

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Tuesday, 5 October 2021
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:58] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:32:16](Interpretation) Court is in session.
15 Good morning to all.
16 Mr Courtroom Officer, could you please call the case.
17 THE COURT OFFICER: [9:32:40] Good morning, Mr President, your Honours.
18 This is the situation in the Republic of Mali, in the case of The Prosecutor versus Al
19 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.
20 And for the record, we are in open session.
21 PRESIDING JUDGE MINDUA: [9:33:06](Interpretation) Thank you very much,
22 Mr Courtroom Officer.
23 As every morning, we are going to check with the teams and their compositions.
24 Mr Prosecutor.
25 MR GARCIA: [9:33:19](Interpretation) Good morning, Mr President, your Honours.

1 Lucio Garcia for the Prosecution, with Ms Sardachti, and we comprise the entire
2 Prosecution team for today.

3 PRESIDING JUDGE MINDUA: [9:33:33](Interpretation) Thank you very much,
4 Mr Prosecutor.

5 And over to the Defence.

6 Counsel.

7 MS TAYLOR: [9:33:38] Good morning, Mr President. Good morning,
8 your Honours. Good morning to everyone in the courtroom.

9 The Defence for Mr Al Hassan is represented today by Ms Sarah Marinier-Doucet, Ms
10 Dolly Chahla and myself, Ms Melinda Taylor.

11 PRESIDING JUDGE MINDUA: [9:33:51](Interpretation) Thank you very much,
12 Ms Taylor.

13 I'm now turning to the Legal Representatives of Victims. Counsel.

14 MR KASSONGO: [9:33:59](Interpretation) Thank you, Mr President, your Honours.
15 Good morning to all. The team of the Legal Representatives of Victims today
16 comprises Madam Prisque Dipanga Biyéke, who is assisting me and who's seated just
17 behind me, and myself, Maître Kassongo. We'd like to thank you on behalf of the
18 entire team.

19 PRESIDING JUDGE MINDUA: [9:34:22](Interpretation) Thank you very much,
20 Maître Kassongo.

21 And now I shall turn to the counsel, the Rule 74 counsel of our witness.

22 Maître.

23 MR DHIB: [9:34:29](Interpretation) Good morning, your Honours.

24 Counsel Hassen Dhib. I am with the witness who is to appear today before the
25 International Criminal Court as per Rule 74 of the Rules of Procedure and Evidence of

1 this Court.

2 PRESIDING JUDGE MINDUA: [9:35:01](Interpretation) Thank you very much,
3 counsel.

4 Now, lastly, I shall turn to the witness. Of course, we shall be continuing with the
5 testimony of the Prosecution witness P-0626.

6 Good morning, Mr Witness, how are you this morning?

7 WITNESS: MLI-OTP-P-0626 (On former oath)

8 (The witness speaks Arabic)

9 (The witness gives evidence via video link)

10 THE WITNESS: [9:35:19](Interpretation) Good morning.

11 PRESIDING JUDGE MINDUA: [9:35:27](Interpretation) Thank you very much,

12 Mr Witness. On behalf of the Chamber, I would like to welcome you once again and
13 thank you for your availability.

14 I would like to remind you that you are still under oath and that you should speak the
15 truth, the whole truth and nothing but the truth.

16 Lastly, I would like to remind you of the practical advice with regard to addressing
17 the Court. As all of us in this courtroom, we need to speak slowly and clearly and
18 observe pauses.

19 Now, without any further ado, I shall hand over to the Prosecution for the
20 continuation and wrapping up, I hope, of the examination-in-chief.

21 Mr Prosecutor.

22 MR GARCIA: [9:36:20](Interpretation) Thank you, Mr President. Thank you,
23 your Honours.

24 Yes, as the OTP committed itself, it shall indeed be wrapping up the
25 examination-in-chief of this witness in this first session.

1 Now, we were continuing yesterday, and as we are still under Rule 74, I would
2 request that we return once again for a session of approximately 30 minutes to private
3 session for questions that might elicit responses under Rule 74.

4 We have two subjects on which we will be able to put questions in public session
5 towards the end of the session this morning.

6 PRESIDING JUDGE MINDUA: [9:37:03](Interpretation) I'd like to remind the
7 members of the public that, unfortunately, we now need to go into Rule 74 closed
8 session.

9 Mr Courtroom Officer, closed session, please.

10 (Closed session at 9.37 a.m.)

11 THE COURT OFFICER: [9:37:31] We're in closed session, Mr President.

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- 21 (Private session at 10.11 a.m.)
- 22 THE COURT OFFICER: [10:11:21] We're in private session, Mr President.
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- 19 (Open session at 10.33 a.m.)
- 20 THE COURT OFFICER: [10:33:40] We are back in open session, Mr President.
- 21 PRESIDING JUDGE MINDUA: [10:33:50](Interpretation) Thank you very much,
- 22 Mr Courtroom Officer.
- 23 Mr Prosecutor.
- 24 MR GARCIA: [10:33:53](Interpretation)
- 25 Q. [10:33:54] So, Mr Witness, we are still on the subject of marriage of the men from

1 the armed groups with women from Timbuktu and the surrounding area.

2 Are you in a position to tell us whether there were many such cases in the years 2012
3 to 2013?

4 A. [10:34:17] Yes. A lot of these events happened in Timbuktu and the
5 surrounding area. Many of the armed groups' men were married in Timbuktu and
6 around it.

7 Q. [10:34:43] And according to your knowledge and your experience, Mr Witness,
8 according to what you heard, did you hear speak of a woman who refused to get
9 married with members of an armed group in the year 2012, 2013?

10 A. [10:35:12] No, I haven't heard of that. Not at all.

11 Q. [10:35:22] So you also spoke to us of certain marriages, three marriages a few
12 moments ago. I don't want to go come back to the details or these marriages again,
13 Mr Witness.

14 But did these marriages come to an end? And, if so, in what manner?

15 A. [10:35:46] In the same manner a man would ask for a hand of a woman. If she
16 agrees, he gives the dowry and the marriage happens. This is -- this is what I know
17 about those marriages.

18 Q. [10:36:19] So I shall be more specific.

19 Were there any divorces in those marriages at a given moment in time or did they
20 continue to stay together?

21 A. [10:36:30] Regarding divorce, what I know is that they -- sometimes they would
22 leave their wives and they would leave the city. Many have left their wives and left
23 the city as well.

24 Q. [10:37:05] So you say that many of them left the city and left their wives as well.
25 Now, when you say "many," who are you speaking of?

1 A. [10:37:19] The armed group that were -- groups that were in Timbuktu.

2 Q. [10:37:30] And when you say that they left their wives, how did that come
3 about?

4 If they were married, how did that happen?

5 A. [10:37:46] Whereby through divorce. They left their wives. They divorced
6 them.

7 Q. [10:38:06] And for us to understand well, Mr Witness, what was the procedure
8 of divorce that they followed? Did they have to bring it before a tribunal? How
9 did things unfold at that time?

10 A. [10:38:21] No, no. No need for the tribunal. They just get divorced. They
11 just leave their wives.

12 Q. [10:38:34] And how did -- or where did they get divorced from? So as for us to
13 understand, how did the divorce from these women come about?

14 A. [10:38:58] I did not understand your question.

15 Q. [10:39:05] To be specific, was it sufficient enough for them to say that they were
16 divorced for it to actually be the case, or did they have to follow a procedure? Did
17 they have to consult somebody?

18 Do you see what I'm driving at?

19 A. [10:39:31] Yes, I understand. There are no procedures. This is why I said they
20 just get divorced. There are no specific measures or procedures for divorce, at least
21 not anything that I know of.

22 Q. [10:39:53] So if I understand you correctly, Mr Witness, it was sufficient for these
23 men, members of armed group -- armed groups, to just say that they were divorced
24 for that to be the case, for them to be divorced from these women that they had
25 married?

1 A. [10:40:14] This is it. This is it. Exactly.

2 Q. [10:40:21] And when did these divorces come about? At what period? Was it
3 at the beginning, towards the middle or towards the end of the occupation of
4 Timbuktu by the armed groups?

5 A. [10:40:43] This happened before the invasion of the south and before the
6 intervention of the French groups when there was the withdrawal. So it happened
7 at that period.

8 PRESIDING JUDGE MINDUA: [10:41:14](Interpretation) Excuse me, Mr Prosecutor.

9 Please check with the witness how the woman knew that she was divorced.

10 Was it the husband who told them that? Or was it the husband who left and then
11 the wife noticed that he was no longer there?

12 MR GARCIA: [10:41:31](Interpretation) Yes. Thank you.

13 Q. [10:41:34] Mr Witness, of course you just heard what the presiding judge said,

14 Mr Witness. So I'm going to be putting the same question to you.

15 How, according to your knowledge, did the wife discover that she had been divorced
16 by her husband?

17 A. [10:41:52] If the person had taken his wife to Timbuktu,
18 he would bring her back to her parents. This is only what I know.

19 MR GARCIA: [10:42:12](Interpretation) I don't know, Mr President, whether that
20 answers your question or not.

21 PRESIDING JUDGE MINDUA: [10:42:21](Interpretation) Thank you very much.

22 MR GARCIA: [10:42:23](Interpretation)

23 Q. [10:42:25] Thank you, Mr Witness, for this clarification. I would like to now
24 change topic. This is one of the last topics I shall be broaching with you.

25 Now, to your knowledge, are you in a position to explain to us how one could join the

1 armed groups that were part of the jihadists in the years 20- and -- 2012 and 2013?

2 A. [10:43:02] There are places, open places for training. There are people in charge
3 of the training, so anyone who wants to integrate the groups can go to them and then
4 they can have training. And then, ultimately they would join the groups.

5 Q. [10:43:44] Now, you were talking of specific locations. What locations were
6 they?

7 A. [10:43:55] I know one place in the northern part of Timbuktu. The groups were
8 there, and the place was open for training.

9 Q. [10:44:22] Did that location have a name? Do you have a description of said
10 location as to what purpose it fulfilled previously?

11 A. [10:44:39] Yes. It had buildings, large buildings.

12 Q. [10:45:04] And these large buildings you are mentioning, do you know what
13 they were used for before the occupation of Timbuktu?
14 Did they have any specific purpose?

15 A. [10:45:21] I said that it was for the gendarmes or -- or the guards and the Malian
16 state -- it was the headquarters for the Malian state.

17 Q. [10:45:50] Very well. Thank you very much for that clarification, Mr Witness, I
18 hadn't seen that in the interpretation.

19 Now, when you say that there was "training," what kind of training were people put
20 through?

21 A. [10:46:08] I have no idea.

22 Q. [10:46:16] And how are you aware of the fact that such locations existed for the
23 purposes of training for people who would then join the armed groups?
24 How are you aware of this?

25 A. [10:46:33] I knew of such places. I knew that there were training locations.

1 MR GARCIA: [10:46:51](Interpretation) Mr President, with your leave, I need 5 to 10
2 minutes in private session.

3 PRESIDING JUDGE MINDUA: [10:46:58](Interpretation) Mr Courtroom Officer,
4 private session, please.

5 (Private session at 10.47 a.m.)

6 THE COURT OFFICER: [10:47:06] We are in private session, Mr President.

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12 (Open session at 10.51 a.m.)
13 THE COURT OFFICER: [10:51:31] We are back in open session, Mr President.
14 PRESIDING JUDGE MINDUA: [10:51:39](Interpretation) Thank you very much,
15 Mr Courtroom Officer. So once again, I would like to publicly thank the Prosecutor
16 for having kept his word and for having finished the examination-in-chief.
17 We have a further 10 minutes. I shall now turn to the Legal Representative of
18 Victims to ascertain whether they retain their request to take the floor.
19 Mr Kassongo.
20 MR KASSONGO: [10:52:16](Interpretation) Thank you very much, and thank you,
21 your Honours.
22 The Legal Representative for the Victims much appreciates how -- the very clear and
23 comprehensive of the -- Prosecution's examination-in-chief, but we would like to put
24 two or three questions to the witness in public session. And now, in view of the
25 time - I think it would be after the break - these will be questions that are general in

1 nature. But I think that we will start in private session in order to establish the
2 circumstances surrounding these questions -- with the Chamber's leave, that is, and,
3 in order to do that, I am in your hands, your Honour.

4 PRESIDING JUDGE MINDUA: [10:53:06](Interpretation) Thank you very much,
5 Maître Kassongo.

6 Now of course I'm now turning to the Defence to put the ritual question to them.
7 Ms Taylor.

8 MS TAYLOR: [10:53:16] Thank you very much, Mr President.

9 This will obviously depend on the question and whether the Legal Representatives of
10 Victims have established a foundation for putting the question to this witness. But
11 we can't object to that until we hear the question, obviously. Thank you.

12 PRESIDING JUDGE MINDUA: [10:53:37](Interpretation) Thank you very much,
13 Ms Taylor.

14 So we have another seven minutes remaining. Maybe we could continue,
15 Maître Kassongo, rather than giving up these seven minutes. We are in open session.
16 Maybe you could establish the foundations for your closed session or private session,
17 and we can move ahead.

18 MR KASSONGO: [10:54:06](Interpretation) Thank you very much, Mr President,
19 your Honours.

20 Now, in order to do so, I would like to move into private session please, in order to
21 establish the foundations with the witness.

22 PRESIDING JUDGE MINDUA: [10:54:15](Interpretation) Mr Courtroom Officer,
23 private session, please.

24 (Private session at 10.54 a.m.)

25 THE COURT OFFICER: [10:54:25] We are in private session, Mr President.

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7 (Open session at 10.58 a.m.)

8 THE COURT OFFICER: [10:58:34] We're back in open session, Mr President.

9 PRESIDING JUDGE MINDUA: [10:58:43](Interpretation) Thank you very much,
10 Mr Courtroom Officer.

11 So, Maître, Kassongo, we do have the time for one or two questions.

12 MR KASSONGO: [10:58:51](Interpretation) Thank you very much, Mr President.

13 I am turning now to the witness.

14 Q. [10:59:01] According to your knowledge, you might have heard about -- or you
15 might have observed young female adolescents wearing the veil. The Legal
16 Representatives of Victims would like clarification with regard to the meaning of the
17 veil, according to your knowledge, according to Islamic tradition and according to
18 jurisprudence, if you can tell us anything about that.

19 A. [11:00:00] The veil or hijab is that a woman wears ordinary clothes. And then
20 she would cover herself with something similar to the dress that she usually wears,
21 but the head has to be covered by a veil.

22 This is what I mean by a hijab or wearing the veil.

23 Q. [11:01:02] Thank you, Mr Witness, for this clarification.

24 PRESIDING JUDGE MINDUA: [11:01:12](Interpretation) Maître Kassongo, I believe
25 that the second question has taken us -- or it is eating into our time for the break. So

1 are you opposed to that in any way?

2 MR KASSONGO: [11:01:27](Interpretation) Yes, indeed, Mr President,
3 your Honours, the Legal Representatives of Victims accepts and submits itself to your
4 decision to take this up again with the witness after the break.

5 PRESIDING JUDGE MINDUA: [11:01:48](Interpretation) Thank you very much.
6 We shall rise for now.

7 The hearing is suspended.

8 THE COURT USHER: [11:01:55] All rise.

9 (Recess taken at 11.01 a.m.)

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

11 THE COURT USHER: [11:32:28] All rise.

12 Please be seated.

13 PRESIDING JUDGE MINDUA: [11:32:48](Interpretation) Court is in session.

14 Maître Kassongo, you have the floor to continue with your questions.

15 MR KASSONGO: [11:33:12](Interpretation) Thank you very much, your Honour,
16 your Honours. I will not be long, but I do have two questions given the answers I
17 was given this morning. I will now turn towards the witness.

18 Q. [11:33:35] Good morning, Witness. I hope that all is well.

19 Prior to the break this morning -- thank you. Before the break this morning, on
20 page 31 of today's transcript, and, namely, line 12 thereof, lines 12 to 13, you told us
21 the meaning of the veil. And on lines 14 and 15, you stated, and here, I quote you:

22 "The head has to be covered by a veil."

23 And I finish the quote there.

24 My question is: What happens - if you would be so kind as to tell us - if somebody
25 refused to cover their head? If a woman or a young adolescent refused cover her

1 head? That's my first question. Who could sanction --

2 PRESIDING JUDGE MINDUA: [11:35:04](Interpretation) Ms Taylor is standing.

3 But, Maître Kassongo, I wanted you to limit yourself firstly to a question and then go
4 to the next, but Ms Taylor is standing.

5 So, Ms Taylor.

6 MS TAYLOR: [11:35:18] Thank you, Mr President.

7 Now, the response that the -- Maître Kassongo was just referring to concerned general
8 jurisprudence and it's not clear whether his question -- his follow-up question
9 concerns general jurisprudence or is directed to specific events in Timbuktu.
10 So I do believe that that's an issue that should be clear and the question should
11 therefore be reformulated to specify exactly what it is that Maître Kassongo is putting
12 to this witness.

13 Thank you.

14 PRESIDING JUDGE MINDUA: [11:35:55](Interpretation) Maître Kassongo, I think
15 that Ms Taylor's right. You'll have to reformulate the question.

16 MR KASSONGO: [11:36:05](Interpretation) Thank you, your Honour, your Honours.
17 Once again, thank you to the Defence for making it possible to specify the time when
18 this request is made. So I will reformulate my question.

19 Q. [11:36:22] Between 2012 and 2013, if a woman or girl refused to wear a veil, if
20 that was -- if that was something that would be reported on? And if so, who would
21 be the person who would report on that?

22 A. [11:36:51] What I know is that this hijab or veil is something that was
23 commanded. It's a command on women and girls once they reach puberty. And
24 the person who was responsible for such issues during that period between 2012 and
25 2013 was the *Hesbah*. Well, again ... But I don't witness really any woman or girl

1 who refused to cover her head and was punished. It is part of our traditions, Islamic
2 traditions anyway, hijab and being modest and to cover in front of foreign men.

3 So it's -- it's part of our tradition -- it became part of our tradition.

4 Q. [11:38:25] Thank you, Witness, for this clarification.

5 As I said, I wouldn't take a long time. You have gone into great detail at some length
6 here.

7 Now my last question was to ask if there was a sanction that was envisaged if
8 somebody refused to wear it, and, if so, what sanction was there if somebody refused
9 to wear -- if a woman or a girl refused wear a veil?

10 A. [11:39:11] I -- doesn't really come to me now. I don't really remember that there
11 was a specific sanction for a woman or a girl who refuses to wear the veil.

12 Q. [11:39:56] Thank you very much. Thank you, Witness.

13 The Legal Representative of Victims has finished with the request for clarifications
14 with these two questions.

15 I would like to wish you -- all you well for the rest of your testimony. And with the
16 leave of the Chamber, I would like to thank you.

17 I now turn towards the Chamber to thank the Chamber and the Judges. The Legal
18 Representative have finished with the questions. Thank you.

19 PRESIDING JUDGE MINDUA: [11:40:35](Interpretation) Thank you very much,
20 Maître Kassongo. I'd also like to thank you -- the Chamber would like to thank you
21 for your questions. And, of course, you have kept -- and also for having kept to your
22 word.

23 Witness, it's now the turn of the Defence for their cross-examination. I would ask
24 you to answer with care the questions that are put to you.

25 I now give the floor to Ms Taylor.

1 Ms Taylor.

2 MS TAYLOR: [11:41:12] Thank you very much.

3 QUESTIONED BY MS TAYLOR:

4 Q. [11:41:17] Good morning, Mr Witness. How are you?

5 A. [11:41:21] I'm fine.

6 Q. [11:41:27] As the Presiding Judge announced, my name is Melinda Taylor, and
7 I'm the counsel for Mr Al Hassan, and I'll be putting questions to you on behalf the
8 Defence today.

9 Now, Mr Witness, my first questions -- I'm hoping to stay in open session, so in order
10 to do so I would ask that you not give any locations concerning your address or
11 where you live and that you don't describe any family relationships.
12 Now, if you feel you need to do so, could you please put up your hand and I will ask
13 to go into private session.

14 PRESIDING JUDGE MINDUA: [11:42:14](Interpretation) Ms Taylor, I just want to
15 state something clearly here. And, obviously, we all have to protect the witness's
16 identity and protect our witnesses, and of course, we have to be careful with regards
17 to Rule 74. But this witness has his counsel next to him, Counsel ... 74. So it's not
18 our task to encourage closed sessions and private sessions because we have a public
19 listening to us, and our principle is the publicity of proceedings.

20 I am sure you understand that, Ms Taylor.

21 MS TAYLOR: [11:43:04] Certainly, Mr President. It was simply to avoid the
22 witness having to give an explanation in open session.

23 Q. [11:43:12] Now, Mr Witness, after Ansar Dine left Timbuktu in 2013, did you
24 stay in your house in your village?

25 A. [11:43:25] Yes.

1 Q. [11:43:41] And speaking of this time period, did French forces from Serval come
2 to your house?

3 A. [11:43:57] Yes. They came to me, and I met them. I met them in another
4 house, actually.

5 Q. [11:44:19] When was this? Approximately how many months after Ansar Dine
6 had left Timbuktu? Or days, depending?

7 A. [11:44:32] That was in -- in 2014, God willing, I think, maybe.

8 Q. [11:44:57] And were you told to go to their base at the airport?

9 A. [11:45:09] Yes. When they went and -- they said to me, "You will come to us in
10 the airport." And after a period of time, they sent me a car to take me there and I
11 went there.

12 Q. [11:45:35] Now, this car that came to pick you up, did the people in the car have
13 weapons?

14 A. [11:45:44] No. The car that they sent to pick me up did not have anyone
15 carrying weapons.

16 Q. [11:46:02] Now, can you describe what happened when you arrived at the
17 airport?

18 A. [11:46:12] I arrived at the airport, and they started asking me questions, and I
19 answered them until they finished. And then they gave me a piece of paper, and
20 they arranged for another car to take me back, a different car from the one that picked
21 me up.

22 Q. [11:46:49] So they asked you questions. Did these questions concern
23 Ansar Dine?

24 A. [11:47:03] Yes. It was related to everything that happened in that time period.

25 Q. [11:47:19] And did they record this or write it down?

- 1 A. [11:47:24] I don't know.
- 2 Q. [11:47:33] Did you have a lawyer?
- 3 A. [11:47:38] No.
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 Q. [11:48:10] Did they ask you to provide them any documents or items?
- 9 A. [11:48:17] Yes.
- 10 Q. [11:48:24] What did they ask you to provide them?
- 11 MR GARCIA: [11:48:34](Interpretation) I'm sorry.
- 12 PRESIDING JUDGE MINDUA: [11:48:35](Interpretation) Yes, Prosecutor.
- 13 MR GARCIA: [11:48:39](Interpretation) ... I don't intend to interrupt, far from that,
- 14 of course. But I just have concerns with regards to the direction in which these
- 15 questions are going, and, in particular, the last question, taking into account that there
- 16 are protective measures in place. So there was a question that was put, if we read
- 17 further up. This is on ...(Overlapping speakers)
- 18 MS TAYLOR: [11:49:01] Can I ask to go into private session.
- 19 MR GARCIA: [11:48:39](Interpretation) That would be excellent, your Honour.
- 20 PRESIDING JUDGE MINDUA: [11:49:10](Interpretation) Yes, Prosecutor, I think
- 21 that the proposal of Melinda Taylor's is very welcome.
- 22 Court officer, please take us into private session.
- 23 (Private session at 11.49 a.m.)
- 24 THE COURT OFFICER: [11:49:25] We are in private session, Mr President.
- 25 (Redacted)

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6 (Open session at 11.58 a.m.)

7 THE COURT OFFICER: [11:58:26] We're back in open session, Mr President.

8 PRESIDING JUDGE MINDUA: [11:58:35](Interpretation) Thank you very much,
9 court officer.

10 Ms Taylor.

11 MS TAYLOR: [11:58:40] I'm going to play a video. It's Defence tab 26. It's

12 MLI-OTP-0012-1644. And I think it should not be displayed to the public.

13 It will be played without sound on evidence 2.

14 (Viewing of the video excerpt)

15 MS TAYLOR: [11:59:44]

16 Q. [11:59:45] Mr Witness, did you recognise anyone in this video?

17 A. [11:59:51] No.

18 Q. [11:59:57] You've never seen those individuals before?

19 A. [12:00:08] No, no.

20 Q. [12:00:12] Mr Witness, were you aware that Houka Houka was arrested in 2014?

21 A. [12:00:21] Yes.

22 Q. [12:00:28] And was Moustapha Ag Issa also arrested in 2014?

23 A. [12:00:38] Yes.

24 Q. [12:00:44] What do you know about the arrest of Houka Houka?

25 A. [12:00:50] Houka Houka --

1 THE ARABIC INTERPRETER: [12:01:14] Note from the Arabic interpreter: The
2 first part of the witness's statement is not well understood.

3 THE WITNESS: [12:01:25](Interpretation) So he has a house where he prays on
4 Fridays. The Malian forces --

5 PRESIDING JUDGE MINDUA: [12:01:47](No interpretation)

6 MS TAYLOR: [12:01:48] Yes, yes, Mr President. I can ask the witness.

7 Q. [12:01:49] Mr Witness, the Arabic interpreter did not hear the first part of your
8 answer clearly. So could you please repeat your response about what you yourself
9 have heard or know about the arrest of Houka Houka?

10 A. [12:02:09] Houka Houka prayed at a mosque on Fridays. The Malian forces
11 went to him -- to that village on a Friday. He was arrested by them, along -- he was
12 arrested along with another person by the Malian forces.

13 Q. [12:02:38] Who was the other person who was arrested with him?

14 A. [12:02:49] That person is someone living in that village, his name is Attihi.

15 Q. [12:03:13] Now, Mr Witness, did Houka Houka or anyone else tell you about the
16 conditions of Houka Houka's detention or the circumstances under which he was
17 held?

18 A. [12:03:35] When Houka Houka was arrested by the Malian forces, he
19 called -- and, I'm not sure if he called his brother or his son, who told me that the
20 Malian forces had arrested him.

21 Q. [12:04:10] And did you yourself hear anything about the conditions of his
22 detention after his arrest?

23 A. [12:04:20] Do you mean -- do you mean if I heard anything about him while he
24 was in prison?

25 Q. [12:04:59] Either while he was in prison or afterwards, did you yourself receive

1 any information about how he was treated while he was in prison?

2 A. [12:05:12] I really don't know. I don't know how he was treated in prison. I
3 know nothing about that. But I know that when he went into prison, I know that he
4 was sick. And we heard -- we had news about his condition sometimes while he
5 was in prison.

6 Q. [12:05:57] And what news did you have?

7 A. [12:06:01] I learned that he was sick. He fell ill. He underwent an operation.
8 The operation was successful.

9 Q. [12:06:28] And how is his -- are you -- do you have any knowledge about his
10 current physical or mental state?

11 MR GARCIA: [12:06:42](Interpretation) Mr President.

12 PRESIDING JUDGE MINDUA: [12:06:43](Interpretation) Mr Prosecutor.

13 MR GARCIA: [12:06:45](Interpretation) I'm just wondering as to the relevance of
14 this question as to the state of health of a third party, in view of the charges brought
15 by the Prosecution and any questions that the cross-examination might involve.

16 PRESIDING JUDGE MINDUA: [12:07:09](Interpretation) Ms Taylor, I do believe
17 that I am in agreement with what the Prosecutor just said. Why this line of
18 questioning as to the state of health of this individual?

19 MS TAYLOR: [12:07:19] Mr President, can we cut off the sound to the witness.
20 And I'd have to answer in private session.

21 PRESIDING JUDGE MINDUA: [12:07:31](Interpretation) Mr Courtroom Officer,
22 could you please cut the sound off to the witness and then move into private session.
23 (Private session at 12.07 p.m.)

24 THE COURT OFFICER: [12:07:53] We're in private session, Mr President.

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2 (Open session at 12.10 p.m.)

3 THE COURT OFFICER: [12:10:01] We are back in open session, Mr President. And
4 the sound has been re-established.

5 PRESIDING JUDGE MINDUA: [12:10:18](Interpretation) Thank you very much,
6 Mr Courtroom Officer.

7 Ms Taylor.

8 MS TAYLOR:

9 Q. [12:10:24] Mr Witness, is it correct that Moustapha Ag Issa was arrested in 2014?

10 A. [12:10:32] Yes.

11 Q. [12:10:39] And do you yourself have any information about the circumstances of
12 his arrest?

13 A. [12:10:46] All I know is that his first arrest at Serval -- do you mean -- excuse me.
14 Do you mean his arrest at Serval or at Bamako?

15 Q. [12:11:20] We can start with his arrest at Serval.

16 A. [12:11:26] Yes. He -- there was cattle, and there were planes who came and
17 went, and many persons had been arrested. I don't remember their numbers. They
18 brought back some individuals to their families. They took Moustapha and a cousin
19 of his. His name is Nadi.

20 MR GARCIA: [12:12:34](Interpretation) I do apologise, Mr President.

21 PRESIDING JUDGE MINDUA: [12:12:39](Interpretation) Yes, Mr Prosecutor.

22 MR GARCIA: [12:12:41](Interpretation) I note that the French transcript has stopped,
23 page 46, line 22. It has not been moving for some time now. I don't know whether
24 the same applies to the English transcript.

25 PRESIDING JUDGE MINDUA: [12:12:59](Interpretation) Mr Courtroom Officer?

- 1 MS TAYLOR: [12:13:01] The English is working.
- 2 THE COURT OFFICER: [12:13:06] Your Honours, the technicians have been
3 informed of this issue and are going to work on it shortly. Thank you.
- 4 PRESIDING JUDGE MINDUA: [12:13:18](Interpretation) In the meantime, we shall
5 continue, Mr Prosecutor, because we do have the English transcript.
6 Ms Taylor.
- 7 MS TAYLOR:
- 8 Q. [12:13:30] Mr Witness, did you hear what happened after they were taken?
- 9 A. [12:13:44] What happened to all the people? Or what?
- 10 Q. [12:13:56] Specifically -- specifically Moustapha Ag Issa.
- 11 A. [12:14:09] Moustapha Ag Issa was brought by the French forces. I don't know
12 what happened later. He was then given to the Malian authorities.
- 13 Q. [12:14:45] And did you yourself hear anything about the manner in which he
14 was arrested or the manner in which he was treated during his transfer?
- 15 A. [12:14:57] Here, in Bamako?
- 16 Q. [12:15:07] During his initial arrest and during his transfer to Bamako.
- 17 A. [12:15:12] What I know about his arrest, I said -- said that the planes came
18 looking for cattle. They took people. They brought back some of them, and some
19 people were given to the Malian authorities. And then they were released
20 afterwards.
- 21 Q. [12:15:50] Now, speaking of Bamako, did you hear anything about his
22 conditions in Bamako?
- 23 A. [12:15:56] Yes. I heard that he was in prison and he was transferred from one
24 prison facility to another prison facility.
- 25 Q. [12:16:28] Did you have any contact with him while he was there?

- 1 A. [12:16:34] Yes. (Redacted)
- 2 (Redacted)
- 3 Q. [12:16:55] And to your knowledge, when he was transferred to the second
- 4 facility, did anyone have contact with him?
- 5 A. [12:17:02] There was a person who we knew. He was giving me of his news.
- 6 He was a former military... And the Malian government -- he was detained in
- 7 similar conditions as the Malian soldiers or military.
- 8 Q. [12:17:46] Are you able to give the name of this individual?
- 9 A. [12:17:49] His name is Mehdi (phon).
- 10 Q. [12:17:59] And this is the individual who was arrested at the same time as
- 11 Moustapha Ag Issa?
- 12 A. [12:18:07] Yes.
- 13 Q. [12:18:18] Now, Mr Witness, according to a Prosecution witness -- and I'm
- 14 referring to T-112, page 31, lines 9 to 13. This person was asked:
- 15 "Do you know if any of Houka Houka's relatives worked for the Islamic police?"
- 16 And the answer was:
- 17 "I am certain, but I do not have the names of those individuals now. But I am sure
- 18 that a number of Houka Houka's relatives worked with the Islamic police."
- 19 Mr Witness, do you know if Houka Houka's relatives worked for the Islamic police?
- 20 A. [12:18:56] I do not remember a specific person.
- 21 Q. [12:19:41] Now, Mr Witness, do you know when Moustapha Ag Issa was
- 22 released?
- 23 A. [12:19:50] I -- not sure. 2018 or ... it was between 2017 and 2018.
- 24 Q. [12:20:27] Have you been in contact with him after he was released?
- 25 A. [12:20:32] Yes.

1 MS TAYLOR: [12:20:40] Mr President, if I may just ask one or two questions in
2 private session.

3 PRESIDING JUDGE MINDUA: [12:20:49](Interpretation) Courtroom officer, private
4 session, please.

5 (Private session at 12.20 p.m.)

6 THE COURT OFFICER: [12:20:55] We're in private session, Mr President.

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- 21 (Open session at 12.26 p.m.)
- 22 THE COURT OFFICER: [12:26:24] We're back in open session, Mr President.
- 23 PRESIDING JUDGE MINDUA: [12:26:31](Interpretation) Thank you very much.
- 24 Ms Taylor.
- 25 MS TAYLOR: [12:26:34]

1 Q. [12:26:35] Now, Mr Witness, is it correct that before your arrest, you had heard
2 of the Al Hassan case at the ICC?

3 A. [12:26:46] Yes.

4 Q. [12:26:52] And you knew he had been arrested by the ICC in connection with his
5 alleged role in the Islamic police?

6 A. [12:27:04] Yes.

7 Q. [12:27:11] Now, Mr Witness, in the period between 2013 until the beginning of
8 2018, did the ICC Prosecution ever try to contact you to interview you as a witness?

9 A. [12:27:32] I did not understand the question very well.

10 Q. [12:27:46] I apologise, Mr Witness. I'll reformulate.

11 Before your arrest, did the ICC Prosecution ever try to contact you to interview you?

12 A. [12:28:01] No.

13 Q. [12:28:08] Now, at the time of your arrest, you were living in your village with
14 your family; that's correct?

15 A. [12:28:18] Yes.

16 Q. [12:28:24] Were you in the same house that you were in in 2013?

17 A. [12:28:31] No.

18 Q. [12:28:39] So you had moved. But is it correct, Mr Witness, that you weren't
19 hiding? That your presence was known?

20 A. [12:28:52] Yes, I moved a little, just 4 kilometres from where I was living in 2013.
21 And I lived there until I was arrested.

22 Q. [12:29:27] Now, a couple of days before your arrest, did Barkhane search the
23 house of Houka Houka?

24 A. [12:29:46] Yes.

25 Q. [12:29:53] What did you hear about this?

- 1 A. [12:29:58] This was posted by somebody on social media.
- 2 Q. [12:30:16] Did you hear whether anything was taken from his house?
- 3 A. [12:30:21] No.
- 4 Q. [12:30:29] Were you arrested at night-time?
- 5 A. [12:30:35] Yes, at night.
- 6 Q. [12:30:41] Was your family present in the house?
- 7 A. [12:30:45] Yes.
- 8 Q. [12:30:52] And was one of your wives pregnant?
- 9 MR GARCIA: [12:30:58](Interpretation) Your Honour.
- 10 PRESIDING JUDGE MINDUA: [12:31:02](Interpretation) Prosecutor.
- 11 MR GARCIA: [12:31:04](Interpretation) Could we go into private session,
- 12 your Honour. I have a lot of concerns here. We're going into precise subjects with
- 13 precise questions which sooner or later ...
- 14 PRESIDING JUDGE MINDUA: [12:31:21](Interpretation) Court officer, please take
- 15 us into private session.
- 16 (Private session at 12.31 p.m.)
- 17 THE COURT OFFICER: [12:31:26] We're in private session, Mr President.
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24 (Open session at 1.03 p.m.)

25 THE COURT OFFICER: [13:03:12] We're back in open session, Mr President.

1 PRESIDING JUDGE MINDUA: [13:03:28](Interpretation) Thank you very much,
2 court officer.
3 So it's now 1.03. It's time for us to have a break, to have our lunch break. We are
4 going to break there and be back at 2.30.
5 Court is suspended.
6 THE COURT USHER: [13:03:51] All rise.
7 (Recess taken at 1.03 p.m.)
8 (Upon resuming in open session at 2.31 p.m.)
9 THE COURT USHER: [14:31:47] All rise. Please be seated.
10 PRESIDING JUDGE MINDUA: [14:32:06](Interpretation) The hearing shall now
11 resume, and the Defence may proceed with continuation of -- but I see that the
12 Prosecutor is -- has risen.
13 MR GARCIA: [14:32:33](Interpretation) A mistake on my part, I did not advise the
14 Court that Mousa Allafi has been with us since the last session and he will be present
15 during this third session. I apologise to the Chamber, but I did want the record to
16 show that.
17 PRESIDING JUDGE MINDUA: [14:32:50](Interpretation) Thank you very much.
18 As you must realise, I do set great store by the record being completely accurate.
19 Ms Taylor.
20 MS TAYLOR: [14:33:14] Thank you, Mr President.
21 Q. [14:33:15] Good afternoon, Mr Witness, how are you?
22 A. [14:33:18] I'm fine, thanks.
23 Q. [14:33:19] Mr Witness, I just have a preliminary question. Do you sometimes
24 find it difficult to understand the Arabic words that are being used in the
25 interpretation?

1 A. [14:33:42] It's not really a difficulty, but there are some sentences or phrases in
2 the questions that were surprising to me, as they were not in line with my witness
3 statement. So I received questions that sounded more like an interrogation and they
4 had to do with events that have taken place quite a while ago.

5 So this confused me and made me look like I do not understand some things.

6 Q. [14:34:54] Mr Witness, is it correct that Tamasheq is your maternal language?

7 A. [14:35:01] Yes, this is true. Tamasheq is my mother language.

8 Q. [14:35:11] Were you given an option to testify in Tamasheq?

9 A. [14:35:17] No. Only I know how to speak Arabic and I can manage with an
10 Arabic interpreter as I can speak Arabic.

11 Q. [14:35:44] Do you understand or find it easier to follow Tamasheq?

12 A. [14:35:52] Yes, it is easier.

13 MS TAYLOR: [14:36:01] Mr President, is there any possibility of having Tamasheq
14 interpretation?

15 THE INTERPRETER: [14:36:22] Microphone.

16 PRESIDING JUDGE MINDUA: [14:36:26](Microphone not activated)(Interpretation)

17 But in -- before all courts and tribunals, we give the person the opportunity to speak
18 in the language that is suitable. It is not necessarily the person's mother tongue. If
19 the person chooses a language -- if the person says that he does speak Arabic and that
20 he is at ease speaking that language, why do you want a Tamasheq interpreter?

21 MS TAYLOR: [14:36:58] Mr President, I do note that the statute refers to - under
22 Article 67 - to a language that the person perfectly understands, or *parfaitement*, and
23 that this is a -- a witness who is appearing under Article 55 and Rule 74, and I'm
24 raising it for that reason.

25 And we have had witnesses testify previously with Tamasheq interpretation, so

1 obviously it is something that is available.

2 PRESIDING JUDGE MINDUA: [14:37:36](Interpretation) Yes, it could be made
3 available, but I would have to ask the Registry. But you're not going to change -- or
4 choose the language in which the witness speaks.

5 Did the witness ask to speak in Tamasheq? Perhaps you should check that.

6 Mr Prosecutor.

7 MR GARCIA: [14:37:59](Interpretation) Your Honour, I obviously don't see the
8 grounds for this request from the Defence. The witness has been testifying in Arabic.
9 If there had been problems, we can always go back to questions and answers to shed
10 light on what was said.

11 The witness never said he would prefer to speak in Tamasheq. That's nowhere to be
12 found on the record. And what I see in his response to the question from the
13 Defence is that it was the way that the questions were put to him during
14 examination-in-chief. It was not a matter of him not understanding.

15 In actual fact, page 64 (sic) and 65 (sic) you can ... (Overlapping microphones)
16 (Speaks English) "It's not really a difficulty, but there are some sentences or phrases in
17 the questions that were surprising to me as they were not in line with my witness
18 statement. So I received questions that sounded more like an interrogation [...]"
19 (Interpretation) So the witness's concern is not about language, it's about the way in
20 which questions were put.

21 PRESIDING JUDGE MINDUA: [14:39:19](Interpretation) Ms Taylor, the witness has
22 not expressed the need to speak in Tamasheq and this is not required under the
23 statute or the rules. The Chamber does not see the need to switch to the Tamasheq
24 language.

25 Naturally, if there are problems with the questions, the interpreters are here to repeat.

1 And the witness himself said that there were questions that seemed - well, I wouldn't
2 say absurd - questions that he did not understand.

3 I see that the witness's counsel would like to address the Court.

4 Counsel?

5 MR DHIB: [14:40:13](Interpretation) Thank you. I would like to clarify some things.
6 The witness before you is fluent in Arabic. He understands it. He writes it. And
7 let us not forget that he is an imam, so this means that he memorises the Koran, and
8 the Arabic language is the language of the Koran. So every time I spoke to him in
9 Arabic, I was certain that he understood me perfectly. And all the questions that
10 were posed by the OTP, they were understood by him. He answered the questions.
11 So there is no way that we have to change the language, especially that the witness
12 did not express any wish to speak in Tamasheq or to give his witness statement in
13 Tamasheq.

14 So we insist on using Arabic, which is one of the languages that are used by the Court,
15 and we concur with the OTP's request.

16 PRESIDING JUDGE MINDUA: [14:41:41](Interpretation) Thank you very much,
17 Counsel, for your remarks. Of course, this is not the Prosecution that has made the
18 request -- the Prosecutor contributed, it's the Defence that has asked for Tamasheq.

19 So, Counsel, the Chamber has been edified. There is no need to request a
20 Tamasheq-speaking interpreter and the interpreter --

21 THE INTERPRETER: [14:42:11] Correction.

22 THE WITNESS: [14:42:11](Interpretation) -- the witness will continue in Arabic.

23 MS TAYLOR: [14:42:15] Thank you very much, Mr President. Just as a matter of
24 procedure, we would request that the counsel respectfully be directed not to testify,
25 and, particularly, not to do so in front of his client. His client is here to testify. It's

1 not appropriate for the counsel to give evidence as to what his client wants or the
2 capacity of his client.

3 Now, we've had this issue before and it's not appropriate for lawyers to give evidence
4 on behalf of their clients.

5 PRESIDING JUDGE MINDUA: [14:42:58](Interpretation) Very well, Ms Taylor.

6 The Chamber will monitor that point closely, but I'm not so sure we're talking about
7 evidence in this particular case.

8 Go on, please.

9 MS TAYLOR: [14:43:14] Mr President, if we could go into closed session, as I do
10 have a couple of questions that relate to Rule 74.

11 PRESIDING JUDGE MINDUA: [14:43:25](Interpretation) Certainly, Ms Taylor.

12 Court officer, private (sic) session.

13 (Closed session at 2.44 p.m.)

14 THE COURT OFFICER: [14:44:14] We're in closed session, Mr President.

15 (Redacted)

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18 (Open session at 4.03 p.m.)

19 THE COURT OFFICER: [16:03:16] We are back in open session, Mr President.

20 PRESIDING JUDGE MINDUA: [16:03:23](Interpretation) Thank you very much,
21 court officer.

22 Mr Witness, once again, I have the unpleasant duty of telling you that your testimony
23 is not over yet, but we are coming to the end of our day's hearing. So we are going
24 to finish for today and resume tomorrow at 9.30.

25 Does that suit you?

- 1 THE WITNESS: [16:03:53](Interpretation) Yes.
- 2 PRESIDING JUDGE MINDUA: [16:03:56](Interpretation) Very well.
- 3 On behalf of the Chamber, I wish to thank you very much for answering the
- 4 questions today and for making yourself available.
- 5 We will resume tomorrow. But in the meantime, as you surely must realise, you
- 6 must not talk about your testimony to anyone at all. Not to anyone.
- 7 I now address the participants -- the parties and participants, the stenographers and
- 8 court interpreters, security staff. Thank you very much everyone for helping to
- 9 make today's hearing a success, and I wish you a pleasant evening.
- 10 And, we will see one another tomorrow here at 9.30.
- 11 The hearing is now adjourned.
- 12 THE COURT USHER: [16:05:03] All rise.
- 13 (The hearing ends in open session at 4.05 p.m.)