International Criminal Court

Trial Chamber X

Situation: Republic of Mali

In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud - ICC-01/12-01/18

Presiding Judge Kesia-Mbe Mindua, Judge Tomoko Akane and Judge Kimberly Prost

Trial Hearing - Courtroom 3

Monday, 30 May 2022

(The hearing starts in open session at 10.03 a.m.)

THE COURT USHER: [10:03:04] All rise.

The International Criminal Court is now in session.

Please be seated.

PRESIDING JUDGE MINDUA: [10:03:41](Interpretation) Court is in session.

Good morning to all.

Madam Courtroom Officer, could you please call the case.

THE COURT OFFICER: [10:03:55] Thank you, Mr President.

The situation in the Republic of Mali, in the case of The Prosecutor versus Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.

And for the record, we are in open session.

PRESIDING JUDGE MINDUA: [10:04:14](Interpretation) Thank you very much, Madam Courtroom Officer.

As always, we shall take the appearances for the various teams, starting with the Office of the Prosecutor of course.

Mr Prosecutor.

MR GARCIA: [10:04:31](Interpretation) Thank you, Mr President. Thank you.

Good morning, your Honours. Today I have Maître Gilles Dutertre, who is in the courtroom with me, Maître Yayoi Yamaguchi, Mr Damien Grzeziczak - I'm sorry - and Madam Charlotte Luijben. Thank you very much.

PRESIDING JUDGE MINDUA: [10:04:48](Interpretation) Thank you very much, Mr Prosecutor Garcia.

I now turn to the Defence. Counsel.

MS TAYLOR: [10:04:57] Good morning, Mr President. Good morning, your Honours. Good morning to everyone inside and around the courtroom. The Defence for Mr Al Hassan is represented today by Maître Sarah Marinier Doucet, Ms Cecile Lecolle, Ms Amina Fahmy, and myself, Melinda Taylor. Thank you very much.

PRESIDING JUDGE MINDUA: [10:05:19](Interpretation) Thank you very much, Ms Taylor.

So I would like to note for the record that the accused has been authorised to not participate in the hearing today.

I'm now turning to the Legal Representatives for Victims. I don't know if Maître Doumbia is able to speak to us.

MR DOUMBIA: [10:05:46](Interpretation) Good morning, Mr President, your Honours. Good morning.

The Legal Representatives for Victims is represented by Madam Prisque Dipanga and by myself, Seydou Doumbia. And I thank you.

PRESIDING JUDGE MINDUA: [10:06:00](Interpretation) Thank you very much, Mr Doumbia.

So now, finally, let me turn to the witness. I would like to say that this morning we have Defence Witness D-0025, 0025.

Good morning, Madam Witness. Can you hear me?

WITNESS: MLI-D28-0025

(Witness speaks English)

THE WITNESS: [10:06:26] Yes. Good morning, your Honour.

PRESIDING JUDGE MINDUA: [10:06:28](Interpretation) Thank you very much, Madam Witness.

On behalf of the Chamber, I would like to welcome you. You shall be testifying with a view to assisting the Trial Chamber in establishing the truth in the case against Mr Al Hassan.

I note in passing that you have not requested protective measures. I would like to thank you for your availability and for your courage, which enables us to hold our hearing openly. But of course, if there is anything that you would like to discuss secretly, we can move into private session.

I'd like to now administer the solemn oath according to Rule 66(1) of the Rules of Procedure and Evidence.

On the table in front of you, you have a document with the official formula; is that correct? The official wording.

THE WITNESS: [10:08:00] Yes.

PRESIDING JUDGE MINDUA: [10:08:02](Interpretation) Very well. So I would request that you read out this wording out loud, please.

THE WITNESS: [10:08:11] I solemnly declare that I will speak the truth, the whole truth and nothing but the truth.

PRESIDING JUDGE MINDUA: [10:08:23](Interpretation) Thank you very much, Madam Witness.

You are now under oath. The VWS, Victims and Witness Section, as well as the

representatives of the Defence have certainly already explained to you what being under oath means. So I shall not come back to that.

However, I do have a number of -- of practical pieces of advice to give you. You should bear in mind throughout your testimony that everything that is said in this courtroom is transcribed by court reporters and interpreted into a number of languages by interpreters. So it is important to speak clearly and slowly.

Please only start to speak once the person questioning you has finished putting their question to you. So, I think there is an additional difficulty in the sense that you speak English and the Defence counsel also speaks English. So please be vigilant and observe pauses to enable our interpreters to work correctly.

You will first be questioned by the Defence, then by the Office of the Prosecutor, and probably by the Legal Representatives for Victims as well.

Without further ado, I shall now hand over to Ms Taylor for the examination-in-chief.

Ms Taylor, please.

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

QUESTIONED BY MS TAYLOR:

Q. [10:10:49] Good morning, Madam Witness.

Just a quick housekeeping matter. There should be a measuring tape next to you, which has centimeters and inches, just in case it's of any assistance to you during the questioning.

Now, first question, what is your name? Can you please state it for the record.

A. [10:11:06] My name is Dr Juliet Cohen.

Q. [10:11:10] And Dr Cohen, can you briefly state for the record your current position.

A. [10:11:18] I am a forensic physician, I work independently.

Q. [10:11:25] And did you hold this position in 2019 and 2020?

A. [10:11:31] At that time I also worked part-time for the charity, Freedom from Torture, where I was the head of doctors.

Q. [10:11:41] And Dr Cohen, roughly, how many individuals have you evaluated as a forensic physician for the purposes of assessing consistency of their account with the physical or mental symptomology you examined?

A. [10:12:00] I have examined, I estimate, over 15,000 individuals for evidence of torture and other kinds of serious harm.

Q. [10:12:12] And for these individuals, did any of them have injuries arising from a detention or custodial environment?

A. [10:12:22] Yes, a great many of them.

Q. [10:12:26] And before your involvement in this case, did you have any experience in assessing either the physical or the psychological effects of shackling or handcuffs?

A. [10:12:39] Yes, I have examined many people who have been shackled for long periods.

Q. [10:12:46] And I have the same question as concerns accounts concerning falaka?

A. [10:12:53] Yes, I have also examined many people who have been subject to that torture.

Q. [10:12:59] Now, if we could turn to tab 2 of your binder. It's MLI-OTP-0080-5674. If we could bring it up. It's a public document. It should be binder number 1 of the Defence binders. And it will also appear on the screen for you.

A. [10:13:25] My screen is blank.

Q. [10:13:30] Dr Cohen, do you have it at tab 2?

A. [10:13:40] Yes, I have tab 2.
Q. [10:13:42] Dr Cohen, are you familiar with this document?
A. [10:13:46] Yes, this document is the one titled, "Proving Torture".
Q. [10:13:51] And does this document have any relationship with the -- with the organisation that you mentioned you were associated with in 2019?
A. [10:14:01] Yes, it was published by Freedom from Torture, the organisation I worked for, and it was largely consisting of work which I led.
Q. [10:14:10] If we could turn to page 5686, and if we could look at the second column on that page.
PRESIDING JUDGE MINDUA: [10:14:23](Interpretation) Ms Taylor, the interpreters are suffering, so please, observe pauses with the witness.
MS TAYLOR: [10:14:31] I apologise to the interpreters.
Q. [10:14:35] If we could scroll down to the third paragraph on the second column, where it states:
[...] the clinician [...] must comply with the duties of an independent expert." And, "This means, among other things, that they must not simply accept the account given to them by the claimant [...]"
Do you see that, Dr Cohen?
A. [10:15:00] Yes.
Q. [10:15:02] And is that the approach that you followed when you met and evaluated Mr Al Hassan?
A. [10:15:10] Yes, it is, and that's my usual practice.
Q. [10:15:16] If we could turn to page 5693 of the same document. This sets out the position of the Home Office towards reports prepared by Freedom from Torture, and it states that the Home Office has issued a directive that asylum caseworkers

should accept the expertise and objectivity of Freedom from Torture reports. Are you in a position to explain to the Court why the Home Office issued this directive?

A. [10:16:04] Yes. This asylum policy instruction came about in order that our reports were not questioned. What had happened some years previously, was that they thought that they could question the expertise of the doctors, that the doctors might not be properly trained to give the opinions that they did. And we demonstrated the extensive training in both physical and psychological assessments that our doctors undergo. And so they put in this statement to say that we were qualified to give the opinions that we did about findings in relation to torture.

Q. [10:16:57] Now, if we could turn to tab 7 of your binder. It's MLI-D28-0002-0500, but if we could turn to page 0528.

Dr Cohen, is this an extract from your curriculum vitae?

A. [10:17:41] Yes, it is.

Q. [10:17:44] And is the information that you provided accurate?

A. [10:17:51] Yes, that's the -- that's the CV at the date that I submitted this report.

Q. [10:17:58] Now, your curriculum vitae mentions that you provided an expert report in the KV case before the UK Supreme Court in 2018. If we could bring up -- if we could keep your report to hand, but if we could bring up on the screen, tab 110. That's MLI-D28-0006-4878.

And Dr Cohen, is this the case referred to in your curriculum vitae?

A. [10:18:46] Yes, it is.

Q. [10:18:49] Now, Dr Cohen, just briefly, can you explain to the Chamber whether the Supreme Court in this case issued any findings concerning the use of the Istanbul Protocol consistency scale?

PRESIDING JUDGE MINDUA: [10:19:06](Interpretation) Mr Prosecutor.
MR GARCIA: [10:19:09](Interpretation) Mr President, I'm going to be objecting to this question because I don't see the relevance for the trial. And the items in the report on which the witness is testifying today, she is being requested to give her opinion on the conclusions of a chamber in which she allegedly produced an expert report. Of course, if we are talking about her expertise, yes, but beyond that, I do not consider it to be relevant.
PRESIDING JUDGE MINDUA: [10:19:40](Interpretation) Ms Taylor.
MS TAYLOR: [10:19:42] Thank you very much, Mr President, and thank you to the Prosecution for that lengthy objection. I'm not sure they've read the judgment because it concerns the application of the Istanbul Protocol in examinations of torture by forensic physicians. So one of the questions which I will obviously be putting to this witness is the applicability of Istanbul Protocol to the type of evaluation that she performed with Mr Al Hassan.
So I do believe we should cut to the chase and just ask the witness if, following this judgment, it was accepted that the Istanbul Protocol could indeed or should be used as a mechanism for evaluating torture survivors.
PRESIDING JUDGE MINDUA: [10:20:28](Interpretation) Very well. So please rephrase your question in order to enable the expert to tell us what she knows on the subject.
MS TAYLOR: [10:20:42] Thank you very much, Mr President.
Q. [10:20:45] Dr Cohen, do you need me to repeat my question? Or is it clear enough that my question -- because I don't think we need another objection, or is it clear enough that I'm asking you about the applicability of the Istanbul Protocol consistency scale to examinations of torture survivors in the United Kingdom?

PRESIDING JUDGE MINDUA: [10:21:09](Interpretation) Mr Prosecutor.

MR GARCIA: [10:21:12] (Interpretation) Well, Mr President, the manner in which it has been rephrased, if it's general, then I do not have an objection, even though the relevance is rather marginal, but I don't want us to delve into the other part of it.

PRESIDING JUDGE MINDUA: [10:21:28](Interpretation) But I do believe this question is useful, Mr Prosecutor, in order to enlighten the Chamber.

So please go ahead, Ms Taylor.

MS TAYLOR: [10:21:39] Thank you very much, Mr President.

Q. [10:21:42] Dr Cohen?

A. [10:21:43] Yes, the -- in this judgment, it was agreed that the Istanbul Protocol provides important guidelines for the assessment of evidence and the correlation of the clinical findings with the allegation of torture.

Q. [10:22:01] Now, Dr Cohen, in your CV, it mentions that in 2018, you were the primary drafter for the working group on Chapter V of the Istanbul Protocol supplement.

What did this chapter concern?

A. [10:22:19] This is the chapter which addresses physical evidence of torture and, essentially, what transpired in the redrafting was that we have simply added some new references, some new sections to the existing Chapter V of the Istanbul Protocol, and clarified the way in which interpretation should be guided by the doctor in relation to the findings as compared to the allegations.

Q. [10:22:58] I'd like to bring up now Defence tab 185. And if we could bring it up on the screen, but I think it's still helpful for you to have your report near you. It's MLI-D28-0006-2639.

Now, Dr Cohen, as someone who has been involved in drafting the supplements to

the Istanbul Protocol, are you in a position to inform the Chamber as to whether the Istanbul Protocol sets out new standards or does it reflect minimum internationally recognised standards in the relevant field?

A. [10:23:52] Perhaps I could just clarify that at the time that I submitted this report, we were still intending that the Istanbul Protocol addition should be a supplement. During the course of the work, it transpired that essentially we were making a new edition, a revised edition of the Istanbul Protocol, and that is going to be published on 29 June by the office of the High Commissioner for Human Rights.

So we didn't change the existing standards, but we hope to clarify and, in some parts, to expand upon the information in the first edition.

Q. [10:24:41] And in terms of this first edition that we're looking at, at the time it was issued and in subsequent years, was it creating new standards or was it reflecting existing principles or standards under human rights law?

A. [10:25:02] So just to speak about my part, the Istanbul Protocol also has legal and other information, but the clinical information simply clarified and built upon existing forensic medical practice where the doctor has to consider the nature of an injury and compare the findings to how the person says that they sustained that injury and give an opinion on that interpretation. So this has always been forensic medical practice. It's, if you like, codified in a clear and defined way in the protocol.

Q. [10:25:53] Now, if we could turn to page 2664 of this document. It sets out the requirements at paragraph 83 of what should be included in a medical report. If we scroll down to paragraph 83 and then we can see on the right-hand column there's (a), (b), (c) and (d). And according to (b), the reporting physician is required to set out a detailed record of the subject's story as given during the interview.

Why does that requirement exist?

A. [10:26:37] So in order to make an interpretation of the findings and give an opinion about how they may match the account given, it's necessary first to take that detailed account of how the person says that they sustained the injuries and the course of healing or treatments that they received. And it's also important to take the background information to understand other opportunities that they may have had for accidental injury, occupational injury, medical interventions, anything that might also have left a physical mark upon their body.

Q. [10:27:29] Now, according to (d), the physician is required to provide an opinion as concerns the probable relationship of physical or psychological findings to possible torture or ill-treatment.

Dr Cohen, can you explain how physicians are competent to provide opinions as concerns the consistency of particular symptomology with an account of torture or ill-treatment.

A. [10:28:05] So it's necessary both to draw upon our general experience and training, and also the specific training and experience acquired when specialising in this type of forensic medicine and to combine that in this process.

Q. [10:28:32] Now, paragraph (d) also specifies that a recommendation of necessary medical or psychological treatment should be given.

Now, does providing this recommendation impact on the neutrality of the physician or create a conflict of interest?

A. [10:28:50] No, I don't believe that it does. I think that, while making such a report, the physician is conscious of their duty to be objective, impartial and to have a duty to the court. They do have a secondary duty of care to the person whose health care needs they have identified. In my experience, often these needs have not previously been clearly identified and this is the reason for making such

recommendations.

Q. [10:29:28] Now if we could go back to tab 7, that was the document we were looking at with your CV. Did you author this report?

A. [10:29:41] Yes, I did.

Q. [10:29:44] And when you wrote this report, did you consider that your duty was to the Defence or to the Court?

A. [10:29:50] My duty is to the Court.

Q. [10:29:54] Now, you took a narrative from Mr Al Hassan. Can you explain to the Chamber how you obtained this narrative, what type of questioning you used?

A. [10:30:04] So it's my practice to always start with the most open questions and to try to invite a fluent narrative and allow the person to describe events in their own words. As the account progresses, it becomes necessary sometimes to ask more closed or focused questions in order to obtain more details about specific parts of their experience.

Q. [10:30:37] Now, if we could turn to page 0501, paragraph 2. Your report states that your opinion "is therefore not based solely on reported history but on my analysis of the responses, observations and examination findings."
Can you briefly explain to the Chamber what this means.

A. [10:31:07] Briefly, this means that I do not accept what is told to me without question. The doctor's job is always to question what the patient tells them and to consider how likely that is to be true in the light of this other information from observation, examination, how they conduct themselves, the level of detail they can give when asked about experiences and so on.

Q. [10:31:43] Now, Dr Cohen, did you conduct a full assessment of Mr Al Hassan's background?

A. [10:31:51] Yes, I asked him a number of questions about his childhood, early life, occupations, and so on.

Q. [10:32:01] And in terms of your methodology to attributions, did you take into account possible alternative causes, including possible injuries sustained in 2012?

A. [10:32:17] Yes. So in the interpretation part, I have discussed those injuries that could be due to other causes than those which he attributed and given, as far as was possible, my opinion as to which was the more likely.

Q. [10:32:41] Now, I'm going to focus on your findings and description of certain reports concerning the use of handcuffs. And it's paragraphs 24 and 48 of your report. And we're going to start with page 0506.

But while this is being brought up, Dr Cohen, do you recall how long Al Hassan told you he was hearing handcuffs?

A. [10:33:08] It was over four months.

Q. [10:33:12] And during this period, was he wearing them 24 hours a day?

A. [10:33:17] Yes.

Q. [10:33:21] Now, according to paragraph 24, he informed you that for the first six weeks, he was wearing metal handcuffs that were stiff-jointed, 15 centimetres apart with metal less than 1 centimetre in diameter.

Now if we could just bring up tab 191, that's MLI-D28-0006-5204. If that could be shown.

Dr Cohen, does this picture correspond to your understanding of his description?

A. [10:34:11] Yes. This is a picture of that type of fixed handcuff.

Q. [10:34:17] Now, would wearing fixed handcuffs like this over a prolonged period of time, would that be akin to being kept in a stress position in terms of the physical or mental stress that is generated?

A. [10:34:33] Yes, it would, because it's extremely restrictive on movements of the arms.

Q. [10:34:41] Now, paragraph 24 mentions that Al Hassan told you that wearing these caused him great humiliation because he couldn't properly wash. What did you understand from him when he said he couldn't properly wash?

A. [10:35:06] Well, both that literally he would not be able to properly wash himself, but also I think he was alluding to the humiliation of the difficulty it would give him to be hygienic when going to the toilet.

Q. [10:35:26] Now, this type of humiliation, in your experience, would it be likely to generate any persisting psychological consequences?

A. [10:35:39] What often happens is that when a person is reminded of such a humiliating and shaming experience, they experience again those emotions of shame, embarrassment, humiliation.

Q. [10:36:00] Now, if we could turn to page 0509 of your report, specifically paragraph 34. You describe the cell conditions that he described to you while wearing these handcuffs. It was a cell of 2.5 metres by 3 with 13 others after the second night. So it's a cell of about 7.5 metres squared, 14 people, about .54 metres square for each person, not taking into account the need to deduct space for waste buckets.

Would you consider dimensions like this to be cramped?

A. [10:36:58] Yes, they would be extremely cramped.

Q. [10:37:03] And in your professional expertise, are you able to give an opinion as to the likely physical and mental effects of being confined while wearing handcuffs in cramped cell conditions?

A. [10:37:21] I think it would make it even more difficult for the person to change

position, to move from sitting to standing, to lying down. It's difficult to see how people could -- well, he described himself that they could only just about manage to lie down at night if they all lay on their sides. So it's extremely stressful to remain for long periods in such a way.

Q. [10:37:50] So if we could turn to page 0511 of your report, paragraph 43. Now, Mr Al Hassan apparently reported to you that it was always difficult to sleep due to these conditions and the guards would kick the door at random intervals. Now, in your experience, would the cell conditions that Al Hassan described to you be likely to generate sleep deprivation?

A. [10:38:36] Yes, they would.

Q. [10:38:37] And does sleep deprivation generate any mental or cognitive consequences?

A. [10:38:46] So it can have effects on memory, on concentration, and make it very difficult for a person to focus and understand things that they are being told or questions asked.

Q. [10:39:03] And what about prolonged sleep deprivation, that is, over the course of 11 months?

A. [10:39:11] So it can have - excuse me - cumulative effects making the memory and concentration worse, and it can exacerbate or make worse other mental health conditions. It can reduce the tolerance to pain, make the person feel continually fatigued. They will be more prone to infection because their immune system is affected.

Q. [10:39:48] I'd like to turn to tab 109, this is MLI-D28-0003-0843, and looking specifically at page 0850. I'd like to go through a series of extracts. Now, on this page, it's an interview of 13 July. It's the first day of his interviews for

the Prosecution. He's mentioning being in a room of 3x4 with five other persons. If we can turn now to page 0858, these are transcripts of an interview from the next day, and he tells the interviewer that overnight he's being transferred to another cell with 10 persons.

I'm now going to turn to 0863. It's an interview from 6 September. He's in the same cell, but now it's 12 people.

If we go to page 0867, 13 September, he tells the Prosecution in the middle of the interrogation sessions he was moved again to a different cell, it's bigger, but it has 18 persons. And he says this is cell 6.

Now, Dr Cohen, in your opinion, if someone is moved during the middle of interrogations to a new cell, which might be more populated, it might have different persons, or it might be more cramped, would any of these changed conditions generate any consequences for the physical or mental health of the person being interviewed?

A. [10:42:27] Yes, they could certainly do that, particularly being moved into a more crowded and more cramped cell.

Q. [10:42:39] Now, in your report - and I'll give the reference, but I want to stay on these transcripts - you wrote that Al Hassan had reported to you that he had been beaten, slapped and given falaka in late November 2017 or early December. And the reference is paragraph 33.

I'd like to turn to the transcripts of his interviews for the Prosecution in early December. This is still on tab 109, but going to 0883.

This is an extract from an interview on 4 December, and in it the investigator mentions that "They were forbidden to eat for 3 days." Can you see that exchange at line 33?

A. [10:43:41] Yes.
Q. [10:43:43] Now, Dr Cohen, if Al Hassan had been denied food for three days after being beaten, would that have generated any psychological or cognitive consequences?
A. [10:43:56] Yes, I'm sure anybody going without food for as long as three days would be likely to have a headache, feel weak, dizzy, perhaps a little sick. They might be starting to feel some confusion and very fatigued.
Q. [10:44:19] Now, Dr Cohen, we've spoken of sleep deprivation, starvation, cramped confinement, and beatings, should we consider the impact of each form of maltreatment in isolation or, in your experience, do different forms of maltreatment intersect in terms of the consequences that are generated?
A. [10:44:46] I think it's very important to consider the cumulative effect of all of these conditions. The Committee for Prevention of Torture has listed these sorts of detention conditions, including cramped cells where a prisoner has less than 4 metres square per person in a shared cell, as well as the poor hygiene facilities, the lack of opportunity to exercise, the lack of proper ventilation, adequate food, adequate water, and states that, in combination, this is how they can be considered to compromise cruel, inhuman, degrading treatment.
Q. [10:45:38] Now if these beatings and starvation happened in late November or early December, and he's in the same cell during his interviews on 4 December, would he be likely to be experiencing any of these cognitive or psychological consequences at the time of 4 December?
A. [10:45:59] Yes.
MR GARCIA: [10:46:02](Interpretation) Mr President.
PRESIDING JUDGE MINDUA: [10:46:11](Interpretation) Mr Prosecutor.

MR GARCIA: [10:46:13](Interpretation) Now there have been a number of questions of the same ilk, where the Defence counsel is putting questions that are conjecture, what would have been the effect on the accused where some situations have occurred. To my mind it is conjecture. It is -- and also the response thereto. If she could come to the same task by putting general questions, but to report this to the accused is to allege what the accused might have felt at the given time in -- point in time in history, and it is quite inappropriate to my mind.

PRESIDING JUDGE MINDUA: [10:47:05](Interpretation) Yes. I was waiting for the interpretation.

Now, Ms Taylor, what the Prosecutor has said is correct, because we are dealing here with an expert who can provide us with the principles and general rules. But with regard to the particular situation of the accused at the time of the events, your question touches on speculation. What do you answer to that?

MS TAYLOR: [10:47:41] Thank you, Mr President. I think it would have been important to hear us first before providing your views, because I'm a little bit surprised and shocked by this intervention from the Prosecution because we have an expert witness on the stand, an expert witness who has the experience in evaluating over 1,5000 torture survivors and providing an opinion, which is what Dr Cohen is doing now, on the consistency between a particular account and possible forms of maltreatment, that is, torture or cruel treatment. It is the role of an expert to provide a medical opinion as concerns the likely consequences of certain forms of maltreatment.

Now that is exactly what Dr Cohen has done. She's informed the Chamber on the basis of her vast expertise what the likely psychological effects would be of falaka, slapping, beating, being kept in a cramped cell, being starved for three days.

Now, if an expert can't inform the Chamber of the psychological consequences of that, then that would not be consistent with the Chamber's duty to ascertain the truth on the basis of an expertise as concerns whether these specific forms of maltreatment would be likely - and I used the word "likely" in my question - would be likely to generate psychological consequences that would persist a week later.

PRESIDING JUDGE MINDUA: [10:49:32](Interpretation) Ms Taylor, I have followed what the expert has been saying. She said, for example, that in general terms, when somebody has not eaten for three days, after three days the person will start to have headaches, they might become dizzy, et cetera, et cetera.

Now you're saying that the reason for testifying is specifically to tell us with regard to the situation of our client when it was he suffered or sustained the alleged torture; is that correct?

MS TAYLOR: [10:50:10] No, Mr President, I believe you may have not understood what I said. What I stated, Mr President, was that this is an expert witness who's providing an opinion as concerns the likely consequences of the types of maltreatment that we've been discussing on a person - it doesn't have to be Mr Al Hassan, they're an expert - on a person who's being interviewed a week later. I can reframe it specifically, but we're wasting a lot of time here, which I do hope we will be credited. What are the persisting -- would the type of consequences described by the witness be likely to persist a week later if the person's in the same detention conditions? Now the witness has already answered this question, and it's a question that falls within the remit of her expertise.

PRESIDING JUDGE MINDUA: [10:51:17](Interpretation) Mr Prosecutor, there you have it.

I believe that further to my question, Defence counsel has explained the purpose of

the questions she is putting to our expert. So I don't know what you would like to speak to. The reformulated question was very specific and clear. It's not a matter of -- well, this is a general affirmation.

MR GARCIA: [10:51:47](Interpretation) Thank you, your Honour.

Very briefly, I believe that this witness came to give testimony about a report she prepared about some injuries. A psychological report was done by someone else. This witness is not here to talk to us about the psychological effects on the accused person. That was clearly set out at paragraph 3: (Speaks English) "I am aware that a separate psychological report is being carried out and that the psychologist has already spent time examining Mr Al Hassan."

(Interpretation) The witness here never conducted a psychological evaluation of the accused person. When Defence counsel tells us that it is quite appropriate that it is within her area of expertise, that is false. She is here to talk to us about the injuries upon the accused person's body. We're not here to discuss a psychological or psychiatric report. And this is where Defence counsel is misleading us.

We should not be putting such questions, and I think that the expert is here, will tell us so because she said so in her own report. She did not conduct a psychological evaluation of the accused person.

PRESIDING JUDGE MINDUA: [10:53:21](Interpretation) Very well, thank you, Mr Prosecutor.

Ms Taylor, we need to move forward. Have you heard everything? It seems that you are expanding the scope of our expert's area.

MS TAYLOR: [10:53:40] I'm absolutely not expanding it. And that was a misleading objection because we tendered two reports from this witness, and in the second report, which is tab 8, Dr Cohen conducted an evaluation of the very same

transcripts I have just been going through to provide her opinion of the likely consequences on his physical and mental state at the time of the interviews.

So Dr Cohen, in fact, already went through these extracts and already provided an opinion, an expert opinion, which this Chamber has considered to fall within the scope of our Rule 68(3) application.

Now I could have gone through these extracts at a later point when I go through the second report, but that would have involved us jumping between a lot of documents. So I simply brought up the questions when I was considering the first report to not lose time, which we have now done.

Now, Dr Cohen has testified that she has expertise in examining the psychological consequences of torture, and Dr Cohen will testify to this Court concerning her second report, which was based on the very same extracts that we've gone through.

I don't understand why we are losing so much time on these baseless objections. It's not fair to the witness and it's not fair to the Defence.

PRESIDING JUDGE MINDUA: [10:55:17](Interpretation) Very well.

Mr Prosecutor.

MR GARCIA: [10:55:23] (Interpretation) I don't want to take --

THE INTERPRETER: [10:55:29] Overlapping.

MR GARCIA: [10:55:32] (Interpretation) We are dealing with 68(3) here. This is what Defence counsel has --

THE INTERPRETER: Overlapping. Excessive speed.

PRESIDING JUDGE MINDUA: [10:55:40](Interpretation) The expert has prepared her report on two topics, namely, the physical condition of the accused and the psychological effects, which are to be found in a report that the Defence --

MR GARCIA: [10:56:01] (Interpretation) We are entirely in agreement, but when

you look at the second report, it is quite general in nature. As for the second question, for each particular witness, it's a different thing. This is not the question that Defence counsel is referring to today. We are mixing up apples and oranges again. We look at the second report, and it is titled "General comments". These are general comments. It was not a psychological evaluation of the accused.
She speaks about a number of conclusions, the effects of certain treatments and so on and so forth. But not -- this doesn't have to do specifically with the accused. In the other reports that she was asked to -- she issued a ...
(Overlapping microphones)
(Speaks English) ... based on the information conveyed by the witness concerning the detention conditions, et cetera.
(Interpretation) "Are you in a position to determine whether this was not or -- whether this was compatible with the Istanbul Protocol or not?"
So this is quite --
THE INTERPRETER: [10:57:30] Excessive speed.
PRESIDING JUDGE MINDUA: [10:57:33](Interpretation) Very well. Ms Taylor, you are holding up a document. What's this all about?
MS TAYLOR: [10:57:41] I am indeed holding up a document because it's titled, report for P-398, which is a specific section of this report - I'm not sure if the Prosecutor read it, I don't know where this confusion is coming from - where Dr Cohen went through various extracts and provided an opinion as concerns the impact of detention conditions. And when read in light of her earlier general comments, which talk about certain cognitive consequences of sleep deprivation, water deprivation, various forms of beatings and restraints, what I did earlier was simply go through extracts that were relevant to her second report, and it was

specifically on Al Hassan, and she specifically addressed cognitive consequences of forms of mistreatment.

This was specifically part of our Rule 68(3) application, Mr President. I don't think we can be faulted for going through the extracts which form the basis of her opinions.

PRESIDING JUDGE MINDUA: [10:59:02](Interpretation) These extracts are included in the report from this expert?

MS TAYLOR: [10:59:09] These extracts were examined by Dr Cohen when she produced that report. And in her report she mentioned the various sequelae of torture, including sleep deprivation, water deprivation, beatings, restrictions. These are all part of her second report, Mr President.

PRESIDING JUDGE MINDUA: [10:59:35](Interpretation) Very well. Very well, Mr Prosecutor, after this discussion, we all know what we are sticking to. Ms Taylor will put her questions, and the Chamber will carry out its own assessment.

Go ahead, Ms Taylor.

MS TAYLOR: [11:00:01] Thank you very much, Mr President.

Q. [11:00:03] Dr Cohen, I apologise for this very lengthy exchange. I understood your last answer to be "yes", that's correct?

A. [11:00:13] Yes.

Q. [11:00:14] Now I am actually going on to a different topic. If we could go to page 0521 of your first report, paragraph 97.

Now, Dr Cohen, in this paragraph, you provide a summary of your overall evaluation, and you state that seven of the lesions that you examined were highly consistent. Five were consistent. And you concluded overall that his account was highly consistent.

Can you explain to the Chamber how and why you reached an overall conclusion that

the results of your examination and a physical evaluation were highly consistent with his account?

A. [11:01:18] Yes. It's simply that if the highest level finding is highly consistent, then the overall evaluation has to be that or potentially it could be higher still, but I didn't find any reason to make it even higher. But it can't be lower than highly consistent because otherwise that would be to deny those findings already made.

Q. [11:01:45] Now, if we turn to page 0523, paragraph 100, you state that Al Hassan has 19 further scars, which he did not attribute to ill-treatment or for which he cannot recall the attribution.

And you then state that:

"There is no evidence of exaggeration or embellishment of the evidence of torture."

Now, Dr Cohen, can you explain, was the fact that Al Hassan -- that he didn't attribute these lesions to torture, was that relevant to your assessment of potential malingering or fabrication?

A. [11:02:27] Yes, it's very relevant in my experience because I have sometimes found people to seek to attribute surgical scars or vaccination scars or scars from traditional rituals to ill-treatment. And where a person carefully looks at their scars and says, "I remember this due to this accident" or "I have no idea how I got that one", I find this to be evidence that they are seeking to be very careful and accurate in their attributions.

Q. [11:03:08] And based on your in-person examination and assessment overall, did Al Hassan display any signs of malingering or fabrication?

A. [11:03:21] No, I didn't see anything.

PRESIDING JUDGE MINDUA: [11:03:29](Interpretation) Ms Taylor, I just wanted to tell the parties and the court reporters and the interpreters that we will continue until

11.30, and then we will have a half-hour break and we shall resume at noon.

So there you have it. We will continue until 11.30.

Go ahead. Thank you.

MS TAYLOR: [11:03:53] Thank you, Mr President.

Q. [11:03:55] Now, did Al Hassan describe any injuries that should have left a physical mark that you were not able to find or identify?

A. [11:04:05] In some cases, where someone has been shackled or handcuffed for a long period, there is more physical evidence of that afterwards. But I did find some small scars attributed to the handcuffs, and the extent of such injuries is dependent on a number of factors. These include how tight the handcuffs are, if they have sharp edges, if the person is suspended by the handcuffs for a long period and beaten, for example, while suspended, then I usually find some small scars as a result of that trauma.

But these injuries may not cause full thickness damage to the skin, and so if examined immediately afterwards, there could be a lot of findings, but at the interval of two or more years, it's not unusual to find only a little or even no evidence.

Q. [11:05:29] If we could turn to page 0524, paragraph 104 of your report. This is in front of you, and let's look at the last sentence:

"From the methods of torture described therefore, I would not necessarily expect to find higher consistency levels in the lesions found."

Dr Juliet Cohen, can you please explain to the Chamber what this means?

A. [11:06:07] So as I -- as I'd said in the para -- in the sentence above, when the injury is caused by, for example, a burn or a sharp force, like a piece of glass or a blade, it tends to leave a much more characteristic injury afterwards. Blunt force trauma tends to leave less specific injuries, which will often heal up almost

completely or fully before the person is examined. So the level of consistency is also affected by the mode of injury.

Q. [11:06:51] Now, Dr Cohen, you have mentioned blunt force injuries. Were many of the injuries that Al Hassan described consistent or appeared to be blunt force injuries?

A. [11:07:04] Yes. Because the main direct trauma that he described experiencing was beating with relatively blunt implements. I believe there was one form of torture, whipping, which did leave a mark, which might have reached a higher level of consistency if examined much more quickly after the injury was sustained. Because whipping can leave very characteristic evidence, but over time and, in certain conditions, it will resolve completely.

Q. [11:07:49] Now, if we could look at tabs 3, 4, and 5 of your binder and for the record, that's MLI-D28-0006-4855, MLI-D28-0006-4860, and MLI-D28-0006-4865. These shouldn't be shown publicly.

Dr Cohen, do you recognise these documents?

A. [11:08:36] Yes. They are my handwritten records.

Q. [11:08:41] You say "records". What are they records of?

A. [11:08:46] My examination at the time that I undertook it.

Q. [11:08:52] And again just to be abundantly clear, was it your examination of Mr Al Hassan?

A. [11:09:00] Yes, sorry, Mr Al Hassan.

Q. [11:09:01] And you say that it was your notes or your record -- your records of "My examination at the time that I undertook it." When was the content of these notes written?

A. [11:09:16] I'm not sure if I understood you correctly. The notes were written as

I was with him, and the report was written afterwards.

Q. [11:09:27] Thank you. That's clear.

Now, did you make any corrections or additions to these handwritten notes afterwards?

A. [11:09:37] No.

Q. [11:09:40] And did anyone other than you make any modification to these notes?

A. [11:09:46] No.

Q. [11:09:49] And did you incorporate all relevant information from your notes into your report?

A. [11:09:58] Yes.

Q. [11:10:01] I am going to turn now to your second report. That's tab 8, it's MLI-D28-0003-0031.

Did you author this report?

A. [11:10:49] Yes, I did.

Q. [11:10:51] Now, if we could turn to page 0032, paragraph 1. This refers to the report being based on information provided to you in the form of non-official translations of biographical and security questionnaires and interviews and linked medical examination reports.

Dr Cohen, is this what you relied upon to draft your report?

A. [11:11:28] Yes.

Q. [11:11:29] Now, Dr Cohen, can you briefly describe the type of information that was relevant to your assessment.

A. [11:11:40] So seeking to answer the questions posed in my instructions, I looked at the places in the records provided where reports were made by the person being

interviewed of their conditions of detention and the way that they were treated.

Q. [11:12:05] Now, Dr Cohen, you were provided with extracts of these interview sessions. Would your opinion in this report have changed if you had been given additional transcripts referring to the Prosecution mentioning the detainee's right to silence or the voluntary nature of the process?

A. [11:12:29] No, because what I was doing was simply drawing out the references to detention conditions and any ill-treatment.

Q. [11:12:43] Now, apart from allegations of physical torture, your report also analyses the existence and likely impact of the detention conditions. And I'd like to turn to page 0033 and that's paragraphs 14 to 18. You list several factors that impact on cognitive functions and you refer to dietary deprivation, water deprivation, sunlight deprivation, solitary confinement and sleep deprivation.

Now, can a layperson reliably assess all the effects of these conditions on cognitive functioning?

A. [11:13:30] A lay --

MR GARCIA: [11:13:33] I'm sorry. (Interpretation) I object, your Honour.

PRESIDING JUDGE MINDUA: [11:13:36](Interpretation) Yes, Mr Prosecutor.

MR GARCIA: [11:13:39] (Interpretation) This is rather speculative. I don't see how the witness could answer this question. If we look at the question and how it was phrased, could a person -- can a layman relatively assess all the effects of these conditions. It's rather speculative. Perhaps if counsel rephrases, we could find our way to a suitable answer.

PRESIDING JUDGE MINDUA: [11:14:11](Interpretation) I don't understand your objection. If we look at paragraph 14, indeed, the conclusion is general in nature. It's framed in a general way. Why does this question bother you? I think the

explanation is clear.

MR GARCIA: [11:14:29] (Interpretation) I quite agree. Paragraph 14, which provides the witness's opinion, is relative, but the question is whether a layperson could -- could a layman relatively assess all the effects of these conditions. This is a question, can a lay -- could a layperson relatively assess the effects on cognitive function. This is where we're asking the witness to speculate. I don't have any issue with paragraph 14, but rather it's the wording of this question.

PRESIDING JUDGE MINDUA: [11:15:19](Interpretation) Ms Taylor, I think you could rephrase your question and stick closer to the report because you make mention of laymen and how they would assess. If you could please rephrase.

MS TAYLOR: [11:15:39] Thank you, Mr President, I did indeed refer to laypersons, but I can reformulate.

Q. [11:15:45] Dr Cohen, as someone who has expertise in evaluating torture survivors, what type of qualifications or expertise is required to reliably identify the cognitive consequences of someone suffering from these types of deprivations I listed?

A. [11:16:09] I think if the signs were very obvious, somebody being evidently dizzy or weak or failing to understand even a basic question, I would expect a layperson to notice that. But a more detailed assessment requires a clinician.

Q. [11:16:33] So, Dr Cohen, if the interviewer doesn't ask about sleep deprivation or disruption and the person doesn't volunteer this information, would someone who is not a clinician be able to visibly detect the extent of impairment or cognitive impairment?

MR GARCIA: [11:17:03] (Interpretation) Objection, your Honour.

PRESIDING JUDGE MINDUA: [11:17:07](Interpretation) Mr Prosecutor.

MR GARCIA: [11:17:10] (Interpretation) The question is completely speculative and it's rather complicated with multiple elements. In my opinion, it should be rephrased, because the question is whether a person who suffers from certain conditions, if that person doesn't give that information, if a person is not a clinician, if -- I find it to be a rather complicated question for the witness, and with all these various elements, I think it really is quite speculative. I object.

PRESIDING JUDGE MINDUA: [11:17:48](Interpretation) Yes, this is indeed a complex question. If you could kindly rephrase.

MS TAYLOR: [11:17:58] Certainly, Mr President. I apologise. I was trying to save some time, but I can go to a document which might make this clearer and elucidate the basis for my question. It's tab 181. It's MLI-D28-0006-5094. It's a report on sleep deprivation. If that could be brought up.

Q. [11:18:21] Or Dr Cohen, if you could turn to tab 181 of your binder. I'm sorry, you've got lots of binders. It's probably in the second -- I believe it's going to be in the one towards the end. And if -- it's also on the screen because the binders are quite unwieldy I'm afraid.

Dr Cohen, can you see on the screen a document titled "Protocol on Medico-Legal Documentation of Sleep Deprivation"?

A. [11:19:15] Yes.

Q. [11:19:15] Did you rely upon this document in your second report?

A. [11:19:18] I referred to it, yes.

Q. [11:19:20] Could we turn to page 5100 of this document. Now the paragraph starting -- it's the second paragraph, starting with "Summing up".

For the interpreters, it's the second paragraph on the left-hand side.

"Summing up, sleep deprivation may lead to acute physical, emotional and cognitive

consequences, and when documenting sleep deprivation, all these aspects must be considered. Symptoms of sleep deprivation are diverse and may range from hardly noticeable cognitive impact to life-threatening delirium.

Sleeping problems are commonly found among torture survivors irrespective of whether they have been subjected to sleep deprivation or not. Asking about current sleeping problems should therefore always be part of the clinical assessment of a torture survivor."

Now, Dr Cohen, I have two questions. The first is that it says that symptoms of sleep deprivation are diverse and may range from those which are hardly noticeable to ones which are evidently noticeable because it's life-threatening delirium.

Do you agree with that opinion?

A. [11:21:09] Yes, I do.

Q. [11:21:12] My second question: It states that "Asking about current sleeping problems should [...] always be part of the clinical assessment of a torture survivor."

Do you agree with that opinion?

A. [11:21:28] Yes, I do.

Q. [11:21:30] Why is it necessary to ask about it rather than just visibly assess the person?

A. [11:21:39] Because the signs may not be physically evident, and so it's my practice always to ask about how many hours they sleep, is the sleep broken or continuous, is it broken by nightmares. In this way with following up questions, I learn a lot about the impact of torture on the person. But their cognitive abilities are more subtle often to detect and require a more detailed clinical assessment.

Q. [11:22:20] Now, Dr Cohen, as someone who has read these transcripts of interviews, is it possible to make a full clinical evaluation as to whether someone's

cognitive capacities have been impaired by only reading the transcripts?

A. [11:22:41] No, it's not possible to make a full assessment. You would need to make a clinical evaluation of that person. There are just here and there some clues when, for example, Mr Al Hassan says that he doesn't remember so well, or I think he's alluding to his mental health in saying things are becoming more difficult for him. But this could be more multiple reasons, as we've discussed, the interaction of different factors, not solely sleep deprivation.

Q. [11:23:19] So it would not be possible to make a full clinical assessment of these words or phrases you've just mentioned if a clinical evaluation was not done at the time?

A. [11:23:30] No.

Q. [11:23:33] Now, speaking still of your second report, this is at page 0033, you're referring -- it's the page I believe we were looking at earlier where you're referring to linkages between hydration and sleep and cognitive functions.

Now if someone's suffering from these issues, hydration deprivation, can that be cured by simply giving someone water during interview?

A. [11:24:09] No, it's not usually so swift as that, because the hydration takes some time to fully be realised throughout the body.

Q. [11:24:25] What about malnourishment, protracted malnourishment, can that be cured by temporary fixes like giving someone good food during the interviews?

A. [11:24:39] That will only relieve immediate acute feelings of hunger. It won't have any effect on the chronic malnutrition with vitamin deficiencies which can affect cognitive function. And I note all the people examined were found by the doctor in the prison to have malnutrition.

Q. [11:25:05] Now, in your experience of working with torture survivors, if a

person says that they're being treated well during interview, would that mean that the interview conditions have cured or addressed any cognitive issues caused by the person's detention conditions?

PRESIDING JUDGE MINDUA: [11:25:30](Interpretation) Mr Prosecutor.

MR GARCIA: [11:25:38](Interpretation) Objection to this last question. Once again this is speculative. The witness is being asked to speculate and to provide an indirect report concerning the Prosecution. The question began with something about experience and then if a person is asked such and such. This is rather complicated and speculative. There are a great many variables in the question that have to be taken into account. So I find the question to be inappropriate and very much in line with the previous questions that we objected to.

PRESIDING JUDGE MINDUA: [11:26:25](Interpretation) Ms Taylor.

MS TAYLOR: [11:26:27] Mr President, I can reformulate, in the interest of time.

PRESIDING JUDGE MINDUA: [11:26:33](Interpretation) Very well. Let's try to save some time. Rephrase, please.

MS TAYLOR: [11:26:40]

Q. [11:26:40] Dr Cohen, now we've talked about various forms of deprivation - sleep deprivation, food deprivation, sunlight deprivation, water deprivation - in your opinion, what would be necessary, what steps would have to be taken to address the cognitive impact of these forms of deprivation to people who were still at the same detention facility?

A. [11:27:08] You would have to do a full evaluation and they would have to be moved to different conditions where it was possible to not be overcrowded, to have proper access to hygiene, to sleep properly, and to have any medical conditions, particularly malnutrition and pain, receive effective treatment.

Q. [11:27:37] Now I'm now going to go to the section of your report that specifically concerns Mr Al Hassan. And if we could turn to page 0036, paragraph 4.

Paragraph 4, I'll read it out: "On 13 July 2018 he reported being blindfolded while interrogated by 'the French'."

Now, Dr Cohen, did you make any corrections to this paragraph during the preparation session?

A. [11:28:17] Yes. I realised when I reviewed this report that that's a typo error and "2018" in that sentence should read "2017". And I checked in the transcript that that's the correct date, 2017. I apologise.

Q. [11:28:35] Now I'll just continue reading:

"On 13 July 2017" - so the first day of his interviews with the Prosecution - "he" - Al Hassan - "... reported being afraid of the authorities. He reported that he did not have ... rights as a detainee. He reported that the Malian authorities had beat him a lot on the day he came to Bomako, and he feared they could kill him. He reported being threatened that if he did not tell the truth they would kill him. He reported no contact with his family."

Now, at paragraph 5, you state:

"A medical examination to investigate this report of potential torture, and any impact this might have on his fitness for interview, is indicated."

Now, Dr Cohen, can you explain how you reached this conclusion.

And I'm aware it's 11.30, so we can also -- Dr Cohen could also give the response after the break, so as not to curtail her.

PRESIDING JUDGE MINDUA: [11:30:02](Interpretation) Quite so. I think you're right.

It is 11.30. We will now break for half an hour and resume at 12 noon.

The hearing is suspended.

THE COURT USHER: [11:30:21] All rise.

(Recess taken at 11.30 a.m.)

(Upon resuming in open session at 12.02 p.m.)

THE COURT USHER: [12:02:17] All rise.

Please be seated.

PRESIDING JUDGE MINDUA: [12:02:41](Interpretation) Court is in session once again.

So it is still the Defence's turn to continue their examination-in-chief.

MS TAYLOR: [12:02:55] Thank you very much, Mr President.

I would just like to note for the record that we have been joined by Maître Michiel Pestman to my left.

THE INTERPRETER: [12:03:13] Message from the English booth --

PRESIDING JUDGE MINDUA: [12:03:17](Interpretation) Thank you very much, Ms Taylor. I would like to of course greet Mr Pestman.

THE INTERPRETER: [12:03:22] Message from the English booth: On behalf of the French interpreters, could pauses be observed, please, and could the pace be reduced somewhat. Thank you so much.

MS TAYLOR: [12:03:31] Thank you very much.

Q. [12:03:33] Dr Cohen, we have just been given a message from the interpreters, and I apologise profoundly, but we need to have more of a break or a pause between questions and answers.

Now, Dr Cohen, before the morning recess, I asked a question to you and it concerned certain descriptions of maltreatment that had been described by Mr Al Hassan to Prosecution investigators on 13 July and the finding in your report that: "A medical

examination to investigate this report of potential torture, and any impact this may have on his fitness for interview, is indicated."

And, Dr Cohen, I asked you to explain to the Chamber how you reached this conclusion.

A. [12:04:34] So my conclusion is based on the reported information, which seemed to be quite clear, that he said he had been beaten a lot, and this beating was recent, and he was still under threats. So, for those two main reasons, he should have an examination.

There is the Istanbul Protocol which states - I believe paragraph 104, amongst others - that there is a duty to investigate allegations of torture. But the secondary concern is that the impact of that torture might mean that he was not at that time fit for interview.

Q. [12:05:27] Now, Dr Cohen, you've used the word "recent". If the beatings and threats occurred on 2 May and the interview is happening on 13 July, should we understand this time span to constitute a degree of proximity for the purposes of ascertaining the impact on 13 July?

A. [12:05:53] It's certainly possible that some marks, even of bruising, could persist as long as that, but it is variable. But if you don't look, then you don't know what you will find. And in any event, the psychological impact of the ill-treatment might still be present.

Q. [12:06:17] Now I have a methodological question about your report. In your report you set out various descriptions of maltreatment. Did you intend for this to be a comprehensive detail of everything that happened, or were you merely providing a snapshot of what you considered to be medically relevant?

A. [12:06:40] It has to be a snapshot, because it is based only on those voluntary

statements that were made in the extracts which I saw.

Q. [12:06:57] If we could turn to page 0037, paragraph 18, of your report. Now, we can see in paragraph 18 you're referring to 16 January 2018. He's referring to being sick, suffering depression and headaches. He wants a reduction in interview hours. He was having difficulties getting medicine for headache. He had a fever, and he is stating that the current conditions of detention make it difficult to remember anything.

Now I'd just like to draw your attention to the fact that here it refers to depression and the Arabic original that Mr Al Hassan used could be interpreted as psychological exhaustion rather than depression. Does that change your opinion?

A. [12:08:15] No, it doesn't. People's lay understanding and use of terms is something I would always explore in a medical report anyway, but there are enough other complaints and concerns here. And knowing that it is psychological exhaustion, which he wishes to describe, still raises that same concern about his fitness for interview.

Q. [12:08:47] In your expert medical opinion, is the -- are the symptoms described here consistent with the type of symptoms you would expect from someone detained in these conditions?

A. [12:09:08] Yes. So he's already described overcrowding and poor ventilation and poor hygiene. I would expect the temperature to be high, and in those conditions, infections are very common, and the stress and malnutrition described would impact on the immune system. So, again, a reason for infections to be common, for fevers due to malaria or other infections, headache may be for multiple reasons, but certainly can go along with a fever.

Q. [12:09:53] I'm going to focus on one symptom, which is he reported that, "The

current conditions of detention [...] make[s] it difficult to remember [...] anything". In your medical opinion, is that a side effect or a symptom that one would expect to see in someone detained in those conditions?

A. [12:10:09] Yes.

Q. [12:10:11] Would reducing the number of interview hours be a sufficient measure to address the concerns that are being reported here?

A. [12:10:27] No, because he needs -- it suggests strongly that he needs to have a medical evaluation and some treatment for the cause of his symptoms.

Q. [12:10:42] If we could turn to tab 62. It's MLI-OTP-0071-0286. Now, this document sets out the steps that were taken by the Prosecution to address these reported concerns. Dr Cohen, have you read this document?

A. [12:11:18] Yes, I have.

Q. [12:11:21] And did you identify in this document any steps that would have resulted in an improvement in Al Hassan's physical or mental health?

A. [12:11:37] So the only time is right at the end where it seems that they are going to arrange a medical assessment, but most of this document is not really addressing his problems. It's simply asking questions, but not taking action that would alleviate them.

Q. [12:12:05] And speaking of the time period during which he was interrogated, did you see any indication that he had been given a comprehensive or adequate medical assessment?

A. [12:12:17] The medical examinations that I saw copies of were fairly brief. They only evaluated his current physical state. They did not inquire about past experiences of torture or other ill-treatment, and they did not include any substantive

psychological evaluation that might indicate fitness or unfitness for continued interviewing or detention.

Q. [12:12:54] Now, these medical assessments you're referring to, were these the fitness to fly or the fitness to travel that were conducted at the end of March 2018?

A. [12:13:07] Yes, but I may be wrong in my memory, did he also have an assessment by the prison doctor?

Q. [12:13:13] Are we speaking of the prison doctor in Bamako or the prison doctor in The Hague?

A. [12:13:18] In Bamako. Or have I mixed this with a different detainee?

Q. [12:13:23] I think that may be a different detainee, unless the Prosecution can point otherwise. We don't have any records apart from his initial transfer to this facility.

A. [12:13:34] Okay. My mistake. So the fitness to fly examinations were extremely brief.

Q. [12:13:47] Now, in any of the steps that you read in this document, were any likely to have mitigated or distinguished the degree of mental suffering that a detainee would have experienced in the conditions described by Mr Al Hassan?

A. [12:14:04] No. In the -- in the process, it seems that sometimes the investigators say they will talk to someone else, but then nothing appears to change. And that I think would lower the morale of anyone suffering these sorts of conditions, because they would feel that no one is helping them. But they might continue to hope and they might continue to seek to stay on the good side of the investigators as far as possible. This kind of compliance and suggestibility even is something that happens in people who are victims of torture and cruel, inhuman, degrading treatment.

Q. [12:14:56] I'm going to turn to a different detainee. It's P-626. I'm going to

bring up a medical report which perhaps shouldn't be shown to the public. It's tab 175, MLI-OTP-0067-0290-R02.

Dr Cohen, have you reviewed this report?

A. [12:15:35] Yes.

Q. [12:15:37] Now, according to this report, the detainee had a broken handcuff on his wrist and he complained of sores. Did you see any photographs of this handcuff or the sores when you reviewed this report?

A. [12:15:53] No.

Q. [12:15:54] Would it have been medically relevant to document that?

A. [12:16:00] In my opinion, yes.

Q. [12:16:04] Why is that?

A. [12:16:07] Well, both to confirm that it was present and because there are sores, to assess the severity of those injuries and the need for treatment.

Q. [12:16:23] Now at page 0292, the report refers to various issues concerning severe dehydration. And at page 2093, the report states, P-626 "stated that he does not have any news about his family's condition, does not see or speak to anybody, and feels that he is left out to die on his own. He stated that he is prevented from showering and changing clothes, have no[t] enough food or water. He sometimes loses consciousness and has 'fits' because of his state of mind. He sometime[s] finds himself gazing at empty space and his mouth open."

Now, Dr Cohen, the type of symptoms that are being described here, are they consistent, medically consistent with the situation of someone who has been held in solitary confinement for several months?

A. [12:17:37] Yes, they are.

Q. [12:17:40] Now, according to page 0292, paragraph 1.1.4, "No attempt was made

to perform detailed or specialised neurological, psychological medical techniques or tests."

Dr Cohen, in your expert opinion, given the self report of this detainee, were such tests relevant?

A. [12:18:12] Yes, very much so.

Q. [12:18:17] And why is that?

A. [12:18:20] Because of the length of time that he has been in solitary confinement and the severe symptoms that he complains of, it would be important to assess just how bad the psychological impact was. People in this condition can develop more hallucinations, delusions, psychotic illness which needs urgent treatment. They can be suicidal, and again a risk assessment is indicated for someone in this condition.

Q. [12:18:59] Now, I'm going to go back to your report, but before doing so, having reviewed this medical examination, in your opinion, was he given a sufficient medical examination to detect possible cognitive impairment?

A. [12:19:18] No.

Q. [12:19:26] So we are turning back to your report. That's tab 8, and at page 0055, paragraphs 178 and 179.

Now paragraph 178, on 29 November 2018, "he reported his detention conditions continue and that 'I'm getting lost ... I do not know where I am and when I do my prayer'. He reported that he [sometimes] feels [...] better when being interviewed and given tea to drink. The interpreter explains he loses his place in the order of prayers. The broken handcuff is still on his wrist, which is seen to be 'full of sores'."

Paragraph 179, the day after, that's 30 November 2018, "he reported disturbed sleep, a sensation in his head or neck, disorientation when in his cell, and hearing voices. He reported that hearing the voices 'really tired me'. He is asked if he feels well enough

to be interviewed and he says yes."

Now, Dr Cohen, based on your experience, would an individual who is being held in solitary confinement for over three months, someone who reports that he's hearing voices, would he be competent to make a self-assessment as to whether he's mentally well enough to participate in an interview?

A. [12:21:39] No. There are serious questions here about his mental capacity to take part in the interview process.

Q. [12:21:48] Dr Cohen, you have referred to "serious questions". Do you mind elaborating what those are?

A. [12:21:55] Because he reports disorientation, hearing voices, that he can't keep his place in the order of prayers, and that he is feeling harassed or tired by the voices, so all of those are very concerning psychological symptoms and they might mean that he is not able to understand and fully comprehend and follow information he is being given and make a reasoned decision about what he wants to do in terms of taking part in the interview.

People do sometimes say that they feel well enough to be interviewed, not because they actually feel well enough but because they want to be seen as compliant, a good prisoner. They find that if they comply with the interview process, they get out of the cell, they're relieved of those conditions for a short time, they're getting food, water, nice treatment, a toilet. For all of those reasons, it would be almost expected that the person wishes the interview process to continue, just to get a brief relief.

Q. [12:23:25] Now, Dr Cohen, you referred to food, water, nice treatment, a toilet. Are any of those capable of addressing the psychological symptomology you see here with this individual?

A. [12:23:45] No, they're not going to address those deeper symptoms. They're

only going to provide a brief superficial comfort, but they will not address the psychological impact.

Q. [12:23:59] Now, if this person had a lawyer present when he indicated that he was well enough to continue, does that impact upon your opinion?

A. [12:24:11] I don't think I can say.

Q. [12:24:15] And why is that?

A. [12:24:19] Well, I think it would depend on the lawyer, whether they thought that they could or should intervene at that point, and I'm not sure that I know enough about legal process. It would seem to me that a lawyer acting in the best interest of their client would intervene, but I don't know about the process in this situation.

Q. [12:24:43] Now, Dr Cohen, did you review the transcripts and medical records of a witness with the pseudonym P-605? And to assist, we can turn to page 0050 of your report.

A. [12:25:04] Yes.

Q. [12:25:08] If we could look at paragraph 134, he's describing certain cell -- conditions of his cell, that is, that he was held in a cell of 4x3.5 metres with 12 people, with an open bucket for a toilet. So he would have probably either 1, or a bit less than 1 metre squared on average. He has no sunlight. He hasn't washed for two years, and has been held without any ability to contact anyone outside for two years.

Now, in your medical opinion, have any of the conditions that I've described, would any of them be likely to impact on his cognitive capacity?

A. [12:26:01] Yes. All of these can together cumulatively comprise cruel, inhuman, degrading treatment and can affect the cognitive abilities of the person.

Q. [12:26:18] And, in your opinion, what measures should have been taken to

address the effects of the detention conditions that have been described in this paragraph?

A. [12:26:29] So all of those conditions would need to be changed so that the person had a sufficiency of space which the Council for the Prevention of Torture designates to be 4 metres squared per person in a shared cell, with time outside in sun for exercise, with proper hygiene, toilet provisions, ability to wash and maintain hygiene, and medical attention for the itching condition, which is not clear what the cause of that is from this information.

Q. [12:27:09] Now, paragraph 137, it's July 2018, he reports no change in the very difficult circumstances or the conditions. And in December the Prosecution arranged for their in-house doctor to examine him.

I'd like to bring up that report. It's tab 171, MLI-OTP-0068-4612.

I think the tab number is wrong.

The document -- it's tab 166 and the document is MLI-OTP-0068-4612.

I apologise, Dr Cohen, it's tab 166.

Dr Cohen, have you read this report?

A. [12:28:40] Yes.

Q. [12:28:42] If we could turn to page 4615. According to this page, in December he reported that he was experiencing constant tiredness and fatigue.

Now, in your medical expertise or experience, is this symptom consistent with the type of detention conditions he has described to the Prosecution?

A. [12:29:17] Yes, it is.

Q. [12:29:20] And does constant tiredness and fatigue, does that generate any cognitive consequences or impairment?

A. [12:29:31] Yes.

Q. [12:29:34] And would this degree of impairment need to be measured by specific tests?

A. [12:29:45] Well, it does indicate that a psychological assessment at a minimum level would be helpful in order to identify if he has difficulties with concentration, with memory, and if the extent of his symptoms are making him liable to suggestibility, and also to assess for other psychological conditions that may not be directly complained of but may be uncovered with a more systematic inquiry.

Q. [12:30:25] Now, Dr Cohen, did you see any indication that these psychological tests had been conducted?

A. [12:30:33] No. There's only a physical examination.

Q. [12:30:43] And in your medical opinion, was this physical examination sufficient to ascertain any physical or psychological consequences of the type of this treatment that was described by P-605?

A. [12:30:59] No. There are no blood tests done, even though there's a suggestion of vitamin D deficiency. But he is given multivitamins and rehydration. That's the only treatment recommended.

Q. [12:31:19] And this recommended treatment, would that have been sufficient to address the conditions that have been described here?

A. [12:31:28] It's possible, but it depends on whether there were any further causes. This would -- this treatment would only help if the only reason for his condition was malnutrition and dehydration. Even then it would take some time for the vitamin levels to build up sufficiently and to overcome the chronic effects of malnutrition.

Q. [12:31:59] You've said "some time". How much time? Or is it not possible to gauge?

A. [12:32:06] It's not possible to gauge without having the blood tests to give some

parameters.

Q. [12:32:16] My question was whether this recommended treatment would have been sufficient to address the conditions that have been described here, and you responded "It's possible". Just to be clear, you also stated that this examination would not have been sufficient to identify the psychological consequences. So can I understand from my -- from your answer that this prescription of vitamins, et cetera, would not address the psychological consequences that weren't examined?

A. [12:32:57] That's correct.

Q. [12:33:00] Now, in the absence of a psychological test, was it possible for you to fully and comprehensively assess the potential impact of these conditions on his cognitive capacity by only reading the transcripts of the interviews?

A. [12:33:19] No.

Q. [12:33:22] And just to be clear, would you have needed a psychological test to have made such an assessment?

A. [12:33:28] Yes.

Q. [12:33:31] Now, Dr Cohen, during the preparation session I drew your attention to the fact the Defence had received additional medical records from the detention unit. Do you recall that?

A. [12:33:48] Yes.

Q. [12:33:50] Did you review those additional medical records?

A. [12:33:55] Yes.

Q. [12:33:57] Did any information in those records impact upon your opinions?

A. [12:34:08] No.

Q. [12:34:11] Now, Dr Cohen, as part of the Rule 68(3) procedure, we read out the -- the tabs and the MLI references and you're given an opportunity to indicate to

the Chamber whether you agree or whether you would oppose the submission of these documents. Now, Rule 68(3) application, we referred to three reports: It was tab 7, that's MLI-D28-0002-0500. It's your first report. The second was tab 8, that's MLI-D28-0003-0031. It's the second report. And tab 9, that's MLI-D28-0003-2059. I realise that I've not yet referred to report to you.

Can you confirm whether you authored this third report at tab 9?

A. [12:35:19] Yes, I did.

Q. [12:35:20] Do you have any objection to submitting any of these reports into the record?

A. [12:35:25] No.

MS TAYLOR: [12:35:29] And, Mr President, I note for the record that a correction was made to the first report regarding the date of 2018, that it should have been 2017. That should be in the transcript.

Mr President, that concludes our examination.

PRESIDING JUDGE MINDUA: [12:35:53](Interpretation) Very well. Thank you very much, Ms Taylor. I can see that the conditions under 68(3) have been met.

I now turn to the Office of the Prosecutor. It is 12.35. Is the Prosecutor ready?

MR GARCIA: [12:36:24](Interpretation) Yes, I am, if you could give me a few moments.

PRESIDING JUDGE MINDUA: [12:36:29](Interpretation) Go ahead. You have a few moments.

(Pause in proceedings)

MR GARCIA: [12:37:16] (Interpretation) Thank you very much, Mr President, your Honours.

PRESIDING JUDGE MINDUA: [12:37:22](Interpretation) You may now proceed,

Mr Prosecutor.

QUESTIONED BY MR GARCIA:

Q. [12:37:28] Good afternoon, Madam Witness. Do you hear me?

A. [12:37:31] Now I do.

Q. [12:37:32] Yes. We just have to be mindful. And if you don't hear me at any point in time, just ask me to repeat, and I'll do so. Is that all right?

A. [12:37:44] Thank you.

Q. [12:37:46] I don't have many questions for you, Madam Witness. We just have to be mindful, obviously, of having a break between my question and your response, since we're both speaking in English. That's quite important. And rest assured that if at any point during my questioning you want the floor to explain something or add some details, just let me know and I'll do so and I'll grant you that time and I'll give the opportunity - and the Chamber obviously is the one who decides - but I have no issue with that.

Is that understood?

A. [12:38:22] Thank you.

Q. [12:38:23] And obviously the questions I am putting to you are questions just of clarify, and if you want to add anything to your answers, apart from the questions that I've -- and responses that I've elicited from you, then please do so as well. Is that understood?

A. [12:38:38] Yes.

Q. [12:38:40] Thank you, Madam Witness.

Now, obviously you are the expert here. I am not an expert in the matters that you are coming to testify. So my questions may at times seem to you very, or you might -- might think that I am missing out on certain things, and if you do see that,

just explain it to me so that it's understood by the Chamber. All right?
Now, I understand that Defence counsel's gone through with you -- went through your -- through your experience and you have explained to the Trial Chamber the experience you have in providing medical-legal reports, is that correct?
A. [12:39:20] Yes.
Q. [12:39:22] Over 1,000 of them, from what I understand.
A. [12:39:27] I think it's probably by now more than 15,000.
Q. [12:39:33] So you have a lot of experience in the matter with meeting people, asylum -- I understand from your line of work, it's usually people who are claiming asylum. Is that the case?
A. [12:39:46] Yes, that's the majority of them.
Q. [12:39:50] And from what I understand of the information that I've -- that I've had is that in certain cases what you've done is provide responses in the case where someone who's seeking asylum, an asylum-seeker, has been refused one time and then you obviously provide a letter explaining -- further explaining what you've seen and the opinion that you have on the asylum-seeker's report or request; is that correct?
A. [12:40:20] Sort of. So those letters were specifically aimed to clarify the clinical issues that are raised in, usually, the Home Office initial decision on the asylum case to make sure that they've understood the medical information correctly and followed their own asylum policy instruction in how to understand and treat medical evidence.
Q. [12:40:49] Thank you for that clarification, Madam Witness.
Now, would you agree with me that it's quite important for you to meet personally the asylum-seeker or the person who you are going to obviously give a medical-legal response letter for? Is that important for you to meet the person, physically examine

them, speak with them?

A. [12:41:17] So these response letters, I did not need to meet the person because I had access to the full report and the decision that had been made, that commented on some aspects of the report, and my role was only to clarify that information and make sure that it was understood and -- that the asylum policy instruction was properly understood and followed. So it was not about the findings that the original doctor had made.

Q. [12:41:50] And I understand that you've already proceeded in the past - or explain to me if it's not the case - as that first doctor, to evaluate an asylum-seeker to determine whether or not the lesions or the trauma described are consistent with what that person is telling?

A. [12:42:09] Yes, that's been the main part of my work.

Q. [12:42:15] And in that type of work, would you agree with me that it's quite important for you to meet actually the person, the asylum-seeker and examine them, make a physical examination yourself?

A. [12:42:29] Yes, to make a medico-legal report on the findings in relation to that individual, then I would examine them myself.

Q. [12:42:40] And you've already explained to us how you go about it and you've explained to us that the reported history -- the prior history of the person is quite important. Especially, occasions on whether or not -- or specific instances where the person might have, you know, sustained injury from any type of activity; is that correct?

A. [12:43:03] Yes.

Q. [12:43:05] And so what I understand of your work is when you do meet asylum-seekers, you're basically -- basically the person is self-reporting. They are

telling you exactly what has happened to them. And normally you have that account and you have the physical examination that you subject that person to, you examine the wounds, and then you verify whether one is consistent with the other using the Istanbul Protocol; is that correct?

A. [12:43:42] So I follow that process, but I usually have more documents than that. So I would normally have the other immigration documents. There may be a witness statement, an asylum interview record, there may be earlier decisions in the case. There is often their medical records from care received in the UK and perhaps from other countries.

Q. [12:44:13] So correct me if I'm wrong, Madam Witness, so all of this documentation actually helps you in assessing the credibility, the reliability, of what the witness is telling you, along with the clinical findings that you determine on your own as well. It gives you a full picture, if you will, of the situation?

A. [12:44:36] It does help to give me a fuller picture. It's not my job to determine their overall credibility.

Q. [12:44:49] I understand that. During the examination-in-chief of my colleague, you spoke about the fact that you were acting as an independent expert and that it is obviously your obligation not to take the account of the person, if you will, at face value. Is that correct? That you have to do some kind of thorough -- you have to push it a bit and see -- verify whether these claims are consistent with what you're seeing; is that correct?

A. [12:45:17] Yes.

Q. [12:45:19] And I understand that this type of document, these extra documents that you have, would have been prior statements of the person et cetera. Other information could help you in that regard. It might help you put questions to the

witness or to the person.

A. [12:45:40] Yes.

Q. [12:45:43] And am I correct, Madam Witness, that through all of this, when you do meet a person as their doctor and you are proceeding to do this medical evaluation of the person, that the rapport you have, there has to be a rapport of trust. You are expecting obviously that the person who's reporting to you, who's making these claims, has a certain degree of honesty. Is being honest in what she's telling you -- or what the person is telling you; is that correct?

A. [12:46:15] I'm sorry. Could you rephrase the question. It was a bit complicated.

Q. [12:46:21] Certainly, I'm just going to -- I'm going to simplify that. I understand that you have to create a certain amount -- a certain rapport with the person that you're meeting and that you're proceeding to do a physical examination and that rapport must be -- rapport must be based on a certain degree of honesty from the person or a certain degree of trust between both of you, is that correct?

A. [12:46:44] Yes, a good rapport is very helpful to facilitate the difficult disclosures which are often part of a torture survivor's experiences. It's not unusual for me to find that a person discloses for the very first time some of their worst experiences, particularly, for example, experiences of sexual violence, which are extremely difficult to talk about, and they may only have been interviewed by authority figures in the past. Whereas, as a doctor, I can be seen as someone that -- it's easier to talk about these things with.

Q. [12:47:26] Yes, Madam Witness, that's quite understandable. And apart from these situations, where it might be difficult for a person to speak about certain allegations, it is important though that you're able to trust in what the person is

saying; that she's -- that the person is being truthful and is telling you a complete story and not leaving certain items out.

A. [12:47:56] So, as I said, it -- I don't take everything that the person tells me at face value at the time that they tell it. All of the time that I'm with a patient or someone I'm examining in this way, I am considering what I already know about them, what all my training and experience tells me, what they say, how they say it, what I find on examination, what the other medical records or investigation show, and everything is assessed together before I form an opinion.

Q. [12:48:37] Thank you, Madam Witness. So if we go to your first report, and that's MLI-D28-0002-0500, you'll find that under your tab number 7, Madam Witness. Just let us know -- just let us know when you do get there.

Do you have that before you?

A. [12:49:04] Yes, I do.

Q. [12:49:07] So I understand from this report that it's based on an interview that you had with the accused on 2 and 3 January 2020 for 4.5 hours. That's on the first page, 0500. Is that correct?

A. [12:49:24] Yes.

Q. [12:49:25] And I understand that you signed this report on 18 May 2020. And that's on page 0525. That's page 26 of your report.

Just to make sure, that is -- so that's a yes for that question for the transcript.

Q. [12:49:58] Now, if we go to the first page, the second page actually, page 0501, that's page 2 of the report. Now at the first paragraph, you indicate that you have been instructed by the Defence team to prepare a medical report, and you also mention that you have used for this medical report --

"[...] medical records from the healthcare team in the ICC prison including letters of

referral, lab test reports, dental x-ray report[s], prescriptions, psychologist session notes, medical clearance document fit on arrival [...] dated 31.3.18."

Did you actually make the compilation? Is there an annex? Was there ever an annex to this report indicating exactly what documents you refer?

I understand this is -- you're just outlining the documents, but is there -- did you have an extra document where you just state explicitly which documents you referred to or is that not in your report?

A. [12:51:07] No, it's not in my report.

Q. [12:51:15] So I understand that if it's not in this first paragraph and you have mentioned it, then it's very likely something that you may not have received at the time from the Defence for the purposes of this report; is that correct?

A. [12:51:28] Yes.

Q. [12:51:30] And don't worry, Madam Witness, this is not a quiz, so if there is a document that you did receive and you just remember that afterwards when I am questioning, please let us know and we'll -- we'll take that into consideration.

Now, I understand that at paragraph 3 of this report, you indicate clearly that there is a separate psychological report that is being carried out. My understanding, Madam Witness, and you can correct me if I am wrong, is that you never proceeded to a psychological assessment of the accused, is that correct?

A. [12:52:14] Yes, that's correct.

Q. [12:52:16] So whether that be in the first or the second or the third report, you never proceeded to a psychological assessment. The extent of your expertise has been simply, at least in this first report, on the physical -- on the lesions that you would have observed.

And then we'll speak about the other reports. You'll have a chance.

PRESIDING JUDGE MINDUA: [12:52:40] Maître Taylor.

MS TAYLOR: [12:52:44] Thank you very much, Mr President. That's quite a confusing compound question referring to the first, second, third reports on the basis of an answer that concerned the first report and then a follow-up question that concerned the first report.

So I do believe that the counsel should be very clear what they mean when they say he did not conduct a psychological evaluation, referring to the first, second and third report. Put simply, the counsel should make clear are they just asking about the first report, or are they requesting whether Dr Cohen also examined any psychological issues of Mr Al Hassan in the second report.

PRESIDING JUDGE MINDUA: [12:53:25](Interpretation) Yes, clarification is required.

MR GARCIA: [12:53:31](Interpretation) The answer is to be found at page 66, line 24 onwards. I clearly said to the witness -- so I was asking the witness, and she can correct me if I'm wrong, she said that she never carried out a psychological -- correction: I said that these -- she had never carried out a psychological evaluation of the person. And she said, yes.

I can put the question again, but the answer is there on the transcript.

PRESIDING JUDGE MINDUA: [12:54:10](Interpretation) Ms Taylor.

MS TAYLOR: [12:54:13] Yes. Thank you very much, Mr President.

Now, the Prosecution was asking Dr Cohen about conducting an in-person physical examination. He referred to her decision in the report not to conduct an in-person psychological examination. And now he's put very confusing questions using very broad terminology as concerns psychological evaluation, which aren't going to assist the Chamber to determine the truth. This isn't a game. If the Prosecution wants to

put to this witness the question as to whether Dr Cohen ever conducted an analysis of psychological issues concerning Mr Al Hassan, then that should be put to her. But putting it in a complex, compound manner using generic phrases do not assist the Chamber. Thank you.

PRESIDING JUDGE MINDUA: [12:55:13](Interpretation) Thank you, Ms Taylor. Mr Prosecutor, it might be better to rephrase the question and then we shall move forward.

MR GARCIA: [12:55:24](Interpretation) I'll just check the transcript, but the question was already put. I can put the question again. But if Defence wants to move backwards and go back to its own questioning and some sort of nuance that the -- well, the Defence can do so during re-examination. I can put the question again, but it will be the same question, Mr President.

PRESIDING JUDGE MINDUA: [12:55:52](Interpretation) Put the question again for everyone's benefit.

MR GARCIA: [12:55:59]

Q. [12:56:00] (Overlapping speakers) So, Madam Witness, once again, have you ever -- I understand that you have three reports here. Did you ever proceed to any psychological assessment of the accused himself?

A. [12:56:10] So, to be really clear, in the first report I confined myself to a physical assessment because I understood that a full psychological assessment was being carried out. In the second report I was instructed to consider the impact of detention conditions on him. But I did not make what I would call a psychological assessment because that was done by another party.

Q. [12:56:38] Thank you for that clarification, Madam Witness.

(Interpretation) Your Honour, I don't know whether the Chamber ...

PRESIDING JUDGE MINDUA: [12:56:51](Interpretation) Yes, yes, that is just fine. We've understood.

MR GARCIA: [12:56:57]

Q. [12:56:57] So, Madam Witness, I'd just like to go to page 0502 of your report. And that's page 3, actually. You still have that before you? Yes, thanks a lot. Now I understand that - and this is under the rubric of history that appears just at the top - and you point out here, at paragraph 8, that the accused recalled some physical punishment as a child. And you continue on the next page to indicate that "No beatings were frequent or severe and he sustained no lasting injury."

Now -- now could you tell us, is this something that -- that you -- the fact that there were no lasting injuries, I understand that that would have been relevant to your assessment of the lesions that you did or did not -- or did observe on Mr-- on the accused; is that correct?

A. [12:57:58] Yes, that's the relevance.

Q. [12:58:02] So, from my understanding, is that you've gone -- or, you went with the accused through what you would -- the more important parts or incidents that might have led to incident to lesions or injuries on his person; is that correct?

A. [12:58:22] Yes.

Q. [12:58:24] Now I have a question, Madam Witness. I understand that - and I've received, we received this information in the witness preparation note - that you were shown a document, which is -- it seems like a report, at -- and that's at tab 114. Maybe if you could take a look at that. It's MLI-D28-0003-2194.

Do you have that before you, Madam Witness?

A. [12:59:14] Yes.

Q. [12:59:15] Did you -- did you happen to take a look at this document during the

witness preparation session, that's a session that you had with the Defence lawyers where you had a chance to review your documents?

A. [12:59:29] We did, we did note it, yes. We didn't go through in great detail.

Q. [12:59:39] Just to be clear, did you have a chance to read it, to read through it?

A. [12:59:44] I have looked at it. It's quite confusing to try to find all of the different documents that are listed, because it's long and complex.

Q. [12:59:58] Understood, Madam Witness. In fact, I totally agree with you, there are a lot of documents here. But we're just going to try and simplify things. What did you understand this to be exactly, this document?

A. [13:00:13] I understand it to be a compilation of medical records from his time in the ICC.

Q. [13:00:24] And just to be clear, when you're saying "his time", you're speaking about the accused?

A. [13:00:29] Yes.

Q. [13:00:32] I'd like to bring you, Madam Witness, to page 2204 of this compilation. And it's an indication of what the accused would have stated or reported on 28 January 2019. Do you see that?

A. [13:01:01] Yes.

Q. [13:01:02] Do you see the part where it says inmate has had several trauma in a moto accident in 2005 and he was unconscious for two hours. Do you see that?

A. [13:01:17] Yes.

Q. [13:01:19] Now, I have looked through your report at 0500, and I've seen no mention of that moto accident. There is mention of the -- of the beatings he sustained as a physical punishment as a child, but nothing regarding this moto

accident. Could you explain that.

A. [13:01:45] So this is not in my report because he did not describe this to me when I saw him. And what I'm not sure about is whether I saw this particular translated document at the time I was conducting my report -- writing up my report, because the medical records were sent to me in a very fragmented and piecemeal way, in -- at different times I received different documents. There was never any chronological, coherent, sensible, complete medical file.

Q. [13:02:35] I understand that, Madam Witness, and maybe I should have told you this from the start because there are a lot of documents. From my information, and Defence counsel can obviously correct me if need be, this document was communicated I think in March 2021. So from the -- I'm looking at the fact that you signed this in May 2020, I don't believe you would have had access to this document, actually.

A. [13:03:03] Okay.

Q. [13:03:06] Now, Madam Witness, would you not agree with me that the fact that the accused had a moto accident in 2005, and that it was of such seriousness that he was unconscious for hours and that it caused several trauma, that would have been relevant information for you to have at the time when you were going through the history of the accused; am I correct in that?

A. [13:03:35] Yes. If I'd known about it, I would have asked him more about it.

Q. [13:03:42] Did you ask -- I'm sorry, Madam Witness, but did you have any information that -- about the sports that the accused would have played back home? Football, amongst others. Did you have any information in that regard?

A. [13:04:03] No. It was quite difficult to get Mr Al Hassan talking initially. And I was aware that he -- he had been quite traumatised after the psychological

assessment. He -- he was, I think, finding it very difficult to go through another assessment, and perhaps that explains why he didn't tell me everything that had ever happened to him.

Q. [13:04:35] Yes. Thank you for that, Madam Witness. But he did give you information on these 12 lesions that you did outline in your report; is that correct?

A. [13:04:49] And the other lesions which he specified as either being of cause he could not recall or due to other injuries, other causes.

Q. [13:05:00] That would have been the other 19 lesions, 31 in all; is that correct?

A. [13:05:06] Yes.

Q. [13:05:08] Now, Madam Witness, as I'm going through your report, and now I'm at page 0503, I notice that the period of time between 2012 and 2017 is covered -- April 2017, is principally covered in paragraphs -- well, let me -- let me just reframe this actually. If we -- if we -- if we put the -- I understand there was an arrest and detention, and that's at paragraph 12, on April 21, 2017. Do you see that?

A. [13:05:57] Yes.

Q. [13:05:59] So we're still in what the accused reported to you. Do you agree that the whole period of time between 2012 and April 2017, the reported history of that particular time frame is actually to be found in one paragraph, paragraph 11 of page 0503; is that correct?

A. [13:06:29] Yes, but the other periods of time in the paragraphs above, also fairly brief.

Q. [13:06:43] No, I understand that, Madam Witness. But my question is, the period of time 2012-April 2017, that's all actually in just one paragraph, paragraph 11; is that correct?

A. [13:06:56] Yes.

Q. [13:06:59] Now I won't go through it -- I might just go through certain excerpts of this, but in regards to this paragraph 11, were you ever provided with information from the Defence at the time when you were writing this report regarding information -- allegations that the accused was part of the Islamic police in the city of Timbuktu in Mali in 2012? Did you receive any of that type of information? So just to be clear for the transcript, the answer was no. Is that correct, Madam Witness?

A. [13:07:52] I don't believe so. I had very little information about that period.

Q. [13:08:01] Did you receive any type of information that Mr -- from the Defence that the accused had been part of armed groups that had occupied the city of Timbuktu in 2012?

A. [13:08:23] I didn't receive any detailed information about the activities that he may or may not have been involved in.

Q. [13:08:40] Now, within this paragraph, you mentioned activities in 2014, and what the accused did at the time of his arrest in April 2017. Those are the last two sentences of paragraph 11.

Did you receive, Madam Witness, any type of information from the Defence indicating that at the time of his arrest, he was responsible for a military base?

A. [13:09:26] Not at this time, no.

Q. [13:09:30] When you say "Not at this time", what do you mean by that?

A. [13:09:38] So, much later, I think, in preparation for this, I've been provided with transcripts of interviews and I've picked out that information from within the transcripts.

Q. [13:09:53] And I thank you, Madam Witness, to bringing -- bring that forward actually as this -- to be fair to you, I'm -- can I ask you to look at tab 109 and then we'll

continue -- we'll continue with that line of questioning just so we can clear up this matter. Tab 109 on your -- in your binder, and that's MLI-D28-0003-0843.

Do you see that, Madam Witness, that document?

A. [13:10:33] Yes.

Q. [13:10:34] It's just for the record, it's titled "Draft Translation[s] of Al Hassan ICC Statements".

Now is this the document that you were referring to that you would have received later?

A. [13:10:50] Yes.

Q. [13:10:52] Now, just for the record, Madam Witness, and just so that we don't confuse you, I understand from the chain of custody of this document that it was communicated to you on 20 May 2020. That's two days after you signed your first report. Would that make -- does that make sense to you?

A. [13:11:16] I'm afraid I don't recall, but if that's what the document shows, then ...

PRESIDING JUDGE MINDUA: [13:11:27](Interpretation) Ms Taylor.

MS TAYLOR: [13:11:35] Mr President, as the Prosecution is aware, the Defence received certain verbatim extracts in a piecemeal manner from the Prosecution. So the time period where the final document was sent or -- again I'm not in a position to testify to this right now, but that's not necessarily reflective of when Dr Cohen received the extracts.

So I do believe it's unfair to rely upon a certain metadata of this document to imply that Dr Cohen had no access to these transcripts before that date.

PRESIDING JUDGE MINDUA: [13:12:26](Interpretation) Very well.

Mr Prosecutor.

MR GARCIA: [13:12:31] (Interpretation) Mr President, I do not have the intention of

course to confuse matters. This is the piece of information that we have. I put the question - and I can put the question to the witness again - but I don't know whether it's clear to her when exactly she received certain documents. But it would seem to me that she did not have said document in her possession, nor was she able to read that document for her first report. In fact, the first paragraph describes the documents that she had received and that document does not appear in that list, so -- according to the information that we have, that is.

So we have the information that this document, according to the chain of custody, was handed over, this is the chain of custody and this is, if I am not mistaken, the one that the Defence wrote down in the electronic document and it was handed over on 20 May 2020, that is to say, two days after the witness signed her report, MLI-D28-0002-0506. But if it is not the case, then the Defence would be in a position to correct that.

I can put the question to the witness, but there are many many documents, and I don't want to confuse matters in the witness's head. I'm trying to be as fair as possible to her as well.

PRESIDING JUDGE MINDUA: [13:13:59](Interpretation) Mr Prosecutor, please put your question, but yes indeed, there are many documents indeed.

MR GARCIA: [13:14:10]

Q. [13:14:10] So I just want us to return back to the document that we were looking at, your first report, which is tab number 7, Madam Witness.

Now, did you ever receive information from the Defence where there were allegations made that the accused had been transporting - part of his arrest - people that he would refer to as mujahideen from one riverbank to another?

Did you receive that type of information from the Defence at the time when you were

drafting this first report?

A. [13:14:58] I don't believe so.

Q. [13:15:02] Now, Madam Witness, do you agree that this type of information, prior employment, especially this type of activity, might have been relevant to you when you were making this first -- drafting this first report or actually meeting the witness? You could've potentially questioned him on certain things; is that correct?

A. [13:15:28] So the purpose of the questions that I was asking him was to understand at what points he may have suffered injuries. and then for him to describe how those injuries came about and the details in particular of his allegations of torture. So although it would have been relevant to have these other pieces of information that later appear in these documents - and I would certainly have inquired more about the circumstances - I'm not sure that it would change any of my conclusions because if he was crossing people back and forth on a river, the opportunities for injuries are not that different than from his other activities.

Q. [13:16:18] But, Madam Witness, you do agree with me that it would have prompted questions from you to the accused if you had had this type of information. We're not speaking simply about transporting tourists or people across riverbanks. We are talking about transferring members of rebel groups from one riverbank to another. We are talking about his prior employment in the Islamic police in an occupied town.

Surely these things would've -- might have led you to put some questions to him to see whether he was injured in any of these activities. Am I not correct in that?

A. [13:17:05] As I said, the exploration of other opportunities for injuries needs to be as complete as possible, and perhaps there were other opportunities for injuries. Nevertheless, my instruction was to explore the allegations of torture in detail and

make -- give my opinion about the correlation of the findings with those attributions of torture.

Q. [13:17:36] Thank you, Madam Witness, for those clarifications. Let's just move along then.

At paragraph 12 of your report, it -- it starts off with:

"Arrest and detention- Timbukto Military Base".

And it speaks -- the accused spoke to you about -- about his arrest on 21 April 2017. And it goes on with the abuse that he suffered while he was detained there. The next page is 0504, and the abuse that he speaks about. He speaks about getting hit by a stick, slapped on the face, waterboarding, amongst other things. Serious things.

And then there's also at paragraph 17, "Detention in Gao".

And you indicate at paragraph 17 -- or he indicated to you that this was from 21 April to 2 May 2017. He gives other details, and, finally at paragraph 20, he speaks about the transfer to the sécurité d'État in Bamako. That's correct?

So there's an arrest and detention and the mistreatment that he suffered in Timbuktu military base and in Gao, goes from paragraphs 12 to paragraph 20; is that correct?

A. [13:19:15] Yes.

Q. [13:19:18] Now, Madam Witness, I want you to look at a specific document that I have here, I'm not sure if it has been added to your list yet. It's going to possibly show up on your screen. It's MLI-OTP-0069-9939. And I'd ask for that to be just -- confidential, only shown to the witness.

Your Honours, the reason why is because there are names in this document; it's a sensitive document. But I will go through the content of it so the public will understand what the nature of this document is exactly.

Now, Madam Witness, are you able to see that document clearly before you on the

screen?

A. [13:20:25] Yes.

Q. [13:20:26] All right. So we are speaking about MLI-OTP-0069-9939. It's a seven-page document. It goes from page 9939 to -- it's a seven-page document. And it's a document - and I'll read out for you that first -- that first page. It's a transfer dossier. So obviously at the top of the document, you see that it's Operation Barkhane, which are the Barkhane French forces, and it's a transfer dossier of the accused to the Malian authorities by the Barkhane forces, which are French forces, on 2 May 2017 in Bamako.

Now, you've only seen this first page, obviously of the document, but have you ever seen -- I can -- you can -- we can just go through the document just to make sure because you might have seen actually parts of it and -- maybe during the witness preparation session, I understand that you probably -- you've probably seen this, but can we just please proceed to show the other pages.

So this is the second page of this document. And it gives you informations -- the particulars of the accused, family members, brothers, sisters. If we could just go to the next page. On the next page, it has more informations as to when the person -- when the accused was apprehended, that's 21 April 2017. And then it has informations on the conditions and reasons for his detention. And that's at page 9941.

If we continue to the next page.

Now, these are photos of the accused taken allegedly when he was first detained. And then if we look at the next page, now these page -- this page as well, you can see photos, and at the top left-hand corner, it says, "Photo de fin de rétention". So photos at the end of his detention with the Barkhane forces, 2 May 2017, and you can

see photos of him at different angles and a full-length photo of the accused as well. And if we go to the next page, we have an "ATTESTATION DE REMISE ET DE PRISE EN COMPTE DE PERSONNE RETENU".

So what this page is briefly, Madam Witness, because you probably went through this, is just simply indicating -- the Malian authorities and the person that signed that name on this page indicating that he's taken the accused on the date, on 2 May, and indicating that, amongst other things, he has noted the medical report, which is as follows, and that the person is the person that he's taken into his possession corresponds to the person in the photos and that his health situation corresponds to the information which is in the medical examine -- examination of detention.

And we can go to the next page. And this is the medical examination. You can see that the Minister of Defence, French Minister of Defence and it's a *constat de l'état de santé*. So it's a medical certificate that is indicating the state of health at the end of the accused's detention with certain inscriptions.

Now, I think that you've seen some of these -- parts of this, if not the entirety, but not in one -- one entire document; is that correct?

A. [13:24:53] Yeah, I may not have seen the French version as well. Some documents have been provided in translation, so I don't accurately recall.

Q. [13:25:04] Just to be clear. Can you -- I mean, I've given you a brief summary of what's indicated in this document, but would you have been able to go through this document if it's written in French and determine what it's saying with a certain level of precision?

A. [13:25:19] I have a basic knowledge of French. I can read that the individual is in a good general state without any examination, particularity noted.

Q. [13:25:33] Now, Madam Witness, am I correct in stating that you didn't have a

chance to look at this document before you signed off on the first report and when you met the accused? You had no idea that this document existed; am I correct?

A. [13:25:50] I think so. But I'm not sure how that would change my opinion.

Q. [13:25:57] I just -- I just want to make sure. You can afterwards, obviously, give your opinion if it hasn't changed or if it has changed, but I just want to make sure of one thing, Madam Witness, that you didn't have access to this document. The Defence did not give you this document before you signed off on the -- your first report; is that correct?

A. [13:26:19] I think so, but I really can't be certain.

Q. [13:26:30] Now, Madam Witness, do you agree with me that -- well, the information that we have is that you didn't have this document. That's our position and I think it will be demonstrated by the chain of custody, but do you agree with me that this document, just on the question of whether you would have had it or not, would you agree with me that you don't refer to this document anywhere in your first report? You can take the time to look through your first report, if you wish. And I note that at paragraph 55 and 57, you speak about medical reports from the ICC at page 0513 and that's page 14. That's where I looked at to see if you made any references documented. I didn't see it there. I don't see it on your -- at your paragraph -- at paragraph 1 either. At least it's not explicitly stated.

Do you agree with me that this report is -- you don't mention it anywhere in your report?

A. [13:27:35] That's correct.

Q. [13:27:40] Now, Madam Witness, I don't want to go through this obviously again, but this is a report from the French authorities and it is indicating, it's -- I understand that in -- it is indicating, it's giving you photos, photographs of the

accused on the day he was arrested, photographs as well when he was released, so there are photographs in this report of the accused.

It also has an indication at page 9944, that the person who's taking custody of the accused clearly indicates or indicates that the person that's being given into his custody, the person in the photographs, Mr Accused, and that his state corresponds to what is indicated in the medical certificate, which is at page 9945. And at page 9945, questions were put -- there are -- the questions have been put to the witness -- to the accused. And it says at the bottom of page 9945 that the accused indicated that he had been able to drink and eat at his convenience. And the accused also indicated that he hadn't been subjected to any mistreatment during the time of his detention by the French authorities.

Do you see that on page 9945?

A. [13:29:16] Yes.

Q. [13:29:19] Now, do you agree with me, Madam Witness, that what we find in this report from the French authorities giving custody of the accused to the Malian authorities at the time contemporaneously with photos, et cetera, is in contradiction to what was told to you by the accused about the different types of torture, mistreatment that he suffered after he was arrested on April 21, 2017 - and that's at paragraph 12 - and until he was transferred to the *Sécurité d'État à Bamako* at paragraph 20. That medical report or that transfer report is in contradiction, or what's stated in it is contradiction to what the accused told you?

A. [13:30:25] Well, it is a contradiction, but what I would draw your attention to is that in my report, the kinds of torture that he has described in that period are the kinds, as we discussed earlier, that tend to cause bruising. He does not mention any wounds to his face. The photographs that you've shown me are not very distinct,

but they only show his face and part of his arms.

So, you know, it's my job to take all of the information and consider it. If I now had that information, I would have some more questions, but I'm not sure that it would change my view because I don't know in what way the question was asked to Mr Al Hassan about whether he'd been able to eat and drink and not been mistreated. And it would be quite common for someone - I've talked to many victims of torture - about their experiences of going to court and so forth, while still under the control of the state authorities who have been responsible for their ill-treatment and they are too scared to declare it in front of any authority figures because they have been threatened as for the consequences of what will happen. And later on, as we saw earlier, there are transcripts which show that he did complain of being under threat.

So I can see what this document says, but I have to consider the overall picture and all the details that I was able to gather about his ill-treatment and the physical findings.

PRESIDING JUDGE MINDUA: [13:32:32](Interpretation) There we are.

Mr Prosecutor, it is 32 minutes past 1. I believe that we shall suspend the hearing. But how much more time do you need now?

MR GARCIA: [13:32:56] (Interpretation) I do not have the information as to how much time I have actually used, Mr President. I've been as efficient as possible, and I can assure you that I'm not going to be -- spend time on matters that don't seem very important in the light of the answers received from the witness. I don't quite know how much time I have used.

PRESIDING JUDGE MINDUA: [13:33:17](Interpretation) Could the courtroom officer please help us?

THE INTERPRETER: [13:33:18] Overlapping speakers.

THE COURT OFFICER: [13:33:23] Fifty-five minutes.

PRESIDING JUDGE MINDUA: [13:33:28](Interpretation) So I imagine that you have further questions, Mr Prosecutor.

MR GARCIA: [13:33:32] (Interpretation) Yes, Mr President. I do have further questions, but I shall be as efficient as possible in view of the answers provided by the witness.

PRESIDING JUDGE MINDUA: [13:33:40](Interpretation) Thank you. So I think we shall suspend the hearing for now. We shall take a break -- a shorten break to reconvene at 2.30 this afternoon, because in the afternoon the Trial Chamber has a meeting.

So the hearing is suspended.

THE COURT USHER: [13:33:59] All rise.

(Recess taken at 1.33 p.m.)

(Upon resuming in open session at 2.31 p.m.)

THE COURT USHER: [14:31:02] All rise.

Please be seated.

PRESIDING JUDGE MINDUA: [14:31:21](Interpretation) The OTP may now continue cross-examination.

Mr Prosecutor.

MR GARCIA: [14:31:36](Interpretation) Thank you, Mr President, your Honours.

Q. [14:31:41] (Speaks English) Are you able to hear me?

A. [14:31:43] Yes, thank you.

Q. [14:31:46] I don't have much more -- many more questions for you, maybe about 30 minutes, Madam Witness. All right. Just so you're aware of that.

I just want to finish with your first report. You might have it still open before you.

It's tab number 7. At page 0521.

If I understand correctly, Madam Witness, at paragraph 97, you go up -- you go through the overall evaluation and your conclusions about the lesions identified; is that correct?

A. [14:32:41] Yes.

Q. [14:32:43] Now I'd like you to turn your attention to the screen. At evidence 2, it's evidence 2 on your -- on what you have before you, just -- and I have a document that I'd like to display for you.

The court usher is going to help us out with that. Thank you.

THE COURT OFFICER: [14:33:34] Mr Garcia, could we please have the ERN number for the record.

MR GARCIA: [14:33:40] Yes. Thank you. The ERN number is MLI-OTP-0078-7628. Thank you.

Q. [14:33:54] So do you see that report before you now, Madam Witness?

A. [14:34:01] Yes.

Q. [14:34:03] So this is a report. It has 15 pages. It's in French. And this is a report from Professor Ludes, who was instructed by the -- it is a professor of forensic medicine at the University of Paris, an expert at the Court of Cassation, and he was an expert that was instructed by the Prosecution to look at your first report, and more specifically the methodology and the lesions you had identified in your conclusions. Do you recall looking at this report?

A. [14:34:41] I was provided with an English translation.

Q. [14:34:53] And I understand that this report is dated 23 July 2020, so this was in response to your first report. Do you need to look it over again or can I ask you questions? I just have a couple of brief questions.

A. [14:35:14] Okay. You may need to translate the French for me if you're talking about it.

Q. [14:35:19] Certainly. But you might see from the -- from the nature of my questions that perhaps you just -- you might not need the translation. If not, we'll ask for a translated one to be before you.

But if we go down to the conclusions part of his report, because he does comment on each and every one of your -- of the lesions that you identified and -- and the methodology you used, and he does discuss that.

I understand that you read this report completely when it was communicated to you by the Defence, because you responded to it afterwards.

A. [14:36:02] Yes, to the English translation.

Q. [14:36:03] That's fine.

Now, would you agree -- and I'm just over at page 14 of the report, and that's 0078 at page 7641 that's before you now. There is a conclusion there. I just want to ask you something before -- before we do get into that.

Would you agree with Professor Ludes in the fact that the scars or the lesions that you found on the person of the accused could not be dated?

A. [14:36:48] It's generally not possible to give an accurate date to healed lesions because, once they've matured, then you can't tell necessarily how long ago that occurred.

Q. [14:37:02] And in the case of the accused they were indeed healed lesions that you identified; is that correct?

A. [14:37:09] Yes.

Q. [14:37:11] So do you agree with Dr Ludes in the fact that these healed lesions, the ones that you had observed on the body of the accused could not be dated with

any type of precision? The only thing you can say is that they were from the past at some point.

A. [14:37:30] Yes, because they didn't show any signs of being recent. It's a complicated negative.

Q. [14:37:37] Would you also agree with Dr Ludes in his conclusion that -- and here I obviously want you to bear in mind paragraphs 9 and 6. Paragraph 97, actually, and your -- paragraph 98 of your report. Is it not a fact, Madam Witness, that you're not able to say either for any one of the lesions, the 12 lesions that you did identify on the person of Mr-- of the accused, that these -- I mean, you're not able to say conclusively that these correspond to the account that he gave you?

A. [14:38:29] So as you can see from the response letter report that I wrote to Professor Ludes' comments, I didn't really understand his terminology, because I'm familiar with the Istanbul Protocol terminology in assessing the level of consistency and Professor Ludes did not use any of this terminology, which is internationally recognised for the assessment of evidence of torture. Instead, he uses these other words, and so I cannot be sure of his meaning. But if I take it to mean conclusive as a diagnostic level, then that is correct. I did not find a diagnostic level. However, I have explained that this is the expected finding when the injuries are due to the sorts of torture that Mr Al Hassan had described.

Q. [14:39:35] So, Madam Witness, if I'm to understand your testimony, if we do take into consideration or we, for the basis of my question, we assume that Mr Ludes is referring to diagnostic of as the level of certainty, you would agree with Dr Ludes that none of your evaluations of any of the lesions, either whether they be individually or overall, reach that level of certainty; is that correct?

A. [14:40:09] In my report I summarised my findings with both individual and the

overall, and reached a conclusion of highly consistent. However, it's important that, as the Istanbul Protocol states, an evaluation of torture includes both a physical and a psychological assessment. And when the reports are considered together, it might be that a higher level of overall evaluation is made.

Q. [14:40:44] But, Madam Witness, in this particular case, and I'm speaking about your evaluation, you never reached this degree of certainty. The highest you ever got to was highly consistent. You never got to typical of or diagnostic of, which are the highest levels in the Istanbul Protocol. Is that correct, Madam Witness?

A. [14:41:09] Yes. As I said, it's the expected finding for the forms of torture that were described.

Q. [14:41:15] I'd like us now -- and obviously, Madam Witness, just in response to your last question, in the forms of torture that were described, this is on the presumption that what was told to you was complete and truthful; is that correct?

A. [14:41:38] I didn't make the assumption that what was told to me was complete. I don't think anyone I've ever evaluated has told me every single thing that happened to them.

Q. [14:41:53] I'd like for us now, Madam Witness, to move to your second report. And I'm going to give you the ERN so that it's -- and you've discussed it a little bit already. It's MLI-D28-0003-0031. And that's at tab number 8. We've already discussed that this morning -- actually, this afternoon.

A. [14:42:19] Yes, I have that.

Q. [14:42:20] You have that before you already. That's great.

Now, Madam Witness, if -- I'm looking at page -- actually, look at the first page, 0031. I understand that you made general comments in relation to the reports on detention for seven witnesses; is that correct?

A. [14:42:58] Yes.
Q. [14:43:00] And if we go to the second page, 0032, the first paragraph, it says: "I have made individual reports on the detention conditions and medical examinations carried out on these seven detainees, based on the information provided to me in the form of non-official translations of biographical and security questionnaires and interviews with the ICC, and linked medical examination reports." And I understand from the basis of those excerpts is how you drew your conclusions; is that correct?
A. [14:43:43] Yes.
Q. [14:43:45] Now, Madam Witness, isn't it correct that what you were offered here is just basically selected excerpts by a Defence for you to look at and on which that you could draw your opinion and your conclusions; is that correct? You weren't provided the totality of the transcripts of these witnesses and their statements that they gave to the Prosecution.
A. [14:44:15] Yes.
Q. [14:44:16] Now, the fact that you were receiving non-official translations, did that constitute any kind of problem for you? Did you see any issue with that at the time?
A. [14:44:31] I think as long as I made it clear, which I have done, the type of translation I had, then that's all I can do.
Q. [14:44:41] And the fact, Madam Witness, that you were just receiving excerpts that were selected by the Defence, did that, as a professional - and I understand that you've drafted more than 1,500 reports in the past - would it have not been more appropriate to have the full transcripts, all of the interviews from these witnesses with the Prosecution so you can get the full picture?

A. [14:45:13] I asked if there was information that I needed to pay attention to in what was not provided, and I was -- I understood that there wasn't. If there is some information that relates to a relief of the conditions that the men have described in the extracts I have seen, then that would be relevant. Are there any such information about relief of their conditions?

Q. [14:45:44] Madam Witness, the question I'm asking you is quite simple. I'm asking you, as a professional, would it not have been preferable to have full transcripts of everything that was stated between these particular witnesses that were detained and the Prosecution? It's a simple question. It's either yes or no. And if you want to give explanations, you can.

A. [14:46:07] Yes, it will be preferable. I think they were trying to conserve my time.

Q. [14:46:14] Madam Witness, so -- so we do understand each other then, that when your -- and I see the conclusions that you make here, paragraph 2, number 3 -- and paragraph 3. You're making these conclusions specifically and solely on the material that's been disclosed and communicated to you. You can't speak for anything else that you've not seen; is that correct?

A. [14:46:39] Yes.

Q. [14:46:42] So when you say in paragraph 2: "These are only the elements spontaneously reported by each individual - there is no indication of systematic inquiry by the interviewers in these transcripts to cover all aspects of detention conditions." You specify in this paragraph, in these transcripts, because you do not know what would have happened in the other transcripts or what was stated between the Prosecution and detainees; is that correct?

A. [14:47:21] Yes.

Q. [14:47:23] Now, if we look at the -- if we look at the transcripts that were actually provided to you, we can go to witness -- to the accused himself and that's page 0036 and that's page 6. If you could maybe direct your attention there. And, obviously, you state here at page 0036 the documents that you've been provided with to make this -- to arrive at the opinion on page 0037.

Now, we already went through this briefly this morning, and I showed you document MLI-D28-0003-0843. And I put that back again on your screen so you can see it, so we don't get lost. As soon as I find it. I don't know if you do recall that document, Madam Witness. It's the document 0843 where it's shown to you the documents that were given to you regarding the accused. And I'm just going to bring it up on the screen now. It's tab -- actually, if you could look at it it's tab 109, Madam Witness. That might be faster.

A. [14:49:26] Okay. I have that.

Q. [14:49:28] Do you see that? So those are the documents that you were given regarding the accused. Do you recall that?

A. [14:49:35] I recall saying that I wasn't sure at what point I'd received the -- all of these different documents because they came to me at different times. So I don't want to say exactly which of these extracts I had.

Q. [14:49:53] That's fair enough, Madam Witness. We have the information that you would have received these on 20 May 2020, but the question that I have for you is that were you aware, Madam Witness -- because over here when you look at this page there is 30 documents, 30 non-official translations. Were you aware of the fact that there are 85 transcripts detailing the statements of the accused with the Prosecution and all? Were you aware of that fact?

A. [14:50:25] No.

Q. [14:50:27] And were you aware of the fact that you weren't given all of the particular -- all of the complete information that the accused, that the accused would have given to the Prosecution and the biographical and security questionnaires? Were you aware of that?

A. [14:50:44] It's a little difficult to know the answer to that.

Q. [14:50:49] I fully appreciate that, Madam Witness. Fully appreciate that. Now, for the other witnesses as well that you prepared opinions and you gave your assessment, you're also aware of the fact that you only received excerpts. You didn't receive -- all of the transcripts detailing their conversations with the OTP; is that correct?

A. [14:51:14] Yes.

Q. [14:51:17] Witness 605, if we look at -- if you look at tab 170, it's at MLI-D28-0003-0976.

Do you have that before you?

Oh, actually, please take your time, Madam Witness.

A. [14:51:58] Okay. I have it now.

Q. [14:52:02] So if you look at what was given to you regarding Witness 605, it's basically just 28 pages of unofficial translations of extracts from his statements to the Office of the Prosecutor; is that correct? If you look at the amount of pages, there are 28 pages in there.

A. [14:52:24] Yes, there's 28.

Q. [14:52:27] And if we continue along and look at what you were given for -- for reference in regards to Witness 582 and that's at your tab 162, Madam Witness, for the record, MLI-D28-0003-0725. If you take a look at that. Those were the extracts that you were given for Witness 582.

Do you see that?

A. [14:53:06] Yes.

Q. [14:53:07] So in all you were given 37 pages. I mean, sorry, 40 pages regarding witness 582; is that correct?

A. [14:53:17] Yes.

Q. [14:53:19] Now, Madam Witness, am I also correct in stating that you never actually physically met any of these witnesses?

A. [14:53:43] That's correct.

Q. [14:53:45] So if I understand correctly, you were given unofficial extracts, which is a small portion in most cases of what the witness had stated to the Office of the Prosecutor, you never actually met these witnesses, but you still felt comfortable enough to give your opinion on the questions that were asked for you -- from you?

A. [14:54:11] I wasn't asked to comment on the clinical findings of an examination of these other witnesses, so I didn't need to meet them. I was asked to give a document review of the documents provided and to answer to the best of my ability certain questions.

Q. [14:54:31] But am I correct, Madam Witness, that when you are basing yourself simply on the extracts, you're taking the information that these witnesses reported at face value? You're not there to question them or to determine exactly what happened. None of those safeguards. You're just simply relying on what's written on a document, correct?

A. [14:54:57] As I understand it, I was looking at the content of what the witnesses reported to the investigators and what the investigators responded to those reports. So it's not a matter of whether I felt I could believe what they said. It's a matter of what was reported and what was done about the reports.

Q. [14:55:25] So then, Madam Witness, you do agree with me that you were taking what they had stated in terms of complaints at face value?

A. [14:55:37] Well, I'm sorry, but I don't quite understand. I've explained what I was doing and it's not about whether or not I took it at face value. It's about what they reported, what happened as a result of that report and what the medical examiner found for those who did have a medical examination and my comments about that information.

Q. [14:56:02] So, Madam Witness, if I understand correctly, you are just basing yourself on the excerpts that you have, the unofficial translation and the excerpts, and the opinion that you're finally giving is whether or not it would have been consistent with the principles of the Istanbul Protocol to conduct substantive witness interviews with these persons at the time they conveyed the information. That was a question that was put to you and the one that you responded to for all of the witnesses; is that correct?

A. [14:56:31] Yes.

Q. [14:56:33] And to arrive at your conclusions - correct me if I'm wrong - you're just taking what the excerpts say, and you're looking at the Istanbul Protocol and you're just basically determining whether there was or not a need for additional exams et cetera or not to have continued the statement taking, but on the basis of what the protocol states?

A. [14:56:57] Yes. So I'm looking at what did the interviewers respond when certain information was reported to them. Did they call a halt to the interview? Did they ask for a medical assessment to consider whether that person was fit for interview or in need of treatment?

So I'm looking at the interactions.

Q. [14:57:22] Thank you for that, Madam Witness. So obviously you're looking at the interaction from these excerpts that you've received and the only thing that you're doing afterwards is applying it to the Istanbul Protocol or whatever -- whatever conditions or limitations or indications are given in the protocol regarding certain statement-taking processes; is that correct?

A. [14:57:43] Yes.

Q. [14:57:45] Now, Madam Witness, if we turn back to page 0032 of this second statement that you gave, this is -- we're back at tab 8.

Now, at paragraph 3, if you have that before you, you say: "These examples raise a concern that despite efforts to follow an evident protocol, interviewers are in effect contributing to the psychological pressure on the witnesses who appear to assume that the interviewers have the power to relieve their conditions."

Now, Madam Witness, I just want to be clear on this matter. Is there a part of speculation in this, because you are indeed stating that it appears. Is this something that you think, that you presume? How is it that you arrive at this conclusion?

A. [14:59:21] Well, I wanted to raise a concern from these examples. I've acknowledged that they're extracts and so it's not a definitive conclusion, but it has to be a concern that is raised.

Q. [14:59:44] But in the end, Madam Witness, you're not sure because you've just received extracts and this does comport a certain degree of speculation when you're indicating what the -- what the witnesses would have assumed or not. Am I not correct in that?

A. [15:00:06] So from the extracts that I read, this is what the -- the witnesses appeared to assume. And I haven't gone further than that, but that much seemed clear to me from what I read.

MR GARCIA: [15:00:24] Thank you, Madam Witness. I have no further questions for you. Thank you.

PRESIDING JUDGE MINDUA: [15:00:44](Interpretation) Thank you very much, Mr Prosecutor, for your cross-examination.

So I'm now turning to Maître Doumbia. Maître Doumbia, are you there?

Madam Court Officer, what is going on, please?

MR DOUMBIA: [15:01:18](Interpretation) Can you hear me?

PRESIDING JUDGE MINDUA: [15:01:20](Interpretation) There we are. Maître Doumbia, I can hear you now.

MR DOUMBIA: [15:01:26](Interpretation) I forgot to put my microphone on.

PRESIDING JUDGE MINDUA: [15:01:29](Interpretation) Ah, there we are. So your microphone was off, was it?

MR DOUMBIA: [15:01:32](Interpretation) Yes, it was.

PRESIDING JUDGE MINDUA: [15:01:35](Interpretation) So after having followed the examination-in-chief on the part of the Defence and the cross-examination by the Office of the Prosecutor, would you still like to put some questions to the witness?

MR DOUMBIA: [15:01:45](Interpretation) Mr President, I had indeed intended to put questions to the witness, but in view of the cross-examination that has just been conducted, I think that the questions I was going to put could be quite repetitive. So I do not have any questions to put to this witness.

Thank you very much.

PRESIDING JUDGE MINDUA: [15:02:23](Interpretation) Thank you very much, Maître Doumbia.

So, I'm quite naturally now going to turn to the Defence to ascertain whether there are any additional questions. Ms Taylor.

MS TAYLOR: [15:02:38] Thank you very much, Mr President. Yes, the Defence does have some discrete issues it wishes to address with the witness and these arise directly from issues that were addressed in cross-examination. And I believe the Prosecutor himself did refer to the fact we could address these issues in re-examination.

PRESIDING JUDGE MINDUA: [15:02:59](Interpretation) Yes, indeed. You don't need to justify yourself. Over to you, Ms Taylor.

MS TAYLOR: [15:03:06] Thank you very much, Mr President.

QUESTIONED BY MS TAYLOR:

Q. [15:03:10] Now Dr Cohen, at page 65 of the transcript today, the Prosecution was drawing your attention to the fact that you met Mr Al Hassan on 2 January and you signed your report I think on 18 May 2020, and you did describe difficulties you faced with the medical documentation.

Now, do you recall if, during this time period, the Defence was still trying to get access to Mr Al Hassan's medical records from the detention unit?

A. [15:03:39] Yes, I do recall hearing that.

Q. [15:03:43] And do you happen to recall why the Defence was having difficulties obtaining access?

A. [15:03:51] No, just that requests were not -- not being properly responded to. I don't recall the details, I'm afraid.

Q. [15:04:01] Now, the Prosecution has drawn your attention to a medical journal that was provided by the detention unit to the Defence after you met Mr Al Hassan. Now, you testified that you were not conducting a psychological examination, but a physical examination. Would it be fair to say that the focus was on physical injuries and not whether Mr Al Hassan might have been unconscious at some point in his

prior life?

A. [15:04:30] Yes, that's right.

Q. [15:04:31] Now if we turn to tab 7, that's your report, it's MLI-D28-0002-0500. If you could look to page 0517. You see paragraph 74 and paragraph 79.

Now, at -- paragraph 74 refers to a scar from an injury that Mr Al Hassan can't remember and paragraph 79 refers to a scar from the silencer of a motorbike.

Do you have that in front of you?

A. [15:05:06] Yes.

Q. [15:05:06] Now, based on your assessment, do you have any indication that Mr Al Hassan might have misattributed any of the lesions that he did attribute to torture?

A. [15:05:19] No. There was nothing to indicate that.

Q. [15:05:24] Now, if he had suffered head trauma, had been unconscious some point -- early point of his life, would that have been likely to diminish or cancel out any of the likely psychological consequences of being detained in the conditions that were described to the Prosecution in the excerpts you reviewed?

MR GARCIA: [15:05:46] (Interpretation) I shall object to that.

PRESIDING JUDGE MINDUA: [15:05:50](Interpretation) Mr Prosecutor.

MR GARCIA: [15:05:52] (Interpretation) If we look at the question, it is rather complicated and it is asking the witness to speculate with regard to the state of the accused. There are two or three items as to whether he had sustained trauma to the head. He was unconscious at a given moment in time in his life and could it have cancelled out the detailed --

THE INTERPRETER: [15:06:19] Counsel is reading at great speed.

MR GARCIA: [15:06:20] (Interpretation) It's quite complicated, so I don't see how

the witness could answer that.

PRESIDING JUDGE MINDUA: [15:06:28](Interpretation) Ms Taylor, could you possibly rephrase your question and make it simpler.

MS TAYLOR: [15:06:34] Certainly, Mr President.

Q. [15:06:35] Now, does this information in this medical report impact upon any of your opinions that you provided as concerns the likely cognitive consequences of Mr Al Hassan's detention conditions that you referred to in your second report?

A. [15:06:56] Sorry, I'm still not quite clear about which --

Q. [15:07:00] I apologise.

A. [15:07:01] -- which report we're -- we're discussing about.

Q. [15:07:03] I did move between reports, that's my fault. We were talking about your first report, which focused on physical examination and then your second report, where you gave an analysis of possible cognitive consequences of certain detention conditions that were reported by Mr Al Hassan. Now, does this -- this Dutch journal concerning a motorbike injury and the possibility that Mr Al Hassan was unconscious at some period in 2005, does that impact upon any of your conclusions in your second report?

A. [15:07:40] I don't think it does. Mr Al Hassan had told me at the time of my examination that he suffered from some memory problems, even before his torture, and that he thought it maybe ran in his family. And just speculating, if you like, it's possible that if he was unconscious in a road accident, that he also had some memory problems as a result of that head injury, which he didn't even appreciate himself, and perhaps that's why he forgot to talk about that injury. None of that will really influence the findings that I made when considering his detention conditions and the probable effects of those on his health.

Q. [15:08:28] And Dr Cohen, I have a brief terminological question. At page 69, you told the Prosecution that you did not conduct what you considered to be a psychological evaluation when you met Mr Al Hassan. But in your second report, you did assess the impact of detention conditions on him.

And in examination-in-chief, you also indicated that you did not consider that it was feasible to do a proper psychological evaluation on the basis of transcript. It was necessary for a clinician to evaluate the person; that's correct?

A. [15:09:07] Yes.

Q. [15:09:08] So when you assessed the detention conditions in your second report, is it correct that you did provide an expert opinion as concerns the likely impact of these conditions on psychological and cognitive capacities?

A. [15:09:28] Yes.

Q. [15:09:30] Now, still focusing on the first report, that's tab 7, now the Prosecution has suggested that you should have used information that was collected by the Prosecution from Mr Al Hassan while he was detained at the sécurité d'État, that is, that he was reportedly assisting persons to transport mujahideen across a river, that you should have used that - fruits of the interrogation - to question Mr Al Hassan.

Now, Dr Cohen, would it be consistent with what the Istanbul Protocol states about retraumatisation for you to have used the content of interrogation records as the basis for your assessment of Mr Al Hassan?

PRESIDING JUDGE MINDUA: [15:10:36](Interpretation) Mr Prosecutor.

MR GARCIA: [15:10:38] (Interpretation) Now, quite simply, Mr President, I am objecting to the manner in which it was phrased. The question put by the Prosecution was to ascertain whether she had this information with regard to the

conduct or activities of the accused at a given moment in time in his history. This is not what the Defence is claiming in their question, which is quite inappropriate in the circumstances.

As to the question -- the question on the part of the Defence counsel depends in the first claim that she makes, and -- the OTP deems it to be inappropriate. And the second is a question about retraumatisation, and this needs to be more specific as a question.

PRESIDING JUDGE MINDUA: [15:11:42](Interpretation) Ms Taylor, what do you respond to that?

MS TAYLOR: [15:11:47] I can break down my question into two. My first question could be: Does the Istanbul Protocol have any guidelines or recommendations concerning retraumatisation of an alleged torture survivor.

PRESIDING JUDGE MINDUA: [15:12:00](Interpretation) Very well. Very well. We shall go about it in that way.

So, Madam Witness?

THE WITNESS: [15:12:10] Yes, it specifically guides the physician to try their best to avoid retraumatisation and to be conscious and aware that taking the account of torture, and asking questions about health-related impacts and the physical and psychological examination process, can retraumatise a victim.

MS TAYLOR: [15:12:36]

Q. [15:12:36] And Dr Cohen, if the interviewer uses information or techniques that could retraumatise the victim, does that impact upon the rapport and your ability to get sound clinical information?

A. [15:12:49] Yes, it would impact on the rapport because if the person starts to see the examiner as another person who is going to harm them, or even if simply the

questions trigger a lot of intense recall or even a flashback of their experiences, then you will lose the rapport. They will not wish to disclose information to you. And they may suffer clinical consequences from this traumatisation.

Q. [15:13:24] Now, Dr Cohen, in your expert opinion, would there have been a risk that using these specific allegations that were collected from the Prosecution while interviewing Mr Al Hassan at the DGSE, could that have created this effect of retraumatisation?

A. [15:13:45] Yes.

Q. [15:13:47] Now, earlier the Prosecution showed a -- I wouldn't call it a medical report, but it was a document prepared by the French authorities, reference being MLI-OTP-0069-9939.

Now I'd like to bring up tab 117. I guess this shouldn't be shown to the public. It's MLI-OTP-0071-0237.

Now, Dr Cohen, can you see the name of the person who signed this? And I'd ask you not to read it out.

A. [15:14:39] Yes.

Q. [15:14:41] So this name is on this document, but not the document that the Prosecution showed. I'm going to call this person Dr B. And if we could go to tab 9, that's a response you prepared to Dr Ludes. It's MLI-D28-0003-2059, at 2063, paragraph -- if we could turn to paragraph 19.

Now, Dr Cohen, in this paragraph, can you see a reference to the medical certificate prepared by Dr B?

A. [15:15:30] Yes. I -- I'm -- just got something in my memory that says did he prepare more than one certificate? I'm not sure. But certainly this is the same name.

Q. [15:15:43] I believe it's a little bit confusing because in the document you were shown, one of them his name's taken out, I don't know why, and we were given various versions of the same thing. But I do believe that this page is consistent. Now, Dr Cohen, is it correct that you did read that certificate that he was in good state, the one that was signed by Dr B?

A. [15:16:06] Yes.

Q. [15:16:08] And when you prepared this response to Dr Ludes, having read the certificate prepared by Dr B, did that impact upon your opinion in any way?

A. [15:16:24] No. Because the certificate is a -- it's -- it appeared to me to be simply a fitness for transfer certificate and because it was so brief, it didn't really show to me that a full history and examination had been taken.

MR GARCIA: [15:16:49] *Monsieur -- Monsieur le Président*.

MS TAYLOR: [15:16:49]

Q. [15:16:50] Now does the (Overlapping speakers)

MR GARCIA: [15:16:50] (Interpretation) Mr President.

PRESIDING JUDGE MINDUA: [15:16:51] (Interpretation) Yes, Mr Prosecutor.

MR GARCIA: [15:16:51] (Interpretation) I'm sorry, Mr President, in order to avoid any form of confusion subsequently because of course now we are looking at documents, the question is being put to the witness, page 110, line 13: "Dr Cohen, is it true that you read this document, that it was in a good state?"

If I understand correctly, there is no date given as to whether -- as to the date that she read the document, this document signed by B in the file.

So it's rather important.

MS TAYLOR: [15:17:31] I'm happy to put the question.

PRESIDING JUDGE MINDUA: [15:17:32](Interpretation) Yes, indeed, Ms Taylor.

MS TAYLOR: [15:17:36] Thank you, Mr Prosecutor, for drawing my attention.

Q. [15:17:39] Dr Cohen, we see at the -- in paragraph 19 you're describing the certificate of Dr B and you're saying it also appears to be a fitness for transfer or travel -- your microphone is on.

And this is obviously in your response to Dr Ludes. So would it be correct that you had seen the certificate of Dr B at the time you prepared this response to Dr Ludes?

A. [15:18:13] I think so, yes.

Q. [15:18:17] Now, does the Istanbul Protocol address the necessity to have an independent medical examination to assess the effects or the existence of sequelae of torture?

A. [15:18:33] Yes.

Q. [15:18:34] And why is that?

A. [15:18:38] Well, because if the person making the assessment is too close to the state authorities who'd been involved in the torture, their independence is in question.

Q. [15:18:55] And, Dr Cohen, would this -- this certificate for transfer, would this comply with the requirements of an independent medical examination?

A. [15:19:06] As I said, it's so brief it doesn't really contain any information at all, and it's not clear whether it could be independent.

Q. [15:19:17] Now, Dr Cohen, I only have a couple of questions to go. You were asked by the Prosecution in cross-examination about the issue of timing and the fact that you couldn't date the lesions, or it was difficult to do so once they became mature.

Now, Dr Cohen, if the Prosecution investigators had arranged for a physical or a psychological examination in July 2017, or September 2017, or December 2017, would

it have been more likely that they could have actually made a higher assessment or a more conclusive assessment?

A. [15:19:56] Yes.

Q. [15:19:59] Now, Dr Porterfield -- sorry, Dr Cohen, you responded to the Prosecution, as concerns your assessment, that if you had considered the psychological aspects of Mr Al Hassan together with the physical aspects of Mr Al Hassan, it might have been possible to have reached a higher conclusion. Now, since this time have you had the ability to read the report prepared by Dr Katherine Porterfield?

A. [15:20:31] Yes, I have.

Q. [15:20:33] And does the contents of this report, do they impact upon your opinion in any way?

A. [15:20:43] Yes. So they -- the conclusions of Dr Porterfield are that Mr Al Hassan is suffering post-traumatic stress disorder, and she has obtained an extremely detailed account of the different tortures and ill-treatments he suffered and their impact on him. And she also links the specifics of the symptoms of PTSD to the tortures that he described, and, in particular, things like the re-experiencing symptoms, for example, when he has to have handcuffs on and how that reminds him and brings back very strong and distressing memories for him.
She has also considered other times in his life experiences that may be contributing --

MR GARCIA: [15:21:40](Interpretation) Mr President.

PRESIDING JUDGE MINDUA: [15:21:41](Interpretation) Yes, Mr Prosecutor.

MR GARCIA: [15:21:43](Interpretation) Well, I didn't object of course because I thought it was a general question. But now the witness is being asked to go or delve into the expert report of another witness, whereas the witness before is here quite

simply to give her expert opinion on the reports that she drafted on the lesions that she noted on the accused.

Now what is being requested of her now is outside the scope of 68(3) and her expertise, and I don't see either how this can fall within the scope of the re-examination and as to what it has to do with her expertise and the subject of her testimony today.

THE INTERPRETER: [15:22:28] Overlapping speakers.

PRESIDING JUDGE MINDUA: [15:22:29](Interpretation) Well, the Prosecutor is quite right in so saying, we really are falling outside of the scope of the testimony of our expert witness before us, are we not?

So please move on to something else, or rephrase your question, or move on to something else.

MS TAYLOR: [15:22:46] I'm certainly happy to rephrase my question. We've already had the Prosecution show other expert reports to Dr Cohen to ask if it impacts upon her opinion. I do believe we should be allowed to do the same, given that the witness had specifically stated in cross-examination that the lack of -- the fact that she did not conduct a psychological evaluation did impact upon her opinion. But I'll get straight to the question, if I may. It's my last question and I would like to be able to put it.

PRESIDING JUDGE MINDUA: [15:23:15](Interpretation) Yes, indeed, please rephrase. Thank you.

MS TAYLOR: [15:23:19]

Q. [15:23:20] Now, Dr Cohen, in accordance with paragraph 188 of the Istanbul Protocol, it's important to give an opinion based on the totality of information that's been provided to you. Now, you've obviously read various reports, the Prosecution

has shown you reports during cross-examination, and we have also drawn your attention to certain information.

Are you in a position, appearing before the Chamber, to provide an opinion under paragraph 188 of the Istanbul Protocol of the consistency of Mr Al Hassan's account with -- I really hope I can just finish.

Rule 68(3) requires the expert to be given an opinion or the -- the possibility of making changes. Here I'm giving Dr Cohen the opportunity of apprising the Chamber whether she has changed any of her opinions in her ultimate evaluation. I do believe she should be allowed to do that, given that various matters were raised during cross-examination. And out of fairness, I do believe Dr Cohen should be allowed to apprise the Chamber if her opinion has in any way changed or what her assessment would now be under paragraph 188 of the Istanbul Protocol, which was the scale that she used in her report.

PRESIDING JUDGE MINDUA: [15:24:47](Interpretation) Ms Taylor, the -- from what I understood, that the witness has evaluated her own assessment with regard to her own report; is that what you're saying?

MS TAYLOR: [15:25:02] Mr President, in the first report there's a paragraph in which Dr Cohen provides her own opinion as concerns the scale in the Istanbul Protocol as towards the consistency of certain symptomology with his symptoms or his narrative. The Prosecutor has asked various questions as to whether that opinion should change on the basis of information that has been brought to her attention during cross-examination.

My question now, to finish with, is given that this first report will now be tendered into evidence under Rule 68(3), has any of the information referred to during cross-examination, or any of things information that Dr Cohen has assessed during

witness preparation affected the evaluation she provided under paragraph 188 of the Istanbul Protocol.

And with your -- Mr President's leave, I would invite Dr Cohen to indicate this to the Chamber and to perhaps explain her response, if necessary.

PRESIDING JUDGE MINDUA: [15:26:18](Interpretation) Indeed, Ms Taylor, this question is accepted.

Mr Prosecutor, I see you getting to your feet. No, no, no, no, the question is accepted.

Please go ahead.

THE WITNESS: [15:26:30] So although in my individual report writing work I normally make both assessments, physical and psychological, and form an overall evaluation on both parts. In many places these two aspects of the examination are done separately, as was done here.

However, we did not have the opportunity as two experts to then write a final summary report in which we would have combined our opinions and formed a joint conclusion, evaluating each other's evidence, and come to a final finding. That would be, in my mind, the preferable, professional way to do it, to consult Dr Porterfield and together to have issued a joint opinion.

However, her findings are extremely strong. She has diagnosed PTSD and she's related that to the torture allegations. My own findings are highly consistent. I would definitely raise them above highly consistent, when considering the psychological evidence as well, at least to typical. And if I had the opportunity to seek Dr Porterfield's view, we might go higher than that as a joint conclusion.

MS TAYLOR: [15:27:47] Thank you, Mr President. I don't have any further questions.

PRESIDING JUDGE MINDUA: [15:27:55](Interpretation) Thank you very much indeed, Ms Taylor, for your re-examination.

Now, there is nothing further to be said by any party, so now I'm going to turn to the expert witness.

Madam Witness, the Chamber would once again like to thank you very sincerely for having assisted it by answering very clearly, very professionally, and with a great -- great deal of goodwill those questions that have been put to you today.

Your testimony has now come to an end, and on behalf of the Chamber I would like to thank you once again and wish you all success in your career.

(The witness is excused)

PRESIDING JUDGE MINDUA: [15:28:54](Interpretation) Before rising for today, I would like to very sincerely thank all those people who took part in today's hearing. I'm thinking of course of the parties, of the participants, the court reporters, the interpreters, and our security guards. I'd also like to thank our public in the gallery and our public following us from further afield.

I do have one last concern to raise, as to what is going to be happening next.

Ms Taylor, the next witness would be for the next -- be for Wednesday, 1 June at 9.30, D-0502; is that correct?

MS TAYLOR: [15:29:53] Yes, Mr President. And it could be possible, obviously, for him to appear earlier, it's just a matter of the Chamber's availability. And also we need to disclose the preparation log, which I believe we will be doing forthwith.

PRESIDING JUDGE MINDUA: [15:30:11](Interpretation) Madam Courtroom Officer, I do believe that there are technical issues.

Ms Taylor, I have further information from the courtroom officer. We will not be able to start tomorrow, so it will be for Wednesday at 9.30. There we are.

Court is adjourned.

THE COURT USHER: [15:30:38] All rise.

(The hearing ends in open session at 3.30 p.m.)