

Trial Hearing
WITNESS: MLI-D28-0020

(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 Judge Antoine Kesia-Mbe Mindua, Presiding, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Wednesday, 11 May 2022
10 (The hearing starts in open session at 9.51 a.m.)
11 THE COURT USHER: [9:51:06] All rise. The International Criminal Court is now
12 in session. Please be seated.
13 PRESIDING JUDGE MINDUA: [9:51:18](Interpretation) Court is in session.
14 Good morning to all.
15 Madam Courtroom Officer, could you please call the case.
16 THE COURT OFFICER: [9:51:44] Good morning, Mr President. This is the
17 situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan Ag
18 Abdoul Aziz Ag Mohamed Ag Mahmoud, case number ICC-01/12-01/18.
19 And for the record, we are in open session.
20 PRESIDING JUDGE MINDUA: [9:52:04](Interpretation) Thank you very much,
21 indeed, Madam Courtroom Officer.
22 As every morning, we shall now hear the appearances, starting with the Office of the
23 Prosecutor.
24 Madam Prosecutor, please.
25 MS LUPING: [9:52:21] Good morning, Mr President, good morning, your Honours.

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1 Appearing on behalf of the Prosecution this morning, are the same team for the

2 Prosecution, but we are joined this morning by Madam Charlotte Luijben.

3 PRESIDING JUDGE MINDUA: [9:52:35](Interpretation) Thank you very much,

4 Madam Prosecutor Luping.

5 I'm now turning to the Defence.

6 Counsel.

7 MS TAYLOR: [9:52:42] Good morning, Mr President, good morning, your Honours,

8 good morning to everyone in the courtroom, good morning, Madam Witness. The

9 Defence for Mr Al Hassan is represented today by myself, Melinda Taylor, by

10 Maître Michiel Pestman, by Ms Cécile Lecolle, Maître Mohamed Youssef and by Ms

11 Leila Abid. Thank you very much.

12 PRESIDING JUDGE MINDUA: [9:53:06](Interpretation) Thank you very much,

13 Ms Taylor.

14 I'd like to make the most of this opportunity to say and to put on the record that

15 Mr Al Hassan is not in the courtroom with us today, in keeping with the

16 authorisation granted to him yesterday by the Chamber.

17 Now over to the Legal Representatives for Victims.

18 Maître.

19 MR LUVENGIKA: [9:53:30](Interpretation) Good morning, Mr President, good

20 morning, your Honours. The victims are represented at this hearing by Madam

21 Carla Boglioli, by Madam Anouk Kermiche and by myself, Maître Fidel Nsita

22 Luvengika, and I thank you.

23 PRESIDING JUDGE MINDUA: [9:53:51](Interpretation) Thank you very much,

24 Maître Nsita.

25 Now I would like to turn to Madam Witness.

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1 Good morning, Madam Witness, how are you?

2 WITNESS: MLI-D28-0020 (On former oath)

3 (The witness speaks English)

4 THE WITNESS: [9:54:02] Good morning, your Honours. Thank you, I'm well.

5 PRESIDING JUDGE MINDUA: [9:54:05](Interpretation) Thank you very much,

6 Madam Witness.

7 On behalf of the Chamber, I would like to once again welcome you and I would like
8 to thank you for your availability.

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

11 I would like you to bear in mind the practical advice that I gave you yesterday with
12 regard to addressing the Court, especially in view of the fact that you are speaking the
13 same language as the representative of the OTP and also the same language as
14 Defence counsel.

15 Now, without further ado, I shall hand over to Madam Prosecutor Luping for the
16 continuation of the cross-examination.

17 Madam Prosecutor, you have 45 minutes; that's what we said yesterday.

18 MS LUPING: [9:55:20] Thank you very much, Mr President.

19 QUESTIONED BY MS LUPING: (Continuing)

20 Q. [9:55:24] Good morning, Dr Porterfield.

21 A. [9:55:27] Good morning.

22 Q. [9:55:30] And I have 45 minutes, I'll try to endeavour to make it less if that's
23 possible.

24 Now before I start, I just wanted to note on the record as I promised yesterday - we
25 ran out of time - but I promised to give you and give the Defence a transcript

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1 reference. It's page 58, line 24, to page 59, line 3, and the questioning went as
2 follows -- we're talking about the additional extracts that you had received of Defence
3 translations:

4 "Did these extracts affect your evaluation of Mr Al Hassan and your conclusion that
5 he had experienced the condition of learned helplessness while detained in Bamako?

6 Answer: They did not change my conclusion." End of quote.

7 Now I'm not going to ask you any question -- anymore questions about that. I
8 just -- I had promised I'd give that excerpt and I'm doing that now.

9 I am conscious of needing to slow down, so apologies to the interpreters.

10 Now I'm going to turn to a different question and that relates to the Defence draft
11 translations. We discussed them in some detail yesterday, and I'm going to refer to
12 page 81, line 17 to 24 of yesterday's testimony, where we were talking about the first
13 Defence translation you received, and that's 0003-0843. I'd asked you:

14 "[...] were you also aware that this translation is only in fact a translation of 30 out of
15 85 interview transcripts of the interview conducted between the Prosecution and
16 Mr Al Hassan?" Response: "Yes, I'm aware of that."

17 "And were you made aware of that at the time, that you were only given part and not
18 all of the transcripts?"

19 Response: "I don't remember. I knew they were excerpted."

20 And then in terms of the second Defence translation, at page 89, lines 17 to 19 - and I
21 was referencing the second Defence translation, and that's 0006-4330 - and my
22 question was:

23 "Yes. And that basically, with this document you received 45 out of the 85 OTP
24 transcripts?"

25 Your response was yes.

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1 "I understand, yes, that sounds correct." End of quote.

2 Now, Dr Porterfield, my question -- my first question is this: Did the Defence explain
3 to you why you were not being provided all 85 of the OTP interview transcripts and
4 all 11 of the security assessments?

5 And I'm going to refer for the record to two indexes; that's 0006-4567 at tab 57 and
6 0006-4572 at tab 58. This is just for the record. It lists the 85 interviews and the 11
7 security assessments.

8 My first question is, did they explain to you why you were not going to get
9 everything?

10 A. [9:59:11] No, I don't believe so.

11 Q. [9:59:23] And did you ask for all of them?

12 A. [9:59:26] I did not ask for all of them.

13 Q. [9:59:35] Wouldn't it be right that you can't exclude the possibility there are
14 relevant -- still relevant extracts from what you didn't receive that were relevant to
15 your assessment?

16 A. [9:59:48] I believed that what I had been shared -- or what had been shared with
17 me was relevant to the question of Mr Al Hassan stating he felt in danger; that he felt
18 he could be killed; that he felt he could be tortured and those excerpts were relevant
19 then to that question for me. Yes, I believe it is true that other material is also
20 relevant.

21 Q. [10:00:28] Now I'm going to move to a different topic and I would ask the court
22 officer to bring up -- that's -- your report, Dr Porterfield. That's at tab 1 of your
23 binder and that's MLI-D28-0003-[0]535, and I'm going to ask the court officer, please,
24 if you could turn to page 0590.

25 And I would ask the court officer, could you please scroll down to the bottom of the

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1 page where it begins: "Uh... OK... OK." If you go all the way down. Thank you.
2 Stop. Thank you.
3 I'm going to be reading -- I'm going to be asking -- actually, Dr Porterfield, if you
4 could read this extract and -- onwards to the next page as well, right up to where
5 Mr Al Hassan says:
6 "All right."
7 Okay, so it's the two pages.
8 I would ask for interpretation please from the interpreters from English into French,
9 starting with -- on page 0590 from:
10 "[...] OK a person in my situation [...]" through to "All right." at the next page, 0591.
11 Court officer, if we could let the interpreters first start with the first page. I can read
12 it also, if that facilitates:
13 "[Al Hassan:] ... OK a person in my situation now I am at the secret services. OK, my
14 case hasn't been transferred yet [...] to the justice system, there."
15 Let me move to the next page.
16 "[Al Hassan:] You are aware of the treatment of the police, the treatment of that office.
17 [...] do you your laws, your procedures allow or allow you to question that person
18 before they are transferred to the Malian justice system?"
19 "[Interviewer 2:] Yes, I understand the question. ... there are two aspects of that
20 because of that all the time I told you that in our investigation, we have no influence
21 on the Malian authorities, on the procedure.
22 [Interviewer 1:] We are not in a position and we are not here to judge the way the
23 authorities ... operate or conduct their investigations ..."
24 Now we get -- "Interviewer 2: ... but ... what is important to us, I mentioned, is the
25 part concerning physical well-being each time we see you. It is for that reason I ask

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1 you the question. I ask you how have you been treated and if everything is fine.

2 It's... to make it simple, if you come here and you were injured after maltreatment or

3 you were completely sick because you weren't treated, ... we would not do this

4 interview."

5 Mr Al Hassan: That's understood.

6 Interviewer 2: ... and we would try to get you care.

7 Mr Al Hassan: All right."

8 Sorry, interpreters I need the next two passages.

9 "Interviewer 1: And just to supplement that ... the obligation is such that if anything

10 happened that seemed to us abnormal and we are aware of that also you know that

11 we ask [you] each time, we need to intervene and do something and talk to the

12 authorities about it.

13 [Interviewer 1:] Our obligation does not allow us to ignore a problem if ... there is

14 one." End of quote.

15 Now, following that exchange, Dr Porterfield, I'm going to refer to the following part

16 of your report where you state - and that's first at page 0591, and then onwards at

17 0592, I quote your conclusion:

18 "The investigator makes clear here not only that he has no influence on the Malian

19 authorities, but also that they are not there to 'judge' how the Malians 'operate.'

20 This statement reflects not only the ICC personnel cannot address the situation but

21 that they will not." End of quote.

22 Now my first question is this, Dr Porterfield, when the investigators state that -- and, I

23 quote:

24 "[...] if anything happened that seemed to us abnormal and we are aware of that [...]

25 we need to intervene and do something and talk to the authorities about it. Our

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1 obligation does not allow us to ignore [the] problem [...] if there is one."

2 My question is now how - as an impartial and objective expert - do you interpret that?

3 A. [10:06:23] So -- I'll pause.

4 I included this excerpt in my report because before saying this, that if anything

5 happened that seemed abnormal, we would need to intervene. Before saying that

6 Mr Al Hassan has said "you can be tortured at any time." And the investigator

7 says -- I beg your pardon, "We are not in a position and we are not here to judge the

8 way the authorities ... operate or conduct their investigations..." and, before that, "we

9 have no influence on the Malian authorities, on the procedure."

10 So if we go to my sentence. My sentence says:

11 "[...] the ICC personnel cannot address the situation [...]", that refers to --

12 "[...] we have no influence on the Malian authorities, on the procedure."

13 -- seems to be a statement of inability to influence and -- I'll pause.

14 The second part, "[...] that they will not.", comes from the language:

15 "We are not in a position and we are not here to judge the way the authorities ...

16 operate or conduct [...]"

17 That is why the language I used reflected both the interviewer's inability as he or she

18 expressed it as well as their statement that they will not judge how things proceed.

19 Q. [10:08:11] Yes, that I understand, Dr Porterfield. But I'm referring to the second

20 part where the investigator state that their obligation is, in fact, do something and to

21 intervene, which you don't reflect in your conclusion.

22 Now wouldn't it be fair to say that's also relevant to an assessment of what the

23 investigators have explained?

24 A. [10:08:40] My opinion is that after a person who's said they're about to be

25 potentially tortured after they're told there is nothing to be done, to then be told, "We

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1 need to intervene" is contradictory and confusing at best, but I'm afraid potentially
2 meaningless if the person's just been told that nothing can be done.

3 Q. [10:09:13] I'm going to move to a different topic, and I'm going to ask you to
4 look first, please, at tab 51 - and I'd ask the court officer please, to bring this up - it's
5 MLI-OTP-0078-7832, and I'd ask you to go to page 7837 to the bottom of that page.
6 Now I appreciate this is in French, Dr Porterfield, and in the interests of time -- yes,
7 it's just to the bottom, please, court usher, rather, at the very bottom. We stop here.
8 I'd ask that the French interpreters please translate into English from the -- if you
9 could scroll down just a little bit more. Thank you. Stop there.

10 From "Mais cet état dissociatif ...".

11 (Interpretation) "But that dissociative state ..."

12 (Overlapping microphones) up to "et sans retour d'émotions."

13 PRESIDING JUDGE MINDUA: [10:10:21](Interpretation) Ms Taylor.

14 MS TAYLOR: [10:10:22] Thank you very much, Mr President.

15 Now the Prosecution has included an English translation of this report in their binder.

16 So I do believe it would be more instructive to allow the witness to view these
17 paragraphs on the English translation, rather than being forced to listen to a sight
18 translation.

19 Now they haven't contested in advance any specific accuracies in that translation, so
20 it's entirely bewildering as to why we're going to a French document with
21 an English-speaking witness. Thank you.

22 PRESIDING JUDGE MINDUA: [10:11:04](Interpretation) The Prosecutor, for
23 practical reasons, you can use the English translation.

24 MS LUPING: [10:11:11] Mr President, just to explain that the Prosecution does not
25 accept the accuracy of Defence translations that have been provided. The fact that

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1 we do not go to the exercise of going through and providing every error that we find
2 in unofficial translations carried out by an unqualified interpreter doesn't mean that
3 we agree with it. It was simply provided on our list as we were not aware - until we
4 questioned the witness - as to what she'd been provided of Dr Lamothe's report, and
5 we know that it wasn't actually provided to her during the witness preparation.
6 We would prefer to use the original evidence. Now, I know it's a bit laborious, but it
7 is only one sentence actually, in fact, it shouldn't take very long and it's for this reason.
8 I think we're entitled to indeed make a decision -- and the Prosecution should be
9 entitled to use the evidence as we see fit, and there are interpreters in the courtroom
10 who are qualified interpreters who can provide this interpretation.

11 PRESIDING JUDGE MINDUA: [10:12:13](Interpretation) Ms Taylor.

12 MS TAYLOR: [10:12:15] Thank you very much, Mr President. I do note that this
13 deviates from the procedure that's been followed thus far for the entire proceedings.
14 We get translations that are prepared by the Prosecution in-house, not by Registry
15 neutral interpreters, and when we have those translations and we have a witness who
16 speaks the language of the translation, we're required to put those translations to the
17 witness.

18 Now it's not for the Prosecution to decide that they don't accept a translation if they
19 don't follow the proper procedures to contest it.

20 Now, if you have -- it is matter of fairness to the witness, if there is a document
21 which is in the language of the witness, the witness should be entitled to read that
22 document. If the objective is to obtain the best evidence, the witness should be
23 placed in a position where they can provide the best evidence to the Chamber;
24 otherwise, the witness is disadvantaged through a strategic choice of the Prosecution.

25 PRESIDING JUDGE MINDUA: [10:13:16](Interpretation) Madam Prosecutor, the

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1 original document is in French and you don't want to use the English translation of
2 the Defence, is that correct?

3 I can see you are nodding.

4 Madam Taylor, you have said that so far you have accepted the translations of the
5 Prosecutor. You can dispute that also. Here, I realise that the Prosecutor is
6 disputing your translations in relation to the original. You are raising your own
7 error for the first time. That does not -- that is not binding on the Prosecutor.

8 So Madam Prosecutor, you can continue.

9 Ms Taylor, we have to make progress.

10 MS TAYLOR: [10:14:23] (Overlapping microphones) Mr President, if I may, just
11 very briefly because this may impact on future documents being used by the witness.
12 It's not an error on the part of the Defence. It's a procedure that applies in this case.
13 If we contest a translation, we need to contest it through proper procedures and have
14 the Chamber rule on it. It's not for a party to stand up in Court and say, I don't like
15 that translation, I'm not going to use that exhibit. That introduces a complete
16 element of arbitrariness, and going forward in the Defence case will cause severe
17 difficulties if the Prosecution simply decides not to use tendered exhibits on their list
18 that are in the language of the witness.

19 PRESIDING JUDGE MINDUA: [10:15:09](Interpretation) Ms Taylor, I understand
20 you, but we have the original document and we have experienced interpreters.

21 So please let us progress, Ms Prosecutor.

22 Obviously you can come back to that in your additional examination.

23 Ms Prosecutor, you have the floor.

24 MS LUPING: [10:15:40] Thank you, Mr President.

25 Now I would ask that the interpreters interpret the following sentence, starting with

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1 "Mais cet 'état dissociatif' ..."

2 (Interpretation) "But that 'dissociative state' --"

3 (Overlapping speakers)

4 (Speaks English) Up to "[...] et sans retour d'émotions." (Overlapping speakers)

5 (Speaks English) The entire sentence.

6 (Interpretation) "-- appears rather to be a drop in the level of attention and does not

7 deprive Mr Al Hassan of the possibility to continue with the interview without

8 memory issues and without emotional flashbacks or effects."

9 (Overlapping speakers)

10 (Speaks English) Thank you.

11 I'd now ask -- before I ask my question, I would now ask that the court officer please

12 bring up a second document.

13 PRESIDING JUDGE MINDUA: [10:16:27](Interpretation) Ms Taylor?

14 MS TAYLOR: [10:16:29] Thank you, Mr President. Again, I think the decision on

15 the conduct of proceedings is very clear on this. We can't just excerpt a sentence

16 from a paragraph that's in French and expect the witness to understand the context.

17 Now this danger, this evil, would have been avoided if the witness had the report in

18 front of her in English. But the Prosecution has taken out one sentence from a

19 paragraph, and I do believe this Chamber has been clear in the past that it is the

20 entirety of the paragraph that should be read to the witness so the witness has the

21 benefit of the context.

22 PRESIDING JUDGE MINDUA: [10:17:07](Interpretation) Prosecutor, I believe this

23 time around the Defence is right. Maybe the entire paragraph can be of help if it is

24 read out.

25 MS LUPING: [10:17:21] Mr President, obviously I'm guided by you, but simply to

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1 note that the rest of the paragraph deals with aspects that are not actually relevant to
2 the point that is being made. It's a question related to Mr Al Hassan's memory and
3 to the finding of Dr Porterfield as to whether or not he had dissociative -- it was
4 truly -- had a dissociative state.

5 Now in this particular paragraph, Dr Lamothe only raises the issue and looks into the
6 issue in detail regarding dissociative state in this sentence.

7 Now I am proposing to provide another excerpt from an ICC psychologist, which is
8 very specific also, in relation to the issue of the memory aspect. Now I note that if I
9 do read the entirety of this, this will quite considerably take up the time of this

10 Chamber and this witness on a matter when the rest of the paragraph doesn't actually
11 relate to that specific issue. And that's the reason why I didn't read - almost what
12 amounts, effectively - almost one whole page because the paragraph continues to the
13 next page, your Honours.

14 Now of course I can read a whole page of evidence. If -- I would propose that if
15 there are additional aspects because of course Defence counsel also speaks French and
16 reads French, if she does indeed consider that there are additional aspects from the
17 one page, that this continues on, that is relevant to this point, then I'm happy to ask
18 for interpretation of that.

19 PRESIDING JUDGE MINDUA: [10:19:21](Interpretation) The time that you have
20 taken to explain that this paragraph is not relevant is longer than if it had simply been
21 read.

22 So to gain time, we are going to read it, and then you are going to use the end of the
23 paragraph.

24 So someone is going to read it for us in French.

25 Can you read it yourself in French? And then it will be interpreted.

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1 MS LUPING: [10:19:54] Thank you, Mr President, of course I can read it in French,
2 but it is before everybody to read and I think it's faster if the interpreters do a sight
3 translation starting from, "Mais on peut retinir que les éléments ..."

4 (Interpretation) "But --" (Overlapping microphones)

5 (Speaks English) Up to: "...sans retour d'émotions."

6 (Overlapping speakers)

7 PRESIDING JUDGE MINDUA: [10:20:19] (Overlapping speakers) *Alors, Interprètes,*
8 *s'il vous plaît.*

9 THE INTERPRETER: [10:20:20] (Interpretation of excerpt)

10 "But one should remember that the -- but one should remember that the elements of
11 severity of clusters (b) and (e) are all absent. There is no habitual modification of the
12 neuro-vegetative state and one cannot determine chronic dissociative states, let alone
13 depersonalisation. Katherine Porterfield points out on page 11 of her report, clinical
14 elements that she identifies as an -- as a dissociative state with the presence of
15 a repetitive habit of an apparent detachment, which she conflates to a monochord of
16 speech and yawning, and it is pointed out that this brings about specific -- or
17 particular physical pain. But this dissociative state seems more to be a drop in the
18 level of attention and does not prevent Mr Al Hassan from the possibility of
19 continuing the interview without memory problems and without emotional feedback.
20 The difficulties of memory -- memory gaps, according to Katherine Porterfield, are
21 evoked by Mr --"

22 (Overlapping speakers)

23 MS LUPING: [10:22:02] I think we need the next page.

24 THE INTERPRETER: [10:22:11] (Interpretation of excerpt) " -- are raised by

25 Mr Al Hassan as *familiales*, having always been part of the functioning -- or, rather, as

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1 arising from family, having always been part of the functioning, such as that of his
2 mother. There, once again, the neuropsychological evaluation of the executive
3 functions and memory did not provide us with any details, but one can note a very
4 important element at the clinical level, that is, he considers his difficulties without any
5 concern or perplexity."

6 MS LUPING: [10:23:02] Thank you.

7 Q. [10:23:02] I now ask Dr Porterfield, that you turn to tab 7 of your binder.

8 MS LUPING: [10:23:08] And for the court officer, the next document is

9 MLI-D28-0003-1378, and I ask that you turn to page -- page 1378.

10 Q. [10:23:19] Now Dr Porterfield, just to put this in context, this is an ICC
11 psychologist who was treating Mr Al Hassan or dealing with the -- dealing with
12 Mr Al Hassan and he refers to issues related to problems of memory. And it's in
13 English, so you can read it for yourself, and I'm going to read one specific passage
14 from this, but you can read it:

15 "Because the complaints" --

16 And I'd ask for translation.

17 Sorry, could we scroll down, please, court usher.

18 Right, if you stop there.

19 And you have the entirety of it.

20 "Because the complaints do not appear related to his current detention or to any
21 possible symptom of some other psychological disorder, the psychologist thinks it
22 may be attention-deficit hyperactivity disorder, a persistent pattern of inattention."
23 End of quote.

24 Now, my question is this, Dr Porterfield, this potential condition of ADHD that's not
25 dealt with or mentioned in your report, would it be correct that this could also be

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1 potentially relevant for your assessment of Mr Al Hassan?

2 A. [10:24:40] Certainly, when you are assessing an individual, you are considering
3 a range of other conditions or problems that could be explanatory of their
4 functioning.

5 Q. [10:24:59] And could you clarify why this is not addressed in your report?

6 A. [10:25:05] There were not significant clinical indicators of attention deficit
7 hyperactivity disorder, which has multiple components to it. Mr Al Hassan did not
8 demonstrate symptoms that would be indicative of attention deficit hyperactivity
9 disorder.

10 Q. [10:25:41] I'm now going to move to a different subject, and for this I'm going to
11 refer to -- there are four letters that you provided to the Defence expressing various
12 clinical opinions on various issues, and I'd like you, first, to turn please to tab 28 of
13 your binder and that's 0003-1801 and I'd ask the court officer, please, to bring that
14 document up. And looking first at page 1801, you've cited a letter of instruction
15 from the Defence, which is a separate document, MLI-D28-0003-1622.

16 Now the first question we have here and I'm -- you can see the question, I'm going to
17 look at part of the question here:

18 "Has Mr. Al Hassan recovered from what he experienced in 2017 and 2018? If not, at
19 what stage of the recovery process is he, and to what extent are his recovery needs
20 being fulfilled in his current detention environment, and current forms of treatment?
21 If his recovery needs are not being met, please explain what measures would be
22 required to meet his recovery needs in your opinion?"

23 Now -- can you please now turn to page 1802. We scroll down.

24 Sorry, we've gone too far. Could you move up a bit. If we -- yes, so at the very
25 bottom of -- sorry, you've gone too far. And I'm going to read:

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1 "For this reason, it is --"

2 Where you look at the various treatments that he's receiving, you state:

3 "For this reason, it is my opinion that, despite their attempts to provide treatment to
4 Mr. Al Hassan, the psychology staff has not been able to successfully treat his
5 condition."

6 You then go on in the next two pages to talk about the type -- in detail, the type of
7 treatment he's receiving, the EMDR.

8 And then the next page, if we go to page 1803, and then following on, 1804, and then
9 you conclude and provide a recommendation:

10 "A therapeutic plan that I recommend for Mr. Al Hassan would be a phased
11 treatment [...]"

12 Now my questions don't relate to the treatment, Dr Porterfield, but isn't it correct that
13 you were providing your clinical opinion about the type of treatment that
14 Mr Al Hassan was receiving?

15 A. [10:28:57] Yes, I was.

16 Q. [10:29:00] I'd now like to turn to the next page, at page 1805, and this is turning
17 to the second question where you had been asked to give -- to address the question
18 from the Defence:

19 "What is the impact, if any, of Mr. Al Hassan's ongoing detention and current
20 conditions of detention, on his psychological functioning/mental well-being?"

21 Now, in the letter of instruction from the Defence, you've given a very detailed
22 description about the various restrictions on contacts of Mr Al Hassan, including
23 active monitoring and private and conjugal visits with his wife.

24 And at page 1805, we have here your conclusion:

25 "It is my clinical opinion that Mr. Al Hassan's current detention conditions of

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1 segregation, monitored contact with his family and no opportunity for private visits
2 in the future are likely to exacerbate his psychological distress."

3 Now again, I'm not going to ask you for the details of that assessment, but am I right
4 in saying again, you're providing a clinical opinion about his detention conditions, is
5 that correct?

6 A. [10:30:25] Yes, the terminology "clinical" comes from an opinion from within the
7 field of psychology stemming from my evaluation conclusions.

8 Q. [10:30:39] Thank you. I'd now like to turn to another document, it's at tab 29 of
9 your binder, it's MLI-D28-0003-1806. If the court officer could please switch to this
10 document.

11 We scroll down, please.

12 Now here, you are giving a summary of conditions of restrictions. And then I'd like,
13 please, if we could turn to page 1807. And if we go down to the bottom of the page.

14 And -- sorry, if we scroll up a little bit. We stop.

15 And you state:

16 "It is my clinical opinion that the current conditions under which Mr. Al Hassan is
17 being held are notably and substantially worse for his psychological well-being."

18 You then, in the next paragraph, state:

19 "It is my understanding that Mr. Al Hassan's defense is seeking his temporary release
20 to reside with his family and abide by any conditions imposed by the Court. It is my
21 opinion that Mr. Al Hassan's psychological condition would be improved by being
22 with his family [...]"

23 I'm just going to stop there. Again, I'm not going to ask about the nature of this
24 opinion, but am I right that you provided a clinical opinion and you supported
25 a request that Mr Al Hassan be temporarily released. Is that correct?

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1 A. [10:32:48] Yes, I -- I did.

2 Q. [10:32:58] I'd now like to turn to the next document and that is at tab 30 of your
3 binder, Dr Porterfield, and for the court usher, that is document -- Defence document
4 0003-1809. Now again in this document, we see you're dealing with Mr Al Hassan's
5 contacts with his family, and isn't it right that you give your clinical opinion and
6 support of increasing his contacts with others, including his family. Is that correct?

7 A. [10:33:45] Can you direct me to the sentence. I apologise.

8 Q. [10:33:56] No problem.

9 MS LUPING: [10:33:58] Court officer, could you please turn to page 1810.

10 And the final sentence, it is the final paragraph:

11 "It is my opinion that Mr. Al Hassan's psychological condition continues to be severe
12 and that the isolation and lack of contact with others that he is living under is
13 exacerbating his level of distress and his PTSD symptomatology."

14 Q. [10:34:27] Now am I correct -- again, I'm not wanting to ask you questions about
15 this -- this opinion, but am I correct that you again gave a clinical opinion related to
16 the question of the contacts with other people, am I right?

17 A. [10:34:38] Yes, the Defence at times asked for my opinion regarding his
18 psychological state, given I had evaluated him so thoroughly back in 2019.

19 Q. [10:34:50] And I'd like to turn to the last document I intend to show you, Dr
20 Porterfield, and that is at tab 31 of your binder, and for the court usher, that's Defence
21 document 0003-1811.

22 Now first, I'm going to turn to page 1814 of this document. It's 11 pages. Apologies,
23 I believe -- sorry, it's page 1813. Yes. And I'm going to first look at the section that
24 states -- if you could move up, please, where we start with the paragraph that says
25 "Lawyers". Right, if we stop there. It states: "Lawyers: Mr. Al Hassan stated that

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1 he will talk with his lawyers and let them work on his case, but that he cannot tolerate
2 going to the courtroom where he will see the prosecutors and be reminded of torture."

3 Okay. Now I'd like to continue to page 1814 -- no, sorry, it is 1813. I had the wrong
4 page here. Apologies. It's still 1813. Right, here we go, it's point 2:

5 "Mr. Al Hassan's capacity to contribute to his defense should be assessed by
6 a clinician. His current stance -- that the courtroom presents a life or death threat to
7 him -- is a symptom of his PTSD and must be further assessed. It is my clinical
8 opinion that the link between the ICC prosecutors and his torture at DGSE has
9 solidified and intensified over the course of the past year, with no treatment and
10 minimal contact with family or trusted individuals." End of quote.

11 Now, my first question, Dr Porterfield, is, were you aware that the Defence was
12 making its application to challenge the accused's ability to stand trial?

13 A. [10:37:22] You mean, at the time of this document?

14 Q. [10:37:28] At the time of the document, correct.

15 A. [10:37:32] I believe I did. I apologise, I'm not certain of the timeline, but I
16 believe I did, I knew that was -- I knew that took place.

17 Q. [10:37:43] Now, you stated that a clinician would need to assess this and you've
18 explained at the beginning of your testimony it's a forensic psychologist who would
19 do that, but am I right that you're here -- I'm not asking for the content of that opinion,
20 am I right that, factually, you are providing a clinical opinion, however, as to the
21 issues that need to be assessed by a clinician and what you see as a link between the
22 Prosecutors and torture?

23 A. [10:38:20] Yes, I am arguing here that a clinical opinion is necessary to determine
24 the psychological state of this individual and his deterioration.

25 Q. [10:38:33] And you are supporting a view that there is a problem with his ability

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1 to stand trial. Would that be a fair description of the opinion that you're giving
2 here?

3 A. [10:38:49] I think it's more accurate to say that I am saying that it needs to be
4 assessed.

5 Q. [10:39:00] Now Dr Porterfield, in terms of these various clinical opinions that
6 we've seen that you provided in these various letters - including in relation to the
7 restrictions on Mr Al Hassan's contacts, including in relation to how to improve his
8 treatment needs in support of his request for temporary release - now these various
9 opinions that you are being asked to give, did this make you feel uncomfortable in
10 any way? Bearing in mind your need to remain neutral and objective in providing
11 an assessment to this Court about the impact of the trauma on Mr Al Hassan?

12 A. [10:39:52] Your question is, did I feel uncomfortable? I apologise.

13 Q. [10:40:01] Did -- you were being asked, essentially, you are an expert witness
14 providing a specific expert opinion to this Chamber. Now separate to that, this same
15 Defence team asked you to assess the same accused person on various issues,
16 including his release from detention and his restrictions on contacts. Now wouldn't
17 it be correct to say that this effectively amounts to a conflict of interest and puts you
18 in a difficult position as a neutral and objective expert coming to testify before this
19 Chamber?

20 A. [10:40:37] That was not my experience of this as a professional. I was asked to
21 evaluate Mr Al Hassan in the context of my clinical expertise. I did so. And later,
22 at different points, I was contacted and asked again to assess various issues and give
23 an opinion. If I had been a person who assesses cardiac functioning and blood
24 pressure and found a person to have very high blood pressure, and later attorneys
25 contacted and said: His blood pressure has gone higher and there's -- someone is

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1 feeding him or doing something to him that is worsening it, do you have an opinion?
2 I would believe that was also an appropriate opinion to share in the purview of my
3 conclusions about his clinical condition, which I evaluated.

4 So to me, these were appropriate follow-up questions regarding my opinion that
5 Mr Al Hassan suffered from severe post-traumatic stress disorder.

6 Q. [10:41:45] And just one -- thank you, Dr Porterfield, one last question. And in
7 your view, you see no conflict in being asked to provide an opinion relevant to his
8 medical treatment, whilst at the same time being asked to give a neutral impartial and
9 objective view to this Chamber about the potential impact of trauma and -- in his -- in
10 his interviews as well with the OTP?

11 A. [10:42:15] I did not. I saw it as consistent with the questions about his clinical
12 condition that I had been asked.

13 Q. [10:42:22] Thank you, Dr Porterfield. I will leave that to the Chamber to assess.
14 I have no further questions for this witness.

15 PRESIDING JUDGE MINDUA: [10:42:36](Interpretation) Thank you very much,
16 Madam Prosecutor Luping, for your cross-examination. So we have all understood
17 that the LRVs do not have any questions to put to the witness.

18 So I am now going to turn to Ms Taylor to ascertain whether she has any additional
19 questions.

20 Counsel?

21 MS TAYLOR: [10:43:01] Thank you very much, Mr President.

22 Now we do seek to re-examine this witness and there's various reasons why we
23 believe we should be given the opportunity to do so and be given the time to do so.

24 First, in the decision on the conduct of the proceedings, it does state that the Defence
25 shall have the last word. It also states that the calling party shall have the right to

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1 conduct examination or re-examination on the basis of issues that have arisen in
2 cross-examination.

3 Now over the course of yesterday and today, the Prosecution has put various
4 questions to this witness on documents, on issues that were not addressed in
5 examination-in-chief and which do fall outside the purview of our Rule 68(3)
6 application in that they concern documents that were not part of that application.

7 At the same time, the Prosecution also put questions to the witness in which -- to
8 which the witness specifically stated, and I can -- have two examples here at least.

9 For example, the first question concerned quotations that were in the report and
10 whether these quotations were in the handwritten notes. In response to that, the
11 witness asked to look at her handwritten notes but was not given the opportunity to
12 do so. So we do believe it's appropriate that the witness be given an opportunity in
13 re-examination to address a question that she wasn't given the choice or opportunity
14 to address in cross-examination.

15 At the same time, the Prosecution put various excerpts to the witness and the
16 Prosecution themselves stated, Well, the Defence will have the opportunity to address
17 the context of those excerpts in re-examination. And as you may recall, although the
18 Defence was allocated two hours 30 minutes, we, in fact, used only two hours and
19 10 minutes.

20 So given the scope of new information -- the new issues that have arisen from
21 cross-examination, we do ask to be able to use that time to re-examine the witness.

22 PRESIDING JUDGE MINDUA: [10:45:03](Interpretation) Yes, Counsel, you are
23 indeed right to come back on the issues that were raised by the Office of the
24 Prosecutor. But as regards the time, we are working under 68(3) here, and if the
25 Prosecutor had more time, that's entirely normal.

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1 Nevertheless, you have the floor now for your additional questions.

2 MS TAYLOR: [10:45:42] Thank you very much, Mr President.

3 QUESTIONED BY MS TAYLOR:

4 Q. [10:45:46] Now Dr Porterfield, yesterday, at page 127 of the transcript, the

5 Prosecution asked you some questions about a specific interview extract with

6 Mr Al Hassan, and I'd like to turn to Defence tab 7. It was MLI-OTP -- 0003-0843,

7 and we are going to turn to page 0900, if you could have that before you.

8 A. [10:46:29] Tab 7, is that correct?

9 Q. [10:46:30] Yes, tab 7 of the Defence binder. These were the translations

10 provided to you in 2020.

11 A. [10:46:38] I have it.

12 Q. [10:46:40] Thank you. Can you turn to a page which has "0900" at the bottom.

13 It's also on your screen.

14 A. [10:46:50] Yes.

15 PRESIDING JUDGE MINDUA: [10:47:01](Interpretation) Madam

16 courtroom officer -- oh, yes, I do have it up on the screen now, because I do have it as

17 a hard copy; whereas, my colleagues do not. So they do need it up the screen,

18 please.

19 MS TAYLOR: [10:47:17] It's Defence tab 7.

20 Q. [10:47:19] In any case, Madam Witness, yesterday, in response to the

21 Prosecution's questioning, you referred to an earlier session of the day when the

22 defendant had expressed information about having a fever.

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

24 Q. [10:47:50] Now, Madam Witness, on this page, we can see the defendant,

25 Mr Al Hassan, referring to his medical situation being unstable and to inflammation

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1 in his teeth.

2 Is this what you're referring to?

3 A. [10:48:09] Yes, that is.

4 Q. [10:48:12] And how did the Prosecution respond to it?

5 A. [10:48:17] The quotation is, quote:

6 "Okay, as you know, this is under the competence of the Malian authorities and from
7 our side, we only communicate with (Redacted) who asks for extraction."

8 Q. [10:48:38] Now in your professional opinion, would this response have
9 generated any psychological response in Mr Al Hassan?

10 A. [10:48:47] In my opinion, if he's stating that he's in discomfort or pain or ill and
11 asking for assistance with this, and then is told, No, these decisions or matters are
12 handled by those who are controlling your detention, the message is sent that -- that
13 he will not receive assistance from these interrogators.

14 Q. [10:49:25] And would that -- that affect -- would that generate consequences that
15 would temporally continue?

16 PRESIDING JUDGE MINDUA: [10:49:42](Interpretation) Madam Prosecutor.

17 MS LUPING: [10:49:44] Mr President, your Honours, we wanted to see in what way
18 Defence counsel was going to address this particular passage, but this question does
19 not arise from the cross-examination of the Prosecution.

20 Now if Defence counsel wanted to address this matter and address this document, it
21 should have been done in examination-in-chief. None of these questions that are
22 being put relate to the cross-examination, and, if Defence counsel is suggesting that it
23 does, we'd like to understand how. What are the questions arising from
24 cross-examination that warrant going through these matters now that could not have
25 been addressed first time around in examination-in-chief?

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1 Now in our (Overlapping speakers)

2 MS TAYLOR: [10:50:35] Certainly, Mr President.

3 MS LUPING: [10:50:37] I would submit, Mr President, that these are not new
4 matters. These could have been addressed in examination-in-chief, and this is an
5 attempt to have another attempt at bringing in new issues.

6 The reminder - and I'd refer to the conduct of proceedings decision - that
7 re-examination is indeed limited to issues having first arisen during
8 cross-examination, now the issue of how Mr Al Hassan -- what his medical state was
9 at the time of his detention at the ICC was addressed during examination-in-chief.

10 Defence counsel herself showed one of the medical records relating to that time
11 period. If she felt the need to elaborate further on that in connection with his
12 medical state at the time of his interview with the ICC investigators, she could have
13 done that. But this is -- this is a completely -- this is not an issue that arises for the
14 first time during cross-examination.

15 So in our submission, Mr President, your Honours, this is an impermissible attempt to
16 reopen matters that should have been addressed the first time in chief.

17 PRESIDING JUDGE MINDUA: [10:52:08](Interpretation) Thank you, Madam
18 Prosecutor.

19 Ms Taylor, we do know the principle, during your further questioning, you should
20 only broach those matters that were raised during the cross-examination. So please
21 explain to us how your questions that you intend to put now are associated with this
22 cross-examination.

23 MS TAYLOR: [10:52:30] Certainly, Mr President. It arises directly from
24 cross-examination at page 127, the Prosecution asked Dr Porterfield about OTP tab 46;
25 that's an interview of 18 January 2018.

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1 Now Dr Porterfield asked the Prosecution if she could read this excerpt in the
2 combined transcript. The Prosecutor did not give Dr Porterfield time to do that, but
3 in her responses, Dr Porterfield stated, Well, this excerpt that you're just reading to
4 me has to be understood in context, and earlier in these interview sessions on 18th
5 January, Mr Al Hassan had complained about pain. He complained about a fever
6 and the prosecution had responded, We cannot help you. It's within the authorities
7 or the domain of the Malian authorities.

8 Now what I have just done is ask Dr Porterfield to do what should have been done
9 yesterday, which is to go to the 18th of January transcripts and identify the section
10 that she was referring to, which Dr Porterfield has just done.

11 Now this is all occurring on the same day that the Prosecution questioned Dr
12 Porterfield about at the end of yesterday's session. I did not question Dr
13 Porterfield about this session. It arose only from cross-examination, and the reason
14 why I'm putting this question to the witness is because the witness was not given the
15 opportunity to refer to these transcripts during cross-examination.

16 Now I'm now moving on directly to the specific session that was addressed by the
17 Prosecution at the end of yesterday. So I do believe that this is a completely
18 foundless objection and we would save time if we can put our questions to the
19 witness without further interventions of a very lengthy nature.

20 And I have the reference here, to the fever, it's page 134, where Dr Porterfield
21 specifically referenced this exchange but was not able to give the Chamber the specific
22 transcript references, which I have now done because the Prosecution did not.

23 PRESIDING JUDGE MINDUA: [10:54:51](Interpretation) Very well. Ms Taylor, I
24 do believe that you are right. Please, continue.

25 And Madam Luping, I do remember that this matter was raised.

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1 So please go ahead.

2 MS TAYLOR: [10:55:07] Thank you, Mr President.

3 Q. [10:55:08] Now, Dr Porterfield, can you please turn to page 0907. Now at the
4 top, Dr Porterfield, we see "MLI-OTP-0060-1791" and we see "Entire Document".

5 A. [10:55:36] Yes.

6 Q. [10:55:37] Now did you read the entirety of this session that was transcribed
7 here when you prepared your report?

8 A. [10:55:43] Yes, I believe so, I read what was given to me.

9 Q. [10:55:46] Okay. Now if we can turn to 0914, line 183.

10 A. [10:56:06] Yes.

11 Q. [10:56:08] Now can you see at line 183, the Prosecutor stating:

12 Well -- "All right, anyway, you [have] already said it, from the beginning, in July 2014,
13 14 July 2017. Sorry, you [had] just told us that IYAD asked for you, as I remember."

14 A. [10:56:27] I see this.

15 Q. [10:56:28] Now, Dr Porterfield, does this reference to past interviews, does that
16 generate any psychological effects?

17 A. [10:56:41] As I said yesterday, there are threads which connect these interviews
18 to interviews, interrogations and times when Mr Al Hassan was maltreated and
19 tortured. So to reference July 2014 -- oh, pardon me, to reference July 2017, is to go
20 back to earlier in his incarceration and reference a different time period. So yes,
21 those are -- that creates threads between time periods, between interrogators et cetera,
22 and, for a victim, those are relevant because they are what I spoke about yesterday,
23 "triggers" to involuntary biopsychosocial reactions. So yes, that -- that would be an
24 example of harkening back to a time.

25 PRESIDING JUDGE MINDUA: [10:57:47](Interpretation) Madam Prosecutor.

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1 MS LUPING: [10:57:48] Mr President, now to avoid me having to continuously
2 object, I would ask that as is normal procedure in a re-examination, that Defence
3 counsel alert the Chamber and the parties as to where in the context of
4 cross-examination an issue -- a new issue arose on which Defence counsel would now
5 like a response.

6 We're having now a reference to a completely new question that again, the
7 Prosecution would argue could've been raised in examination-in-chief. What we're
8 having is a pattern of simply referring to new questions on associated matters that
9 should've been addressed earlier on.

10 Now to avoid this objection and me standing up every time a question is raised, I
11 would simply ask as is the normal procedure that Defence counsel indicate where this
12 issue arose in cross-examination, providing the transcript reference, indicating the
13 new issue and asking the question. Otherwise, this will enable the Defence counsel
14 to continually broach questions that should have been asked in examination-in-chief.
15 This line of questions that we've just had just now, in our submission, is
16 impermissible, your Honours.

17 PRESIDING JUDGE MINDUA: [10:59:20](Interpretation) Well, Madam Prosecutor,
18 your fear is that the Defence will now raise matters that she should have put in her
19 examination-in-chief and you would like for the Defence, before they put any
20 additional question now, to provide a foundation in the cross-examination for the
21 appearance of a new question.

22 So Ms Taylor, you followed what I just said. Could you please follow this simple
23 method in order to enable us to save time.

24 MS TAYLOR: [11:00:02] Certainly, Mr President. I believe I had given the
25 transcript references, specifically, it was page 127, page 134, page 173, lines 14 to 16.

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1 All of this is dealing with an exchange that the Prosecution put to the witness for the
2 first time in cross-examination. I'm now giving Dr Porterfield the opportunity to
3 provide her expert opinion based on ...

4 Sorry, this really is a bit too much.

5 Based on the entirety of that transcript, given that's what the Prosecution has stated
6 consistently is what should happen.

7 Now, we've already dealt with the fever. I'm now going directly to the extract that
8 the Prosecution put to the Chamber at the end of yesterday, was directly informative
9 to Dr Porterfield's opinion.

10 Now Dr Porterfield should be given the opportunity to read, not just those couple of
11 sentences, but also what came before in that very same session. I'm not going into
12 other sessions. I'm dealing specifically with the session that the Prosecution spent
13 quite a bit of time on and, in fact, asked the same question to the witness twice at the
14 end of yesterday.

15 So I do believe that if we are interested in ascertaining the truth, we should give Dr
16 Porterfield the opportunity to explain to the Chamber why and how she formed that
17 opinion.

18 And I really hope that this is not going to continue like this, because it's entirely
19 unnecessary, given that we have given the references, we have given the explanation,
20 and now it just becomes a bit obstructive.

21 PRESIDING JUDGE MINDUA: [11:01:47](Interpretation) Very well, Ms Taylor.

22 Very well, Ms Taylor, we shall try and establish those principles that will guide us in
23 the future.

24 Now Madam Prosecutor, the explanation provided by Ms Taylor is entirely plausible.

25 Why are you getting to your feet once again?

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1 MS LUPING: [11:02:04] Mr President, I'm not seeking to be obstructive and I don't
2 think that -- that comment was called for. Just a question of procedure, Mr President.
3 Now, the fact that I referenced a specific transcript during questioning on another
4 topic, I would submit, does not give the Defence carte blanche to refer to wholly
5 unrelated parts of that same transcript.

6 Now I'd just like to read out the question that Dr Porterfield was asked at page 31,
7 lines 6 to 7, after referring to an exchange or a statement made by the investigator --

8 PRESIDING JUDGE MINDUA: [11:02:44] *Non, non* --

9 MS LUPING: [11:02:44] -- "Does this reference to -- "

10 PRESIDING JUDGE MINDUA: [11:02:49](Interpretation) No, no, Madam Prosecutor,
11 let's try and save time here. You presented a document, you put a question, and the
12 question gave rise to a subject on which the witness wanted to respond, but did not
13 have the opportunity to do so. But what the Defence is asking is that the witness be
14 enabled - in all fairness - to express herself. So I don't see why you are against that.
15 We are in agreement on that, are we not?

16 MS LUPING: [11:03:19] Mr President, I'm just simply -- I'm in agreement if it's the
17 same topic. My simple submission is it's a different topic. It is not related to the
18 question I raised in cross-examination. She's being asked here to talk about whether
19 past interviews generate any psychological effects. That has nothing to do with the
20 questions I posed in cross-examination.

21 The questions that must be put by counsel must relate to the -- an issue first arising in
22 cross-examination. Now what Defence counsel is doing, your Honours, is referring
23 to a transcript I referred to, but I asked questions on a wholly separate topic. So I
24 would submit that if the questions related to the topic that I asked, of course I'd be in
25 agreement. But here we have a question that has nothing to do with the questions

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1 that I asked and this why, we argue, that this is inappropriate. It should have been
2 done during examination-in-chief.

3 PRESIDING JUDGE MINDUA: [11:04:26](Interpretation) Very well, we need to
4 wrap up this discussion.

5 So Ms Taylor, your intervention needs to be -- or have a nexus to the matter raised by
6 the Office of the Prosecutor. So please, for one last time, please make an effort and
7 put your question directly associated with the matters raised by the Office of the
8 Prosecutor, please. Thank you.

9 MS TAYLOR: [11:04:50] Certainly, Mr President, I'm very glad we spent all this time
10 on that because I'm now going to go to page 0926, which is the exact extracts used by
11 the Prosecution. If that -- if Dr Porterfield's --

12 A. [11:05:05] Could you repeat the page.

13 Q. [11:05:08] It's page 0926.

14 A. [11:05:09] Okay.

15 Q. [11:05:10] And I'll be asking you about page 0926 to page 0927, which I do
16 believe is within the same extract range, and if we could turn to page -- line 472.

17 A. [11:05:33] Yes, I see.

18 Q. [11:05:34] Now on this line, is it correct that the Prosecution refers back again to
19 the meeting of 14th of July?

20 A. [11:05:40] Yes.

21 Q. [11:05:42] Now if we turn to page 0927, if we could look at line 510. This is
22 where -- this is the exact area (Overlapping speakers)

23 MS LUPING: [11:06:08] Mr President?

24 MS TAYLOR: [11:06:08] This is (Overlapping speakers)

25 PRESIDING JUDGE MINDUA: [11:06:12](Interpretation) Madam Prosecutor.

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1 MS LUPING: [11:06:14] I'm afraid I have to disagree. This is not a passage that we
2 used -- I used in cross-examination. Again, I would have to repeat that the question
3 being asked about references to past interviews is completely unrelated to questions I
4 asked in cross-examination.

5 Now in spite of the objection as I understood being upheld, we're again having
6 a passage that had nothing to do with my cross-examination. Yes, it's the same
7 transcript, but it's not a part I used, and there was nothing about references to past
8 interviews in the questioning that I asked.

9 So it's an elaboration of exactly the same question being put by Defence counsel.

10 So again, I'm afraid I have to repeat our objection, Mr President.

11 PRESIDING JUDGE MINDUA: [11:07:03](Interpretation) But was the question
12 already put?

13 MS TAYLOR: [11:07:08] No, I wasn't (Overlapping speakers)

14 PRESIDING JUDGE MINDUA: [11:07:08] (No interpretation)(Overlapping
15 speakers)

16 MS TAYLOR: [11:07:08] I wasn't given the opportunity.

17 PRESIDING JUDGE MINDUA: [11:07:08] Ms Taylor, had not yet asked her
18 question.

19 MS LUPING: [11:07:11] No, Mr President, I'm talking about the passage that she's
20 just cited. Now Defence counsel asserts that this is a passage the Prosecution used
21 and I'm simply disagreeing. This is not a passage we used. We didn't deal with
22 this question. It's not -- it doesn't come within the passage I read to the witness.
23 That is not correct.

24 That is what I'm saying. And this passage that's being read is an elaboration of the
25 past question that I objected to. It's just a continuation of the same question.

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1 PRESIDING JUDGE MINDUA: [11:07:48](Interpretation) Very well, because I was
2 surprised, the question had not yet been asked. Now I understand, you are on your
3 feet because the Defence is quoting a passage that you yourself did not quote.

4 Ms Taylor, why are you referring to that passage if the Prosecutor did not deal with it?
5 The issue here is to deal with issues that were raised by the Prosecutor. Not all the
6 documents that we are going to have to be analysing here now.

7 MS TAYLOR: [11:08:24] With the greatest respect, Mr President, this falls within the
8 exchange the Prosecution specifically argued was relevant because it's the exchange
9 where the Prosecutor -- the investigator informs Mr Al Hassan about his right to
10 silence and that it's a voluntary process.

11 So that was specifically the exchange that the Prosecution argued should be construed
12 in its entirety, and I don't think it's for them to cherry-pick, and I really hope we're not
13 going to have more back and forth on this.

14 I'm not obliged to ask the same questions as the Prosecution. I'm not obliged to only
15 ask about the same lines. We've had an expert witness say that the context is
16 important. Now given that this context was not put to the expert witness yesterday,
17 I should be allowed to ask questions about lines before and after the very specific
18 sentences that were extracted from context yesterday. It's the same exchange. It's
19 the same part that the Prosecution - in filings - said was relevant because it concerns
20 the manner in which the Prosecutor informed him about the voluntary nature of the
21 interview.

22 Now we have lost a substantial amount of time for questions that really, I see no
23 harm --

24 PRESIDING JUDGE MINDUA: [11:09:35](Interpretation) Very well, very well,
25 Ms Taylor.

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1 Madam Prosecutor, we will stay in the context and I will authorise the Defence to put
2 the question and that way we make progress.

3 Ms Taylor.

4 MS TAYLOR: [11:09:46] Thank you very much, Mr President.

5 Q. [11:09:48] Now we're on page 0927, Dr Porterfield, if you have that in front of
6 you.

7 A. [11:09:52] I do.

8 Q. [11:09:55] Now we have -- obviously, we have the investigator saying that that
9 they can stop the interview, that: "[...] you have [the] right [...] to stop the interview."

10 That's earlier at line 499.

11 And then at line 510 to 511, the interviewer states:

12 "You know what we're going to do. I'll let you think. All of this has specific
13 consequences."

14 At lines 513 to 514, the investigator continues:

15 "If we decide to see you again, we will have a few questions, some clarifications on
16 what you have said."

17 Now this occurred on the 18th of January, and the Prosecutor did not see

18 Mr Al Hassan again until the 5th of March, just for the full context on this.

19 Now the Prosecution in this exchange has referred to:

20 "[...] I'll let you think. All of this has specific consequences."

21 Which are not enumerated in this exchange.

22 Now in your professional opinion, is this exchange relevant to your conclusions?

23 A. [11:11:14] What I believe is relevant is that a person who has been tortured and
24 has serious consequences from torture, such as my conclusion that Mr Al Hassan does,
25 that person -- one of the things that's insidious about the imprint of torture is that

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1 people react to things that may have been benign or may not have meant what the
2 person thought because the person is triggered. The word "consequences", for
3 a prisoner who has been in a context in which he's been transported to these meetings
4 by the guards and the captain who are in charge of his custody, the same prison in
5 which he's been handcuffed for four and a half months, beaten, held in inhumane
6 conditions, the fact that consequences are referenced, I -- I make no statement about
7 what the interviewers meant by the word "consequences". I -- I do not know and I
8 do not imply a nefarious intent on the part of these investigators. What I am
9 suggesting and concluding is that for a survivor of severe torture to be told, "You said
10 this earlier, you said this before, back in July" - a time when he was under very severe
11 abuse - "if you stop now, there's going to be consequences", that would be a highly
12 triggering remark for a person who has been through the kinds of things this person's
13 been through and who is in the custody and being transported by those who enacted
14 some of this torture.

15 That is my conclusion about why it's relevant to be told there's "consequences" for not
16 speaking in this context of having been tortured.

17 Q. [11:13:16] And just one more question on this exchange, these words from the
18 investigator:

19 "If we decide to see you again [...]"

20 Would that generate any psychological effects for someone held incommunicado
21 detention?

22 A. [11:13:34] I believe so, because again, the contact with these interviewers, as I
23 understand it, was contact in which he was treated well and told he could possibly
24 make requests to the attorney general. Therefore, to withdraw their contact based on
25 this would mean - for a survivor of torture - that now you are back in the condition of

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1 the custodial situation where you were tortured, and you no longer have any contact
2 with the outside world, as it were.

3 So I believe that would have an impact on Mr Al Hassan.

4 MS TAYLOR: [11:14:25] Now Mr President, I'm going to move to the issue of the
5 audiotapes that also came out in cross-examination.

6 Q. [11:14:30] And yesterday, you were asked if it would have been relevant to have
7 the audio recordings, because these were reviewed by Dr Lamothe who does not
8 speak Arabic.

9 Now how feasible is it to perform a clinical evaluation of exchanges that are in
10 a language you do not understand, like Arabic?

11 A. [11:14:58] I would argue it is difficult, if not impossible, to do the word you just
12 said, a "clinical" evaluation of audiotapes of people speaking, much less in a different
13 language. In other words, that's not data that allows one to do a clinical
14 evaluation -- audiotapes.

15 Q. [11:15:16] And why is that?

16 A. [11:15:18] Because a clinical evaluation involves the methodology I spoke of
17 earlier: Time with the person, clinical observation, extensive interviewing, use of
18 scientific and empirical data and literature to support what you are seeing. Hearing
19 a conversation on a recording can tell you some things, certainly, but that would not
20 be a replacement -- I don't think anyone in the field of forensic or clinical psychology
21 would say hearing audio interviews is a replacement or -- or adequate for a clinical
22 evaluation.

23 Q. [11:15:58] Now you've referred to "seeing". Would it have been relevant
24 therefore to view the visual demeanour and appearance of the participants during
25 these interviews through a video recording?

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1 A. [11:16:09] It certainly would be data that could be used, certainly, yes, but it
2 could not be sole data on which one was making clinical opinions.

3 Q. [11:16:19] Now yesterday, at transcript page 102, in cross-examination, you
4 stated that going into earlier events that were the subject of later interrogations could
5 have been problematic.

6 Now does the Istanbul Protocol address the issue of retraumatisation?

7 A. [11:16:40] The Istanbul Protocol certainly deals with methodology of
8 interviewing potential survivors of torture to minimise harm, an attempt to - while
9 extracting information - not cause further harm, so yes. It is a balance, however.

10 Q. [11:17:02] So by the word "problematic", do you mean avoiding
11 retraumatising -- unnecessary retraumatisation?

12 A. [11:17:12] Yes, that is a goal of an evaluation of this nature, certainly.

13 Q. [11:17:16] Now, yesterday, the Prosecution asked you in cross-examination
14 about the death of Mr Al Hassan's daughter in 2013, and asked if that would have
15 been relevant to your evaluation.

16 Now they didn't ask the follow-up question, which is, Can you explain if and how it
17 could have impacted on your evaluation and conclusions? An earlier stress event,
18 such as the death of his daughter.

19 A. [11:17:46] It would impact in that you would be thinking about something I
20 mentioned yesterday, "dose" amount of trauma and whether earlier trauma created
21 what - I think I used the word "kindling", as in a fire - to worsen symptoms from
22 a current contemporaneous trauma.

23 So it would have added to that factor to know that.

24 Q. [11:18:12] Now yesterday during cross-examination, the Prosecution showed
25 various reports, which suggested that Mr Al Hassan's depression could be linked to

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1 guilt.

2 Now is there a difference between the symptomology of someone who feels guilt and
3 depression because they've committed crimes as compared to the symptomatology of
4 someone who has been tortured during interrogations in a detention environment?

5 PRESIDING JUDGE MINDUA: [11:18:48](Interpretation) Madam Prosecutor.

6 MS LUPING: [11:18:49] Mr President, just for the sake of accuracy, I do believe the
7 passages that I showed yesterday didn't refer specifically to guilt, but it was
8 a question of stress related -- it was actually the -- the specific report was describing
9 an -- sleep problems and depression related to the case.

10 Now, I would submit Defence counsel is putting guilt as an aspect.

11 Now the joint report -- panel expert report referred to the pressure of being subjected
12 to such serious allegations in the case. Now this is not necessarily guilt. It could
13 simply be stress from having to face such serious charges, such as war crimes and
14 crimes against humanity.

15 It was just a question of accuracy because the witness is being asked specifically in
16 relation to only focus on guilt, but it can actually be pressure from being subject to
17 such serious charges.

18 PRESIDING JUDGE MINDUA: [11:19:44](Interpretation) Yes, indeed, Madam
19 Prosecutor. But the witness's answer could in fact assist to explain this impression
20 following allegations of such serious crimes.

21 Ms Taylor.

22 MS TAYLOR: [11:20:05] I can be directed by the Trial Chamber. Should I put the
23 question again? I can move to the specific medical report --

24 PRESIDING JUDGE MINDUA: [11:20:14] No, no, no.

25 MS TAYLOR: [11:20:14] -- that was cited.

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1 PRESIDING JUDGE MINDUA: [11:20:14](Interpretation) In fact, it is the witness
2 who should answer.

3 Madam Witness, please answer.

4 THE WITNESS: [11:20:21] Apologies. Could you repeat the question.

5 MS TAYLOR: [11:20:24] Yes, certainly.

6 Q. [11:20:24] I was asking about whether there's a difference between the
7 symptomology of someone who feels guilt and depression because they've committed
8 crimes as compared to the symptomatology of someone who is being tortured during
9 interrogations in a detention environment.

10 I guess my question boils down to as a professional evaluator, are you able to assess
11 any difference between the two?

12 A. [11:20:49] There is different symptomatology in both of these kinds of
13 conditions, depression, and depression emanating from guilt, for instance, or from
14 actions, and post-traumatic stress disorder. There is difference in these
15 symptomatology. There is overlap. So there are some symptoms that would
16 bridge those two conditions: Emotional distress, negative thinking, sleep problems
17 and even agitation.

18 However, the symptoms of post-traumatic stress in addition provide us a framework
19 that is -- that is quite different, what we call "presentation". The person has -- I can
20 be brief here, but components of hyper-arousal in their nervous-system reactivity.
21 They have what we call intrusive re-experiencing of memories of the torture. They
22 have avoidance and numbing, and, at times, as Mr Al Hassan does, dissociative
23 reactions where they become disconnected.

24 Therefore, those symptoms distinguish and are the -- the prominent presentation of
25 a person who has suffered trauma. That is different than depression emanating from

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1 guilt or personal distress.

2 Q. [11:22:27] Now at transcript page 122, yesterday, during cross-examination, the

3 Prosecution referred to a medical report from the detention unit, where it refers to

4 Mr Al Hassan --

5 "[...] also points out that recently he's experienced more nightmares and depressive

6 complaints spending most of the day in bed. Both appear to have resulted from the

7 fact that the client's case is taking place."

8 Now I want to ask your opinion about a related extract in the panel of experts' report.

9 Madam Witness, do you have OTP tab 55, that is, MLI-0080-5766?

10 A. [11:23:17] Yes.

11 Q. [11:23:18] And can we turn to page 5806, paragraph 288.

12 A. [11:23:23] Apologies, could you say the tab again.

13 Q. [11:23:24] It's Prosecution tab 55.

14 A. [11:23:27] I'm in the Defence binders.

15 Q. [11:23:29] Sorry, I apologise.

16 A. [11:23:31] I apologise. Prosecution 55, one moment.

17 Yes.

18 Q. [11:23:54] Now could you please turn to page 5806, paragraph 288, and if that

19 could be shown on the screen.

20 A. [11:24:11] 58 ...? Page again.

21 Q. [11:24:14] I apologise, it's page 5806. Paragraph 288.

22 A. [11:24:24] Yes.

23 Q. [11:24:26] It states here that:

24 "Al Hassan's self-report was coherent with his clinical appearance and the reports by

25 other experts and mental health professionals. It can be assumed that Al Hassan

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1 experiences distress in relation to reminders of the alleged torture, such as
2 the handcuffing. It is also reasonable to conclude that the general sense of betrayal
3 and dehumanization is triggered by certain cues in the courtroom, such as the
4 presence of the prosecutor."

5 Now Dr Porterfield, the detention unit medical report was dated 19 July -- or 16 July,
6 2019, it was a couple of weeks after the confirmation hearing. In your professional
7 opinion, could the daily use of handcuffs or the public quotation of evidence that's
8 linked to the DGSE - for example, Al Hassan's statements - could that have impacted
9 Mr Al Hassan's psychological state?

10 A. [11:25:32] Are you asking could one or the other? Or are you asking could both?
11 You said the daily use of handcuffs --

12 Q. [11:25:39] Either of the two.

13 A. [11:25:40] -- as well as the statement -- the recitation of alleged acts?

14 Q. [11:25:45] The recitation of the transcripts of his interviews from the DGSE?

15 A. [11:25:51] Yes, those could be -- those could -- you asked could they explain his
16 mental state?

17 Q. [11:25:57] Yes.

18 A. [11:25:58] Contributing to it? Yes, they could, certainly.

19 Q. [11:26:02] Now at transcript page 116, yesterday, the Prosecution asked you
20 about your fourth opinion in which you referred to Mr Al Hassan expressing distress
21 about doctors not helping him or believing him. And again, I'd like turn to
22 page 5798 of the panel of experts' report.
23 It's my last question on this report.

24 Paragraphs 216 and 218.

25 A. [11:26:33] Yes.

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1 Q. [11:26:35] And this refers to Al Hassan recounting the detention unit's doctor's
2 refusal to provide his medical file to him and also certain inaccurate reporting of
3 descriptions in his files.

4 A. [11:26:55] Yes.

5 Q. [11:26:55] Now, is this account -- this description of his interaction with this
6 specific doctor, is this consistent with what was reported to you?

7 A. [11:27:07] Yes.

8 Q. [11:27:08] And did this impact on this issue of trust and belief?

9 A. [11:27:16] In my understanding, Mr Al Hassan had difficulty communicating
10 with medical personnel regarding records, and this created for him frustration and
11 agitation. I -- I'm not sure if that's what you're asking.

12 Q. [11:27:42] I'll just move on to the next issue, which is at page 99 of the
13 transcript, I believe. The Prosecution showed a specific report to you -- a specific
14 quotation to you from your report and they asked you who had authored it and how
15 it was authored. And the quotation was that Mr Al Hassan said that he was afraid to
16 be transferred to Mali, because they would kill him, and you offered to look at your
17 handwritten notes but at the time you weren't given the opportunity to do so.

18 So Madam Witness, could we turn to Defence tab 4, that's MLI-D28-0003-1456, and if
19 we could look specifically at page 1478.

20 A. [11:28:43] I'm going to wait for it on the screen because my binder, I fear I've
21 confused things. You could say the tab one more time, but I can wait for it to
22 appear.

23 Q. [11:28:50] It's Defence tab 4.

24 A. [11:28:56] And the document is?

25 Q. [11:28:57] It's MLI-D28-0003-1456.

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1 A. [11:29:02] I have -- oh, it's my notes. I don't have it here, I apologise.

2 Q. [11:29:07] It might be difficult to see, and I don't know if there's a way to scroll
3 down so you can see it.

4 Is this page 1478?

5 If we can stay there. Maybe just up a little bit.

6 A. [11:29:29] If you could just scroll a little bit up. Thank you.

7 Q. [11:29:35] Now Dr Porterfield, can you see in that first paragraph a quotation?

8 A. [11:29:42] Yes.

9 Q. [11:29:43] And does that correspond to what you put in your report?

10 A. [11:29:49] I believe so.

11 Q. [11:29:55] Now --

12 (Counsel confers)

13 MS TAYLOR: [11:30:06]

14 Q. [11:30:06] Now another quotation that the Prosecution -- or fact the Prosecution
15 asked you about was about three buckets in his cell they would use to urinate.

16 We could turn to page 1495 of your notes.

17 If we could scroll to the bottom.

18 Dr Porterfield, can see any reference to "3 buckets"?

19 A. [11:30:36] Yes.

20 Q. [11:30:37] Now Dr Porterfield, did you base your report on your handwritten
21 notes or the typed notes?

22 A. [11:30:43] I believe my handwritten notes is what -- is what I referred to during
23 the process of writing.

24 Q. [11:30:49] Now, the OTP asked you about the narrative section of your report
25 and asked if it was based on Al Hassan's account to you to, to which you responded it

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1 was.

2 A. [11:31:08] Yes.

3 Q. [11:31:09] I apologise, my papers have got a little bit mixed up.

4 Now the narrative part of your report is separate from your evaluation. For your
5 evaluation of the symptomatology of torture, did you take what Mr Al Hassan said to
6 you for granted and just appended a description to it? Or was your evaluation of his
7 symptomatology of torture based on anything else, such as clinical observations or
8 empirical data?

9 A. [11:31:38] Yes, as I explained, my evaluation was based on clinical interview,
10 clinical observation, knowledge of torture survivors acquired over the course of my
11 work, and empirical and scientific literature that enhances our understanding of these
12 issues. So it is a combination of these pieces of the evaluation.

13 Q. [11:32:08] Now at page 124, lines 20 to 23, you stated in a response to a question
14 of the Prosecution concerning malingering:

15 "Those factors are under the rubric of the clinical interview. So, for"
16 example -- "instance, how you conduct the interview, how the person presents during
17 the interview, [and] do they demonstrate symptoms that would be difficult to feign."
18 Now did Al Hassan demonstrate symptoms that would be consistent with a torture
19 survivor that would have been difficult to feign?

20 A. [11:32:45] Yes, this was quite pronounced because -- oh, apology.

21 PRESIDING JUDGE MINDUA: [11:32:53](Interpretation) Madam Prosecutor.

22 MS LUPING: [11:32:56] Mr President, I do appreciate that Dr Porterfield is an expert
23 witness and that's very different to a fact witness, but I would just simply ask that
24 Defence counsel reformulate to avoid such leading questions. I've let a number of
25 leading questions go, but it's just to essentially reformulate to make her questions

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1 more open.

2 PRESIDING JUDGE MINDUA: [11:33:22](Interpretation) Ms Taylor, could you
3 please rephrase.

4 MS TAYLOR: [11:33:26] Thank you, Mr President, I don't believe it's necessary for
5 me reread the quote, which I was using as the basis for my question.

6 Q. [11:33:36] Now the symptoms that were presented by Mr Al Hassan during the
7 interview, would any of those symptoms have been difficult to feign?

8 A. [11:33:48] Yes, I would say that was characteristic of Mr Al Hassan is that he did
9 not have insight into his symptoms, meaning, he -- he could not really articulate them.
10 Instead, he was -- he would experience them and be sort of overtaken by them, such
11 as becoming, as I said, blank, numb. If you recall the word "flag" I said yesterday, so
12 flagging physically. He did not attribute these to anything and they would be
13 difficult to -- to know they are symptoms of post-torture.

14 So these were quite marked in him, and I felt very very genuine and not malingered.

15 Q. [11:34:43] Now this morning, the Prosecution read to you an excerpt from Dr
16 Lamothe's report, and in that excerpt, I believe, Dr Lamothe had claimed that none of
17 the clusters were present. He didn't explain, I think, in that excerpt what he meant
18 by "clusters". But if you have in front of the panel of experts' report, that's OTP tab
19 55, and if you could turn to page 25. It's OTP tab 55.

20 A. [11:35:32] Yes.

21 (Counsel confers)

22 MS TAYLOR: [11:35:42]

23 Q. [11:35:43] Now Dr Porterfield, have you had the opportunity to read this section
24 of the report previously?

25 A. [11:35:48] The section of the report --

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1 Q. [11:35:48] Yes --

2 A. [11:35:49] -- by the panel of experts.

3 Q. [11:35:52] -- where they apply the various criterion?

4 A. [11:35:55] Yes.

5 Q. [11:35:55] And is it correct that the panel of experts found that these various
6 criterion was fulfilled?

7 A. [11:36:00] Yes, they found that many of the criterion were fulfilled.

8 Q. [11:36:04] So is that inconsistent with Dr Lamothe's conclusion?

9 A. [11:36:14] It is.

10 Q. [11:36:15] Thank you.

11 MS TAYLOR: [11:36:16] Mr President, your Honours, I don't have any further
12 questions.

13 PRESIDING JUDGE MINDUA: [11:36:25](Interpretation) Thank you very much,
14 Ms Taylor, for your further questions.

15 So now this concludes this testimony, unless no one is requesting to address the Court,
16 I shall now turn to the witness, to our expert witness.

17 Madam Witness, the Chamber would once again like to thank you for your assistance
18 in responding in a very clear and specific manner - and a very willing manner - to the
19 questions put to you. Your testimony has now come to an end. I would like to
20 wish you success in your career and a safe journey home.

21 (The witness is excused)

22 PRESIDING JUDGE MINDUA: [11:37:29] I shall now turn to the Defence.

23 Ms Taylor, our next witness, when will that be for and which witness are we talking
24 about?

25 MS TAYLOR: [11:37:41] I apologise, Mr President, I don't have the specific

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1 pseudonym, it's Mr Kalantzis, and it will be, I believe, next Tuesday.

2 PRESIDING JUDGE MINDUA: [11:37:58] (Overlapping microphones) *Le 17, le 17*

3 *mai.*

4 (Overlapping microphones)

5 MS TAYLOR: [11:38:00] Exactly. It's an open-session witness, so I do believe it's

6 okay for me to refer to his name, it's Mr Nikolaos Kalantzis.

7 PRESIDING JUDGE MINDUA: [11:38:12](Interpretation) Perfect. I just wanted to

8 hear confirmation for everyone and that will be Tuesday 17th of May at 9.30.

9 Now before adjourning for the day, I would like to thank - as always - all those

10 individuals who have made this hearing possible, that is to say, the parties, the

11 participants, the court reporters, the interpreters, our security guards, and our public

12 in the galley and further afield.

13 I would like to wish you all a very good day and see you next Tuesday.

14 Court is adjourned.

15 THE COURT USHER: [11:38:51] All rise.

16 (The hearing ends in open session at 11.38 a.m.)