-chief, of course.

5 It is 11 o'clock. We will now suspend for half an hour and resume at 11.30.

6 The hearing is suspended.

7 (Recess taken at 11.01 a.m.)

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

9 THE COURT USHER: [11:32:27] All rise.

10 Please be seated.

11 PRESIDING JUDGE MINDUA: [11:32:45](Interpretation) Court is in session.

12 Before giving the floor to Maître Kassongo, I would like to address a few items by

13 way of clarification in the question that Ms Taylor raised just before the break on the

14 subject of the scope of questions which can be put by the Legal Representatives of

15 Victims.

16 Obviously, I pointed out that in principle the Legal Representatives of Victims should

17 limit their questions to the examination-in-chief conducted by the Prosecution, but at

18 the same time, the Chamber clarifies, Ms Taylor, that the questions that the Legal

19 Representatives put cannot be repetitive. That would be a waste of time for the

20 Chamber to hear the same questions from the Office of the Prosecutor and the Legal

21 Representatives.

22 As such, the Legal Representatives, not being a second prosecutor, may put questions

23 that have not been raised by the Prosecutor, but are nevertheless within the

24 framework of the examination-in-chief. However, where it concerns this witness, in

25 particular, we know that he is not only an expert, but a factual witness. He has an

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1 encyclopedic knowledge of everything that happened in the events in the field. He
2 lived there and he participated in commissions, reconciliation, and so certainly the
3 Legal Representative of Victims would be able to go a bit further in this than where
4 we would normally allow them to go.

5 To sum up, the Legal Representatives of Victims are authorised to put questions, not
6 having the -- not having the examination-in-chief as the basis, but taking into account
7 those aspects for this witness.

8 And I would conclude by saying that the Chamber will proceed on a case-by-case
9 basis with regards to the questions.

10 Ms Taylor, that's what I can say in this regard.

11 I now turn towards Maître Kassongo for the questions. Please go ahead, Counsel.

12 MR KASSONGO: [11:36:04](Interpretation) Thank you, your Honour,
13 your Honours.

14 QUESTIONED BY MR KASSONGO: (Interpretation)

15 Q. [11:36:18] If I may call the witness and say good morning. We've already met.
16 Good morning.

17 A. [11:36:24] Good morning, sir.

18 Q. [11:36:26] I will go slowly, taking into account that we're speaking the same
19 language, to make it possible for us to be translated with ease.

20 Witness, I have a few questions to put to you concerning the status of persons, as an
21 university expert who is a specialist in Malian law, could you tell us in a word how, if
22 there is legislation confirming this, if -- how is marriage government under Malian
23 law?

24 A. [11:37:16] Good morning, Counsel.

25 Q. [11:37:21] Good morning, Witness.

1 A. [11:37:25] Positive Malian law and the applicable legislation in Mali does not
2 recognise the free union outside marriage.

3 Q. [11:37:46] Thank you, Witness, for this clarification.

4 Could you now make a difference or establish what difference there is between the
5 status of an adult woman and a girl -- or young girl?

6 A. [11:38:18] Your Honour, faced with this question, I have to say that the code on
7 persons and families of December 2011 authorises marriage for a girl from the age of
8 18. That's from my memory. A question was put to me, furthermore, where it
9 concerns the tradition. Young girls are married while they appear to be only just
10 mature in this age to marry, but they arrive at the age when that is not the legal age
11 under the code of persons and the family.

12 Q. [11:39:50] Thank you, Witness. According to your explanation a moment ago,
13 you raised cases of violence, cases of rape, forced marriages and other violence meted
14 out against people. My question is to know, given that you are from Timbuktu, how
15 did you see victims of such violence? In what state were they in, without going into
16 details?

17 A. [11:40:47] Well, in a very eloquent way, I would say -- I would express the
18 manifestation of the hundreds of women in Timbuktu which took place on Saturday,
19 6 October 2012 against the application of Sharia as the occupiers wanted to do. The
20 testimony -- there are numerous testimonies thereto, and the cases are in front of the
21 courts.

22 Q. [11:41:33] Thank you, Witness. Could you clarify, to the best of your
23 knowledge, if the wearing of the veil was imposed by the legislation and what were
24 the sanctions where there was a violation of them?

25 A. [11:42:03] In positive Malian law, there is no obligation to wear a veil. Where it

1 concerns the town of Timbuktu, which has a secular tradition, which meant that the
2 young women and young girls were dressed in a way which would be considered
3 decent, there was no imposition as such of a form of covering one's head or a level of
4 the length of trousers in terms of common usage. It's an ancient town, people dress
5 traditionally such that in a way they consider decent with regards to the customs in
6 a town which has existed for over a thousand years.

7 Q. [11:43:27] Thank you very much, Witness, for giving us this clarification.

8 Now, you mentioned your role in mediation. Without repeating what was said
9 about your mediation in (Redacted) my question is whether there was or there is
10 a widespread custom in Timbuktu taken into account in the case of the status of
11 people, either for marriage or for divorce?

12 A. [11:44:23] On this question, the way of life of the people, whether that's in the
13 town of Timbuktu or outside Timbuktu, in my report, I indicated that the question of
14 marriage was problematic and it was -- well, the legislation can be contradicted by the
15 theory. People are -- or legislation can be contradicted by tradition. There
16 are -- there are customs. People are Muslims in Timbuktu, but there are customs.

17 Q. [11:45:19] Thank you, Witness. Another question that I wanted to put to you
18 concerning fundamental freedoms. You mentioned during -- the destruction of the
19 archives in the building. How can you describe the impact of this destruction, the
20 impact on the population of Timbuktu having suffered it? If you have any
21 clarifications you can give us in that regard.

22 A. [11:46:03] I think that before the International Court this question of heritage has
23 largely been addressed. I would give an example. We are in a town which has
24 come to grow and 500 -- 1556, the Ahmed Baba died in 1556. He had more than
25 1,600 books, Maître Ahmed Baba -- 16,027. And that was the most important library

1 in the town. And I think that's illustrative of the importance of books in a town
2 which -- in which there was the largest university at the time in all of West Africa, the
3 University of Sankoré. There's letters of people. I'm not sure if I have their names,
4 but I think that people know a lot more about these letters that were written by
5 people that are there. I think the Court knows more about it than I do.

6 Q. [11:47:52] Thank you, Witness, for these clarifications.

7 I now turn towards you once again for clarifications concerning the legality -- the
8 criminal legality in Mali, in the strict sense, without mentioning a particular text.
9 Could you tell us the nature of prosecutions that there are for acts of rape and the
10 sentence if the judge finds the suspect guilty?

11 I'll sum up, could you speak to us or could you tell us about the crime of rape or
12 about theft? Knowing that it is a crime, what is the seriousness of theft and what is
13 the sanction for theft, theft meaning taking goods belonging to somebody else?

14 A. [11:49:07] I'm not a criminal expert. These are crimes, I would say, in a general
15 way, including in our positive law. Deprivation of liberty could be between one and
16 five years. The judge will assess the facts of the matter. Where it concerns rape,
17 this is something you mentioned as well, then it's the court of assize, it's a crime.

18 Q. [11:49:50] Thank you, Witness, for these clarifications.

19 MR KASSONGO: [11:49:55](Interpretation) Thank you, your Honour, and thank
20 you, your Honours, for allowing me to put these questions. I've finished with the
21 list of questions that I had.

22 And I wish you a safe return.

23 PRESIDING JUDGE MINDUA: [11:50:16](Interpretation) Thank you very much,
24 Maître Kassongo.

25 So I now turn towards the Defence.

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1 Ms Taylor, as we have already seen -- well, I see the Prosecutor is standing.
2 Prosecutor?
3 MS LUPING: [11:50:33] Thank you, Mr President, your Honours. Before the
4 Defence begins the cross-examination, I just wanted to simply note for the record
5 some potential preliminary objections under paragraph -- related to paragraph 61 of
6 the Conduct of Proceedings decision. The Prosecution wants to first note a number
7 of documents that it considers even on the face of those documents do not appear to
8 be relevant to issues arising in this case. I first refer to the documents at tabs 6 and
9 14 of the list of documents of the Defence that appear to relate to female genital
10 mutilation, which in the Prosecution's submissions have no relevance whatsoever to
11 any known issues arising in this case.
12 Similarly, documents at tab 5 relating to a march against the cartoon of the prophet
13 Muhammad, and at tab 37, a report regarding agricultural activities. On the face of
14 it, your Honours, the Prosecution would submit they bear no relevance whatsoever to
15 any of the charged incidents in this case.
16 In terms of documents that refer to instances of ill-treatment or crimes against women
17 which do not relate to the charged incidents. For example, there are documents that
18 have been included that relate to the crime of forced marriages occurring outside the
19 charged incidents, the Prosecution would argue that these bear no relevance, in the
20 same way that the fact that women may be raped or suffer other forms of sexual
21 violence before or after the charged incidents do not have any bearing on the
22 incidents in this case. And I refer in particular to the document at tab 27 of the
23 Defence list of documents.
24 And similarly, the issues of how women are viewed in the context of Islamic law in
25 terms of their rights within consensual marriages, the Prosecution would argue they

1 bear no relevance. And I refer in particular to the documents at tabs 35 and 36.

2 And the Prosecution reserves its -- its objections in relation to additional documents,
3 but we simply wanted to have those preliminary objections on the record.

4 PRESIDING JUDGE MINDUA: [11:53:10](Interpretation) Thank you very much,
5 Madam Prosecutor.

6 I don't know if Ms Taylor would like to answer. You have the floor.

7 MS TAYLOR: [11:53:17] Thank you, Mr President.

8 Firstly, the Defence does not intend to use the documents at tab 6 and tab 14, and we
9 could have clarified that if requested by the Prosecution.

10 As concerns tab 37, I would need to address that particular issue outside the presence
11 of the witness.

12 For the reminder of the issues raised by the Prosecution, the documents in question
13 relate squarely to the issues in the report. The report itself concerns broad themes of
14 marriage, Islam and religion both before 2012 and after 2012. Some of the
15 documents relate specifically to points set out in the report. Having introduced
16 a report concerning all those issues, the Defence is perfectly entitled to explore these
17 issues with this witness.

18 For tab 37, Mr President, would you like me to address that outside the presence of
19 the witness? I believe it will be clear when I raise it. It is just one page and I can
20 quite clearly state it does relate to the contents of the report.

21 PRESIDING JUDGE MINDUA: [11:54:29](Interpretation) Thank you very much,
22 Ms Taylor, there is no need to speak about it for the moment, particularly in front of
23 the witness, to save time.

24 So first of all, I'd like to state that the conditions envisaged under Rule 68(3) of the
25 Rules of Procedure and Evidence having been met, we've already seen that, all of us.

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1 The Legal Representatives have spoken and now we are going to start with the
2 cross-examination. So for that, the Office of the Prosecutor raises certain preliminary
3 objections, they say preliminary, I'm very much attached to this word. Certain
4 objections have been raised. The Defence has clarified that there are tabs which will
5 not be used. And then for the other subjects, well, I imagine that we shall decide on
6 a case-by-case basis. We have already said that this witness is a particular witness,
7 an expert, an expert in law. And at the same time he is a fact witness, he
8 experienced certain situations, he was an actor in certain situations. We will not be
9 able to set aside questions before knowing what the Defence wants to put.
10 So Ms Taylor, you have the floor to commence your cross-examination.

11 QUESTIONED BY MS TAYLOR:

12 Q. [11:56:15] Good afternoon, Mr Witness. My name is Melinda Taylor and I met
13 you briefly this morning. I'm the counsel for Mr Al Hassan for the Defence and I'll
14 be putting questions to you today.

15 Can you confirm that you can hear me clearly?

16 A. [11:56:39] Good morning, Counsel. I can hear you very clearly.

17 Q. [11:56:44] Wonderful. Well, to start with, Mr Witness, I'll be putting some
18 questions to you about religious and moral views in Timbuktu, both before 2012 and
19 after 2012. And to put my first question to you I'd like to turn to your report, that's
20 OTP tab 1, MLI-OTP-0077-2933, turning to page 2939, that's page 6. And we'll be
21 looking in particular at the last paragraph on the page, starting with:

22 *(Interpretation) "In addition to that, with regard to the mentalities, more than one
23 inhabitant of the town of Timbuktu, and even more so the nobility, before the
24 occupation of 2012, had a bad experience of the difficulty that the public authorities
25 had in reconciling free trade and industry inherent to a liberally-oriented economy,

1 with the consideration of the values of a religious or saintly town such as Timbuktu
2 (bars in the medina, Miss Mali Office of Radio and Television competition)."

3 Mr Witness, is it correct that before 2012, alcohol and bars were prohibited in the
4 medina in Timbuktu?

5 A. [11:58:32] Before 2012, alcohol and bars were not prohibited in the town of
6 Timbuktu.

7 Q. [11:58:49] Mr Witness, can you explain what you mean then when you refer to
8 "*bars dans la Médina*" of Timbuktu?

9 A. [11:59:04] There, I indicate the opinion of the population in a town which is
10 a saintly *ville* -- town. The population is by majority -- by majority do not
11 understand that there are lots of bars in the medina or even that there is a competition
12 with the prettiest women called Miss, that's the shortened form of it, which is
13 annually organised by the office -- by the radio, television office of Mali, this -- this
14 indisposes ...

15 Q. [12:00:11] Mr Witness, are you aware of opposition even now to bars and
16 alcohol in the medina of Timbuktu?

17 A. [12:00:28] I would simply answer that in the bibliographical elements attached
18 to my report, there are press cuttings which are dated -- or which show movements of
19 young people who consider that bars -- that there are a lot of bars in the town. These
20 press cuttings are attached to my report. They are expressions of young people.
21 You can refer to the bibliography that I added thereto, Sareykeïna, Djingareyber.

22 Q. [12:01:26] Mr Witness, you referred to the ORTM competition, is it correct that
23 in 2010 there was local opposition to the ORTM -- the Ms ORTM competition?

24 A. [12:01:45] Before 2012, I would say, before 2012. More than once and in towns
25 other than Timbuktu, but also in Timbuktu, the -- there was the opinion, people did

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1 think that -- well, I believe that human rights organisations also were not happy that
2 these kinds of beauty contests were being held in Timbuktu and elsewhere.

3 Q. [12:02:25] Are you familiar with a gathering organised in September 2010 in
4 Timbuktu with Koranic scholars which denounced secular education, western
5 tourism and the state's lack of support for Islamic education?

6 A. [12:02:51] I don't have any information about that in 2010, but I did add to the
7 bibliography some information from an association that safeguards the cultural
8 values of the city of Timbuktu. That group did exist.

9 Q. [12:03:34] If I could just turn to Defence tab 45, that's MLI-D28-0004-9442. This
10 is a 2010 article by Ferdaous Bouhleb, titled "*Les Médersas du Mali: Réforme, Insertion et*
11 *Transnationalisation du Savoir Islamique*".

12 And if we can turn to page 9452, if we look in the first page, if you have that in front
13 of you, page 9452 -- Mr Witness, is that being shown on the screen to you? I
14 understand that the documents haven't been printed.

15 And it states: (Interpretation) "The same thing holds true in Timbuktu where
16 a major challenge movement brings together a number of Islamic associations and
17 they spoke out about the problems of morality owing to children going to lay schools,
18 the behaviour of certain tourists in religious places, and the closing of *majalis* ..."

19 (Overlapping speakers)

20 (Speaks English) At footnote 25 it refers to: (Interpretation) "Discussion with one of
21 the leaders of the movement that is organising in September 2010, in Timbuktu,
22 a major gathering to promote Islamic culture and to call for a return to religious
23 education."

24 (Speaks English) Mr Witness, do you have any knowledge of this protest or event?

25 A. [12:05:52] (Microphone not activated)

1 MS TAYLOR: [12:06:09] I can't hear the witness in English.

2 THE WITNESS: [12:06:17](Interpretation) May I --

3 PRESIDING JUDGE MINDUA: [12:06:20](Interpretation) Go ahead.

4 THE WITNESS: [12:06:21](Interpretation) Thank you. I repeat: I didn't know
5 about this movement, September 2010, but what I see in front of me on the screen is
6 not new. And let me reiterate, to ensure that my report was balanced, I did make
7 note of this reservation, yes, both in the bibliography of my report and in the body
8 thereof. Thank you.

9 MS TAYLOR: [12:07:01]

10 Q. [12:07:01] Mr Witness, you said you weren't aware of this event, is that because
11 you were not aware or familiar with what was happening on a day-to-day basis in
12 Timbuktu before 2012?

13 A. [12:07:13] I am fully aware of what was going on in Timbuktu. I would point
14 out once again that in the bibliography I showed something about this association led
15 by some people from prominent families and these people were calling for the
16 promotion of the Islamic culture in Timbuktu.

17 Q. [12:08:06] Mr Witness, in 2012 --

18 A. [12:08:13] You're welcome.

19 Q. [12:08:14] -- was the president of the high council for Islam in Mali,
20 Mahmoud Dicko?

21 A. [12:08:25] Yes, Counsel.

22 Q. [12:08:33] Is he from Timbuktu?

23 A. [12:08:36] I can say so because he is a Kabara -- he is from Kabara, which is
24 a neighbourhood in Timbuktu along the river port, Kabara, K-A-B-A-R-A,
25 Imam Dicko is from Timbuktu, if you look at it that way.

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1 Q. [12:09:09] And is Imam Dicko affiliated with the Wahhabi strand of Islam?

2 A. [12:09:24] It is well known that he is an imam in a mosque that is said to be
3 Wahhabi in the city of Bamako in Badalabougou neighbourhood.

4 Q. [12:09:48] I'm going to bring up Defence tab 7 MLI-D28-0004-3108. This is an
5 article from October 2010 concerning Mahmoud Dicko and his efforts to suppress
6 elements of the family code. And if we could bring up page 3111.

7 Is that in front of you, Mr Witness?

8 A. [12:10:32] Right now. But, Counsel, could someone tell me the source of this
9 perhaps?

10 Q. [12:10:47] Certainly, Mr Witness. It's an article published in Jeune Afrique,
11 dated 14 October --

12 A. [12:10:59] Thank you.

13 Q. [12:11:00] -- 2010. Now, Mr Witness, in front of your screen, there is
14 a paragraph stating:

15 (Interpretation) "Does Dicko prefer Sharia to the family code? After all, the Islam
16 says that he is part of the Wahhabite strand - which advocates a literal interpretation
17 of the Koran. His answer is measured: 'I am fighting for my religion, but it would
18 be premature to apply Sharia in Mali.' And later?" Answer: "'I am Muslim. I
19 can't oppose the establishment of an Islamic republic, but I am fine, I'm fine in this lay
20 country.'"

21 Mr Witness, are you familiar with this public sentiment from Imam Dicko?

22 A. [12:12:10] Counsel, I was asked to say who I had been in communication with,
23 and I provided -- I was told that it was at the request of the Defence, I provided
24 a communication that I had in September 2017 regarding the state and I made that
25 information available. Explicitly, I can report that Imam Dicko said that he did not

1 have a problem with secular -- secularism and this -- this nuance that is mentioned in
2 this article from Jeune Afrique. And I was asked for that communication and I made
3 the text of that communication available, September 2017.

4 Q. [12:13:34] Now is it not correct, Mr Witness, that Imam Dicko in this article says
5 on the one hand he's comfortable in a secular state, but on the other he would not
6 oppose the installation of an Islamic republic?

7 A. [12:13:54] Counsel, that is Imam Dicko's opinion.

8 PRESIDING JUDGE MINDUA: [12:14:04](Interpretation) Madam Prosecutor.

9 MS LUPING: [12:14:05] Just if Defence is putting the proposition of the stated views
10 of the Imam Dicko, in that same passage, if we are to have an accurate and fair
11 depiction of the views, there is also a reference that it would be premature to apply
12 Sharia in Mali. So I'm just referring to the totality of the views, if they're going to be
13 put, they should be put fairly.

14 MS TAYLOR: [12:14:32] Mr President, I read the entire paragraph to the witness.

15 PRESIDING JUDGE MINDUA: [12:14:37](Interpretation) I'm sorry, I'm afraid I
16 didn't quite follow you because of the interpretation. What did you just say?

17 MS TAYLOR: [12:14:48] Mr President, I read the entire paragraph with that element
18 in it to the witness, along with the date, it being 2010.

19 PRESIDING JUDGE MINDUA: [12:15:01](Interpretation) Well, there you have it.
20 Objection -- I don't understand your objection, Madam Prosecutor.
21 Please go ahead, Ms Taylor.

22 MS TAYLOR: [12:15:14]

23 Q. [12:15:15] Just turning to another document, this is tab 9 on the Defence list, it's
24 MLI-D28-0004-3186. This concerns a meeting between Imam Essayouti and Imam
25 Mahmoud Dicko during a meeting of the *comité des mœurs* in 2010.

1 Is this document on your screen, Mr Witness?

2 A. [12:15:44] Please, Ma'am.

3 Q. [12:16:02] Now, Mr Witness, earlier you referred to -- in your bibliography and
4 as part of your report dealing with the committee of virtues and I think you
5 mentioned notables, is this what you were referring to?

6 A. [12:16:18] The document that I mentioned -- the document I am talking about
7 and the spokesperson and the family of the imam from the Sidi Yahia mosque. Am I
8 to remind you that in the town of Timbuktu, there are many mosques admittedly, but
9 there are three major mosques. Mr Ben Essayouti, I see him right here, he is the
10 imam of the Djinguereber. And I insist the document that I was referring to, that
11 document was given to me by a spokesperson of the family at the Sidi Yahia mosque.

12 Q. [12:17:36] Would it be fair to say that Imam Essayouti is a person of influence in
13 Timbuktu?

14 A. [12:17:46] Imam Ben Essayouti is the imam of the largest mosque in Timbuktu
15 because -- the imam of the Djinguereber mosque and, thus, he is the representative of
16 the High Islamic Council in the city of Timbuktu. That is the knowledge that I am in
17 possession of. I haven't heard anything about him changing anything. He is a part
18 of the High Islamic Council.

19 Q. [12:18:31] Now turn to tab 10 on the Defence list, it's MLI-D28-0004-3334. This
20 is a Facebook post of 20 February 2013 referring to a general assembly of the *comité des*
21 *moeurs* taking place in June 2012.

22 I'll next turn to tab 11 on the Defence list, that's MLI-D28-0004-3335. This is
23 a Facebook page of 20 February 2013 with the resolution from that general assembly
24 dated 10 June 2010.

25 If we could scroll down towards the bottom of the page, starting with "*Recommande*",

1 are you able to read these recommendations, Mr Witness?

2 A. [12:19:53] Yes, recommend, yes.

3 Q. [12:20:03] And does this include recommendations concerning respect for dress
4 rules?

5 A. [12:20:13] What I see here is recommends respect for codes of clothing that are
6 suitable or in keeping with our secular culture. I think I spoke to that point
7 answering a question from Mr Kassongo. But I don't think this is -- has anything to
8 do with trousers going to the level of the ankle or anything like that.

9 Q. [12:20:53] Does this refer to putting in place a virtue committee in each quarter?

10 A. [12:21:01] I -- I'm -- I read that, I read that.

11 Q. [12:21:13] Does it refer to measures to prohibit any form of circulation during
12 Friday prayers?

13 A. [12:21:24] Is there a question in there, Counsel?

14 Q. [12:21:43] Mr Witness, do you see that written there: (No interpretation)

15 A. [12:22:05] (No interpretation)

16 Q. [12:22:08] Does it recommend measures to restrict the proliferation of bars?

17 A. [12:22:18] Yes, I can read that here.

18 Q. [12:22:22] Mr Witness, would you agree that social conservatism was part of
19 Timbuktu culture both before and after 2012?

20 A. [12:22:36] I believe that you read page 6 of my report where I said that -- well, if
21 the Presiding Judge would allow me to refer you to the last paragraph of my -- of
22 page 6 of my report.

23 PRESIDING JUDGE MINDUA: [12:23:12](Interpretation) Ms Taylor, would you like
24 him to say more about the way he sees this, or is the reference sufficient (Overlapping
25 speakers)

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1 MS TAYLOR: [12:23:21] Mr President, the paragraph of page 6 was the paragraph I
2 read out earlier concerning bars in the medina and the Miss ORTM competition. So I
3 believe that's already been put to the witness, unless the witness has something else to
4 add?

5 PRESIDING JUDGE MINDUA: [12:23:45](Interpretation) Mr Witness, did you want
6 to add something?

7 THE WITNESS: [12:23:50](Interpretation) Well, the question she was asking me, I
8 have the impression that the answer is to be found in the paragraph that I just
9 mentioned. Bars, that has to do with freedom of trade and industry. Police, at the
10 time of prayer, that is -- that's something to ensure -- well, there's no contradiction.

11 MS TAYLOR: [12:24:22]

12 Q. [12:24:24] Mr Witness, are you familiar with a killing of 17 dawah preachers in
13 September 2012 by the Malian army?

14 A. [12:24:35] No, no, I'm not, Ma'am.

15 Q. [12:24:48] If we can turn to Defence tab 20, that's MLI-D28-0004-8029, the title of
16 this article is "Massacre of preachers in Mali sign of a broken army." It's an article
17 dated September 23, 2012, from Associated Press. And turning to page 8034 --

18 PRESIDING JUDGE MINDUA: [12:25:24](Interpretation) Madam Prosecutor, I
19 (Overlapping speakers)

20 MS LUPING: [12:25:30] Mr President, I'm just trying to understand the foundational
21 basis for showing this to the document -- this document to this witness who's very
22 already -- he's been asked whether he is aware of the events of a massacre of
23 preachers and he has stated clearly he is not aware of these events, so I would submit
24 he's not the appropriate witness to ask about this document.

25 PRESIDING JUDGE MINDUA: [12:25:53](Interpretation) Ms Taylor, I don't think

1 the witness was the one who wrote this article, I don't see any connection between
2 him and the article, so what is going on? Why are you showing this article to him?

3 MS TAYLOR: [12:26:07] Mr President, I'm not putting this question to the witness in
4 his capacity as a fact witness, I'm putting it to him in his capacity as an expert witness.
5 In particular, it's my intention to read out a paragraph and to ask him a follow-up
6 question based on issues concerning religion.

7 PRESIDING JUDGE MINDUA: [12:26:33](Interpretation) Go ahead, Ms Taylor.

8 MS TAYLOR: [12:26:35]

9 Q. [12:26:37] Now, on this page, referring to the death of these preachers it states:
10 "Colonel Idrissa Traore, director of public relations for the Malian military,
11 acknowledged that the troops at Diabaly had violated the command structure. But
12 he noted that the preachers came from the former sect of Iyad Ag Ghali, the head of
13 one extremist group now controlling Mali's north."

14 Mr Witness, based on your expert experience on issues of religion, is there a tendency
15 to conflate certain sects such as Wahhabism or Dawah with extremism or terrorism?

16 A. [12:27:27] Counsel, the document here is in English, this document up on the
17 screen. I can read a bit of it, a few lines, but I would have a hard time to express an
18 opinion about something written in English. I could answer a question, a question
19 rephrased if that pleases you, please.

20 Q. [12:28:11] Mr Witness, the translation should be in the transcripts, but the
21 question that I'm putting to you is based on your experience and expertise, are you
22 aware of instances where individuals have been wrongly labelled or targeted as an
23 extremist or terrorist because of their religion?

24 A. [12:28:36] I think this question is far too broad, Counsel. What I can say as
25 a citizen, just as a citizen, the army in an operation may have committed acts of

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1 violence or abuse, and I think that human rights reports have been constant about
2 that. Reports of abuses have been made against armed groups, against terrorists and
3 against armed forces in Mali. I'm referring to more than one UN statement.

4 THE INTERPRETER: [12:29:27] Correction: "More than one UN resolution."

5 MS TAYLOR: [12:29:31]

6 Q. [12:29:32] If I can turn to Defence tab 13, MLI-D28-0004-3482. This is an
7 Afrobarometer dispatch dated 4 June 2018, concerning the role of Islam in Mali.
8 Actually, no, we are not going to that -- that document just yet.

9 Mr Witness, before 2012 --

10 A. [12:30:19] The document -- I can't make out the document. It is not legible.

11 Q. [12:30:24] Mr Witness, it's not necessary for you to look at the document just yet.
12 Before 2012, would you agree that there were barriers as concerns the ability of
13 communities in the north to access formal justice systems?

14 A. [12:30:44] That is a general situation. That is a general situation. There is
15 a problem of access, a problem of access to justice services for the entire population.

16 Q. [12:31:15] Focusing specifically on the north, are you able in your expert opinion
17 and based on your expertise to provide us with any information or examples as to
18 what caused these barriers?

19 PRESIDING JUDGE MINDUA: [12:31:41](Interpretation) No, I think we did not
20 hear any French interpretation.

21 THE WITNESS: [12:31:50](Interpretation) No.

22 MS TAYLOR: [12:31:55]

23 Q. [12:31:55] Mr Witness, my follow-up question was: Focusing specifically on
24 the north of Mali, are you able to provide us with any factors that contributed to the
25 barriers to access justice?

1 A. [12:32:16] Yes. Yes, Counsel. What I see to date, there isn't a single lawyer
2 who is based in the Timbuktu region, Gao, Kidal, and Ménaka.

3 Q. [12:32:52] When you say that there wasn't a single lawyer, does that also include
4 there being no judges in those areas?

5 A. [12:33:04] There are judges in all these regions that I indicated, but they are
6 hardly any of them in their post today due to the insecurity in the region.

7 Q. [12:33:28] And what was the situation in 2012, were there any judges in
8 Timbuktu?

9 A. [12:33:38] From January 2012, certainly not.

10 Q. [12:33:51] I'm going to turn to Defence tab 16, that's MLI-D28-0004-7124. This
11 is a report by IDLO, "En route to justice: An exploration of customary practices in
12 Mali". It's dated August 2019. And if we could bring up page 7125 on your screen,
13 this refers to a 2014 report. In particular, we have --

14 A. [12:34:46] I read somewhere 2019.

15 Q. [12:34:51] Yes, the first page is 2019, but this page is concerning, on the third
16 paragraph under the photo, a 2014 to 2015 report of 36 African countries by
17 Afrobarometer. And it says this study (Interpretation) "... showed that Malians are
18 the citizens who interact least with the formal judicial system, while a number of
19 citizens use the effective services and they are present in a positive way."

20 Mr Witness, does this -- the results of this study, are they consistent with your
21 experience as an expert in this area?

22 A. [12:35:53] Yes, yes, Counsel. Without disagreeing, I would also refer you to the
23 bibliographical elements. I was more than once a moderator of workshops where
24 the civilian society and armed forces, judges, territorial administrators, mentioned
25 these issues. In the bibliography, I quote a Clingendael study on the need for there

1 to be reconciliation between the two different systems of justice. What's mentioned
2 here quite precisely, well, I don't know about that, but I accept the observation and
3 the opinion that is put forward.

4 Q. [12:37:04] Now, according to this study, it says that of the persons interviewed,
5 32 per cent indicated that they prefer to go to traditional local leaders; 20 per cent said
6 that they avoid courts because they don't expect fair treatment; 18 per cent believe
7 that courts favour the rich and powerful; 16 per cent said that judges or court officials
8 will demand money; and 13 per cent don't trust courts.

9 Is this consistent with what you heard in your workshops?

10 A. [12:37:46] Counsel, please allow me to observe that this is quite coherent with
11 regards to my report on these issues. You mentioned the percentage, the
12 minister -- highest minister that we had in Malian republic also quoted, Mr Keita said
13 that the level of corruption was a recurring issue. This is something that I mentioned
14 in the report without any type of euphemism. Thank you, Counsel.

15 Q. [12:38:38] On the same page we have a quote from the director of IDLO, that's
16 Jean Mutabesha, and it says:

17 (Interpretation) "'Mali is a very particular case and presents a complex situation. For
18 example, it's difficult to find a demarcation line or a distinction between the different
19 traditional authorities,' comments Jean Mutabesha. Numerous community chiefs
20 have several roles, sometimes mayor, traditional chief and imam."

21 Would you agree, Mr Witness, based on your experience, that in order to meet local
22 justice and governance needs, local leaders or notables will often fulfil different roles?

23 A. [12:39:38] I'm sorry, could you put your question again, please, Madam.

24 Q. [12:39:47] Well, Mr Witness, do you have the quote in front of you on the screen,
25 just so you can see it? And my question was, would you agree --

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1 A. [12:40:03] Which quote is it?

2 Q. [12:40:06] It's the quote starting -- it's the third last paragraph on that page.

3 A. [12:40:10] Yes, please go ahead.

4 Q. [12:40:14] And it starts with (Interpretation) "Mali is a very particular case".

5 (Speaks English) And it ends with (Interpretation) "Numerous community chiefs have
6 several roles at the same time, mayor, traditional chief and imam."

7 (Speaks English) Do you have that paragraph in front of you?

8 A. [12:40:38] Yes, Counsel. And the question?

9 Q. [12:40:45] Based on your experiences, would you agree that in order to meet
10 local justice and governance needs, local leaders or notables will often fulfil different
11 roles?

12 A. [12:41:01] Sometimes, Counsel, a traditional chief can be mayor. I know of
13 a village chief who could be an imam. It's more rare. However, having the mayor,
14 traditional chief and imam, I have to say I do not know of that, but we're talking
15 about a young state and Malians say it's a very old nation.

16 Q. [12:41:58] Mr Witness, can you explain what you mean by your last comment
17 when you say it's a young state but an old nation? Do you mean that because it's
18 a younger state in terms of formalities, it's still developing?

19 A. [12:42:18] Yes. The state is 60 years old, the state of Mali, since independence
20 in 1960, but an old nation. It is the empire of Mali. It's a very known case in Africa.
21 I would say that a mayor could be a traditional chief, but I'm not aware of situations
22 of a mayor being a traditional chief and also being a imam. Furthermore, I know of
23 village chiefs who are imams. Thank you.

24 Q. [12:43:16] If I could turn to Defence tab 24. That's MLI-28-0004-8148. This is
25 a 2015 case study on tradition and religious authorities and local governance in Mali.

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1 Footnote 1 lists the contributors to the report. It's Dr Miguel Loureiro,
2 Lukas Krienbuehl, Dr Abdoulaye Sall, Professor Moussa Djiré, Issa Dembélé, and also
3 Sane Chirfi Alpha.

4 Are you familiar with any of these contributors?

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. [12:45:07] If we can turn to page 8163 of the report. Looking specifically at the
11 paragraph starting "*Dans la région de Tombouctou*," do you that in front of you,
12 Mr Witness?

13 A. [12:45:43] Yes, counsel.

14 Q. [12:45:44] And it says:

15 "In the region of Timbuktu, the traditional justice system is based on the *cadi*,
16 a judge -- a Muslim judge in the Sunni tradition which regulates the conflicts of daily
17 life, in particular, marriage, divorce, inheritance and even commercial relations. The
18 *cadis* exist in all regions of the north. According to interviews, state judges often
19 consult the *cadis* to settle definitively certain complex conflicts, especially when the
20 judgments handed down by the courts are not well accepted by the parties to the
21 conflict. Nomadic populations turn in particular to the jurisdiction of *cadis* given the
22 slowness and the restrictive procedure of the state jurisdiction."

23 Mr Witness, would you agree with -- would you agree --

24 A. [12:46:47] Go ahead.

25 Q. [12:46:48] -- with this assessment?

1 A. [12:46:55] Indeed.

2 Q. [12:47:01] Would you also agree that the *cadi* has played a key role in access to
3 justice in Timbuktu for centuries?

4 A. [12:47:15] Yes, Madam.

5 Q. [12:47:19] And that for many, the *cadi* is more trusted as an agent of justice than
6 formal Malian judicial institutions?

7 A. [12:47:32] I agree.

8 Q. [12:47:42] Turning to page 8173 of the same report, refers to "*Interactions*
9 *substitutives*". Do you have that in front of you, Mr Witness?

10 A. [12:48:10] (No interpretation)

11 Q. [12:48:15] And turning in particular to the second paragraph, if you see that it's
12 starting with (Interpretation) "A very strong effective substitution".

13 (Speaks English) And I'll read it out in its entirety:

14 "A very strong substitution effect was observed during the 2012 and 2013 crisis.

15 Regions that the administration, the army, judges, teachers and locally elected

16 officials have left, traditional and religious authorities (heads of villages,

17 neighbourhoods and factions, notables, *cadis* and imams) have taken over public

18 management, in particular, through the establishment of humanitarian measures to

19 ensure the survival of the populations in the areas occupied by jihadist groups. It is

20 also they, however, who collaborated and negotiated with a jihadist armed group."

21 Mr Witness, would you agree that in 2012 traditional and religious authorities filled
22 the vacuum created by the lack of effective state institutions?

23 A. [12:49:42] Counsel, I don't know if I'm going to be able to comment. You said

24 about the efficiency of the institutions, the paragraph is explicit. The army, the

25 judges, they are part of the occupation. Now I'll reply very clearly that the

1 traditional authorities had -- were responsible for public authority, as indicated in this
2 paragraph.

3 Q. [12:50:24] Mr Witness, in the absence of state authorities in 2012, did traditional
4 and religious authorities take steps to help ensure the survival of local populations?

5 A. [12:50:46] That's a way of speaking. Where it concerns the town of Timbuktu, I
6 note - and this is something I read with interest in the document - in the town of
7 Timbuktu, the traditional authority was the interlocutor with the occupants of the
8 town.

9 Q. [12:51:25] Now, you've referred to the traditional authorities being an
10 interlocutor. According to this article, it states, it is also they, being the heads of
11 villages, neighbourhoods and factions, notables, cadis and imams, who collaborated
12 and negotiated with a jihadist armed group.

13 My question, Mr Witness, is, in order to help ensure the survival of local populations,
14 did these groups collaborate and negotiate with jihadists?

15 A. [12:52:01] I perfectly understand what you say. Where it concerns the villages,
16 it wasn't the case. Where there were factions, it wasn't the case. The situation of
17 occupation was specific to the town. The situation of occupation was specific to the
18 town, and I prefer to say things simply. In the town of Timbuktu, the people who I
19 consider as the notables, those people, they were the only ones who negotiated with
20 the groups in place and there were problems of supply that they raised in daily life.
21 I would prefer to put it in those terms.

22 Q. [12:53:10] Mr Witness, you've referred to them negotiating. Did they also
23 cooperate and collaborate to ensure that services would be provided
24 throughout 2012?

25 A. [12:53:30] Yes.

1 Q. [12:53:39] Turning to Defence tab 21, this is MLI-D28-0004-8039, this is a 2015
2 report by the Clingendael Institute concerning the roots of conflict in Mali.
3 Turning in particular to page 8088, that's page 50, and the paragraph at the bottom of
4 the page, and I'll read it out and the French translation should come onto your
5 transcript, Mr Witness:

6 "By marginalising contacts and good relations with local communities, the central
7 government and its international partners have, in the end, weakened local
8 ownership of the security programmes, which also explains the support given to
9 armed groups by local populations. Islamist groups, indeed, have acted as a social
10 security provider, fulfilling roles that the Malian government has been unable to
11 deliver to the northern population - for example, medical and food aid, schooling,
12 financial donations for marriages, and [food]."

13 Mr Witness, would you agree that --

14 A. [12:55:42] Please go ahead.

15 Q. [12:55:43] Would you agree that in the absence of effective state institutions in
16 the north, Islamic groups filled the gap by providing social security services to the
17 population?

18 A. [12:56:05] Madam, I prefer to speak about things in a more nuanced way.
19 That's what I am like by my profession. There were occupants, there was violence
20 which was exercised, there were exactions, abuses. The occupants solved the
21 population from problems, and the terms that are here mention that. I didn't write
22 the paragraph like this. Perhaps it's trying to say the same thing.

23 Q. [12:56:52] Mr Witness, do you have any knowledge of Islamic groups providing
24 social security services before and up to 2012 in the area of Timbuktu?

25 PRESIDING JUDGE MINDUA: [12:57:21](Interpretation) Madam Prosecutor.

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- 1 MS LUPING: [12:57:22] Mr President, objection. Asked and answered. I think the
2 witness has already been asked effectively the same question, already provided,
3 perhaps not the answer that Defence counsel was seeking. He did indicate he would
4 provide a nuanced response, but he's -- he's responded to the original question.
5 PRESIDING JUDGE MINDUA: [12:57:42](Interpretation) Ms Taylor.
6 MS TAYLOR: [12:57:43] Mr President, I'll move on.
7 PRESIDING JUDGE MINDUA: [12:57:48](Interpretation) Please continue.
8 MS TAYLOR: [12:57:50] I am noting the time, though, and that I am coming to a line
9 of questioning.
10 PRESIDING JUDGE MINDUA: [12:57:57](Interpretation) Would you like us to
11 pause here?
12 MS TAYLOR: [12:58:01] I think that would be a good point, otherwise I would have
13 to effectively ask the question and then ask it again after the break.
14 PRESIDING JUDGE MINDUA: [12:58:10](Interpretation) Very well. We've only
15 got two minutes left before the lunch break.
16 So we're now going to stop and we shall restart at - allow me to check - 2.30. So we
17 will have our normal proceedings now that Ramadan has finished.
18 Hearing is adjourned.
19 THE COURT USHER: [12:58:48] All rise.
20 (Recess taken at 12.58 p.m.)
21 (Upon resuming in open session at 2.32 p.m.)
22 THE COURT USHER: [14:32:01] All rise.
23 Please be seated.
24 PRESIDING JUDGE MINDUA: [14:32:19](Interpretation) We shall now resume. I
25 will immediately turn to Ms Taylor so she may continue with her cross-examination.

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1 Ms Taylor.

2 MS TAYLOR:

3 Q. [14:32:48] Good afternoon, Mr Witness. I hope you're well rested during the
4 break.

5 A. [14:33:00] Good afternoon, Counsel. Thank you for asking. Very kind of you.

6 Q. [14:33:07] Now we're going to turn to an article I prematurely showed before.
7 It's Defence tab 13, MLI-D28-0004-3482.

8 And this is a dispatch from June 2018 from an organisation called Afrobarometer.

9 It's titled, "Maliens split on role of Islam in country, but majority feel politicians use
10 religion to rule".

11 And in terms of an explanation of the methodology, it says on the first page, that's
12 3482:

13 "The Afrobarometer team in Mali, led by Groupe de Recherche en Economie

14 Appliquée et Théorique ... interviewed 1,200 adult Malians in February 2017.

15 A sample of this size yields country-level results with a margin of error of +/-3 at
16 a 95% confidence level.

17 "Reflecting their share of Mali's total population, small sample sizes in
18 sparsely-populated Kidal, Gao, and Tombouctou produce results with very large
19 margins of error. Particularly in Kidal, results should be considered purely
20 [speculative]."

21 Now, Mr Witness, as a first question, how many persons have you interviewed on
22 questions concerning Sharia law?

23 A. [14:34:53] Counsel, I have not drawn up any questionnaires. I have not drawn
24 up any questionnaires. But, to be quite explicit, of the people I met, in light of their
25 qualifications that issue did come up. I added the list of -- I added the list of

1 prominent people that I met, I added it to my report.

2 Q. [14:35:44] So, Mr Witness, should we take it that those are the persons you have
3 spoken to about Sharia law in preparing this report?

4 A. [14:36:03] The list of prominent people that I met with -- I -- just look at the list
5 and you will see the -- their calibre. And I did discuss the issue of Sharia with them.
6 What is more, I did not draw up a questionnaire, nor did I do any field research into
7 Sharia.

8 Q. [14:36:34] Now, just dealing with countrywide results, I'd like to turn to
9 page 3487 of this report.

10 Sorry, that's 3486. If page 3486 could be put up.

11 And this is a figure 4: Support for applying Sharia law by socio-demographic group.

12 Now, according to this survey, it says 52 per cent of women interviewed, of the total
13 of 1,200, support the application of Sharia law in Mali. And that's contrasted to 41
14 per cent of men.

15 Mr Witness, in your experience, would it be correct that one cannot assume that
16 women are opposed to the application of Sharia law?

17 A. [14:37:55] I was going to say something about explanation of the text. In the
18 general imagination, people think that Sharia is Muslim law, in the Muslim sense of
19 the word. More than one custom coincides with Sharia. One speaks of Islamised
20 customs.

21 As for the substance within the field of criminal law, and that is the point clearly put
22 to the people that I met with, positive law does not recognise the application of Sharia
23 law.

24 What is more, Ma'am, in everyday life, more than one citizen would be in agreement
25 with applying Sharia in areas such as marriage.

1 The women's associations I worked with, both before and after the Beijing conference,
2 the missions I conducted regarding the code of the family, I did not see a majority of
3 women advocating for Sharia law. I think we need to make a distinction between
4 Sharia in criminal law, executions, floggings. October 2012, one person was
5 executed in Timbuktu. Now I don't think that is the kind of Sharia that people are
6 going to advocate.

7 Once again, I did not draw up a questionnaire, I did not conduct field research. But
8 allow me to observe, Ma'am, that I took more than one -- I think you really need to
9 take multiple precautions when dealing with statics.

10 Thank you, Ma'am.

11 Q. [14:40:11] Now, Mr Witness, you just mentioned women's associations that you
12 interacted with as part of the Beijing conference. Now according to the same survey,
13 51 per cent of persons with no formal education support the application of Sharia law,
14 as compared to only 18 per cent with a post-secondary education. Would you accept
15 that there are different views, depending on levels of education?

16 A. [14:40:46] Of course, Ma'am. The country is, for the most part, rural. But even
17 in rural settings, the Sharia in question is not the one of floggings or executions or
18 cutting people's hands off. You don't need to go out and do field research to know
19 that, it's common opinion.

20 Let me be very clear about -- you really can't force things when it comes to the field of
21 statistics.

22 Q. [14:41:39] Turning to page 3487 of the same report, this is concerning the
23 question as to whether Islam leads to excesses:

24 "Respondents in Kidal (67%) and Gao (61%) - two regions heavily affected by the
25 violence of armed groups - most frequently see excesses of Islam in the crisis of the

1 North. Conversely, far fewer respondents in Tombouctou (30%) and Mopti (17%)
2 express this perception. Although these regions also suffered extensive trauma
3 during the crisis, Tombouctou and Mopti are regions where the Koran has been
4 taught for centuries in universities and '*grandes écoles*,' in a culture of moderate Islam
5 where people may be less likely to blame the religion as the source of the excesses of
6 armed groups -- armed extremist groups."

7 Mr Witness, would you agree that Islam and Sharia law can't be blamed for the
8 excesses of certain extremist groups?

9 A. [14:42:54] I can acknowledge that quite easily. An international conference in
10 Vienna on comparative law was of the view that Islamic law is a current of law that
11 belongs to the current civilisation, so that's how you would look at it from
12 a theoretical point of view.

13 As for Gao, in my report I clearly set out my opinion. I spoke of an imam who was
14 well respected. I mentioned him by name, Alpha Omar, well known in Gao,
15 strongly opposed the application of Sharia. Imam Wahhabite indicated that, in his
16 view, the conditions were not there to administer Sharia because the city was being
17 occupied.

18 Now, must I remind you, since you refer to multiple situations, if you look at
19 Timbuktu and Gao, you must realise that Gao was Islamised before Timbuktu. Gao
20 saw Islam arrive. It was clearly set out in Félix Dubois and -- in the 1989 edition of
21 the particular work. Because I think your question is very broadly cast, if I could put
22 it that way. Islam, as such, does not lead to excesses, this is clear in law.

23 Q. [14:45:09] Now you've referred to Gao, would you agree that there was
24 a difference in how Sharia law was applied in Gao as compared to Timbuktu in 2012?

25 A. [14:45:19] Tin-Hama, Ansongo, that is not Gao, that is the region of Gao. In the

1 town of Gao itself, the resistance to the occupation was stronger, more noticeable, and
2 still is in comparison to the resistance to the occupation in Timbuktu, even though the
3 occupiers left Timbuktu first.

4 Q. [14:46:06] Is it correct that the role of the *cadi* was specifically included in Article
5 46 of the Algiers peace accords?

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. [14:47:07] We can turn to the specific provision. It's Defence tab 32,
12 MLI-D28-0004-8691, and the particular page is 8702, dealing with Article 46.
13 And it goes over to the next page, and the writing is quite terrible so I'll read it out,
14 the specific provision in Articles 46. It sets out a commitment to the reassessment of
15 the role of the *cadis* in administering justice, particularly concerning civil mediation
16 taking into account cultural, religious and traditional characterisations.

17 The article also refers to a commitment to incorporate traditional and customary
18 justice in Malian legal framework.

19 Mr Witness, would this suggest that even after 2012 there was strong support for the
20 application of customary and religious law in the north?

21 A. [14:48:43] Article 46 is somewhat long, Ma'am. I won't go into all the various
22 subsections of this provision, but there are several subsections. The part that speaks
23 to the probable role of the *cadi* adds an element of information that cannot be ignored.
24 It is the *cadi* who intervenes while respecting the role of the state. The people of
25 Mali must have the intelligence to bring in the *cadi* into the justice system. What is

1 more, it says or it makes mention of enhancing the capacities of the *cadi*.

2 Q. [14:49:36] So, Mr Witness, you've just said that the people of Mali must have the
3 intelligence to bring in a *cadi* into the justice system, so the question is incorporating
4 religious law into formal law and not the other way around?

5 A. [14:49:58] Ma'am, I believe -- I'm very sorry to say this, with all due respect to
6 the Court and to yourself. I think this could be a very long discussion, and I'll try to
7 summarise. When you speak of religious law, religious law is already somewhere
8 within Malians -- the justice. Let me explain, if the code of the person and the family,
9 if you look in that code and you come to the book that deals with inheritances, if the
10 *de cuius* indicates in his will that the inheritance shall be distributed on the base of
11 religious law, then the inheritance is allocated in accordance with religious law.

12 Who's better -- who would be better than the *cadi* than to apply that kind of religious
13 law?

14 I would hasten to add that with -- if there is not a will, it is the code of the family and
15 the person that applies and prevails over religious law. So that is what the exercise
16 is all about.

17 Q. [14:51:42] Now when the *cadi* hears disputes, is the *cadi* supposed to represent
18 and apply the social values of the community?

19 A. [14:51:51] Counsel, in positive law, when you are in civil matters having to do
20 with law -- land, for example, ever since the beginning, the very beginning, the law,
21 the code of procedure in the Republic of Mali obliges assessors, traditional or
22 customary assessors who sit alongside the judge, and this is true all the way up to the
23 Supreme Court. So you will have a judge and then you will have a customary judge
24 alongside him. If something -- a case having to do with an inheritance goes up to the
25 Supreme Court, the highest court of the land, the court is obliged under Malian

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1 legislation to have the customary judge alongside the primary judge.

2 Would you allow me to explain further, Ma'am? Could I give further explanations
3 about the *cadi*?

4 Q. [14:53:23] Yes, I don't have an objection, Mr Witness, but I do have quite a series
5 of questions on the *cadi*, so it might be best if you wait until I've gone through these
6 series of questions if you have any further observations to add, unless you specifically
7 wish to make them now.

8 A. [14:53:43] Respectfully, Counsel, I was asked to comment on an article. I took
9 quite a bit of time to explain this before this Court and I'm trying to answer questions
10 before this Court. I don't have any particular viewpoint to set forth.

11 Q. [14:54:23] Well, Mr Witness --

12 A. [14:54:23] I've already provided my article.

13 Q. [14:54:25] -- I'm going to turn to a report on customary justice systems and then I
14 will ask you some follow-up questions concerning the *cadi*.

15 It's tab 34, it's MLI-D28-0004-8743. This is a 2017 report by the Clingendael Institute
16 titled "*Sous le microscope: les systèmes de justice coutumiers dans le Nord du Mali*".

17 Are you familiar with this report, Mr Witness?

18 A. [14:55:01] The report that I'm familiar with is the one that has to do with
19 congruence amongst various systems of justice. It's not this report.

20 Q. [14:55:21] We can turn to a specific page of this report, it's page 8761, and I'll
21 read out a paragraph and then ask you some questions. It's page 8761, and the
22 paragraph:

23 "The *cadi* exercises his functions as a member of the community he serves (figure 6).

24 Indeed, it is a prerequisite of Islamic law that any individual seeking to act as *cadi* has
25 to first demonstrate extensive knowledge of local traditions and practices of that

1 community. Familiarity with local circumstances allows the *cadi* to better
2 understand the frame of reference of litigating parties and to mediate disputes by
3 taking into consideration the past, present and future relationships in the community.
4 Further, as an active member of the community living in the same social landscape as
5 the disputants, the *cadi* has a strong interest in preserving harmony.
6 "Traditionally, disputants are not considered as single entities, extrapolated from their
7 social context, but rather as an integral part of larger social units, such as a village.
8 Immersed in a complex social landscape, the *cadi* operates at the intersection of moral
9 and social demands and the formal legal Islamic normative. His mandate is
10 therefore twofold, settling disputes and preserving social cohesion. As one
11 respondent from Gao elaborated, 'we believe that we are Muslims and [the *cadis*]
12 decisions are taken in accordance with the Koran and they maintain social cohesion."
13 So, Mr Witness, my first question, would you agree that it's a prerequisite that the
14 *cadi* should have extensive knowledge of the local traditions and practices of the
15 community?

16 A. [14:57:46] To the extent of my knowledge - and I reiterate - to the extent of my
17 information, the *cadi* should be a person who is knowledgeable
18 with -- knowledgeable about Islamic law, an eminent person, a scholar of Islamic law.
19 What is more, the action in terms of harmony is a situation that the *cadi* -- and this is
20 just for the northern region, and one could add Mopti. What is more, the *cadi*, by
21 preserving social cohesion, is similar to all people playing traditional roles.

22 Q. [14:58:51] Mr Witness, you referred to the extent of your knowledge. Can you
23 explain what the extent of your knowledge on this subject is?

24 A. [14:59:02] I am not a specialist in Islamic law, I have not studied Islamic law.
25 What I'm saying, and you'll find it in my 2017 article, with my knowledge of the *cadi*

1 institution, I have knowledge of cadis within the society of the north, and also -- and
2 this is just the point I wanted to express. I was asked what a marabout was.
3 A marabout is someone who conducts religious ceremonies but also settles
4 day-to-day conflicts. When I have a discussion with the imam of the mosque, he
5 may also mention to me that he is the cadi in that down because he is asked to settle
6 disputes in that area. That's what a cadi is. But the cadi remains the superior judge,
7 designated by the state authorities.

8 And in the north, not just anyone is called a cadi, even if he plays the role of a judge.

9 A cadi must have a clearly demonstrated knowledge of Islamic law. And these cadi
10 can be counted on the fingers of one hand, Ma'am. But marabout, they administer
11 justice all day long and an ordinary citizen might call them cadi.

12 Q. [15:00:57] Turning to page 8763 of the same report, and 8764, we're going to
13 a specific part and I'll just put some questions to you. Is it correct that the procedure
14 in cases heard by cadis is different from the procedure in regular formal courts?

15 A. [15:01:24] Yes.

16 Q. [15:01:32] Is it correct the parties are not represented by a lawyer?

17 A. [15:01:37] Yes.

18 Q. [15:01:46] And the parties can call witnesses and be heard themselves?

19 A. [15:01:52] To my knowledge, this is down to the cadi himself. He can call
20 whichever witness he wants. And in the eminent literature on the subject of the cadi,
21 it is clearly indicated that he is not bound by any of the advice of those assisting him.
22 He is the one to decide. He is advised but he is -- the advice he can take or leave to
23 one side, *ab initio*. That is what the cadi is from the get-go.

24 Q. [15:02:39] Is it correct that it's not necessary to pay a fee to bring a matter before
25 the cadi?

1 A. [15:02:50] There is absolutely no fee whatsoever to be paid. But the parties will
2 present themselves before the *cadi*, they are morally obliged to do so.

3 Q. [15:03:13] Turning to page 8764, I'm going to read out the last paragraph to you.
4 If that's on your screen the paragraph will be in French, but I'll read it in English:
5 In addition, according to those interviewed, the *cadis* serve all members of the
6 community without discrimination. Interviewees did not highlight any noticeable
7 gulf between the *cadis* and themselves, whether economically impoverished or
8 educationally disadvantaged they might be. In several instances it was emphasised
9 that access to justice through the figure of the *cadi* was universal. As one respondent
10 explained, all those who have a difficulty or a problem are allowed to appear before
11 the *cadi*. He makes no distinction or difference between men and women, youth and
12 elders. Notably, the services of the *cadis* in the field of dispute settlement are free.
13 Some interviewees also highlighted that corruption in politics might deteriorate the
14 functioning of customary justice systems. None however made that allegation
15 against the *cadis*.

16 Would you agree that *cadis* allow for access to justice without discrimination?

17 A. [15:04:42] Well, I would note, counsel, that the customary justice system
18 comprises the *cadi*, in the sense that he is included in that.

19 Q. [15:05:07] Mr Witness, this quote says: In addition, according to those
20 interviewed, the *cadis* serve all members of the community without discrimination.
21 Do you agree with this assessment?

22 A. [15:05:20] The literature reminds us of situations where the integrity even of the
23 *cadi* might have been called into question. Recently, I had a discussion with an
24 imam from a very important mosque, the Abaradjou mosque, who said to me that in
25 the light of these two justice systems, the state system or the customary system, the

1 cadi system, that is, the issue of probity should be put or the question of probity
2 should be put. It is more relevant when we talk about the state judge with regard to
3 those -- rather than those who people who act as cadi. I believe that that is the
4 answer that I can provide you with.

5 Q. [15:06:31] Mr Witness, were you aware that even after the French intervention in
6 2013, some local cadis in Timbuktu continued to hear criminal cases?

7 A. [15:06:43] Well, counsel, the imam that I just mentioned to you from Abaradjou
8 neighbourhood, the most populated neighbourhood in Timbuktu, whom I met
9 recently, said to me - and another imam - both said to me that they had been seized
10 by any inhabitant of any neighbourhood whatsoever, whether it be the medina or any
11 other neighbourhoods, and they are seized of a matter and they are recognised as
12 a cadi. It is true that there have been eminent cadis in the town of Timbuktu. I'm
13 sorry to belabour this point, which is that a cadi is in fact a judge, as I said, but
14 the -- but these are judges who provide day-to-day justice, if you like. They
15 administer day-to-day justice.

16 Q. [15:07:56] If we can turn to Defence tab 57, that's MLI-OTP-0080-2475. And,
17 Mr Witness, could you please let me know when you can see that on your screen.

18 A. [15:08:31] The paragraph that I have before me was broadcast earlier.

19 Q. [15:08:38] I don't believe it's the right document. I think there should be a new
20 document in front of you now. Can you see that, Mr Witness?

21 A. [15:08:47] Yes, the document that begins with "*Prologue*".

22 Q. [15:08:57] Now, Mr Witness, we're in open session but can you explain what this
23 document is?

24 A. [15:09:03] I haven't understood your question.

25 Q. [15:09:14] Mr Witness, can you describe what this document is without

1 identifying yourself?

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)v

8 Q. [15:10:06] Can we turn to page 2482.

9 And before reading out the paragraph I'll ask you a question. Mr Witness, is it
10 correct that the *cadi* does not have the discretion over the laws and punishments
11 provided in the Koran for serious crimes, that is *hudud* crimes?

12 A. [15:11:00] Well, there is that issue on adultery where the incriminated are
13 questioned, mm-hmm.

14 Q. [15:11:12] Mr Witness, it says: (Interpretation)

15 "In criminal matters, the *cadi* must apply the sentences provided for in the Koran:
16 Mutilation for burglary, ransom or crimes of blood and flogging for adultery, and in
17 this case the law is difficult to apply, four witnesses are required to assist -- four
18 witnesses, having assisted in the perpetration of the incriminated act and the person
19 who blew the whistle are at the risk of 100 lashings."

20 So, Mr Witness, today do you still agree with the opinion that the *cadi* must apply the
21 penalties purviewed by the Koran in penal matters?

22 A. [15:12:29] (Redacted) Please put things back in their
23 context. I talked about history in the sense that the *cadi* must apply all the sanctions
24 that are outlined in the Koran, yes.

25 Q. [15:12:50] Is it correct that the Koran suspends the application of certain

1 penalties for grave crimes, that is the *hudud* crimes, during times of conflict?

2 A. [15:13:16] Well, I do not have specific knowledge on that question.

3 Q. [15:13:23] Now, at the fourth paragraph, this refers to certain institutions. Is it
4 correct that institutions such as *Hisbah* and the *Shurta* flow from the power and
5 jurisdiction of the *cadi*?

6 A. [15:13:44] Counsel, well, I shall quote Professor Bernard Durand who was
7 a specialist on the history of institutions in Francophone countries. And I quote him,
8 Professor Bernard Durand that is, both in the text and in the bibliography.

9 Q. [15:14:22] Mr Witness, am I understand from your answer that Bernard Durand
10 is the source of this section?

11 A. [15:14:31] As the paragraph indicates. And I refer to the written work,
12 absolutely.

13 Q. [15:14:47] Is it correct that the role of the *muhtasib* is to enforce public morals?

14 A. [15:15:00] Once again, Counsel, I quote Professor Durand on the subject. In the
15 previous lines it is well indicated what the evolution of the *cadi* system was *ab initio*.
16 The caliph himself was the judge and, at a given point in time in history, this function
17 was delegated. And I repeat, *ab initio* it was the caliph, he himself who was in the
18 position of judge.

19 Q. [15:15:44] And, Mr Witness, as an expert, are you aware whether the role of the
20 *Shurta* was to enforce public security and law?

21 A. [15:15:53] Well, in the country that we are interested in here, that function did
22 not exist.

23 Q. [15:16:15] And under the Koran?

24 A. [15:16:18] Well, I am not a specialist in such writings. And once again I shall
25 quote Bernard Durand, and I repeat that only the caliph could be a judge, and it was

1 over time that the evolution took place.

2 Q. [15:16:46] So, Mr Witness, I'm going to go back to your report. That's OTP tab
3 1. That's MLI-OTP-0077-2933, dealing with the pages at 2940 to 2941. This is issues
4 of demographics.

5 Now is it correct, Mr Witness, that the figures you provided in this report
6 demonstrate an overall population increase of 73 per cent in Timbuktu between 2009
7 and 2019?

8 A. [15:17:23] I'm referring to the source. These are from the national directorate of
9 the population dated October 2018, that's the source.

10 Q. [15:17:49] Mr Witness, would you agree that if there's been such a population
11 increase, the 2012 events did not have a negative effect on population growth in
12 Timbuktu?

13 PRESIDING JUDGE MINDUA: [15:18:10](Interpretation) Madam Prosecutor, you're
14 on your feet.

15 MS LUPING: [15:18:13] (Overlapping speakers) I'm looking at the source of the
16 information, information being provided to the witness about a 73 per cent increase
17 during a period of ten years between 2009 and 2019. I would say that that does not
18 provide a proper basis for the question that is being put, which is very specific to 2012.
19 It's simply one year within a ten-year period, and this doesn't provide the basis for
20 such a question.

21 PRESIDING JUDGE MINDUA: [15:18:51](Interpretation) I do believe, Ms Taylor,
22 that the Prosecutor is correct in so saying that you need to provide a foundation for
23 this.

24 MS TAYLOR: [15:18:57] Mr President, if the Prosecutor is of the position that these
25 figures have no relevance to 2012, then I'm happy to move on.

1 Q. [15:19:04] Now, earlier I mentioned issues concerning Imam Dicko. Now, is it
2 correct that Imam Dicko, in 2009 and 2010, opposed -- proposed reforms to the family
3 code?

4 A. [15:19:23] The family code was voted, from memory, in 2009.

5 THE INTERPRETER: [15:19:45] The witness repeats himself.

6 THE WITNESS: [15:19:47](Interpretation) The national assembly, the parliament
7 therefore, there is only one chamber and the parliament voted in this law in 2009.

8 The Islamist associations, under the aegis of the High Islamic Council under
9 Imam Dicko, requested that there be a review of the code of persons and the code of
10 family.

11 The institutional arsenal under the Malian constitution provides that a second reading
12 can take place and, to the extent of my knowledge, this is the first time in
13 constitutional history of our country that a second reading took place. A second
14 reading took place and only in 2011 was the code promulgated, the code that is in
15 place now after the second reading, as I said.

16 MS TAYLOR: [15:21:01]

17 Q. [15:21:03] Now, Mr Witness, you've referred to Islamic groups requesting that
18 there be a review of the code. Were you aware or to your knowledge was
19 amendments also opposed by women's groups?

20 A. [15:21:26] Women, could I ask you to be more explicit?

21 Q. [15:21:38] Certainly. I'll turn to a specific article. That's Defence tab 35. It's
22 MLI-D28-0004-8794. This is an article dated 23 August 2009 titled, "Mali protest
23 against women's law". And it concerns an interview with the head of a Muslim
24 women's association called Hadja Dembele. And I'll read out the relevant sections:
25 "One of the most contentious issues in the new legislation is that women are no longer

1 required to obey their husbands.

2 Hadja Sapiato Dembele of the National Union of Muslim Women's Associations said
3 the law goes against Islamic principles.

4 'We have to stick to the Koran,' Ms Dembele told the BBC's Focus on Africa
5 programme. 'A man must protect his wife, a wife must obey her husband.'

6 'it's a tiny minority of women here that want this new law - the intellectuals. The
7 poor and illiterate women of this country - the real Muslims - are against it,' she
8 added."

9 Mr Witness, based on your memory and what you know, were women's groups
10 opposed to the amendments to the law?

11 A. [15:23:15] Thank you. Opposite the High Council, the High Islamic Council,
12 there was another organisation called the CAFO, the coordination of feminine
13 organisations, the CAFO, and the CAFO had proposed that a number of measures be
14 taken with a view to reforming the code of the person and family. And I'll brush
15 over those details. But a first attempt was made and (Redacted)

16 (Redacted) And

17 it is true that the -- the President Amadou Toumani Touré wanted to grant some of
18 the requests on the part of the female or feminine associations. But it was less
19 a question of whether it was more educated women or less educated women pitted
20 against each other, rather it was international engagements that had been
21 underwritten by the state of Mali. So there was a protocol by which, in terms of
22 succession, there had to be equality between men and women. These were the
23 relevant provisions of the Malian constitution from 1960 until today. There has been
24 a social movement in existence and I have mentioned it clearly in my report.

25 As in other countries indeed, there have been difficulties in bringing together the

1 understanding of the traditions and the law in place, and this is why a social
2 movement came into being.

3 Q. [15:25:39] Mr Witness, you've referred to an organisation called CAFO. Is
4 a person called Niamoye Alidji a member of that organisation?

5 A. [15:25:59] Certainly, but I have not had the honour to meet this individual.
6 And there are names of even more eminent personalities quoted here.

7 Q. [15:26:18] Is it correct that as a result of these protests, the 211 law cements the
8 obligation of a women to obey her husband and the role of the husband as the head of
9 the family?

10 A. [15:26:39] (Redacted)

11 (Redacted), the report was approved. There was the issue, the
12 quite simple issue of the nubile age, that is to say, should they get married before the
13 age of 18 or not. And according to the proposal introduced in 2009, the age was 18.
14 The association said that this was contrary to tradition and the -- the population was
15 really supporting what the Koran has to say. So a local official said to President
16 Touré that the constitution should be modified as to the limitation of the mandate of
17 the president of the republic, that it should be limited to two mandates. And they
18 asked Mr -- President Touré if he could put this forward, that he should not however
19 touch anything that should be contrary to the sacred book. These are discussions
20 and debates current in society.

21 Once again, the Malian republic subscribed to the international agreements, and that
22 be that the constitution says that there should be equality between women and men.
23 And the women's associations were of the mind that -- that one should adhere to
24 these international agreements and also to what the people had to say.

25 Q. [15:28:35] Mr Witness, you've referred to the proposals concerning the law and

1 certain controversies concerning the law. Are you familiar with the contents of the
2 2011 law?

3 A. [15:28:53] I did mention earlier on the issue of succession, Maputo Protocol to
4 which Mali subscribed. There is equality there between men and women, even in
5 terms of inheritance. And when the law provides that the testator can indicate that
6 his estate be devolved under Malian or under law, then there is an international
7 convention that also comes into play that has been legally ratified, for example,
8 *inter alia*, with regard to the age.

9 Q. [15:29:52] Is it correct, Mr Witness, that the current or the 2011 law sets the legal
10 age of marriage for women at 16 years and allows marriage at 15 in certain
11 circumstances?

12 A. [15:30:08] Yes, those are the terms, but you're speaking of exceptions.

13 Q. [15:30:25] And it also recognises religious marriage in law?

14 A. [15:30:32] Absolutely, my report is explicit on that point.

15 Q. [15:30:46] Is it correct, Mr Witness, that the Koran is not -- or is opposed to
16 forced marriage?

17 A. [15:30:56] That is my opinion, that's my opinion.

18 Q. [15:31:04] Are you familiar with the following section of the Koran, Defence tab
19 58, MLI-D28-0004-9477, stating: It is not lawful for you to inherit women by force,
20 nor may you treat them harshly so that you can make off with part of what you have
21 given them unless they commit an act of flagrant indecency. Live together with
22 them correctly and courtesy.

23 Is it correct, Mr Witness, that supporting the application of the Koran doesn't mean
24 supporting forced marriage?

25 A. [15:31:59] I think so. I think so.

1 Q. [15:32:21] Now, going back to your report, in particular your section on the
2 status of women. This was page -- this is OTP tab 1, MLI-OTP-0077-2933, looking at
3 page 2948 in particular.

4 A. [15:32:54] Which page from my report, please? Tab 1, you said?

5 Q. [15:32:57] It's page 2948.

6 A. [15:33:26] Yes. Yes, please.

7 Q. [15:33:30] Is it correct, Mr Witness, that you based this section on two sources,
8 a 2018 report by the -- the national commission of human rights and a 2020 report?

9 A. [15:33:45] Yes. Yes, which I cited, absolutely.

10 Q. [15:34:02] And is it correct that the information taken from the 2018 report
11 concerns violations documented after 2012?

12 A. [15:34:17] Counsel, I quoted from the report from page 66. I quoted page 66.

13 Q. [15:34:39] Mr Witness, would you characterise early marriage as a form of
14 forced marriage?

15 A. [15:34:56] Well, we are talking about international conventions which Mali has
16 signed on to. If marriage occurs before the nubile age, the marriage occurs without
17 the consent on one of the future spouses, then we are talking about forced marriage
18 and we are in the field of -- we are also in the field of gender violence. This may
19 clash with tradition, but that's what we're talking about here.

20 Q. [15:35:52] Mr Witness, would you agree that this practice of early marriage
21 existed in Timbuktu both before and after 2012?

22 A. [15:36:12] Throughout the entire country, Ma'am.

23 Q. [15:36:21] Now, in your report you describe the system of marriage for the
24 Songhai. This is at page 2951 of your report. According to this system, is it possible
25 for girls to be married from the age of eight or 10 years?

1 A. [15:36:40] I am quoting Bokar N'Diaye, his work. If you move to page 18,
2 fourth paragraph from the top, we read the following: "Young girls can marry at the
3 age of eight or 10." In such a case, she goes to the conjugal home, but her husband
4 shall await until she is nubile to consummate the marriage.

5 Q. [15:37:36] Is it correct that many Songhai marriages in Timbuktu occur within
6 the same family?

7 A. [15:37:44] Yes, Counsel. Salem Ould Elhadj reports that in the medina there is
8 a trend to such marriages within families, absolutely.

9 Q. [15:38:07] Going to turn to Defence tab 29, that's MLI-D28-0004-8515. This is
10 a Canadian study of early marriage. It's based on studies between 2007 and 2009 in
11 northern regions of Mali. And according to this, I'll read out the paragraph:
12 "An exploratory study of descriptive type, having used a quantitative and qualitative
13 approach related to the practice of early marriage from October 2007 at November
14 2009 in the areas of Mopti, Gao and Timbuktu. The practice of the early marriage
15 remained rather significant in the three areas studied with levels of prevalence of
16 52.3% to Mopti, 63.3% with Gao, and 58% with Timbuktu. The practice remained
17 strongly endogamic with 50 -- 85% of early marriage practised within the same family
18 with Timbuktu, 71.6% with Mopti, and 37.2% with Gao. All ethnic groups were
19 concerned. The principle reason of the early marriage was the fear of the illegitimate
20 pregnancies, with 51.7% with Timbuktu, 42.8% with Gao, and 4.1% in Mopti -- 41.1%."
21 I apologise.

22 Now, Mr Witness, I'll go to one sentence in particular and ask you a question.

23 Discussing the 52 -- 58 per cent prevalence in Timbuktu of early marriage, it says, the
24 practice remained strongly endogamic, occurring within the same family. So it's
25 saying that 85 per cent of early marriages occurred within the same family.

1 Would this suggest the family pressure plays a role in early marriage in Timbuktu?

2 A. [15:40:40] Much more than the family pressure is the social and cultural
3 pressure. This is a state of mind. If you are from a particular family, there is the
4 weight of society. There's social pressure from the family, but the family is to be
5 found within an environment. * So there's the family pressure, which comes from - I
6 apologise for speaking in a light-hearted manner - the family pressure can come
7 mainly from the fear of gossip.

8 Q. [15:41:40] I'm just turning to this issue of social pressure, and I'll read out the
9 last sentence of that paragraph, which states that: "The principle reason of the early
10 marriage was the fear of the illegitimate pregnancies with 51.7% with Timbuktu,
11 42.8% with Gao, and 41.1% in Mopti."

12 Would you agree, Mr Witness, that there are socially conservative views in Timbuktu
13 towards pregnancy outside of marriage?

14 A. [15:42:16] Well, the social issue is difficult beyond the north if we include Mopti
15 within the movement against the nubile age suggested by the public authorities, the
16 opinion of families in light of the demographic evolution. Young girls reach puberty
17 earlier than 20 or 30 years before, so -- so there is a great deal of concern and fear
18 when it comes to illegitimate pregnancies.

19 Q. [15:43:17] Mr Witness, would you agree that both before 2012 and after 2012
20 social views towards illegitimate pregnancies have affected girls' marriage choices in
21 Timbuktu?

22 A. [15:43:34] I did not conduct research in that area, but I do have in mind some
23 children who were born of relationships that did trouble the conscience of people in
24 Timbuktu. There were illegitimate children born because -- well, during the
25 occupation, that does come to mind. I didn't investigate that specifically, but I do

1 know about this.

2 Q. [15:44:31] I'm going to turn to another document. It's Defence tab 27. It's
3 MLI-D28-0004-8506. It's an article, 2017 article concerning bride kidnapping in Mali.
4 I'm looking at the bottom page, it says: "Mali has one of the world's highest rates of
5 child marriage. Around one in seven girls are wed by the age of 15 and more than
6 half by 18, says United Nations children's agency."

7 Mr Witness, is this consistent with information you've received in your work?

8 A. [15:45:33] UNICEF is credible when it comes to this issue in Mali. UNICEF is
9 completely credible.

10 Q. [15:45:57] And to turn to page 8507 of the same article, and this is discussing the
11 practice of bride kidnapping. And I'll read out a quote and ask you a question.

12 The quote is -- I'll read out two paragraphs to give you the context:

13 "In rural Mahou - which is 275 miles ... west of the capital Bamako - the issue of child
14 marriage is compounded by the deeply rooted tradition of bride kidnapping.

15 The men who kidnap girls to wed may be unable to afford a dowry, or have struggled
16 to find a willing wife, activists say. If the kidnapper has sex with the girl, she could
17 be seen as too tainted to marry anyone else, causing her family to accept it."

18 Mr Witness, my question is, would you agree that high dowry prices can play a role
19 in forced marriage?

20 A. [15:46:58] I don't know. Out of professional practice, I don't know the problem
21 of girl kidnappings. I've read Bokar N'Diaye, whom I quoted, within some ethnic
22 groups, but I am not familiar with the practice.

23 Q. [15:47:39] I'm going to turn to another document then, which is Defence tab 26.
24 That's MLI-D28-0004-8194. And this is a UN Women's study on practices concerning
25 child marriage in Africa. It's dated 2018. If we turn to page 8291, we can see that

1 they're dealing with Mali. And if we turn to page 8292, we can see that they're
2 addressing the issue of forced or arranged marriage.

3 So if we can put up 8292, although it's in English. So I'll read it out slowly so you
4 can get the interpretation:

5 "While parents and guardians will force girls into child marriage as a means of
6 avoiding the shame of adolescent pregnancies and premarital sexual relationships,
7 most temporary marriages end in divorce and the girls either remarry or live the rest
8 of their lifetime caring for their children. Temporary marriages sometimes can also
9 just be a disguise for prostitution as women meet with men who are not intimately
10 attached to them. Practically, *al moutaa* is a means through which young Islamic
11 men who cannot afford full marriages as per the Islamic law and culture evade the
12 prohibition on premarital sex but still have sexual intercourse with their temporary
13 wives."

14 Mr Witness, based on your expertise, are you aware of a linkage between the practice
15 of *al moutaa*, temporary marriages, and high dowry prices, that is that men will resort
16 to either forced marriage or temporary marriages because they can't afford full
17 marriages as per Islamic law?

18 A. [15:49:55] I'm quite -- I'm quite -- I'm finding it quite difficult not to go back to
19 my criminal sociology classes when I attempt to answer your question.

20 Q. [15:50:50] Mr Witness, did you want to provide further information?

21 A. [15:50:56] I did not do research into that issue. But I do read the newspapers.
22 Those situations are mentioned. For example, people who go to the Gulf and come
23 back, those issues are spoken of, similar -- similar situations to which you've just
24 described, perhaps. There is this option you mentioned, but it's also possible that
25 more trivially there may be such situations leading to crime. I understand

1 completely. That's my reaction.

2 Q. [15:51:51] If I can turn to Defence tab 28. That's MLI-D28-0004-8511. This is
3 a 2015 article concerning efforts by women's groups in Timbuktu to lower the price
4 for the dowry, to fix it between 20,000 and 200,000 CFA, according to the means of
5 a family.

6 Mr Witness, are you aware of any efforts by women's groups to lower the price of the
7 dowry?

8 A. [15:52:31] No, Counsel. I don't have any such information. It contributes, so
9 to speak, what I've read from Ould Elhadj. Apparently, it is at the time of separation
10 or divorce the man has finished paying the dowry, because he was told that he could
11 take his time, and this is mentioned as a particular aspect of Timbuktu.

12 More contemporaneously, there is the -- there are external influences, perhaps. In
13 some families, such amounts are asked for. It seems logical enough that
14 organisations would intervene and ask for these amounts to be decreased. It seems
15 to my mind to be quite a common situation, but I'm -- I'm saying that with reserves.
16 Just like when you were mentioning temporary marriages a few moments ago, I don't
17 have much information, but if I -- but I can't ignore reality.

18 Q. [15:54:18] Mr Witness, you've just stated that it seems logical enough the
19 organisations would want to intervene and ask for these amounts to be decreased.
20 Are you able to clarify why it seems logical to you?

21 A. [15:54:34] Quite recently, in February 2021, Timbuktu had a festival, the Living
22 Together Festival. It was the fifth year the festival was held. I heard, after putting
23 some questions to people, that the young people -- well, more and more young people
24 are taking part in this festival about living together. The women's organisations are
25 more and more organised. There are networks, people are advocating. There is

1 lobbying going on on all the issues that we've discussed regarding marriage.

2 I do remember the associations -- the women's associations carrying out activities in
3 this area. It's clear that the young people in Timbuktu are waking up. And one
4 organisation definitely does have the wind in its sails. This organisation intervened
5 quite recently. Women's organisations are particularly well organised.

6 MS TAYLOR: [15:56:15] Mr President, I have several questions which would be best
7 placed in private session. So given that we only have five minutes left with this
8 session, I think now would be a good time to go into private session to ask those
9 questions.

10 PRESIDING JUDGE MINDUA: [15:56:40](Interpretation) Certainly, Ms Taylor.
11 Court officer, private session, please.

12 (Private session at 3.56 p.m.)

13 THE COURT OFFICER: [15:56:53] We're in private session, Mr President.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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Trial Hearing
WITNESS: MLI-OTP-P-0643

(Private Session)

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Trial Hearing
WITNESS: MLI-OTP-P-0643

(Private Session)

ICC-01/12-01/18

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9 (Open session at 4.02 p.m.)

10 THE COURT OFFICER: [16:02:22] We're back in open session, Mr President.

11 PRESIDING JUDGE MINDUA: [16:02:33](Interpretation) Thank you very much,

12 Mr Courtroom Officer.

13 Mr Witness, I'm now addressing you. The Chamber would like to thank you once

14 again for having very clearly answered and very patiently answered the questions

15 that have been put to you today. But, unfortunately, as you can see, your testimony

16 has not yet come to an end.

17 THE WITNESS: [16:03:05](Interpretation) You're welcome.

18 PRESIDING JUDGE MINDUA: [16:03:06](Interpretation) So tomorrow you will

19 continue your testimony. Until then, as you are well aware, you are not allowed to

20 talk about your testimony to anybody, whether it be members of your family,

21 whether it be friends, were you to come into contact with any of them this evening.

22 So there we have it. So please get some rest and we shall see each other again

23 tomorrow at 9.30.

24 I would like to now give my usual thanks to the parties and the participants for your

25 collaboration today. I'd also like to thank the court reporters, the interpreters for

Trial Hearing
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- 1 their hard work, as always. And also our security officers, to whom I'd also like to
- 2 say thank you. And last but not least, those who are following us, the public.
- 3 So we shall now adjourn and reconvene tomorrow morning at 9.30. I wish you all
- 4 a very nice evening.
- 5 Court is adjourned.
- 6 THE COURT USHER: [16:04:38] All rise.
- 7 (The hearing ends in open session at 4.04 p.m.)