

Trial Hearing
WITNESS: MLI-D28-D-0020

(Open Session)

ICC-01/12-01/18

1 Trial Chamber X
2 Situation: Republic of Mali
3 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
4 Mahmoud - ICC-01/12-01/18
5 Presiding Judge Kesia-Mbe Mindua, Judge Tomoko Akane and Judge Kimberly Prost
6 Trial Hearing - Courtroom 3
7 Tuesday, 10 May 2022
8 (The hearing starts in open session at 9.31 a.m.)
9 THE COURT USHER: [9:31:42] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE MINDUA: [9:32:12](Interpretation) The Court is now in
13 session.
14 Good morning, ladies and gentlemen.
15 Please call the case, court officer.
16 THE COURT OFFICER: [9:32:25] Good morning, Mr President.
17 This is the situation in the Republic of Mali, in the case of The Prosecutor versus Al
18 Hassan Ag 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: [9:32:44](Interpretation) Thank you so much, court
21 officer.
22 Just like every morning, we're going to now have the presentation of the various
23 teams, starting off with the OTP.
24 Madam Prosecutor.
25 MS LUPING: [9:33:05] Good morning, Mr President. Good morning, Your

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1 Honours.

2 Appearing on behalf of the Prosecution today are myself Dianne Luping, Mr Gilles
3 Dutertre, Mr Lucio Garcia, Marie-Jeanne Sardachti, Claudine Umurungi and Daniel
4 Grzeziczak. Thank you.

5 PRESIDING JUDGE MINDUA: [9:33:22](Interpretation) Thank you so much,
6 Madam Prosecutor.

7 I'm turning to the Defence.

8 Counsel.

9 MS TAYLOR: [9:33:37] Good morning, Mr President. Good morning, your
10 Honours. Good morning to everyone in the courtroom and around the courtroom.
11 The Defence for Mr Al Hassan is represented today by Maître Michiel Pestman, Ms
12 Cécile Lecolle, Maître Mohamed Youssef, Ms Leila Abid and myself, Melinda Taylor.
13 Thank you very much.

14 PRESIDING JUDGE MINDUA: [9:33:57](Interpretation) Thank you, Counsel Taylor.
15 I'm turning to the legal representative for victims.
16 Counsel.

17 MR LUVENGIKA: [9:34:08](Interpretation) Good morning, your Honours.
18 The victims are represented by Mrs Anouk Kermiche, Carla Boglioli and myself, Fidel
19 Nsita Luvengika. Thank you.

20 PRESIDING JUDGE MINDUA: [9:34:23](Interpretation) I'm turning now to the
21 witness.

22 Good morning, Witness. Can you hear me?

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24 (Witness speaks English)

25 THE WITNESS: [9:34:33] Yes. Good morning, your Honour.

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1 PRESIDING JUDGE MINDUA: [9:34:41](Interpretation) Witness, on behalf of the
2 Chamber, I really would like to welcome you to this Court. You're going to provide
3 testimony to the Chamber, and this is with the view to establishing the truth in the
4 Al Hassan case, who is with us today in this room.
5 You haven't asked for protection measures, and I'd like to welcome that and
6 congratulate you. And I also would like to thank you for your availability.
7 So you're going to provide testimony in open session with your name, but if there
8 were special circumstances which would require us to go into private session, the
9 Defence team will put in the request and we will move into private session.
10 Now, for the moment, I'm going to ask you to take an oath by virtue of Rule 66 of the
11 Rules of Procedure. You have a document on your table with the statement. This is
12 a solemn commitment by which you must take oath and swear to tell the truth. So
13 could you please read what is on the document loudly. Thank you.
14 THE WITNESS: [9:36:19] Yes, your Honour.
15 I solemnly declare that I will speak the truth, the whole truth and nothing but the
16 truth.
17 PRESIDING JUDGE MINDUA: [9:36:33](Interpretation) Thank you, Witness. You
18 are now under oath.
19 The Representatives of the Victims Section and the Defence representatives have
20 already explained what that entails and means, so I'm not going to come back to it.
21 I've got a few practical suggestions and tips for you. You must bear in mind during
22 your deposition that everything that is said in this Court is transcribed by court
23 reporters and simultaneously interpreted into several languages by interpreters, so it
24 is important to speak clearly and slowly.
25 Please start speaking only after the person who's interrogating you has finished his or

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1 her question. Obviously, if you've got a concern, please raise your hand to tell us
2 that you would like to speak.

3 Have you understood what I said?

4 THE WITNESS: [9:38:08] Yes, your Honour.

5 PRESIDING JUDGE MINDUA: [9:38:13](Interpretation) Thank you, Witness.

6 Without further ado, I'm now going to give the floor to the Defence team for the start
7 of your deposition. As you know, you will be interrogated by the Defence, and then
8 there's going to be a cross-examination from the OTP and the legal representative of
9 victims.

10 Counsel Taylor, you've got the floor, please.

11 MS TAYLOR: [9:38:50] Thank you very much, Mr President.

12 QUESTIONED BY MS TAYLOR:

13 Q. [9:38:55] Good morning, Madam Witness.

14 A. [9:38:57] Good morning.

15 Q. [9:38:58] Madam Witness, could you please give us your name for the record.

16 A. [9:39:00] My name is Katherine Porterfield.

17 Q. [9:39:02] Dr Porterfield, could you please turn to the binder of documents next
18 to you. There should be a tab 1, which is MLI-D28-0003-1624.

19 And if the Registry could bring that on to channel 1 on the screen in front of you.

20 Dr Porterfield, do you recognise this document?

21 A. [9:39:36] Yes, I do.

22 Q. [9:39:37] And what is it?

23 A. [9:39:39] This is my curriculum vitae, CV.

24 Q. [9:39:45] Do you confirm the accuracy of its contents?

25 A. [9:39:48] Yes, I do.

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1 Q. [9:39:50] If we could turn to page 1625. If we could scroll down, I believe. I
2 believe this should -- refers to is a clinical director in psychiatry at New York
3 University School of Medicine and as a senior psychologist at the Bellevue NYU
4 Programme for Survivors of Torture.

5 Dr Porterfield, how would you describe your specialty? What's your specific title?

6 A. [9:40:37] So I'm a clinical psychologist by training. I received my master's and
7 doctorate in clinical psychology, which is the practise of the evaluation, assessment,
8 research and treatment of mental disorders in humans.

9 I have specialised for the last 22 years -- sorry. Just pausing here. Apologise.

10 I have specialised, since my post-doctoral training in 1998, in trauma and the
11 assessment, research and treatment of trauma, particularly severe trauma in the
12 context of torture, war trauma, refugee trauma, and child abuse and neglect.

13 Q. [9:41:24] Dr Porterfield, can you provide a brief explanation as to how you
14 obtained the expertise in the area that you mentioned of torture. You mentioned
15 that you had experience in the assessment of severe trauma in the context of torture.

16 A. [9:41:42] Yes. During my clinical training at the University of Michigan, I
17 specialised in assessment and treatment and research of bereavement and grief in the
18 context of loss to children and adolescents.

19 Later, when I began a post-doctoral training fellowship at New York University, I
20 focused on treatment of children and adolescents and families, and I then began to
21 work as a staff member, full-time, at the Bellevue NYU Programme for Survivors of
22 Torture. That work has been the bulk of much of my professional engagement for
23 the last 24 years.

24 And at Bellevue, I trained extensively in the assessment and treatment of survivors of
25 torture and war trauma. This training came in the form of my clinical work, which

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1 was many, many hours each week working with survivors, as well as extensive
2 continuing education in the context of international training on assessment and
3 treatment of torture survivors. This came in the form of conferences, papers that I
4 read and wrote, things that I participated in that were editorial processes of writing
5 about torture, et cetera.

6 So my engagement has been across clinical, research, teaching and assessment
7 platforms in the field of clinical psychology, focusing on torture and war trauma.

8 Q. [9:43:22] Dr Porterfield, you've described yourself as a clinical psychologist and
9 you've referred to your clinical work. Can you provide a concise explanation of the
10 distinction between a clinical psychologist and a forensic psychologist or psychiatrist?

11 A. [9:43:41] Yes. A clinical psychologist receives training at a doctoral level
12 usually in the evaluation and assessment, and treatment and research of human
13 mental disorder, mental difficulty, psychological disorders. Therefore, you receive
14 that training across time in the processes of assessing people, treating them and
15 working with them, and you learn about these mental disorders and processes.

16 A forensic psychologist training usually involves working to understand the interface
17 between psychological issues and legal issues. Therefore, forensic psychologists
18 usually have a broad training in legal matters, as well as in the interface of
19 psychological issues. That could be, for example, insanity, inability to understand
20 one's actions, competency to stand trial. Things of that nature.

21 So forensic psychologists focus on assessment in a legal context and answering certain
22 questions versus clinical psychologists, as I've explained.

23 Q. [9:44:57] As a clinical psychologist, do you have the expertise to evaluate or
24 provide an opinion as concerns whether an individual is a torture survivor?

25 A. [9:45:11] Well, what I have the ability to do as a clinical psychologist would be

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1 evaluate the impact of torture, the impact of trauma on an individual. The
2 determination of what torture is and the definition of torture is technically a legal
3 decision, but there is some interface in my expertise of recognising when someone has
4 been tortured, what the effects of it are. So slight nuisance there that I'm underlying.

5 Q. [9:45:44] And can you explain to the Court how you do this, what approach you
6 follow.

7 A. [9:45:50] Yes. When you're approaching any type of evaluation, you have a
8 methodology in the field of psychology. My methodology comes from 24 years,
9 again, of experience, working with survivors of torture and trauma. And the
10 methodology briefly involves -- first of all, you are asking a question or you're - I beg
11 your pardon - you're answering a question usually put to you. If the context is in a
12 legal matter, such as a court, as we are today, that question then I approach with
13 multiple prongs of information.

14 The first form -- the first prong of my methodology is clinical interview. Clinical
15 interview is the gold standard of evaluation in the field of psychology. And that is a
16 usually lengthy and detailed interview that follows various areas pertaining to
17 psychological functioning.

18 You also utilise clinical observation, which is quite important as a clinical
19 psychologist. Meaning, you're looking at the person, you're asking them questions
20 about your functioning, and you're watching for indications of symptomology.

21 You're also then using in your -- in my methodology, I would -- we also use a prong
22 of collateral data, other information that guides in your understanding of the
23 individual. So this could be records, as I was provided in this case, other documents
24 that would inform you about the individual's functioning and experiences.

25 And, finally, an important prong in my methodology is simply that you use your

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1 background, your clinical expertise and experience, as well as the empirical scientific
2 literature to buttress your conclusions. You -- after you've examined all this data,
3 you don't simply react to it. You are utilising the empirical knowledge that the field
4 of psychology and traumatology brings.

5 Q. [9:47:58] Now, you've referred to your expertise in evaluating the impact of
6 torture. Is it possible to evaluate the impact of symptomology of torture, days,
7 months or even years after it has occurred?

8 A. [9:48:14] Yes. Because the nature of torture is that it -- depending on the
9 severity, of course, but it can leave very severe consequences. These consequences
10 are often quite long lasting, and they're also what we call pervasive, meaning across
11 multiple domains of a person's functioning.
12 So you can assess and see these symptoms and evaluate them, at times years later. I
13 have evaluated people many, many years after torture and still seem quite virulent
14 symptoms.

15 Q. [9:48:52] Now, before your involvement in this case, had you ever been
16 instructed to provide an expert opinion or evaluation as concerns whether an
17 individual's account was consistent with the symptomology of torture?

18 A. [9:49:08] Yes, I have.

19 Q. [9:49:10] And what methodology did you follow in those cases?

20 A. [9:49:14] What I spoke of earlier, multimodal, so multi-pronged evaluation,
21 observation, use of empirical and scientific data, and analysis of collateral data. So
22 that would be the same methodology to assess the impact of alleged torture.

23 Q. [9:49:33] And in those cases, did the Court recognise you as an expert?

24 A. [9:49:38] Yes.

25 Q. [9:49:40] Have you ever reached the conclusion that the person you evaluated

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1 did not display symptomology consistent with torture?

2 A. [9:49:49] I have reached that conclusion over the course of evaluations during
3 my career, yes.

4 Q. [9:49:56] If we could look at page -- I believe it's 62 -- 1625 of your CV, or I can
5 ask the question openly.

6 Have you participated on a working group to supplement the Istanbul Protocol?

7 A. [9:50:14] Yes. I was part of an editorial working group for an update of the
8 Istanbul Protocol.

9 Q. [9:50:22] Can you briefly explain to the Chamber what the Istanbul Protocol is.

10 A. [9:50:27] Yes. It is a document that lays out for international bodies the
11 procedures and methodology recommended for the evaluation of torture and human
12 rights violations. It is a document that was produced for the United Nations High
13 Commissioner on Human Rights, and it is recognised across multiple context
14 medically and legally as a guide to -- to guide individuals who assess the impact of
15 torture.

16 Q. [9:51:09] And what were you asked to comment on or provide input on?

17 A. [9:51:13] There's many components to the Istanbul Protocol manual. So, as a
18 psychologist, I was asked to contribute to the section on the psychological impact of
19 torture.

20 Q. [9:51:24] And did the project ultimate rely upon your input?

21 A. [9:51:28] I believe so, yes. The editorial process is complete, and the Istanbul
22 Protocol should be producing an updated version any -- any day, apparently. So,
23 yes.

24 Q. [9:51:39] If we could turn to Defence tab 4. This is MLI-D28-0003-1456.

25 THE INTERPRETER: [9:51:53] Can we please slow down a little bit.

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1 MS TAYLOR: [9:51:57] Certainly. I apologise.

2 Q. [9:52:04] Dr Porterfield, do you recognise this document?

3 A. [9:52:06] I do. These are my notes from my evaluation of Mr Al Hassan.

4 Q. [9:52:12] And, Dr Porterfield, when did you write these notes?

5 A. [9:52:16] I wrote them contemporaneously during the evaluation.

6 Q. [9:52:20] And who was present when you wrote these notes?

7 A. [9:52:24] The room was myself, Mr Al Hassan and an interpreter.

8 Q. [9:52:32] Now, earlier you've referred to the gold standard of evaluation, which
9 is an in-person interview. Did the conditions of your interview with Mr Al Hassan
10 comply with what you considered to be the gold standard in terms of the time you
11 had available and the conditions?

12 A. [9:52:53] yes. I was given a great deal of time and an opportunity to inquire
13 across several days and to inquire about a number of relevant questions. So, yes, I
14 would say I was given the opportunity to conduct a full clinical evaluation.

15 Q. [9:53:14] And you've referred to the Istanbul Protocol. Was the methodology
16 that you followed in your interview with Mr Al Hassan consistent with the standards
17 or recommendations set out by that protocol?

18 A. [9:53:29] Yes, I would say so.

19 Q. [9:53:32] I'm going to turn to page 1470 of these notes. If you could confirm to
20 me when you have that in front of you.

21 A. [9:53:52] Yes.

22 Q. [9:53:55] Is this your handwriting?

23 A. [9:53:57] It is.

24 Q. [9:54:01] Dr Porterfield, I just ask if you could have a break before responding to
25 me for the interpreters.

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1 A. [9:54:06] I apologise.

2 Q. [9:54:07] I have a question about some of the words on this document. We can
3 see words that are in brackets. So, for example, we can see the word "faint" in
4 brackets, and at the bottom we can see the word "cries" in brackets. What do these
5 words in brackets refer to?

6 A. [9:54:27] Usually, I place brackets in my notes if I am either observing something
7 or noting that I asked or stated something to someone. So it's a break in the
8 reporting of the person's words, the brackets signify that.

9 Q. [9:54:47] And what did you observe at these particular points?

10 A. [9:54:54] I was asking -- just a moment, please.
11 I believe the first bracket with "faint" was me asking, "Did you faint?"
12 The second bracket, you've asked about "cries", was me noting Mr Al Hassan crying
13 while speaking.

14 Q. [9:55:31] Were these reactions relevant to you?

15 A. [9:55:35] Yes. Throughout the interview, I'm always looking for descriptions of
16 what someone may have experienced in the past, as well as noting what they are
17 demonstrating in the present during the evaluation, when questioned.

18 Q. [9:55:52] And on this page, we can see a few words scribbled out. Can you
19 explain what happened here.

20 A. [9:56:01] I think throughout my notes there's probably scribbles based on if I
21 wrote something incorrectly or needed -- you know, changed a word based on
22 something that I -- that the subject said. So these would be, again,
23 contemporaneously marked parts of my notes.

24 Q. [9:56:23] If we could turn to the next page. This is page 1471. We again have
25 words in brackets. We have -- I think twice we have "yawning" in brackets. Can

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1 you explain why you put this.

2 A. [9:56:46] One of the things I'm quite familiar with, having worked extensively
3 with people who suffered severe torture, are certain manifestations of what we call
4 defensive reactions to torture memories. Defensive reactions are bodily reactions.
5 So something physiology or sometimes psychological, what we call cognitive
6 reactions. So I am watching for those when someone is describing torture to me.
7 Yawning happens to be, strangely, because it is thought of as a common
8 occurrence -- yawning is something that you take note of when you are talking to a
9 person who may have been in a posture of dissociation or what we call flag, flagging.
10 And in English, the word "flagging" simply means beginning to collapse.
11 My clinical experience, as well as many years of consulting with others on these
12 matters, shows that when someone is recounting something where they were tortured
13 and they went into a flag, or dissociative state, they often begin to return to that state.
14 They do this with yawning. They start to physically flag. They begin to slump and
15 show other manifestations.

16 So I watch for this, and I note it to myself if I see it, especially if I see it frequently.

17 Q. [9:58:33] Now, Dr Porterfield, we had on the page before your note of "crying",
18 and then we have on this page "yawning". Are those reactions consistent with the
19 symptomology of someone has experienced a type of conduct that was described on
20 these pages?

21 A. [9:58:54] Yes.

22 Now, again, these are just a few moments in my notes. But what was being
23 discussed was very disturbing abuse that had taken place to Mr Al Hassan, by his
24 report. One was being told he would be killed step by step. That is the quotation.
25 And as he told that to me, that is when he began to collapse and to cry.

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1 The second point was when he began to talk about being waterboarded.

2 Waterboarding is a technique used in which a person is brought to a point of almost
3 drowning. It is considered by many of us in the field of torture a form of mock
4 execution.

5 I have seen several people after they have been waterboarded and have watched them
6 recount it. Mr Al Hassan's yawning and beginning to flag was extremely consistent
7 with what one sees in people who have been through waterboard.

8 Just briefly, one more thing, if I may add, it is that, when they recount it, that
9 defensive cascade, that's what comes back to them, which is what they had to use in
10 the moment when they were being tortured. So when you're being waterboarded
11 and you're thinking you're about to be drowned, people often collapse, collapse into
12 what we call a flag faint. So, therefore, when you recount it, sometimes that returns.
13 That return is visible when the person starts yawning or sinking down.

14 Q. [10:00:40] Now, this type of actions, *chiffonnage* and waterboarding, does that
15 produce any psychological impact or effects on the person?

16 A. [10:00:53] Yes, very severe effects.

17 Sorry. I did not pause.

18 Q. [10:00:56] And what type of effects does it produce?

19 A. [10:01:01] Well, waterboarding can produce a number of effects. Usually these
20 are categorised under what we would call biopsychosocial effects. So bodily effects
21 such as a person having to go into a state of dissociation, I've spoken about, or flag or
22 faint. Psychological; so biopsychosocial, psychological effects such as incredible
23 states of terror, severe distress, expressions of distress; biopsychosocial, impact of
24 something like waterboarding, intense fear of others, severe mistrust that one is going
25 to be killed or one is going to be harmed.

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1 So those biopsychosocial consequences are quite common after something like
2 waterboarding or mock execution, both of which are relevant here.

3 Q. [10:02:04] Dr Porterfield, you've just delineated a series of effects. Do any of
4 those effects last beyond the moment of being waterboarded?

5 A. [10:02:16] Yes. What is well known and well documented in the field of
6 trauma, particularly torture trauma, is that these effects can be very long lasting and
7 pervasive. Meaning, again, they cover a range of functionality in a person; thoughts,
8 feelings, body reaction.

9 So, yes, these can be very long lasting, years. I have seen people after events like this,
10 I've seen people 10 and 15 years after, things like this, where they are still quite
11 symptomatic, especially when they are recounting, in other words, when they're
12 brought back to the moment of having to relive those events.

13 Q. [10:03:05] If I could turn to page 1483 of your notes.
14 Now, we see at the bottom of these notes a word. I think it's "SUDS" and then "5".
15 Can you explain what this refers to.

16 A. [10:03:43] SUDS is a acronym for Subjective Units of Distress Scale. It's a term
17 used in psychology to ask the person - so, subjective - what their experience of
18 distress is in this moment. So it becomes a sort of scale in the moment of how
19 distressed are you. You don't frame it that way.

20 What you say is, "On a scale of 1 to 10, I would like you to tell me how you are feeling
21 right now. 10 is that you are very, very distressed."

22 For this evaluation, I used the words that would match Mr Al Hassan Hassan's
23 language, his own conceptions of well-being or distress. In other words, Arabic
24 words. 10 would be extreme; 1 would be no distress at all, calm.

25 So, at this point, he has given me a rating of 5 as to how he is feeling.

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1 Q. [10:04:43] And was his rating relevant to you?

2 A. [10:04:47] Well, the rating is definitely relevant when you're doing this
3 evaluation, this type of evaluation, because you're wondering what the person's
4 subjective experience is. And it becomes a way to ask for that.

5 So here he was becoming distressed, I could tell, physically, and he requested to go to
6 the bathroom, which is sometimes something people do when they are trying to avoid
7 symptoms. They try to make a break. And I wondered at that point if he was
8 getting more distressed.

9 He had just told me about being beaten very hard. He had also been told -- he had
10 just been describing being hanged from an iron bar in the outside and being beaten
11 while cream was poured on his back, he believed, in an attempt to not leave marks.
12 This would be the kind of memory that would be highly distressing for a person to
13 return to.

14 So I believed at that point he was becoming distressed. So that is why the SUDS was
15 asked at that point, and I viewed it as relevant.

16 Q. [10:05:56] Now, you've mentioned that the scale is from 1 to 10, but here
17 Mr Al Hassan has given a 5. So what conclusions did you draw from that, if any?

18 A. [10:06:08] well, you're just -- you're looking to see what the person's own
19 tolerance for distress is. What I -- this was fairly early in my evaluation, I believe. I
20 have to look at what day this was. I apologise.

21 I came to see that Mr Al Hassan tended to minimise emotional states, and he was
22 more likely to have physiological symptoms. This is something with see
23 cross-culturally in many cultures where the expression of emotional distress is
24 actually not particularly normative, and so I was not -- I was interested that he would
25 give it a 5. I felt it was probably a manifestation of him having difficulty expressing

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1 emotional pain.

2 Q. [10:06:57] If we could turn to page 1486. Again, we have in brackets "now" and
3 then colon "5". Can you explain what this means.

4 A. [10:07:24] Again, here I was attempting to understand and track Mr Al Hassan's
5 emotional state. He had just described believing he was going to be killed, which,
6 again, in my experience over many years, it is very noteworthy when someone is
7 recounting almost dying. It is a very frightening experience, obviously. And so
8 when people recount it, they often get into a physical state of symptom -- symptoms.
9 He had just reported that he thought he was going to be killed many times and would
10 say the Muslim prayer, the Shahada, for -- in those moments. So I asked him his
11 level of distress, and he said a 5.

12 Q. [10:08:14] Did you draw any conclusions from that?

13 A. [10:08:17] It was just more data that Mr Al Hassan tended to minimise
14 emotional distress but had quite severe physiological symptoms that he would
15 manifest. So I was watching for that combination with him.

16 Q. [10:08:30] Now, Dr Porterfield, can you just read the exchange on this page
17 underneath "back to the story". If you could have a look at that quickly.

18 A. [10:08:41] So he begins to recount, I believe -- sorry. It says "back to story"
19 because he's going back to a part of the experience he had. I believe at this point we
20 are in -- in Bamako, but I'm -- and he is saying it was about noon and that he had been
21 there for about one and a half hours.

22 I'm just looking for a moment.

23 Q. [10:09:13] Perhaps if you could just read it to yourself. Sorry.

24 A. [10:09:18] Would you like me to recount it, or no?

25 Q. [10:09:21] No. If you could just read it to yourself first, and then I'll ask a

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1 question.

2 A. [10:09:27] Okay.

3 Yes.

4 Q. [10:09:30] Do these words reflect what Mr Al Hassan told you at the time?

5 A. [10:09:35] Yes. Yes, they do.

6 Q. [10:09:37] Now, if this account is true, would this exchange between

7 Mr Al Hassan and this individual, as described here, would this reflect any

8 psychological effects of torture?

9 A. [10:09:53] The exchange would result in psychological effects because what he's
10 describing - and it was quite notable as he described this to me - that he was being
11 told he would be dismembered by his captures. They were going to cut him into
12 pieces. And, again, I apologise for the difficult material that I'm saying in the
13 courtroom. They also said they were going to place things in his body, in his
14 genitals, as well as kill him.

15 This report of being threatened with very severe harm and death led him to be very
16 distressed and physiologically look -- look quite distressed, and he linked it to the fact
17 that the man saying this was saying there was no oversight and no judges who would
18 ever care that this had happened. He said, "We can do what we want." So this was
19 a particularly, I would say, disturbing moment in many disturbing parts of this
20 detention.

21 Q. [10:11:04] Now, according to this account, Mr Al Hassan replied, "I'll tell you
22 anything you want."

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

24 Q. [10:11:13] Did you draw any conclusions from his response? Was that relevant
25 to your evaluation?

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1 A. [10:11:21] I viewed this as a credible narrative of what a person does when they
2 are told they will be dismembered, potentially sexual assaulted or killed, that at that
3 point, many people, and in my experience -- almost all people at that point say, "I will
4 do what is needed to not have those things happen to me."

5 Q. [10:11:43] Now, this type of exchange, would this generate any type of
6 psychological effects on the individual?

7 A. [10:11:51] Yes. This is the kind of -- I'll pause.
8 This is the kind of very frightening interaction that shatters individuals in a number
9 of ways. It often shatters their sense of other people because they are so frightened
10 by what has been done by other people. It leads to states -- and this is difficult to
11 understand, but it leads to physiological states in the body that are actually
12 involuntary. And those states are states in which fear is activated. And I spoke
13 about it a few minutes ago. What we call a defensive cascade gets activated.
14 So, first, the person usually goes into what we call fight or flight, heart racing,
15 sweating, a fear reaction. Anybody who has been on a rollercoaster knows -- knows
16 what this feels like. But the more complicated subtle reaction that then usually takes
17 place, if the person is trapped and cannot escape, is that they begin that process of
18 going downward into flag, faint, disassociate.
19 So what's happening usually when you are captured, you cannot escape, you are in
20 an uncontrollable situation, your body starts to take charge and try to shut down
21 what you're experiencing. And this does leave very long lasting marks. I'll finish
22 up here. But it leaves people often with ongoing problems in their arousal system,
23 their consciousness, as well as, if we go back, their social ability to relate to other
24 people and not get triggered.

25 Q. [10:13:42] I'd just like to turn to page 1494. And you can see here, there's a

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1 third paragraph or -- starts with, I believe it's the word "during" and then dash.

2 A. [10:14:10] Yes.

3 Q. [10:14:10] I think we need to scroll down on the screen.

4 Do you mind reading that out just so we can be sure of your hand -- what's written
5 here.

6 A. [10:14:20] Reading it out loud?

7 Q. [10:14:22] Yes, please, just to show what the words are.

8 A. [10:14:26] It says: "During -- had team who claimed to be from Malian court.

9 Prosecutors, they interrogated me. They were state security. They interrogated me
10 blindfolded and handcuffed."

11 Q. [10:14:43] Does this reflect what Mr Al Hassan told you?

12 A. [10:14:47] Yes.

13 Q. [10:14:49] Now, if this account was true, would this type of conduct generate
14 any psychological effects?

15 A. [10:14:58] This account explains Mr Al Hassan's perceptions of his interrogators
16 and that he was unable to assess whether people were telling the truth or not, and so
17 he began to perceive. And I don't know if he was correct, but he was perceiving that
18 people were claiming they were from one organisation, but, in fact, they were from
19 someone else -- somewhere else. That would be a very, very common - and I've seen
20 it a great deal - response to someone who is having multiple interrogations over and
21 over, particularly after torture or during torture. Because what happens is, that
22 nervous system, biological response, hyperarousal takes place, and people perceive
23 that the people coming at them are going to continue to do harm or to do more harm.
24 So new people coming in are not viewed as trustworthy or safe because they are in
25 the context of others who have harmed, threatened and said, "There will be no

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1 accountability to what we've done to you."

2 So to me this was a description of his thinking at the time, and it was unsurprising to
3 me.

4 Q. [10:16:24] If we could turn to page 1496. Now, if we could scroll down. You
5 have a -- I think there's an arrow of some sort, and then I believe it's "had guards hood
6 me, handcuff me". Do you see that?

7 A. [10:16:55] Yes.

8 Q. [10:16:55] Can you read this paragraph to yourself just quickly.

9 A. [10:17:02] Yes, I've read it.

10 Q. [10:17:04] Does this reflect what Mr Al Hassan told you?

11 A. [10:17:07] It does.

12 Q. [10:17:08] Now, this section refers to Mr Al Hassan being hooded. Now, in
13 your experience as an expert in evaluating torture survivors, what kind of
14 psychological effects does hooding produce?

15 A. [10:17:25] Hooding, the process of placing a hood over a prisoner's heading,
16 thereby preventing them from seeing or hearing, in some cases, is a very well
17 documented form of destabilising and disorienting an individual and enhancing
18 states of fear, lack of control, unpredictability. For this reason, hooding is highly
19 rejected as a standard procedure to be used on anyone, much less prisoners.

20 There have been -- I believe in my report I refer to a document written in which a
21 panel of forensic experts create -- sorry -- have written a statement regarding the
22 inappropriate and damaging use of hooding and why it should be outlawed.

23 So hooding is a very, very frightening technique, particularly if used with other
24 techniques such as pain and shackling and threatening and degrading, as had been
25 happening to Mr Al Hassan.

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1 Q. [10:18:39] And, Dr Porterfield, you've referred to disorientation, destabilisation
2 as effects. In your experience as a expert in this field, how easy is it for someone
3 who is not a trained psychologist or medical professional to identify or assess the
4 effects of hooding?

5 A. [10:19:03] It's actually difficult to recognise the effects of torture responses. It's
6 not quite as instinctual as one might think. Certainly, in some cases, people show
7 distress, and that I think is something that laypeople can recognise. Crying, shaking,
8 weeping, begging, things like that, look like a person who's afraid.
9 However, for an individual who has been tortured for a long time and/or very
10 severely, they often do not demonstrate those symptoms. In fact, they demonstrate
11 the others I've been speaking about, the second part of that defensive cascade, which
12 is flagging, fainting, dissociating, becoming absent. And in my experience - and I
13 have this experience across a lot of context, unfortunately, so I've seen this in the
14 context of other medical professionals who are not trained; lawyers, law
15 enforcement - these symptoms are not very recognisable to people because they are
16 often symptoms of absence and symptoms of disconnection.

17 Q. [10:20:22] And, Dr Porterfield, can you read the last paragraph on that page to
18 yourself, and then continue over to the next page, up until the brackets of "gets
19 upset".

20 A. [10:20:42] Yes, I've read it.

21 Q. [10:20:46] Now, this process of being taken to a place while being hooded, could
22 that impact upon any interview that takes place afterwards?

23 A. [10:21:05] Yes, because the hood is placing the person in a state of loss of control,
24 loss of predictability, perhaps sending them into arousal state, which would be more
25 fight or flight, or could be sending them more into a shutdown state.

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1 In this case, the hood is combined with being put into the trunk of a car, which is a
2 very distressing mode of transport for an individual. And -- just for a moment. I
3 need to pause.

4 MS TAYLOR: [10:21:48] I'm sorry, Mr President. Can we have a brief break?

5 Mr Al Hassan would like to go to the bathroom. Can we pause just to allow him to
6 go to the bathroom, please?

7 PRESIDING JUDGE MINDUA: [10:21:59](Interpretation) Yes, indeed, Ms Taylor.

8 Mr Al Hassan, you are excused for a brief while.

9 (Pause in the proceedings)

10 PRESIDING JUDGE MINDUA: [10:25:22](Interpretation) Well, Mr Al Hassan is
11 back.

12 Ms Taylor, you can proceed.

13 MS TAYLOR: [10:25:30]

14 Q. [10:25:31] Dr Porterfield, I believe you were in the middle of answering still.

15 A. [10:25:36] Yes. This anecdote is important on a number of psychological
16 reasons. One is that it is a time when Mr Al Hassan is describing transport.

17 Transport for survivors of torture is often a very anxiety-producing time because they
18 are unclear what is coming. Unpredictable and uncontrollable are the two
19 components that are quite relevant in torture. So he states that at this point he
20 believed he was possibly going to be.

21 He is placed in a trunk of a car, as I said, a strange transport method that would
22 highlight, I think, something being done in secrecy, and he's hooded at the same time.
23 So we have a maximisation, really, of lack of control, and he's afraid he's, in his mind,
24 going to be killed.

25 And as he's transported, two other things happen, which is a guard says to him,

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1 "You're going to spend the rest of your life in prison because you worked with these
2 people, the Islamists, and your wife is going to become a prostitute." And, again, I
3 apologise for difficult examples for the Court, but to threaten someone with their
4 family being destroyed, and in this cultural context, really shamed, was highly
5 destabilising for Mr Al Hassan.

6 When he began to recount this, this was one of the moments he did become
7 emotionally upset, as opposed to just physically symptomatic. He began to cry and
8 had difficulty composing himself.

9 Q. [10:27:13] And was his reaction consistent with what you would have expected
10 in someone who had experienced those actions?

11 A. [10:27:25] Yes. Given that combination of techniques being used on
12 him - hooding, a trunk of a car, transport, threatening his family and humiliating
13 him - yes, I would expect that would lead to a strong emotional reaction.

14 Q. [10:27:43] If we could turn to page 1499. Again, I have a question about words
15 in brackets.

16 We see here the words in brackets "not exaggerer". Can you explain what that refers
17 to.

18 A. [10:28:10] One of the things I am attending to when I do an evaluation such as
19 this is that the person is not lying, exaggerating, faking symptoms, which is called
20 malingering, and so I am looking throughout the time with them for indications of
21 these behaviours. So at times I will ask things for -- ask for more detail, and if a
22 person does not add, I will simply note that that seems to be then a -- an indication of
23 non-exaggeration.

24 People who are exaggerating or malingering will often have many, many examples,
25 and they will kind of continue to give them to you over and over, and always add

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1 more. That was not -- very much not the case with Mr Al Hassan. He actually was
2 reserved in describing things.

3 Q. [10:29:07] You've just referred to this term of malingering. As a psychologist,
4 are you able to assess whether someone is fabricating, exaggerating or malingering?

5 A. [10:29:22] One of the pieces of training as a psychologist is to try to -- is to be
6 able to conduct evaluations and get valid, reliable information. So, yes, we are
7 trained on doing the best job of that, that one can do, looking for indications of
8 malingering and working to -- to minimise those possibilities. So, yes, I am very
9 versed in that and have spent a lot of my career in those -- thinking about those issues
10 and dealing with them. That is to say, though, these are complicated issues. And,
11 you know, humans are not lie detector. So we cannot always assure that there are
12 things we are being told that are not true.

13 Q. [10:30:12] Now, during the course of your interviews and interactions with
14 Mr Al Hassan in this case, did he ever give any signs that he was fabricating,
15 exaggerating or malingering?

16 A. [10:30:29] No. As I said, in terms of symptoms, he tended to minimise his
17 distress, even when it was very obvious. So that would be an indication of not
18 malingering. And he tended to also answer "no" to different kinds of abuse that I
19 asked about that he said he had not suffered from. So those were two indicators for
20 me.

21 Q. [10:30:57] If we can turn to page 1521 of your notes. And if we can scroll down.
22 I think we can see it, but if we can see scroll down a little bit more. That's good.
23 We can see again two words in brackets or two types of words. We have "worst"
24 and "most scared". What does that refer to you?

25 A. [10:31:36] The first was me asking what was the worst thing he went through

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1 during his arrest and imprisonment, and he answered, the first day in Bamako, where
2 he was tortured.

3 He -- the second bracket on "most scared" is -- I asked, "Do you recall when you felt
4 the most afraid?" And he answered, "All the way through, until the end of detention
5 at Bamako."

6 Q. [10:32:09] And what is written in brackets after that, after "Bamako"?

7 A. [10:32:14] I asked if he thought he would die, and he responded, "When first
8 captured, yes. When transferred and frequently during detention," because he
9 thought they were going to kill him in the Bamako security prison on many occasions.
10 Also with the waterboarding. As you see, I asked about that.

11 Q. [10:32:42] Now, according to this paragraph, he told you, "All the way through,
12 until the end of detention at Bamako," after the words "most scared".

13 Now, is that credible to you, that someone could experience or be "most scared" for
14 that entire period?

15 A. [10:33:10] Yes, because the conditions he described were very severe, and he had
16 seen people die from their abuse. He had been beaten, you know, at different times
17 during the -- during the imprisonment at Bamako. And one thing to understand
18 about a torture survivor is that the threat -- once you have tortured someone and
19 shown them that you have total control over their body and their well-being, it is very
20 easy to return them to a state of fear.

21 You can come into the room with your keys. Guards do that sometimes. You can
22 come in with a weapon. You can simply remind them. And if you beat them again,
23 as happened to Mr Al Hassan I believe in the month of -- I would need to look at this.
24 I believe it's the month of November 2017, when they were beaten again, you really
25 do bring the person back into the state of "I'm in danger here."

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1 So it did not surprise me that with the conditions he was living in Bamako,
2 handcuffed for four-and-a-half months, very, very harsh cell conditions, crowded,
3 buckets for waste, people he had seen who had died, it did not surprise that that was
4 just a time of tremendous fear.

5 Q. [10:34:21] And, Dr Porterfield, when were these notes photocopied?

6 A. [10:34:27] When I left -- before I left The Netherlands after evaluating
7 Mr Al Hassan.

8 Q. [10:34:32] And did anyone add any corrections to your notes or ask you to
9 delete anything?

10 A. [10:34:39] No.

11 Q. [10:34:41] If we could turn to tab -- Defence tab 2. This is MLI-D28-0002-0435.

12 Do you recognise this document?

13 A. [10:35:08] Yes, this is my report.

14 Q. [10:35:10] If we could turn to page 0609.

15 A. [10:35:27] Yes.

16 Q. [10:35:28] Whose signature is this?

17 A. [10:35:30] That's my signature.

18 Q. [10:35:32] Did you author this report?

19 A. [10:35:36] Yes.

20 Q. [10:35:37] Did anyone else author it?

21 A. [10:35:39] No.

22 Q. [10:35:41] I'm going to go to a few questions on content. If we could go to page
23 0570.

24 Now, here you set out your diagnosis of Mr Al Hassan. What materials did you rely
25 upon to reach this diagnosis?

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1 A. [10:36:20] I diagnosed Mr Al Hassan with post-traumatic stress disorder with
2 dissociative features. I relied on the methodology I used that I spoke of earlier,
3 clinical interview, extensive interviewing, clinical observation, scientific empirical
4 data that supports the evaluation of such conditions.

5 Q. [10:36:48] And was your diagnosis consistent with the symptomology of a
6 torture survivor?

7 A. [10:36:56] Yes, it was.

8 Q. [10:36:58] Can you explain how you reached that conclusion.

9 A. [10:37:03] Well, the diagnosis is -- would be consistent with a person who
10 suffered trauma. Post-traumatic stress disorder is such a condition. It comes from
11 the exposure, is the word, to events that are life-threatening, frightening, horrifying,
12 et cetera. And it has different components to it - what we call sort of clusters of
13 symptoms - that accompany this disorder when someone has been exposed to severe
14 trauma.

15 So, Mr Al Hassan, manifest many of the symptoms of post-traumatic stress disorder,
16 which were quite consistent with what I've seen with others who've suffered the
17 things he's suffered. In other words, his symptom picture was quite consistent with
18 others who have suffered these kinds of events. And, again, that becomes a kind of a
19 clinical indicator, when you've had a lot of clinical experience looking at a kind of
20 condition. I was an oncologist looking at a kind of tumour, and I saw hundreds and
21 hundreds of people with this tumour, I would then be able to use that knowledge as a
22 support to seeing another person with such a tumour.

23 Torture is similar. It is a toxin that results in different symptoms that were quite
24 prevalent in Mr Al Hassan's presentation.

25 Q. [10:38:24] Now, did you evaluate him for other possible causes of trauma?

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1 A. [10:38:30] I asked about his history, yes, and he did have early trauma and other
2 experiences of trauma that I believed were relevant to this diagnosis.

3 Q. [10:38:39] So is it possible that the PTSD symptoms that you observed could
4 have been attributed to his early life experiences and not what he experienced in
5 Bamako?

6 A. [10:38:53] It would not really be an either/or situation. Early trauma serves as
7 what we might call kindling, you know, as in a fire, for people's later trauma.
8 Mr Al Hassan was exposed to someone being killed on a street when he was young.
9 He was a refugee. They fled his country and lived in a refugee camp. These things
10 would be early traumas that certainly predisposed him to have more difficulty were
11 he to face later traumas, which he did.

12 So it's not that you think of it as cancelling out the other. It's that the earlier or other
13 traumas make the current trauma worse in many cases. That's a very well-known
14 fact in torture, in our knowledge in the torture field.

15 Q. [10:39:47] Now, did you reach this diagnosis and these conclusions before or
16 after you reviewed the transcripts of interviews with ICC investigators?

17 A. [10:39:59] Before.

18 Q. [10:40:02] If I could turn to an aspect of your diagnosis. On page 0573, if we
19 could turn to that. And you're referring here to Mr Al Hassan describing several
20 triggers that could make him feel frightened, and you refer to the sound of guards'
21 keys and the use of handcuffs.

22 Now, are you referring here to the effects of that handcuffs and keys produced in 2019,
23 when you evaluated him?

24 A. [10:40:50] Yes. In this description, he's talking about presently. So presently
25 with the context being 2019. That these triggers, such as when he hears the guard

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1 coming down the hall and he hears the keys, send him into some states of fear. So
2 he's talking about in the present time, as I'm -- you know, at the time of my evaluation.
3 As well as handcuffing.

4 Q. [10:41:15] And in your expert opinion, if he's experiencing these triggers in 2019,
5 is it possible to reach a conclusion as to whether he would be likely to have
6 experienced them while detained in Bamako?

7 A. [10:41:32] Yes, it would be very likely that someone who's having these triggers
8 a year to two years after torture was having them previous as well. That would be
9 what we call the course, an expected course of symptoms, is that they would -- the
10 triggers would be laid down, if you will, in the context of the torture. So guards
11 become a trigger because guards had enacted his torture. So even safe guards, such
12 as here in The Hague, guards who he has positive interactions with quite frequently,
13 as I understood it, become triggering because they are carrying keys, he hears it, and
14 his body goes back into that state. So, yes, it would be usual for that to be something
15 that just emerges out of the blue, rather it comes throughout the context of the
16 post-torture experience.

17 Q. [10:42:23] And would these triggers be likely to generate stress?

18 A. [10:42:30] Triggers, it's actually a technical term, because what it does is it
19 activates the nervous system cascade that I've been speaking about. It can activate
20 the uproar reaction of hyper-arousal that I spoke of, heart racing, sweating, et cetera.
21 It can also activate that second part, as the curve goes down, shutting down that
22 flagging dissociating. So, yes, triggers, the reason that's the word is it triggers, it
23 makes happen the same reaction that happened during the torture. That's why it's
24 so uncomfortable and so destabilising for people.

25 Q. [10:43:14] Now, you've referred to the effects he's experiencing in 2019. Would

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1 these effects have been likely to have been more intense in 2017, in 2018, while
2 detained in Bamako?

3 A. [10:43:29] They would be likely to be more intense because he's in the context
4 where torture has happened. So he's not really even out yet of the place where he
5 had been -- one of the places he had been maltreated. So, yes, the symptoms would
6 be probably more destabilising, more uncomfortable, more intense, because he's in
7 the context where the torture was taking place and returning to the cell where he's
8 being permanently handcuffed, seeing the other difficult events, such as people who
9 have died, et cetera. So, yes, more intense during the period.

10 Q. [10:44:03] Now, earlier I asked about whether a layperson would be able to
11 easily visually identify the effects of hooding. What would be your conclusion about
12 the ability of a layperson to visually identify the effects of these types of triggers,
13 handcuffs, keys, et cetera?

14 A. [10:44:25] It's very difficult to recognise. Again, it's not intuitive that a person
15 who is shutting down and looking calm and looking flat is actually a person in a state
16 of physiological distress. What they look like is flat, detached, even calm. So that
17 component of the cascade is -- of the defence of cascade is really not a natural thing
18 for people to recognise who don't have the experience.

19 Someone crying, shaking, trembling, begging is more I think obviously a state of
20 distress. And so if someone's doing that, I think laypeople would know, "Oh, that
21 person's frightened." But it's the second half of that cascade that's very difficult to
22 understand.

23 Q. [10:45:17] Now, you've referred to someone being calm and flat. Would a
24 person who's experiencing this type of response be capable of laughing or making
25 jokes with their interrogators?

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1 A. [10:45:32] Yes. If they're flat, they're going to be less likely to be doing that.

2 But these are not states that are one hundred per cent at play the entire time the
3 person is being triggered. So -- so when they're flat, they're going to be flat. Flat
4 looks like not a lot of emotion, not a lot of engagement. They can also -- but people
5 can look socially, you know, normal in terms of talking and answering questions
6 when they are in states of shutdown.

7 Q. [10:46:07] Now, if we could turn to page 0584 of your report. Now, if we could
8 scroll down. You address the "Relationship between torture and interrogations for
9 Mr Al Hassan: Learned helplessness". Can you briefly describe this concept of
10 learned helplessness in layperson's terms.

11 A. [10:46:50] So learned helplessness is a cognitive description of a condition. It is
12 not a diagnosis. It is a description of a response that is seen in mammals when they
13 are under inescapable, uncontrollable threat or harm. And I say mammals because
14 much of the research on learned helplessness comes from animal models in which
15 animals are put into states of receiving shocks, or what we call aversive events, and
16 they'd start to stop fighting or they start to stop trying to escape.

17 This model has been argued as highly relevant to depression, people who are
18 depressed, as well as torture survivors. Because what we see, and I've seen it quite a
19 lot, is that survivors will stop taking action and become quite passive in the face of
20 threats to their well-being. They start to sort of not -- the term is often passive and
21 acquiescent. So passively engage in things that are harmful to them because they
22 cannot fight any longer.

23 Q. [10:48:09] Now, Dr Porterfield, are you familiar with the concept of a clean
24 team?

25 A. [10:48:17] Yes, I am.

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1 Q. [10:48:18] And what do you understand to be a clean team?

2 A. [10:48:24] The phrase "clean team" has been used in a number of contexts. In
3 the context of interrogation, it has been used to indicate a team of interrogators who
4 come to interview someone after the person has been tortured, maltreated or harmed
5 or threatened. This team is called "clean", because as opposed to those who
6 threatened and harmed, the clean team does not engage in those behaviours. So the
7 clean team is viewed as coming in after abuse and getting information from the
8 person in the post-abuse state.

9 Q. [10:49:02] Now, is this construct of learned helplessness that you referred to,
10 does that have any relevance to interviews conducted by a clean team?

11 A. [10:49:17] Yes. What experience shows us with survivors of torture is that
12 the -- a person who has become passive and unable to act, to defend themselves will
13 then in the state of a person -- sorry -- in the presence of individuals not harming
14 them will still be in this state and will still feel they cannot defend themselves. And
15 so the problem that has been raised in the idea of clean teams is that they are in fact
16 still a coercive environment, because the person who has been tortured by the
17 previous team knows that these interrogators are linked to that. They are connected.
18 They may be, as in Mr Al Hassan's case, in the same setting, literally the same
19 detention centre. And so the -- there is no real separation of the clean team as a safe
20 place, but, in fact, it is a reflection of still conditions that are coercive and frightening.

21 Q. [10:50:19] Dr Porterfield, if I can ask just a quick clarification. You've said, "The
22 same setting, literally the same detention centre." Now, if the clean team interviews
23 Mr Al Hassan in a different setting, do your conclusions still hold?

24 A. [10:50:36] That would be one very --

25 PRESIDING JUDGE MINDUA: [10:50:43](Interpretation) OTP.

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1 MS LUPING: [10:50:48] Mr President, objection, just simply because it requires the
2 witness to speculate. I have let quite a number of questions go by that are requiring
3 the witness to provide quite a speculative response. And I'd submit that this
4 question as well is highly speculative.

5 PRESIDING JUDGE MINDUA: [10:51:05](Interpretation) Counsel Taylor, what do
6 you have to say?

7 MS TAYLOR: [10:51:08] Mr President, I think, with the greatest respect, the
8 Prosecutor's simply using the entirely incorrect standard. This is an expert witness
9 who's being requested to provide an expert opinion on various factual scenarios.
10 That's what expert witnesses do. They provide their opinion. There's a clear
11 distinction between a fact witness and I -- a fact witness and an expert witness.
12 Now, in the witness's previous response, she mentioned a phrase, "The same setting,
13 literally the same detention centre." My question is a follow-up question arising
14 directly from her answer, in the sense of, "If your assumption is based on the
15 interviews happening in the same detention centre" - and I don't know if that's the
16 case, or if it's just my misunderstanding of what the witness has said - "would that
17 assumption still apply if the interviews are happening when Mr Al Hassan was taken
18 to a different environment." I do believe I have to put that question to the witness,
19 out of fairness to the witness, and I don't believe I should be obstructed from doing
20 so.

21 That's not speculation. That's me actually putting the facts to the witness and asking
22 the witness to provide her expert opinion.

23 PRESIDING JUDGE MINDUA: [10:52:34](Interpretation) OTP.

24 MS LUPING: [10:52:36] Mr President, very briefly. It's just simply the question
25 itself which builds on various scenarios is calling the witness to respond in a

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1 speculative way.

2 Now, as I've said, we've let other -- I've let other questions go which do call for the

3 witness to speculate. But on this point, I would argue that it is both so general as to

4 stretch the witness's expert opinion as to be unhelpful and speculative.

5 I would also note that the witness was simply asked if she's familiar with the term

6 "clean team". We've not seen either in the report or the testimony of this witness as

7 to the scope of her expertise also on this subject. So that's a matter that's also unclear,

8 as to the scope of her ability to provide an expert opinion on this very topic.

9 PRESIDING JUDGE MINDUA: [10:53:30](Interpretation) Madam Prosecutor, I think

10 Counsel Taylor is right. She is an expert witness, and Ms -- Counsel Taylor asked

11 her a question on her domain of expertise. It's a general question. "Now, in the

12 same environment, what about the new clean team?" So I think we can accept the

13 question.

14 Counsel Taylor, please proceed.

15 MS TAYLOR: [10:53:56] Thank you, Mr President.

16 Q. [10:53:58] Now, you've referred to connections that might make learned

17 helplessness as a construct relevant to interviews conducted by a clean team. And in

18 your previous response, you mentioned being in the same environment.

19 Now, if Al Hassan had been taken out to a different location to be interviewed, would

20 your conclusions still apply, and what connections would be relevant to your

21 conclusion?

22 A. [10:54:29] The environment of where the torture took place certainly matters to

23 the physiological state and psychological state of the survivor. Moving them from

24 one state to -- one place to another is a variable then that would -- that matters in

25 terms of how the person's going to respond. So if they are moved in a way that is

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1 threatening, hooding, put in the trunks of car - I'm using examples from

2 Mr Al Hassan to link this - then those connections are going to still be quite strong
3 between the torture and the new -- if there is a new location.

4 In general, what I would like to say is this: There are -- the imprint of torture is a
5 very powerful pervasive, pernicious imprint, especially if the torture is severe. So to
6 mitigate it by changing the person's -- to mitigate it in another interrogation, there
7 needs to be a lot done, right, to try to stop the person from being in the throes of the
8 torture response. So they need treatment. They need rehabilitation. They need
9 safety. They need a lot of factors to mitigate that imprint.

10 So when I said that about being in the location, absolutely, being in the same location,
11 as he was on several occasions of interrogation, would really enhance that feeling of
12 unsafety.

13 A clean team in a different location could be slightly less evocative of torture,
14 certainly, but there are still many connections that would need to be mitigated or
15 rehabilitated for the survivor to be able to be in a state of what I would say health or
16 well-being during that interrogation.

17 Q. [10:56:15] And if Mr Al Hassan were to be brought to and from the same
18 location where he has been tortured, is that a relevant connecting factor? So if, for
19 example, at the end of each interview, he's brought back to the detention cells where
20 he was tortured.

21 A. [10:56:34] Yes. As I said, the imprint can be -- it's linked to many triggers, right,
22 so the guards, going back to the location. An example I will reference from my
23 report is that guards from the location where he was being tortured and had been
24 tortured stepped into his interrogation meetings at times. This may seem like an
25 unimportant detail, but it is -- for a survivor of torture, it is a reminder of the

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1 ownership over him, if you will, the custodial ownership that is possessed by these
2 guards that who are now stepping into this interrogation.

3 So, yes, you're looking for the number of threads that will tie the person back to the
4 experience of torture. And, unfortunately, for a survivor of severe torture, there's a
5 lot of threads.

6 Q. [10:57:23] If we could turn to page 0585 of your report, footnote 6. You cite an
7 article by Basoglu and Mineka on "The role of uncontrollable and unpredictable stress
8 in post-traumatic response in torture survivors". And you cited in support of the
9 sentence: "Learned helplessness resulting in a state of passive acquiescence in which
10 the torture victim stops trying to fight against his captors and may actually agree to
11 false statements and to conditions that he does not want because he fears -- and
12 actually expects -- further harm."

13 Now, you're linking this article on uncontrollable and unpredictable stress to a
14 conclusion concerning learned helplessness. So could you please explain to the
15 Court what the linkage is between learned helplessness and uncontrollable and
16 unpredictable stress.

17 A. [10:58:49] Yes. As I said a bit earlier, I think, when the organism, you know, a
18 mammal - essentially, humans, we are mammals - is put into conditions where they
19 cannot know what is coming next - that's unpredictable - or control and stop what is
20 happening to them - uncontrollable - the mammal develops what we call defensive
21 reactions to this condition. They adapt.

22 So, as we know, animal models show us that fight or flight only lasts so long, and it
23 becomes replaced ultimately, when the person really cannot escape, or when the
24 mammal cannot escape, it becomes replaced by states of passivity, submission, flag,
25 as I said, faint dissociation. In other words, the -- and learned helplessness is one of

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1 these qualities. It's why a condition, not a diagnosis. The quality is, "There is no
2 more acting I can do to stop this from happening to me. I've become passive."
3 So it is actually a defensive, what we call adaptive response. It's just that it is very
4 disturbing because the person stops being able to prevent themselves from being
5 harmed.

6 MS TAYLOR: [11:00:12] Mr President, I see it's 11 o'clock. Now is a suitable time to
7 have a break.

8 PRESIDING JUDGE MINDUA: [11:00:20](Interpretation) Absolutely, Counsel
9 Taylor.

10 It's 11 o'clock. We're going to suspend the session for half an hour, and we shall
11 resume at 11.30. Thank you.

12 The session is suspended.

13 THE COURT USHER: [11:00:33](Interpretation) All rise.

14 (Recess taken at 11.00 a.m.)

15 (Upon resuming in open session at 11.33 a.m.)

16 THE COURT USHER: [11:33:58] All rise.

17 Please be seated.

18 PRESIDING JUDGE MINDUA: [11:34:20](Interpretation) The hearing is resumed.

19 I realise that Mr Al Hassan is not present in the room. I think it is consistent with the
20 request made by the Defence.

21 So Mr Al Hassan has waived his right to be present for the continuation of the
22 testimony of the expert; is that correct, Ms Taylor?

23 MS TAYLOR: [11:34:54] Yes, it is, Mr President. Thank you very much for
24 accepting his request.

25 PRESIDING JUDGE MINDUA: [11:35:01](Interpretation) Obviously, a written

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1 document will be in the record, I assume.

2 So the floor has the -- the Defence has the floor for the continuation of the direct
3 examination.

4 Ms Taylor.

5 MS TAYLOR: [11:35:23] Thank you, Mr President.

6 Q. [11:35:26] Just following on from my last question, Dr Porterfield, is it correct
7 that learned helplessness is a condition that can be generated by instances of
8 unpredictable or uncontrollable stress?

9 A. [11:35:44] Yes, that would be an accurate characterisation.

10 Q. [11:35:49] Now, could you please turn to tab 9 of your binder. That's
11 MLI-D28-0003-1696. And if we turn specifically to page 1703.

12 A. [11:36:27] I apologise. Did you say tab 9?

13 Q. [11:36:34] 114. 114. I apologise.

14 A. [11:36:47] That's 8?

15 Q. [11:36:48] Tab 114.

16 A. [11:36:49] Oh, tab 114. I -- okay.

17 Q. [11:36:50] It should be also on the screen.

18 A. [11:36:52] Great.

19 Q. [11:36:53] And we're looking specifically at page 1703, so if that could be put on
20 the screen. I imagine it might need to be inverted to be horizontal, if that's possible.

21 A. [11:37:21] Yes.

22 Q. [11:37:23] Do you recognise this article?

23 A. [11:37:25] I do.

24 Q. [11:37:27] Is this the article cited in your report?

25 A. [11:37:30] Yes, it is.

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1 Q. [11:37:31] Now, the authors are listed as Metin Basoglu and Susan Mineka.

2 Are these individuals considered to be experts in the field of uncontrollable and
3 unpredictable stress in torture survivors?

4 A. [11:37:48] Yes, they are recognised as experts in torture. So research regarding
5 torture, clinical care evaluation, and so this article concerns their analysis of the
6 concept of uncontrollable and unpredictable stress in relation to torture. And that is
7 something they are widely known as experts in.

8 Q. [11:38:12] If we could turn to page 1712. If we could bring that up.

9 And if you have any difficulties reading, we do have a better version of this article.

10 A. [11:38:32] Yes.

11 Q. [11:38:32] If we could look at the last paragraph. Do you see a paragraph
12 starting with "... isolation during the period of detention constitutes a major source of
13 stress for the detainee"?

14 A. [11:38:50] I'm sorry, again. Could you say the page. I see it on the screen, but
15 it's easier in front of me.

16 Q. [11:38:56] 1712 is the MLI reference.

17 A. [11:38:59] And the paragraph begins?

18 Q. [11:39:01] "Isolation during the period of detention constitutes a major source of
19 stress for the detainee."

20 The paragraph actually starts with, "After arrest, the detainee is often kept in
21 complete isolation from other prisoners in the outside world." It's the last paragraph
22 on the right-hand column.

23 A. [11:39:25] I see, yes.

24 Q. [11:39:27] And then this paragraph continues on to the following page, which is
25 1713.

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1 A. [11:39:38] Yes.

2 Q. [11:39:39] And it ends with the sentence, "Isolation thus deprives the detainee of
3 such safety signals and may intensify feelings of helplessness."

4 A. [11:39:52] Yes, I see.

5 Q. [11:39:54] Have you read this paragraph before?

6 A. [11:39:57] I have.

7 Q. [11:39:58] And do you agree with the observation on this page?

8 A. [11:40:05] Yes. The authors are speaking about safety signals, which are ways
9 that a person learns from the environment that they are not going to be harmed.

10 And, yes, I'm knowledgeable about this concept and this part of the article.

11 Q. [11:40:25] Do you agree with what the article writes about isolation constituting
12 a major source of stress for the detainee?

13 A. [11:40:36] Yes. This is a widely known, studied, proven fact, that isolation
14 enhances other mental health problems such as post-traumatic problems. So, yes,
15 isolation is a very known exacerbator of post-traumatic problems or symptoms.

16 Q. [11:40:56] And what do the authors refer to when they use the term "isolation"?

17 A. [11:41:04] They are speaking about individuals held in conditions where they do
18 not have access to the outside world, to family members, to others who can provide
19 them with support, information, et cetera.

20 Q. [11:41:29] Now, in terms of the level or type of stress generated by isolation,
21 would a detainee's ability to predict or control contacts with the outside world impact
22 on the degree or type of stress that they experience in detention or during
23 interrogations?

24 A. [11:41:49] I'm sorry, can you ask that again.

25 Q. [11:41:51] Okay. We were talking about the stress caused by isolation and

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1 contacts with the outside world. Would a detainee's ability to predict or control

2 contacts with the outside world impact on the degree of stress that they experience?

3 A. [11:42:14] Yes. The premise is that increased lack of ability to predict, so lack of

4 ability to predict, as well as lack of ability to control one's environment, are like

5 pouring gasoline on the trauma survivor's environment because they are unable to

6 anticipate or enact anything that will protect themselves or anticipate what is coming.

7 So the idea is, yes, that these kinds of conditions worsen the functioning of a torture

8 survivor.

9 Q. [11:42:57] And would this stress also come into play if a detainee has an

10 unanticipated or unpredicted contact, that is, if he's brought to an interview he

11 doesn't know about or hasn't predicted?

12 A. [11:43:12] Yes. That's the definition of an unpredictable environment, is you

13 don't know what is coming, and that is quite characteristic of environments where

14 there is torture. It is actually a method of enhancing the effects of torture that is

15 often used, is to keep the person in a state of not knowing. So if they are taken

16 places, they don't know where they're going or who will be there.

17 And for Mr Al Hassan, for example, this was a very, very anxiety-provoking part of

18 his imprisonment, because at times he would not know where he was being taken,

19 and where he would go in his mind - and this is, by the way, a cognitive

20 symptom - his mind, where he would go is, "I'm going to be killed."

21 Now, that was not accurate, but that is what we talk about when we talk about one of

22 the components of torture sequela or torture consequence, is the person expects

23 further pain.

24 So unpredictability then really enhances that feeling of something bad is going to be

25 on the other side of this.

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1 Q. [11:44:30] And could this type of stress that you describe, could this impact on
2 the manner in which the detainee responds to the interrogators?

3 A. [11:44:39] Yes. Because the person is going to potentially have a stress reaction,
4 which I have described before, the fear cascade. As that is triggered and they are put
5 in front of other people, interrogators, they are going to be reacting within those
6 symptoms and within that frame of fear.

7 The idea is that the fear reaction has not been extinguished. What we call in
8 psychology the extinguishing of a response means you get that response to go down
9 or go away. With torture, you cannot extinguish the response to the torture reaction.
10 You cannot extinguish the torture reaction in these kinds of conditions where you are
11 repeating conditions of confinement that are triggering back -- sorry -- that trigger the
12 person back to the experience of torture. So you cannot extinguish the fear response.

13 Q. [11:45:55] So focusing still on this area of uncontrollable or predictable stress, if
14 an interrogator were to say to a detainee, "If you don't want to speak to us, we will
15 leave, and we don't know if and when we will return," could this lack of certainty
16 generate stress?

17 A. [11:46:21] The statement said would be what, again? Could you please repeat
18 it.

19 Q. [11:46:25] "If you don't want to speak to us, we will leave. You will return to
20 yourself, and we don't know if and when we will return to you." Could this lack of
21 certainty generate stress?

22 A. [11:46:42] Certainly, it's possible. And in this context, it is a -- for Mr Al Hassan,
23 that kind of statement would be an indicator that he's going to lose contact with
24 people if he does not cooperate with them. And so that -- that can be an anxiety
25 increase for him because he's going to lose contact, but all -- which potentially means

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1 contact with the outside world, and he's going to be returned to the place where he
2 knows he has no contact and where he is, in his own words, capable of being tortured
3 at any time. So it has a -- it's a double meaning there that would enhance stress.

4 Q. [11:47:32] If we could turn to page 1713 of the same article. If we could bring
5 that on the screen. The last paragraph in the second column discusses the use of
6 blindfolding. And the authors write: "Blindfolding is highly aversive even when
7 not combined with other forms of torture. Loss of visual monitoring of the
8 environment distinctly intensifies feelings of helplessness and introduces a significant
9 element of unpredictability regarding imminent aversive events."

10 Dr Porterfield, do you agree with this opinion?

11 A. [11:48:22] Yes, I do. Certainly, blindfolding - the word here is potentiates - also
12 strengthens, worsens the effects of maltreatment and torture.

13 Q. [11:48:38] Now, this is discussing the use of blindfold during torture and also
14 the use of blindfold when torture doesn't happen.

15 Now, if we focus on that second scenario, someone being blindfolded even when they
16 haven't -- aren't being actually tortured, is the fact that they've been blindfolded
17 during previous acts of torture relevant to how they experience blindfolding in that
18 second scenario when they're not actually being tortured?

19 A. [11:49:10] Certainly, blindfolding, once it has been used in torture, becomes, as
20 we talked about earlier, a potential trigger. So, literally, the experience of having the
21 blindfold put on and then tortured and then later having a blindfold put on again, can
22 introduce in the subject's body that fear cascade. So it can trigger them to go into
23 states of fear.

24 So, in that sense, blindfolding, just in and of itself, can be a trigger. But unlike the
25 guards' keys, blindfolding has another physical effect on the person, which is, it stops

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1 him from being able to take in his environment. So by doing -- so it has its own way
2 that it, therefore, strengthens, potentiates that fear reaction, because they can't see
3 what's happening, and they don't know what is going to be done to them next.
4 So it's two ways that blindfolding can do that -- I'm sorry, there's a third, a third effect,
5 is that blindfolding is a signal to a torture survivor that you don't know who is doing
6 this to you, which means that person may be impervious to consequences and to you
7 ever being able to identify them or have accountability because you cannot identify
8 this person. So are there are three ways it potentially worsens the survivor's -- the
9 torture victim's experience.

10 Q. [11:51:05] Now, Dr Porterfield, if a detainee has been subjected to multiple stress
11 events over the course of several months, would all that came before the last stress
12 event impact the manner in which the person reacts to the last stress event?

13 A. [11:51:30] I think the answer that's relevant to your question is that, yes, stress
14 has cumulative effects on the human organism. So we know - and this is very well
15 studied - that any stressors build on one another and worsen them, the stress,
16 response. So a recent stressor, a new stressor to a person, may activate physiological
17 responses that came due to those early stressors as well. I'm not sure if that
18 answered your question.

19 Q. [11:52:16] Sorry. If we have, for example, an initial severe stress event and then
20 we have at the end of a period of months a lighter stress event, should we take into
21 account the earlier stress event in assessing what the person's experiencing during
22 that lighter stress event?

23 A. [11:52:34] Certainly, because that's the -- the point is that they may be in the
24 state of biopsychosocial symptoms from the early heavy stress. And these lighter,
25 quicker, less severe stresses are activating those reactions. That's the problem with

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1 post-traumatic stress, is it gets activated over and over again.

2 Q. [11:53:01] Now, is this the case even if the source or author of the stress event is
3 different?

4 A. [11:53:08] Certainly. The trigger can come from a different person, a different
5 situation.

6 Q. [11:53:15] Now, based on your evaluation of Mr Al Hassan and the materials
7 provided to you, did you conclude that Al Hassan had experienced uncontrollable or
8 unpredictable stress while detained in Bamako?

9 A. [11:53:31] Yes, that would be my conclusion.

10 Q. [11:53:34] And did this also include while he was being interviewed by ICC
11 investigators in a separate location while he was detained in Bamako?

12 A. [11:53:48] Yes, is -- can you repeat the question of what you're asking. Whether
13 it was simultaneous?

14 Q. [11:53:53] Did your opinion that he experienced uncontrollable and/or
15 unpredictable stress include the occasions when he was interviewed by ICC
16 investigators in a separate building while he was detained in the same detention
17 facility in Bamako?

18 A. [11:54:17] Yes. I would say that, during those interrogations and that time
19 period, he was under unpredictable and uncontrollable stress, and so interrogations
20 were another source of that kind of stress. You have to remember, he was having
21 multiple kinds of interrogations at the same time. You know, meaning the same
22 period of time, multiple teams. So all of those interrogations are potential sources of
23 stress. This brings us back to why torture is so devastating, because the person
24 internalises in their body that interrogators, questioners, people who have me in their
25 custody, are going to continue to harm me, and they are continuing to harm me.

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1 Q. [11:55:13] If we can go back to your report. That's Defence tab 2. It's

2 MLI-D28-0002-0535. And if we can turn to page 0585.

3 You write that learned helplessness -- I'll wait for you to get the page.

4 A. [11:55:55] I'm ready.

5 Q. [11:55:55] I think if we can scroll down a bit on the -- the Registry. A bit more.

6 You write in this last paragraph that: "Learned helplessness results in a state of

7 passive acquiescence [...] torture victim stops trying to fight against his captors and

8 may actually agree to false statements and to conditions that he does not want

9 because he fears -- and actually expects -- further harm."

10 Now, in your professional opinion, would the type of stress that Al Hassan was

11 exposed to during his detention and during his interviews with ICC investigators

12 have impacted on his responses to ICC investigators?

13 A. [11:56:55] Yes, that's my opinion. Because during that period, he is saying that

14 he is at fear for his life, potentially will be tortured again, and is in fact beaten and has

15 guns trained on his cell. So his attempts that he does make are not met with relief,

16 which would, as we say, reinforce learned helplessness.

17 Q. [11:57:35] Now, in your report you say that learned helplessness could result in

18 a situation where the person actually agrees to false statements. Does this

19 conclusion apply to the type of stress you identified in connection with

20 Mr Al Hassan?

21 A. [11:57:55] Yes. That's the nature of learned helplessness, is that one is not

22 stopping things from happening to you. Agreeing to false statements is something

23 well known to be a by-product of torture. It's why torture is outlawed by

24 international legal bodies and law enforcement organisations, not simply on a moral

25 reason, but because it creates false information and potentially tangles the ability of

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1 fact-finders to get accurate information. So this is why torture survivors' statements
2 are so problematic, because they are tangled in a state of often symptomatology and
3 helplessness that has resulted in them not being able to be accurate or forthcoming
4 and impaired in their ability to communicate.

5 Q. [11:59:09] Now, in this last sentence, you state, and it goes over to the next page,
6 you will review data from Al Hassan's interviews with ICC investigators to illustrate
7 how the dynamic of learned helplessness was inculcated further by the lack of
8 responsiveness to Mr Al Hassan's reports of maltreatment.

9 Now, I'd just like to focus on this word "further". Had you already assessed or
10 concluded that Al Hassan had experienced this condition of learned helplessness
11 before you reviewed the transcripts of the interviews with ICC investigators?

12 A. [12:00:09] I'm not sure what the question is regarding the word "further". I
13 apologise.

14 Q. [12:00:16] I'll make it more open. In the first part of your report, you have a
15 diagnosis which refers to various conditions that Mr Al Hassan had experienced, and
16 then in the second part of your report, you analyse various transcripts.

17 So my question is: Based on your interviews with Mr Al Hassan and your review of
18 his medical records, did these present a portrait of someone who had experienced
19 events of uncontrollable or unpredictable stress?

20 A. [12:00:53] Yes. The data from Mr Al Hassan's interviews confirmed what his
21 report and medical records indicated, which was that he had severe consequences
22 from torture, and these were manifesting in his way of interacting with people.
23 So, yes, the interviews further confirmed what I concluded from my evaluation of
24 him, which was that he was suffering from serious consequences, including learned
25 helplessness.

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1 Q. [12:01:40] Now, during the preparation session with the Defence, did you
2 receive -- or beforehand, did you receive additional extracts from the transcripts of
3 Mr Al Hassan's interviews with the Prosecution?

4 A. [12:01:57] Yes, I did.

5 Q. [12:02:00] And did you review these extracts?

6 A. [12:02:04] Yes, I did.

7 Q. [12:02:06] Did these extracts affect your evaluation of Mr Al Hassan and your
8 conclusion that he had experienced the condition of learned helplessness while
9 detained in Bamako?

10 A. [12:02:24] They did not change my conclusion.

11 Q. [12:02:28] Can you explain why not.

12 A. [12:02:32] The additional material I received provided a lot more content around
13 the interrogations. I saw that the interrogators had many times referenced
14 Mr Al Hassan's right to not incriminate, as well as to not talk about topics, so I was
15 able to see things that were in the transcript showing the interrogators utilising those
16 methods.

17 However, those methods of -- sorry -- those statements made by the interrogators,
18 that Mr Al Hassan is -- is free to not talk about certain things and that his well-being
19 matters to them, the problem is, those are still as embedded in other things that are
20 happening in the interview, such as him saying, "I'm afraid I'm going to be killed."
21 So the problem is, while the statements may reflect, you know, an explicit statement,
22 "You have a right to not speak. Your well-being matters," the de facto occurrence is
23 that the statements he's making, that he's in danger, that he's been beaten, that he can
24 be tortured, are being just -- well, I should say, there's no action being taken about
25 them, and in fact, he's being told, "There is nothing we can do about that."

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1 So the problem is, that really would not extinguish learned helplessness. That
2 would enhance learned helplessness, because the person's learning, these people I'm
3 speaking with are saying one thing, but they're -- you know, that this is voluntary, but
4 they're ignoring the other facts that I'm telling them, such as, "I'm afraid I'll be killed,
5 and I'm still in a regime of torture."

6 Q. [12:04:44] Now, is it possible to counteract or alleviate the psychological effects
7 of unpredictable or uncontrollable stress that is experienced by someone who is in
8 detention and being interrogated?

9 A. [12:05:03] Well, there are certainly ways you could mitigate that condition,
10 certainly.

11 Q. [12:05:10] And how could it have been mitigated or counteracted in
12 Mr Al Hassan's case?

13 A. [12:05:18] Well, in my experience over many years of working with torture
14 survivors who are detained, as well as no longer detained, if you have people still
15 held in the place where they were tortured and the people who harmed them are still
16 their custodians, that is -- it's very difficult for that person to be relieved of their
17 symptoms of post-traumatic stress and of learned helplessness.

18 If the person is continuing to be harmed by their custodians, it is very difficult to
19 relieve the conditions of post-traumatic stress and learned helplessness.

20 If authorities who witnessed and were part of the torture are transporting someone, it
21 is very difficult to then mitigate or decrease the conditions of post-traumatic stress of
22 learned helplessness.

23 So these things can be mitigated, but they require, you know, changes in conditions,
24 changes in custodial behaviour, the eradication of threats against people's lives and
25 beating of them. So these things would have to be removed, otherwise the

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1 symptoms, the effects are going to remain in place.

2 Q. [12:06:52] I apologise if you have already answered this, but just to be clear,
3 based on your review of both the new extracts and the old extracts, are you in a
4 position to give an opinion as to whether the steps taken by the ICC Prosecution, that
5 is, reading out his rights, having a lawyer present, informing him that the interview is
6 voluntary, were the steps taken reflected in these transcripts sufficient to counteract
7 the effects of unpredictable or uncontrollable stress during these interviews?

8 A. [12:07:27] I do not believe they were sufficient to mitigate or remove the
9 conditions of unpredictable, uncontrollable stress, and Mr Al Hassan's psychological
10 and physical responses to that stress. So, no, I do not believe they were adequate,
11 those statements were adequate to do that.

12 Q. [12:07:55] And, again, just to be comprehensive, why is that?

13 A. [12:08:01] Because Mr Al Hassan was in the custody and situation in which he
14 had been severely maltreated, tortured, threatened, and was continuing to suffering
15 those things, and he was then meeting with people who were saying, "This is
16 voluntary. You have your rights," there is a -- this is a contradiction. Right?
17 There is a -- what is being said is not matching what is happening, which is that he is
18 living still in a regime of abuse, maltreatment and torture.

19 So that cannot be mitigated by simply statements being made, when, in fact, the
20 captain is still transporting him, who stepped on his chest during his first day and
21 said, "You're a dog and the offspring of a" -- of some kind of swear - I'm sorry - some
22 kind of curse, curse word, when he's still being beaten and when guns have been
23 aimed on his cell and when other detainees have reported very severe torture taking
24 place in something called room 6.

25 All of these conditions overpower, for a torture survivor, words to the effect of,

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1 "You're free to do what you want. You have rights here. You know, we care about
2 your well-being." Those are overpowered by those conditions.

3 Q. [12:09:42] Now, earlier we talked about contacts with the outside world and the
4 ability of the detainee to control or predict those contacts. Would your conclusion
5 on that point also apply to the ability of the detainee to control or predict contacts
6 with a lawyer?

7 And just to be clear, the scenario is if a detainee can't call a lawyer when they want to,
8 if they can only speak to them in the framework of specific interrogation sessions, is
9 that relevant to the stress they experience?

10 A. [12:10:23] The lawyer being present in the interrogation that is essentially
11 ignoring Mr Al Hassan's statements of being tortured and being -- sorry -- being
12 afraid of torture and being afraid he'll be killed, the presence of someone representing
13 him as a lawyer there who is then not acting I think would simply further the
14 dynamic that is at play in this group, which is, things are said, but there is nothing
15 done to change the circumstance of him being at risk in an environment where people
16 are abusing him, abusing others and some have been killed.

17 Q. [12:11:09] Now, you've referred to the lawyer that is there not acting. Now,
18 would the fact that the lawyer doesn't have the legal mandate to act in connection
19 with the legality of his detention or the Malian procedures, would that be relevant to
20 issues of stress?

21 PRESIDING JUDGE MINDUA: [12:11:35](Interpretation) Madam Prosecutor.

22 MS LUPING: [12:11:38] Objection. Mr President, I fail to see how this falls within
23 this expert's ability to provide an expert opinion on this. This is, in fact, going
24 beyond, and this would be a matter that's for the assessment of the Chamber.

25 PRESIDING JUDGE MINDUA: [12:11:50](Interpretation) Counsel Taylor.

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1 MS TAYLOR: [12:11:56] Mr President, I'm not discussing a legal issue. I'm
2 discussing a psychological consequence, which is uncontrollable and/or unpredictable
3 stress. My question was very much directed to whether -- it's directed to this issue
4 of what steps were necessary to ameliorate, to alleviate, to eliminate causes of
5 unpredictable or uncontrollable stress. And the witness has mentioned in her
6 response already that his inability to change his environment, his inability to address
7 the source of harm is relevant. This flows directly from that in the sense of, is the
8 fact that the lawyer does not have the mandate to address the source of harm, to
9 address his environment at the location where he's detained, is that relevant to the
10 stress he would have experienced.

11 I can move on, but I do believe it's relevant, because it goes directly to his
12 psychological state and whether a lawyer is capable of ameliorating psychological
13 stress.

14 PRESIDING JUDGE MINDUA: [12:13:13](Interpretation) Madam Prosecutor, would
15 you like to add something?

16 MS LUPING: [12:13:16] Simply to ask that Defence counsel then reformulates the
17 question. Because the way it's currently formulated, it does come across as if this is
18 pleading, it's providing evidence, and it's speculating as to what the actual situation
19 was. So the witness is being provided a hypothesis, that we would disagree with,
20 and is being asked to provide an opinion on this. It is not simply a question of
21 asking what a stressor is in this situation and her expert opinion on it, but it's putting
22 forward a hypothesis that is not actually helpful to the Chamber. It's not accurate
23 either.

24 PRESIDING JUDGE MINDUA: [12:13:57](Interpretation) Right. Counsel Taylor,
25 obviously, we've got the expert here. If the questions on the expertise is okay, but if

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1 you have an assumption that you want to get it validated, I don't agree. So please do
2 reformulate the question and proceed.

3 MS TAYLOR: [12:14:17] Thank you very much, Mr President. And I will ask for
4 references from the Prosecution later.

5 Q. [12:14:23] Dr Porterfield, in your expert opinion, talking about specifically the
6 type of conditions that would alleviate, that would mitigate or eliminate the sources
7 of uncontrollable or unpredictable stress experienced by Mr Al Hassan, would any
8 limitations on the ability of a lawyer to address those sources be relevant?

9 A. [12:15:02] I think the best way to answer is to say that, if a torture victim is in an
10 environment of ongoing stress, maltreatment, potential torture, it would enhance
11 their state of learned helplessness and potentially symptoms, if the people that that
12 speaks to cannot act or will not act to help them. So, you know, whether help is
13 change the environment, report this, do something.

14 So, yes, if you are -- if you have been tortured, you're in an environment in which that
15 has taken place and you speak to whomever, a doctor, a lawyer, a guard, a captain
16 and say, "I'm afraid I'm going to be killed," and then you're not able to -- and the
17 person says, "I cannot help you with that," then, yes, you're going to have more sense
18 of learned helplessness, potentially more post-traumatic symptoms and more sense
19 that the environment cannot be controlled.

20 Q. [12:16:20] Now, Dr Porterfield, I've mentioned the medical and psychological
21 reports from the -- that you were given. Were the psychological reports from the
22 ICC detention unit relevant to your evaluation?

23 A. [12:16:36] Yes, they were helpful.

24 Q. [12:16:39] Can you explain what you mean when you say they were helpful.

25 A. [12:16:44] As a mental health professional, it is helpful when you can see

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1 opinions of someone else who has seen a subject that you're examining. And the
2 ICC detention centre's mental health staff did, I thought, a very good job attempting
3 to assess Mr Al Hassan and provide him care.
4 I have written previously, there were some things that they did that I thought were
5 not indicated, but they were giving opinions about him that in real-time
6 demonstrated to me validation of his post-traumatic symptoms.

7 Q. [12:17:32] If we could turn to Defence tab 112. It's MLI-D28-0003-2194.

8 A. [12:18:02] Yes.

9 Q. [12:18:05] Dr Porterfield, have you seen this document before?

10 A. [12:18:09] Yes, I have.

11 Q. [12:18:10] And have you read the contents of this document?

12 A. [12:18:14] Yes, I have.

13 Q. [12:18:16] And did the contents impact on your assessment and conclusions in
14 your report?

15 A. [12:18:24] They did not change them, no.

16 Q. [12:18:26] And why is that?

17 A. [12:18:30] They were confirmatory of Mr Al Hassan's treatment here by medical
18 and their opinions and documentation of his care, and they were consistent.

19 Q. [12:18:55] Now, during the preparation session, did the Defence draw your
20 attention to translation errors that had been identified by the Prosecution and set out
21 in a table in each interview transcript?

22 A. [12:19:09] Yes.

23 Q. [12:19:09] And did you review these errors during the preparation session?

24 A. [12:19:14] I reviewed them. I did, yes.

25 Q. [12:19:17] And I'll just bring up a document. It's Defence tab 122.

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1 Now, before asking you a specific question about this document, do you recall what
2 methodology was used to go through these errors?

3 I don't -- if you could put it on the screen, Defence tab 122.

4 A. [12:19:57] The methodology used with me to demonstrate these to me?

5 Q. [12:20:01] What methodology was followed to go through the different errors
6 during the preparation session?

7 A. [12:20:07] An individual recounted each area that had been identified as an error
8 in translation, and the person spoke both French and Arabic, as well as English, and
9 she explained then the errors in interpretation or translation, translation.

10 Q. [12:20:29] Okay. Now, if we could scroll backwards on this document, we can
11 see a little asterisk next to number 4.

12 A. [12:20:45] Yes.

13 Q. [12:20:45] Do you -- do you know what this asterisk denotes or this star denotes?

14 A. [12:20:55] I believe that I noted and said these are ones that I would -- that seems
15 substantive to me. In other words, these were errors that seemed important to
16 make -- to make sure we were aware of.

17 Q. [12:21:15] Now, if we could turn to Defence tab 127. It's MLI-D28-0006-4809.

18 A. [12:21:38] Yes.

19 Q. [12:21:39] Have you seen this document before?

20 A. [12:21:43] Yes. This was provided to me last night.

21 Q. [12:21:45] And have you had time to review this document?

22 A. [12:21:48] I did.

23 Q. [12:21:50] And have you reviewed the sections highlighted in yellow,
24 specifically?

25 A. [12:21:55] Just a moment.

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1 Yes, I did.

2 Q. [12:22:04] Now, in these sections, you would have seen that the words spoken
3 by the interpreter are different than the words that the interpreter should have said.

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

5 Q. [12:22:16] That is, sometimes when an interviewer said something, he either
6 omitted it or said something slightly different.

7 Now, having reviewed this document, do the errors made by the
8 Prosecution -- sorry -- by the interpreter, do any of the errors impact on your
9 evaluation of these exchanges?

10 A. [12:22:40] I would say -- you know, I've been thinking about this a great deal
11 since this was provided to me. I think there are some unfortunate errors here that
12 have to do with language around consent. There are -- some of these errors I think
13 are insubstantial. There were a couple that I thought were somewhat noteworthy
14 that had to do with whether the interpreter correctly informed Mr Al Hassan about
15 something that he's completely free to do or has chosen to do. So there was -- I
16 thought that was unfortunate, that in a few of these, that was the tone.
17 I also have to say, I understand this is many, many hours of time spent, so I think
18 these errors do happen. But a few were I thought notable in that they decreased his
19 access to language around consent.

20 Q. [12:23:37] Just to be clear, can you explain what you mean by "unfortunate".

21 A. [12:23:42] Yeah. I mean, they were -- a few of these errors were such that I
22 thought that what was absent in what was translated to Mr Al Hassan was language
23 around him having consent or freedom to do something or not. And so when I said
24 "unfortunate", I meant unfortunate in that, you know, it was not a clear statement of
25 what had been intended, which was that he, you know -- this person wanted to say

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1 the word -- for instance, on, I think it's page 1272 or number 1272, number 10, "You
2 are completely free" was just cut from the interpretation.

3 Q. [12:24:31] So when you say number 1272, is this page 14?

4 A. [12:24:37] On my document --

5 Q. [12:24:44] Is this page 4822 at the bottom?

6 A. [12:24:56] Yes.

7 Q. [12:24:56] Are you referring to the example at the top, which is under page 1272?

8 A. [12:25:03] Yes.

9 Q. [12:25:03] And were there any other examples that you considered to be
10 noteworthy?

11 A. [12:25:15] Number 6, which would be -- the documentation here says page 1376,
12 it's December 6, and ...

13 Q. [12:25:40] I believe that's page 4815 at the bottom; is that correct?

14 A. [12:25:45] Yes. There's a miscommunication there or misinterpretation, which
15 is, "Do you have anything to report regarding detention conditions" was the intended
16 sentence, and instead, the sentence says "regarding your arrest". This is also I think a
17 confusion that would result in a different kind of response from a person. An arrest
18 is a very specific event versus being asked about detention conditions, which by this
19 point, in December, Mr Al Hassan has made quite clear are really problematic
20 conditions. So, again, it is to me a misinterpretation that decreases his ability to
21 express what's happening in his detention, because it's not what's said to him.

22 Q. [12:26:36] And would these errors still be relevant if the -- if Mr Al Hassan can
23 understand some level of French?

24 A. [12:26:45] I don't know enough about his level of language experience to know
25 how to answer that.

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1 Q. [12:26:51] Did any of these errors impact on the evaluations and
2 recommendations set out in your report?

3 A. [12:27:02] They do not change anything about my conclusions.

4 Q. [12:27:09] Has anything that you've reviewed since you concluded your report
5 impacted on the evaluations or conclusions set out in your report?

6 A. [12:27:21] Nothing has changed my conclusions, no.

7 Q. [12:27:26] Just going back to your report again. Defence tab 2. Turning to
8 page 0569.

9 A. [12:27:50] Yes.

10 Q. [12:27:52] Now, on this page, you note that you received a report prepared by
11 Dr Juliet Cohen based on her examination that took place on 2 or 3 January 2020.
12 Why did you review Dr Cohen's report?

13 A. [12:28:10] I was -- there's nothing on my screen, by the way. Just in case it
14 matters. I have the report, but -- should I continue?

15 I understood that Dr Cohen had conducted a medical evaluation of Mr Al Hassan,
16 and I believed that would be useful to my evaluation. As I said earlier, collateral
17 data, as well as expert -- other experts' opinions can be helpful. So I believed that
18 would be important for me to see.

19 Q. [12:28:50] And did you change any conclusions or descriptions of your
20 evaluation of Mr Al Hassan after reading this report?

21 A. [12:28:59] I did not.

22 Q. [12:29:01] Now, did anyone from the Defence ask you to change any of the
23 contents of your report or any of your evaluations or conclusions?

24 A. [12:29:10] No.

25 Q. [12:29:11] I would just like to bring up Defence tab 3. It's MLI-D28-0003-1881.

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1 THE COURT OFFICER: [12:29:29] Apologies. The document will come up shortly.

2 We're just running into loading problems.

3 THE WITNESS: [12:29:44] Should I proceed?

4 Yes, I see this document.

5

6 BY MS TAYLOR:

7 Q. [12:29:47] Do you recognise this document?

8 A. [12:29:48] I do. It is the letter written by you to me regarding my report.

9 Q. [12:29:53] And was this the first instruction letter you received from the
10 Defence?

11 A. [12:30:00] I believe so. We had been in communication because by this point I
12 had already obviously seen Mr Al Hassan, but this is the first and I believe only letter
13 regarding referral questions being asked of me by the Defence.

14 Q. [12:30:17] Now, does this letter correspond to what you understood to be your
15 mandate in the case at the time?

16 A. [12:30:26] Yes, it does.

17 Q. [12:30:29] Now, we have a formal Rule 68(3) procedure. Now, throughout
18 your testimony, we've gone through your report, your CV, your instruction letter,
19 some of the reference materials, and I believe there's also ...

20 Do you have a tab 4, Dr Porterfield?

21 A. [12:31:23] My tab 4, yes, are my notes.

22 Q. [12:31:26] Okay. And there should also be a tab 5, which is a diagnostic
23 formulation.

24 A. [12:31:34] Yes. It's a letter where I comment about my diagnostic formulation
25 to address to you.

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1 Q. [12:31:45] And do you -- did you author this document?

2 A. [12:31:48] I did.

3 Q. [12:31:50] Now, we have gone through tabs 1, which is your CV; tab 2, being
4 your report; tab 3, being your instruction note; tab 5, being this diagnostic formulation
5 in a letter. Do you agree for these documents to be admitted into evidence for Rule
6 68(3) of the procedures?

7 A. [12:32:12] Yes, I do.

8 MS TAYLOR: [12:32:15] Mr President, your Honours, that concludes our
9 examination.

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

12 As you have just mentioned, the conditions of the proceedings required under 68(3)
13 of the Rules have now been fulfilled. Thank you.

14 Now, the legal representatives did not make any applications for questioning.

15 Maître Nsita, I can see you standing.

16 MR LUVENGIKA: [12:32:58](Interpretation) I wanted to remember -- to remind the
17 Chamber that we had submitted an application.

18 PRESIDING JUDGE MINDUA: [12:33:23](Interpretation) Yes, this has just been
19 brought to my attention because before that was not the case. So there is in fact an
20 application. So you have the floor.

21 MR LUVENGIKA: [12:33:32] (No interpretation)

22 PRESIDING JUDGE MINDUA: [12:33:39](Interpretation) We have finished with the
23 direct examination, so now I give the floor to the OTP.

24 MS LUPING: [12:33:50] Thank you, Mr President. Thank you, your Honours.

25 The Prosecution really is guided by you. We will need some time to set up. There's

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1 a slight change in our team to be able to proceed. We do have all the team members
2 here, but we need to make a few switches over to get to our computers rebooted
3 because I need another colleague to assist to my left.

4 Would it be possible -- I'm guided by you. Either we probably need about 10
5 minutes for these administrative switch overs, or we could resume after the break.
6 It's as you wish, your Honours.

7 PRESIDING JUDGE MINDUA: [12:34:30](Interpretation) Thank you very much,
8 Madam Prosecutor.
9 Ms Taylor.

10 MS TAYLOR: [12:34:37] Thank you, Mr President.
11 The Defence was always going to be finish by the lunch break, so I really don't
12 understand why this wasn't anticipated. But I would want to emphasise, it would be
13 preferable to finish today, if we can, so we can release the witness. So we would be
14 against any forms of delays.

15 PRESIDING JUDGE MINDUA: [12:35:00](Interpretation) Ms Prosecutor, we have
16 about half an hour left. I think we can -- you can arrange yourself very quickly.
17 Five minutes.

18 MS LUPING: [12:35:14] Five minutes will be fine. Thank you.

19 JUDGE MINDUA: [12:35:05](Interpretation) Thank you very much.

20 (Pause in proceedings)

21 MS LUPING: [12:38:10] Can I please ask the court officer if the Prosecution's two
22 binders may be provided to the witness, please.

23 And, Mr President, your Honours, before we commence, and whilst the witness is
24 getting her binders before her, I would just like to announce an additional member of
25 the team who did enter just before the break, that's Mr Moussa Allafi, who is also

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1 assisting us today.

2 PRESIDING JUDGE MINDUA: [12:39:28](Interpretation) Very well. Thank you,
3 Madam Prosecutor, for that clarification. And welcome to Mr Moussa Allafi.

4 MS LUPING: [12:39:43] Thank you, Mr President. I believe the Prosecution is
5 ready to begin.

6 QUESTIONED BY MS LUPING:

7 Q. [12:39:51] So, good morning, Dr Porterfield. My name is Dianne Luping. As
8 you know, we had an opportunity to briefly meet yesterday.

9 A. [12:39:57] Good morning.

10 Q. [12:39:57] I will be asking you questions on behalf of the Prosecution, and I
11 apologise in advance if I am looking at other materials and I'm not looking at you as
12 you're responding on occasion. No rudeness is intended.

13 A. [12:40:10] Understood.

14 Q. [12:40:10] All right. So, Dr Porterfield, you very helpfully explained this
15 morning that you are a clinical psychologist; is that correct?

16 A. [12:40:20] That's correct.

17 Q. [12:40:20] And you were explaining to the Defence team the differences between
18 a clinical and a forensic psychologist; is that right?

19 A. [12:40:29] That's correct.

20 Q. [12:40:30] And am I right in understanding, just to clarify, that you yourself a
21 clinical psychologist and not a forensic psychologist; is that correct?

22 A. [12:40:39] That's correct.

23 Q. [12:40:41] Okay. Now, I would like you to, if you could, please, turn to -- it's
24 tab 20 of the Prosecution's binder. You've already seen it. It's actually your CV,
25 and I just had a few points I'd like to clarify regarding that CV. That's document

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1 MLI-D28-0003-1624.

2 A. [12:41:11] Yes. That's 19 tab for me. Is that -- I just in case there's a --

3 Q. [12:41:16] Tab 19. Apologies.

4 A. [12:41:17] No, I just didn't want it to be out of sync.

5 Q. [12:41:22] It's your CV.

6 A. [12:41:23] I recognise it.

7 Q. [12:41:24] Fantastic. And -- now, you've explained as well that you work for
8 the Bellevue NYU Programme for Survivors of Torture and had done so since 1999; is
9 that right?

10 A. [12:41:36] That's right.

11 Q. [12:41:36] And you explain at page 1626 of that CV - if I could ask the court
12 officer to please scroll down to page 1626 - that you provide clinical services to adults,
13 children, adolescents and family at the clinic, and survivors -- including survivors of
14 torture and war trauma; is that right?

15 A. [12:42:00] Yes, that's right.

16 Q. [12:42:01] So, in terms of your work at Bellevue as a clinical psychologist, am I
17 right that when you say you provide clinical services, this means that you'll
18 provide -- you're clinically treating them as torture survivors or survivors of war
19 trauma; is that right?

20 A. [12:42:19] That's part of my duties, yes.

21 Q. [12:42:21] And am I also right that, amongst the patients that you treat, there are
22 individuals who don't speak English; would that be correct?

23 A. [12:42:30] Correct.

24 Q. [12:42:30] And am I also right that when you work with these individuals, it's
25 extremely important for your work that you actually correctly understand what

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1 they're saying?

2 A. [12:42:44] Yes, I would say so.

3 Q. [12:42:45] And would it be correct it that their words, their expressions, even
4 their very intonations can be relevant for your assessment?

5 A. [12:42:57] Yes.

6 Q. [12:42:57] Would that be correct?

7 A. [12:42:59] That's correct.

8 Q. [12:43:00] And would I also be right in assuming that Bellevue ensures that you
9 use qualified interpreters when you work with these survivors to properly
10 understand them; is that correct?

11 A. [12:43:12] Yes, that's correct.

12 Q. [12:43:14] And in terms of your role in treating these survivors, as a clinical
13 psychologist, would I be right that it's not your role to question or to confront them
14 about what they say happened to them?

15 A. [12:43:33] That's not exactly correct because of the evaluation process that is
16 part of being accepted into our programme.

17 Q. [12:43:40] All right. Now, I'm going to -- thank you for clarifying that.

18 I am going to turn -- ask you to turn to tab 52 of your binder. And that's

19 MLI-OTP-0080-5754. If I ask the court officer to enlarge that so that we can just focus
20 just on the first part, on the mission of Bellevue.

21 So if we see here, it talks about the mission of Bellevue, which is to assist individuals
22 and families subjected to torture and other human rights abuses, to rebuild healthy,
23 self-sufficient lives, and to contribute to global efforts to end torture.

24 Is that correct, that's the mission statement for Bellevue?

25 A. [12:44:32] Yes, correct.

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1 Q. [12:44:33] And so part of that mission then is to advocate for the end of torture,
2 would that be right?

3 A. [12:44:39] Certainly, we -- that is part of our mission, yes.

4 Q. [12:44:45] Thank you. Now, I just want to switch to the issue of the
5 methodologies that you use.

6 And, first of all, just to clarify, am I right that you don't read or speak French fluently?

7 A. [12:44:59] Correct.

8 Q. [12:44:59] And Arabic as well?

9 A. [12:45:01] Correct.

10 Q. [12:45:02] All right. Now, just to be clear. It's not a judgment. Just want to
11 clarify what your abilities are in terms of language.

12 And so am I correct that you could not actually read the extracts of the originals of the
13 interview transcripts between Mr Al Hassan and ICC investigators?

14 A. [12:45:19] Correct.

15 Q. [12:45:20] Is that correct?

16 So you were, in large part, then reliant on the English translations that were provided
17 to you by the Defence.

18 A. [12:45:28] That's correct.

19 Q. [12:45:28] That's when you were reviewing -- reviewing this.

20 Now, I'd like to ask you to turn to tab 2 of your binder, and that's MLI-D28-0003-0843.
21 You may recognise this.

22 A. [12:45:54] Yes.

23 Q. [12:45:54] This is the first translation.

24 Apologies.

25 PRESIDING JUDGE MINDUA: [12:46:00](Interpretation) Madam Prosecutor, since

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1 both of you are speaking the same language, please try to observe a pause.

2 MS LUPING: [12:46:09](Interpretation) I am sorry, Mr President.

3 (Speaking English) And my apologies to the interpreters. Indeed, it is all too
4 tempting that we speak the same language.

5 THE WITNESS: [12:46:15] I apologise.

6 MS LUPING: [12:46:17] No, my fault as well.

7 Q. [12:46:20] Now, Dr Porterfield, am I right that this is -- so this is the first
8 translation that was provided to you, and this is the translation that you used for
9 preparing your report; is that correct?

10 When I refer to your report, so we're clear, I am referring to MLI-D28-0002-0535.

11 A. [12:46:46] Yes, that is correct.

12 Q. [12:46:50] Now, would I be right that, just as you find it important to work with
13 a qualified interpreter for Bellevue, that it would be equally important that you are
14 provided a translation by a qualified translator or interpreter of this report, of this
15 translation you were provided? Would that be a fair thing to say?

16 A. [12:47:21] I think that would be ideal, yes.

17 Q. [12:47:24] And were you told who prepared this translation for you and whether
18 or not they were a certified translator?

19 A. [12:47:36] I was not told.

20 Q. [12:47:41] And were you informed or were you aware that this is only a draft
21 translation?

22 A. [12:47:54] I don't -- I was not aware though, as you say that, it does say that at
23 the top, "Draft Translation". So I think I was not aware, but there is it is.

24 Q. [12:48:08] Now, were you also aware that this translation is only in fact a
25 translation of 30 out of 85 interview transcripts of the interview conducted between

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1 the Prosecution and Mr Al Hassan?

2 A. [12:48:28] Yes, I'm aware of that.

3 Q. [12:48:33] And were you made aware of that at the time, that you were only
4 given part and not all of the transcripts?

5 A. [12:48:41] I don't remember. I knew they were excerpted.

6 Q. [12:48:47] Yes, indeed. And they are, indeed -- they were only selected
7 passages, correct, of -- for those transcripts that you did get, they were not the entire
8 transcripts, only partial; is that right?

9 A. [12:49:03] Yes, that's true.

10 Q. [12:49:06] Now, would it be fair to say, Dr Porterfield -- that was my pausing.
11 Would it be fair to say that, before your assessment, it is important to have all
12 relevant passages for you to make your assessment, including for the report that you
13 prepared?

14 A. [12:49:33] Yes, I would like to have relevant passages, as much as possible, for
15 something like this.

16 Q. [12:49:43] Would I be right in saying that if there are, say, mistakes in the
17 translations - for example, if a response or a comment is being attributed to the wrong
18 person - that that can be problematic? Would that be fair to say?

19 A. [12:50:12] Yes, that would be fair to say.

20 Q. [12:50:15] I'd now like to ask you to turn to your own report, please. And that's
21 at tab 1. And I'd ask you to turn to page 0595. So that's MLI-D28-0002-0535.

22 And I'd like to focus on the passage where you state, and I quote: "He reports to the
23 investigators that he is suffering from *erhak nafsi*, which translates as psychological
24 exhaustion or depression."

25 It's just -- if you could --

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- 1 A. [12:51:11] I see that.
- 2 Q. [12:51:12] -- scroll down, and we stop there. Thank you court officer.
- 3 You see that?
- 4 A. [12:51:18] I do.
- 5 Q. [12:51:18] Now, would it be fair to say that as a non-Arabic speaker, you had to
- 6 rely on somebody else's interpretation for that comment you made in your report?
- 7 A. [12:51:27] Yes.
- 8 Q. [12:51:28] And was this a member of the Defence team?
- 9 A. [12:51:33] I believe so.
- 10 Q. [12:51:37] Now, I'm going to also ask you -- sorry. This is a bit of mental
- 11 gymnastics. But if you could go back to the draft translation you were provided.
- 12 I'm going to refer to that. That was still 0003-0843.
- 13 A. [12:51:58] Could you say the tab number.
- 14 Q. [12:52:00] Yes. Apologies. That's at tab 2. So it's right next to your report, in
- 15 fact. It's the next one along.
- 16 A. [12:52:13] Sorry. Go ahead.
- 17 Q. [12:52:14] No, my fault. And at page 0895, now, there's a reference to an
- 18 exchange.
- 19 If the court officer could scroll down.
- 20 You see in the exchange - if you could go down further. Please keep going. If we
- 21 stop there.
- 22 At line 65, we see the Article 55(2) lawyer using the word "depression". And in this
- 23 translation that's being provided to you, it's been attributed to Mr Al Hassan that he
- 24 used the word "depression".
- 25 Now, in fact, this is a mistake in the draft translation provided to you because it's still

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1 the interpreter repeating what the Article 55(2) counsel had stated.

2 PRESIDING JUDGE MINDUA: [12:53:07](Interpretation) Ms Taylor.

3 MS TAYLOR: [12:53:09] Thank you very much, Mr President.

4 And I'm minded about procedures, that it might be appropriate to ask Dr Porterfield
5 to leave the room. But I do believe it's inappropriate for the Prosecution to assert a
6 fact before this witness, which has certainly not been demonstrated, that there was an
7 error on the part of the Defence in our translation.

8 I'm quite happy to discuss this further, but I do believe that doing so in front of the
9 witness might be inappropriate.

10 PRESIDING JUDGE MINDUA: [12:53:46](Interpretation) Madam Prosecutor, do
11 you wish to answer?

12 MS LUPING: [12:53:52] Very briefly. I don't think it's necessary --

13 PRESIDING JUDGE MINDUA: [12:53:53](Interpretation) Regarding the witness,
14 should she leave the room?

15 MS LUPING: [12:54:01] No. In fact, my proposition would be that it's not
16 necessary. I can --

17 PRESIDING JUDGE MINDUA: [12:54:03](Interpretation) Just a minute, please.
18 Ms Taylor.

19 MS TAYLOR: [12:54:07] Then I still haven't made my objection. So if the
20 Prosecution doesn't wish for the witness to leave the courtroom, I should be entitled
21 to make my full response, perhaps with the assistance of Maître Youssef, but we did
22 actually review this last night. And to be honest, it's completely misleading for the
23 Prosecutor to phrase their question in that way given that the English transcript
24 corresponds to the French transcript in the version disclosed by the Prosecution.
25 And --

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1 Mr Dutertre, please don't shake your head.

2 So, really, I don't think it's appropriate for the Prosecution to establish -- rely upon
3 established facts to formulate a question when those facts have not been established
4 in any evidential determination in this case.

5 PRESIDING JUDGE MINDUA: [12:55:01](Interpretation) Very well.

6 Ms Prosecutor, the witness is still there. You have the floor.

7 MS LUPING: [12:55:09] Thank you, Mr President.

8 I'm not asking this witness to make a comment on the mistake itself. This is a matter
9 that certainly could be for the Chamber ultimately to decide. In fact, the transcript,
10 the original transcript refers to the interpreter and not Mr Al Hassan; whereas,
11 counsel knows, in other parts of the transcripts refers to the person who's being
12 interviewed, whenever it's a reference to Mr Al Hassan.

13 So, in our view, it is quite clear, if you compare the original with the draft translation,
14 there has been a wrong attribution. But I can simply state to ensure that this is made
15 clear, that this is the Prosecution's position as to the interpretation, I can make that
16 clear. The witness has responded. It was simply a question as to whether it would
17 be problematic, and that was -- this simple question being asked. But I can certainly
18 bear in mind the Defence's objection for my additional follow-up questions.

19 PRESIDING JUDGE MINDUA: [12:56:12](Interpretation) Ms Taylor.

20 MS TAYLOR: [12:56:13] We don't have an objection provided it is abundantly clear
21 that is simply a hypothetical scenario that the Prosecutor is putting to the witness and
22 not an actually proposition based on established facts in this case.

23 PRESIDING JUDGE MINDUA: [12:56:32](Interpretation) Very well. We will move
24 on then.

25 Madam Prosecutor.

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1 MS LUPING: [12:56:38] Thank you.

2 Q. [12:56:39] Now, the expression "*erhak nafsi*" that has been attributed in the draft
3 translation to Mr Al Hassan, would I be correct that the word, the word being
4 translated and being attributed to Mr Al Hassan of depression, that that would have
5 some relevance for your assessment; is that right?

6 A. [12:57:03] I'm sorry, what would -- could you repeat.

7 Q. [12:57:05] You used the word *erhak nafsi*, and in your body of your report, you
8 stated that it means psychological exhaustion or depression; is that correct?

9 A. [12:57:19] Yes, that's in the report, correct.

10 Q. [12:57:21] Now, the Prosecution's position is that that is not a correct translation
11 and that the word "*erhak nafsi*", which is quite right, is the word that was used by
12 Mr Al Hassan, does not mean depression. I'm stating the Prosecution's position, and
13 that is a matter that can be decided upon later, but would I be right that this
14 difference in language, the words, that they have some meaning and are relevant to
15 your assessment; is that correct?

16 A. [12:57:52] Yes. I do see two words as the translation in my report,
17 "psychological exhaustion" or "depression", so I just want to clarify that. But,
18 certainly, the meaning of the word is important.

19 Q. [12:58:04] Thank you. Now, I'd like to ask that you turn to tab 40, and we're
20 referring to now the second translation provided to you.

21 PRESIDING JUDGE MINDUA: [12:58:16](Interpretation) Ms Taylor.

22 MS TAYLOR: [12:58:18] Thank you very much, Mr President.

23 Now, the Prosecution has just advanced the position that the translation of *erhak*
24 *nafsi* - I'm not saying it correctly - is incorrect, but they haven't said what they
25 consider to be the correct translation of *erhak nafsi*. So, out of fairness to the witness,

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1 I do believe they should put the correct translation to Dr Porterfield and ask her if
2 that correct -- or what they consider to be the correct determination would have
3 impacted her evaluation.

4 MS LUPING: [12:58:46] Thank you.

5 PRESIDING JUDGE MINDUA: [12:58:48] (Overlapping speakers)

6 MS LUPING: [12:58:49] Mr President, that is not the question I asked the witness.

7 And I thank Defence Counsel, but if she would like to ask that question, she's
8 certainly open to do so in re-examination. But my question was a different one, and

9 I can certainly -- I can certainly provide the translation and repeat the question as I
10 posed it.

11 Q. [12:59:07] Now, Dr Porterfield, the Prosecution's position is that the term
12 actually means psychological exhaustion, and it doesn't mean depression.

13 But I would repeat my question, which is: Isn't it right that these words have
14 meaning, including the word "depression", it has meaning in terms of your evaluation;
15 is that correct?

16 A. [12:59:35] Yes, psychological exhaustion has meaning and depression has
17 meaning. They both have meaning.

18 Q. [12:59:43] Thank you. So I'm now going to move on to a different document,
19 and that's at tab 40, MLI-D28-0006-4330. And you've been shown this document
20 already, Dr Porterfield.

21 Do you recognise this translation?

22 A. [13:00:08] Yes. Apologies. That's tab 40?

23 Q. [13:00:13] Am I giving you the wrong tab number again? I do apologise.

24 A. [13:00:18] No, I think -- it's just that the screen is different than what I've opened.

25 Q. [13:00:22] Yes, it's tab 40 of your binder, physical binder.

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1 A. [13:00:23] Okay.

2 Q. [13:00:24] All right. And my simple -- I have a very simple question. Am I
3 right, this -- this was provided to you, a draft Defence translation after you wrote
4 your written report; is that correct?

5 A. [13:00:38] Yes. I'm confused at what this is. So this is in French, this page,
6 and on the screen what I see is in English. I'll slow down.

7 On the screen, in English, it says "Translation of Evidence" at the head of this
8 document. In my binder, the document is in French and says "*Transcription des*
9 *Dépositions*". So ...

10 Q. [13:01:00] I'm wondering, Dr Porterfield, I just want to make sure if you've got
11 the right binders. Do you have the Prosecution's binder and not the Defence binder?

12 A. [13:01:10] Yes, I believe so.

13 Q. [13:01:11] All right. Well, I'm not sure what the problem is there. But if you
14 look on your screen at 0006-4330, am I right, this the second draft, Defence translation,
15 provided to you after you wrote your report; is that correct?

16 A. [13:01:26] Could this be scrolled up so that I could see. Sorry, keep going. I
17 just want to see what the document -- if you could scroll down a few pages. I just
18 want to make sure. There's been confusion on this. Yes. Maybe another page or
19 two. And maybe the next page would clarify.

20 So I seem to have the French version in my binder, but that is -- I believe this is, yes,
21 what was provided to me, yes, on Sunday.

22 Q. [13:02:05] Right. This is a second version of the draft. And, of course, you
23 provide a third version of the draft.

24 Now, this second version of the draft, again, were you aware that this only
25 provides -- there are 22 documents here, but there are only an additional 15

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1 documents out of the 85?

2 A. [13:02:27] Additional 15 interrogation sessions, is that what you mean by
3 documents?

4 Q. [13:02:31] Yes. And so, basically, with this document, you received 45 out of
5 the 85 OTP transcripts.

6 A. [13:02:38] I understand, yes, that sounds correct.

7 Q. [13:02:43] Now --

8 PRESIDING JUDGE MINDUA: [13:02:50](Interpretation) Madam Prosecutor, you
9 haven't asked the question. I think we're going to stop right now.

10 It's 1.02, and we're going to break for lunch. We shall resume at 2.30.

11 The hearing has been suspended.

12 THE COURT USHER: [13:03:10] All rise.

13 (Recess taken at 1.03 p.m.)

14 (Upon resuming in open session at 2.35 p.m.)

15 THE COURT USHER: [14:35:21] All rise.

16 Please be seated.

17 PRESIDING JUDGE MINDUA: [14:35:41](Interpretation) Court is in session once
18 again.

19 So over to the Prosecution for the continuation of the cross-examination of this
20 witness.

21 Madam Prosecutor Luping, please.

22 MS LUPING: [14:36:03] Thank you, Mr President.

23 Q. [14:36:05] Good afternoon, Dr Porterfield.

24 A. [14:36:06] Good afternoon.

25 Q. [14:36:07] I just have to mention, because I've been told off by various members

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1 of my team that I must slow down, so I would ask that we both take that into account.

2 It's the difficulties when we speak the same language.

3 Now, I would ask you to turn to the OTP binders. And just to let you know as well

4 that there were problems with the numbering. You were right. So this has been

5 corrected in the break, and the court officer has ensured that you get the right version.

6 A. [14:36:44] Thank you.

7 Q. [14:36:45] Could I ask, Dr Porterfield, if you could please turn to tab 59 of your

8 binder.

9 And for the record, that is MLI-D28-0006-4573.

10 A. [14:37:07] I believe I'm there.

11 Q. [14:37:10] Excellent. And I see that it's on our screens as well.

12 Now, is it correct, Dr Porterfield, this is actually the third Defence translation that you

13 received? This is a longer version, 226 pages.

14 A. [14:37:26] Yes, that's correct.

15 PRESIDING JUDGE MINDUA: [14:37:31](Interpretation) Ms Taylor.

16 MS TAYLOR: [14:37:33] Thank you very much, Mr President.

17 I would just ask my colleague to be careful with her terminology in the sense that this

18 is not a new or an additional translation.

19 PRESIDING JUDGE MINDUA: [14:37:49](Interpretation) Thank you very much.

20 Madam Prosecutor.

21 MS LUPING: [14:37:54] (Overlapping speakers) that this is actually a different

22 version of a translation. I mean, I don't want to belabour the point, but this is a

23 226-page document where the original version was 133 pages. So I'm just referring

24 to a third version of a Defence translation.

25 Q. [14:38:11] Now, Dr Porterfield --

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1 PRESIDING JUDGE MINDUA: [14:38:17](Interpretation) Ms Taylor, we have
2 understood that it is an issue of terminology, have we not?

3 MS TAYLOR: [14:38:25] Yes, Mr President. But just to be clear, it's not a new
4 translation or an additional translation. This is a different document with existing
5 translations in it.

6 PRESIDING JUDGE MINDUA: [14:38:35](Interpretation) Well, let us say that it's an
7 updated document augmented with additional pages. Let's move on, Madam
8 Prosecutor.

9 MS LUPING: [14:38:46](Interpretation) Thank you, Mr President.

10 Q. [14:38:53](Speaks English) Now, Dr Porterfield, this additional version with
11 augmented pages, extra pages of the same transcripts you had received before, can
12 you clarify when you received this translation? When did you first see this
13 document?

14 A. [14:39:10] I received this I believe it was Sunday in the evening.

15 Q. [14:39:19] And turning to tab 56. This is MLI-D28-006-4477. We now have a
16 version of a document with various corrections actually that the OTP had made to the
17 original transcripts. You've seen that before?

18 A. [14:39:55] Yes.

19 Q. [14:39:56] And am I correct that you only received that yesterday evening; is
20 that right? On the eve of your testimony?

21 A. [14:40:03] This document that's in front of me was what was used Sunday to
22 read to me the discrepant sections. So this -- I did not hold this in my hand. It was
23 given, you know, in order, I believe, French, Arabic, English, the translations of these
24 different items. So that is not -- I was -- I worked with this on Sunday, to answer
25 your question.

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1 Q. [14:40:38] And that was an unstamped version, right? So now we have a
2 version with the ERN which, according to the metadata, is dated 8 May.

3 A. [14:40:50] That sounds correct.

4 Q. [14:40:53] Now, Dr Porterfield, would it be fair to say with these -- also these
5 last-minute provisions of additional pages, 226 pages, just as of Sunday, would it be
6 fair to say that it can get a bit confusing with these alternative versions of the Defence
7 draft translations?

8 A. [14:41:19] So it can get confusing, yes. The merging of the two documents is
9 what is the 220-page document that you're referring to and I asked for those to be
10 merged. So, to be fair, I may have created a bit of confusion, but it felt helpful to me
11 to put things in temporal order in terms of the excerpts. So that was something I
12 requested on Sunday.

13 Q. [14:41:45] And, again, are you aware that these various draft translations, as far
14 as we understand, they're not certified translations by a qualified interpreter. Were
15 you aware of that?

16 A. [14:41:59] I was not.

17 Q. [14:42:01] Now, bearing in mind your previous comments about the importance
18 of accuracy and understanding what is actually being said, would it be fair to say that
19 if there are inaccuracies in this draft uncertified translation, that this might have an
20 impact on your assessment?

21 A. [14:42:24] Certainly, I'd want to know about inaccuracies, yes.

22 Q. [14:42:31] Now, I'm just going to refer back also to what you said at the
23 beginning about your work also with Bellevue, and the importance in your
24 assessment also of a person's tone for your assessing not just what they are saying,
25 but how they are saying. And you've explained this as relevant to your assessment.

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1 Now, were you aware, Dr Porterfield, that there are audio tapes of the interviews
2 between the OTP interview -- sorry, OTP investigators and Mr Al Hassan? Were
3 you aware of that?

4 A. [14:43:17] I was.

5 Q. [14:43:18] And do you know why you were not provided with copies of these
6 audio tapes?

7 A. [14:43:24] No, I didn't request them, but I don't have any other knowledge as to
8 why it wasn't.

9 Q. [14:43:30] And would you agree that if you'd had the opportunity to listen for
10 yourself to Mr Al Hassan's tone, that this may have had relevance for your own
11 assessment?

12 A. [14:43:48] It's possible it could have had relevance, yes.

13 Q. [14:43:57] Now, Dr Porterfield, I'm going to ask you to turn to your report again.
14 So that's at tab 1 of the binder. And, again, for the record, that's MLI-D28-002-0535,
15 and I am going to ask you, please, to turn to page 0160. So that's the annex. That's
16 appendix 1 to your report. And I'd ask the -- just to scroll -- yep, we can stop there.
17 And I'm just going to refer to the second part of that appendix where you state
18 following the evaluation of Mr Al Hassan by Dr Porterfield, one team member
19 transcribed the handwritten notes to word and sent these notes back to Dr Porterfield.
20 So, again, just to understand the process, Dr Porterfield, we have seen already your
21 handwritten notes which, am I right, that these appear to be more in note form? Is
22 that correct?

23 A. [14:45:02] Those are my handwritten notes, yes.

24 Q. [14:45:04] And just to understand the typed notes that were sent back to you,
25 were they, again, just simply in short note form or were they full sentences?

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1 A. [14:45:15] I believe they were as close as possible to the way it was written in my
2 notes. So, you know, if it was a partial sentence and abbreviated word, I think that
3 was what was typed as well.

4 Q. [14:45:28] And just to, again, understand the process, when you first prepared
5 your report, did you provide any draft version to the Defence team?

6 A. [14:45:44] Towards the end, I asked for clarification on things like dates, spelling
7 of locations, you know, proper names of detention centres, things like that. So that
8 would be -- I would send it to them and say, question mark, is this the correct name of
9 this prison, things like that.

10 Q. [14:46:04] And other than these questions, were there any comments or other
11 edits or suggestions made by the Defence team?

12 A. [14:46:11] Factual only. So things regarding, like I said, spelling or location or
13 things like that. Nothing substantive to my opinion.

14 Q. [14:46:19] And when you say "factual", was it also relevant to the account given
15 by Mr Al Hassan?

16 A. [14:46:26] Can you clarify what you mean. I don't understand.

17 Q. [14:46:29] Well, in terms of any suggestions or comments made by the Defence
18 team, did they provide you any comments related to the facts as described by
19 Mr Al Hassan of what happened to him? Did they make any additional comments
20 relating to those aspects?

21 A. [14:46:46] I don't believe so.

22 Q. [14:46:54] When you say you don't believe so, is that because you can't
23 remember or what? Could you clarify?

24 THE INTERPRETER: [14:47:01] Message from the English interpreter: Could
25 counsel and the witness please observe a pause and go more slowly? Thank you

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1 very much, indeed.

2 THE WITNESS: [14:47:11] So I said I don't believe so, just meaning that during the
3 final phase of getting the report completed with those factual points, I don't believe I
4 don't recall any other edits that would have been related to things that Mr Al Hassan
5 said.

6 MS LUPING: [14:47:35]

7 Q. [14:47:35] All right. Now, also when we were talking about your report and
8 the specific term "*erhak nafsi*", you mentioned you had some, if you like, interpretation
9 or translation assistance from a member of the Defence team.

10 Can you recall the name of that member of the Defence team who gave you that
11 assistance?

12 A. [14:48:02] I'm not certain who that was because multiple members of the team
13 speak different languages. I would not be certain on who specifically said that
14 words "translation".

15 Q. [14:48:17] Do you recall an individual called Mr Mohamed Youssef? Was he
16 the person who assisted you?

17 A. [14:48:23] That's what -- I'll pause.

18 That's what I just cannot recall, if it was Mr Mohamed or another team member, but
19 it's very possible.

20 Q. [14:48:33] Now, could I -- pardon me. I'm just pausing.

21 Mr President, I'm not sure. I think the -- is the French transcript working? Because
22 I notice in the LiveNote that I'm not getting anything. Is it working outside of
23 LiveNote?

24 PRESIDING JUDGE MINDUA: [14:49:07](Interpretation) Apparently, I do have the
25 French transcript working, so let's -- let's check.

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1 Is there an issue? I have it.

2 MS LUPING: [14:49:24] It appears that, Mr President, that other members of the
3 Prosecution team are not able to see the French transcript. So I wonder if the court
4 officer could clarify, please.

5 THE COURT OFFICER: [14:49:34] Yes, we are currently following up, and it's
6 appearing to come out of the buffer zone. Thanks.

7 MS LUPING: [14:49:42] Now it's working. Thank you.

8 Q. [14:49:45] Can you remember the gender of the person who assisted you? Was
9 it a male or a female?

10 A. [14:50:01] Apologies. I don't remember because it might have taken place in an
11 email. It's -- I just don't recall and I just did not want to misspeak since multiple
12 team members speak different languages.

13 Q. [14:50:17] All right. Thank you.

14 And I'd like you, please, to now turn to the same -- it's the same report. If also the
15 court officer could turn to page 10. That's page 0544 of your report. I'll asking that
16 we scroll to the two pages. But first looking at page 10, 0544. If we could scroll
17 down, please. Keep scrolling then stop there. Thank you.

18 Now, if you could please turn -- Dr Porterfield, if you could look for yourself at pages
19 10 to 11, and I'll read out the excerpt. I'm going to start reading it, also for the
20 Chamber to see.

21 But am I right that your first part of your report, pages 3 to 33, that this is not simply a
22 short summary of what Mr Al Hassan said; am I right, that this is actually an
23 extremely detailed description of the information provided to you by Mr Al Hassan?

24 A. [14:51:31] Yes, I would say so.

25 Q. [14:51:32] And what I'm bringing your attention to is just one example. But

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1 isn't it correct that there are a number of instances in your report where you actually
2 provide full quotations for what Mr Al Hassan said was discussed between him and
3 other people?

4 A. [14:52:03] That's correct.

5 Q. [14:52:04] And this particular passage that I've come to, where we have
6 quotations, did you draft this yourself?

7 A. [14:52:15] I wrote this, yes, from my notes.

8 Q. [14:52:18] And was this based in any way on the Defence's notes, or did you
9 actually have quotation marks also in the body of your handwritten notes?

10 A. [14:52:28] I can look at the handwritten notes now, but this is based -- I'll slow
11 down.

12 These quotations come from Mr Al Hassan's report to me, so they are things he says
13 that he said.

14 Q. [14:52:47] Can I ask you now also to go to page -- as an example, page 0555 of
15 your report. And if the court officer could scroll down until we start with a
16 paragraph that reads "on his second day in the cell."

17 And, Dr Porterfield, I'd like you to look at this paragraph from "on his second day in
18 the cell" to the end, which reads: "Their cell became very dirty, however, with 12
19 men sharing three buckets for waste."

20 Now, am I right that in various parts of your report, we don't see you describing what
21 Mr Al Hassan is reporting, but it's provided as a -- as a narrative of the facts? Is that
22 correct?

23 A. [14:53:40] Yes, I would say that the format of the report, as I lay it out, is his
24 report of what happened to him. And I use language in that way. And I think
25 make that clear in the beginning of the report.

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1 Q. [14:54:02] Now, Dr Porterfield, isn't it right that your analysis and assessment as
2 to the potential causes of trauma, of stress of the accused is based on the facts as he
3 described them to you, in large part; is that correct?

4 A. [14:54:27] That's correct.

5 Q. [14:54:28] And would I also be right to say that if the accused wasn't telling you
6 all of the relevant facts about what happened to him, that this could actually impact
7 as well on your assessment. Would that be fair to say?

8 A. [14:54:46] I apologise. If the accused were not sharing information, is that
9 what -- leaving things out?

10 Q. [14:54:54] Correct.

11 A. [14:54:54] Yes.

12 Q. [14:54:56] Now, just looking at your report and the very long section from pages
13 3 to 33 of your description of what happened as provided to you by Mr Al Hassan,
14 now, am I right that other than Mr Al Hassan's description of his marriage in 2012
15 and then his experiences from 27, including his arrest and detention, that he has not
16 given you any information about anything that happened between 2012 and 27; is
17 that right?

18 A. [14:55:32] Between 2012 and?

19 Q. [14:55:35] 2017.

20 A. [14:55:37] Correct.

21 Q. [14:55:40] Now, wouldn't it be fair to say that if there were relevant factors about
22 what happened in that time period, that this could also be relevant to your
23 assessment of potential causes of trauma? Would that be fair to say?

24 A. [14:55:55] Yes, that's true.

25 Q. [14:55:58] Could you explain why there's nothing in your report about this time

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1 period whatsoever?

2 A. [14:56:05] I was asked to assess Mr Al Hassan's reaction if any, and conditions, if
3 any, in relation to his arrest, his treatment in custody, his detention conditions. I was
4 asked specifically to talk about those, that context and the effects on him. And I was
5 also asked to look at that information in relation to Mr Al Hassan's behaviour and
6 potential reactions to interrogation.

7 So I focused my analysis and my evaluation on his arrest, detention, treatment in
8 custody.

9 Q. [14:57:02] Thank you for explaining it, the instructions you received from the
10 Defence. But as an expert witness and obviously someone who is asked to look at
11 the impact of trauma, including at the time of the OTP interviews, would it not have
12 been relevant for you to know what happened in that time period?

13 A. [14:57:22] I think there could certainly be information in that time period that
14 was relevant. It was also clear to me that because I was evaluating Mr Al Hassan in
15 relation to these interrogations, that were I to begin to go into a lot of the material that
16 had been ostensibly part of the interrogations, it would be or could be quite
17 problematic. And I felt that I could determine his response to arrest, detention and
18 maltreatment with that information as the primary material that I worked from.

19 And if I had felt I couldn't, then I would have had to shift and rework my approach.

20 Q. [14:58:16] Now, Dr Porterfield, would it be fair, though, to say that having the
21 whole historical period of the accused is what you need for a complete picture, to
22 really assess potential causes of trauma?

23 A. [14:58:34] I felt I had adequate material to describe his response to arrest,
24 detention, torture, interrogation, given the 30 hours I had with him to evaluate that.
25 So I felt that was adequate and sufficient to answer the questions I had been asked.

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1 Q. [14:58:59] And just so I understand -- and forgive me if I'm not understanding
2 something here. And I understand that -- well, first of all, if I understand you
3 correctly or explain it, you were directed to look at a particular time period, namely,
4 his period in detention. But in addition to that, would it be fair to say you are also
5 being asked to look at the impact of trauma, and to do that, would you not need to
6 know all potential causes of that trauma?

7 A. [14:59:30] I think that I had adequate information and that broadly he referenced
8 things in his past that I thought were relevant, but I felt I could proceed without going
9 into the material that was the very crux of what he had been tortured and
10 interrogated about. So I did make a decision, a judgment call based on the referral
11 question, the data I had, and what I thought were potential problems with certain
12 material in relation to the accused.

13 Q. [15:00:08] And, Dr Porterfield, when you talk about the subject matter of what
14 the accused was being questioned about, did you have any concern about delving
15 into issues that might incriminate him? Was this one of your concerns?

16 A. [15:00:24] I was not directed that way, so I can't say that I was explicitly
17 avoiding potentially incriminating material. I can say that clinically I was more
18 concerned that going through that material was going to become remarkably
19 mirroring of the interrogations and, therefore, was going to prevent me from getting
20 other information from Mr Al Hassan because I thought his reaction would be quite
21 strong.

22 Q. [15:01:01] Now, Dr Porterfield, I want to ask if you are aware of this. But
23 according to the Defence, this is information from the Defence, both in their opening
24 statement on Monday and in their trial brief, that Mr Al Hassan, when he traveled to
25 Libya, when he fled to Libya with his family, that he lost his very young baby. Now,

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1 I've noticed that this is nowhere in your report. Would it be fair to say that

2 Mr Al Hassan did not give you that information?

3 A. [15:01:42] I don't believe I have that information.

4 Q. [15:01:46] Now, you -- as I understand from your CV, you have a particular
5 specialisation in the impact of trauma from bereavement from the loss of a family
6 member; is that correct?

7 A. [15:01:58] Yes, that's part of my training.

8 Q. [15:02:00] And would it be also fair to say that the loss of a very young baby
9 would be a traumatic experience?

10 A. [15:02:13] Yes, that would definitely be fair to say.

11 Q. [15:02:18] Now, would it be also fair to say that this is something that would be
12 relevant to your assessment of him and potential causes of any trauma?

13 A. [15:02:36] It would be an important piece of information, yes.

14 Q. [15:02:42] Now, Dr Porterfield, you mentioned earlier on that you consider that
15 it's important to have other experts' opinions to be able to assess.

16 Now, I understand from your witness preparation notes that you actually asked for a
17 copy of the report of Dr Lamothe; is that right?

18 A. [15:03:01] Yes.

19 Q. [15:03:03] And were you given any explanation as to why you were not being
20 given a copy of his report?

21 A. [15:03:10] No. But it's my recollection I was provided with that report quite
22 some time ago, so this was not the first time I'd seen it.

23 Q. [15:03:21] Well, I'd like you to turn to tab 51 of your binder. And the report I'm
24 referring to is MLI-OTP-0078-7832.

25 Now, it is in French. Apologies. I promise to give you the -- through our

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1 interpreters, a translation of relevant aspects. But just -- first of all, just for a point of
2 information, that Mr Lamothe was provided with access to all original OTP interview
3 transcripts. That's the 85 transcripts, plus the 11 security assessments of the accused,
4 as well as access to audio tapes of the interview, just so that you have that
5 information.

6 Now, there are three particular points that I'd like to raise with you arising from
7 Dr Lamothe's report. And, first, I'd ask you to go to page 7834.

8 So I'd ask the court officer to do that, please. Keep scrolling down. Keep going.

9 Apologies. One moment. Apologies. It's page 7835, so it's the next page, court
10 officer and Dr Porterfield. And I'm going to read a passage.

11 And he states -- and I ask for an interpretation from the interpreters, please.

12 (Interpretation) "Katherine Porterfield does not --

13 (Overlapping speakers)

14 (Speaks English) and for the interpreters, it starts with "*Katherine Porterfield n'en fait en*
15 *tout cas*" ... down to "*l'Accusation*".

16 Could I please have the interpreters read this and interpret for the witness, please.

17 THE INTERPRETER: [15:06:31] "Katherine Porterfield does not really make a
18 statement and we're strangely moving on from one line to the other from 2012 with
19 his second marriage being accepted by the first wife in 2017 and his arrest. And,
20 hence, we are actually doing away with the entire period which is in question in the
21 current case and the accusation."

22 MS LUPING: [15:07:11]

23 Q. [15:07:11] I'd ask the interpreter please read the next paragraph "*l'examen d'un*
24 *détenu*" up to "*une longue période*".

25 THE INTERPRETER: [15:07:21] "The examination of the accused detainee with

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1 serious charges, and who is presumed innocent until conviction, cannot uniquely rely
2 on a biographical account and of an observation that is being interpreted by some of
3 his attitudes, even if the contact and observation have been done so -- have been
4 made over a long period."

5 MS LUPING:

6 Q. [15:08:03] And now I'd ask the court officer and Dr Porterfield, if you could turn
7 to page 7836. It's just one last extract here.

8 Could we please move down to the paragraph that reads "*Même si elle a fait le détail*".

9 All right.

10 I would ask that there be interpretation provided from "*Même si elle a fait le détail*" up
11 to "*2011 à 2013*".

12 THE INTERPRETER: [15:08:43] "Even though she's provided a detailed account of
13 the previous traumatic events, Katherine Porterfield does not retain the existence of
14 PTSD that's been decompensated until 11 months of detention in Mali. This could
15 lead -- this could assume the existence of latent PTSD which had influenced his
16 behaviour along the Islamic groups. Nothing has been mentioned in the
17 psychological state between 2011 and 2013."

18 MS LUPING: [15:09:35] And, finally, at page 7837, could I ask for the second
19 paragraph.

20 Could I please have interpretation from "*dans un examen*" up to "*handicap*".

21 THE INTERPRETER: [15:10:07] "In an examination that's been presented as
22 spreading over 30 hours of interview, and which has been interspersed with
23 telephone conversations, I've never seen that we avoid raising fundamental questions
24 and which would have been determining to the previous existence of an alleged
25 PTSD and this -- and its repercussions on the psychological life of Mr Al Hassan.

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1 Earlier than argued as permanent disassociation, stress, distress and disability."

2 MS LUPING: [15:11:01]

3 Q. [15:11:01] So, Dr Porterfield, again, this is -- this is in fairness to you, to let you

4 see another expert's opinion on this. Now, just a first point. What we see, as

5 Dr Lamothe has confirmed, that having full -- knowledge of the full period, including

6 events from 2011 to 2013 and beyond, is important to a proper assessment of the facts.

7 Now, would you agree with that?

8 A. [15:11:29] As I said, I think that when I'm asked to examine an individual,

9 particularly in relation to the circumstances of arrest, detention, torture, that is pro

10 predominantly where I focus. I do ask about other experiences in the life of the

11 individual and these are relevant.

12 I believe in this case, as I said, the focus on arrest, detention, torture yielded so much

13 information and so much severe symptomology linked to the maltreatment, that it

14 was adequate to answer the question. And were I to begin to ask about activities

15 that I knew were directly linked to these interrogations, I believed it would become

16 counterproductive in the question I was answering. And I was surprised -- well,

17 that's it.

18 Q. [15:12:38] Please, Dr Porterfield, were you going to make another comment?

19 A. [15:12:43] No.

20 Q. [15:12:44] Now, this same expert also has questions about the analysis, including

21 of permanent dissociative states, distress and handicap. Now, he makes a concern

22 that this is not really truly developed in the report, if at all. And what would be

23 your response to that?

24 A. [15:13:11] When you say not -- again, I'm reading it in French here, so I'm trying

25 to recall how Dr Lamothe spoke about this. What I recall that was confusing about

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1 this report was that this was not someone who had seen the patient. So in standard
2 clinical practise, if you're offering a second opinion or a reaction to someone else's
3 clinical formulation, usually that's because you yourself have been able to see the
4 patient. So this was, to me, a document that did not have a particularly robust data
5 behind it in terms of the person that we were talking about.

6 I found that the tone -- now, perhaps this is an interpretation problem, but I found the
7 tone of this report was unusual, so I did not understand the perspective of
8 Dr Lamothe, some of the language that was used at least in the translation that I had
9 was not clinical. The word "zombie" was used at one point, which surprised me.
10 Sentences ended with ellipses, which confused me.

11 So Dr Lamothe's opinion about whether Mr Al Hassan suffers severe disassociation,
12 which I assessed over 30 hours with 25 years of experience examining torture
13 survivors, to me is not a particularly helpful additional opinion.

14 Q. [15:15:12] But just to clarify, going back to the original question of Dr Lamothe
15 in his report, he did analyse the period from 2012 to 27 because he had access to all
16 the interview transcripts and the security assessment. So my question would be: In
17 relation to your assessment, that is something that you didn't focus upon?

18 PRESIDING JUDGE MINDUA: [15:15:48](Interpretation) Counsel Taylor.

19 MS TAYLOR: [15:15:53] Thank you very much, Mr President.

20 I'm not aware that Dr Lamothe is in the courtroom, and I don't believe it's appropriate
21 for the Prosecution to put forward a positive assertion as to what Dr Lamothe did or
22 didn't do, particularly given that what was just put forward doesn't necessarily
23 conform to his report in the sense that he's -- she's put forward that he analysed the
24 period from 2012 to 2017. That's an entire period. We don't have any evidence that
25 he analysed the entirety of that period. Having read the report, I also don't think we

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1 have evidenced any clarity that he reviewed the entirety of the transcripts.

2 PRESIDING JUDGE MINDUA: [15:16:39](Interpretation) Madam Prosecutor.

3 MS LUPING: [15:16:44] Mr President, it's not for me to start pleading at this point.

4 I don't think it's appropriate, but I would just simply note I am going to move onto
5 another topic, but I would just simply note, for the record, that Dr Lamothe does look
6 at the opinion of whether or not there is PTSD based on trauma related to the
7 detention, and he looks at the issues related to what happened to the accused, and
8 that is also drawn from the OTP interview transcripts.

9 But I'm going to move on. And I would ask that we pull up another document, and
10 I'm going to ask that you look at tab 55 of your report. And this is
11 MLI-OTP-0080-5766.

12 A. [15:17:45] Yes, I see.

13 Q. [15:17:47] Could I ask the court officer, please, to bring up this document. Did
14 you have the ERN? Thank you.

15 I ask that we please turn -- it's page, if you go to page 34 -- I will give you the ERN
16 number in a moment, but if you turn to page 34 you will get it on the left if you type
17 34.

18 All right. So that's page 5799 and I'd like us, please, to turn to paragraph 231.

19 Apologies, it is the next page apparently. Yes. Right.

20 Now, I'm going to read an extract from a report. And Dr Porterfield, for your
21 information, this was a joint panel of experts that was put together by the Chamber,
22 and I'm going to read an excerpt from their report and I quote: "It is quite evident" --

23 PRESIDING JUDGE MINDUA: [15:19:47](Interpretation) Counsel Taylor.

24 MS TAYLOR: [15:19:50] Thank you, Mr President. Out of fairness to the witness, I
25 do believe it would be appropriate for the Prosecutor to clarify that this was a panel

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1 of experts appointed by the Chamber to assess the fitness of Mr Al Hassan to stand
2 trial and not whether he was a survivor of torture. So I do believe that clarification
3 should be made out of fairness to the witness.

4 PRESIDING JUDGE MINDUA: [15:20:24](Interpretation) Yes. The position is
5 important, Madam Prosecutor.

6 MS LUPING: [15:20:30] Absolutely. But also for the clarification of Dr Porterfield,
7 one of the aspects was to look at the impact of trauma when making that assessment
8 of fitness to stand trial.

9 Q. [15:20:40] So I will now read this section, and I would ask for the interpretation
10 in French. "It is quite evident" is where we will start. And I will finish at "trauma
11 related". And perhaps if you could read along, too, Dr Porterfield.

12 "It is quite evident that the mental health of an accused can be related to the charges
13 brought against him, for example, intense feelings of guilt or facing the charges
14 [relisation] - realising, sorry - the dimension of the consequence of the acts. And this
15 is a different issue from fitness to plead. In response, the individual might recruit
16 coping and survival strategies in order to deal with a significant level of incoherence
17 and so require measures to assure his well-being. In the case of Al Hassan, his sense
18 of betrayal and despair could be the result of realising the consequences of an alleged
19 involvement in criminal acts, without being trauma-related." End of quote.

20 Now, Dr Porterfield, isn't it correct that being accused of war crimes and crimes
21 against humanity could also be a cause of stress for the accused?

22 A. [15:22:15] Absolutely.

23 Q. [15:22:21] I'd like to now turn to another report. That's at tab 10. It's
24 MLI-D28-0003-1401. It's at tab 10 of your binder, Dr Porterfield.

25 I'd like to focus on the second paragraph of this report. And it is a -- it's amongst the

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1 materials, Dr Porterfield, you've probably already seen this. This is one of the
2 reports from an ICC, the ICC psychologist. And I will read out, and if we could
3 have interpretation from the French, please, into French.
4 "The client also points out that recently he's experienced more nightmares and
5 depressive complaints spending most of the day in bed. Both appear to have
6 resulted from the fact that the client's case is taking place."
7 I'm going to stop there. Now, would it be fair to say, then, that here an ICC
8 psychologist who has spent time with the accused is suggesting that the nightmares
9 and depressive complaints are actually resulting from the accused's case taking place?

10 A. [15:23:45] My reading of -- I'll pause.
11 My reading of the medical reports was that that was mentioned as one of several
12 factors influencing Mr Al Hassan's functioning. So trauma and torture were
13 mentioned by the staff assessing him, as was his mental state in relation to his case.
14 So they were all raised.

15 Q. [15:24:24] Now, thank you for that. Dr Porterfield, would I be right in saying
16 that if the accused was not telling you the truth about the facts of what happened to
17 him, and I'm talking about in detention, specifically, that this would impact on your
18 assessment and your conclusion; am I right?

19 A. [15:24:50] Certainly if there was extensive evidence of that, yes. Not every
20 single fact because I took for granted that there were probably things that were
21 possibly distorted, forgotten, incorrect, et cetera. You have to factor that when
22 you're talking to someone over such a long period of time and when they are so
23 impaired.

24 Q. [15:25:16] But what I'm talking about, Dr Porterfield, is not really the -- an
25 impairment. I'm talking about the issue of whether he's telling you the truth. If

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1 he's not telling you the truth about what actually happened to him in detention,

2 would it be fair to say that this does impact on your conclusions?

3 A. [15:25:37] Certainly, knowing specifically what kind of facts are not accurate

4 would be -- or what information is not accurate would be important, yes.

5 Q. [15:25:44] All right. Could I please ask that we turn to tab 6 in your binder.

6 For the court officer, that's MLI-D28-0003-1376. It we could please scroll down. It

7 is at page 1376. Keep going further down. Thank you. I'll stop. No. Keep

8 going up. Sorry, we need to see the words. Sorry. It was at the beginning. My

9 fault. Go up a bit more. All right.

10 Now, this is the ICC psychologist's report, and I'm going to just refer to a specific

11 extract. And, again, if the interpreters could translate this into French.

12 Now, when asked --

13 PRESIDING JUDGE MINDUA: [15:26:52](Interpretation) Counsel Taylor.

14 MS TAYLOR: [15:26:54] Thank you, Mr President. I just wanted a quick

15 clarification as to whether these documents are being shown to the public gallery.

16 These are medical reports.

17 THE COURT OFFICER: [15:27:03] None of the documents so far today have been

18 shown to the public.

19 MS TAYLOR: [15:27:08] Thank you.

20 MS LUPING: [15:27:13] And thank you for the reminder from Defence Counsel. I

21 should, obviously, have made it clear. And that's my fault, that this document is

22 confidential. However, I do believe that the extract I'm going to be reading does not

23 fall foul of the Single Judge's instructions. I'd be mindful of that.

24 Q. [15:27:31] I'm going to quote a passage. Dr Porterfield, it's in the first

25 paragraph:

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1 "When asked, the client said that it was not the first time that he has recounted the
2 events, including the instances of torture. He has spoken about them to the Red
3 Cross and to his lawyer. When he talks about it, a weight is lifted off his shoulders.
4 However, his account is not always believed." End of quote.

5 Now, isn't it right -- sorry. I have to wait for the translation. Isn't it right,
6 Dr Porterfield, that Mr Al Hassan explained to an ICC psychologist that when he talks
7 about what happened to him, in particular about the alleged torture, that he's not
8 always believed. Is that correct?

9 A. [15:28:36] That's what this document says that he said.

10 Q. [15:28:42] Could I ask that we now turn to another document, and that's at tab
11 31 of your binder. And I'm referring to MLI-D28-0003-1811.

12 You may recognise this, Dr Porterfield. I'll be asking you more questions about this
13 document later, but this is, from my count, your fourth clinical opinion that you were
14 asked to provide to the Defence team; is that correct?

15 A. [15:29:19] This was a letter that I shared in July of 2020. And I believe -- I'm am
16 just looking. I -- sorry.

17 Q. [15:29:31] Apologies, I will ask more questions. I want to refer to a specific
18 passage from this?

19 A. [15:29:37] Okay. (Overlapping speakers) Nope, go ahead.

20 Q. [15:29:39] But if we refer to page 1813, and I'd ask the court officer to bring us to
21 that page. At the part stating "medical care", and I'd like to read that passage out.

22 Medical care. And an interpretation, please, into French.

23 Now, I am going to refer to this following passage. This is referring to what
24 Mr Al Hassan has said.

25 "He noted that he feels they're not interested in helping him and they do not believe

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1 him." End of quote.

2 Now, in this passage, am I right that Mr Al Hassan had expressed his concerns to you
3 that medical staff at the ICC detention facility did not believe him in what he was
4 explaining happened to him; is that correct?

5 A. [15:30:47] Some context is needed. This is a document that I shared, that I
6 wrote in July 2020. And at this point, Mr Al Hassan's mental condition, in my
7 opinion, was deteriorating from when I had seen him earlier in the year -- sorry, the
8 previous year, and over the course of some telephone calls. So, yes, I was reporting
9 here various experiences and opinions that Mr Al Hassan with a was saying that I
10 believed evidenced his deteriorating state. That was one of them.

11 Q. [15:31:34] Thank you for that clarification. And just, again, to make sure we're
12 clear though, where you noted that he feels they're not interested in helping him and
13 they do not believe him?

14 A. [15:31:46] Yes.

15 Q. [15:31:46] Is that with reference to him explaining to you that the ICC medical
16 staff did not believe him about what, when he described what had happened to him?

17 A. [15:32:00] No. Pausing.

18 No. I believe it was more broadly referencing, that he felt in general they did not
19 believe his distress, his needs, et cetera. And, again, in my opinion at this time, he
20 was deteriorating quite severely and his perceptions were reflective of that.

21 Q. [15:32:29] And I'd now like to turn to a different document. And this is at tab 3
22 of your binder and it's MLI-D28-0003-1334. And I'd like to turn to the top of that
23 document. If we could scroll down a little. Thank you. I'll stop there.

24 Now, this document is dated 31 March 2018. And I believe you've already seen this,
25 Dr Porterfield. It's an examination that was conducted upon the arrival of

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1 Mr Al Hassan at The Hague, at the ICC. And here he has been declared by a medical
2 officer as being both physically and mentally fit after air transport; is that correct?

3 A. [15:33:23] I believe so, yes. I'm just reviewing it. "No noteworthy
4 abnormalities occurred. Seems to be in relatively good health." Yes.

5 Q. [15:33:40] So certainly on his arrival at the ICC, he was found both mentally and
6 physically fit?

7 A. [15:33:47] I think a context again is required. The mental fitness here is
8 probably what we call a mental status examine, which is something that a mental
9 health provider can do in a short period to basically assess is the person oriented to
10 where they are, to who they are? Can they speak? Are they psychotic? Meaning,
11 they do not have touch -- they're not in touch with reality. So it appears this would
12 be a fitness as derived from a brief mental status exam, not an in-depth assessment.

13 Q. [15:34:33] Now, I'd like to turn to your report, and I'd ask you to turn to tab 1.
14 And for the legal -- for the court officer, that's MLI-D28-0002-0535. And I'd like to
15 turn to page 0583.

16 A. [15:34:59] Okay.

17 Q. [15:35:03] And if we could scroll down, please.

18 Now, I'm going to refer to the first line under the heading "torture and abuse". Now,
19 here, Dr Porterfield, you've stated and I quote: "It is my opinion that Mr Al Hassan
20 has been a victim of torture during his imprisonment in several locations in Mali from
21 April 2017 through March 2018." End of quote.

22 And then you reference the torture convention; is that correct?

23 A. [15:35:40] That's correct.

24 Q. [15:35:40] And if we scroll down to the next page -- sorry, page 0584, where you
25 state, where you describe his experience. You described it as involving, and I quote:

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1 "The purposeful infliction of pervasive systemic brutal methods of psychological and
2 physical torture." I'm just going to stop there.

3 Now, first of all, it's correct, isn't it, that you're not a lawyer, Dr Porterfield?

4 A. [15:36:19] Correct.

5 Q. [15:36:20] You have no legal qualifications?

6 A. [15:36:23] That is correct.

7 Q. [15:36:23] So am I right to say you are not legally qualified to provide a legal
8 opinion as to whether a person meets the legal test for torture. Would that be fair to
9 say?

10 A. [15:36:36] Correct. I was speaking about the victim being a victim of torture as
11 a subjective -- his experience, not as me deeming a legal categorisation.

12 Q. [15:36:46] And when you have used the words purposeful infliction, or if you
13 intentional and the word systematic, again, you're not legally qualified to make any
14 such legal assessment as to whether these acts are intention or systematic; is that
15 correct?

16 A. [15:37:05] Well, when he's describing various things done to him, they would be
17 determined -- they would be, I think, categorised as purposeful if he's having his
18 genitals beaten or being waterboarded or being suspended by a bar or being beaten
19 on his back, or, you know, et cetera. Those would be not accidental. So ...

20 Q. [15:37:37] Dr Porterfield, I just want to know that we're in open session and I
21 believe that the Single Judge's instructions where that that type of evidence was to be
22 elicited in private session. I'm not going to, at this point, ask any questions about
23 that so that we don't have to waste time going into private session.

24 I would just simply note that -- and I'm sure this will be redacted for the record, but
25 those acts that you have referred to, isn't it right that in your report you confirm that

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1 these were not described to the ICC investigators; isn't that correct?

2 A. [15:38:19] Some of them were not correct.

3 Q. [15:38:22] Now, I would like to turn to a different part of your report and I'd ask
4 that we go to page 0569 of your report. And I'd ask if the court officer could please
5 go to page 0569. Now, you have already explained that you reviewed Dr. Cohen's
6 report and you stated that you did so, as you believed it was important to have other
7 expert opinions; is that correct?

8 A. [15:39:11] That's correct.

9 Q. [15:39:11] May I just clarify, Dr Porterfield, did you ever have any contact with
10 Dr Cohen? Did you speak with her at all?

11 A. [15:39:24] I don't -- I don't believe so, but there is -- it is possible there was a brief
12 phone call where we were introduced to each other. But I'm sorry, I don't
13 completely recall.

14 Q. [15:39:37] And do you recall if you received any other copies of Defence expert
15 reports other than Dr Cohen?

16 A. [15:39:47] I received a copy of a report by Dr Sandra Crosby.

17 Q. [15:39:53] Now, this brief telephone conversation with Doctor -- where Dr
18 Cohen was also there, can you recall what was discussed?

19 A. [15:40:03] I apologise. I cannot recall this phone call and I'm not even certain if
20 this was just a, hello, Dr Cohen will examine Mr Al Hassan in relation to medical.
21 Dr Porterfield will examine psychological. I -- I believe that was the phone call.
22 But that -- I'm not 100 percent certain.

23 Q. [15:40:29] And during this call, do you recall who was present? Was this a
24 conference call? Were there other people on the call?

25 A. [15:40:38] Again, I think if this introductory call took place - I'll slow down - if

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1 this took place, I believe that would have been Ms Taylor, perhaps other members of
2 the legal team.

3 Q. [15:40:51] And did you take any notes of this call?

4 A. [15:40:57] No, I don't believe I did because I would remember it, I think, if I took
5 notes. My apologies.

6 Q. [15:41:04] No apology needed. I'd ask the court officer, please, to scroll further
7 down so we get to the point C, paragraph C on the same page. Yes, if we stop there.
8 Now, I'm going to read a passage where it states, and I quote, Dr Cohen's opinion was
9 that Mr Al Hassan did not appear to exaggerate or feign symptoms or medical
10 problems. This is consistent with my conclusion as to his clinical credibility and lack
11 of malingering, feigning or exaggerating his experiences.

12 Now, first of all, when you state that this is -- that Dr Cohen's opinion was consistent
13 with your own, were you concerned at all that by reading another expert's opinion
14 that you yourself might be swayed in your own opinion by having access to the
15 expert's opinion on this same subject?

16 A. [15:42:11] No, I would not say swayed. This was in -- this was after my -- so Dr
17 Cohen examined Mr Al Hassan after I did. So I had already done my evaluation,
18 which also means I had all of my clinical findings and notes. And another expert's
19 examination of something that you yourself are not able to do in your own expertise,
20 meaning I am not a medical doctor, really serves to supplement what you have found,
21 but it's a different -- I might say it's apples and oranges, right, so that a medical
22 evaluation is not something that I would do. So her opinions are unique to her
23 discipline.

24 Q. [15:43:07] Am I right, Dr Porterfield, that when you included this passage in
25 your report, I mean, the report wasn't finished, right? You were still drafting it?

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1 A. [15:43:17] Correct.

2 Q. [15:43:17] So you included this aspect after reading Dr Cohen's report --

3 A. [15:43:22] Correct.

4 Q. [15:43:23] -- and your own report?

5 A. [15:43:25] That's correct.

6 Q. [15:43:27] Now, I'd like to turn to another aspect of your testimony from today

7 and that's at pages 29 to 30 of your evidence - sorry, your testimony today before this

8 Court - where you explained that in your view there are two indicators for you that

9 Mr Al Hassan was not lying to you. First, that he minimised his distress and

10 secondly that he said no to some of the different kinds of abuse that you asked about.

11 Is that correct?

12 A. [15:43:59] Those were two of other indicators. There are other indicators, but,

13 yes, those were two indicators I had mentioned.

14 Q. [15:44:06] All right. So just turning to the second indicator where he said no to

15 different kinds of abuse that you asked about, so did you, for example, ask him about

16 a specific type of abuse and say, for example, were you subjected to waterboarding?

17 Is that how it worked? I'm just trying to understand how it went.

18 A. [15:44:27] So it would be in my notes things such as, there was a time he's telling

19 about being transported, I believe, and I said, "Did they say anything or do anything

20 when transporting you back?" "They" being the guards. And he said, "No,

21 nothing." Things of that nature. There's several throughout the report -- sorry,

22 throughout the notes. It's a person, you know, denying that something happened.

23 Q. [15:45:07] And, again, just so I understand the process and the methodology, do

24 you give example -- did you give examples to Mr Al Hassan of potential types of

25 abuse that he then said no to?

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1 A. [15:45:20] No, I don't usually do that. There may have been a time I asked how
2 did they, you know -- I'll slow down. He said, "They beat me", and I would say,
3 "Can you describe how they beat you?" which is more getting clarification. But not
4 listing, for instance, methods of abuse and then asking if it happened to him. I did
5 not do that.

6 Q. [15:45:46] And just to clarify in terms of this assessment of his clinical credibility,
7 as you say, and these two indicators you mention, is there any specific scientific
8 research that you relied upon, and if so, could you explain where in your report that
9 is?

10 A. [15:46:10] Regarding which part?

11 Q. [15:46:12] Regarding these factors that one takes into account to assess
12 credibility.

13 A. [15:46:20] Those factors are under the rubric of the clinical interview. So, for
14 instance, how you conduct the interview, how the person presents during the
15 interview, do they demonstrate symptoms that would be difficult to feign. Those are
16 the kinds of things you are looking at that are written about in the litter literature.
17 There is not scientific literature that teaches us how to determine malingering. It is
18 much to the chagrin of many fields. There are not easy ways to do that.

19 Q. [15:47:04] So there's no scientific research. Is there any forensic training that
20 you got to be able to do this?

21 A. [15:47:11] By the way, to clarify, I don't think it is that there is no research. So I
22 don't want to be on the record saying that.

23 Part of clinical training is to determine how to receive -- how to obtain accurate,
24 reliable information. So, yes, that is very much part of my training. And in the
25 clinic that you referenced, my clinic that I worked at, the Bellevue programme, for 22

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1 years much of our work there is what we call an intake evaluation. In an intake
2 evaluation, we examine a person and assess their history and then determine if they
3 are credible to then be accepted into our programme because we have criteria that
4 come from the office of refugee resettlement.

5 So I've spent a very great deal of my professional career working to maximize reliable,
6 accurate information and determine ways to do so.

7 Q. [15:48:21] And when you do those assessments for the Bellevue, presumably the
8 whole picture of the person's background is important for that assessment.

9 Would that be fair to say?

10 A. [15:48:31] Certainly. Though it is a torture treatment programme, the focus
11 really is on torture.

12 Q. [15:48:38] Thank you. Now, just one quick question before I go back to your
13 report. Now, am I right that you've -- when you met with Mr Al Hassan that you
14 took photographs of the accused; is that correct?

15 A. [15:48:51] No, I did not.

16 Q. [15:48:54] All right. There must have been an error in one of the reports or
17 findings that we had received on that.

18 Now, is it correct, Dr Porterfield, that as an expert witness it is very important that
19 you remain neutral and objective.

20 Would that be fair to say?

21 A. [15:49:11] Yes, I would say that's important.

22 Q. [15:49:13] Could I ask the court officer and Dr Porterfield, if you turn to your
23 own report at page 0585. Scroll to the bottom, please.

24 Now, I'm going to read a passage that goes over to the next page where you state: "I
25 will review data from Mr Al Hassan's interviews with the ICC investigators to

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1 illustrate how the dynamic of" -- we continue to the next page -- "learned helplessness
2 was inculcated further by the lack of responsiveness to Mr Al Hassan's reports of
3 torture and maltreatment."

4 Now, first of all, Dr Porterfield, would it be correct to say that this is not a neutral
5 way to articulate what you are about to conduct in terms of your assessment of these
6 transcripts?

7 A. [15:50:37] Well, I would -- I think it's descriptive, is how I meant it, which is that
8 not responding to a person saying certain things about their safety. If that person
9 has already been tortured and threatened with death, that not responding
10 behaviourally is a furtherance or a reinforcement of learned helplessness. So I meant
11 it as a behavioural description of the condition of learned helplessness that I believed
12 was reinforced in these interviews.

13 Q. [15:51:10] Well, I'd like to turn to an example from your report, and that is at
14 page 0596. It starts off at page 0596 and you are describing an exchange between
15 Mr Al Hassan and ICC investigators on 18 January 2018. And you describe it as a
16 dynamic of - and I'm quoting you - "fostered, learned helplessness".

17 Now, you quote various passages from the transcript up to page 1806, but I'd like to
18 read a continuation from that very same interview for a passage that you didn't read,
19 you didn't include in your report. And I'd like to ask the interpreters, actually, to
20 use a transcript that I'm going to be referring to. And that's at tab 46. It's
21 MLI-OTP-0060-1791.

22 I'd ask that we please turn to page 1808, please, at line 550.

23 A. [15:53:05] Do I have this document or I'm just seeing it on the screen.

24 Q. [15:53:09] Oh, you do have it. It should be -- sorry. I'll just double check.

25 Apologies, Dr Porterfield.

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1 A. [15:53:19] No. I think it's my mistake.

2 Q. [15:53:22] No, it's tab 46. I probably said it too quickly at the beginning. Tab
3 46 of the ICC binder.

4 A. [15:53:29] Okay.

5 Q. [15:53:32] Okay. And I would ask that the interpreters provide you a
6 translation from the original French from lines 550 to 584. Could we have the French
7 interpretation into English, please, for this section?

8 THE INTERPRETER: [15:53:53] Line 551.

9 "Interpreter: I would like to clarify something.

10 Interpreter: My silence concerning what happened in 2012.

11 Interpreter: You said to me that I had the right to say nothing that would incriminate
12 me.

13 Interpreter: And I'm not going to lie.

14 Interpreter: And that is why I'm not going to go into more detail.

15 Interpreter: And I think that it suffice -- it is sufficient that I have helped those
16 people who killed the United Nations, who killed the French, who kill the Malian
17 army.

18 Interpreter: And I prepare -- or I prefer to withdraw at this juncture."

19 End of sight translation.

20 MS LUPING: [15:54:52] Could we continue, please, court officer? I had asked for
21 translation up to line 584 and we're only at 565. All the way to the end, please.

22 From 565, just if you could scroll so the interpreter can see it, line 565. And then if
23 you could, as she's interpreting, scroll down til we get to the end, please.

24 THE INTERPRETER: [15:55:14] Message from the English booth: Apologies.

25 "In order not to incriminate myself further.

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1 Interviewer: Very well.

2 Interpreter: It is not because I don't want to furnish any details, but that's the way it
3 is.

4 Interviewer number 1: As I said to you, it is your absolute right to answer or not
5 answer.

6 Interpreter: That is true.

7 Interviewer Number 1: We are very scrupulous when it comes to respecting the
8 rights of the Defence and the rights of witnesses, whether these be Article 55(2)
9 witnesses or other types of witnesses.

10 Interviewer number 1: That is why the lawyers are present.

11 Interviewer number 1: And that is why we constantly remind you of your rights."

12 End of sight translation.

13 MS LUPING: [15:56:15]

14 Q. [15:56:15] Now, Dr Porterfield, in the -- you relied for your report on the section
15 that preceded that to -- when you came to a conclusion that that example showed a
16 dynamic of fostered learned helplessness.

17 Now, would it be fair to say that in the passage that followed that very same
18 interview, would it be right to say that this shows quite a different dynamic case?

19 Here we have the investigators stressing to the accused his right not to incriminate
20 himself, and the accused here appears to understand and states he doesn't want to
21 speak any further about any role he had in the death of peacekeepers.

22 Now, my first question is: Isn't it correct that this additional passage you didn't
23 include in your report is actually relevant to your assessment of fostered learned
24 helplessness?

25 THE INTERPRETER: [15:57:23] Microphone, please.

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1 MS LUPING: [15:57:27]

2 Q. [15:57:27] The microphone was switched off, Dr Porterfield, but I will just let
3 the --

4 A. [14:19:41] (Overlapping speakers)

5 Q. [15:57:31] There was a question about whether you wanted to know where in
6 the materials this is.

7 A. [15:57:38] May I be referred to that document for a moment, because it would
8 help me orient? It's difficult to read the French and --

9 MS TAYLOR: [15:57:46] If I may assist, I have the reference.

10 PRESIDING JUDGE MINDUA: [15:57:48](Interpretation) Yes, Ms Taylor.

11 MS TAYLOR: [15:57:50] It's -- it's on page -- it's in the -- of the second batch or the
12 new extracts provided to you. It was on 0006-4461.

13 THE WITNESS: [15:58:04] What index number?

14 MS TAYLOR: [15:58:04] It's tab 8 in the Defence binder.

15 THE WITNESS: [15:58:08] So it won't be tab 8 in the Prosecution binder?

16 MS TAYLOR: [15:58:11] No, it's the Defence binder. This isn't the combined one,
17 but this is the new extracts that were provided to you and it's page 4461.

18 THE WITNESS: [15:58:20] I apologise. Do I still have the Defence binders.

19 MS LUPING: [15:58:25] I can -- it's also in the Prosecution binder, Dr Porterfield,
20 and I can refer you to the correct tab for that. That's at tab 40.

21 A. [15:58:37] I apologise to the Court.

22 Q. [15:58:41] And this extract in English that you just heard is found at page 4461.
23 And it starts with: "I want to clarify something."

24 A. [15:59:06] Okay. I have the document. If I may beg indulgence for a moment.

25 Q. [15:59:12] Certainly.

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1 MS LUPING: [15:59:24] Mr President, whilst the witness is looking for that excerpt, I
2 am conscious of the time, but if -- I do believe that it may be more efficient if
3 Dr Porterfield is given the opportunity, with your indulgence, to finish reading this
4 extract and so that I can -- we can clarify the witness's response on this question, if
5 that -- if that is amenable to the Chamber.

6 THE WITNESS: [15:59:48] Shall I proceed?

7 PRESIDING JUDGE MINDUA: [15:59:53](Interpretation) Yes, indeed, Madam
8 Prosecutor.

9 MS LUPING: [15:59:58]

10 Q. [15:59:59] And yes, please, Dr Porterfield?

11 A. [16:00:01] Part of my opinion around the excerpts I received for the January 18
12 interrogation and my opinion that Mr Al Hassan's responses were being -- I apologise,
13 that the responses to Mr Al Hassan were likely to foster further sense of helplessness
14 came from earlier in that transcript on page 4460 in the document you've shared just
15 now where the interviewer says, "I asked the question and you talk or not", as well as
16 that's not how an investigation stops -- "That's not how an investigation stops. I ask
17 you the question and you answer."

18 These were the kinds of statements that once a person has said, he's feeling unstable,
19 which I believe is the word Mr Al Hassan used when he's told, you don't -- "You
20 either answer me or not", and "I ask the question, you answer." Those were the
21 pieces of the document that I were -- I was saying would have fostered a sense of
22 learned helplessness in a survivor of torture.

23 These excerpts you said which then come after, as I spoke about earlier, yes, they
24 are -- they are statements of someone's right to not incriminate themselves. They are.
25 It's just that they -- they come in the face of many instances of him saying, I'm

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1 unstable, I'm unsafe. I'm in a position where I could be hurt, including having been
2 beaten several months earlier. So that context is what I'm trying to speak about as
3 the context in which he learned that if he brought these things up, he was going to
4 stay in the same situation.

5 MS LUPING: [16:02:16] Mr President, I just would like to repeat the question I asked
6 because I haven't had a -- I'm not --

7 THE WITNESS: [16:02:22] Sorry.

8 MS LUPING: [16:02:22] -- faulting you, Dr Porterfield, but I would just like an
9 answer to the question I had asked.

10 Q. [16:02:28] So, Dr Porterfield ...

11 PRESIDING JUDGE: [16:02:31] Yes, please. By all means, ask the question.

12 MS LUPING: [16:02:36] Thank you. Thank you, Mr President.

13 Q. [16:02:37] Now, Dr Porterfield, when you testified earlier, you said you'd
14 received these various extracts and you had stated to Defence Counsel that they -- this
15 didn't impact at all on your assessment.

16 Now, I would like to repeat my question to you now that you see this extract?

17 PRESIDING JUDGE MINDUA: [16:03:06] Counsel Taylor.

18 MS TAYLOR: [16:03:08] Thank you very much, Mr President.

19 I would like to request my colleague to use the same practise that she has requested
20 from the Defence, which is not to paraphrase what the witness says so that we don't
21 put words in the witness's mouth or inaccurately describe what the witness has
22 actually said. And I don't believe the witness used the term "at all" in her response.

23 MS LUPING: [16:03:33] Apologies, Dr Porterfield, but just in the interest of time, just
24 to avoid keeping everybody waiting, I can provide -- I can check and find the precise
25 words that you used.

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1 But repeating the question ...

2 Q. [16:03:50] Now that you've again seen this passage, isn't it correct that this does
3 show quite a different dynamic? Mr Al Hassan is explicitly stating that he is not
4 willing to talk any further about his role in the killing of peacekeepers. He
5 understands his rights of self-incrimination -- against self-incrimination and the
6 investigators are stressing that he has those rights.

7 Now, would you not agree that this passage shows quite a different dynamic?

8 A. [16:04:26] What I was trying to say and didn't do a very good job was that
9 earlier in this same interrogation he's saying he does not feel well, he needs medicine
10 and he has a fever. He's expressing that he's not functioning well. And he's told
11 that is up to the Malians. In other words, as he expresses distress, he's told there
12 have to be -- that someone else is in charge of that, that they're not going to respond.
13 So then when he later says, "I don't want to speak of this", they do -- they say "That's
14 your right, yes, absolutely". It's just that the presence -- you know, it's like saying the
15 presence of something does not take away the absence of the other thing, right? So
16 the presence of these statements of -- that he has rights to not incriminate doesn't take
17 away the absence of responding to him saying he's in danger. I think that was what
18 I was trying to say.

19 MS LUPING: [16:05:31] Mr President, I just want to ask a clarification of that, or you
20 prefer that we leave it there? All right. We can leave it there.

21 Dr Porterfield, thank you for answering my questions. I haven't finished, I'm afraid
22 to say. I know that we were all hoping that we would complete today.

23 I did have a few additional questions for the witness within the time allotted to me.

24 PRESIDING JUDGE MINDUA: [16:05:59](Interpretation) Right.

25 Madam Prosecutor, I've got a question for you. How much time do you need to

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1 finish with the witness today?

2 MS LUPING: [16:06:14] Could I please ask the court officer how much time have I
3 got left, because I do believe it will -- I will require all the time allocated.

4 THE COURT OFFICER: [16:06:23] You have used 1 hour and 48 minutes so far.

5 MS LUPING: [16:06:27] So as I understand, I had two and a half hours,
6 your Honours. So that would leave me with approximately 45 minutes left to
7 complete my cross-examination.

8 PRESIDING JUDGE MINDUA: [16:06:49](Interpretation) Right. You've got 45
9 minutes to complete your cross-examination according to the court officer. And I
10 think the legal representative of victims would like how much time?

11 MR LUVENGIKA: [16:07:05](Interpretation) Your Honours, the questions that the
12 LRVs wanted to ask have actually been raised by the OTP. So the clarifications that
13 we wanted were already demanded by the OTP. So thank you so much.

14 PRESIDING JUDGE MINDUA: [16:07:28](Interpretation) Thank you, Counsel Nsita.
15 Counsel Taylor.

16 MS TAYLOR: [16:07:33] If it is relevant at all to your scheduling, I'd also like to
17 draw the attention to the Chamber that we will be requesting to re-examine the
18 witness as well. Thank you, Mr President.

19 PRESIDING JUDGE MINDUA: [16:07:48](Interpretation) Okay. Given these
20 conditions, we can't finish today, even though that was your desire. We need 45
21 minutes for the OTP and some time for you, so it's impossible to finish today. So we
22 are going to actually suspend the hearing today.

23 Madam Prosecutor, so your question is going to be the last question for today,

24 Madam Prosecutor.

25 Madam Prosecutor.

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1 MS LUPING: [16:08:26] Mr President, I don't believe I need to ask any additional
2 questions. I think the witness's position, actually, when I re-read her response, her
3 position is clear and I will leave the Chamber to assess that response for itself. And
4 then I will be turning to other aspects tomorrow.

5 PRESIDING JUDGE MINDUA: [16:08:46](Interpretation) Very well. So we're
6 going to continue tomorrow, as you said. And at -- we shall resume at 9.30.
7 My colleague reminds me that tomorrow it's 9.45, according to the latest information
8 of the Chamber.

9 Madam Witness, expert witness, the Chamber would like to thank you for having
10 clearly responded to the questions that were put forward to you. Unfortunately,
11 your deposition is not over, as you might have noticed. Tomorrow we shall
12 continue, but until then, I would like to remind you that you cannot talk about your
13 deposition to anyone at all, neither to the members of your family or your friends in
14 case you're in touch with them this evening, more specifically.

15 THE WITNESS: [14:19:41] I understand.

16 PRESIDING JUDGE MINDUA: [16:09:53] So before closing -- thank you so much.
17 Before closing this session, I would like to thank the various participants and the
18 parties, the interpreters and the court reporters, the security officers, and, of course, I
19 would like to thank the public in the gallery and the public that's been viewing the
20 proceedings remotely. And I would like to wish you a very good evening and we
21 will see each other tomorrow.

22 And the Court session is now suspended.

23 (The hearing ends in open session at 4.10 p.m.)