

Trial Hearing
WITNESS: MLI-D28-0500

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Wednesday, 25 May 2022
10 (The hearing starts in open session at 9.34 a.m.)
11 THE COURT USHER: [9:34:10] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:34:27](Interpretation) The hearing shall now
15 begin.
16 Good morning, everyone.
17 Madam Court Officer, if you could please call the case.
18 THE COURT OFFICER: [9:35:07] Good morning, Mr President.
19 This is the situation in the Republic of Mali, in the case of The Prosecutor versus Al
20 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case number ICC-01/12-01/18.
21 And for the record, we are in open session.
22 PRESIDING JUDGE MINDUA: [9:35:25](Interpretation) Thank you very much,
23 court officer.
24 As usual, we will now hear the introductions from the various teams, beginning with
25 the OTP.

1 Mr Prosecutor.

2 MR GARCIA: [9:35:43](Interpretation) Good morning, *Mr President,
3 your Honours.

4 Lucio Garcia, for the Prosecution. *With me today are Ms Schoeters, and Mr
5 Grzeziczak, who is seated behind me.

6 Thank you.

7 PRESIDING JUDGE MINDUA: [9:36:01](Interpretation) Thank you very much,
8 Mr Garcia.

9 And now the Defence team.

10 Counsel.

11 MR PESTMAN: [9:36:10] Good morning, Mr President, my colleagues for the
12 Prosecution, the victims. Good morning to the expert witness today.

13 My name is Michiel Pestman. Apart from our client, Mr Al Hassan, today, in the
14 courtroom we have Cécile Lecolle, next to me, Melinda Taylor, and Haneen Ghali.

15 PRESIDING JUDGE MINDUA: [9:36:45](Interpretation) Thank you very much,
16 Counsel.

17 I greet Mr Al Hassan as well, who naturally is here in the courtroom.

18 I will now call upon the legal representative of the victim. With the leave of the
19 Chamber, Mr Doumbia will be introducing his team via video link.

20 Counsel, please go ahead.

21 MR DOUMBIA: [9:37:12](Interpretation) Good morning, your Honours.

22 The victims are represented this morning by the team of Carla Boglioli, Anouk
23 Kermiche and myself, Seydou Doumbia.

24 I'd like to take this opportunity, since it's a rather unusual situation, to greet everyone
25 in the courtroom from where I am.

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1 PRESIDING JUDGE MINDUA: [9:37:45](Interpretation) Thank you very much,
2 Mr Doumbia, for being so kind.
3 And now the witness. Today, we will be hearing from Defence witness D-0500.
4 Good morning, Mr Witness. Can you hear me?
5 Can you hear me, Mr Witness? Good morning.
6 I think there might be a bit of a technical problem.
7 Court officer, if you could please take care of that for us.
8 THE INTERPRETER: [9:38:40] English interpretation. English. English.
9 THE COURT OFFICER: [9:39:03] Mr Witness, can you hear us on the audio channel?
10 WITNESS: MLI-D28-0500
11 (The witness speaks English)
12 THE WITNESS: [9:39:12] Yes, I can hear you.
13 So my -- is it my turn to introduce myself? Sorry, I missed a little of that.
14 PRESIDING JUDGE MINDUA: [9:39:24](Interpretation) Good morning, Mr Witness.
15 Can you hear me now?
16 THE WITNESS: [9:39:26] I can hear.
17 PRESIDING JUDGE MINDUA: [9:39:27](Interpretation) Thank you very much.
18 On behalf of the Chamber, I would like to welcome you to the court. You'll be
19 testifying with a view to assisting the Chamber in coming to the establishment of the
20 truth in this case regarding Mr Al Hassan.
21 I have taken note of the fact that you have not asked for any protective measures, so
22 you will be testifying in open court, and, I thank you very much, and I pay tribute to
23 your courage and cooperation.
24 I *would like to ask you to make the solemn undertaking pursuant to Rule 66(1) of the
25 Rules of Procedure and Evidence.

1 THE WITNESS: [9:40:39] I solemnly --

2 PRESIDING JUDGE MINDUA: [9:39:40](Interpretation) Please wait, please wait.

3 You have the oath in front of you on your desk, and I can see that you already know
4 what to do. Please read it out aloud.

5 THE WITNESS: [9:40:55] I solemnly declare that I will speak the truth, the whole
6 truth and nothing but the truth.

7 PRESIDING JUDGE MINDUA: [9:41:13](Interpretation) Thank you very much,
8 Mr Witness. You are now under oath.

9 The Victims and Witnesses Section as well as the Defence team have already
10 explained to you what that means, so I won't reiterate that.

11 All the same, I do have some practical advice for you. Throughout your testimony,
12 please remember that everything that is said in this courtroom is being transcribed by
13 court reporters and interpreted into multiple languages by interpreters.

14 Consequently, it is important to speak clearly and slowly. Please begin to answer
15 a question only once that person has finished putting his question to you.

16 Naturally, if you have any concerns, just raise your hand to let us know that you
17 would like to say something. So there you have it.

18 I'd like to draw your attention to the fact that, since you will be speaking in English
19 and the Defence counsel will be speaking English as well, we'd like to ask you to
20 pause between question and answer so that the interpretation into French and Arabic
21 can be done properly.

22 So, please, Counsel, go ahead. You may now begin your examination-in-chief.

23 QUESTIONED BY MR PESTMAN:

24 Q. [9:43:34] Good morning, Mr Witness. This is the moment you can introduce
25 yourself. Please go ahead.

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1 A. [9:43:42] My name is Brian Sommerlad. I'm a plastic surgeon of 44 years.

2 Q. [9:43:58] Thank you very much.

3 I'm not sure, is there a black folder in front of you?

4 A. [9:44:06] Yes.

5 Q. [9:44:07] Could you please have a look at the documents under tab 5, 6, 7, 8, 9
6 and 10.

7 Can you confirm that these are the reports written by you?

8 A. [9:45:01] Yes.

9 Q. [9:45:03] Thank you.

10 Would -- I'm looking at the Trial Chamber. Would you like me to read the MLI
11 numbers, or is the reference to the tabs sufficient?

12 PRESIDING JUDGE MINDUA: [9:45:27](Interpretation) I believe that the court
13 officer does need the ERN reference numbers.

14 MR PESTMAN: [9:45:35] So the first report is number MLI-D28-0006-2722. The
15 next one is 0006-2725. Then 0006-2730, and then again 0006-2734 - two
16 more - 0006-2737, and the last one 0006-2778.

17 Q. [9:46:50] Mr Sommerlad --

18 PRESIDING JUDGE MINDUA: [9:46:58](Interpretation) Mr Prosecutor.

19 MR GARCIA: [9:47:00](Interpretation) Sorry to interrupt, but just a correction. It's
20 not 2622. 0006-[2]722.

21 PRESIDING JUDGE MINDUA: [9:47:12] (No interpretation)(Overlapping
22 speakers)...Maître Pestman.

23 MR GARCIA: [9:47:15](Interpretation) And the second is [27]25, and the -- just so
24 that these numbers are clear on the case record.

25 PRESIDING JUDGE MINDUA: [9:47:30] (No interpretation) (Overlapping

1 speakers)...Maître Pestman.

2 MR PESTMAN: [9:47:35] Thank you for those corrections, Mr Prosecutor.

3 Q. [9:47:39] And I address myself to Mr Sommerlad. I had a couple of questions
4 about your experience.

5 You mentioned that you worked as a consultant plastic surgeon for 44 years, is that
6 correct?

7 A. [9:47:57] Yes.

8 Q. [9:47:58] In your report, that -- in each of your reports, you write that you
9 prepare around 250 medical reports per year, is that correct?

10 A. [9:48:27] Yes.

11 Q. [9:48:30] You describe several categories. One of the categories you mention
12 are reports to assess the scarring from alleged torture, that's correct, isn't it?

13 A. [9:48:45] Yes.

14 Q. [9:48:45] How many of those reports do you write per year?

15 A. [9:48:49] My guess is about 30. I haven't double-checked, but about 30 per
16 year.

17 Q. [9:48:59] At whose request do you write these reports?

18 A. [9:49:12] At the request of the representatives of the victims or the asylum
19 seekers.

20 Q. [9:49:25] And what is the purpose of these reports?

21 A. [9:49:29] These are people who are claiming asylum because of the risks to them
22 returning to their home country, and people -- and they have sustained torture
23 in -- either in their own country or on their way to the UK. And it's my job to assess
24 that scarring and to decide if it's consistent with the -- with the story of how
25 they -- how the injuries were sustained.

1 Q. [9:50:01] Am I correct to say that it's basically the same work we asked you to do
2 in this particular case?

3 A. [9:50:20] Yes, very similar.

4 And perhaps I could also just add that -- can I just add that, the great majority of the
5 rest of those reports are to do with scars -- they are, my assessing a scar, the likely
6 cause, the outcome, whether treatment is available for it.

7 Q. [9:50:44] Thank you.

8 Could you explain to the Court why they would ask you as a consultant plastic
9 surgeon to write these reports? Why are you suitable to write these reports, and
10 why they're not asking somebody else in the medical profession?

11 A. [9:51:10] Well, I would say that a plastic -- I would say a plastic surgeon is very
12 well qualified to describe scars. I have experience of creating scars as a surgeon and
13 also monitoring scars, and, as I've said, in assessing scars for medical-legal reasons.
14 So in my experience, most requests about -- for opinions about scars are sent to plastic
15 surgeons.

16 Q. [9:51:59] Mr Sommerlad, you wrote this report -- these reports for us and for the
17 Trial Chamber, and to write this report, you looked at a considerable number of
18 photos. Is there anything that you can say in general about these photos? In
19 general.

20 A. [9:52:41] Yes. In general, the quality of the photographs is very poor, with
21 some exceptions, but in general, very poor. And I made the point very early on
22 when I was asked to be involved in this case whether it was possible to actually see
23 the individual witnesses, because it is very hard to assess a scar from a photograph,
24 and, particularly, from a very -- from a poor quality photograph.

25 Assessment of a scar involves looking with magnification often, feeling, assessing

1 sensation, assessing whether the scar is mobile, and so on. And I did request to see
2 the witnesses, if that was possible, and there were possible arrangements to see one
3 witness, but they fell through. So I have had to rely on photographs which, in
4 general, are very poor quality.

5 Q. [9:53:55] Dr Sommerlad, excuse me, I didn't address you properly.

6 But, Dr Sommerlad, in spite of these problems with the photos, you came to
7 a conclusion in three out of six cases. Can you explain how you managed to come to
8 a conclusion, or to form an opinion, despite the fact that the photos were not always
9 of good quality.

10 A. [9:54:26] Well, one of those -- in one of those cases, the photographs were of
11 good quality. In fact, in two of them. Except that - I think, if we're talking about
12 the same cases - I was only shown a close-up photograph of one of the victims and
13 have since seen a more distant view, which slightly changes my -- my opinion. That
14 was P-0520.

15 Q. [9:55:10] Thank you, Dr Sommerlad.

16 Could you please have a look at the document under tab number 1. And I will give
17 the MLI number. It's 0006-2639.

18 Could you explain the relevance of this document for your work when assessing scars
19 possibly caused by torture.

20 A. [9:56:10] When I'm asked to give reports on asylum seekers in the UK, or also
21 some child abuse cases, but particularly asylum seekers, I'm asked to apply the
22 Istanbul Protocol as a scoring system to evaluate the likely consistency of the story.
23 In other words, does this scar -- is this scar totally consistent with the story, or is it
24 totally inconsistent, or where is it in between?

25 So the Istanbul Protocol has a scoring system of (a) to (e).

1 And I have - assuming that this was a similar situation - I have attempted to use that
2 scoring system.

3 Q. [9:57:22] (Microphone not activated)

4 THE INTERPRETER: [9:57:27] Microphone, please.

5 MR PESTMAN: [9:57:30] I'm sorry.

6 Q. [9:57:32] Dr Sommerlad, could you please go to page number 0006-2681. That's
7 the MLI number printed on the document.

8 It might be helpful to put this particular page on the screen. And I'm particularly
9 interested in paragraph 187, at the bottom on the right of this page.

10 Perfect, thank you very much.

11 Mr Sommerlad, is this the scale, the conclusion scale you mentioned just earlier?

12 A. [9:59:09] Yes, it is. Yes, it is, although it's not coming up on my screen, but I
13 can see it on the -- in the document, yes.

14 Q. [9:59:21] I believe somebody will help you to press the right button so that you
15 can see what we all see on the screen.

16 Can we go to the top of the next page of this document, please. Which has MLI
17 number 0006-2682.

18 Thank you.

19 So, Mr Sommerlad, am I right to conclude, on the basis of this document, that there
20 are five steps in the scale?

21 A. [10:01:20] Yes.

22 Q. [10:01:20] Could you just briefly explain where we start and where we end in
23 the scale.

24 A. [10:01:29] Well, really, as I -- as I said, (a) is the least consistent; in other words,
25 "the lesion could not have been" described "by the trauma" -- "could not have been

1 caused by the trauma described;" up to (e), which is, "Diagnostic of: this appearance
2 could not have been caused in any [other] way [...]"

3 Q. [10:02:02] So basically, for your asylum seekers, (a) would be good outcome, (e)
4 would be not a very good outcome?

5 A. [10:02:18] No, the other way around.

6 Q. [10:02:20] Depending on your point of view.

7 A. [10:02:23] For the asylum seekers, well --

8 Q. [10:02:23] Yeah.

9 A. [10:02:23] -- no. I mean, they -- they would like confirmation that their -- that
10 this -- that their story is consistent.

11 Q. [10:02:31] So (e) is -- oh, yes.

12 A. [10:02:32] (e) is -- (e) is the -- (e) is the consistent story.

13 Q. [10:02:44] Of course, Dr Sommerlad, you're right. Thank you very much for
14 that clarification.

15 I would like to go to one of your reports, Dr Sommerlad, number -- the one after tab
16 number 6.

17 And I think it's probably best not to broadcast this document. The MLI number is
18 0006-2725.

19 Could we please go to page 2727. I would like to show Dr Sommerlad the last
20 paragraph of his report. The paragraph just above his signature.

21 I have a question, Dr Sommerlad, about the report you mention in this particular
22 paragraph, a report produced by the Netherlands Forensic Institute. In the last
23 sentence of this particular paragraph, you say:

24 "I note the conclusions of Dr Karst."

25 And Dr Karst is the one who is responsible for the report written by the Netherlands

1 Forensic Institute.

2 Can you tell the Court, or explain to the Court, what you mean by, "I note the
3 conclusions of Dr Karst."

4 A. [10:05:33] Well, I was not sure whether I was supposed to --

5 Q. [10:05:36] Dr Sommerlad, just, I think, one second.

6 I'm just waiting for the translation to catch up with my question.

7 I think, Dr Sommerlad, you may continue.

8 A. [10:06:03] What I was saying was that I had seen the report. I wasn't sure if I
9 was supposed to comment on it. I'm happy to comment on it if you wish, although
10 I'd like to just see the report, remind myself of exactly what was said. But I had seen
11 that report and, as I explained in that paragraph, there were some photographs in that
12 report that I had not seen, that I'd not been sent personally.

13 MR PESTMAN: [10:06:40] Could we please put on the screen, but not for the public,
14 number 46, tab number 46, MLI number, 0080-2133, please.

15 PRESIDING JUDGE MINDUA: [10:07:06] *Monsieur le Procureur.*

16 MR GARCIA: [10:07:07](Interpretation) The Prosecution is going to object -- or, we
17 didn't object to the first questions, however, but it does seem to me that the witness
18 has come here to testify on his expert report and to explain to the Chamber what he
19 based himself on to arrive at these conclusions.

20 Now, here, we are going into an expert report produced by a third party and we are
21 going outside the scope of the witness testimony, in my opinion, we're going to go
22 into a report without the witness knowing what the letters of instruction was, what
23 evidence items were there.

24 And the report indicates that the expert met the witness; whereas, I don't see the use
25 of going into this report, firstly, and I think it's outside the field of scope of what the

1 witness has come to testify about today, namely, his expert report.

2 PRESIDING JUDGE MINDUA: [10:08:15](Interpretation) Maître Pestman, the report
3 at tab 46 is not signed by this witness. So how do you explain that you want to hear
4 the witness on this? That's the question that the Prosecutor is putting to you.

5 MR PESTMAN: [10:08:39] Before I answer your question, Mr President, I'm a bit
6 surprised because it's a report written at the request of the Prosecutor, so I'm
7 surprised they're objecting to us using this or mentioning this report.

8 We -- to be absolutely clear, we asked Dr Sommerlad to look at this report when he
9 wrote his own report. This report contains photos, which he relied upon when he
10 wrote his report. It's just one of the annexes, one of the documents he relied upon
11 when he wrote his report, and I was intending to ask him some questions about the
12 document and the way he used this document to write his report.

13 PRESIDING JUDGE MINDUA: [10:09:25](Interpretation) Prosecutor, you can reply
14 to the Defence's explanation.

15 MR GARCIA: [10:09:31](Interpretation) Certainly, your Honour.

16 I'm a bit confused by the answer from the Defence lawyer because at the end of the
17 day, it's not because a document is in the Prosecution's documents that it's relevant to
18 ask questions about it to any witness about this document.

19 And secondly, if the Defence counsel is telling us that he's going to put questions to
20 know how the witness was influenced by a report of a third party, then he's -- he's
21 freely able to do that. But what I'm asking as a question is, what's the relevance of
22 going into a third-party report with the witness?

23 The witness is here and he has looked at the evidentiary items. We have a document,
24 which shows the evidence he's looked at, the photos, the transcripts that he looked at.

25 I don't see why we are going into a report with an expert by a third party, which is

1 not relevant in my opinion. But obviously, I will make my comments to the
2 Chamber concerning the probative value of that and I leave it to your discretion,
3 your Honour.

4 PRESIDING JUDGE MINDUA: [10:10:50](Interpretation) I was just waiting for the
5 interpreting.

6 Prosecutor, I think we're going to let the Defence continue because of course the
7 witness didn't write this report, but he did work on that, and, as an expert, he's an
8 expert witness, he can give us his perspective.

9 Mr Pestman, please continue.

10 MR PESTMAN: [10:11:15] Thank you very much, Mr President.

11 Q. [10:11:25] Dr Sommerlad, is this the report you noted?

12 A. [10:11:30] Yes.

13 Q. [10:11:33] For the record, the MLI number - I gave the wrong number - is
14 0080-2123. I would like to ask to put a different page on the screen, please, also not
15 to be broadcast, that's page number 0080-2133. And I'm particularly interested in the
16 bottom -- the last paragraph of this page.

17 Dr Sommerlad, do you have the same document in front of you?

18 A. [10:12:43] I do.

19 Q. [10:12:46] The first sentence of this report says:

20 "The scars in this case seem not to be the result of the flogging with a rope."

21 My question to you, Dr Sommerlad, is, do you agree with this conclusion?

22 A. [10:13:07] Yes.

23 Q. [10:13:10] When you examined the photos contained in this report and the other
24 photos with regard to this particular witness, did you see any evidence of wounds
25 caused by flogging?

1 A. [10:13:36] I saw a series of scars -- photographs of scars mainly vertically
2 orientated, close to each other, not always parallel, sometimes converging, small areas
3 of scarring up to 7 or 8 scars on each section, and I couldn't imagine how that could be
4 caused by flogging.

5 Q. [10:14:14] Thank you, Dr Sommerlad.

6 Are you familiar with the organisation, the Dutch organisation, the institute that
7 wrote this report?

8 A. [10:14:28] No. I had not heard of them until I -- I read these reports.

9 Q. [10:14:35] In that case, I want to move on to the other report, or the next report,
10 contained -- or you can find under tab number 8.

11 Not to be broadcast to the public, the MLI number is 0006-2734. I would like to put
12 on the screen the last paragraph of this particular page.

13 And Dr Sommerlad, can I just draw your attention to the last paragraph.

14 I have the same question here, which I had for the previous witness. I will read the
15 paragraph to you, Dr Sommerlad. It says:

16 "I have seen the medical report by The Netherlands Forensic Institute report by Dr W
17 Karst, with a photograph, stating that there were no visible scars."

18 Can you explain to the Court what you mean when you say, "I have seen it."

19 A. [10:16:45] Well, I was sent that report as part of the information that I was given.

20 Q. [10:16:55] And you read the report, is that --

21 A. [10:16:59] Excuse me. Yes.

22 Q. [10:17:02] Can we please go to the document under tab number 47, MLI number
23 0080-2135.

24 THE COURT OFFICER: [10:17:24] Could counsel indicate whether the document
25 may be broadcast publicly.

1 MR PESTMAN: [10:17:28] No, it better not. Thank you.

2 Q. [10:17:57] Is this the document, Dr Sommerlad, that you saw and read?

3 A. [10:18:00] Yes.

4 Q. [10:18:01] Can I put on the screen, please, the next page, 0080-2138. And I
5 would like to read out the first paragraph. Not the document itself, but the first
6 paragraph written by the person that wrote the report which is at the bottom of that
7 particular page. Yes. Thank you.

8 So I quote the report, if I can continue, it says:

9 "Before the examination, the witness told me she still suffered from general pain since
10 the alleged flogging incident in 2012. She told me that all the scars on her back were
11 disappeared. She could not tell since when the scars on the back had disappeared."

12 I would like to ask for your professional opinion, Dr Sommerlad. Is it possible for
13 scars to completely disappear or will there always be some form of scarring left?

14 A. [10:19:53] The definition of a scar is damaged and repaired tissue. So the
15 answer is, a scar will never disappear. It -- it certainly is -- in most cases will
16 improve over -- over years and potentially become less visible, but an actual scar
17 never disappears.

18 Q. [10:20:44] Dr Sommerlad, during or for the preparation -- or during the
19 preparation for this day in court, we sent you several videos, including videos of the
20 person who probably is or may be the person which you examined, and I'm talking
21 about the videos which are referenced to under tab 53 and 54 of the Defence folder.
22 I am looking at the Court, Mr President, I know that these videos have been shown in
23 court before on numerous occasions. The victim -- or sorry, Dr Sommerlad knows
24 what the videos I'm referring to. Is it necessary to show them or can I just give you
25 the MRLI numbers -- or the MLI numbers?

1 PRESIDING JUDGE MINDUA: [10:22:06](Interpretation) I'm now turning to the
2 Office of the Prosecutor.

3 What do you think, Prosecutor Garcia?

4 MR GARCIA: [10:22:11](Interpretation) I have a bit of difficulty, your Honour. I
5 don't know if this is a question of the type or the scope of the question. Where it
6 concerns the videos, they were presented in the courtroom, but also in a confidential
7 way, given their provenance. And of course the question is there for the Defence to
8 see if he would like to carry out his examination-in-chief by asking questions quite
9 simply, because we can, of course, show the video to the witness on his screen
10 without it being broadcast outside. But obviously, this can be done without showing
11 the video. This is something for him to decide on.

12 PRESIDING JUDGE MINDUA: [10:22:56](Interpretation) I'm in agreement with the
13 Prosecutor, so please proceed as you think is possible.

14 MR PESTMAN: [10:23:04] Thank you, Mr President. I will continue. If it becomes
15 necessary to show them, I will show them, but I will try to continue without showing
16 them.

17 Q. [10:23:24] Dr Sommerlad, just to be sure, did you watch all the videos of the
18 woman being flogged that were in the folder that we sent to you earlier?

19 A. [10:23:38] Yes, I did.

20 Q. [10:23:40] Can I ask for your professional opinion. You saw the flogging, can
21 you tell the Court whether you think, in your professional opinion, it is possible that
22 the kind of flogging you can see on the video causes scarring, scarring that would
23 consequently disappear or become almost invisible?

24 A. [10:24:15] I would expect -- looking at that -- at those videos, I would expect
25 there to be contusion, which is not the same as scarring, bruising, which is not the

1 same as scarring, but both of those can certainly resolve. By definition, they are not
2 going to result in scars.

3 So I think it may -- this may hinge on the use of the word "scarring". But I believe in
4 this case that scarring -- assuming that this witness was the person shown in those
5 videos, that flogging resulted in bruising and contusion and swelling and discomfort,
6 but did not leave scars.

7 Q. [10:25:20] Can I please go to -- back to document under tab 47, and I would like
8 to go to page with the MLI number 0080-2139, and I am particularly interested to
9 show the last paragraph of this page. I can read this paragraph, and I would like
10 you to comment on it, if you have any comment, so it says:

11 "No injuries were noted during the examination. Given the reasonable assumption
12 of injuries that are superficial or underneath the skin, the absence of injuries are about
13 even as common under the hypothesis of being flogged with a rope compared to the
14 hypothesis of not being flogged with a rope."

15 Dr Sommerlad, I'm struggling with this sentence, especially the second one. Can
16 you explain to the Court what you -- what you think the expert is trying to say.

17 PRESIDING JUDGE MINDUA: [10:27:24](Interpretation) Prosecutor.

18 MR GARCIA: [10:27:25](Interpretation) Your Honour, this is the reason why I
19 objected at the outset because here, we're going into speculation as to what the expert
20 thinks and we're talking about a document written by a third party, with evidence
21 from the third party, with questions that the people met personally. And now we're
22 hearing a witness and asking a witness to speculate on a forensic document, which is
23 not before us, and to try and speculate as to what the person thought at a particular
24 given time.

25 PRESIDING JUDGE MINDUA: [10:27:58](Interpretation) Maître Pestman.

1 MR PESTMAN: [10:28:03] I will continue with a different question.

2 PRESIDING JUDGE MINDUA: [10:28:12](Interpretation) Very well. Please

3 formulate. But, Mr Pestman --

4 Prosecutor, perhaps the problem is also because we've got a confusion with regard to

5 certain terms because the witness said, if I remember, that the scars never

6 disappeared so -- obviously because the witness is speaking in English and I'm in

7 French.

8 I also heard him speak about contusions, haematoma and scarring as well.

9 It is possible, Mr Pestman, to ask the witness to explain these different

10 terms -- contusion, haematoma, and scarring?

11 MR PESTMAN: [10:28:51] Yes, your Honour.

12 Q. [10:29:02] Contusion is bruising basically, is -- is damage to the soft tissue with

13 swelling but -- but expected to resolve without scarring. Bruising is a stage further

14 on where there's leakage of blood from blood vessels producing discolouration and

15 bruising, and, again, this is likely to settle spontaneously.

16 I think the confusion here is that - and if I can refer to this -- to this document - the

17 word "tearing" is used, which I think -- which is not a very medical term.

18 A laceration - and I think that's what is meant by the word "tearing" - will leave a scar.

19 The severity of that scar will depend on the depth and extent of the -- of the

20 laceration.

21 PRESIDING JUDGE MINDUA: [10:30:03](Interpretation) Prosecutor, I think that we

22 can leave Defence to continue with the question and then the Chamber will assess it.

23 MR GARCIA: [10:30:12](Interpretation) Certainly, if that's the Chamber's decision.

24 Just, your Honour, if we want to get to a definition of certain terms to help the

25 Chamber, then questions can be asked in a precise way, What is this term? And not

1 to ask questions which are more general with regard to what a third party might have
2 thought or why he wrote something and -- that's the reason why I objected in the first
3 place.

4 PRESIDING JUDGE MINDUA: [10:30:38](Interpretation) Very well.

5 Mr Pestman, please take that into account and put your questions in a more
6 appropriate way.

7 MR PESTMAN: [10:30:49] Okay. I'll try to reformulate.

8 Q. [10:30:56] But Dr Sommerlad, the question I would like to ask is about the last
9 paragraph of this particular report, which is still on the screen.

10 Do you agree with the conclusion of the expert who wrote this report?

11 A. [10:31:16] I'm afraid I don't understand the last paragraph. If that -- the expert
12 is saying that -- look, I do not understand. I don't understand the -- the language
13 used. I don't know what "about even as common" means.

14 Q. [10:31:55] Thank you, Dr Sommerlad.

15 Just briefly going back to the videos, so can you explain to the Trial Chamber why
16 you think that the flogging you saw in the video would not leave any scarring.

17 A. [10:32:20] Yes. I -- I don't know exactly what the weapon was, what the
18 instrument of the flogging was. What I saw was someone with some -- something
19 like a whip being applied on the back of the witness from above and to her right, in
20 a back-handed motion. I would in general not expect such a flogging to produce
21 a laceration and therefore a scar. I -- I think that -- I would -- the most likely
22 outcome of what I saw would be contusion and bruising and pain, which would
23 resolve.

24 I think the only -- it would only be likely to actually produce a laceration and
25 therefore a scar if the object that was being used was very sharp and probably being

1 inflicted without any clothes, and the witness in the video was -- was wearing clothes.
2 So I would not expect that -- from what I saw, I would not expect that to result in
3 scarring.

4 Q. [10:33:54] Thank you, Dr Sommerlad.

5 Can I move to the next page of the report, also not to be broadcast, which has MLI
6 number 0080-2140. And I would like to show the paragraph, the top of the page.
7 Dr Sommerlad, can flogging, in your professional opinion, flogging with a rope,
8 result in permanent damage to muscles or tendons?

9 A. [10:35:08] I would say that that is unlikely, but it does -- it would depend on the
10 weapon used and on the force used and certainly a very severe blunt injury can result
11 in permanent damage to muscles. But I think looking at that video, I think that
12 would be very unlikely.

13 Q. [10:36:12] Thank you.

14 Dr Sommerlad, I have no further questions for you at this particular stage, which
15 means that I have to pronounce the magic formula. I have to ask you, according to
16 the rules, whether you object to the submission of your report or your reports, the
17 Istanbul Protocol, your CV, and the list of evidence you relied upon to write your
18 reports.

19 Do you object to the submission of all these documents?

20 A. [10:37:01] I do not object, except just as I commented before, I -- I have -- since
21 writing those reports, I have seen some further photographs of the previous witness
22 that we've discussed and one other photograph of another witness. So there's a -- a
23 little further information that I didn't --

24 Q. [10:37:26] Okay.

25 A. [10:37:27] -- I didn't have.

1 Q. [10:37:27] Yeah. Just to -- before I continue, I will ask you about these
2 comments or these additions. I was talking about the documents under tab number
3 1 to 10. Those are the documents we would like to submit, tender into evidence.

4 Would you like me to read the MLI numbers or won't that be necessary?

5 PRESIDING JUDGE MINDUA: [10:38:01](Interpretation) I don't think it's necessary,
6 Mr Prosecutor, for Mr Pestman to read out all those reference numbers.

7 MR GARCIA: [10:38:11](Interpretation) Of course, if that makes things easier for the
8 Chamber, as long as the information is on the case record, but I do see that amongst
9 these various documents, the third tab is an email communication.

10 Regarding the other documents, of course, we have no objection, but the email
11 between the Prosecution and Defence team members concerning the possibility of
12 Mr Sommerlad to meet a number of witnesses, to our mind, that email should not be
13 placed on the case record. It is not the evidence of the witness; rather, it is merely
14 communications between Prosecution and Defence. It's up to the Defence to plead it
15 or introduce it on to the case record in another manner.

16 PRESIDING JUDGE MINDUA: [10:39:22](Interpretation) Did you follow that
17 exchange regarding the email?

18 (Overlapping speakers)

19 MR PESTMAN: [10:39:25] Yes, I think I did. I did understand the objection.

20 THE INTERPRETER: [10:39:27] You're overlapping. Overlapping.

21 MR PESTMAN: [10:39:30] The witness talked today -- Dr Sommerlad today talked
22 about the quality of the photos and the fact that he was not able to personally
23 examine the witnesses and he regretted that. And he also mentioned the fact that
24 there was an attempt to examine one of them and it didn't work. These emails
25 explain why it was not possible to do what Dr Sommerlad would have liked to have

1 done; so that's why I think it's relevant.

2 PRESIDING JUDGE MINDUA: [10:40:09](Interpretation) Yes, Mr Prosecutor,

3 Defence counsel is correct. In any event, I believe that the Chamber did authorise
4 the various emails and taking them into consideration.

5 MR GARCIA: [10:40:28](Interpretation) Of course. I just wanted to say that these
6 were inter partes communications between parties, and usually such communications
7 are not placed on the record. Once again, I must make the same pleading; namely,
8 that the Defence could try to introduce the information -- or, rather, the
9 communications in another manner, but through this witness, no. The witness can
10 be used for placing his reports on the record, but not communications.

11 PRESIDING JUDGE MINDUA: [10:41:08](Interpretation) Very well. These are the
12 reports under 68(3). The Chamber shall take into account these emails if and when
13 the Defence introduces them on the record appropriately.

14 (Overlapping speakers)

15 THE INTERPRETER: [10:41:29] Overlapping by Defence counsel.

16 (Overlapping speakers)

17 MR PESTMAN: [10:41:32] Thank you very much.

18 Q. [10:41:33] Mr Sommerlad, before I finish my examination, you said you had
19 two -- or one or two comments or changes you would like to make to the report. I
20 think this is maybe the moment to do it.

21 The first one you mentioned, if I'm correct, is in relation to Witness number 520, and
22 the document or your report regarding this witness is under tab number 5. And it
23 has MLI number 0006-2722. Please go ahead.

24 A. [10:42:24] Yes. I was sent one close-up photograph of a puckered scar on the
25 back, apparently on the back, with some visible stitch marks. I have since seen

1 a more distant view of that witness's back, and there are some -- so I commented that
2 I really couldn't explain that scar, and it didn't seem to be consistent with -- with
3 whipping. But in the more distant photograph, there are some fairly indistinct
4 horizontal, possible scars, lateral outside to -- to that visible scar. I had not seen
5 those.

6 I think the witness actually said that the -- all the scars had disappeared, except this
7 one scar, so the one that I'd seen in the close-up. But there are, on this more distant
8 view, some marks which could be stretchmarks, but I think look more like superficial
9 scars from some incident. But the -- the witness apparently said that the other scars
10 had gone away. So I don't know how to interpret that.

11 Q. [10:43:53] Thank you, Dr Sommerlad.

12 Yes, you had one more comment you would like to make.

13 A. [10:44:10] Well, the other was the -- the person we discussed, the first witness
14 that you asked about, where I had seen three scars, but the forensic institute report
15 shows many more, but all of a very similar pattern. So I don't think it changes my
16 opinion, but there was perhaps seven of these groups of vertical scars within an area
17 of perhaps three or four centimetres in different parts of the body. But they -- so
18 they all look very similar to the ones that I had reported on.

19 Q. [10:44:59] Just for the record, the report Dr Sommerlad mentioned is the report
20 with MLI number 0006-2737.

21 PRESIDING JUDGE MINDUA: [10:45:20](Interpretation) Do you have the tab
22 number, Defence counsel?

23 MR PESTMAN: [10:45:25] Number 9, excuse me. Sorry.

24 PRESIDING JUDGE MINDUA: [10:45:42](Interpretation) Thank you very much,
25 Mr Pestman. Have you --

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1 (Overlapping speakers)

2 THE INTERPRETER: [10:45:46] Overlapping.

3 MR PESTMAN: [10:45:49] Well, just one more question.

4 Q. [10:45:50] Dr Sommerlad, with the corrections you've just made, do you still
5 agree to submit your report to the Court --

6 A. [10:45:58] Yes.

7 Q. [10:45:59] -- and tender them into evidence?

8 A. [10:46:00] Yes.

9 Q. [10:46:01] Thank you.

10 PRESIDING JUDGE MINDUA: [10:46:19](Interpretation) Very well. Thank you
11 very much, Mr Pestman. This concludes your examination-in-chief. The conditions
12 under 68(3) of the Rules of Procedure and Evidence are met.

13 I now turn to the OTP. We still have 15 minutes, Mr Prosecutor. We can continue

14 MR GARCIA: [10:46:55](Interpretation) Certainly. I'm ready to continue
15 immediately.

16 PRESIDING JUDGE MINDUA: [10:47:00](Interpretation) Thank you very much.
17 Please go ahead, Mr Prosecutor.

18 QUESTIONED BY MR GARCIA: [10:47:09]

19 Q. [10:47:13] Good morning, Mr Sommerlad.
20 Can you hear me?

21 A. [10:47:15] I can now.

22 Q. [10:47:15] Oh, fine, fine.

23 I'll be referring to you as "Mr Witness". Don't take that in any -- any way a sign of
24 disrespect. It's just the way that we refer to people that come to the -- to come and
25 testify.

1 We've already had the chance of meeting briefly yesterday. Welcome to the Court.
2 I'm not going to have many questions for you. I just want to get some clarifications
3 from you on certain matters. All right?

4 So I know it can be a bit tedious obviously, but I'd like us to just go through the
5 reports that my colleague at the Defence has gone through -- some of them, not all of
6 them, obviously.

7 Is that all right?

8 A. [10:47:49] Yes.

9 Q. [10:47:51] Now I understand that from the introductory questions from my
10 colleague, you have worked on asylum claims, is that correct?

11 A. [10:48:01] Yes.

12 Q. [10:48:02] And -- obviously, I'm mindful of the -- the five-second delay, so
13 don't -- don't worry if I do pauses between my questions, and obviously between
14 your answers, you've done that quite well until now.

15 When you've been working and producing reports, I understand that these are
16 medical-legal reports that you're -- that you've been drafting and submitting for the
17 courts to hear, is that correct?

18 A. [10:48:32] Yes. And, therefore, the British Home Office in consideration of the
19 asylum requests.

20 Q. [10:48:42] And, as I've understood from the questions of my colleague, you
21 proceed with work using the Istanbul Protocol, the one that you've spoken about, is
22 that correct as well?

23 A. [10:48:57] Yes, because I'm asked to do so.

24 Q. [10:49:01] And let me ask you this, Mr Witness: When you do draft such
25 reports for asylum claimants, do you meet the witnesses personally?

1 A. [10:49:11] Almost always. I ask to do -- I always ask to do so for the reasons
2 that I gave earlier; that examination of a scar is a lot -- physical examination of a scar
3 is really essential, that looking at a photograph is usually not. So I always ask to see
4 them and in the great majority of cases, I see them personally.

5 Q. [10:49:36] And, in fact, Mr Witness, even the Istanbul Protocol - I believe it's
6 paragraph 173 - states clearly that you -- that a complete physical examination needs
7 to be done of the asylum claimant -- or the person by a qualified physician, is that not
8 correct?

9 A. [10:49:58] Yes, I'm sure it is, yes.

10 Q. [10:50:02] And I appreciate your testimony this morning, because you've
11 indicated, and from what I understand, is that to do a proper assessment of someone,
12 you meet them in person, is that correct?

13 A. [10:50:14] Yes. And if I can just add, in each of my reports I have said -- I have
14 suggested that the only way that these scars could be properly assessed and the
15 accounts verified -- or not -- would be by physical examination of the witness.

16 Q. [10:50:30] Thank you, Mr Witness. And have no worries, we will be getting
17 there obviously, and no tricks on my part, just normal questions for you to answer.
18 And when you do meet these witnesses, obviously, you do have some time to ask
19 them about their history, about the origins -- the provenance of these injuries, these
20 trauma, is that correct

21 A. [10:50:56] Yes. That's the purpose of -- of my assessment. I need to hear their
22 story and then assess whether the scars resulting from those incidents are consistent
23 with the story.

24 Q. [10:51:13] Because, obviously, Mr Witness - and correct me if I'm wrong - you
25 need to act as an independent expert, and so, obviously, you can't simply just take

1 what someone tells you at face value.

2 A. [10:51:23] No.

3 Q. [10:51:24] Is that correct?

4 A. [10:51:25] Absolutely correct.

5 Q. [10:51:30] Now from what I understand, you've -- you were asked by Defence to
6 prepare expert reports, much like the ones that you prepare normally, regarding six
7 particular witnesses, is that correct?

8 A. [10:51:50] Yes.

9 Q. [10:51:52] Now, I understand - and you can correct me if I'm wrong, but I
10 believe this is correct - you didn't have a chance to meet any of these six witnesses.

11 A. [10:52:04] Correct.

12 Q. [10:52:07] Now, I'd like us to just go -- obviously -- and I'm just going to put this
13 up for you on your screen, so we can all be on the same page. And this is at tab
14 number 5. And it's -- I don't know if you've seen that yet, but I will be -- sorry.
15 Maybe the -- I can ask help from the court officer to display MLI-D28-0006-2722-R01
16 simply for the witness.

17 Mr Witness, do you recognise, obviously, your report? You have it -- yeah, just be
18 mindful --

19 A. [10:53:47] Yes.

20 Q. [10:53:47] Yeah. I do that often as well, but just be mindful, please, you can
21 keep your microphone on, if you wish. I'm not sure that -- that causes any difficulty.
22 So that is your report. And I understand, if we look at the second page of your
23 report -- actually, I'm just going to give you the -- there's a bottom -- at the left-hand
24 corner, there's an MLI, and it's MLI-D28-0006-2723. Do you see that? And that's
25 where your opinion -- your opinion.

1 So there's a section that says, "Analysis, "Opinion", and then obviously you have the
2 caveat that you mentioned to us, is that correct, at the end of your analysis?

3 A. [10:54:36] Yes.

4 Q. [10:54:38] Obviously, I've suggested calling it a "caveat", but you can tell us if
5 you see it in another way.

6 A. [10:54:49] Yes. You mean the reference to the further scars that I saw on the
7 second photograph?

8 Q. [10:54:54] So we're going to get to that, because I see that the -- at the end of
9 every report, you state:

10 "I have suggested that the only way that these scars could be properly assessed, and
11 the accounts verified or not, would be" a "physical" -- "would be by physical
12 examination of the witness."

13 So that is a caveat that you've added to each one of your reports, is that correct?

14 A. [10:55:12] Yes.

15 Q. [10:55:13] Now, if we just go back to the first page of your report, that's
16 2722 -- now, one thing that caught my attention is that all these reports seem to be
17 quite short. Are they -- normally the type of reports that you draft up, are they
18 longer than this? This reports that you've handed in -- these reports that you've
19 handed in for Defence counsel, do they have more information, more details?

20 A. [10:55:46] Yes. I mean, my reports are much longer usually, because I've seen
21 the victims. Or the people who are claiming asylum, for example, I've heard their
22 story. I've seen the documents from the UK Home Office. So these are short, I
23 agree, because they are based on photographs and not personally meeting the
24 witnesses.

25 Q. [10:56:14] And in this particular case, for this witness, from what I see in your

1 report and the documents that have been handed to us by Defence counsel, you just
2 looked at one photograph.

3 A. [10:56:25] Yes.

4 Q. [10:56:26] Is that correct?

5 A. [10:56:27] Correct.

6 Q. [10:56:28] And under the section "Methodology", there is one transcription
7 excerpt, is that correct?

8 A. [10:56:37] That's what I was shown originally, yes.

9 Q. [10:56:41] I'm sorry, just -- just to be clear on this matter, when you say this is
10 what you were shown originally, you were not shown the entire transcript, just this
11 particular extract -- "excerpt" that we see here on the front page?

12 A. [10:56:54] That -- that is my understanding.

13 Q. [10:56:59] I just want to make sure, Mr Witness. I'm not looking for what your
14 understanding is, but I want to know exactly what you received when you were
15 asked to give your opinion on a person that you didn't see, that you never met. Was
16 it this excerpt simply, or did you have a look at the whole transcript or the transcripts
17 of the witness?

18 A. [10:57:21] Initially, I was shown extracts of the -- of the transcripts. I have since
19 seen more complete accounts from the witness.

20 Q. [10:57:36] Thank you. Thank you for that clarification, Mr Witness.

21 When you say, "I have since seen more complete accounts," is that recently when you
22 met with Defence counsel? Because we have a note obviously here that's given to us
23 by Defence counsel indicating that they've met you on 20 May, 23 May, and
24 indicating that you had access to many transcripts, all the transcripts.

25 Is that the time that you're referring to? Is that when you really had access to all the

1 transcripts?

2 A. [10:58:19] Yes.

3 Q. [10:58:21] So if I understand you correctly, Mr Witness, when you first decided
4 to write this opinion, you were going simply on the basis of one photograph and an
5 excerpt of the transcripts of a witness.

6 Did you find any issue with this? Did you have any problems with that?

7 A. [10:58:40] Well, I had the problem with the photograph that I've described
8 earlier. And, of course, it would be -- it would -- the more I knew about the incident,
9 the better it would have been.

10 Q. [10:58:56] Well, Mr Witness, you were never provided with the rest of the
11 transcripts before. Just a couple of days ago, actually.

12 A. [10:59:05] Correct.

13 Q. [10:59:07] Did you ask to see the rest of the transcripts, just to get a more
14 complete picture of what it is exactly happened? Other type of information?
15 Anything?

16 A. [10:59:20] I didn't know if I was entitled to do so.

17 Q. [10:59:27] So when you wrote this opinion, Mr Witness, you have no
18 information on the weapon that's being used or the whip, the type of whip, the
19 length of the whip, the material with which the whip is made of. You had no
20 information regarding what, if anything, the witness was wearing, how much
21 clothing, because you mentioned that was important, is that correct?

22 A. [10:59:58] Yes. I have the information in -- I have the information that I've put
23 in the report of -- where she's -- where the witness states:

24 "I don't know whether it was a wire or a thread. I don't know. But he pushed me
25 down and I fell down. I didn't say wire -- I said I might have fallen on something.

1 After that, he took a whip and he flogged me with it."

2 PRESIDING JUDGE MINDUA: [11:00:29](Interpretation) Mr Pestman, I see you
3 have risen.

4 MR PESTMAN: [11:00:35] Yes. I realise it's a bit late to object to the question, but I
5 object to it because it suggests that all this information listed by the Prosecutor, about
6 the clothes and the material, is available to all of us, and that's not the case to be
7 absolutely sure.

8 And I also want to be -- make clear that the material, the extracts my -- or
9 Dr Sommerlad saw were much longer than the ones he actually used for his report.

10 PRESIDING JUDGE MINDUA: [11:01:09](Interpretation) Mr Prosecutor.

11 MR GARCIA: [11:01:10](Interpretation) Well, it is the witness who is testifying, not
12 Defence counsel, just to give a quick reminder of that. And this is not a criticism of
13 the witness. I'm putting a question to the witness, what is the nature of the
14 information, what information did he have in his possession when he wrote his
15 opinion. I'm not saying that the Defence -- well, each witness -- for each witness,
16 there is relevant information to be found in the transcripts.

17 PRESIDING JUDGE MINDUA: [11:01:49](Interpretation) I think the Prosecution is
18 correct. It is the witness who is testifying, not you.

19 MR PESTMAN: [11:01:56] That's right. I won't testify, but I object to the question
20 because I thought it was misleading, because it was suggesting that there was all
21 kinds of information which was available to us which had not been disclosed to this
22 witness, and, in that sense, it's misleading. But I understand I'm too late because the
23 answer has already -- the question has already been answered.

24 PRESIDING JUDGE MINDUA: [11:02:22](Interpretation) The question has already
25 been answered.

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1 I can see Mr Witness -- Dr Sommerlad, please go ahead.

2 THE WITNESS: [11:02:34] Thank you, your Honour.

3 I should -- I should clarify. Remember, I've seen this evidence over various periods.

4 I would have to look back and see exactly what I was shown originally in the first
5 documents. I have seen more complete documents since, but -- so I -- I withdraw
6 what I said before. I would have to check back on the original documentation to see
7 exactly what I was shown.

8 PRESIDING JUDGE MINDUA: [11:03:09](Interpretation) Very well. I think that
9 this is resolved. It's clear now.

10 Prosecutor, it's now 11.02. I don't know if you've finished. If not, we'll have to
11 interrupt to continue later.

12 MR GARCIA: [11:03:25](Interpretation) Yes, your Honour, I haven't finished. I
13 won't be very long with the cross-examination but I haven't finished, in order to
14 answer your question.

15 PRESIDING JUDGE MINDUA: [11:03:38](Interpretation) Very well. We are
16 therefore going to stop for approximately half an hour, and we will be back at 11.30.
17 Court is adjourned.

18 THE COURT USHER: [11:03:50] All rise.

19 (Recess taken at 11.03 a.m.)

20 (Upon resuming in open session at 11.37 a.m.)

21 THE COURT USHER: [11:37:26] All rise.

22 Please be seated.

23 PRESIDING JUDGE MINDUA: [11:37:53](Interpretation) Court is in session once
24 again.

25 I'm handing over to the Office of the Prosecution for the continuation of their

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1 cross-examination of this witness.

2 Mr Prosecutor, please.

3 MR GARCIA: [11:38:06](Interpretation) Thank you, Mr President. Just for those in
4 attendance, Madam Charlotte Luijben has just joined and she is seated behind me
5 here.

6 PRESIDING JUDGE MINDUA: [11:38:23](Interpretation) Thank you very much for
7 pointing that out. Thank you.

8 MR GARCIA: [11:38:28]

9 Q. [11:38:28] Mr Witness, hello again. You're able to hear me?

10 A. [11:38:31] Yes, I can.

11 Q. [11:38:32] All right. Great. We don't have much -- much longer, so please,
12 please be patient. I know that you've already sat through a lot of questions this
13 morning.

14 When we left off I was referring to the report that you have on -- that's at tab 5. Do
15 you have that still before you, Mr Witness?

16 A. [11:38:51] I do.

17 Q. [11:38:54] And just before you finished answering the questions of my learned
18 colleague at the Defence, you were speaking about a photo, that you had seen a photo
19 with a different perspective, I imagine, and you wanted to bring a correction to your
20 report. I don't think mention -- specific mention was made of that photo, and I just
21 want to give you the opportunity of making that correction.

22 So the photo that I believe you're referring to - because we have a note here that
23 indicates what items -- what corrections you made during the preparation meeting
24 that you had with the Defence - is a photo that goes under the ERN, I'm just going to
25 give the ERN number for the Court, MLI-OTP-0060-9511. And I'm going -- I'm

1 displaying that for you, Mr Witness. And if you could just put on the -- press on the
2 Evidence 2 channel, maybe that's already -- did you -- can you see that?

3 A. [11:39:52] Yes.

4 Q. [11:39:53] I think it's --

5 A. [11:40:02] Yes, I can see it.

6 Q. [11:40:15] You can see it.

7 So Mr Witness, just to confirm, that is the photo that was shown to you during
8 the -- your preparation session recently, is that correct?

9 A. [11:40:26] Correct.

10 Q. [11:40:27] And that is concerning the witness that we're looking at. So if I
11 understand correctly, at this point in time when you met with the Defence and that
12 photo was shown to you, that additional photo, you stated something to the effect
13 that this distant view showed a transversal pale mark, which could be the result of
14 being whipped with something producing significant skin damage, but it could also
15 be stretch marks, is that correct?

16 A. [11:41:00] Yes.

17 Q. [11:41:01] Is that a correct summary? Because obviously this is not verbatim,
18 it's a summary.

19 A. [11:40:00] Yes.

20 Q. [11:41:01] But I'm just reading the note. Is that the gist of what you told the
21 Defence?

22 A. [11:41:08] Yes, could I -- could I clarify. There was a series of -- of almost
23 transverse scars on the outer part of the right side of this lady's back, and they -- I
24 could imagine several possible explanations, which would include scratches, deep
25 scratches, sufficiently deep to leave a scar, possibly stretch marks because stretch

1 marks do occur when people put on weight in -- in certain parts of the body, but I
2 could examine that they could have been caused by a -- superficial lacerations by
3 a sharp whip, for example.

4 Q. [11:41:57] Thank you, Mr Witness. And -- and so if we look at the Istanbul
5 Protocol, because you mentioned it and my learned counsel spoke about it, then
6 paragraph 187, where we're speaking about the -- quantifying your certainty, you
7 would agree with me that that -- that your present conclusion would be -- somewhere
8 be with either "consistent with" or "highly consistent", is that correct, if you look at the
9 Istanbul Protocol?

10 A. [11:42:31] Yes. Can you remind me which -- which page.

11 Q. [11:42:34] Of course. It's Istanbul Protocol, and it's going to be, forgive me for
12 that, at your tab 1. It's the first document that you have.

13 A. [11:42:40] Yes, it's the page number.

14 Q. [11:42:42] It's going to be page 36 and it's paragraph 187, titled, "Examination" --

15 A. [11:42:48] Yes.

16 Q. [11:42:48] -- "and evaluation following specific forms of torture".

17 A. [11:42:57] Yes, I would clarify those marks as (b) "Consistent with: the lesion
18 could have been caused by the trauma described, but it's non-specific and there are
19 many other possible causes."

20 Q. [11:43:12] Thank you for that, Mr Witness. And just to be clear, so then
21 basically what you did, what appeared here is that initially, if I look at your report
22 under 520, at page 2723, just under the rubric "Analysis", "Opinion", it says "Istanbul
23 Protocol [...]" and you had indicated at the time:

24 "Not consistent: the lesion could not have been caused by the trauma described."

25 A. [11:43:51] Yes.

1 Q. [11:43:51] So if you'll -- and I'll allow you the time, Mr Witness. Obviously this
2 is not -- not an exam or anything, but would you agree with me that what has allowed
3 you to revise this conclusion that you had arrived at initially is the fact that you have
4 had additional material in the form of a photograph that has a wider perspective, is
5 that correct?

6 A. [11:44:13] Yes, if I could explain, I would stick with my original view of the --

7 PRESIDING JUDGE MINDUA: [11:44:26](Interpretation) Mr Pestman.

8 MR PESTMAN: [11:44:28] I'm really sorry to interrupt you, but I just object to the
9 use of the word "revise". It was an addition Dr Sommerlad made to his original
10 report. But I think Dr Sommerlad was about to explain.

11 MR GARCIA: [11:44:46](Interpretation) I believe, Mr President, that Mr Sommerlad
12 is the expert here. I was trying as best I could to summarise his conclusions. He's
13 going to explain it to you viva voce, if he's allowed to do so.

14 PRESIDING JUDGE MINDUA: [11:45:00](Interpretation) Thank you very much.

15 Mr Witness, over to you. Please go ahead.

16 MR GARCIA:

17 Q. [11:45:05] Please explain, Mr Sommerlad. I understand that you wanted to
18 give some clarifications.

19 A. [11:45:09] Yes. So I was commenting on the puckered mark with the stitch
20 marks and I applied the Istanbul Protocol (a) to that scar. But in the further
21 photograph which I subsequently saw, I saw these transverse marks to the side of that
22 scar and -- and so it is an addition because I hadn't seen it before, and I -- as I've
23 suggested, I would apply Istanbul Protocol (b) to those scars.

24 Q. [11:45:41] Thank you very much, Mr Witness, for the clarity of your comments
25 and clearing all of this matter up. Obviously we're not the experts here and I'm

1 doing my best to try and translate your thoughts and your conclusions. But if I
2 make any mistake, by any means, just lift up your hand as you've done before, tell me
3 and I'll give you the floor to clarify. Thank you.

4 Now if we go to this same page -- remain on the same page, which is 2723, there's that
5 caveat that you've added to each and every one of your reports. I mentioned it
6 before:

7 "I have suggested that the only way that [the] scars could be properly assessed, and
8 the accounts verified or not, would be [...] physical examination of the witness."

9 Now I'm correct, Mr Witness, that this caveat finds itself in every one of the reports
10 that you've drafted, the six reports?

11 A. [11:46:40] Correct.

12 Q. [11:46:43] Now you've explained to us previously all through this morning the
13 importance of meeting the person, of conducting a physical examination. Would it
14 be correct to state that when you -- that this caveat means that any of the conclusions
15 or opinions are subject to a more thorough, proper assessment in person?

16 A. [11:47:07] Yes.

17 Q. [11:47:09] Thank you, Mr Witness.

18 So on that same line of thinking obviously, then none of these opinions or conclusions
19 are definitive. You can't be definitive in these conclusions because of the fact that
20 you never had the chance to meet them, to get their history, to actually observe the
21 scars, take photographs et cetera, is that correct?

22 A. [11:47:35] There are degrees of certainty. The witness where we -- which
23 we -- whom we've previously discussed with the series of vertical scars, they were
24 good quality photographs and I could state that with much more -- I could be more
25 positive in those conclusions. But in many of the others, the photographs were

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1 simply not -- did not allow me to be -- to really give a confident opinion.

2 Q. [11:48:19] Thank you, Mr Witness. So -- so indeed when you were presented
3 with photographs that had issues with maybe contrast or focusing, and I believe
4 you've stated it on certain amount of times you're -- you've basically indicated that in
5 the report, and you've drawn no conclusions, is that correct?

6 A. [11:48:38] Yes.

7 Q. [11:48:48] Mr Witness, I'd like to change right now. We're not going to go
8 through all the reports, as I said before, because I believe that most of your comments
9 apply to all of them. I'd like you to now look at another one of your reports. It's in
10 your tab -- it's in your binder before you and I'm going to give you the number of it.
11 It's number 6.

12 (Microphone not activated)

13 THE INTERPRETER: [11:49:29] Microphone, please, Counsel. Microphone, please.

14 THE COURT OFFICER: [11:49:34] Could counsel please turn on his microphone.

15 MR GARCIA: [11:49:39] Thank you.

16 Q. [11:49:40] So for the record, the report that I'm referring to at tab number 6 is
17 MLI-D28-0006-2725.

18 Do you have that open before you, Mr Witness?

19 A. [11:50:05] I do.

20 Q. [11:50:07] Now, previously, Mr Witness, before the break I asked you questions
21 obviously about what transcripts, excerpts you had. Just to be clear, my purpose is
22 not to confuse you. I just want to be certain about what you did and didn't have.

23 A. Yes.

24 Q. [11:50:23] Because we indeed have a note from the Defence -- from Defence
25 counsel indicating the excerpts that you've -- that you received or the list of evidence

1 that you relied upon to do your expert reports. So it's not a quiz or anything and I'm
2 going to be principally questioning you on -- on the -- on the methodology that you
3 used et cetera, but questions within -- I'm not going to ask you very precise questions,
4 but just general questions. If you're unable to answer, just let me know.

5 Now when we look at this report, you've -- you've indicated obviously the terms of
6 reference. You mention a transcript -- a transcription excerpt. Now if you can
7 answer the question, and if you're not able to -- because we have obviously
8 indications of what you would have had before you and it seems like you had
9 a couple of excerpts. You've indicated here one excerpt. Is that because this is the
10 one that's most telling to you, is it the most important one or is it -- how did you work
11 out the methodologies? Just so we understand your reports.

12 A. [11:51:41] Yes, thank you for asking that. And I would like to clarify what I
13 said previously. I have seen all -- I've seen much fuller excerpts of the transcripts
14 since doing these reports, but the -- what I've put in my reports are extracting the bits
15 to do with the actual incident which -- which produced the -- the scars. So correction
16 to my earlier comment. In each case, I was shown more information and I have
17 summarised what I felt were the bits that were relevant to the injuries.

18 Q. [11:52:27] I understand that and thank you very much, Mr Witness, for that.
19 Now one other thing that I -- that I've not seen in your methodology is how you
20 might have addressed other issues that might be relevant. Let me ask you this
21 question: When you -- when you received the information regarding this witness,
22 did you receive any type of information regarding whether or not the person was
23 clothed when he was whipped? You know, type of clothing, information on -- on
24 the whip, on the type of whip, the material, the amount of lashings, is that the type
25 of -- did you receive any of that type of information? If you can recall from memory.

1 A. [11:53:18] Well, I was allowed to bring my files in and I actually have it in front
2 of me so, yes, I can -- I was given information about the clothes and quite a lot of
3 information about the incidents. I've since seen even fuller transcripts of the court
4 proceedings, but I was given information about the whip and not very much about
5 the nature of the whip, except that it was bent. And there is information about the
6 clothes that the victim was wearing.

7 Q. [11:54:05] Yes, thank you for that, Mr Witness. And you would agree with me
8 that whether or not a person is wearing clothing or not is -- would be relevant to your
9 assessment, just out of common sense?

10 A. [11:54:18] I agree.

11 Q. [11:54:21] You would agree as well with me, Mr Witness, that the force with
12 which the person has been struck, where they have been struck as well, would also be
13 relevant to your assessment?

14 A. [11:54:35] I agree.

15 Q. [11:54:38] Would you also agree, Mr Witness, that the nature -- the type of whip
16 that was used, you know, the material it was made of et cetera, that would also be
17 extremely relevant to your assessment -- overall assessment of injuries and whether
18 these are consistent with an account?

19 A. [11:54:58] Yes.

20 Q. [11:54:59] Now, the reason I'm asking you those questions, Mr Witness, is that I
21 haven't seen -- I haven't seen any -- any discussion of these issues in your report
22 regarding the witness. They seem to be not addressed at all, actually, of whether
23 you've taken these into consideration and how you've taken them into consideration,
24 if so. It seems to be absent from your report. Unless you could indicate to us where
25 exactly you deal with the clothing aspect et cetera, the nature of the whip, if only to

1 discount them.

2 Can you help us with that?

3 A. [11:55:39] I based my conclusions on the pattern of the scars and, as we have
4 said, these series of vertical -- vertically orientated scars, and I -- no matter whether
5 the witness was wearing clothes or not, I just can't imagine -- and no matter what sort
6 of whip was used, I can't imagine how it could have produced a series of seven
7 patterns of vertical scar -- small patches of vertical scarring.

8 Q. [11:56:16] So, basically, Mr Witness, you're agreeing with me that you've not
9 addressed this in your report. They're not -- you've not indicated in any which way
10 this information and its relevancy and why or why not you've decided to not address
11 them or why it's not relevant for the assessment. That's absent in your report.

12 A. [11:56:41] Are you referring to the clothes or the nature of the whip?

13 Q. [11:56:47] Any of the elements that I've -- that I've broached. I understand your
14 response, but you would confirm that this is not addressed in your report in any
15 which way.

16 A. [11:56:58] No. I've tried to look at the pattern of the scarring and give an
17 opinion as to whether those could have been caused by a -- by flogging or whipping,
18 and I can't imagine a way that they could be.

19 Q. [11:57:15] And did you take into consideration as well -- or did you read up on
20 anything regarding what type of treatment the person received after the incident?
21 That -- wouldn't that have been relevant in your assessment?

22 A. [11:57:31] Yes, I -- I think there was something -- there was something in the
23 excerpts, in the transcripts that I saw about the treatment, which was by his mother,
24 as I remember. He was seen in a hospital. There were -- there were areas of blood
25 where -- which had coagulated, and he then went to a therapist using a traditional

1 method of removing the blood.

2 Q. [11:58:13] Indeed, Mr Witness, and you're referring to, just for the record,
3 obviously, transcript 55, page 24, lines 1 to 3. And I'll leave that for the court record.
4 But you agree with me that that also might have been -- would have been relevant in
5 your assessment. is that something you took into consideration as well or not?

6 A. [11:58:39] Yes, I did take it into consideration, because I did see these -- these
7 transcripts.

8 Q. [11:58:45] But, again, Mr Witness, that -- there is no indication of that in your
9 report, that you did take that into consideration and it's relevancy or not, is that
10 correct?

11 A. [11:59:00] Yes.

12 Q. [11:59:05] Now, Mr Witness, you were also questioned briefly by Defence
13 counsel on flogging videos. Do you recall that? And reference has been made -- I
14 understand that you had a chance to look at some of these videos during your
15 preparation session or on your own time, is that the case?

16 A. [11:59:27] Yes.

17 Q. [11:59:29] And I see here from the witness preparation note that these would
18 have been the videos -- I'm just looking at them, and I know that there was
19 a correction and I think it would be videos -- would've been 49 to 58. Defence
20 counsel will correct me if I'm wrong, but I think that's the information I believe that
21 was given to us. Is that correct?

22 It's fine. It's just for the record, Mr Witness. I don't expect you to know the ERN
23 numbers of every one of these videos that you've watched, but in general you've
24 watched a certain amount of videos, is that correct?

25 A. [12:00:16] I've seen a video of a man being hit from his left side on to his back.

1 Q. [12:00:24] So amongst -- amongst these videos, Mr Witness, there's a more
2 general video, which is a report, and then there's these other smaller videos. Does
3 that -- do you remember that?

4 A. [12:00:37] Yes.

5 Q. [12:00:41] Now, Mr Witness, would you agree with me that what you've seen
6 were extracts of what -- of these floggings? You've not seen -- I mean, from your
7 observation, these are not extracts. I mean, the videos you've seen, we call them
8 videos, but they're actually -- they're kind of small videos. They don't last that long,
9 correct? There's not much whipping going on.

10 A. [12:01:07] I -- I don't know the answer to that question. I don't know if I've ever
11 seeing extracts or -- or the entire whipping.

12 Q. [12:01:14] Now, Mr Witness, you mentioned in your -- actually, if you look at
13 your document, your expert report regarding this witness, and right at the bottom of
14 page 2725 - I'm not sure if that appears - you say:

15 "It appears that the witness stated that he was subjected to 100 lashes."

16 Correct?

17 A. [12:01:39] Yes.

18 Q. [12:01:42] Now, would you agree, Mr Witness, that -- and I'm just coming back
19 to the conclusion on the question that was asked to you by Defence counsel, that you
20 can only speak to the correspondence between what you've seen and -- and the
21 photographs you've seen of these -- of these witnesses. In fact, that's the limit of
22 what you're opining -- what you're giving your opinion on here in court. If there's
23 only four whippings in that video and the video lasts 10 seconds, your videos -- your
24 opinion is limited to those four distinct strikes. Is that correct?

25 A. [12:02:27] Yes. There were more than that that I saw, but -- and there were

1 several videos of the same person. So I don't know whether they were simultaneous
2 videos or -- I just don't have that information. They all appeared to show the same
3 pattern of action, which was hitting transversely across the back, the buttocks and the
4 backs of the legs.

5 Q. [12:02:53] The fact of the matter is, Mr Witness, you didn't get to see the 100
6 lashes completely. I understand they are extracts, and, in fact, some of them might
7 be, you know, duplicating the same things, but you didn't see 100 lashes, did you?

8 A. [12:03:07] I didn't count 100 lashes.

9 Q. [12:03:10] Now -- so then, basically, obviously, when you stated to the Defence
10 counsel that the -- and this is in response to a question on page 18 of the
11 real -- transcript, when you've concluded, when you've given your conclusions on
12 these extracts, it's strictly limited to what you've seen and only that. You can't speak
13 for what you've not seen, obviously.

14 A. [12:03:44] Yes.

15 Q. [12:03:48] And the people that you've seen in the video were clothed, is that
16 correct? They were wearing some items of clothing.

17 A. [12:03:55] Yes.

18 Q. [12:03:56] Even two.

19 A. [12:03:57] Yes.

20 Q. [12:04:00] So that's relevant to an assessment, obviously, of injuries and
21 account -- and correspondence with an account, is that correct?

22 A. [12:04:09] Yes. I think all that can be -- if I can just add, I think all that can
23 be -- the only effect that clothing would have would be to diminish the impact to
24 some extent.

25 Q. [12:04:27] And you mentioned, if I'm not incorrect, that the -- if you were

1 wearing clothing, and after seeing these videos, that it might be more likely bruising.

2 A. [12:04:38] Yes.

3 Q. [12:04:38] Contusions, and not necessarily scarring.

4 A. [12:04:41] Yes.

5 Q. [12:04:42] Is that correct?

6 A. [12:04:43] Yes.

7 Q. [12:04:45] Now, I'd like to bring you to the next expert report, Mr Witness, and
8 that's just -- actually, just one last thing on this report, if you don't mind, Mr Witness.

9 I see that on page -- and this is just to confirm, for the record -- on page 27 -- 27, you
10 do indicate in your opinion that --

11 "The vertical scar over the left back could have been caused by a superficial laceration
12 produced by the trauma described." That's correct?

13 A. [12:05:29] Yes. There's a -- a vertical scar, suggesting a superficial laceration
14 and it's -- it's a little difficult -- it wouldn't fit with the videos that I have seen, which
15 suggest transverse injuries, but not a vertical injury.

16 But if, as you're suggesting, other whipping was carried out with other actions on
17 other occasions that I haven't seen, yes, that could have been the result of a whip, but
18 applied vertically. For example, if the individual was lying down, face down, and
19 being hit from above.

20 Q. [12:06:22] Thank you very much, Mr Witness, for that clarification.

21 Now we're just going to move on to the next -- another expert report that you -- that
22 you drafted. And I will give you the tab number on that one. That would be tab
23 number 8. And for the record, it's MLI-D28-0006-2734-R01. I'll give you time to just
24 find the report, Mr Witness, in your binder. It's tab number 8.

25 Now, you confirm, Mr Witness, that this is one of the reports that you drafted for the

1 Defence.

2 A. [12:07:50] Yes.

3 Q. [12:07:52] Now, Mr Witness, when you've -- we've already gone through your
4 methodology, so I'm not going to come back on that but just to ask you one precise
5 question. I notice here that the witness or what you had taken from the relevant
6 transcripts was that the witness themselves had indicated that there were no -- when
7 asked about the wounds or injuries, the witness says:

8 "There was inflammation on my back. I had bruising."

9 Do you see that as a questions and answer -- one of the questions and answers? Is
10 that correct?

11 A. [12:08:35] Yes, correct.

12 Q. [12:08:37] So now you have seen the video, obviously, and you've commented
13 that it would lead to -- to bruising and contusions, is that correct?

14 A. [12:08:54] It -- it certainly could lead to bruising and contusion.

15 Q. [12:09:01] So, Mr Witness, that would be, in effect, consistent with what the
16 witness reported.

17 A. [12:09:08] It would.

18 Q. [12:09:11] I notice as well, Mr Witness, if you can confirm, that there is no
19 indication -- any indication of how you've addressed matters regarding clothing or
20 types of whip, any of that -- those kind of factors that I've outlined before, in this
21 report either, is that correct?

22 A. [12:09:44] Correct. I didn't think that was part of my responsibility.

23 My -- my -- I understood my responsibility was to address the issue of scarring. I
24 can't -- I can't comment on someone who doesn't have any scarring.

25 Q. [12:10:10] I understand that, Mr Witness, but as a professional - and I

1 understand you have more than 40 years of experience - it would have been useful to
2 address these comments, the comments that -- it would've been -- don't you think it
3 would've been useful to address these issues? The issues of possible weapons,
4 nature of the weapons, clothing et cetera in your expert report?

5 Do you not feel that that could have been useful?

6 A. [12:10:38] Well, just to repeat, I didn't think that's what I was being asked. I
7 thought I was being asked to comment on -- on those individuals where there were
8 scars and whether they could be explained.

9 Q. [12:11:02] I'd like -- did you want add something to that, Mr Witness? I give
10 you the floor, if you do want to add anything.

11 A. [12:11:11] Well, can I just add, I mean, I said that in my terms of reference, I've
12 been asked to accept -- assess whether the appearance of the scars is consistent with
13 the account given.

14 Q. [12:11:21] But you agree with me, even with that term of reference, as a
15 professional, you need to outline everything that might be relevant to your
16 assessment. And you've indicated to me previously that all of these factors, type of
17 whip et cetera were relevant.

18 So do you not agree that it should have been in the report?

19 A. [12:11:41] Well, if I misunderstood my instructions, then they should have been,
20 but I did not think that was part of my -- my job.

21 Q. [12:11:53] Mr Witness, I'd like to just address one last report with you, and that's
22 the expert report that you drafted at tab number 9. If you could just please go there.
23 And just for the sake of the court record, that is MLI-D28-0006-2737. I'll give you
24 time to find that, Mr Witness.

25 Now, do you confirm -- do you have that before you, Mr Witness?

1 A. [12:13:14] I do.

2 Q. [12:13:16] Thank you, Mr Witness.

3 Do you confirm for the record that that is an expert report that you prepared for the
4 Defence?

5 A. [12:13:23] Yes.

6 Q. [12:13:23] Now, what I'm concerned about here is that -- I'm not going to go into
7 the amount -- the photograph that you received et cetera. I want us to go
8 directly -- actually, let's go back to page 2737. And if we look under the
9 "Methodology" - I'm looking at the transcript excerpts - from what I understand, the
10 information you had at the time when you -- I'll let you get there. The first page,
11 Mr Witness.
12 2737, for the court record.

13 Do you see that?

14 A. [12:14:06] Yes.

15 Q. [12:14:08] Now, the information you had before you at the time or the
16 information that you found necessary to put in the methodology as relevant
17 information is the fact that this person had been -- amongst other things had been
18 slapped in the face and that -- and I'll quote you -- is that you've just indicated that the
19 extract -- the excerpt that you've indicated or -- is: "Yes, I saw him again another
20 time, that was when he slapped me and you can see the scar which is just above my
21 jaw. He slapped me in the face."

22 So those are -- that's one of the injuries that you were asked to look at through the aid
23 of photographs that are indicated in your report and -- to determine whether
24 the -- the information or the account and the injury were consistent, amongst other
25 things, is that correct?

1 A. [12:15:09] Correct.

2 Q. [12:15:09] And you -- first of all, in your opinion, at page 2738, you mentioned
3 that you focused on the photograph regarding the lesion just above the jaw. You
4 also mentioned the fact that they were poorly focused photographs in the batch of
5 photographs you've seen, and, in your opinion you say:

6 "It is highly unlikely that this scar would have been caused simply by a slap in the
7 face."

8 And if I understand correctly, that is the photograph of the jaw or the face of the
9 witness, is that correct?

10 A. [12:15:57] Yes.

11 Q. [12:15:57] And, just for the record, I believe that would have been MLI 0072-0499.
12 And what I'm going to do, Mr Witness, I'm going to put that on the screen for you,
13 just so that we're sure that we're speaking about the same thing.

14 And only you can see this, obviously. It's confidential.

15 Now, you see that before -- is that the photograph that you looked at where you drew
16 this conclusion?

17 A. [12:16:31] It is.

18 Q. [12:16:35] Is that correct?

19 Now, Mr Witness, I've read your conclusion, but in the excerpts of the documents that
20 were given to you, I have noticed that there is one excerpt that was missing, where it
21 is indicated that the witness was slapped and that the person who slapped her had
22 a ring.

23 And, just for the record, that is transcript 156, page 43. Where it's been made of a
24 mention of a ring.

25 Now, I understand that from my information, Mr Witness, you didn't have -- you

1 didn't have that -- that particular excerpt.

2 A. [12:17:26] I believe I did not have that.

3 Q. [12:17:28] Right. Now, would you -- would you agree with me that
4 that's -- that's quite an important element -- that's quite an important item or piece of
5 information for you to have in making your assessment.

6 A. [12:17:44] Yes.

7 Q. [12:17:50] And, obviously -- and, obviously, you didn't have that information at
8 the time. Did you -- I understand that -- there's one last question I have on this, is
9 that, in the witness preparation note, it's indicated that you did have a look at all the
10 transcripts. Did that not -- did that not come up in your reading of the transcripts of
11 this witness?

12 A. [12:18:17] It did come up in the reading of the transcripts that I saw in the last
13 few days.

14 Q. [12:18:25] So you've seen that then basically or you've read that? That came up
15 in your reading?

16 A. [12:18:32] Yes.

17 Q. [12:18:33] Now, is there a reason why you didn't raise that with the people that
18 you were having a preparation session? That that would have been a relevant piece
19 of information.

20 A. [12:18:46] I believe it was discussed. I may be wrong. Certainly, I have
21 thought about whether that does change the situation and raised the question of
22 whether if this was a slap from the -- from the front of the hand and there was
23 no -- there were no -- there was no jewellery attached or -- to that part of the ring, then
24 I think that would be unlikely to change the situation. But -- but --

25 Q. [12:19:19] I understand, Mr Witness, but I'm just -- the thing is that I'm just at

1 a bit of a loss here, because I do have the witness preparation note for you indicating
2 what has been discussed on both days, unless I'm missing some information, and, in
3 regards to this specific report, MLI-D28-0006-2737, that's at page MLI-D28-0006-5200,
4 all I see here is:

5 "The witness provided" -- and I'll read it out to you, in all fairness, so that you -- just
6 so that we're sure about what's happening.

7 "The Witness provided a revision to this report. The Witness explained that the scar
8 above the jaw left mandible is bigger than what he initially considered. However the
9 witness explained that a slap would not produce permanent damage, and this being
10 a permanent scar, his conclusion remains the same as to the implausibility of the
11 account."

12 So, as you can see, Mr Witness, there is no indication here in the preparation note that
13 you would have raised the matter of a ring, or that you would have given any of the
14 explanations that you've given us now as to which side the jewellery would have
15 been on. Did you -- can you explain that?

16 Did -- maybe you're not in a position to explain that and I understand you didn't
17 write this document.

18 A. [12:20:47] Mm, to be quite honest, I can't remember. I have, at some stage in
19 this process -- and I've seen a lot of documentation in the last few days, at some stage
20 in this process, I have seen a reference to a ring in the full transcript and I have
21 thought about whether that changes the situation. Whether -- whether it was
22 discussed, I -- I honestly can't remember.

23 Q. [12:21:08] So you -- all right, Mr Witness, so you'd agree that --

24 PRESIDING JUDGE MINDUA: [12:21:33](Interpretation) It's only now that we hear
25 the end of the interpretation.

1 If you could please pause from time to time.

2 MR GARCIA: [12:21:42](Interpretation) Thank you, your Honour. I apologise.

3 Q. [12:21:52] (Speaks English) So I understand, Mr Witness, you can't recall
4 whether you did raise this or not during the preparation session, just to be clear.

5 A. [12:21:58] I can't -- I can't recall.

6 Q. [12:22:01] But you do agree that it is information which is relevant and which
7 could have affected your assessment.

8 A. [12:22:09] It could have.

9 PRESIDING JUDGE MINDUA: [12:22:34](Interpretation) Mr Witness?

10 THE WITNESS: [12:22:37] Am I allowed, however, to comment on the scar? This
11 is -- and it depends in what light you look at the scar, but --

12 PRESIDING JUDGE MINDUA: [12:22:49](Interpretation) Go ahead.

13 THE WITNESS: [12:22:50] It depends on the light in which you're looking at the scar,
14 but this is a scar. So I said 2.5 centimetres by 6 millimetres. It's probably more like
15 2.5 centimetres by 1.5 centimetres, looking more carefully or in different light of the
16 scar.

17 It's the sort of scar that would result from a significant superficial injury, such as,
18 a shaving laceration, an abrasion, or a burn. I still cannot imagine how it could have
19 been caused by a slap. And even if there was some jewellery on the part of the hand
20 that actually hit the face, that would be expected only to cause a small injury, not
21 a scar of this size.

22 So I can't imagine how this scar could have been caused by a slap, even if the assailant
23 was wearing a ring.

24 Q. [12:24:01] But, Mr Witness, for you to have a definitive conclusion on what we
25 see here now and the ring, you would have had to know, I imagine, additional

1 information on how the strike was given, was it, you know, a glancing type of blow
2 where the jewellery just goes across the jaw et cetera. Those are elements that you
3 don't have and that would be relevant for you to be able to give a definitive opinion
4 on this. Is that correct?

5 A. [12:24:27] Yes, it would have been helpful to know exactly the nature of the slap,
6 but I wasn't given that information.

7 Q. [12:24:33] And do you agree with me, Mr Witness, that nothing obviously can
8 replace the fact of -- or the possibility of you physically examining the witness
9 yourself? That would have been the best thing for you to come to a definitive
10 conclusion.

11 A. [12:24:48] A more definitive conclusion.

12 Q. [12:24:52] Thank you, Mr Witness. I have no further questions for you. Thank
13 you very much.

14 PRESIDING JUDGE MINDUA: [12:25:13](Interpretation) Thank you very much,
15 Mr Prosecutor, for your cross-examination.

16 Now I turn to the legal representative of victims, Mr Doumbia. Would you like to
17 say anything after hearing the questioning by the Defence and the OTP?

18 MR DOUMBIA: [12:25:33](Interpretation) I'll be very brief in relation to the
19 cross-examination led by the OTP.

20 PRESIDING JUDGE MINDUA: [12:25:46](Interpretation) Very well. I now turn to
21 the parties.

22 Have you any objections to the Legal Representative of Victims saying something.
23 Mr Prosecutor?

24 MR GARCIA: [12:25:59](Interpretation) No objection by the Prosecution.

25 PRESIDING JUDGE MINDUA: [12:26:03](Interpretation) Thank you.

1 Defence?

2 MR PESTMAN: [12:26:09] ...

3 PRESIDING JUDGE MINDUA: [12:26:16](Interpretation) Very well. Mr Doumbia,
4 please go ahead.

5 MR DOUMBIA: [12:26:23](Interpretation) Thank you very much, your Honour. I
6 have one or two questions for this witness.

7 QUESTIONED BY MR DOUMBIA: (Interpretation)

8 Q. [12:26:32] Mr Witness, I carefully listened to your remarks and I did take note of
9 the fact that you have more than four decades of experience. I would like to ask you
10 during these more than four decades of experience, have you been in the habit of
11 treating or providing expert reports in conditions such as in this case; namely,
12 providing an expert opinion without -- completely without the person -- well, without
13 having the opportunity to physically see the person regarding whom you are writing
14 an expert opinion, is this a first for you?

15 A. [12:27:32] Not -- not quite a first, but very unusual. As I said at the beginning, I
16 always request - if at all possible - to see the individual in person. The alternative
17 has been a remote consultation by -- by Zoom, but I regard that as -- as less
18 satisfactory and certainly examining -- assessing scars purely from photographs I
19 think is extremely limited.

20 Q. [12:28:17] Could I put it to you, Mr Witness -- could I suggest to you that any
21 sort of expert opinion or report has a certain margin of error, even in the best possible
22 conditions?

23 A. [12:28:40] Yes, I agree.

24 Q. [12:28:49] Now if we take that as our starting point, if you had been placed in
25 the best-possible conditions, would the results of your expert reports been dealt with

1 differently? And would you feel more comfortable telling the Chamber about the
2 expert reports that you have provided?

3 A. [12:29:17] The answer to that is yes, as I said earlier.

4 MR DOUMBIA: [12:29:33](Interpretation) Your Honour, I'd like to conclude on this
5 point.

6 Q. [12:29:35] Now if we take these elements of information as our starting point, if
7 you were asked to indicate on a scale from one to 10, the margin of error that your
8 expert reports are on now - bearing in mind that you did not have any physical
9 contact with these victims - how would you rank your reports on a -- rather, how
10 would you rank the margin of error on a scale from one to 10 for the Chamber?

11 A. [12:30:15] It would be different for -- for each report. It would depend on
12 the -- how good the photographs were, how -- how clearly the nature of the injury
13 was described. So I think -- I think in all cases I suffered from not being able to ask
14 questions about the nature of the instrument used, for example. As I said earlier,
15 some of the photographs are better than others. The -- the photograph of the -- I
16 think it was 52 -- 0520 are good photographs and I think I could give a reasonable
17 opinion with relatively low risk of error, but others, the error rate is very -- would be
18 very high.

19 MR DOUMBIA: [12:31:23](Interpretation) Thank you very much, your Honour. I
20 have no further questions for this witness.

21 PRESIDING JUDGE MINDUA: [12:31:30](Interpretation) Thank you very much,
22 Maître Doumbia, for your questions.

23 Now of course, I'm now turning to the Defence to ascertain whether there are any
24 further questions to put to the witness. Mr Pestman?

25 MR PESTMAN: [12:31:44] Thank you -- thank you, Mr President. Yes, I had

1 a couple of questions on issues I would like to raise to clarify the answers given by the
2 witness during the cross-examination.

3 PRESIDING JUDGE MINDUA: [12:32:02](Interpretation) Please go ahead, counsel.

4 QUESTIONED BY MR PESTMAN:

5 Q. [12:32:06] I'll try to be brief, I know you have a plane to catch.

6 We discussed -- or you discussed with the Prosecutor, you did discuss the witness
7 with the scar on the mandible, you know which one I'm talking about, and the
8 Prosecutor noted that it would have been better to examine this particular witness in
9 person. That's correct, isn't it?

10 A. [12:32:46] Correct.

11 Q. [12:32:47] Yeah. Do you know why it wasn't possible to examine this witness
12 in person?

13 A. [12:32:53] I don't. I -- I did request the opportunity to examine all of them, but I
14 don't know the reasons why not.

15 Q. [12:33:01] Could we put --

16 MR GARCIA: [12:33:08](Interpretation) I'm objecting.

17 PRESIDING JUDGE MINDUA: [12:33:11](Interpretation) Yes, Mr Prosecutor.

18 MR GARCIA: [12:33:13](Interpretation) We are in re-examination here to clarify
19 questions. This is rather restrained. I don't see where we're going with this. I
20 think that the question -- the first question, well, it's a clarification question, if you like.
21 But this second question that's just been put, I am objecting to. I think they're
22 wasting our time.

23 PRESIDING JUDGE MINDUA: [12:33:36](Interpretation) Mr Pestman, I do agree
24 with the Prosecutor with regard to the second question. It is not relevant.

25 MR PESTMAN: [12:33:46] I'll rephrase my question in a pertinent way -- I'll try.

1 Q. [12:33:55] Dr Sommerlad, did you know that this particular witness

2 refused (Overlapping speakers)

3 MR GARCIA: [12:34:01] (Overlapping speakers)... object.

4 MR PESTMAN: [12:34:01]

5 Q. [12:34:01] -- objected to an examination.

6 MR GARCIA: [12:34:02](Interpretation) I'm raising an objection.

7 PRESIDING JUDGE MINDUA: [12:34:04](Interpretation) Mr Garcia?

8 MR GARCIA: [12:34:05](Interpretation) Mr President, it is entirely inappropriate in
9 the circumstances because the witness is coming here to simply explain his report and

10 not the circumstances that -- there are a number of circumstances that were

11 not -- we're not here to go into the details of the circumstances. We're here to talk

12 about what the witness did in his expertise in his report et cetera. Not the reasons

13 why he was not able to meet - yes or no - certain witnesses.

14 (Overlapping speakers)

15 THE INTERPRETER: [12:34:38] Overlapping speakers. Repeated overlapping
16 speakers.

17 PRESIDING JUDGE MINDUA: [12:34:46](Interpretation) This question is not
18 accepted. Please move on to something else.

19 THE INTERPRETER: [12:34:53] The English interpreter: There are repeated
20 overlapping speakers. Please.

21 (Overlapping speakers)

22 MR PESTMAN: [12:34:55]

23 Q. [12:34:55] Mr Sommerlad, there are one or two issues I would also like to just
24 clarify.

25 There is a little bit of confusion about the documents, the extracts -- the transcripts

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1 that you saw and when you saw them.

2 MR PESTMAN: [12:35:08] Can I show and put on the screen the document under
3 tab number 4, and I would like to show it to the witness and ask him whether he's
4 familiar with this document.

5 THE COURT OFFICER: [12:35:45] Could counsel indicate whether the document
6 could be shown publicly.

7 (Counsel confers)

8 MR PESTMAN: [12:36:05] I believe, and I'm told, that it's not a public document.

9 So if you could not broad -- if it could not be broadcasted then it would be preferable.

10 The MLI number is 0006-3004.

11 Dr Sommerlad, do you recognise this document.

12 A. [12:36:42] I do.

13 Q. [12:36:44] And what does the document actually say? Do you know --

14 A. [12:36:46] The evidence that -- that I relied on in preparing my report.

15 Q. [12:36:52] Okay. In preparation for your witness -- for your appearing here
16 today in court, you also received the full transcripts concerning all the witnesses.

17 A. [12:37:18] Yes.

18 Q. [12:37:19] You --

19 A. [12:37:20] Yes. Well, much fuller, I don't know if they were complete, but
20 I -- but much more comprehensive documents, yes.

21 Q. [12:37:29] And in preparation for today, you read those transcripts?

22 A. [12:37:34] Yes.

23 Q. [12:37:38] The question I have for you today is whether that made you change
24 your mind, whether reading the entire document changed your opinion in any
25 relevant way?

1 A. [12:37:55] I don't think so. I think the extracts that I was -- that I was shown
2 originally were the -- the extracts which were relevant to the -- to the injuries, I don't
3 think there was anywhere which would have changed it. I -- there is this question of
4 the ring and the -- being worn by the -- the person who allegedly slapped. I can't
5 remember whether that -- whether that was discussed, but I think there is reference in
6 the -- in the full transcript to a ring.

7 Q. [12:38:41] The photos you looked at to prepare your reports, were they the
8 originals or were they copies?

9 A. [12:38:50] I don't -- I'm not sure I can answer that question. I -- I don't know if
10 they are originals.

11 Q. [12:39:10] You said that when you wrote the report you looked at the photos?

12 A. [12:39:16] Yes.

13 Q. [12:39:17] And you also stated on numerous occasions that you would have
14 preferred to examine the witnesses in person.

15 A. [12:39:22] Yes.

16 Q. [12:39:23] And that it is sometimes difficult to form an opinion, to draw
17 a conclusion on the basis of just photos.

18 Can a layperson do that? Is a layperson better at doing -- drawing conclusions?

19 MR GARCIA: [12:39:41](Interpretation) I am objecting.

20 PRESIDING JUDGE MINDUA: [12:39:44](Interpretation) Mr Prosecutor.

21 MR GARCIA: [12:39:45](Interpretation) Once again, Mr President, this question
22 does not fall within the very restrained scope of re-examination. Here, questions are
23 being put -- I do not see the relevance for this witness. This question might have
24 been put in the examination-in-chief, but it was not contained in my
25 examination-in-chief. He's being asked whether a normal person without any

1 experience -- and this is not relevant with regard to this witness.

2 PRESIDING JUDGE MINDUA: [12:40:16](Interpretation) Mr Pestman, your
3 additional questions need to fall within the scope of a -- of the cross-examination, but
4 here we seem to be coming out of that somewhat.

5 (Overlapping speakers)

6 MR PESTMAN: [12:40:30] I understand. I withdraw the question.

7 Q. Just to be sure, when I asked you about the copies and the originals, when I talk
8 about "originals", I am referring to computer files, JPG files. Did you see those
9 photos?

10 A. [12:40:48] Yes.

11 MR PESTMAN: [12:41:07] Okay. Just one second, I'm just trying to see whether I
12 covered all the topics.

13 PRESIDING JUDGE MINDUA: [12:41:15](Interpretation) Please go ahead, take your
14 time.

15 (Counsel confers)

16 MR PESTMAN: [12:41:48]

17 Q. [12:41:50] I'm sorry for taking your time, just once more I would like to ask you
18 two questions about the in-person examination.

19 So you noticed and had a look at the reports produced by the Netherlands Forensic
20 Institute. Are you aware of the fact that the Netherlands Forensic Institute had the
21 possibility to examine (Overlapping speakers)

22 MR GARCIA: [12:42:22] *Je m'objecte.*

23 MR PESTMAN: [12:42:22]

24 Q. [12:42:22] -- the witnesses in person.

25 MR GARCIA: [12:42:22](Interpretation) I'm objecting.

1 PRESIDING JUDGE MINDUA: [12:42:23](Interpretation) Mr Prosecutor.

2 MR GARCIA: [12:42:24](Interpretation) Mr President, entirely outside of the scope
3 of the cross-examination. I didn't broach those documents with the witness. The
4 Defence did so initially, and I raised an objection at the time. The Defence was able
5 to put all the questions that they could, but to try and come back on it -- to try and put
6 a question that, to my mind, is not relevant here.

7 PRESIDING JUDGE MINDUA: [12:42:52](Interpretation) Mr Pestman, I do believe
8 that the Prosecutor is correct with regard to the question that you just put as to the
9 report of the Dutch Netherlands Forensic Institute, so please move on.

10 THE INTERPRETER: [12:43:04] Overlapping speakers. Multiple overlapping
11 speakers.

12 (Overlapping speakers)

13 MR PESTMAN: [12:43:08] Am I allowed to respond to the objection or is it a station
14 we have passed?

15 I can see your colleague nodding.

16 PRESIDING JUDGE MINDUA: [12:43:17](Interpretation) Yes, because I've already
17 ruled on the question, so please move on to something else.

18 (Counsel confers)

19 THE INTERPRETER: [12:43:29] Message from the English booth: a great deal of
20 material is being lost due to overlapping speakers. Could this please be pointed out
21 to counsel, and could they please observe a pause and slow down. Thank you.

22 MR PESTMAN: [12:43:47] Okay, one more last question.

23 Q. [12:43:48] And that has to do with the evaluation of photos and your opinion
24 based on those photos.

25 You repeated - after having been cross-examined by the Prosecutor or during your

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1 cross-examination - that it is difficult -- sometimes difficult to draw a conclusion on
2 the basis of photos.

3 Do you think a judge or this particular Trial Chamber can draw any conclusion on the
4 basis of those photos?

5 MR GARCIA: [12:44:22] Objection.

6 PRESIDING JUDGE MINDUA: [12:44:27](Interpretation) Mr Prosecutor.

7 MR GARCIA: [12:44:32](Interpretation) It's calling upon conjecture on the part of
8 the witness and we're asking the witness to put themselves in the place of this
9 tribunal.

10 PRESIDING JUDGE MINDUA: [12:44:38](Interpretation) Yes, Mr Pestman, I really
11 am against this question because the -- the witness is not going to judge the judges.
12 That's a little bit what it's all about here.

13 (Overlapping speakers)

14 MR PESTMAN: [12:44:49] I was hesitant to use the term "layperson", so I used a
15 more specific term.

16 I have no further questions. Thank you.

17 PRESIDING JUDGE MINDUA: [12:44:59](Interpretation) Thank you very much,
18 Mr Pestman.

19 So I believe that we have finished with this witness, Mr Prosecutor.

20 Mr Witness, on behalf of the Chamber, I would like to thank you very sincerely for
21 having assisted the Chamber by answering very professionally, very specifically and
22 with a good deal of goodwill, those questions that have been put to you.

23 So your testimony has now come to an end. Once again, I would like to thank you
24 and I would wish you a safe journey home and a great deal of success in your future
25 career.

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1 THE WITNESS: [12:46:00] (Overlapping speakers) Thank you, your Honour.

2 PRESIDING JUDGE MINDUA: [12:46:01](Interpretation) You are welcome.

3 (The witness is excused)

4 PRESIDING JUDGE MINDUA: [12:46:02](Interpretation) Now I'm turning to the
5 Defence for the continuation before we rise for today.

6 Ms Taylor, do you have an idea for the future testimony to come?

7 MS TAYLOR: [12:46:18] Yes, certainly, Mr President. It will be D-25, I believe will
8 be commencing on Monday.

9 PRESIDING JUDGE MINDUA: [12:46:32](Interpretation) That is correct, Ms Taylor,
10 that's what I have in my schedule anyway. Very well.

11 So before we rise for today, I would like - as always - to thank very sincerely all those
12 individuals who took part in the success of this day. Of course I'm talking about the
13 parties, the Office of the Prosecutor, the Defence, the Legal Representatives for
14 Victims, and, once again, the witness.

15 I would also like to thank the court reporters, the interpreters, who are always
16 working at high speed, and I would like to thank the security officers who have been
17 assisting us and the public in the gallery, and our public who are following us further
18 afield.

19 I'd like to wish you all a pleasant day and see you soon.

20 Court is adjourned.

21 THE COURT USHER: [12:47:31] All rise.

22 (The hearing ends in open session at 12.47 p.m.)